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INDONESIA REGIONAL POLICY BRIEFING: APPENDIX ON DEFORESTATION POLICIES

Policy brief Appendix prepared by Access Partnership for the
Tropical Forest Alliance

Prepared in August 2022; Updated in March 2023

About this Appendix

TFA has identified the need to build awareness of relevant policy developments in key Indonesia among corporate stakeholders related to deforestation and related supply chain risks. In service of this objective, TFA commissioned Access Partnership to develop regular Regional Policy Briefings for Indonesia, with the aim of providing comprehensive and impartial information on the policy and geopolitical context related to deforestation and the forest-positive agenda in Indonesia to help downstream supply chain companies engage with policymakers. Aspects covered by these briefs include policy developments and updates from current events related to forest protection, sustainable land use, agricultural production and trade, green finance, climate, and land rights. This is the Appendix for these briefings, which is intended to be read in conjunction with the main documents.

Contents

Contents	2
Appendix A: Deforestation-Related Laws in Indonesia	3
1. Laws granting authority	3
2. national decarbonisation plans	3
3. Forestry laws	4
4. Licensing laws	5
5. Agri-food laws	6
6. Trade laws and other international mechanisms	7
Appendix B: Forest Nomenclature in Indonesia	9
Sources	10

Appendix A: Deforestation-Related Laws in Indonesia

1. Laws granting authority

Authority of forestry law-making and enforcement is shared between the national, provincial, city, district, and village level governments. Each has varying responsibilities.

- **National government authority:** The Ministry of Environment & Forestry (MoEF) is the lead authority for nearly all forest matters. The MoEF has authority over issues at the national level, including managing land and forest fires, setting environmental laws and quality standards, and developing and implementing programs geared towards achieving national priority targets. The leading role of the MoEF in forest policy and management was reaffirmed by Presidential Decree No.16 of 2015.¹ Other relevant federal ministries include Agriculture, Industry, Trade, and Investment. Relevant agencies under these ministries include the Directorate of Plantations, the Peatland and Mangrove Restoration Agency, the Forestry Police, Forestry Security Unit, and Forestry Supervisor.
- **Subnational government(s) authority:** Law No. 23 of 2014 on Regional Governance shifted authority over natural resource management away from district and city governments towards provincial and federal governments.² However, Law No. 6 of 2014 allows villages to manage their natural sources to an extent by allocating specific portions of State budget as discretionary funding for making local improvements to support poverty alleviation and infrastructure.³

2. National decarbonisation plans

There are three national plans/targets to note that encompass elements of forestry-related targets, that have been covered below. Bilateral and multilateral partnerships towards meeting decarbonisation goals are often agreed to under the auspices of these laws. These are related but independent to forestry laws that have been covered in subsequent sections of this document:

- **Indonesia's nationally determined contributions (NDCs):** NDCs are a country's committed decarbonisation targets, often presented at an international stage, and usually branched into unconditional and conditional, with a 2030 or 2050 timeframe. In September 2022, Indonesia submitted an enhanced set of NDCs for COP27, under which it increased its unconditional emissions reduction target from those declared at COP26 to 31.89% and its conditional target to 43.2% by 2030, relative to a business-as-usual emissions scenario for 2030 that was calculated in 2021.⁴ The forestry sector is responsible for achieving nearly two-thirds of the original targets, and, critically, the enhanced commitment will be similarly implemented through sustainable forestry management and effective land use and spatial planning. This includes scaling national social forestry programs, restoring functions of degraded ecosystems including wetland ecosystems, and improving agricultural productivity.
- **FOLU Net Sink 2030:** In February 2022, Indonesia's MoEF released a decree on Indonesia's Forestry and Other Land Use (FOLU) Net Sink 2030 plan.⁵ The plan rests on a key target – that the absorption of greenhouse gases from Indonesia's forestry sector be balanced or more than its emissions by 2030. Under the plan, GHG absorption from forestry and land use is targeted at 140 million tonnes CO₂e by 2030, increasing to 304 million tonnes in 2050.⁶ The plan rests on four main strategies:⁷
 - **Avoiding deforestation:** Capped at 6.8 million hectares by 2030 to achieve net sink objectives.
 - **Conservation and sustainable forest management:** Reducing excessive logging and production forest encroachment, promoting sustainable forestry, and extending protected areas. MoEF is optimising legal permits for social forestry, with the aim of covering 12.7 million hectares by 2028 under the net sink target and supporting 45,200 social forestry business groups (KUPS) through 2030.⁸
 - **Protection and restoration of peatlands:** Emissions from peatland account for 50% of total emissions in the agriculture and FOLU sector, which largely originate from peatland fires and dry peatland decomposition. An important enforcement mechanism to prevent fires is surveillance

of companies located in high, very high, and extremely high priority index areas listed in the location priority index.⁹

- **Sink enhancement:** Accelerating afforestation and reforestation of severely degraded land outside and within forest areas, including urban rejuvenation.
- **Nilai Ekonomi Karbon (NEK) or Carbon Economic Value Policy:** NEK was issued under *Presidential Regulation No. 98 of 2021 (PR98/2021)* on Indonesia's NDCs. These include the Ministerial Decree for Carbon Trade in October 2022,¹⁰ which among other areas set out plans to enable a national carbon exchange to meet Indonesia's enhanced NDCs. The Financial Services Authority (OJK) will be handed responsibility to design and launch the exchange in 2024 or 2025.¹¹ PR98/2021 also covered steps for Indonesia to move from a voluntary to mandatory carbon market by stipulating several critical sectors, including energy, agriculture and forestry as required to participate.¹² On February 22, 2023, Indonesia's Ministry of Energy and Mineral Resources launched the first phase of mandatory carbon trading in energy generation, in the power generation subsector.¹³ This follows the issuance of *Ministry of Energy and Mineral Resources Regulation No. 16* in 2022, concerning Procedures for Implementing NEK in the Power Generation Subsector. Indonesia's carbon exchange could be launched in 2024 or 2025.¹⁴ Authorities have stressed that carbon trading schemes must expressly detail various aspects including benefit sharing, verification and certification processes, as well as supervision in their implementation and local involvement.¹⁵

3. Forestry laws

Article 1 of the Government Regulation No. 23 of 2021 concerning Forestry Management covers a wide range of forestry laws that have evolved over past decades.¹⁶

- **Nomenclature.** Article 1 of the Government Regulation No 23 of 2021 concerning Forestry Management provides definitions of different forest types. It should be noted that Indonesia employs a different definition for “forests” than used in other parts of the world,¹⁷ with the total extent of Indonesian forested area including both designated state forests as well as other landscapes with tree cover designated for non-forestry usage:
 - Under Indonesian law, “Forest Area” is under the jurisdiction of the Ministry of Environment and Forestry (MoEF) but includes areas both covered by forests and not forested and designated for both conservation and forestry uses.
 - Similarly, public lands outside of state forest area categorised under Indonesian law as “Other Use Areas (APL)” can be both covered by forests and not forested and are designated for development outside the forestry sector, including for agriculture.
 - Both Forest Area and APL fall under the full extent of Indonesia's forested area. Land cover may therefore take several different forms, including natural forests (consisting of primary forest and secondary forest), plantation forest, plantation/estate crops, agriculture, shrub, settlements, and various others. These definitions can be found in Appendix B.
- **Forest stock-taking.** The same government regulation also includes requirement on forest stock-taking at the national, provincial, watershed, and forestry management unit levels at least once every five years (Chapter 2, Section 2). The objective of forest stock-taking is to ensure that the country possesses data on available resources, as well as potential natural wealth of forests and their environment.
- **Forest Protection.** Chapter 7 of the government regulation mandates the central and provincial government, state-owned enterprises in the forestry sector, as well as rights and permit holders to conduct forest protection efforts based on the principles of preventing and restricting damages of forests and forest products; protecting the rights of the country, community, and individuals; and environment restoration.
- **Surveillance.** Chapter 8 of the regulation further stipulates ministers and governors must survey activities involving any business licenses and utilisation approvals in the forestry sector. Surveillance must be conducted periodically (at least once a year) or incidentally based on suspected violation and/or public complaints.

- **Sanctions.** Chapter 9 of the regulation lay out administrative sanctions that could be imposed for any violations. Sanctions can be imposed on holders of licenses or utilisation approvals if they conduct activities not in line with the approval or license terms, transfer ownership of the licenses or approvals, do not pay the required non-tax fees, do not set up an operational workplan or conduct Forest Protection initiatives, among others. Sanctions imposed range from warning, fines, freezing of permits, to revocation of permits.
- **Rehabilitation requirement.** The derivative policy of Ministerial Instruction No 8 and 9 of 2021 stipulates that in between palm oil plantation cycles, a reparation period is required.¹⁸ Under this regulation, it is prohibited to plant new plantation after one cycle, and the land must be returned to the state. Palm oil plantations located in Production Forest Areas are granted 25 years for each cycle, while those located in Protected or Conservation Forests are granted 15 years for each cycle.

Additionally, the **Ministry of Environment and Forestry Regulation No. 8 of 2021 on the Governance and the Making of Forest Management Plan, as well as Forest Use on Protected Forest and Production Forest** regulates mandatory tree stock-taking and long-term business plans and also authorises the Timber Legality Verification System (SVLK).¹⁹

4. Licensing laws

Although part of Government Regulation No. 23, licensing laws are unique in that they are critical to determining “accepted” levels of deforestation.

- **Types of licenses.** There are two main business licenses in the forestry sector: the Forest Utilisation Business License and the Forest Product Processing Business License, covered in Chapter 4 of the Government Regulation No 23 of 2021. In addition to licenses, Forest Utilisation Approval can be granted to development interests outside of forestry activities. In addition, A new multi-purpose licensing scheme allows companies to avail a single license for a range of forest uses, including non-timber forest products, eco-tourism, and gradually for carbon trade, with the aim of incentivising other forest uses beyond timber.
 - **Forest Utilisation Business License.** The Forest Utilisation Business License can be given to Protection Forests, Production Forests, and Conservation Forests for the utilisation of land, environmental services, timber and non-timber forest products, as well as collection of timber and non-timber forest products. Holders of this license are required to arrange a 10-year and annual workplan on forest utilisation and management, set proper boundaries, implement forest fire prevention measures, carry out reforestation efforts, pay utilisation fee, employ silviculture system, employ Reduced Impact Logging techniques when harvesting any forest products, and collaborate with local community cooperatives. In January 2022, the government revoked 192 licenses of businesses covering 2.1 million hectares as they were inactive and did not prepare any work plan on forest management.²⁰
 - **Forest Product Processing Business License.** The Forest Product Processing Business License can be given to businesses that (a) process logs, wood chips and/or wood biomass into processed timber products other than furniture, handicrafts, and pulp and paper;²¹ (b) process non-timber forest products into processed products. Raw materials for such processing activities must be obtained from legal sources, such as Forest Utilisation Business License holders, Social Forestry Management, and forest management by state-owned enterprises in the forestry sector, Private Forests, import, and other legal sources. To ensure the legality of raw materials, Article 172 of the regulation requires an assessment of sustainable practices of the source, verification of the legality, and independent declaration by license holders – done through the Ministerial information system.
 - **Forest Utilisation Approvals.** Development interests outside of forestry activities that may be granted Forest Utilisation Approval include religious, mining, renewable energy, telecommunication infrastructure development, infrastructure and transportation development, public facilities, industry, defense and security, public safety, natural disaster, irrigation and

sanitation facility development, waste management infrastructure development, and public safety support infrastructure activities.

- **Amnesty for business activities without forestry licenses.** Decree No 359 of 2021 and decree 531 of 2021²² from the Ministry of Environment and Forestry identified 364 subjects that operate in Forest Areas but do not possess forestry licenses. Of these subjects, 212 are palm oil plantations and 53 are mining companies. However, these subjects were given concessions under Constitution No 11 of 2020 Articles 110A and 110B.²³ Article 110A allows concessions for palm enterprises without business license in the forestry sector – they would not be subjected to criminal sanctions but are given the opportunity to complete their license application by paying the Forest Resources Provision fee and Reforestation Fund. Article 110B applies to mining, plantation and other enterprises operating in Forest Areas that would not be subjected to criminal sanctions but are subjected to administrative sanctions in the form of temporary termination of business, orders for payment of administrative fines, and/or government coercion to be subsequently given approval for the right to continue their business activities in Production Forest Areas.
- **Frequent updates to licensing laws ensure evolving socioeconomic priorities are reflected:** Licensing laws are frequently updated to effect necessary changes in economic priorities while maintaining strict forest protections. For instance, in 2018, the Indonesian Government issued a 3-year ban on new licenses for palm oil plantations, which has since expired, and in 2019 imposed a permanent ban on new licenses in primary and peat forests. In March 2022, it withdrew concession permits from 15 companies covering nearly half a million hectares of forests to improve governance and transparency, following the revocation of over 2,000 mining, plantation, and forest-use permits in January due to non-compliance or lack of use.²⁴

5. Agri-food laws

Indonesia's main agricultural policies are also relevant to the deforestation agenda, given the role of agri-food commodities like palm oil in driving deforestation²⁵:

- **Food Law of 2012:** Indonesia's main agricultural policies are framed under Law No. 18 of 2012 – the Food Act – which establishes key objectives related to food sovereignty and self-reliance.²⁶ The application and evolution of this law in following years has translated to programmes aimed at achieving self-sufficiency in a number of staples – including rice, maize, soybeans, sugar and beef. Also included are export tax arrangements related to palm oil and cocoa, as well as an export levy on crude palm oil and plans to increase the biofuels mandate to blend 30% palm oil (B30). Fertiliser subsidies are a significant portion of the budget provided to the agricultural sector have contributed to negative environmental effects, including nitrogen and phosphorous loading in soils and water bodies receiving run-off.
- **Sustainable agricultural systems:** The new Law No. 22 of 2019 on Sustainable Agricultural Systems aims to improve sustainability of agricultural production systems.²⁷ The law mandates that the achievement of food sovereignty objectives account for the ability of ecosystems to support production while maintaining healthy function, mitigation of carbon emissions, and measures to adapt to climate change. Specific aspects covered by the law include land use, seeds, planting, water quantity and quality, harvest and post-harvest losses, and research and development.
- **The Indonesia Sustainable Palm Oil (ISPO) certification.** Under the certification, enterprises are prohibited from converting indigenous lands to palm oil plantations. In 2018, an update to the regulation was made, through which a principle of transparency and traceability requirements was added. The Presidential Regulation No 44 of 2020 concerning certification system for sustainable palm oil further revised the regulation.²⁸ ISPO certification is no longer voluntary but mandatory for all palm oil plantation and processing enterprises, with these enterprises given five years of preparation period. The regulation also changes the institution that can issue the ISPO certification, from the ISPO Committee to accredited certifying bodies, in order to maintain independence and transparency. Certification will be given to enterprises that adhere to the stipulated principles and criteria. These principles are: adherence to national constitution; good plantation practice; management of the environment, natural resources, and biodiversity; responsible labour practices; social responsibility and economic empowerment;

transparency; and continuous business improvement. While it prohibits conversion of indigenous lands and includes principles of transparency and traceability, ISPO has been heavily criticised by observers for relying on official frameworks for recognising indigenous land claims which cover only a fraction of such areas, while also not explicitly calling for protection of secondary forests or providing independent monitoring of the certification scheme.²⁹

6. Trade laws and other international mechanisms

Trade agreements and partnerships with consumer governments also play an important role in reducing deforestation risk, as well as certification schemes and import laws by bodies such as the European Union (EU).

- **Forest Law Enforcement, Government and Trade (FLEGT)-Voluntary Partnership Agreements (VPA).** Between 2011 and 2013, Indonesia and the European Union (EU) negotiated a FLEGT-VPA to promote trade in legal timber products and improve forest governance; in 2014, the two parties ratified the agreement.³⁰ Under the VPA, Indonesia will export only verified legal timber products, which will be accompanied by FLEGT licenses if exported to the EU. Indonesia began issuing FLEGT licenses in November 2016. In 2019, Indonesia and the United Kingdom also ratified the agreement after the exit of the latter from the EU.³¹ Only producers who have obtained FLEGT licenses can export timber products under the Regulation of the Minister of Trade No. 93 of 2020, which lays out procedures for export clearance.³²
- **Consumer government alliances:** Alliances of consumer governments including the Amsterdam Declaration, which was launched in 2015, are designed to eliminate deforestation in supply chains, particularly for palm oil (including the extended Amsterdam Palm Oil Declaration), cocoa, and soy.³³ The original signatories to the agreement include Denmark, France, Germany, Italy, the Netherlands, Norway, and the United Kingdom, and other countries are often associated with efforts from these signatories to address deforestation risk in supply chains, including Spain, Poland, Belgium, Switzerland, and Portugal.³⁴ Although not legally binding, they provide resources for engagement between public sector agencies and support for private sector commitments.
- **EU Deforestation Regulation (EUDR):** The EU's new regulation that bans the trade of deforestation-linked commodities by 2030 was implemented in December 2022. The regulation imposes mandatory due diligence rules for companies that wish to trade in commodities that are linked to tropical deforestation.³⁵ The burden will be placed on buyers and traders to prove that products are legally produced and deforestation-free (i.e., produced on land not deforested after 31 December 2020). The announcement precipitated a wave of activity from stakeholders to map their production to farm-level and improve their traceability systems.³⁶ The EU's ambassador to Indonesia stated that most palm oil companies in Indonesia could meet these requirements, including smallholders,³⁷ but the Indonesian Palm Oil Association (GAPKI) disputes this and has recommended that the regulation's traceability requirements exempt smallholders.^{38,39} Instead, GAKPI advocates the use of national and voluntary certification schemes as a form of compliance. More recently, the Indonesian and Malaysian governments have echoed these concerns and more over the current policy design and have taken steps to raise these to the EU and World Trade Organisation (WTO). This includes sending trade envoys to the EU to present their views⁴⁰ and bringing the *EU – Palm Oil (Indonesia) (DS593)*⁴¹ case in front of the WTO's Dispute Settlement Body.
- **EU's Carbon Border Adjustment Mechanism (CBAM).** This regulation, which was also agreed upon in December 2022 and pending implementation in October 2023, essentially imposes a tariff on carbon-intensive products, initially covering iron, steel, cement, aluminium, fertilizers, hydrogen, electricity, as well as some manufactured products.⁴² Upon its proposal in 2021, Indonesian policymakers' perception of the CBAM suggested that many government officials see it as a potential trade barrier, although they were less concerned as palm oil was not under the scope of the policy.⁴³ However, this stance may change as more products are expected to be included in future, with deforestation-linked commodities such as palm oil likely to be affected.
- **The Roundtable on Sustainable Palm Oil (RSPO) certification.** The RSPO certification is a voluntary certification, awarded to palm oil producers that adhere to and fulfil the RSPO Principles and Criteria by

accredited Certifying Bodies, and can be withdrawn at any time in case of infringement of the rules and standards.⁴⁴ All organisations in the supply chain that use RSPO certified sustainable oil products are audited to prevent overselling and mixing palm oil with conventional or non-sustainable palm oil products. The seven principles of the RSPO are: ethical and transparent behaviours; legal operations and respect for rights; optimisation of productivity, efficiency, positive impacts, and resilience; respect for community and human rights and delivery of benefits; support for smallholder inclusion; respect for workers' rights and conditions; protection, conservation, and enhancement of ecosystems and the environment.⁴⁵ It covers a small but growing share of the Indonesian palm oil sector, with over 2.3 million hectares of production land (~16% of national total) and 11.1 million tonnes of palm oil (~23% of national total) RSPO-certified as of 2021.⁴⁶ While both schemes encourage sustainable palm oil production, both draw legitimacy from different sources which has spurred tensions. The RSPO is driven primarily by international CSOs and downstream companies from developed countries, and thus has greater international market acceptance, while the state-driven ISPO could be viewed as an expression of the Indonesian government's sovereignty.⁴⁷

Appendix B: Forest Nomenclature in Indonesia

Article 1 of the Government Regulation No 23 of 2021 concerning Forestry Management provides definitions of different forest types as listed below:

- **Forest** – an ecosystem of land containing biological natural resources, dominated by trees in their natural environment, and is inseparable
- **Forest Area** – an area designated by the government to be maintained as Permanent Forest; however, land legally designated as Forest Area could include both covered by forest or “forested” and not covered by forest or “not forested”
- **Other Use Areas (APL)** – public lands categorised under Indonesian law as “Other Use Areas (APL)” can be both forested and not forested and includes areas outside the state forest area designated for development outside the forestry sector, including agricultural landscapes like plantation forests, plantation/estate crops, agriculture, and settlements. Both Forest Area and APL fall under the full extent of Indonesia’s total forested area or forest cover
- **Permanent Forest** – forest maintained as a Forest Area, consisting of Conservation Forests, Protected Forests, and Permanent Production Forests
- Based on their status, forests are classified into three:
 - **Country Forest** – forest located on land not encumbered with land rights
 - **Private Forest** – forest located on land encumbered with land rights
 - **Customary Forest** – forest located within the territory of Customary Law Communities
- **Customary Law Community** – a traditional community that are still organised in associations, governed by customary laws and instruments, collect forest products in the surrounding forest areas, and whose existence is confirmed by local regulations
- Based on their functions, forests are classified into three:
 - **Conservation Forest** – a Forest Area with the main function of preserving the diversity of plants and animals, as well as their ecosystem. It is further classified into three:
 - **Nature Reserve Forest Area** – forest with the main function of preserving the diversity of plants and animals together with their ecosystem, as well as serving as a support system for lives in the area
 - **Nature Conservation Forest Area** – forest with the main function of protecting the life support system, preserving the diversity of plants and animals, and to sustainably utilise biological natural resources and their ecosystems
 - **Hunting Park** – a Forest Area designated as a hunting park
 - **Protection Forest** – a Forest Area with the main function of protecting the natural system
 - **Production Forest** – a Forest Area with the main function of producing forest products. It is further classified into two:
 - **Permanent Production Forest** – a Forest Area with the main function of producing forest products and is maintained as a Permanent Forest
 - **Convertible Production Forest** – a Production Forest Area which can be spatially reserved for development outside of forestry activities and can be converted into Permanent Production Forest
- **Social Forestry** – a sustainable forest management system carried out by local or Customary Law Communities to improve welfare, environmental balance, and socio-cultural dynamics, in the form of Village Forests, Community Forests, Community Plantation Forests, and other partnerships
 - **Village Forest** – a Forest Area that has not yet been encumbered with land permit, which is managed by the village and utilised for the welfare of the village
 - **Community Forest** – a Forest Area with the main function of empowering the community
 - **Community Plantation Forest** – plantation forest in Production Forests built by community groups to increase the potential and quality of Production Forest by applying silviculture, with the aim of ensuring the sustainability of forest resources
- **Silviculture system** – a forest cultivation system or technique, which includes selecting seeds, seeding, planting, maintenance, protection from pests and diseases, as well as harvesting

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