

Implementing sustainability commitments for palm oil in Indonesia

Governance arrangements of sustainability initiatives involving public and private actors

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Abbreviations

ALS	Assessor Licensing Scheme
AMDAL	Analisis Dampak Lingkungan (Environmental Impact Assessment)
APL	Areal Penggunaan Lain (Non-Forest Estate Land)
APP	Asia Pulp & Paper
ASLI	Aliansi Sawit Lestari Indonesia
ATR/BPN	Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional (Ministry of Agraria and Spatial Planning/National Land Agency)
BGA	PT Bumitama Gunajaya Agro
BLH	Badan Lingkungan Hidup (Environmental Agency)
BLU	Badan Layanan Umum (Public Service Unit)
BMP	Best Management Practices
BPDP	Badan Pengelola Dana Perkebunan (Oil Palm Plantation Fund/CPO Fund)
BPDPKS	Badan Pengelola Dana Perkebunan Kelapa Sawit
BPKH	Balai Pemantapan Kawasan Hutan (The unit of the MoEF that deals with forest gazettement)
BPN	Badan Pertanahan Nasional (National Land Agency)
BRG	Badan Restorasi Gambut (Peat Restoration Agency)
CI	Conservation International
CIFOR	Center for International Forestry Research
CPO	Crude Palm Oil
CSO	Civil Society Organizations
CSPO	Certified Sustainable Palm Oil
CSR	Corporate Social Responsibility
DAK	Dana Alokasi Khusus (Special Allocation Fund)
DAU	Dana Alokasi Umum
EIA	Environmental Investigation Agency
EU	European Union
FBB	Froned Based Biomass
FFB	Fresh Fruit Bunches
FoKSBI	Forum Kelapa Sawit Berkelanjutan Indonesia
FPIC	Free, Prior and Informed Consent
FPP	Forest Peoples Programme
FLEGT	Forest Law Enforcement, Governance and Trade
GAPKI	Gabungan Pengusaha Kelapa Sawit Indonesia (Indonesian Palm Oil Association)
GAR	Golden Agri Resources
GHG	Greenhouse Gases
GoI	Government of Indonesia
HaKI	Hutan Kita Institute
HCV	High Conservation Value
HCS	High Carbon Stock

HCSA	High Carbon Stock Approach
HCV-HCS	High Carbon Stock Integration
HCVRN	High Conservation Value Resource Network
HD	Hutan Desa (Village Forest)
HR	Hutan Rakyat (People's Forest)
HGU	Hak Guna Usaha (Business land-use permit)
HKm	Hutan Kemasyarakatan (Community Forest)
IP4T	Inventarisasi Penguasaan, Pemilikan, Penggunaan dan Pemanfaatan Tanah (Inventory of Land Control, Ownership, Use and Utilization)
IFC	International Finance Corporation
ICRAF	World Agroforestry Center
IDH	The Sustainable Trade Initiative
INDC	Intended Nationally Determined Contributions
IPB	Institut Pertanian Bogor (Bogor Agriculture University)
InPOP	Indonesia Palm Oil Platform
IPOP	Indonesia Palm Oil Pledge
ISPO	Indonesian Sustainable Palm Oil
INOBU	Institut Penelitian Inovasi Bumi
KELOLA Sendang	Kemitraan Pengelolaan Lanskap (Kelola) Sembilang Dangku (Sendang)
KEE	Kawasan Ekosistem Essential (Essential ecosystem area)
KORSUP	Koordinasi-Supervisi (Coordination and Supervision)
KPK	Komisi Pemberantasan Korupsi (Corruption eradication commission)
KPH	Kesatuan Pengelolaan Hutan (Forest management unit)
KSDAE	Konservasi Sumber Daya Alam dan Ekosistem
MuBA	Musi Banyuasin
MoEF	Ministry of Environment and Forestry
MoU	Memorandum of Understanding
NDPE	No Deforestation, No Peat, No Exploitation
NGO	Non-Governmental Organization
NKB	Nota Kesepakatan Bersama (Joint Memorandum)
P2KA-SDA	Percepatan Penyelesaian Konflik Agraria dan Sumber Daya Alam
PERDA	Peraturan Daerah (Ministry Regulation)
PILAR	Palangkaraya Institute for Land Use and Agriculture Research
POIG	Palm Oil Innovation Group
PP	Peraturan Pemerintah (Government Regulation)
RAN	Rainforest Alliance Network
REDD+	Reducing Emissions from Deforestation and forest Degradation and enhancing forest carbon stocks
RSPO	Roundtable on Sustainable Palm Oil
RTRWP	Rencana Tata Ruang Wilayah Propinsi (Provincial Spatial Plan)
SATGAS	Satuan Tugas (Taskforce)
SEKBER	Sekretariat Bersama (Joint secretariat)
SHM	Sertifikat Hak Milik (Freehold Title)
SIPKEBUN	Sistem Informasi dan Pemantauan Kinerja Perkebunan Berkelanjutan (The Information and Performance Monitoring System for Sustainable Plantations)

SKT	Surat Keterangan Tanah (Certificate of Land)
SNV	Stichting Nederlandse Vrijwilligers (Netherlands Development Organization)
SPKS	Serikat Petani Kelapa Sawit
SPOTT	Sustainable Palm Oil Transparency Toolkit
STDB	Surat Tanda Daftar Usaha Perkebunan untuk Budidaya (Ownership certificate and permits to plant)
SVLK	Sistem Verifikasi Legalitas Kayu (Timber Legality Verification Standards)
TFT	The Forest Trust
TNC	The Nature Conservancy
TORA	Tanah Objek Reforma Agraria (Land as Object of Agrarian Reform)
TUK	Transformasi Untuk Keadilan Indonesia
UKP4	Unit Kerja Presiden bidang Pengawasan dan Pengendalian Pembangunan (President's work unit for supervision and management of development)
VPA	Voluntary Partnership Agreement
WALHI	Wahana Lingkungan Hidup Indonesia (The Indonesian Forum for Environment)
WWF	World Wildlife Fund
ZSL	Zoological Society of London

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Executive summary

The palm oil sector in Indonesia has seen the adoption of zero deforestation commitments by larger companies in the form of various pledges around No Deforestation, No Peat, and No Exploitation (NDPE). These commitments are a response to demands from non-governmental organizations to clean supply chains and raise standards. At the same time, at the national and sub-national level, new governance arrangements are emerging for sustainability initiatives involving government, the private sector and other non-state actors.

This paper explores the interactions between public and private sectors in the palm oil arena in Indonesia. It examines tensions and complementarities between these sectors, the degree to which, and manner in which, private standards and actors are pushing the sustainability debate and implementation, and the likely outcomes in relation to their design. These initiatives range across the different stages of the regulatory and policy cycle: from policy formulation, rule setting and development of standards to implementation, development of incentives, and monitoring and oversight systems with varying degrees of state and non-state involvement. A key area of interest is the relations between national and sub-national levels, an area that has had less attention due to the international nature of the debates. Therefore, our focus was on three provinces and five districts: Kotawaringin Barat, Seruyan in Central Kalimantan, Ketapang in West Kalimantan and Musi Banyuasin in South Sumatra.

The implementation of sustainability commitments by non-state actors touches on how they relate to their role and function of the state. These initiatives have created new forms of governance relationships, most notably a shift in the types of function that were once the sole domain of the state. Some initiatives are independent and formulated outside of the state, but others interact with, and support, state actions. At each jurisdictional level, a range of agendas and several initiatives are aligned. By design and by nature of their objectives and implementation, some initiatives are complementary (actions around the intensification of smallholders); others act as substitutes for the state (some land registration programmes); and others are antagonistic (the setting aside of some conservation areas).

Ironically, despite the lack of state capacity (which is a factor that has led to the emergence of such initiatives), these initiatives highlight the fundamental role of the state in making their implementation possible. Overall, there is a high degree of “complementarity” at the agenda- setting stage. The state is also passing over some roles at the “implementation and enforcement” and “monitoring” stages. However, these latter stages are more antagonistic, with tension particularly played out between the national and provincial levels.

Our analysis stresses the importance of designing sustainability initiatives with reference to the wider political economy of the sector and the agendas involved. On the one hand, such initiatives are helping implement immediate and specific sustainability objectives; they fill implementation gaps, bear some operational costs and speed up regulatory change. On the other hand, a focus on specific sustainability issues and market-based standards can divert efforts from more fundamental reform processes across the landscape of the sector. It is still unclear how new public-private initiatives are engaging with nationally owned processes for reform. Such processes include debates around agrarian reform, the capturing of state revenue loss, license review and social forestry. Aligning sustainability initiatives with these agendas is crucial to avoid undermining them all.

1 Introduction

There is much controversy regarding palm oil development in Indonesia, which is mainly linked to its contradictory impacts (van Noordwijk et al. 2017). On the one hand, many perceive the sector as a significant driver of economic growth and important for the development of Indonesia's economy at both the national and sub-national levels.¹ On the other, the sector is also seen as a major driver of biodiversity loss and deforestation in Indonesia, which leads to an important carbon debt particularly when it expands on peatlands (Pacheco et al. 2017b). There is increasing recognition about the need to address performance gaps in the sector, with regards to social impact, productivity and carbon emissions.

Within these discourses are hopes that the sector will increase efficiency and provide important spill-over effects by contributing to improved infrastructure, economic growth and poverty reduction. At the same time, there are concerns associated with the dependence of the rural economy on a single commodity (Rhein 2015), food security, the high concentration of land in a few companies, associated land conflicts (Barreiro et al. 2016) and environmental impacts. Thus, the discourse on sustainability co-exists with other discourses on conservation, national development, smallholder empowerment and anti-corruption (Peluso et al. 2008). These differing discourses add complexity to achieving sustainability as they offer different notions of who should oversee implementation (Pirard et al. 2016).

Significant governance challenges have been identified at both the transnational and national levels, which present difficulties for both public and private actors (Hospes 2014; Oosterveer 2015). Low coordination between sectoral agencies and levels of government has resulted in a significant area of overlapping permits.² In addition, the sector is characterised by large areas of illegal palm oil within the forest estate³ (Sloan 2014; Pramudya et al. 2017). Figures on the actual size of the issue depend on the definition of "illegality" and which sources of illegality are included.⁴ Many situations are historically complex; and much illegality is a function of a misalignment between spatial plans at district, provincial or national levels (see Box 1) (Aurora et al. 2015; McCarthy and Robinson 2016). There is also policy uncertainty over production in peatlands and the risk that new regulations and policies will deem further areas of palm oil to be illegal. The peat moratorium, and presence of peat in many undeveloped concessions creates a situation of "stranded assets". An estimated 6.1 million ha (or 29% of Indonesia's leased out land bank) cannot viably be developed without violating buyers' No Deforestation, No Peatland, No Exploitation (NPDE) policies (CRR 2017a). Long-term solutions will be complex and need the engagement of actors who often have different agendas (Pacheco et al. 2017b).

Provinces in Sumatra depend increasingly on palm oil for their local economy, a phenomenon also arising in Central and West Kalimantan provinces. This expansion has been related to the patronage connections between officials and the business sector (McCarthy 2011; Li 2017). This, in turn, has led to development of plantations without social and environmental safeguards.

The ongoing debate around the relevance of Indonesia's oligarchs (Mietzner 2012) is pertinent here. Under Suharto, the forest and land-use sector played an important role as a revenue source

1 Estate crops contribute to 3.6% GNP (Indonesian Oil Palm Statistics 2015).

2 KPK (2106) estimates overlapping permits to cover an area of 4.69 million ha.

3 Data from the Ministry of Agriculture's Directorate of Plantations (2017) indicated around 800,000 ha of oil palm plantation managed by a large corporation and another 1.7 million ha of smallholder plantations lie within the forest estate.

4 These range from presence of concessions in protected areas (KPHK), in production forests (KPHP), in natural forest logging concessions (HPH), plantings on deep peat and smallholders planting in the forest estate.

Box 1. Political manipulation of the regulatory process^a

Wibowo et al. (2017b) identify a number of ways in which the processes of palm oil development are influenced politically:^b

1. **Through the land allocation and the spatial planning process and the legalization of palm oil plantations that have been established in the forest estate.** The unratified provincial spatial plans for Central Kalimantan and Riau are said to have been influenced by business interests. This, in turn, has accentuated the conflict of interests between central and local governments.
2. **The creation or manipulation of regulations and laws related to the technical mechanisms of permits and sustainability standards.** This has resulted in many regulations facilitating the expansion of palm oil to the detriment of the public interest. These include handing out permits for plantations in “degraded forest”, development of regulations penalizing small-scale encroachment and lobbying of spatial plans to increase non-forest estate areas.
3. **The lobbying of district heads for permits.** Sjafrina et al. (2013) from their work in Kubu Raya and Ketapang districts showed that permits for palm oil development increased sharply in the years after the election, and that illegal payment practises have become a common feature of the sector. They show how political elites at the local level have managed to increase their political power through palm oil development. The need for electoral funds and the obligation to repay assistance with the issuing of permits is said to be an important factor; this is seen at the level of both the governor and many bupati in the case of Kalimantan (Berenschot 2015). Burgess et al. (2012) documented the link between the election cycle and deforestation in Indonesia. The link between campaign finance and resource mobilization from the forest sector via permit acquisition has been established at the local level more generally. A number of different types of relations can be identified around the allocation of permits in the forest and land-use sectors:^c i) licenses allocated in return for financial assistance to an election campaign; ii) licenses allocated to a company which then allocate some area of that land back to the bupati (or those that allocated it) with no direct financial transaction; iii) licenses allocated to a company using a political party as a broker to approach the executive; iv) licenses allocated in return for a donation to a political foundation. Interviews in one district showed the degree to which certain individuals in the line agencies feel unable to override the decisions of the bupati over license issuance and regulation enforcement, even when they are aware that due process is not being followed.
4. **Links between local and national elites and communities who live in and surrounding forest margins.** These links are responsible for encroachment, which benefits such elites.

a This box, for the most part, is taken from Wibowo et al 2017b

b All these scenarios were also referred to in our interviews.

c Interview with IPB academic, 2014.

in a patronage-based system of cronyism (Gellert 2005). Suharto’s economic model was based on conglomerates often controlled by families, and many of the Suharto era tycoons are still prominent (Winters 2011). Many changes since Suharto have arguably never challenged the “economic oligarchy” that remains central to Indonesia’s political economy; those in power are reluctant to change the status quo (Saich et al. 2010), which is entrenched in subsequent political interactions and reforms (Harvard Kennedy School 2011). The legacy of the oligarchs persists heavily in the business sector (Robison and Hadiz 2005) through complex webs of elite business-political interests, patronage and personal motivations (Gellert 2010; Aspinall and van Klinken 2011; Hapsari 2011; Gellert 2015). This, in turn, leads to the persistence of vested interests in maintaining business as usual (Wakker 2006). Twenty-five “business groups” control 5.1 million hectares (ha) of palm oil plantations (3.1 million planted ha and 2 million ha of undeveloped land (TUK 2015). The top nine private palm oil companies control more than 20% of the estate and produce 35% of crude palm oil (CPO) production (Rhein 2015).

A range of public and private initiatives has emerged involving public agencies, companies and civil society organizations (CSOs). The recent debate and practice around sustainability commitments in the Indonesian palm oil sector is characterised by a plethora of policy developments and regulatory and institutional arrangements. From the public sector side, these include policies and regulations related to biodiversity conservation (Timmins 2017), climate change mitigation aimed at reduction of greenhouse gas (GHG) emissions (Brockhaus et al. 2012; GoI 2016), sustainability of palm oil development linked to Indonesian Sustainable Palm Oil (ISPO) regulations, and land governance linked to land-use planning (e.g. moratoriums, the One Map Initiative [Samadhi 2017] tenure clarification, as well as specific bioenergy (Saptoadi 2015) and trade policies (Tempo 2018).

At the same time, larger companies have adopted zero deforestation commitments (both in Indonesia and internationally). These have taken the form of various pledges around NDPE. In Indonesia and Malaysia, company groups with NDPE policies hold 74% of refining capacity (CRR 2017b). In Indonesia, the six major signatories to zero deforestation commitments (that made up the now-disbanded IPOP) produce 60% of the palm oil output (IF 2016). These commitments were made voluntarily, without government involvement, but were pushed primarily by NGOs and subsequently by buyers and consumers. Action from non-state actors has taken the form of name and shame campaigns and consumer “boycotts” targeting key brands. It has also involved innovations for “sustainable supply chain management” such as ecolabels and certification schemes, codes of conduct, and auditing procedures (Boström et al. 2015; Lambin et al. 2018), as well as many new initiatives going beyond sustainability standards (Mallet et al. 2016). However, implementations of the commitments have been challenging (Donofrio et al. 2017; Greenpeace 2017).

NGO relationships with the companies remain an important part of the picture. For the most part, NGOs have continued to push for greater commitments and better implementation of the commitments. This has led to several initiatives involving different combinations of public and private actors that have sought to clean up their supply chains and are characterised by being supported by intermediary NGOs. These initiatives primarily aim to help implement specific aspects (such as smallholder registration) or broader approaches (such as those that cross jurisdictions). These include technical support for smallholder mapping and documenting of land rights, monitoring license issuance, creating and adopting government regulations and voluntary standards for sustainable palm oil, guiding decisions on land-use planning, tracing and monitoring supply sourced from smallholders, and channelling subsidies to smallholders. In addition, “private standards” are emerging from certification initiatives, guidelines, codes of conduct and self-regulatory initiatives, including pledges to zero deforestation.

This paper identifies some key governance issues emerging from the interaction between public and private sectors in the palm oil arena in Indonesia. It examines the ways in which they are working together (or not) to achieve shared (or not) sustainability objectives within the wider context of recent company commitments around “zero deforestation”. Primarily, the study looked at the tensions and complementarities between public and private initiatives, the degree to which private standards are pushing sustainability debate and implementation, and their likely outcomes in relation to their design. It asks to what extent the new initiatives can support implementation of emerging private commitments and the level and type of public sector action needed to enable this.

The experience around implementation of sustainability commitments by non-state actors and the associated emergence of public-private initiatives have opened new debates. These center around the role and function of the state in relation to the private sector; the degree to which private standards are advancing sustainability; the existence and rationale for potential contradictions between public and private agendas; and possibilities to connect the two agendas across different policy realms. This discussion is pertinent in a context of weak land-use governance in Indonesia where both the state (and, in some cases, companies themselves) lack formal control over huge areas of land. It raises questions about what reforms are legally and practically possible within a short time frame.

This document is organized into six sections. The first provides the background to the governance context and challenges to sustainability in the palm oil sector. The second lays out methods used, while the third outlines some theoretical approaches to understanding governance interactions particularly around hybrid governance. The fourth section selects examples of sustainability initiatives of governments, companies and non-state actors at different stages of the regulatory and policy cycle. The fifth section explores the ways in which complementarity or substitution can be encouraged in the design and implementation of sustainability initiatives. We also examine interactions between the national level and the sub-national level. The final section draws out conclusions, reflecting on the effectiveness of these initiatives in reforming the sector.

2 Methods

Following Eberlein et al. (2014) we take a “meso-level” analytical approach. This focuses on interactions between different “transnational business governances” and state-based regulation, and sustainability initiatives/schemes within a single sector (in this case palm oil). We explicitly aimed to focus at the sub-national level to understand connections to, and influence by, higher-level governance and vice versa. Therefore, we used a multi-level focus that drills down from national level to specific “case study” provinces and districts. A focus on the meso level allows the identification of patterns and trends in specific institutional contexts, and the way in which schemes/initiatives are operating within wider regulatory complexes. It also enables some links to impact and outcomes at the field level.

Our methods involved review of secondary literature and direct interviews with national and sub-national governments, companies, NGOs and those involved in specific sustainability initiatives. At the sub-national level we focused on three provinces (Central Kalimantan, West Kalimantan and South Sumatra) and five districts within these provinces. The provinces and districts were selected due to the presence of relevant sustainability initiatives (see Figure 1). Between October 2016 and April 2017, we interviewed 154 respondents: 25 at the national level (6 government, 9 NGOs, 8 companies and 2 donors); 57 at the provincial level (24 government, 24 NGOs, 7 companies and 1 donor); and 72 at the district level (49 government, 21 NGOs and 2 companies). In total, there were 79 government,

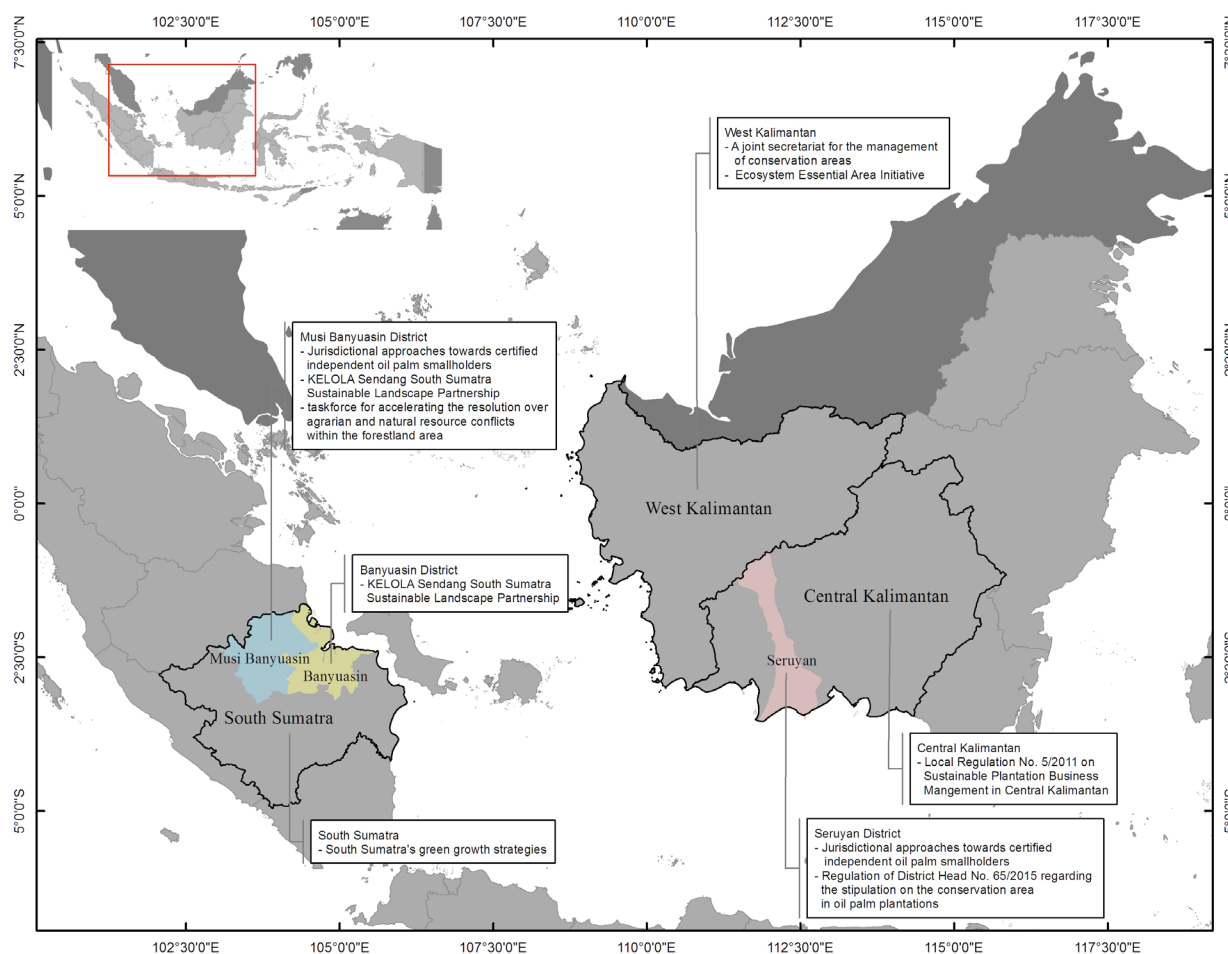


Figure 1. Map to show location of initiatives reviewed

54 NGO, 17 private-sector and 3 donor respondents. We selected respondents according to specific themes identified up front and employed a snowballing technique to identify additional respondents. We used ethnographic research techniques of semi-structured and open questions for the interviews.

In Central Kalimantan, we interviewed respondents at the provincial level and in three districts: Kotawaringin Barat, Seruyan and Kapuas. Central Kalimantan has developed a regulation on sustainability in the palm oil sector, High Conservation Value (HCV) assessments at the provincial level and various forums to foster communication between public and private sectors, and civil society. We chose Kotawaringin Barat and Seruyan districts primarily because their Bupatis (regents) are embracing jurisdictional approaches to certification for palm oil that have resulted in several associated initiatives (see Table 1). We selected Kapuas to provide a different history of palm oil conversion than in Seruyan and Kotawaringin Barat. Palm oil conversion in Seruyan and Kotawaringin Barat took off pre-decentralization in 1999 (The Gecko Project 2017); today, the larger more established companies are active there. Kapuas is the site of the ex-mega rice project; with palm oil development relatively recent, licenses are still handed out. Nonetheless, in many cases these licenses are contested or controversial as the forest estate has not released permit areas; this results in high levels of legal uncertainty (See Box 2).

In West Kalimantan, we carried out interviews at the provincial level and in Ketapang district. The province has recently developed several public and private initiatives to promote sustainable palm oil governance and support zero-deforestation commitments. The provincial government, for example, is collaborating with the Sustainable Trade Initiative (IDH) and a private company, PT Bumitama Gunaja Agro (BGA Group). Together, they established Kawasan Essential Ecosystem (KEE⁵) areas in Ketapang and Kayong Utara districts as part of a collaborative effort to adopt sustainable palm oil landscape (Mongabay 2017) (Box 3). The provincial government is also establishing a joint Secretariat for the Management of Forest and Natural Resources (Sekber), as well as a forum to strengthen establishment of KEE. Some companies, NGOs and other parties reached agreements for a common database for KEE areas and to design their management. As a result of Law 23 (2014), the Governor of West Kalimantan has cancelled some district regulations. This includes a local regulation developed by Ketapang district on the protection of conservation areas.

In South Sumatra, we carried out interviews at the provincial level and in Musi Banyuasin district. A variety of initiatives are emerging at the provincial and district level with varying governance arrangements. The governor (facilitated by IDH and World Agroforestry Centre [ICRAF]) is supporting a provincial green growth plan as part of his Green Growth Vision (Ariestya 2017). At the same time, Kelola Sendang (Kemitraan Pengelolaan Lanskap Sembilang Dangku – see Box 4) is facilitating a model for sustainable landscape management. South Sumatra has committed to jurisdictional certification with a primary focus on Musi Banyuasin and the sub-district of Lalan. Various multi-stakeholder processes are being developed at the provincial and district levels.

5 Ministry of Environment and Forestry of the Republic of Indonesia, No. P.101 / Menhut-II / 2014.

Table 1. The main initiatives reviewed (as of 2017)

Policy stage	Initiative reviewed	Actors involved, institutions, objective and scale
Policy formulation and agenda setting	Landscape management project: Kelola Sendang South Sumatra	Kelola Sendang is a multi-partner landscape management project that aims to use private sector sustainable sourcing commitments, in combination with traceability and supply chain management solutions, to reduce agricultural and land speculation pressure on natural habitats. It includes some collaboration with major palm oil growers and buyers and involves district-level (MUBA) implementation and engagement at the provincial level (Box 4).
	Landscape approach: West Kalimantan IDH	This initiative is a collaboration between AidEnvironment, Bumitama Gunajaya Argo (BGA), IDH and local government to combine wildlife protection with sustainable production (Jantowski 2017) in three districts of Ketapang, Kubu Raya and Kayong Utara (see Box 3).
	Green growth strategy South Sumatra (see Box 9)	A provincial-level strategy across “green sectors” facilitated by IDH and involving strengthening partnerships between the private sector, conservationists and civil society (see Box 9).
	Green growth strategy West Kalimantan	The Green Growth plan for 2017-2037 will provide guidelines for landscape-based investments in various commodities, considering smallholders and adat communities. It is intended as a development strategy for balancing the production and protection needs, while improving the welfare of farmers and communities. It is supported by the provincial government in partnership with IDH and PT CUS.
Rule setting	Standards being developed in reaction to private sector/civil society action (ISPO)	ISPO intends to increase the competitiveness of Indonesian palm oil in the global market, contribute to the national commitment to sustainable development and GHG emission reduction, and to address environmental issues. The Ministry of Agriculture is responsible for implementation. Prior to 2017, large-scale growers and processors or integrated ones are obliged to adopt ISPO, but it was voluntary for plasma scheme smallholders, independent smallholders and growers/processors producing renewable energy (biofuels). ISPO became mandatory for all in 2017, potentially encouraging companies to cut smallholders of uncertain origin out of their supply chain (although biodiesel production remains exempt). As of December 2017, 306 companies had been ISPO-certified. This covers 16.7% of palm oil, which is an area of 1.88 million ha producing 8.15 million ISPO-certified tonnes. ^a Another 600 companies are said to be under the certification process. The ISPO website (9 January 2018) showed that 586 public announcements for audits had been made. ^b There has been recent impetus around the ISPO strengthening team and attempts to increase the range of perspectives.
	Provincial regulations on sustainability (Central Kalimantan)	Central Kalimantan was the first province to formulate a sub-national regulation that focuses primarily on the integration of HCV assessments and set-asides into concession planning. It obliges plantation companies to identify and set aside areas considered of high conservation value, and map and develop management and monitoring plans for HCVs (see Box 7).
	District-level regulation for HCV/conservation (Seruyan)	Several companies in Seruyan district have been attempting to set aside HCV/HCS areas in their concessions, which has culminated in the recent passing of a district-level regulation on conservation set-asides by the Bupati ^c (Box 13).
	District-level regulation for HCV/conservation (Ketapang)	This regulation ^d provides guidelines for setting aside areas considered to have high conservation values, and obliging companies to protect those areas within their concession. It was lobbied for heavily by NGOs. As the provincial government took back forestry affairs from the district, the provincial government cancelled the regulation in 2017 with the justification that forestry is no longer under district authority after the new regional government law (No. 23/2014).

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Table 1. Continued

Policy stage	Initiative reviewed	Actors involved, institutions, objective and scale
Implementation/ compliance/ enforcement	Registration of smallholders (INOBU in Central Kalimantan) for legality	INOBU have facilitated the creation of the Central Kalimantan provincial roadmap to low deforestation development and are working with district governments to pilot jurisdiction-level certification of palm oil production (see Box 8).
	Agrarian reform: IP4T land reform	IP4T is part of a wider national agrarian reform program. This is an inter-departmental (Ministry of Home Affairs, Public Works, Forestry and National Land Agency) policy aimed to resolve longstanding issues on illegal production in state forestlands (see Box 10).
Incentives	Oil Palm Plantation Fund (BPDP)	Funds are sourced from levied exports of palm oil and its derivative products, and used to support development of human resources, research and development, promotion and publicity, replanting and establishment of means and infrastructure required to support palm oil development (see Box 12).
	Proposed jurisdictional certification (MuBa)	South Sumatra has committed to jurisdictional certification with a primary focus on MuBa with the objective of testing joint RSPO/ ISPO certification. The Musi Banyuasin Jurisdictional Certification plan aims to certify Lalan sub-district by 2018, Musi Banyuasin district by 2018 and South Sumatra by 2018 (IDH 2017). There is also support from multiple sources: Donors, Sahabat MuBa (IDH, RA, SPKS, HaKI, Daemeter, ZSL, PSL, SNV), national agencies and the supply chain and political commitment at provincial and district level.
	Proposed jurisdictional certification Seruyan	In 2015, Seruyan district announced that all palm oil produced and processed in the district will be certified as sustainable. Its main partners are INOBU and it is working closely with several palm oil companies in the district. They are promoting the mapping and registration of smallholders and other institutions (e.g. PILAR), and have been working on partnership models between companies and communities. All companies in the district have signed an agreement with the government of Seruyan to accelerate the adoption of sustainable farming practices by independent palm oil smallholders in the entire district.
	Traceability systems for supply chain management – Lalan (IDH/ Daemeter, South Sumatra); SIPKEBUN	Some initiatives are building the capacity of local government to map smallholders, others involve companies engaging through their own initiatives or via the help of NGOs. Some initiatives are building the capacity of local government to map smallholders (see section 4.3.3 for more details). In the sub-district of Lalan in MuBa, collaboration between IDH and the BPDP is developing smallholder certification and access to finance (IDH 2017). All told, 4,000 ha of smallholders have been mapped as a basis for this certification. SIPKEBUN (facilitated by INOBU) is a geo-spatial system being integrated into the Ministry of Agriculture's system. This will allow access to information such as independent farmer data, statistical data and analysis of the plantation sector. It will also include basic company information, such as the Plantation Enterprise assessments and environmental performance conditions such as fire, deforestation, degraded lands and regulatory compliance.
	Smallholder financing	The IFC project on smallholder financing aims to develop commercially feasible, replicable smallholder credit models (IFC 2013; IDH 2017); Kemitraan Kesejahteraan Hijau (KeHIJAU) Berbak Partnership (Green Prosperity Project – of which SNV is a partner) aims to increase household incomes and reduce GHG emissions from deforestation and peatland degradation.

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Table 1. Continued

Policy stage	Initiative reviewed	Actors involved, institutions, objective and scale
Oversight and monitoring	Sekretariat Bersama Pengelolaan Kawasan Konservasi)	This is a joint secretariat/multi-stakeholder process for the management of conservation areas. It was established by the provincial government of West Kalimantan, with support from external parties, local government, plantation and mining companies and NGOs including Belantara (a foundation associated with APP). The purpose is to improve communication to resolve various problems; several companies have signed up.
	Forum KEE. West Kalimantan	The provincial government established Forum KEE as a response to new developments surrounding KPHs and Regional Government Law No. 23. A KEE Collaborative Management Forum, developed by the governor or Bupati, is part of the GoI's description of the KEE program. It is a multi-stakeholder approach to the management of the protected areas and benefit sharing, detailing the structure, responsibilities and duties of each party. The GoI's KEE description suggests the following as members of the forum: the local village heads, traditional leaders, universities, NGOs, the Forestry Department and the district government (Department of Agriculture, the Executive Agency of Agricultural Extension, Fisheries and Forestry Department, BAPPEDA, Department of Animal Husbandry and Fisheries, the tourism office, etc.) [Timmins 2017].
	South Sumatra Sekber	A multi-stakeholder Sekber process is being developed at the South Sumatra provincial level with the objective of involving NGOs, companies and government in one forum.
	Musi Banyuasin SATGAS	A multi-stakeholder Satgas (the Satuan Tugas Percepatan Penyelesaian Konflik Agraria dan Sumber Daya Alam (P2KA SDA) taskforce for accelerating the resolution over agrarian and natural resource conflicts within the forest estate has been established as multi-stakeholder mechanism for agrarian conflict resolution and to assist government in developing policy responses (HUMAS Muba Red 2017).
	Sahabat MuBa	Sahabat MuBa taskforce is a multi-stakeholder group working to assist jurisdictional certification in Lalan (Natawidjaja 2016). Members include the Rainforest Alliance, SPKS, HaKi, Daemeter Consulting, SNV and IDH. It is to be formalized in a multi-stakeholder governance structure (Natawidjaja 2016).
	ISPO multi-stakeholder strengthening forum	Led by the Ministry of Agriculture, this has involved consultations with multiple stakeholders (including NGOs) to feed into the development of a presidential regulation. NGOs and expert groups from universities were given the task to lead discussions on specific issues to provide input to the draft regulation.
	InPOP and FoKSBI	Led by the Coordinating Ministry for Economic Affairs, InPOP and FoKSBI have coordinated consultations with multiple stakeholders (including NGOs) on the National Action Plan for Sustainable Oil Palm to feed into the development of a presidential regulation (InPOP 2017).
	RSPO complaints system	The role of non-state actors in an oversight role is crucial for the successful operation of RSPO through its complaints system as a way of highlighting emerging issues. Notable examples include complaints lodged against Golden Agri (GAR 2015); Greenpeace (2010), First Resources in West Kalimantan (First Resources Limited 2016) and Wilmar (FPP 2016). ^e

a Directorate General of Plantation Ministry of Agriculture as reported in Perkebunan News (2017).

b Sometimes more than one announcement for the same company is made (for audit stages 1 and 2).

c Peraturan Bupati No. 65/2015 tentang Penetapan Kawan Konservasi di Perkebunan Kelapa Sawit.

d Peraturan Daerah No 5. 2015.

e <https://www.rspo.org/members/complaints/status-of-complaints/view/8>

Box 2. Challenges to legality in Central Kalimantan

- 5 million ha of the 12.7 mill ha classified as forest estate (by the MoEF) has been deforested in Central Kalimantan (Paoli et al. 2015).
- The provincial land-use plan (RTRWP) has formally been legalized through Perda No. 5/2015. However, it has not been fully operationalized as local government and the MoEF are in dispute over some areas. The provincial government is requesting 45% of the land area as APL whereas the MoEF has fixed a figure of 18% (Sriyanti 2016, Kementrian Dalam Negeri 2017, Fathurahman 2017).
- Plantations in the disputed “holding zone” are technically illegal so they are unable to get “clear and clean” status.
- According to 2011 data, plantation permits have been issued over 1.3 million ha and 3.7 million ha for mining (Earth Innovation Institute 2015).
- Between 3.9 to 4 million ha of MoEF-classified forest overlaps with Izin Lokasi or HGU (Timmins 2017) involving 282 units of oil palm plantation companies (Setiawan et al. 2017).
- The problem stems from a U-turn in Ministry of Forestry policy whereby a Perda (issued in 2003) allowed expansion into forest estate. It was nullified in 2012 (Ibie et al. 2016),^a leaving many concessions in an illegal state. Resolution of the situation requires a decision from the MoEF.
- Delays to the RTRWP and associated lack of clarity have been used for patronage as rent acquisition from permit allocation has continued.
- The severity of the situation varies across districts: in Seruyan and Kotawaringan Barat, many, but not all, concessions given prior to the 2003 Perda have been released from the forest estate and have HGU (The Gecko Project 2017).
- In Kapuas district, only 1 of 26 operating companies has a HGU and therefore full legality. Ijin lokasi (location permits) continue to be given out in the forest estate and many mills have been established without the necessary permits.
- Corrective action seems to be rare and examples of permits being withdrawn are not common.^b However, the governor has recently issued high-profile threats to remove the licenses of those who do not apply for release from the forest estate.
- Some companies have large concession areas reported to exceed the national legal limit^c of 100,000 ha (Indonesia-Investments 2013).
- Adat rights are recognized in law (e.g. MK No. 35/2013) and by a number of local Perda (e.g. Permen 52), but there are few examples of implementation.^d
- There is no clear synchronization between the statutory and adat system for registering land.
- Claims related to adat are for the most part limited to compensation negotiations.

a Ministry Forestry Decree Number 529 Year 2012 on the designation of 15,300,000 ha as forest area in Central Kalimantan (Ibie et al. 2016).

b In 2011, the governor ordered 15 oil palm permits in Pulang Pisau to be revoked. These were mostly initial concession permits that had been dormant for a prolonged period. It occurred at a time when Indonesia had made big international announcements on its effort to reduce emissions. Central Kalimantan was selected as one of the pilot provinces and Pulang Pisau district was one of the key areas for peat protection (Palangka Post 2011).

c Interview with NGO Palangkarya.

d Ministry of Agrarian Affairs Decree 10/2016 on Communal Rights (Hak Communal) represents an unused opportunity for customary communities to register collective rights within the forest estate.

Box 3. IDH West Kalimantan Landscape project^a

Since September 2016, IDH has been exploring activities with the Directorate General of KSDAE of the MoEF, West Kalimantan provincial government, and several palm oil companies regarding the protection of HCV areas managed and conserved by companies. This led to collaboration between AidEnvironment, Bumitama Gunajaya Argo (BGA), IDH and local government to combine wildlife protection with sustainable production (Jantowski 2017) in three districts of Ketapang, Kubu Raya and Kayong Utara. This activity falls under West Kalimantan's sustainable development plan, which was supported by Governor Cornelis. Several palm oil companies in West Kalimantan have allocated areas with HCVs in their concession areas, as well as corridors to connect HCVs and move endangered species from one conservation area to another. PT KAL has allocated 5,000 ha for HCS protection. These companies needed legal recognition for their conservation efforts and their efforts resulted in recommendations from the Directorate General of KSDAE for the HCV areas and corridors to be incorporated into the KEE. This activity requires a detailed mapping of the area, the development of an action plan to manage the HCV areas, and the development of a public-private forum that will approve and direct the implementation of the action plan.

^a Taken predominantly from Infosawit (2016).

Box 4. Kelola Sendang

At COP 21 in late 2015, the Governor of South Sumatra announced the launch of a public-private partnership that later became known as Kelola Sendang (Miller et al. 2017). Kelola Sendang is a sustainable landscape management initiative engaging public and private land managers and local communities (SPOTT 2017). It is run by a consortium of Zoological Society of London (ZSL), IDH, SNV, Daemeter, FPP and Deltares working closely with the provincial and local governments. The project landscape covers an area of approximately 1.6 million ha across the Sembilang-Dangku Landscape of Musi Banyuasin and Banyuasin districts (ZSL 2017). The goal of the Kelola Sendang is to use private sector sustainable sourcing commitments to reduce this agricultural and land speculation pressure on natural habitats around Dangku NR. It is hoped to develop smallholder mapping, register land and commodities, develop a traceability system, certify ISPO and RSPO, allocate resources such as from the BPDP; and comply with sustainable sourcing. It is hoped the traceability will help identify potential illegality present in mills' supply chains and in so doing improve engagement of mills with farmers through extension services.

3 Theoretical context

We draw on theory from a selection of literatures in our analysis. These include political theory approaches (actors, institutions, incentives and interests); market approaches (actors responding to incentives and risks; and standards to solve collective dilemmas and preserve reputations. However, our analytical framework is based primarily on “hybrid governance” literature. We define governance, following Auld et al. (2014), as “the interactions between private actors, or between private actors on the one hand and civil society and state actors on the other, giving rise to institutional arrangements that structure and direct actors [behaviour]”. We define “policy” as encompassing both state-led and society-led instruments (Auld et al. 2014).

Theories around hybrid institutions are rooted in the value of institutional diversity (Ostrom 2005), as well as work on legal pluralism (e.g. von Benda-Beckmann and von Benda-Beckmann 2006). The term “hybrid” refers to institutions cutting across the state and the market (e.g. Agrawal and Lemos 2009) and instruments that originate from private authority. It can sometimes involve government directly in rule-making, implementation, enforcement or adjudication. Thus, hybrid authority goes beyond traditional forms of subcontracting such as lobbying, consultation or subcontracting (Andonova 2010).

In the 1990s, scholars began to develop notions of “private authority” and “private regimes” to capture new forms of governance. These involve different constellations of private sector actors and NGOs with the state, which were becoming more prominent in global governance. These forms included not only industry self-regulation, but also “transnational private regulation” where coalitions of non-state actors codify, monitor and certify firms’ compliance with standards (Bartley 2007). Hauffer (2009) categorises hybrid collaboration into four types i) co-management (between state agencies and communities), public–private partnerships (between state agencies and market actors), iii) private–social partnerships (between market actors and communities and iv) multi-partner governance (involving all the different types of agents).

In the literature, various frameworks capture the range of optimism and pessimism over hybrid governance. Auld et al. (2014) distinguish between the way that “society-led” (or non-state governance) can act as a supplement, competitor or substitute to state-led policy interventions. Lambin et al. (2014) have developed a typology of “interactions” to characterise the range of interactions between state and non-state regulatory instruments for land use. They categorise different types of interaction as to whether they represent “complementarity”, “substitution” or “antagonism”. In so doing, they capture the ways in which different actors (governments, NGOs and companies) may enhance, compete with or hinder each other’s actions. Similarly, Eberlin et al. (2014) categorise interaction in terms of competition, coordination, co-optation or chaos.

Attention to hybrid governance developed along with a narrative about the limits of the state and inter-governmental organizations to deal with problems of globalization (Abbott 2012). This dissatisfaction with state regulatory control led to a focus on market incentive-based instruments (Bartley 2007). At the same time, there was increasing realisation that all governance strategies, whether market-, state-, or civil society-based, can enhance efficacy through support from the other domains (Agrawal and Lemos 2007).

On the one hand, the focus on hybrid institutions suggests new opportunities for policy design and service delivery (Sullivan 2015) to achieve goals that single domains would struggle to achieve alone. For example, market actors could help fill efficiency gaps in state capacity (Meagher et al. 2014) and provide successful principles of private contracts (German and Keeler 2009). For its part, the state could enhance enforcement capacity and bring the certainty of legal ownership (German and Keeler

2009), as well as help overcome the democratic deficit and lack of legitimacy often associated with market instruments (Lemos and Agrawal 2006). Finally, community and NGO actors would bring legitimacy and a grounding in the local.

On the other hand, concerns were raised about legitimacy. For example, private actors may be stepping outside of their authority into areas of state function. As a result, hybrid governance may weaken the state by undermining democratic (and previously clearer) hierarchical systems of accountability (Biermann and Pattberg 2008). Others raised questions about whether hybridity undermines state capacity, how it selected non-state institutional partners and whose interests it served (Meagher et al. 2014).

Within these different narratives around hybrid governance are different trajectories of hybrid authority. Some trajectories stress the potential for a reshaping and strengthening of the boundaries of state and non-state authority. Others focus on the potential for a blurring of boundaries as non-state actors manipulate normative arrangements and compete over regulatory authority (Lochery 2013). Boström et al. (2015) discuss the way global supply chains have been forced to harmonize with various legal requirements rather than be allowed to replace them. Hospes et al. (2014) question whether the persistence of national standards (such as Indonesian Sustainable Palm Oil, ISPO) shows a successful diffusion of global private standards into national contexts or a fundamental challenge to the adoption of international standards such as RSPO (see Box 5).

A key question is whether these are new forms of transformative governance or *ad hoc* responses to reassure the market.⁶ Ford (2003) argues that the rhetoric of participation by non-state actors has not managed to shift “regime politics” because the negotiation process itself was undemocratic. Hybrid governance thus risks being used to legitimize certain models of development (Paterson et al. 2003) rather than addressing power-based barriers to reform. These debates relate to questions raised by Cashore (2009) as to whether a critical mass of companies implementing better standards can help raise the bar for national standards or expand the risk of lack of compliance by creating a race to the bottom.

The issue of transformation is related to the wider question of the motivation of companies and government for involvement in sustainability commitments. Lowered reputational and market risk associated with achieving sustainable standards is assumed to influence company decisions. This, in turn, presumably pressures suppliers to adopt practices that comply with sustainability criteria. However, to date, there is more RSPO-certified supply than the market can absorb or buyers are willing to purchase.⁷ Since the price premium is very small, it is not the main incentive for these companies. Commitments to sustainability standards by companies are said to be associated more with reputational and financial risks, and positioning, in what are increasingly more demanding global markets (Gnych et al. 2015).

Bartley (2007) discusses how NGO mobilisation of consumer concerns created collective action problems for companies related to reputation and competition; certification represented a collective response by one segment of the sector. The logic of this market-based approach is that i) certification aims to differentiate good firms from the bad; ii) firms rely on external systems to provide consumers with credible information as firms lack credibility and supply chains are complex; iii) certification systems then act as quasi-cartels to bring competitive advantage and limit competition (Bartley 2007). Personal reputation is important. Many companies and political leaders involved in the various

6 The experience of Indonesian Palm Oil Pledge (IPOP) clearly represented an *ad hoc* response (Pirard et al., 2017), but the question is whether other initiatives, such as RSPO Next [see Box 5], may, with time, lead to more embedded types of private governance.

7 In 2013, only 52.2% of Certified Sustainable Palm Oil (CSPO) was sold as CSPO [RSPO 2014]. In 2016, only 1.4 million tonnes out of the 2.5 million tonnes of CSPO imported by refineries for the food industry in Europe was then bought as CSPO (ESPO 2017).

Box 5. The process of private standards development

RSPO is an established, internationally recognized standard (especially within the EU, which is moving towards RSPO-only procurement). Its first set of Principles and Criteria (published in 2007) were viewed by several NGOs to be weak standards with many loopholes. In 2013, the revision of the Principles and Criteria closed many loopholes, but the standard stopped short of committing to no deforestation (preferring to use HCV assessments only) and no peat. Some gaps in labour and community relations have also been criticized. The system itself was also criticized heavily due to poor HCV assessments, audit, and complaints procedures. However, with establishment of the Assessor Licensing Scheme (ALS) under the High Conservation Value Resource Network, attempts have been made to resolve some of these issues. In the meantime, other “standards” have started to emerge.

Palm Oil Innovation Group (POIG) was one of the first alternatives to be developed in 2013 following disappointment at the progress in the revision of the RSPO Principles and Criteria and the lack of no peat and no deforestation rules. It was set up as a multi-stakeholder initiative, led by Greenpeace, as a charter for companies wishing to push for stronger sustainability commitments building on the RSPO standards (including NDPE). As a multi-stakeholder discussion group, POIG moved towards indicator development, monitoring and auditing.

RSPO’s response to POIG. As all POIG member companies were/are also RSPO members, the RSPO set up an “innovation lab” led by companies to identify future standard improvements by learning from other “standards” and commitments. This group was never very active, but may have had a significant role in the development of RSPO Next.

RSPO Next. To allow some companies to progress, while allowing others to catch up, the RSPO set up RSPO Next, a voluntary system inside a voluntary system. This includes many commitments of NDPE. RSPO Next bans planting on peatland and requires companies to implement fire prevention policies, reduce greenhouse gas emissions, pay employees a living wage, ensure transparency and commit to zero deforestation. Ultimately this will be audited and certified. Daabon, operating in Colombia, is the first and only RSPO Next company.

initiatives reviewed appear to be incentivised by “champion” or “front-leader” reputations that can accompany such sustainability initiatives. This “market-based” motivation is prominent in the literature on private regulation (e.g. Spar and Yoffie 2000; Potoski and Prakash 2005).

However, Bartley (2007) warns against “reductionist decontextualized models of governance”, which frame responses in terms of the need for firms to ensure their reputation alone. He proposes a “political” view of transnational private regulation that understands motivation in terms of conflict and power dynamics between the state, NGOs and the private sector (Dezalay and Garth 2002). In a similar vein, Fligstein (2005, 194) argues that “historically most market institutions were the outcome of political struggles whereby one group of capitalists capture government and created rules to favour itself over political opponents”. In interviews, some respondents suggested that the moves of larger companies to engage in sustainability commitments are part of a strategy to consolidate the sector. This, in turn, allows land bank expansion and strengthens their market position by limiting the expansion of smaller players (as discussed in Howard 2016). This reflects wider public discussion around the risks of greenwashing (e.g. Carrington 2014; Pearce 2014). Hospes (2014) emphasises the value of grounding analysis on hybrid institutions in the palm oil sector in an understanding of the way regime interests, state capacities and business agendas collaborate to overcome what McCarthy (2012) has termed “methodological blindness” towards these aspects in this sector.

4 Categorizing initiatives around their stage of regulatory governance

Our analysis reviews the experience of selected initiatives and the interactions between private and public sectors associated with them. To that end, we unpack relevant governance factors, identifying barriers and emerging opportunities. We then assess how these factors might affect the nature of outcomes and impact. We review most initiatives at an early stage of implementation, focusing on the design and process around their development with some assessment as to how they may address some key outcome questions. The initiatives vary in terms of integration into the government system; horizontal relationships between sector agencies and the governor/bupati; vertical relationships with the centre and the regions; and the challenges of mainstreaming. They also vary in terms of actors: who is involved and the nature of their involvement; the role of political relationships; the role of intermediaries; and vulnerability to the electoral cycle. This includes a variation in the motivation and incentives of the actors ranging from market incentives, legal requirements and/or fear of sanction to political agendas such as power, ego and territorialism.

To categorise the initiatives, we use an adapted version of classification (Eberlein et al. 2014) that disaggregates the regulatory process to identify points of interaction between non-state actors and the state. We categorise initiatives in terms of the regulatory stage at which they are located as follows (see Table 1 and 2 for more details):

1. Policy formulation and agenda setting: examples include jurisdictional approaches (Seruyan; Musi Banyuasin [MuBa]); landscape approaches (Kelola Sendang in South Sumatra; IDH in West Kalimantan); green growth strategies (South Sumatra; West Kalimantan).
2. Rule setting and standards (voluntary and mandatory): for example, mandatory standards (ISPO) being developed in reaction to mandatory standards (e.g. RSPO) and private sector/civil society action; government regulations that strengthen and implement standards: regulations on sustainability (Central Kalimantan; South Sumatra); and for HCV (Seruyan; Ketapang).
3. Implementation, compliance and enforcement of regulations and standards: registration of smallholders (Institut Penelitian Inovasi Bumi (INOBU) and work by Kelola Sendang on traceability and supply chain management; IP4T land registration; KPK's KORSUP process.
4. Incentives or compensation of costs to encourage adherence to standards: examples include the Oil Palm Plantation Fund (BPDP or CPO Fund); traceability systems for smallholder integration and access to markets through certification; smallholder financing (e.g. projects by IFC and SNV; fiscal incentives for local government).
5. Oversight, transparency and monitoring: such as multi-stakeholder processes (Sekber process, West Kalimantan; MuBa SATGAS process); and multi-stakeholder forums (associated with the ISPO process and FoKSBI).

Following Eberlein et al. (2014), we define “interactions” as “the myriad ways in which governance actors and institutions engage with, and react to, one another”. For each part of the regulatory framework we asked several cross-cutting questions. These include i) who or what is interacting?; ii) what drives and shapes interaction?; iii) what are the mechanisms and pathways of interaction?; iv) what is the character of the interaction?; v) what are the effects of that interaction (see Table 2 for summary of results)?

4.1 Standards and rule setting: RSPO, ISPO and associated regulation development

At the level of rule setting, there has been a clear influence and interaction between voluntary and mandatory standards. Rules must not only support the overall goal of sustainability, but also guarantee

Table 2. Potential for change and key issues arising in the reviewed initiatives

Policy stage	Initiative reviewed	Potential for change
Policy formulation	Landscape management: Kelola Sendang South Sumatra; West Kalimantan IDH	Buy-in from governors facilitated by intermediaries. Less clarity about the role of line agencies, which raises challenges for mainstreaming and district-level implementation. Interaction with companies is sporadic and limited to selected pro-conservation companies.
	Green growth strategies: South Sumatra & West Kalimantan	Strong buy-in from governors, but line departments not engaging significantly.
Rule setting	Standards in reaction to private sector/civil society action (ISPO)	Clear influence from private standards. It is government-led, but has increasing multi-stakeholder involvement influenced by the FLEGT process. Ministry of Agriculture has less capacity for multi-stakeholder processes.
	Regulations – on sustainability (Central Kalimantan); on HCV/conservation (Seruyan & Ketapang)	Heavily facilitated by NGO intermediaries. Vulnerability to political changes. The Central Kalimantan regulation has not yet been implemented (following a change in governor) and the Ketapang regulation has been nullified by the governor. Seruyan’s conservation regulation is an example of the private sector pushing regulatory change.
Implementation/ compliance	Registration of smallholders (e.g. INOBU in Central Kalimantan)	A range of NGO and company initiatives around the mapping of smallholders and registration of rights. Some are facilitated by NGOs and some by companies working directly with smallholders; many of the data sets are intended for company use and are not synchronized with government systems; little direct public/private interaction.
	Agrarian reform: IP4T land reform	The IP4T process was stalled, until recently, by the lack of an implementing regulation and need for ministries to coordinate. It has now been superseded by the PerPre No. 88/2017 (see Box 10).
Incentives	Oil Palm Plantation Fund (BPDP)	One objective was to incentivize sustainable practises to address the problem of low yields by financing the replanting of old and low production areas. The process has been marred by delays, and poor and unequal dispersal. This raises questions over the suitability of such incentive mechanisms in certain political/governance contexts.
	Access to markets through certification/traceability systems e.g. Lalan.	Challenges remain on how these efforts can be coordinated or integrated into the state system.
	Proposed jurisdictional certification (MuBa and Seruyan districts)	Discussion around jurisdictional certification remains abstract at the level of the district and requires many other preliminary steps. Several key companies with excellent reputations for good practice are engaged.
Oversight and monitoring	Multi-stakeholder processes (Sekber processes in W. Kalimantan; S. Sumatra SATGAS; Forum KEE)	Provincial government is keen to coordinate the multi-stakeholder process. This is viewed by some NGOs as an attempt to maintain state control over them. This, in turn, has had to NGOs rejecting formalization by the state, as well as attempts of the private sector to finance and coordinate these processes.
	Multi-stakeholder processes (ISPO, National Action Plan)	The government has recognized the importance of multi-stakeholder involvement and the way in which this can increase legitimacy. The experience of FLEGT in Indonesia is being revisited in the strengthening process of ISPO and the process for consultation around the National Action Plan on sustainable oil palm.
	RSPO complaints system	Few NGO/CSOs have the capacity to play this role, particularly at the sub-national level. There is need for strong field monitoring to identify violations of companies of their own (“voluntary”) commitments.

alignment of different standards (Pacheco et al. 2007a). ISPO is a mandatory standard system which, in its overall design and principles, is like RSPO (Hospes 2014). It provides a strong example of how private standards can trigger government reaction to develop new definitions of standards and regulations to implement them.

Both the Ministry of Agriculture and the Coordinating Ministry for Economic Affairs have shown interest in bridging the differences between ISPO with RSPO. The Ministry of Agriculture initiated a comparative review of ISPO and RSPO (Suharto et al. 2015). Another initiative (led by the Coordinating Minister for Economic Affairs) aims to strengthen ISPO systems by focusing on gaps in the ISPO regulation in relation to RSPO. This focuses particularly on issues such as HCV (see Box 6 and Box 13) and Free, Prior and Informed Consent (FPIC). ISPO requires producers to comply with regulations for palm oil production, environmental management and responsibility to workers and communities. Thus, as one of its main conditions is legality in principle, ISPO could help start to address the legal complexities in the sector.

In addition to the ISPO process itself, several government regulations aim to strengthen implementation of sustainability standards (both public and private). Some are emerging in response to private sector and civil society actions. These include the Regulation on Sustainable Plantations in Central Kalimantan at the district level (see Box 7); regulations on conservation at the district levels in Seruyan and Ketapang (both of which were facilitated by NGOs) [see Box 13]; and the KEE movement that would provide a regulatory framework at the national level for protecting areas with high biological, ecological, social or cultural values (particularly those outside conservation areas and state forest lands).

The development of standards, and regulations to implement them, raises the question of compliance. ISPO's requirements are not new but are, to a large extent, repackaging existing regulations. Its development is therefore an implicit acknowledgement by the government that it cannot enforce the existing legal framework. It remains to be seen if schemes for new standards can help overcome pre-existing challenges to the implementation of regulations. Current deficiencies in ISPO's implementing systems means it is not yet achieving significant coverage. There are few incentives for acquiring certification (no sanctions, price premium or preferential market access). Local government also lacks incentives to engage. Respondents in West and Central Kalimantan claimed that the low number of ISPO-certified companies was related to the lack of incentives for local government to assess eligibility and for companies to engage. Tenurial issues associated with legality around plantation concessions have also contributed to delays in certification and verification processes.

4.2 Policy formulation/agenda setting: Jurisdictional/landscape approaches and green growth strategies

In terms of policy formulation and agenda setting, Jurisdictional (and Landscape) Approaches to sustainability have received increased attention in recent years. The concept emerged most strongly under debates around REDD+ (Reducing Emissions from Deforestation and forest Degradation and enhancing forest carbon stocks). Globally, these jurisdictional approaches have taken many different forms. These range from "bottom-up" multi-stakeholder initiatives, global demand-side signals for commodities produced in reduced-deforestation jurisdictions, and place-based supply-side signals in the form of jurisdictional certifications (Wolosin 2016).

A number of landscape and jurisdictional approaches are evolving at the provincial and district levels (see Table 2). These include the landscape approaches facilitated by IDH in West Kalimantan and Kelola Sendang in South Sumatra, as well as plans for jurisdictional certification in MuBa, Seruyan and Kotawaringan Barat districts (see Table 1 for details of these and in initiatives below).

Box 6. Voluntary standards for biodiversity conservation^a

A key focus of market/NGO pressure on palm oil companies is around deforestation (and related GHG emissions). However, as soon as companies committed to zero deforestation the big question developed as to what the term meant. The answers ranged from not felling any trees, to not clearing land if this would result in net carbon emission, to not clearing areas that are officially designated as forest, among others. Thus, to implement their “zero deforestation” commitments and/or achieve RSPO certification, many companies have committed to High Conservation Value (HCV) and/or High Carbon Stock approaches to identify areas to be set aside for conservation within their palm oil concessions (Purwanto 2014).

HCV: The concept of HCV was first developed under the FSC standard. It sought to recognize the potential impacts of forestry on the natural environment, and allow production, while protecting vital habitats. Its use in conversion agriculture such as palm oil was initially controversial, but has been accepted as an RSPO norm. Its use under the RSPO standard only took hold between 2005 to 2007 and its application (both in regards to HCV assessments and to HCV management and monitoring) has not been uniform and necessarily of good quality. Poor assessments in the past have caused conflict with NGOs and local communities and have had a detrimental impact on the reputation of both palm oil and the RSPO. Attempts were made to improve the system through establishment of the Assessor Licensing Scheme (ALS) in 2015 and application of a quality assurance process. However, pre-ASL legacy cases, especially from assessments in Papua, are subject to NGO campaigns.

HCS: The HCV approach is not intended to prevent all deforestation, but to maintain environmental and social values in the landscape. As such, it does allow for limited deforestation in certain cases. Partially due to the historically poor application of the HCV approach and the lack of protection to all forests of certain quality, Greenpeace, The Forest Trust and Golden Agri-Resources (GAR) came together to develop the High Carbon Stock Approach (HCSA). As companies started to commit to no deforestation policies, the HCSA aimed to provide a benchmark and process against which “no deforestation” could be defined. The HCSA Toolkit (2017 version) aims to define the process and best practice for identifying and setting aside forests in production landscapes; it separates HCS areas (viable natural forest) from non-HCS areas (degraded land) (Proforest 2014).

HCSA is a high-profile multi-stakeholder forum made up of working groups designed to develop a tool for identifying what is meant by “no deforestation”, which was created to counterbalance poor HCV assessments. It developed a toolkit that is under revision. Over time, it has expanded to advise on FPIC, HCV and even biodiversity assessments.

HCVRN (High Conservation Value Resource Network) is the governance body of the HCV standard. Many of the complaints in the RSPO are related to HCV assessment. As a result, in 2015, the HCVRN set up an Assessor Licensing Scheme to improve assessment standards, create accountability and develop a complaints mechanism. This was poorly funded compared to the HCSA, but is now a worldwide-recognized system. HCVRN has an Indonesian network and in some respects has been relatively well communicated to the Indonesian government. The term “HCV” is applied in regulation, although the actual definition may be different.

HCV-HCS (High Carbon Stock) integration. Controversial at first, the value of bringing together HCV and HCS standards with one quality assurance body is now widely recognized. Companies committed to RSPO and NDPE policies to date have been forced to conduct two separate assessments (HCV and HCS) within their concessions. The integration of the two approaches on a practical level during assessment, and the subsequent efficiencies that can be achieved, have led to the development of an integrated HCV-HCS Assessment Manual. In addition, bringing assessments under one quality assurance body under the HCVRN is seen as a positive step in improving confidence in assessment standards.

^a Box prepared by Mike Zrust.

Box 7. Central Kalimantan's Regulation on Sustainable Plantations

This regulation^a was facilitated by local NGOs and research organizations that worked together with the Provincial Plantations Agency (JDIH 2015). It was the first regulation to deal with sustainable palm oil issues and is more stringent than national law.

- The regulation was developed using RSPO standards as a reference point. It requires adherence to FPIC, respect for community rights and securing of HCVs by all growers in the province and not only RSPO members (Colchester et al. 2011).
- Some companies complained about the high level of technicalities^b and monitoring requirements, and in response the regulation was amended.^c
- Initially there was no implementation due to lack of regulations. Subsequently, three implementing Governor Regulations have been issued (on conflict resolution^d, on HCV^e and on partnership^f). However, implementation has not yet occurred as it lacks the full range of required regulations.
- The Perda needs further revision by the Plantations Agency, revisions which themselves depend on ratification of the spatial plan (RTRWP^g).
- Since issuance of the regulation there have been major political changes with a new governor and the replacement of the head of the Plantations Agency.
- Some interviewees at the Plantations Agency said the regulation faced too many implementation challenges and should now be dropped.^h

a Perda No. 5 (2011).

b Interview with provincial-level GAPKI.

c Interview with PILAR, University of Palangkarya.

d Peraturan Gubernur No. 42/2014 concerning resolution of conflicts in the plantation sector in Central Kalimantan.

e Peraturan Gubernur No. 41/2014 concerning the management of high conservation value areas within plantation concessions in Central Kalimantan.

f Peraturan Gubernur No. 12/2014 concerning partnership in plantation sector in Central Kalimantan

g Interview with staff from Lestari.

h Respondent from Plantations Agency, Palangkarya.

In Kotawaringan, Barat and Seruyan INOBU⁸ (Box 8) are promoting the mapping and registration of smallholders. Other institutions (such as PILAR) have been working on partnership models between companies and communities. Several companies in Seruyan district have been attempting to set aside HCV/HCS areas in their concessions. This has culminated in the recent passing of a district-level regulation on conservation set-asides. South Sumatra has committed to jurisdictional certification with a primary focus on MuBa and with the objective of testing joint RSPO/ISPO certification. In the sub-district of Lalan, IDH and the BPDP are collaborating on smallholder certification and access to finance (IDH 2017).

8 INOBU is an Indonesian NGO that grew out of the Earth Innovation Institute working on jurisdictional approaches.

Box 8. INOBU's smallholder mapping process

- INOBU have facilitated creation of the Central Kalimantan provincial roadmap to low deforestation development and are working with district governments to pilot jurisdiction-level certification of palm oil production. This includes mapping smallholder palm oil farmers, supporting their land registration, establishing collaboration between government and agribusiness, and developing a plantation monitoring system. The two districts Kotawaringin Barat and Seruyan have also been selected as pilot sites for RSPO initiative for jurisdictional certification.
- INOBU have strategically focused on smallholder issues as an entry point to wider sustainability and legality discussions. As local government cares about smallholders, the strategy has been an effective way to engage both provincial and local government. Government respondents were positive about the activities and methods that INOBU use.
- Smallholder mapping started in May 2014 and by the end of 2015, 1,229 farmers were surveyed and had their lands mapped in Kotawaringin Barat and Seruyan districts. This included eight villages in Kotawaringin Barat covering 1,671.61 ha, and another eight villages in Seruyan covering 2,182.75 ha (Watts et al. 2016).
- This represents around 6% of the palm oil farmers in Kotawaringin Barat district and 9% of the total number of palm oil farmers in Seruyan. In Kotawaringin Barat, 87% were from transmigrant communities and in Seruyan 81% were indigenous (Watts and Irawan 2016).
- In the case of Kotawaringin Barat, a decree^a was issued. Here STDB^b certificates^c are available for free.^d
- In August 2015, smallholder land certification commenced in Pangkalan Tiga and in Seruyan they are applying for STDB and formalizing their land rights. By October 2016, the government had issued 50 STDB.
- The benefits of registration are not only for traceability and ensuring legality of supply, but also to give smallholders collateral for access to finance (BPDP and bank loans).
- Local government has authorized INOBU to collect smallholder data, which are fed into the cadastre. In this way, INOBU can be said to be carrying out a state function, not duplicating it.
- Data are stored within the SIPKEBUN^e database, which enables local government to streamline the process for issuing cultivation registration letters and then to initiate processes for issuing land certificates to smallholders (Arief 2016).
- Inobu's experience suggests a high degree of capacity building is needed for local government on a range of sustainability issues – both in terms of visioning and implementation.^f

a Surat Keputusan.

b Surat Tanda Daftar Usaha Perkebunan (Cultivation registration certificate).

c These certificates are not the same as land ownership, which would require a SKT (Surat Keterangan Tanah) issued by the village authority or a SHM which are issued by BPN.

d Interview with INOBU staff.

e Sistem Informasi dan Pemantauan Kinerja Perkebunan Berkelanjutan (SIPKEBUN) was launched on 26 October 2016 in Jakarta by the Plantation General Director, Ministry of Agriculture together with Government of Central Kalimantan, Government of Seruyan District, District Government of Kotawaringin Barat and District Government of Gunung Mas and INOBU. It is a government initiative to strengthen the plantation database on commodities and especially oil palm (Ditjenbun 2016).

f Interview with INOBU staff.

The development of provincial green growth strategies in both South Sumatra (see Box 9) and West Kalimantan is also gaining attention. Both initiatives are under the leadership of the respective governor and facilitated by IDH, among others.

Box 9. Green Growth Initiatives in South Sumatra

In late 2015, South Sumatran Provincial Governor Alex Noerdin and IDH signed a Memorandum of Understanding (MoU) to implement a green growth plan in the province until 2018 (Ariestya 2017). The plan focuses on increasing agricultural and forestry production, while protecting and restoring forests and peatlands by strengthening partnerships between the private sector, conservationists and civil society. The plan is to delink deforestation and fires from commodities such as palm oil, rubber, coffee and pulp from deforestation. It also seeks to improve the lives of smallholders through a collaboration with private companies, communities, NGOs and the government. South Sumatra, as a province, has one of the fastest growing populations in the nation. It has been expanding palm oil, pulp, mining and rubber sectors, which cause deforestation.

Concrete steps scheduled for implementation between 2015 to 2020, include developing a landscape-level coordination structure among stakeholders, reviewing and improving spatial planning and improving legal frameworks. ICRAF is responsible for developing the 2015-2020 plan with a multi-stakeholder approach, focusing on the districts of Musi Banyuasin and Banyuasin.

4.3 Implementation and enforcement

Large amounts of palm oil are being sourced from lands under regimes that cannot be classified as legal. This situation is exacerbated by confusion over the definition of legality (as discussed in section 1). Many areas of production, particularly in Central Kalimantan, are on land classified as forest estate by the Ministry of Environment and Forestry (MoEF) because the spatial plans are still contested. The legally questionable status of many palm oil licenses (see Box 2 for a discussion of this in Central Kalimantan) is problematic for certification by both private and public standards systems. At a minimum, most standards developing in response to market or NGO demands require compliance with law and regulation (Lambin et al. 2014). Company areas of palm oil that have not yet obtained HGU⁹ will not be eligible for ISPO.¹⁰ Until recently, RSPO has been less clear on its requirements for HGU¹¹ suggesting that, in legal terms, ISPO has (or has had) more stringent terms. A recent ruling of the Constitutional Court (GAR 2015)¹², however, clarifies that without HGU palm oil production is not legal. Resolution of the legality issue clearly requires significant state action and strong collaboration between local government and the private sector.

Regulatory solutions proposed by the state include:

1. Opportunities for companies, whose plantations are found to be on convertible production forests, to get a late (release) permit on forest conversion (release) from the Minister of Environment and Forestry, as long as failure is due to governance error in spatial planning processes such as low production.¹³
2. Improved laws and regulations and their enforcement¹⁴, including attention to conflict resolution¹⁵ and plantation license reviews by the state.

9 The steps for obtaining HGU (Hak Guna Usaha - the Right to Exploit) are laid out in Handayani (2010).

10 However, HGU is not relevant for smallholders.

11 Correspondence between RSPO and FPP available on the internet in December 2016 but no longer available; see also GAR (2015).

12 Constitutional Court Decision on Plantation Law No. 39 of 2014 on 27 October 2016.

13 Government Regulation No. 60/2012 and No. 104/2015, and Minister of Environment and Forestry's Regulation No. P.51/Menlhk/Setjen/KUM.1/6/2016 on procedure for forest conversion and forest function changes.

14 These include the law concerning the prevention and control of forest destruction (UU No 18/2013) and ministerial decree (P.84/MENLHK-Secretariat/2015) on the settlement of the conflict over land tenure.

15 These include the social forestry decree (P.83/MENLHK/SETJEN/KUM.I/10/2016) and a unit in charge of conflict resolution and a special directorate for law enforcement.

3. Increased attention to greater and secure access for local communities and smallholders through agrarian reform or TORA, as stipulated in the Presidential Regulation No. 88/2017 that refines an earlier programme called IP4T (Inventory of Land Control, Ownership, Use and Utilization) (see Box 10), and social forestry schemes.
4. Smallholder registration.

Box 10. The IP4T programme for agrarian reform

IP4T is a joint programme for agrarian reform involving the Ministry of Forestry, Public Works, the Ministry of Internal Affairs and the National Land Agency based on a joint regulation signed on 17 October 2014. There are two different parts of the IP4T programme i) to register smallholders outside the forest estate, and ii) to deal with those illegally within the forest estate. Initial attention has focused on the former.^a It offers various means of resolution through forest conversion, exchange of forests and utilization rights via social forestry and resettlement. Among other issues, it was intended to resolve conflicts related to palm oil smallholders' occupation over forest lands, and give them legal rights over lands. The process involves making an inventory of control, ownership, use and utilization of lands over state forests.

Until recently, the IP4T process was said to be stalled by lack of mutually agreed regulations that provide guidance for resolving land conflicts. The National Land Agency, as a follow up to the joint ministerial regulation on 17 October 2014, prepared an implementing guidance on IP4PT in 2015. It was considered sectoral and insufficient for inter-ministerial coordination or to resolve the legal basis for this inter-departmental initiative. Thus, budget allocation is a constraint^b, few outcomes from this process have been achieved^c and enthusiasm from bupati^d, government and farmers is very low.^e The Presidential Regulation, recently issued to resolve coordination problems,^f introduces two new teams. The Tim Percepatan PPTKH resolves occupation over state forestlands; Tim Inver PTKH verifies how a proposed case can be resolved (forest release, resettlement, social forestry, etc.). The role of the inter-ministerial regulation concerning IP4T in this process is unclear (Wibowo et al 2017a).

There has also not been an agreement between the National Land Agency (BPN) and BPKH (the unit of the MoEF that deals with forest gazettelement) over the 20-year residency cut-off eligibility criteria for those within the forest estate.^g This cut-off date is particularly controversial in a context of swidden farming^h where users with rights may not have been settled in the same location for 20 years.

a Interview with provincial-level BPN, Palangkarya.

b Interview with PILAR, University of Palangkarya.

c Interview with staff from a district-level Plantations Agency.

d Interview with a provincial-level GAPKI staff.

e Interview with donor assistance programme, Palangkarya.

f Presidential Regulation No 88/2017.

g Interview with BPN Palangkarya, staff responsible for IP4T.

h Interview with Head of Division, Plantations Agency, Palangkarya.

4.3.1 Improvement of laws and regulations

The policy arena around palm oil and sustainability in Indonesia is crowded with legal and regulatory processes. Many new regulations are being developed at all levels. However, there is also a picture of unclear and fragmented responsibilities resulting from a plethora of conflicting regulations (most notably across national to sub-national levels of governance). Given the context of weak enforcement and lack of clear authority, better designed legal/regulatory frameworks will not necessarily lead directly to better outcomes. Indeed, more regulation can help create ambiguities that allow business as usual to continue. Law enforcement institutions are weak and authorities do not always have clear

powers or capacity for enforcement or sanction.¹⁶ This context raises questions about the value of developing further regulations: *“it is not fair for companies to blame government that there are not enough regulations – there are a lot of regulations, but they cannot do much and the government does not have the capacity to monitor them”*¹⁷. For example, one respondent explained that the Ministry of Agriculture is informed if a production area is found to be in the moratorium area or on peat. However, corrective action rarely happens¹⁸ and *“problematic licenses are never dealt with”*¹⁹. Under ISPO, companies that fail to meet a deadline²⁰ are subject to a downgrade of their plantation class (kelas kebun) and revocation of licenses.

Only some of this lack of enforcement can be blamed on *weak* enforcement. Others explained it was *“not fair”* to displace actors²¹. Still others claim that *“government know if it is wrong but they are not brave enough to take the steps”*²², suggesting a complex power dynamic that regulations alone cannot tackle. Indeed, the degree to which regulations can tackle the most influential political actors and entrenched influences in the sector is sometimes questionable. Legal reform, and the creation of new regulation, is a classic response to a problematic governance context. A body of literature exists on the way in which many “good governance” and legal reform programs try to depoliticize the state by framing the problem in a technical way. Evidence (Rodrik 2005) suggests that strengthening formal, rules-based institutions may have limited impact as they are “ill-equipped to deal with powerful opponents” (Ledergerber and Susanti 2007). A particular area of interest is how legal frameworks can further private interests (See Box 1 for specific ways in which this occurs in the palm oil sector).

Several processes around the review of licenses have taken place or are ongoing. These include KPK’s KORSUP and Nota Kesepakatan Bersama (NKB), One Map (building on previous work by the UKP4), the MoEF license review and the BRG’s (Peat Restoration Agency) review of licenses on peat. The KPK’s KORSUP review of forestry and plantation licenses has collected data on licenses that have been allocated at the national, provincial and district level. Many state agencies report handing over permit information. Some respondents^{23,24} reported high levels of expectation that this process might resolve illegal permitting problems. However, the lack of follow up (and clarity over who is responsible) has led to disappointment. This was coupled with a confusion of responsibility between the KPK and UKP4, which was collecting similar permit information prior to its dissolution. Since the “monitoring and supervisory” division of KPK is carrying out the KORSUP process, it lacks the authority of the enforcement division. Effective follow-up therefore depends on a body with enforcement power taking up the KORSUP results.²⁵ Our interviews suggest a trend of increasing reluctance over making recommendations to revoke licenses. The MoEF has done so in some high-profile cases. However, there was increased talk of letting palm oil companies finish their rotation and of a BRG retreat away from recommending license removal as a strategy.

16 Interview with provincial-level Environment Agency (BLH) staff.

17 Interview with district-level BAPPEDA staff.

18 Interview with district-level BPN staff.

19 Interview with NGO, Palangkaraya.

20 Set on 16 September 2016 in the Agriculture Minister’s Regulation No. 11/2015 on ISPO.

21 Interview with district-level BPN staff.

22 Interview with NGO staff, Kapuas District.

23 Interview with district-level BLH staff.

24 Interview with Indigenous People’s group, Kapuas district.

25 Experience from the KPK’s KORSUP on mining has resulted in a significant number of permits being (“voluntarily”) revoked by local governments (to avoid potential legal action) in both Central and West Kalimantan.

4.3.2 Agrarian reform and social forestry programmes

Agrarian reform and social forestry are included in Jokowi's government priority agenda emphasising how Indonesia's natural resources can be sustainable and accessible and can lead to prosperity as part of an objective of creating economic equality.

Various initiatives have been put forward in the form of targets. These include the 12.7 million ha of social forestry (Finlayson 2017) to be managed by local and indigenous people,²⁶ the TORA land reform programme²⁷ (aiming to redistribute 9 million ha, of which 4.5 million ha coming from state forest by 2019) and the agrarian reform programme IP4T (see Box 10). NGOs and community activities promote different programmes such as social forestry (with models ranging from Community Forest (HKm), Village Forest (HD), People's Forest (HR), Indigenous Forest (HA) and Community Plantation (HTR), community enterprises and communal solutions such as Hak Communal). In addition, the private sector, NGOs and government generate a plethora of efforts for the registration and regularisation of smallholders in the palm oil sector (see section 4.3.3).

The debate about agrarian reform and social forestry programmes in the land and forest sector has become notably more vocal among NGOs and the MoEF in the last few years. However, the term "agrarian reform" appears to embrace several approaches. In one scenario, encroached areas of the forest estate are reclassified as APL (land outside of the forest estate). In another, various social forestry programmes are designed to grant communities with access and use rights to forest lands. Land redistribution is a third approach.

It is unclear how jurisdictional approaches and other sustainability initiatives involving the private sector support or clash with these approaches. Both the MoEF and social NGOs are concerned that proposed "agrarian reform" risks legalising big players that are operating palm oil illegally. In interviews, some NGO and government actors argued that some proposals for "agrarian reform" involving the forest estate are a way of legalising illegal production that is in the hands of larger companies or powerful local elite. There are fears of land being removed from the forest estate before safeguards can ensure it remains in the hands of community and is not leased or sold to larger players.²⁸ Jelsma et al. (2016) show that "smallholder" palm oil plantations established in the last five years are more likely to be in peat and forest estate land and owned by larger smallholders on APL land.

4.3.3 Smallholder registration

Several smallholder registration programmes have developed to address legal and sustainability uncertainties over CPO supply chains. Smallholders without clear rights lack bankability and access to extension services, which may result in continued encroachment into protected areas. Assisting smallholders with registration can also help address conflict through clarification of tenure and user rights. For example, more than 80% of land claims of rural people in Central Kalimantan have not been delineated or demarcated (Earth Innovation Institute 2015).

These initiatives involve a variety of different public-private interactions. INOBU, for example, helps identify smallholders who could/should be legalised. Specifically, it works closely with local government to help map, fund and register smallholders, facilitate company input (such as the provision of company staff to assist) and integrate data into government database systems (see Box 8 for more details). Others are also building the capacity of local government to map smallholders (IDH in South Sumatra, Conservation International [CI] in North Sumatra, and The Nature Conservancy

26 As of March 2017, the Environment and Forestry Ministry had distributed a total of 13,000 ha to 11 indigenous groups in several regions, including North Sumatra, Banten and Jambi (Halim 2017).

27 Following on from the previous PRONA programme.

28 The MoEF may well also be concerned about the loss of territorial power of MoEF that this entails.

[TNC] in Kalimantan Timur). Kelola Sendang is mapping specific supply chains with certain mills. This involves identifying their smallholders by working down the supply chain, mapping and profiling the stakeholders. The database created is then provided to the government, which takes up official registration (see Box 4). Aliansi Sawit Lestari Indonesia (ASLI) is not working directly with government, but rather collecting data that will hopefully be integrated into government systems.

Others are purely private sector initiatives in which companies collect data to fulfil the traceability needs of specific mills (Asian Agri, Nestle in Riau, Golden Agri Resources (GAR) in Riau, and Serikat Petani Kelapa Sawit [SPKS]) (see Box 11). Asian Agri is working through NGOs to get smallholders legalised (see for example their work with Setara in Jambi) (Asian Agri 2016). GAR is mapping independent smallholder suppliers in several locations (GAR n.d.). Many data sets are intended for company use and are not synchronized, or even shared, with government systems.

The challenge is to develop accurate approaches with acceptable standards that can be rapidly implemented at scale, while maintaining the same quality. World Wildlife Fund (WWF), for example, has taken many years to map only part of the palm oil growers in Tessa Nilo National Park. A slow pace does not match the urgency of achieving sustainability in the palm oil sector.

Box 11. Defining traceability^a

For those advocating commitments to no deforestation policies, as well as those attempting to implement them, understanding the physical source of the FFB is key to attributing failures in compliance.

Companies are responding to consumer desires to ensure that supply is legal and particularly to ensure that smallholders are not growing in zones illegal for plantations (Yaacob 2012) or in national parks. Aspiration for traceability and visibility over supply chains has led to increased attempts by larger companies to verify that sourcing from smallholders does not compromise commitments to zero deforestation.^b Many companies are trying to urge subsidiary and third-party suppliers (particularly) to adopt sustainability policies.^c

Lack of information about location of supply comes at a time when companies are increasingly under pressure to share information about their supply chains.^d This has led some NGOs to highlight the related risk that smallholders may be excluded from supply chains because they are difficult to trace. This is counter to the political narrative of the importance of protecting smallholders.^e Once a presidential decree is issued on ISPO, it will become mandatory for all. This will potentially encourage companies to cut smallholders of uncertain origin out of their supply chain. ISPO requires a traceable supply chain (to the level of the individual)^f and RSPO has introduced a new requirement (4.1.4) in the 2013 Principles and Criteria: mills should record the origins of all third-party sourced FFB (RSPO Secretariat, 2013) including that of independent smallholders.

The role of smallholders is increasingly important in the future of the palm oil sector with a growing contribution of independent smallholders to FFB supply (currently 40% of production). The significantly lower level of production on the part of smallholders is, to some degree, related to lower economies of scale, lower labour productivity and a less favourable age profile of smallholder plots (Rhein 2015). In Indonesia, 28% of smallholders are contracted to a credit agreement to a particular mill (Rhein 2015) and these tend to have higher Frond Based Biomass (FBB) yields.

Supply chains involving independent smallholders vary in complexity. Smallholders may supply directly to mills, but in most cases, they supply to intermediaries. Mills effectively compete for FFB supply, and intermediaries compete to increase their own market share and maintain the loyalty of suppliers and buyers; therefore, they are often unwilling to divulge their sources and business relations. This, together with the fact that supply chains are fluid and vary over time, means that individual lines of supply are incredibly difficult to map and monitor.

continued on next page

Box 11. Continued

While traceability is a critical aspect of sustainability, the actual definition of “traceable” supply is hotly debated in numerous forums, including the RSPO and industry-only working groups such as the Traceability Working Group (chaired by IDH). The first step in traceability is to gather information on location of supply. To date, many large companies with sustainability commitments have identified their supply to refinery and mill level. They publish information on their own and with third party supplier mills online on “sustainability dashboards” or other reporting. Some advocate that traceability to mill is sufficient, allowing stakeholders to draw a radius around the mill from which it is possible to assume that supply originates. Interviews with the larger international agribusiness companies suggest huge challenges to identify supply chain even from the refinery down to the mills. However, some are far from attempting, or being able, to trace supply from the mill down to the producer. Progress has been made from refineries to mills, and mills to estates, but large challenges remain in tracing the supply to smallholders.^g

Without plantation-level mapping of suppliers (and given that many mill supply bases overlap), it is not possible to attribute compliance failures confidently in such a model. Therefore, other stakeholders, notably NGOs and consumers of palm oil, advocate for full traceability to plantation. This includes field-level mapping and potentially chain of custody monitoring.^h Plantation-level traceability adds another level of complexity and itself can be separated into several forms. A company can identify locations of its own plantations and plasma smallholder areas. Should a mill source from other industrial estates, this information can also be acquired relatively simply. However, significant difficulties can be experienced attempting to implement plantation-level traceability when sourcing from third party mills and any supply chains involving independent smallholders.

All the above results in differing opinions as to the value, effectiveness and efficiency of plantation-level traceability, which includes independent smallholders. No clear single definition of traceability has emerged, and no clear methodology has been found to be efficient and scalable to the size of the issue. Despite this, several pilots by the private sector stretching from supply shed mapping (i.e. simply mapping smallholders in a potential supply shed) and attempting to collaborate on sustainability issues on a landscape level with other companies, to chain of custody monitoring by individual companies. Ultimately, a cost-effective and scalable model is likely to become the standard for traceability, but this may still be some way off.

a Box prepared mostly by Mike Zrust.

b Interview with donor, Jakarta.

c Interview with Asian Agri.

d Interview with large company with zero deforestation commitments.

e New legislation was enacted in October 2016 banning independent mills without HGU is an example of legislation that may contradict a pro-smallholder agenda.

f Revised ISPO standards (Minister of Agriculture Regulation No. 11/2015)

g Interview with international palm oil processor.

h Interview with international palm oil processor.

4.4 Incentives

Two types of incentives involve public-private interaction. These include: i) assisting with the clarity of supply chains for smallholders to providing an incentive for integrating into the market; and ii) direct financing for replanting to encourage sustainable practises. Examples include the proposed funding under the state BDPD fund and IFC smallholder financing initiatives (see Table 1). In addition, the Ministry of Finance is considering incentives for local government through the fiscal transfers and revenue-sharing systems.

4.4.1 Smallholder integration: Linking producers with markets and improving performance

Potential illegality, lack of sufficient livelihoods and poor agronomic practices by smallholders may in some cases be interlinked. In response, some companies are improving supply chain management and traceability to help link producers to markets and improve the performance of their smallholder suppliers. Their efforts include the following:

- Mapping and registering of smallholders so they can access financial incentives via the provision of bankable collateral. This will enable them to improve practises and help implement sustainability standards. For example, RSPO Trust Fund links Inobu's smallholders in Seruyan to a group of major corporations such as Wilmar International Limited and Nestle.²⁹
- Encouraging smallholders to engage in groups and establish cooperatives to enable easier access to assistance and finance.
- Developing Memorandums of Understanding (MOUs) between companies and cooperatives (e.g. the commitment of the Makin Group in Lalan sub-district in South Sumatra³⁰ to guarantee markets).
- Developing MOUs between companies and palm oil buyers. For example, Golden Agri-Resources (GAR) established an agreement Nestle, one of its major customers. Together, they help a group of independent farmers in Siak, Riau (GAR 2016) to adopt sustainable practices and gain wider market access in line with the company's traceability policy (GAR 2018).

Several companies are providing extension services to smallholders to improve loyalty and therefore certainty of supply to their mill. Kelola Sendang, for example, is piloting a number of such projects in Musi Banyausin. The services help increase productivity and quality of crop, which in turn benefits the mill. However, for the most part, these company initiatives are not well integrated or linked formally to government processes and systems.

4.4.2 Finance to encourage intensification of production by smallholders: The example of the BPDP (Oil Palm Plantation Fund)

The Dana Perkebunan Kelapa Sawit (Oil Palm Plantation Fund – BPDP) was launched in 2015 in response to domestic oversupply of CPO and the decline in crude oil prices. The regulation states it was intended to finance human resource development, research and development; to promote the oil palm sector; and to encourage smallholder replanting (see Box 12 for more details). It aimed to stabilize and increase the price of CPO in Indonesia and support the absorption of production for biodiesel. In addition, it sought to incentivise sustainable practises by smallholders to address the problem of low yields, particularly through replanting of low productivity stock.

Two regulations³¹ that provide the legal basis for the replanting programs guide use of the funds and determine the target farmers and locations. It remains to be seen how the funds will provide economic incentives for sustainable palm oil development through replanting. Flows to smallholders have been negligible and limited, for the most part, to finance for capacity building and training. Dispersal rates for replanting were marred by delays of the required regulation³² for further financial disbursement.

29 The Seruyan District Governor has an agreement with UNEP's Ten Year Framework of Programmes on Sustainable Consumption and Production Patterns (10YFP), RSPO and INOBU: the PELITA Seruyan Agricultural Facility (Food Ingredient First 2017).

30 Interview with head of Plantation Agency, Muba District.

31 Issued by respectively the Minister of Agriculture [Regulation No. 29/2017 on the guidance on smallholder oil palm replanting with support from CPO fund] and Ministry of Finance [Regulation No. 84/PMK.05/2017 on the use of funds managed by the CPO Agency for replanting] in March and July 2017.

32 The regulation was issued in March 2017.

Box 12. The BDPDP (Oil Palm Plantation Fund)^a

The Dana Perkebunan Kelapa Sawit (Oil Palm Plantation Fund) was launched in 2015^b to collect, manage and distribute taxes placed on the export of CPO and/or its dividends collected from those who export the commodity but not the growers. The levies amount to USD 50/ton of exported CPO and USD 20-30/ton for exports of derivatives.

According to the regulation, the fund was intended to support i) development of human resources in palm oil plantations, ii) palm oil research and development, iii) promotion of plantations, iv) replanting and v) building infrastructure for plantations. It is targeted at improving the sustainability of smallholders – funds for replanting will be targeted at farmers who own less than 4 ha of land.^c

The fund was developed to subsidize the gap between biodiesel price and diesel oil price in a context of declining CPO prices due to the *oversupply* of CPO and the decline in crude oil prices. Thus, it was hoped the fund would stabilize and increase the price of CPO Indonesia and support absorption of biodiesel (through implementation of the B20 biodiesel program that obliges a mix of 20% CPO in all biodiesel), as well as incentivising sustainable practises to address the problem of low yields.

In 2016, only 6.7% of the allocated funds were spent (approximately USD 40.7 billion) and an area of 640 ha was replanted (see section 4.4.2. for a discussion of challenges). Total funds allocated for replanting and farming facilities and infrastructure has reached Rp 560 billion as of May 2017. This funding has been spent predominantly on training and only a few farmers have received funds for replanting to date. No funds had been allocated to supporting replanting activities in Central or West Kalimantan. This is partly because plantations have not reached the age for replanting due to difficulties to identify target areas for replanting and the absence of technical guidelines for determining target farmers and location. The low absorption of funds for replanting is related to the lack of clear ownership of the land and the need for a verification process. For example, land status constrains about 61% of land area in proposals for replanting over 26,500 ha involving about 12,000 farmers. The problem of legality of palm oil plantations does not only occur at the level of the smallholder; the many plantation concessions face similar uncertainty, including an overlap between companies with mining business permits and location in forest areas.

To date, 89% of dispersals have supported biodiesel production, which helps achieve the government goal of decreasing CPO supply to global market and increasing CPO price. However, price increases can stimulate palm oil expansion. As plantations producing biodiesel are exempted from mandatory ISPO, biodiesel production may become a way to channel non-compliant CPO.

KPK (2016) reports that three companies received 82% of allocated funds, as well as some lack of procedure in its management (Wirawan 2018). Nurfatriani et al. (2018) suggests the need for more transparent criteria for determining the proportion of the allocation of funds; for strengthening composition of oversight members within the agency by including non-state actors to ensure credible and inclusive decisions; and linking the granting of funds to companies producing biofuels to a requirement that those companies support smallholder practices that lead to sustainability.

The fund is managed by Badan Pengelola Dana Perkebunan Kelapa Sawit (BPDPKS), a Public Service Agency under the Ministry of Finance. The fund is managed on budget, but off-treasury and thus is subject to its own set of budget standards and administration.^{d,e} However, the issuance of the state budget requires verification and technical recommendations from the technical ministries. Originally, the proposals were submitted directly to the BPDPKS and were not intended to flow through the local government. However, the Ministry of Finance as the owner of Public Service Unit (BLU) claimed that the issuance of the state budget requires verification and technical recommendations from the technical ministries.^f Thus, the new Decree No 29/2017 from the Directorate General of Plantations stipulates that proposals should first be submitted to local government (District/Provincial Plantation Office) and then verified by the Plantation DG. Proposals are then returned to local government (if they need to be revised) and the proponent. After a proponent revises a proposal, the DG of Plantations gives a technical recommendation, which is then delivered to BPDPKS to allocate the grant.

continued on next page

Box 12. Continued

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- a Box taken from Nurfatriani et al. (2018).
 - b Presidential Regulation Number 61 Year 2015.
 - c Talk by Director of Planning and Utilization of BDPKPS Palm Fund at Focus Group Discussion on the “Optimization of Palm Oil Plantation Funds to Realize Sustainable Palm Oil Management” Jakarta, March 30, 2017. Puslitbang Sosial Ekonomi Economic Policy and Climate Change Ministry of Environment and Forestry and Center for International Forestry Research (CIFOR).
 - d Thus, the fund is categorised as state revenue and it is noted in the state budget. However, it does not refer to the state budget standards and administration. It is still subject to the routine audit by the National Audit Agency.
 - e Deputy for Food and Agriculture Coordination, the Coordinating Ministry of Economic Affairs at Focus Group Discussion on the “Optimization of Palm Oil Plantation Funds to Realize Sustainable Palm Oil Management” Jakarta, 30 March 2017. Puslitbang Sosial Ekonomi Economic Policy and Climate Change Ministry of Environment and Forestry and Center for International Forestry Research (CIFOR).
 - f Ibid

The implementation of above regulations will be a challenge. Smallholders continue to face some major obstacles in accessing the BPDP palm oil funds³³ reported in early stages. These obstacles³⁴ include the following:

1. Most smallholders are not organised into groups or cooperatives as is required for fund dispersal.
2. There is uncertainty over the legality of much of the land and businesses used by smallholders.
3. Bank policies are not conducive for farmers to access credit directly.
4. The estimated cost of replanting (which affects the needed collateral) is lower than the loan of 25 million IDR that they are required³⁵ to take out. Thus they are required to take out loans higher than they need.
5. Some companies are reluctant to become guarantors for smallholders linked to their mill with concerns that it will compromise their sustainable supply chain.³⁶

KPK (2016) reports that three companies have received 82% of allocated funds, while Wirawan (2018) reports weak governance. This level of subsidies to larger producers has raised concerns of rendering small producers non-viable. It also raises some questions about the suitability of such incentive mechanisms in certain complex political contexts.

33 Speaker from the Farmers’ Union of Palm Oil at Focus Group Discussion on the “Optimization of Palm Oil Plantation Funds to Realize Sustainable Palm Oil Management” Jakarta, March 30, 2017. Puslitbang Sosial Ekonomi Economic Policy and Climate Change Ministry of Environment and Forestry and Center for International Forestry Research (CIFOR).

34 Ibid

35 Speaker from Indonesian Oil Palm Farmers Association (APKASINDO) at Focus Group Discussion on the “Optimization of Palm Oil Plantation Funds to Realize Sustainable Palm Oil Management” Jakarta, 30 March 2017. Puslitbang Sosial Ekonomi Economic Policy and Climate Change MoEF and Center for International Forestry Research (CIFOR).

36 Interview with GAPKI, South Sumatra.

4.4.3 Addressing incentives for local government through fiscal transfers

Addressing the financial incentives to different levels of government is a crucial part of developing jurisdictional approaches and improving law compliance. Many local government respondents repeatedly raised the lack of incentives for local government to engage in sustainable planning in the palm oil sector as a concern. This was particularly so in our interviews in South Sumatra. The province, highly dependent on extractive oil and gas resources, is already engaged in intense negotiations over fiscal transfers from the centre over these products. This issue is echoed in the KPK report (as discussed in Arumingtyas 2017), which highlights the lack of effective revenue-sharing mechanisms between central and local government to act as an incentive for sustainable management in the palm oil sector.

Analysis by the Climate Policy Institute (2015 in Central Kalimantan reveals the negative incentives for local government for sustainable land use. The only revenue that accrues to the local government directly from the sector is that of land tax, thus providing a perverse incentive that encourages extensive land use. This finding echoes Nurfatriani et al. (2015), who highlight how forest fiscal policies in Indonesia boost financial returns rather than ecosystem benefits. The Ministry of Finance is debating how to provide positive incentives for land-use objectives, as well as to support objectives of the National Action Plan for Greenhouse Gas Emission Reduction (RAN-GRK) (Haryanto 2015). These incentives include potential government finance mechanisms (HoB 2010). A Special Allocation Fund (DAK), for example, could link specified priorities and operate through a direct grant agreement with a delegated district based on objectives and criteria. Irawan and Tacconi (2016) propose a Regional Incentive Fund. Another possibility is an indicator-based system that transfers funds from the national to the provincial level (Mumbunam et al. 2012).

The debate on strengthening the fiscal transfers system also relates to the long-standing debates about corporate social responsibility (CSR). Should the private sector finance rural development through direct local CSR payments as supposed public funding through an effective taxation system and fiscal transfers system? CSR is usually considered a voluntary activity under the Law of Perseroan Terbatas (2007).³⁷ However, CSR implementation is obligatory for companies operating in certain sectors related to natural resources (Maris 2014). Adherence to the obligation, however, is often uncoordinated. Some district governments are considering systems to oversee CSR payments, while others are considering harmonisation with local budget processes.³⁸

4.5 Oversight and monitoring: Multi-stakeholder processes and involvement of non-state actors

One challenge for both mandatory and voluntary initiatives is a reliance on effective monitoring and oversight for the initiative to function successfully. Involving multiple actors in these processes is perceived to bring credibility.

At the national level, the ISPO is attempting to increase its multi-stakeholder participation in the forum and by attention to the Indonesian Palm Oil Platform (InPOP) (see Tables 1 and 2).

Provincial and district levels are focusing on development of multi-stakeholder processes (laid out in Table 2). The government of West Kalimantan province has established a Sekretariat Bersama (SekBer/Joint Secretariat) with local government, plantation and mining companies, and NGOs to

37 Law No.40 2007 on Limited Liability Company (*UU No. 40 Tahun 2007 tentang Perseroan Terbatas*) in addition to Law No.25 2007 on Investment (*UU No. 25 Tahun 2007 tentang Penanaman Modal di Indonesia*), which gives CSR in Indonesia an attribute of compulsion.

38 Interview with Bupati's office in MuBa, and other districts.

improve communication over various forest-related problems (Viodieogo 2017). At the South Sumatra provincial level, a multi-stakeholder Sekber process is being developed to involve NGOs, companies and government in one forum. Other such processes include the Forum KEE in West Kalimantan (see Table 1). At the district level in South Sumatra “Sahabat Muba” is helping establish a multi-stakeholder process in Lalan (Natawidjaja 2016). In MuBa, a Satgas (the Satuan Tugas Percepatan Penyelesaian Konflik Agraria dan Sumber Daya Alam (P2KA SDA) has established a multi-stakeholder mechanism for agrarian conflict resolution and to assist government in developing policy responses (Humas MUBA 2017).

5 Enabling “complementarity” in hybrid initiatives

In this section, we apply Lambin et al.’s 2014 typology of “interactions” as a framework to discuss lessons on how to enable “complementarity” or “substitution” rather than “antagonism” in the development of sustainability initiatives.³⁹ Discussing “complementarity” in the “agenda-setting” phase, Lambin et al. (2014) use examples of private/hybrid instruments that might reinforce state regulations, fill policy gaps or provide cross-learning between the public and the private realms (Gulbrandsen 2014). These might include the state designing legislation in response to non-state actions, or strengthening regulations for adoption of voluntary standards that encourage private standards to converge. In Indonesia, we can point to the role of ISPO at the national level, as well as the various sub-national initiatives for local regulations regarding conservation set-asides for palm oil (See Table 3). Complementarity also includes governments participating in multi-stakeholder processes and collaborating with non-state actors over sustainability issues. In the “implementation” phase, examples include creating conditions for adoption of private/hybrid institutions, regulating sanctions associated with private standards or enabling non-state actors to take over land-zoning activities.⁴⁰ Implementation of HCV policies and development of “landscape management” programmes by various companies illustrate this approach in Indonesia. In terms of “enforcement and monitoring”, examples might include NGO monitoring of private compliance with public policies and of governments giving access to data and technology for monitoring. We find fewer examples of this in Indonesia, suggesting less complementarity at the implementation, enforcement and monitoring stages.

Table 3. Applying a typology of “interactions” to selected examples of emerging palm oil sustainability initiatives in Indonesia

	Complementarity	Substitution	Antagonism
Agenda setting	ISPO Inclusion of HCV and transparency provisions in ISPO Seruyan district’s conservation regulation Multi-stakeholder processes in West Kalimantan and South Sumatra	ISPO is including new standards on HCV and transparency	Many conflicting laws, regulations and incentives e.g. fiscal transfers that do not incentivize local government. The government of Indonesia (GoI) does not endorse RSPO. The new Plantation Law is said to have resulted from heavy lobbying by companies.
Implementation	APP’s Landscape programme HCV implementation Kawasan Ecosystem Essential legislation	Inclusion of HCV into ISPO requirements	Concern from government that companies are embracing commitments as greenwash.
Enforcement and monitoring	Application of FLEGT civil society monitoring processes to ISPO Allowing access to information on concession boundaries to the public	No examples to date	Complex governance context that can undermine standards.

³⁹ Despite our frequent use of the terms “state”, “non-state”, “private sector” etc., we recognise that none of these actors are monolithic or have one voice.

⁴⁰ This can also be seen as “antagonism”.

In “substitution”, the state takes over a function previously fulfilled by a private actor, or vice versa. At the “agenda setting” stage, this would refer to the state endorsing certification in public policies and adopting private standards into law. This has been seen in the case of ISPO and development of the regulation for KEE, which matches HCV’s six categories. “Implementation” could include government sanction of private standards. In terms of “monitoring and enforcement”, the state might take legal action against companies defaulting from their commitments such as actions in Indonesia connected to fire issues (Pramudya et al. 2017).

“Antagonism” at the “agenda-setting” stage includes the way in which different instruments can prescribe conflicting management practises. It could also embody different incentives; governments refusing to endorse labels; and companies lobbying against standards. Indeed, the Indonesian government and private sector bodies (such as GAPKI) have refused to endorse RSPO (Hospes et al. 2014). In terms of implementation and enforcement, “antagonism” could refer to the way in which weak governance and corruption prevent full implementation of private standards. For example, the Law No. 39/2014 on plantations has been much criticised for undermining principles of sustainability in favour of large company interests (Jong and Jacobson 2017). In this case, industry and members of parliament have lobbied hard for the new bill. At the same time, some parts of government (and NGOs) have refused to continue deliberations on grounds that the new law will overlap with existing laws (Gideon 2017; Reily 2017). The government is also not comfortable with changing the criteria used for secondary forests and old shrubs to determine no-go areas for plantations. This idea was suggested by IPOP and others to achieve zero deforestation goals (Mongabay 2015).

At the “implementation” stage, we also see “antagonism” in the plantation law and Government Regulation No. 11/2011 on “abandoned” land, which is contradicted by subsequent company initiatives to set aside HCVs. According to the regulation, growers must have developed 30% of land allocated within three years after issuance of the HGU; by six years, they must have planted 100%. Parts of government are also resisting various company sustainability initiatives. They accuse industry of defaulting on sustainability standards elsewhere. They also argue that sustainability standards are a way for companies to establish a cartel that pushes “non-compliant” competitors out of the sector. At the monitoring stage, the state is resisting NGO attempts to access certain data to enable independent monitoring (Jong 2018) and company attempts to take over decisions on land zoning.

Overall, “complementarity” is emerging in the design, policy and rule-setting states with more “antagonism” in implementation, enforcement and monitoring. The latter tension is particularly played out between the national and provincial levels as discussed below. NGO actors are moving from antagonism to substitution. Concepts such as an accreditation body (and independent monitoring) from RSPO-related processes are being incorporated into ISPO. Legislation is emerging around the concept of conservation set-asides in the form of KEE. A potential synergy is also being explored to link adoption of a high carbon stock toolkit to Indonesia’s Intended Nationally Determined Contributions (INDCs) (Rosoman et al. 2017). The government is also passing over some roles at the “implementation and enforcement” and “monitoring” stages. However, at these stages we are seeing more antagonism.

5.1 Negotiating substitution: The shifting boundary between state function and acceptable roles for non-state actors

The new sustainability initiatives are shifting the boundary between those actions considered to be within the state’s remit and those for which it is acceptable for non-state actors to be responsible. Many of the reviewed hybrid initiatives, by definition, were designed to replace state function, and in some way by-pass government (as also discussed in Bartley 2014). This assumes that best practice follows from companies making the first move, which then cascade down and help drive government policy and implementation.⁴¹ Some initiatives are working outside of government by design: “*we do*

41 Interview with intermediary organization working on smallholder mapping.

not have time for direct engagement which is why we play outside and when we are ready we will present the results"⁴². Others are operating on a "government-light" principle of engaging through individual relationships with government actors.

Thus, emergence of these initiatives has opened debates about the role and function of the state in relation to the private sector: where the balance should lie at each "policy" stage, which functions are undeniably those of the state, and which the private sector can more efficiently implement. The MoEF publicly criticized Asia Pulp and Paper (APP)'s "Landscape Conservation Approach" over its lack of authority to make decisions over land classification (EPN 2016). Both NGOs and government have implied that companies are stepping outside of their authority into areas of state function in discussions around Ecosystem Essential and the implementation of district-level regulations such as Seruyan's district-level regulation on HCV set-asides (see Box 13). This regulation represents an interesting example of the non-state sector straying into the realm of state function. Non-state actors are deciding not only the location of HCV areas⁴³, but also the definition of HCV.

According to an RSPO working group analysis, there is a good fit between RSPO requirements⁴⁴ and Indonesian law in terms of how HCVs are recognized. However, because states lack their own definition of HCV, they need to use non-state definitions when identifying HCV areas. Government has raised concerns that the state, not industry, should develop definitions.⁴⁵ This is partly related to a concern that such processes should not be aligned with commercial interests. Initiatives involving smallholder mapping and wider jurisdictional approaches are also raising questions about where decisions are made, the responsibilities of actors involved and the level of state formality required. An additional feature is the nature of legitimacy attached to state processes which non-state (NGO or private financed or coordinated) processes struggle to achieve. In our interviews, many national and sub-national NGOs raised concerns about the way in which private initiatives relied on oversight by non-state actors⁴⁶ and do not engage with public-sector oversight mechanisms such as state audits.

5.2 State function is needed to facilitate implementation of private standards

Although the importance of non-state actors and standards is increasing, the authority of the state in implementation remains strong. Despite the lack of state capacity as a factor leading to the emergence of private standards and initiatives, the experience of these initiatives highlights the role of the state in making their implementation possible. All initiatives reviewed rely on the presence of state capacity and processes to operate, or are vulnerable to being blocked by its absence. State function is needed to provide and enforce regulation, to manage implementation and to provide oversight.

One of the greatest barriers faced by implementation of private standards is lack of integration into government systems and/or deficient regulations and enforcement. A recent Policy Network Analysis by Pirard et al. (2017) reached a similar conclusion, which suggests political support will be critical for sustainability commitments to materialize and that implementation will be difficult without government collaboration. It also suggests the importance of connections to the state in the design and implementation phases, and attention to building state capacity. Until recently there has been little interest in co-regulation or integration with government systems, and vice versa. For example, in the early days of their development, few international processes around private standards development (HCV, HCS, RSPO – see Box 5) engaged significantly with the Indonesian government. This has arguably led to confusion and some push-back (see the collapse of IPOP and the government's

42 Interview with intermediary organization working on smallholder mapping.

43 Discussion from meeting on HCV, Bogor, 14 November 2016.

44 Other than the HCV criteria on community needs and cultural values.

45 Discussion from meeting on HCV, Bogor, 14 November 2016.

46 Interview with WALHI Pontianak.

Box 13. The legal context of conservation set-asides

The debate over HCV is characterized by clarity over the degree to which the specific HCV-related standards required by private standard schemes are supported, or undermined, by the law. Until recently, the dominant legal interpretation was that set-asides are not legally permitted in concession areas that have been given out for production. For example, PP No.11/2011 on “Idle Land” authorizes government to revoke the rights to those areas within the concession that have been left idle (Colchester et al. 2009, 2011; Suryadi et al. 2012). This was backed up by the Agrarian Law (Colchester et al. 2009) and the 2014 Plantations Law. Studies by Colchester et al. (2009) in Kalimantan confirm there are cases where set-asides were revoked and the land allocated to other companies. While the law is increasingly unclear on this, the government may be shifting its position. This is reflected in the updated ISPO standard-on HCV and the development of a discussion around the proposed Ecosystem Essential regulation. Respondents in BPN at the national level were clear that HCV set-asides are allowed (referring to the circular letter Number 10/SE/VII/2015) requiring district-level BPN to set aside HCV areas.^a This circular letter was the follow up to a request from the MoEF to the Ministry of Agrarian Affairs and Spatial Planning (S.242/MenLHK-II/2015) for a letter to Regency Heads and provincial governors to not excise HCV areas within a Right to Use Land Permit (Suharto et al. 2015). However, district-level BPN staff interviewed were not aware of the 2015 circular.

In addition, BPN Regulation Number 4/2010^b states that up to 25% of an HGU area can be unused, but that the rights holder needs to submit a revision of the land concession according to regulations (Suharto et al. 2015). Other respondents claimed that if a case can be made, and third-party assessment was available, BPN will look favourably upon any proposal to set aside conservation areas. The 2014 Peat Regulation (No. 71/2014) also provides a legal basis for taking areas out of production, particularly those with peat of over 3 m in depth or the presence of endemic or protected species (Paoli et al. 2015).

Central Kalimantan’s 2011 Regulation on Sustainable Palm Oil (see Box 7) is the first provincial regulation making HCV identification mandatory during the planning stage. Several agreements with Bupatis over HCV set-asides have already been made. However, such regulations, which have not been enacted by parliament, may be vulnerable to the election of new governors/bupatis, legal challenges from the national level^c, or to the development of potentially competing regulations such as the “Essential Ecosystem” regulation. It is also unclear, for example, how these regulations fit in with the Regional Government Law 23/2014, which shifts authority for monitoring and evaluation from the district up to the provincial level.

The Bupati of Seruyan has developed a district-level regulation on HCV set-asides^d with input from companies such as Wilmar. It provides an example of the private sector pushing the development to be legally allowed to set aside HCV. This has interesting implications as the company itself must self-declare the location of the HCV areas and pay for the government monitoring team. Yet the regulation is not mandatory and there are no sanctions,^e which suggests no legal implications. Questions remain around the robustness of that regulation vis à vis higher-level rulings. After many years of work and lobbying by NGOs to develop “Ketapang’s landmark” Conservation Perda, for example, the governor nullified it in 2016, arguing that authority for forestry-related issues had passed to the provincial level.

Revisions to the ISPO standard in 2011 removed requirements for companies to avoid HCV areas. The 2015 standards refer to the protection of peat and primary forest, but do not specifically mention HCV. However, ISPO’s certification system (Criteria 4.6) has three requirements. First, palm oil plantation companies must maintain and preserve biodiversity. Second, companies must have technical guidelines to identify and protect flora and fauna at the time of land clearing up until the time of auditing. Third, they must protect riparian areas according to the Minister of Agriculture Regulation 11/2015 (Suharto et al. 2015). The recently established inter-ministerial taskforce to strengthen the ISPO has, however, endorsed the legalization of HCV for its potential inclusion into ISPO principles and criteria. Furthermore, HCV assessments are recognized under ISPO (although they do not require ALS and are therefore often of poor quality). HCV assessments are starting to be included in provincial regulations on estate crops, e.g. in Central and South Kalimantan. East Kalimantan is developing a similar regulation.

continued on next page

Box 13. Continued

The High Carbon Stock (HCS) approach, initiated by a steering committee comprising plantation companies, commodity users, NGOs and technical organizations, has not been endorsed by the government. It is keen to continue using its own vegetation classes and criteria for determining go and no-go areas for conversion into plantations.

Recently the government, led by the Directorate General of Conservation of Natural Resource and Ecosystem of the MoEF, reinvigorated the concept of KEE (Essential Ecosystem areas). These match the internationally-recognized six categories of HCVs (biological diversity, landscape ecosystem, rare and threatened species, ecosystem services, as well as areas of social and cultural significance).^f It is intended that the Indonesian HCV guidelines will be adopted under an MoEF Decree that regulates Essential Ecosystem areas (InPOP 2016). The KEE^g program has been a legal option for the last decade, but has only become feasible since Regional Government Law No. 23/2014. Under KEE, a section of forest that is critical for either protected species, peatland or ecosystem functions at the landscape level can be protected on APL land (remaining in the HGU), under the management of a multi-stakeholder group assigned by the governor and supervised by the MoEF.

There are, however, concerns that setting aside HCV areas alone does not help to manage the entire ecological landscape or to address more fundamental failings in the land classification and spatial planning process.^h There is discussionⁱ (e.g. Colchester et al. 2009) about reworking of the AMDAL (environmental impact assessment requirements for the permit process) to include HCV criteria in that process, which is lacking. In this respect, more fundamental solutions are needed to prevent allocation of HCV/HCS land for production in the first place or to facilitate reclassification of that land back into forest estate. The former refers to MoEF decisions over classification of conversion forest and how areas of higher conservation value or peatland can avoid such a classification. The rules (P.33/Menhut-II./2010) do not specifically prevent areas that would be defined as of “high conservation value” being released from the forest estate. Other concerns raised in interviews included the use of “HCV set-aside” by companies to exclude communities from conflict areas or to maintain their land banks.

a Internal Letter of the Minister of Agrarian and Spatial Planning/National Land Agency (ATR/BPN) No. 10/SE/VII/2015 regarding High Conservation Value Forest/Area (HCV) in the issuance of permits (HGU) (Surat Edaran Menteri Agraria dan Tata Ruang / Kepala Badan Pertanahan Nasional No. 10/SE/VII/2015 tentang Penerbitan Izin pada Areal Hutan Konservasi Bernilai Tinggi).

b Article 20, paragraph 4.

c Interview with facilitating intermediary organization.

d No. 65/2015.

e Interview with the Seruyan District Environment Agency.

f Information on KEE in this paragraph is taken from Timmins (2017).

g Winrock’s ASLI programme is advising the Directorate General for the Conservation of Natural Resources and Ecosystem to develop a concept of KEE. The collaboration has produced a white paper concerning KEE, which aims to guide the Ministry in setting up regulations (Winrock International 2017).

h Interview with provincial-level BLH staff.

i Interview with provincial-level BLH Central Kalimantan.

rejection of RSPO). For example, since producer associations and public authorities of production countries were absent during the early development of the RSPO, their voices were poorly addressed in early designs (Hospes 2014). This reflects conclusions by McCarthy (2012) and Schouten et al. (2012) that the RSPO’s potential to transform markets will remain limited unless it finds ways to connect with the state.

Attention on the state is growing, reflecting a conclusion in the literature that public institutions play a crucial role in legitimizing private standards (Bush et al. 2015) and should therefore be recognised. Indeed, IPOP's collapse brought a resurgence of attention onto governance issues surrounding the relationship between the state and the private sector.^{47,48} In support of this, many sub-national-level respondents (NGOs, private sector and government) had clear expectations for mandatory processes and the role of regulation in pushing sustainability objectives rather than on the role of market incentives. Thus, even some of the more critical NGOs, who were also sceptical the government could enforce regulations, maintained that building state capacity was an important objective.⁴⁹

5.3 The shifting roles of non-state actors: From antagonism to substitution

Across the initiatives, NGOs and civil society actors have adopted two distinctive, and sometimes overlapping, roles. On the one hand, some groups play an advocacy role, campaigning and maintaining pressure on the sector. On the other hand, some intermediary facilitators work closely with government and/or companies to build capacity and push certain ideas.

In terms of the NGO-government relationship across the initiatives we can see various alliances. The external MoEF positioning has shifted significantly since the recent change in the Minister. Most notably is the close relationship of the Minister's special advisors and high-level staff with NGO networks such as Wahana Lingkungan Hidup Indonesia (WALHI). As a result, NGOs and a wider range of academics have more direct access to the MoEF. This trend is reportedly matched by less personal access by companies to the Minister. At the same time, new alliances are developing between the private sector, local governments and governors and bupati. Examples include alliances between APP and the Governor of South Sumatra and initiatives such as those between the IDH Landscape project in West Kalimantan with the Governor of West Kalimantan.

Similarly, NGO-company relationships vary greatly. GAR's relationship with Greenpeace involved confrontation followed by collaboration, followed by continuing strained relationships; the Rainforest Action Network (RAN) tends to focus on critical advocacy and does not engage in standards development; the relationship between WWF and companies involves less antagonism and is more focused on working to develop and monitor standards; The Forest Trust (TFT) operates as a consultancy for implementation of its own standard of "transformation" and does not engage in public comment. This breadth of roles reflects the trend captured by Bartley (2007) who highlights how social movements are not only a source of "disruption", but also increasingly acting as entrepreneurs that generate change alternately through protest (and pressure) and institution building (Rao, Morrill and Zald 2000). Thus, the role of non-state actors cannot be simply reduced to the pressure they exert on companies; they also actively design emerging institutions. We discuss these contrasting roles in sections 5.4 and 5.5 below.

5.3.1 Complementarity: A reliance on non-state actors in an oversight role requires capacity building

Multi-stakeholder processes have become an important part of hybrid governance, particularly around generating credibility. As advocacy NGOs heavily influence the standards of market-based mechanisms, their continual engagement and oversight are valuable. Boström et al.'s (2015) review of sustainable supply chain governance initiatives suggest that successful networks and hybrid constellations had multiple mutually reinforcing actors. The involvement of non-state actors in different stages of the regulatory process also brought some independence into the system, which heightened legitimacy and credibility in the market.

47 Interview with advocacy NGO in Palembang.

48 Interview with donor agency involved in funding sustainability initiatives.

49 Interviews with NGOs in all three provinces.

Indeed, the reputation of many initiatives relies on local NGOs that can monitor commitments and maintain pressure on the sustainability of the supply chain. However, this capacity varies and in some regions is limited. In West Kalimantan, NGOs (with the help of Forest Peoples Programme [FPP]) have successfully used the RSPO complaints systems to hold various RSPO members (including Sinarmas, First Resources and Wilmar) to account.⁵⁰ In South Sumatra, the capacity of NGOs to engage with the RSPO complaints system is more limited. In Central Kalimantan, NGO experience with the RSPO complaints mechanism was that it was slow and ineffectual.⁵¹

Advocacy NGOs have had some success in pushing zero deforestation objectives at the level of the international market. However, they have been less successful in tackling governance and enforcement barriers at the national level⁵² and in getting companies to voluntarily and consistently implement standards. Advocacy NGOs with environmental objectives are often accused of pushing “Western” agendas⁵³, which undermines their perceived credibility. Many advocacy NGOs pushing “RSPO” objectives are said to have weak lobbying capacity and struggle with the higher-level diplomacy needed to result in regulatory reform⁵⁴: “NGOs write a position paper, circulate it amongst themselves and call that lobbying”.⁵⁵

Traditionally, NGOs and other non-state actors have had few formal avenues to work with the executive. Therefore, interaction has tended to take place through informal or personal means.⁵⁶ Until recently, NGOs tended not to focus directly on the ministries and sector agencies, but rather through what were perceived to be more accessible channels for pushing reform. These included presidential bodies at the national level and governor or bupati advisors at the sub-national level. However, these agencies have limited powers in the national arena⁵⁷, while leaders at the sub-national level are subject to short electoral cycles.

The 2014 change of Minister of the MoEF led to a significant shift in the relationship between the MoEF and NGOs and the opening of the MoEF to a wider range of academic and civil society input. This trend is also seen at the provincial level with the creation of various multi-stakeholder forums and attempts to coordinate NGOs. Here the debates on governance designs for multi-stakeholder processes were split. Some NGOs favor a formal system with the legal basis which would subject any financing to official audit processes. Others reject any formalisation of NGO conduct for fear it will involve control and loss of freedom. This fear is reflected in the rejection by sub-national NGOs (provinces, in our case study) of private finance offered for multi-stakeholder processes and small sustainability initiatives.⁵⁸ This concern was based partly on the fear that financial assistance will be used to greenwash the companies providing the finance.

5.3.2 Non-state actors substituting state function

Few, if any, of the initiatives reviewed involved direct relationships between the companies and government. Most rely on intermediaries in the form of NGOs and research organizations to facilitate the relationship between companies and government, and to build capacity. These organizations are positioning themselves in a middle ground between international standards and the state.

50 Interviews with NGOs in West Kalimantan were relatively positive about the mechanism in comparison to what they perceive as the lack of a functioning complaint mechanism attached to the SVLK.

51 Interviews with NGOs in Palangkarya and Kapuas district.

52 Interview with international advocacy organization involved in campaigning around zero deforestation.

53 Interview with WALHI Pontianak.

54 Interview with company.

55 Interview with international advocacy organization involved in campaigning around zero deforestation.

56 Interview with member of a legal reform NGO.

57 See Luttrell et al. 2014 for a discussion of this on REDD+ in Indonesia.

58 Interviews with local NGOs in West Kalimantan and South Sumatra.

IDH, for example, has sought to work with, and assist, governors' advisors who had already been engaging with jurisdictional approaches. Reliance on intermediaries does bring challenges for sustainability due to the risk that initiatives driven by intermediaries collapse after their involvement ends and the practicalities of scaling out. The introduction of this new form of "intermediary" non-state actor has also added complexity to the picture. Many of these intermediaries are profit-making organizations playing more of a service-provision role and are not acting to demands for accountability or with a constituency base. In addition, as donors or international NGOs/foundations fund many of the initiatives, some local government stakeholders perceive them to be based on outsider agendas. This, in turn, creates challenges for ownership.

One common theme across the initiatives is how "intermediary organizations" tend to work "politically" and that initiatives rely on strong personal relationships with government "champions".⁵⁹⁶⁰ This is seen in particular by getting the buy-in of individual governors/bupatis or individual "champions" in the bureaucracy rather than working through formal structures or systems. Many initiatives are working predominantly through advisory teams associated with governors or regents. In West Kalimantan and South Sumatra, these special advisors play a particularly important role in influencing the governor and enabling him to engage internationally around issues of sustainability. In South Sumatra, the governor's advisory team is less integrated (at this early stage) into the sector agencies. Conversely, in West Kalimantan, heads of key agencies were playing strategic advisory roles for the (previous) governor. These champions tend to benefit from international exposure, which enhances their reputation⁶¹⁶² and differentiates them from other politicians.⁶³ This brings crucial political support for the initiative and can bring rapid action. However, it does raise the challenge of how to avoid political manipulation and how to survive the short electoral cycle when key individuals change position.

Such initiatives may face challenges in embedding related reforms more deeply in the bureaucracy as relationships with individuals are vulnerable to short-term political cycles.⁶⁴⁶⁵ One lesson from the challenges of REDD+ was the importance of getting institutional buy-in rather than simply that of particular individual champions (Luttrell et al. 2014). This is seen in the current uncertainty in Central Kalimantan about what position the new governor will take with regards to sustainability reforms than the previous governor initiated. It is suggested that the new governor is less supportive of sustainability initiatives than the last and there have been significant shifts of staff in the bureaucracy. The case of South Sumatra and West Kalimantan, where support from the governor was instrumental in propelling various sustainability initiatives forward, is also a significant risk. In South Sumatra, the governor is nearing the end of his term. In West Kalimantan, a new governor was appointed in January 2018.

To some degree this "personality" approach is related to the challenges of finding entry points to influence the executive without donor finance and/or formal government relationships. In some interviews, sector agencies questioned the legitimacy of non-state actors to engage over policy and implementation. On the other hand, as noted by some NGOs, working with *elected* representatives of the people such as governors and bupatis can open the issue to electoral and democratic processes⁶⁶ in a sector that has long suffered from a lack of *public* demand for reform.

59 Interview with facilitating intermediary organization.

60 Interview with ex IPOPOP staff.

61 Interview with NGO Pontianak.

62 Interview with facilitating intermediary organization.

63 Interview with facilitating intermediary organization.

64 Interview with indigenous peoples' NGO, Palangkaraya.

65 Interview with company.

66 Interview with district-level NGO activists MUBA; and advocacy NGO in Palembang.

Key considerations are the degree to which the initiative is integrated into the government system, what part of that system or whether it works in parallel through newly created structures. A lack of direct engagement with the sector agencies does risk a lack of integration into overall government systems. It also raises technical issues, as well as the risk of reduced ownership. For example, data collection in smallholder mapping systems that are not integrated into the government system faces the challenge of how the state can recognize related traceability systems. There are technical risks associated with the practical complexities of integrating systems. Organizations working with smallholders use several systems to map smallholders, as well as a wide array of different questionnaires. Consequently, the integration of systems raises technical difficulties both from a software perspective and in terms of the data collected. The lack of standardised data collection prior to implementation of projects can be a direct threat to the later value of that data. Perhaps more significantly, the data risk being seen as illegitimate if non-state actors collect them outside of a government mandate. Indeed, one company reported that local government had challenged the company's decision not to source from smallholders whom the company had deemed to be illegal.⁶⁷

Overall, the experience suggests that initiatives that have worked together with government through formal processes tend to have more chance of success than those that prepare the "product" and then pass it to the government for implementation. INOBU's close relationship with various governments at different levels in jurisdictional and smallholder mapping projects has helped with integrate information and monitoring for palm oil smallholders into the Ministry of Agriculture's system (INOBU 2016). This does beg the question of which part of government. The Central Kalimantan Sustainability Regulation, though heavily facilitated by NGOs, worked closely with key individuals in the Plantation Agency. However, these individuals moved on with the change of governor and momentum around the regulation was reduced. The South Sumatra Green Growth plan has high-level support from the governor's team. However, it is at an early stage and not yet mainstreamed into all the sector agencies (though key individuals are involved). It remains to be seen if this strategy can weather an inevitable change of governor.⁶⁸

Kelola Sendang represents a new form of state-NGO-donor relations with a shift to non-state actors as recipients and implementers of donor finance. It is too early to assess outcomes, but our interviews suggested some unease from sector agencies at this variation in the mode of donor finance.⁶⁹ Respondents questioned the legitimacy and accountability of the consortium players involved (as international NGOs and private consultancies). This suggests some challenges with continuity when the project has ended resulting from a lack of capacity building of, and ownership by, the bureaucracy. A related challenge in various green growth strategy discussions is how new funding sources and arrangements will/will not, or should/should not work, through the state budgeting system. Accordingly, respondents from sector agencies focused on the need to mainstream the green growth strategy into medium-term development plans to ensure coordinated implementation and financing. In our interviews with local government, this issue was also related to the debate over the need for oversight, coordination and harmonization of companies' CSR payments to local government.⁷⁰

5.4 Complementarity between the national and sub-national

The dynamics of "complementarity", "substitution" and "antagonism" can also be applied to categorize interactions across jurisdictional levels. The number of initiatives emerging at the provincial level reflects a shift of attention by donors and intermediaries to progressively lower jurisdictional

67 Interview with company with NDNPE commitments.

68 The current governor is coming to the end of his second term in 2018.

69 In the case of Kelola Sendang, interviews with sector agencies frequently noted that no budget is flowing from the project to the line departments and that the project is not partnering with them.

70 Interview with Sekda MuBa among others.

levels as the key arenas of sustainability. The upsurge of interest in sustainability issues by governors at the regional level can be related to some extent to the funding, capacity building opportunities and potential for personal legacy that initiatives have brought. This has been encouraged by involvement in (and leadership of) the Governors Climate and Forests Taskforce (GCTF) in the case of Central Kalimantan and West Kalimantan; the international attention that South Sumatra is receiving; and increased attention by donors such as Norway at the provincial level. The shift of focus to this level is rooted in an increased recognition that *subnational* governments must put in place frameworks for improved standards and need more coherent strategies. Some companies interviewed feel that subnational government has a better knowledge of sustainability issues (such as HCV), making it more productive to discuss and engage with these issues at that level.⁷¹

New alliances are developing between provincial government and companies (e.g. the South Sumatra Governor and APP), and between/versus the Ministry of Forestry and advocacy NGOs (e.g. WALHI). These are all relevant to national–sub-national dynamics. Indeed, there is some evidence of antagonism and unease from the center over the regions gaining too much power around the land-use debate. Such tension is visible, for example, between the MoEF and the South Sumatra Governor whom they view as too close to certain companies. At the same time, the MoEF has accused some companies that plan to implement their commitments of operating outside their authority over land classification. This is also related to MoEF concerns over infractions by such companies related to forest fires and peat conversion. One notable example was the opposition of the MoEF to engagement in the activities of the South Sumatra Governor around the Bonn Challenge. Some NGOs that argue the governor is too close to APP support this position (Hicks 2017). Others view these dynamics as part of the wider power play between the national and the sub-national level and concerns of the center (in this case, the MoEF) to maintain “power” over the regions.⁷²

The balance of state authority over land use, licensing and financing is particularly dynamic and uncertain as a result of the new Regional Government Law (No. 23/2014), the development of KPHs and the Village Law. As result of the new Regional Government Law, local governments have reorganized at the district level, and provinces have been allocated new powers to monitor district-level officials. Authority on forestry, mining and marine issues has shifted to the provincial government. These shifts are creating some challenges for initiatives previously focused at the district level; the legal authority and responsibility of different levels of government and the ability of the sub-national level to set its own rules are unclear. At the same time, as attention shifts from the district to the province, the village level has increased budgetary control and powers. This is reflected in the attention of the BRG on the Desa (village) level (e.g. Netral News 2017), and could also reflect it can practically implement. Its authority to make demands to license holders is limited (Sinaga 2017) and it does not have authority to cancel licenses.

The Governor of West Kalimantan recently nullified Ketapang’s district Conservation Regulation on the protection of regional conservation areas. The governor argued that since the province has resumed authority over forestry and conservation it now oversees all matters concerning “forestry”. However, the regulation is equally relevant to land use in APL land, which remains under the authority of the district. This cancelled regulation has discouraged the district government’s initiative to conserve forests or high conservation value areas. In addition, the movement around the KEE suggests a shift from developing district regulations for conservation toward a more centralized approach.⁷³

Fishbein and Lee’s (2015) review of jurisdictional approaches stresses that few sub-national programmes can succeed without strong national-level support. National government, and the MoEF in particular, still maintain much authority over spatial planning and land classification. The lack

71 Interview with company with NDNPE commitments.

72 Interview with provincial-level WALHI.

73 Interview with intermediary organization, West Kalimantan.

of a ratified spatial plan in Central Kalimantan creates a vacuum for many initiatives. The Central Kalimantan 2011 Regulation on Sustainable Plantations (Box 7), for example, cannot be implemented until the spatial plan is ratified. Resistance from the national level to some initiatives is visible and perhaps related to power dynamics between central and local government and concerns of the MoEF over its own reach.

5.5 The challenges of replication: The need for incentives

The development of *pilot* initiatives for jurisdictional approaches is important as a “proof of concept”⁷⁴. Furthermore, it signals to the national level and to the markets that local government is motivated around sustainability objectives.⁷⁵ However, there has been some criticism of choosing only “easy” sites to enable “NGO showcasing”⁷⁶ rather than focusing on the challenges of more complex contexts and the question of transferability.

Incentives are a key part of creating interest and maintaining momentum behind an initiative particularly for jurisdictional approaches (Paoli et al. 2016). INOBU has attempted to address this hurdle by facilitating the direct introduction of buyers at the district level. While wider incentive systems from government for jurisdictional approaches (such as price premiums, tax reductions or increased transfers) are not available⁷⁷, they remain important (Paoli et al. 2016). They assume the market, rather than government, will provide incentive. However, given the lack of a price premium, it is not yet clear that buyers are prepared to cover the wider costs associated with jurisdictional approaches.⁷⁸

Those promoting jurisdictional approaches risk raising expectations without full communication of the hurdles and the potential costs involved⁷⁹ (a situation reminiscent of promises in the rolling out of REDD+ as an incentive). A key issue here is the amount of capacity and financial input needed by both the state and companies.

Lack of capacity at the local government level is noted as a significant challenge (also highlighted in Fishbein and Lee 2015). For example, identification and protection of HCVs are a requirement of RSPO and therefore linked to the incentive of market access through RSPO compliance. However, the question of who will pay for HCV set-asides is commonly voiced. It reflects a wider debate about the degree to which state is absorbing the cost of achieving private sector objectives or conversely whether companies are internalizing costs of benefits to the wider nation.

This uncertainty about responsibility for covering costs is also linked to a lack of clarity over who should be responsible to *manage* set-asides. On the one hand, some respondents suggest it does not make sense to ask companies to pay for conservation as this may reduce its value in the eyes of the government as a public good. On the other hand, some argue against expecting the state to subsidize aspects that will benefit companies’ access to a market.⁸⁰

Most signatories to zero deforestation commitments are RSPO-certified. However, this incentive as a motivation is problematic as it cannot be applied easily across the sector.⁸¹ For the most part,

74 Interview with ex IPOP staff.

75 Interview with an international foundation working on jurisdictional approaches.

76 Interview with company.

77 Interview with BLH Kotawaringan Barat District.

78 Interview with INOBU.

79 Interview with RSPO.

80 The High Carbon Stock Approach has put together a special working group to discuss incentives and set-aside financing and how companies can be supported to cover their costs.

81 Interview with advocacy NGOs in Palembang and Palangkaraya.

the RSPO-certified companies have certified those areas that are older plantations that have less environmental risk and social conflict. Most sub-national respondents dismissed the idea that medium and small companies care about achieving RSPO or reaching a sustainable market, partly because many of them are not legal.

5.6 Key lessons emerging

- Mixing private and public actors and institutions in the design of sustainability initiatives needs attention to processes of legitimacy. This includes ensuring clarity over boundaries between the state and non-state actors in terms of their functions and mandate and a grounding of this in a constitutional or legal basis.
- Non-state actors may act more effectively in some cases by *strengthening* the capacity of public authority and accountability; in other cases, their actions can weaken or undermine such public systems.
- Initiatives based on the commitment of individual “champions” and not embedded in wider bureaucratic systems may face sustainability challenges.
- Integrating initiatives into executive systems can help weather short and uncertain electoral cycles, particularly for those with long-time scales or that require action across multiple jurisdictions.
- Initiatives intended as innovative pilots or to kick start a process in unclear legal contexts may benefit from fast action that can be gained from acting outside of more formal state systems.
- Non-state actors can play distinct roles — from intermediaries implementing the initiatives to independent oversight; these roles require different degrees of legitimacy due to their different mandates.
- Non-state actors and institutions are likely to require capacity building to replace state functions effectively. Not to address capacity needs can significantly compromise the effectiveness and legitimacy of the initiatives.
- Development sustainability initiatives need to engage in more problematic governance contexts rather than remaining in “showcase” examples.
- Knowledge sharing across different sectors and levels of government, jurisdictions and companies is key to address multi-level governance tensions, and to avoid a proliferation of pilots and silos of experience.

6 Conclusion: Nature of the interaction between public and private governance arrangements and some thoughts on outcomes

Across the palm oil sector in Indonesia, private commitments are emerging as a response to demands from advocacy NGOs to raise standards. This has led to a range of new governance arrangements in the form of sustainability initiatives, regulations and political “champions”, as well as the emergence of non-state intermediaries supporting implementation through state systems. Government responses to RSPO include ISPO, the KEE process, a “wave” of provincial and district green growth programmes, jurisdictional approaches and government/private sector efforts around smallholder registration. At each implementation level there is a complexity of agendas and few initiatives are aligned.

Although non-state actors and standards are increasingly important, the authority of the state in implementation remains strong. Lack of state capacity is one of the very factors leading to the emergence of such initiatives. However, the experience of these initiatives highlights the fundamental role of the state in making their implementation possible through providing and enforcing regulation, management and oversight. The shift of framing to a focus on jurisdictional approaches, and state initiatives such as ISPO and KEE (the recognition of a new conservation area status) has brought an attention to the role of state and on the potential complementary functions of non-state initiatives.

The emerging sustainability initiatives are helping implement immediate specific sustainability objectives by filling implementation gaps, by bearing some operational costs and by speeding up regulatory change. However, movement of such changes through the policy process and into implementation takes time. This delay is combined with reluctance from some elements of the private sector and slow action from some parts of government. It is thus still unclear how much selected companies acquiring “sustainability champion” status produce a trickledown effect to permeate change throughout the system. Boström et al. (2015) describe a “credibility” or “legitimacy gap” whereby some companies operate with little actual improvement in overall sustainability and in some cases even blocking innovation.

Our analysis stresses the design of sustainability initiatives that refer to the wider political economy of the sector and the agendas involved to avoid perpetuating the status quo. Lambin et al. (2018) point out that zero-deforestation initiatives by individual companies may be blocked or fail to target the most challenging forms of deforestation, especially those associated with illegality or poor forest governance. Several concerns have been raised, including the following:

1. ISPO risks becoming a tick box exercise that legitimizes poor process by not addressing underlying problems in permit allocation and FPIC.
2. The Oil Palm Plantation Fund has predominantly benefited a handful of major players in the sector.
3. Pressure for solving the legality issues may encourage a “quick fix” through formalization of land tenure.
4. Setting aside of HCV areas alone does not help address more fundamental failings in the land classification and spatial planning process.⁸²
5. Smallholders’ registration and mapping does not lead to triggering of state response, but to an increased expectation that the private sector will perform this role.

⁸² Interview with provincial-level BLH Central. Kalimantan.

Thus a key question is whether we are seeing short-lived *ad hoc* responses to particular market pressures or new forms of interaction between the public private sectors that can trigger transformational change.⁸³ Showcase examples around specific interventions might work at one scale, but may not shift overall political transactions. Thus, solutions may only enable standards in the short term to make up for a system that is not functioning effectively.⁸⁴ To bring about the transformation, interactions would need to weather political cycles and trigger more and higher-level cumulative change.

A focus on specific sustainability issues and market-based standards can divert efforts from more fundamental reform processes across the landscape of the sector. It is yet unclear that the emerging public-private initiatives address ongoing national reform processes such as agrarian reform, state revenue loss, license review and social forestry. Aligning sustainability initiatives with these agendas is crucial to avoid them undermining each other.

83 Interview with international advocacy organization involved in campaigning around zero deforestation.

84 Interview with international advocacy organization involved in campaigning around zero deforestation.

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The palm oil sector in Indonesia has seen the adoption of zero deforestation commitments by the larger companies in the form of various pledges around No Deforestation, No Peat, and No Exploitation (NDPE). At the same time, at the national and sub-national level, new governance arrangements are emerging for sustainability initiatives involving government, the private sector and other non-state actors. These initiatives have created new forms of governance relationships, most notably a shift in the types of function that were once the sole domain of the state. Some initiatives are independent and formulated outside of the state, but others interact with, and support, state actions. This paper explores the interactions between public and private sectors in the palm oil arena in Indonesia. It examines tensions and complementarities between these sectors, the degree to which, and manner in which, private standards are pushing the sustainability debate and implementation, and the likely outcomes in relation to their design.



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