Dirty Plan behind Palm Oil Bill
A. Introduction

Palm oil plantation is a plantation plant commodity which is the biggest in terms of its land use in Indonesia. In accordance to Directorate General of Plantation, the Ministry of Agriculture data, there are 11,672,861 hectares of palm oil plantation areas; while Corruption Eradication Commission (KPK) states that the total area of palm oil plantation in Indonesia is 15.7 million hectares. Based on KPK data, only 28.03% of such palm oil plantation is owned by the community; the other 3.14% is owned by State Owned Enterprise and 68.83% is under private investment control. Such space controlling condition obviously represents the domination of palm oil plantation in Indonesia by Investment.

The dominating investment situation over palm oil plantation in Indonesia has in fact left devastating mark to the social and environment condition which can be seen from the record of conflict and environmental impact resulted from its activity.

In accordance with WALHI record, 21 out of 28 Regional offices have done advocacy for monoculture plantation, which has caused conflict and significant ecological damages. Furthermore, the Agricultural Reform Consortium (KPA)\(^1\) noted that there were 450 agricultural conflicts throughout 2016. According to the conflict record, 163 conflicts (36.22%) happened in plantation sector dominated by the expansion of palm oil plantation. Most of the palm oil plantation conflict includes the overlapping with the people management land and due to functional shifting of the forest and forest area causing the loss or damage on living sources of the community.

The relation between conflict and releasing forest area is shown from the total area of forest being shifted for its function. Based on processed data from Ministry of Environment and Forestry, there are more than 5 million hectare forest areas that has been shifted for its function becoming palm oil plantation area within 1987 to 2016. It reached its highest point of shifting function of forest area during 2013 and 2014.

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Picture 1. Map of hot spot distribution in permitted area and non-permitted area in 2013

Picture 2. Map of hot spot distribution in permitted area and non-permitted area in 2014
Another bad impact of palm oil plantation is regarding hot spots distribution throughout 2013 until 2016, during which the palm oil plantation, particularly HGU and IUP Plantations, was considered as one of the biggest contributors for hot spots in Indonesia. In addition to its relation with forest and land fires, palm oil plantation contributes to the other ecological disasters, such as water crisis, flood, etc.

The above explanation at least illustrates that the promise for welfare resulted from palm oil investment is merely an imagination. Unfortunately, the reality of negative impact caused by palm oil plantation is not counted into consideration in preparing the national political legislation.

This is proven by the decision of the House of Representative of the Republic of Indonesia (DPR-RI) that considers Palm Oil Bill to be part of the National Legislation Program (Prolegnas) in 2016 and 2017; and continues the harmonization process as well as internal discussion in DPR-RI despite the fact that the Government considers there is no urgency in discussing this RUU. Nevertheless, the substance of this RUU shows the tendency of siding towards investment and ignoring the social as well as environmental aspects.
B. Threat Notes on Palm Oil Bill

At the end of 2016, DPR-RI was officially deciding again that Palm Oil Bill was included in the 2017 Prolegnas Priority. Such ratification is the continuation of DPR policy, of which in 2015 stipulated this Bill to be included in the 2016 Prolegnas Priority. Bad intention of this Bill is starting to get obvious after the disclosure of the academic text and Bill draft, in which the spirit of this Bill is clearly and obviously ignoring the interest of the community (plantation) and environment. In regards with such matter, WALHI identifies several crucial articles showing the real intention of Palm Oil Bill that supports investment, including:

1. Considering Preamble letter b states that palm oil is one of the biodiversity resources becoming the strategic commodity and has big contribution and potential in the national economy development for the welfare of the people. This is an unfounded assumption since the Palm Oil Bill substance is indeed dominated by the provision for giving extra intensive and privilege to investment;

2. Considering Preamble letter c states that palm oil is not regulated comprehensively and integrated according to the need and development of law. Such considering statement is non-sense for the fact that Law Number 39 of 2014 regarding Plantation is still relevant and accordingly regulates the palm oil management system as one of the plantation plants;

3. It mentions principle of environmental preservation in the palm oil plantation practice (Article 2 letter J). Such principle obviously contradicts with the palm oil principle, palm oil development is indeed related to the loss of forest coverage and damage of soil and water ecosystem;

4. Opening opportunities for the exploitation and even opening of peat ecosystems for oil palm plantations (Article 9 paragraph (2), Article 23 paragraph (4), Article 50, Article 51). This provision is certainly contrary to the spirit of protection of the peat ecosystem and the Government’s efforts to prevent forest and land fires. The position of the Moratorium Presidential Instruction will not be empowered against the substance of this bill if it is ratified;

5. The existence of a provision that negates the criminal liability scheme with the limitation of the system of administrative accountability only (Articles 16 and 53). Should the fulfillment of administrative violations may be fulfilled by the element against the law in some criminal provisions;

6. Provision of special facilities / intensive to investors / investment, which is reduction of corporate income tax; exemption or relief of import duty on the import of goods; exemption or relief of import duties on raw materials or auxiliaries for production purposes; exemption or suspension of value added tax on import of capital goods or machinery or equipment for production purposes not yet produced domestically; accelerated depreciation or amortization; earth and building tax relief; and / or product marketing assistance through agencies or agencies (Article 18).

Substance of formulation of Article 18 is contrary to the Government’s efforts to increase state revenues from the tax sector. In addition, in the principle of justice, the one that shall be getting access and subsidy is the poor, not the big-scale businessman who certainly has the ability to fulfill his obligation fully;

7. The legalization of crime in forest area (Article 24 paragraph (2). Although this provision sets forth in particular the Planter, there is a threat for this provision to be abused by falsifying document of big-scale individual and corporate plantation relocation to be owned by Planters for the acceleration process of plantation legalization;

8. The existence of de-legitimization efforts on land rights and indigenous people’s cultivation systems (Articles 25 and 26). This provision has the potential to change the traditional cultivation tradition of indigenous and tribal peoples. Furthermore, it has the potential to eliminate the independence and customary law community over their customary lands, in which the patterns of land delivery open up the potential loss of indigenous peoples’ rights over a long period of time;

9. Open the opportunity of land banking, in which determined the land owning for 100,000 hectare at the most for Corporate, not for each holding company (Article 27). This provision opens the opportunity for holding company to create “shadow company” that seems not having any affiliation with them;

10. The concentration of people’s cultivation system on only palm oil commodity (Article 29). This will promote the acceleration of agricultural land conversion into palm oil plantation;

11. The blurring of history by making palm oil a part of Indonesia’s genetic resources (Article 34);

12. Excessive allocation of national fertilizers for oil palm and subsidies for imported fertilizer use (Art 47). Against this provision there are two threats. Firstly, the increasing use of chemical fertilizers and the potential for opening new fertilizer plants to meet the needs of large-scale oil palm plantations is increasingly high. Secondly, there is potential for unavailability of fertilizer allocation for other plantations, as well as inaccurate target of fertilizer subsidies dominated for investment needs;

13. Government facility for water supply and peat management (Article 49 and 50). This provision adds the burden for the Government to give special facility potentially to be used for big-scale investment;

14. Any compensation for eradication of palm oil attacked by pests. There is no difference on compensation receiver between the community and corporate. It may cause additional financial burden of the state;
15. The existence of restrictions on the use of export duties as a source of state revenue is only for the benefit of oil palm plantations, especially investment (Article 70). This inevitably hampers the process of building and allocating the use of funds for other developments related to the accelerated increase of people’s welfare;

16. The dominance of the provisions formulated for the sake of investment that will be the financial burden of the state (Article 71 s / d 74). Even some of these provisions led to a positive campaign that made the Government obliged to close the dark story or fabricate lies to support large-scale palm oil plantation investments in Indonesia;

17. The mandate of the establishment of the Palm Oil Management Board (Article 87 to Article 91). The agency’s urgency merely pays attention to the economic aspects and ignores the facts of the environmental, social and cultural destructive power of oil palm plantation activities. In addition, the establishment of this agency will add to the state’s financial burden amidst efforts to streamline the budget;

18. The existence of some criminal provisions that is prone to be misused to criminalize the people (Articles 97 & 98). The standardization of care, harvesting and post-harvest regulatory requirements of the bill is very difficult to meet by small scale independent smallholders;

The formulation of Palm Oil Bill is politics of law process in the stage of formulation/legislation determining politics of law step in the application step and so on. Moh. Mahfud MD states that politics of law refers to “effort in making the law as process to achieve state’s objectives.”3 Referring to the substance explanation of the Palm Oil Bill, it is obvious that the content of this Bill is against the objective of the state as set forth in the fourth paragraph of the Preamble of 1945 Constitution of the Republic of Indonesia stating to protect all the people of Indonesia and their entire native land, and in order to improve the public welfare, to advance the intellectual life of the people and to contribute to the establishment of a world order based on freedom, abiding peace and social justice.

The argument on incoherence between Palm Oil Bill substance and state’s objective set forth in the Preamble of 1945 Constitution of the Republic of Indonesia can be observed by referring to a theory of three basic values of law. Gustav Radbruch as mentioned by Satjipto Rahardjo4 states that there are three basic values of law: justice, expediency (Zweckkmaszigkeit) and legal certainty. Although the three is the triad of basic values of law, there is a spannungsverhaltnis, a tension between one and another. The existence of tension is because each value has a different purpose. If you want to simplify, the basic value of law can be divided into two, namely justice and certainty. The basis of this argumentation is because in the theory of justice, usefulness is one of its goals, especially when considering the originator of the theory of justice with the flow of utilitarianism.

Referring to the substance of the Palm Oil Bill can be seen the legislation plan of this law just accommodate the interests of the corporation to ensure the existence of intensive and privileges that actually better be reserved for the people of the weak economy. The Rites Law uses the value of legal certainty as a means of ensuring the smoothness of investment capital in order to ensure the goal of obtaining profit as well as escape from the environment, social and cultural obligations. This condition is in line with what was delivered by Satjipto Rahardjo, where the modern capitalistic economic system desperately needs certainty and predictability (predictableness and preciseness), and in the investment of oil palm plantations, this bill is directed to be a tool for realizing predictableness and preciseness which is neglected to the fair value and the benefit.

C. Palm Oil Bill Promotes Legitimation of Human Rights Violation

DPR attitude that keeps pushing to complete and harmonize Palm Oil Bill, despite of the tendency of rejection from the government and the pressure to stop the legislation process of this Bill from many of civil society organizations, has created suspicion. Ideally, DPR shall take a stand and use its supervising function to call on the Government for clarification on European Parliament Resolution called On Palm Oil and Deforestation of Rainforests. Basically, this Resolution rejects the idea of bio-diesel produced from Palm Oil since it may cause the fast deforestation and is closely related to Human Rights violation practices.

Those two issues are not new things; indeed, they have been attached to big-scale palm oil plantation practice for the last 20 years.

Regarding deforestation practice caused by the rapid development of palm oil plantation has explicitly illustrated from the forest area release graphic throughout 1987 until 2016 that has reached over 5 million hectares. This excluded the functional shift of primary forest becoming palm oil plantation illegally. Therefore, in this part, we will focus to briefly explain the bad practice of palm oil plantation from human rights perspective. From the explanation, there will be some clear information that special Bill is not necessary to answer the need for solving palm oil plantation problems; instead, special action and policy regarding laborer, children and community rights within the plantation industry up to the processing circles are much necessary.

1. Loss of land and environmental rights

According to Sawit Watch data, the trend of conflict in the palm oil sector continues to increase from 2007 where 514 conflicts occurred, then in 2008 there were 576 conflicts, increasing in 2009 where there were 604 conflicts, 608 conflicts in 2010, in 2011 there were 668 conflicts, in 2012 there were 679 conflict, in 2013 recorded 680 conflicts, in 2014 recorded 591 conflicts.

The conflicts recorded by Sawit Watch include conflicts of land, partnership and the environment. While in 2015, KPA noted there are 127 plantation conflicts dominated by oil palm plantation conflicts.\(^7\)

In the perspective of human rights, the right to life in relation to agrarian resources at least covers the right to land and other livelihoods. The land for the peasants and the villagers is not only seen from an economic point of view, but is related to the continuation of life. The loss of land means loss of life source. Conflicts in oil palm plantations that often negate land rights controlled for generations without a clear formal legal basis by farmers and villagers. No land, no work, no work cannot continue life. The only option to go on without land is to be a worker in a palm oil plantation that robs people’s land. Other options to maximize the utilization of other natural resources in the village are also very small opportunities to be maximized, as forests, rivers and other livelihoods from forest or environmental sustainability have declined in quality due to functional transfers, channel clearance and the use of chemical and other fertilizers. Even for large-scale, large-scale oil palm plantation practices are rewarding ecological disasters to communities, such as forest fires, flash floods and river pollution. The conflict situation also resulted in the loss of the right to a peaceful, happy and prosperous peace. This is inseparable from the pressure, intimidation that is often accepted by citizens of state devices or hired company.

Normatively, the neglect of good and healthy land and environment of oil palm plantation practices is a form of basic rights enforcement that is affirmed in the provisions of Articles 28I and 28Hayat (1) of the 1945 Constitution of 1945 jo. Article 4 of Law Number 39 Year 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law).

2. Cheap wages and loss of rights to welfare

The right to welfare is related to the right to life. Article 36 of the Human Rights Law states that each person, whether individually or in groups, is entitled to own property, and that such property rights are prohibited from being arbitrarily and unlawfully seized. Although land grabbing and functional alteration of functions are sometimes based on clear legality, further investigation is needed, whether the legality in the form of permits issued through the state administrative decree is in accordance with the licensing criteria or not. If not then the licenses are published unlawfully. Furthermore, whether the obligations to relinquish the rights of third parties or people who are included in the HGU or IUP have been fulfilled or not. Even the cost of compensation for land claims of citizens is also not allowed if not from the citizens’ initiative,

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\(^7\) Konsorsium Pembaruan Agraria, Catatan Akhir Tahun 2015 Reforma Agraria dan Penyelesaian Konflik Agraria Disandera Birokrasi, hlm. 4.
since the obligation to surrender the land compensated by a sum of money may only be made in the public interest (Article 38 of Human Rights Law), and investment is clearly part of business interests. Thus, if the obligations mentioned are not done, it is clear that the appropriation and eviction of oil palm plantation investments is based on the incorrect use of procedural and legal substance. Relation of land grabbing and destruction of forests and other environmental sources by changing livelihoods of farmers and self-employment into plantation laborers. The seizure of land and the destruction of forests and the environment resulting in the conversion of professions is of course contrary to the provisions of Article 38 paragraphs (1) and (2) that determine that every person is entitled to a fair job based on his skill. Given the land grabs of forest and environmental degradation, of course, it removes the freedom for conflicting communities with oil palm plantations to independently choose work.

Furthermore, another critique regarding rights over welfare is the employment status and justice in payment system. According to Sawit Watch data, used by the Ministry of Manpower states that out of 10 million workers in palm oil plantation sector, 70% of them are casual workers. With the status of a day-to-day freelancer, the day-to-day freelancers are not likely to get social security and health from their employer or employer. This condition is exacerbated by an unfair and unfair wage system. Even some of them also do not know holidays and work more than labor rules. This, of course, resulted in workers and their families struggling to meet basic needs and decent living.

This condition certainly violates the right of plantation laborers to obtain prosperity and clearly contradictory to the provisions of Article 28D of the 1945 Constitution jo. Article 38 paragraph (3) and (4), Article 40 and Article 41 paragraph (1) of the Human Rights Law.

3. Criminalization and the use of forcible attempts to remove the right to security

In academic terminology, criminalization is defined as law policy to consider ordinary action as prohibited criminalized one. Sociologically, criminality terminology is interpreted negatively, where an ordinary act becomes a criminal act entirely committed with the subjective authority of the investigator and ignorant of the aspect of certainty and justice. Criminalization in this sociological sense is often used to silence popular resistance against non-participatory and unfair policies (strategy lawsuit against public participation).

The tendency of criminalization toward trends in criminalization practices against extractive industry investment resistance also occurs in investment in the oil palm plantation sector. In 2016, there were 134 farmers and activists who were criminalized due to agrarian conflicts and natural resources. From that figure, criminalization in the oil palm plantation sector came in as one of the largest contributors.

One of the largest cases of oil palm plantation criminalization in 2016 is the conflict between villagers Olak-olak Kubu Village, Kubu Sub-district, Kubu Raya Regency, West Kalimantan vs. PT. Sintang Raya. At least 5 people are designated as suspects, while referring to the Supreme Court ruling this corporation has no legality of tenure. In addition to criminalization, other SLAPP efforts often used in stopping popular resistance are the use of forceful efforts, such as arrests, searches, mobilization of apparatus in large scales and other pre-judicial acts committed without a clear basis.

The inappropriate use of unlawful legal measures to silence the people’s resistance to investment in palm oil explicitly negates the state’s obligation to guarantee and fulfill the right of the people to obtain justice as provided for in Articles 17 and 18 of the Human Rights Law and to gain a sense of security towards intimacy both personally as well as their families as it is regulated in Articles 29, 30 and 31 of the Human Rights Law.

Considering the above explanation, in general, ignorance practices towards human rights on palm oil plantation investment is not a new issue; in fact, the above explanation is just a small part of the big picture, in which there are still a lot of plantation practices contradicting with the fulfillment and violation of human rights and other basics.

Unfortunately, resolution from European Parliament is only realized in business competition. Based on that, the resolution shall be correction tool for the state to review dirty practices in palm oil plantation instead of protection for dirty investment. The significant state position in fulfilling human rights and basic in the concept of institution, in which State as the authority having the power, has “institutionalized human rights to citizen rights so that the performance is guaranteed by positive law.”

D. Withdraw from Discussion Process

Hariadi Kartodiharjo referring to KPK findings states that Taxpayer compliance (Organization and Individual) of palm oil business is decreasing significantly: from 70.6% in 2011 to 46.3% in 2015; as for Individual Taxpayer compliance is decreasing from 42.3% in 2011 to 6.3% in 2015. Referring to such fact, having the formulation of Palm Oil Bill giving incentive and facility to avoid tax and other financial obligations for Corporates is indicated to accommodate corporates that are reluctant to fulfill such responsibilities.

Furthermore, this Bill is basically contradicts the commitment of peat ecosystem protection and the spirit of increasing the income from taxation and other non-tax revenues from palm oil plantation sector. In regards with Nawacita, promoting the ratification of this Bill means that Jokowi’s Government is legitimating violations and non-compliance committed by corporates through policy legislation. Bill ratification means denying Nawacita commitment to realize partiality of Jokowi towards the people and environment.

The only choice for the Government in response to the RUU initiated by DPR is to reject the continuation of discussion process in delivering argument during the introduction to deliberation of Discussion on Draft Law on Level I. Should DPR decides to keep urging the discussion of this Bill, President through designated minister is entitled to not give the approval of ratification for the Bill in Discussion on Level II. Having no such joint approval from President and DPR, the Bill shall not be ratified or re-proposed in DPR plenary session during that period.

E. Closing

Regarding the Palm Oil Bill formulation, WALHI expressively REJECTS Palm Oil Bill and urges the President to consistently reject the discussion and ratification of Palm Oil Bill. The urgency of discussion and ratification of Palm Oil Bill which according to DPR is for the sake of the people is a total lie. Moreover, WALHI considers that Law Number 39 of 2014 regarding Plantation, which also has issue in regards with partiality towards the people and environment, is still very relevant in regulating the overall plantation sectors, including palm oil issue. Should DPR represents the interest of the people, the important point it shall execute is to revise some of the problematic formulations in Plantation Law, rather than promoting the legislation process for Palm Oil Bill that has no clear stand for the people.
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