

Motivation

The underlying laws and legal framework can be the defining factor promoting execution of the sustainability. However, there is **lack of research on the role of laws as an instrument of sustainability**. Conduct a comparative legal analysis of the palm oil related-law between Indonesia and Malaysia in enforcement, standard, certification: Malaysian Sustainable Palm Oil (MSPO) Vs. Indonesia Sustainable Palm Oil (ISPO).

This paper contributes to the literature by focusing on the role of governing laws and their effectiveness in implementing sustainability standards for oil palm in Malaysia and Indonesia. Comparing laws between the two nations reveals key differences palm oil policies and priorities between the two nations.

Legal Background

Malaysia's early environmental laws were initially comprised of sector-specific legislations such as Water Enactments of 1920; the F.M.S. Forest Enactment in 1934; the Merchant Shipping Ordinance of 1952. Since 1974, the **Environmental Quality Act 1974** integrated the pollution-related provisions of these laws (Mustafa & Nurah, 2015). However, in forest-related law a separate law under the **National Forest Act 1984**.

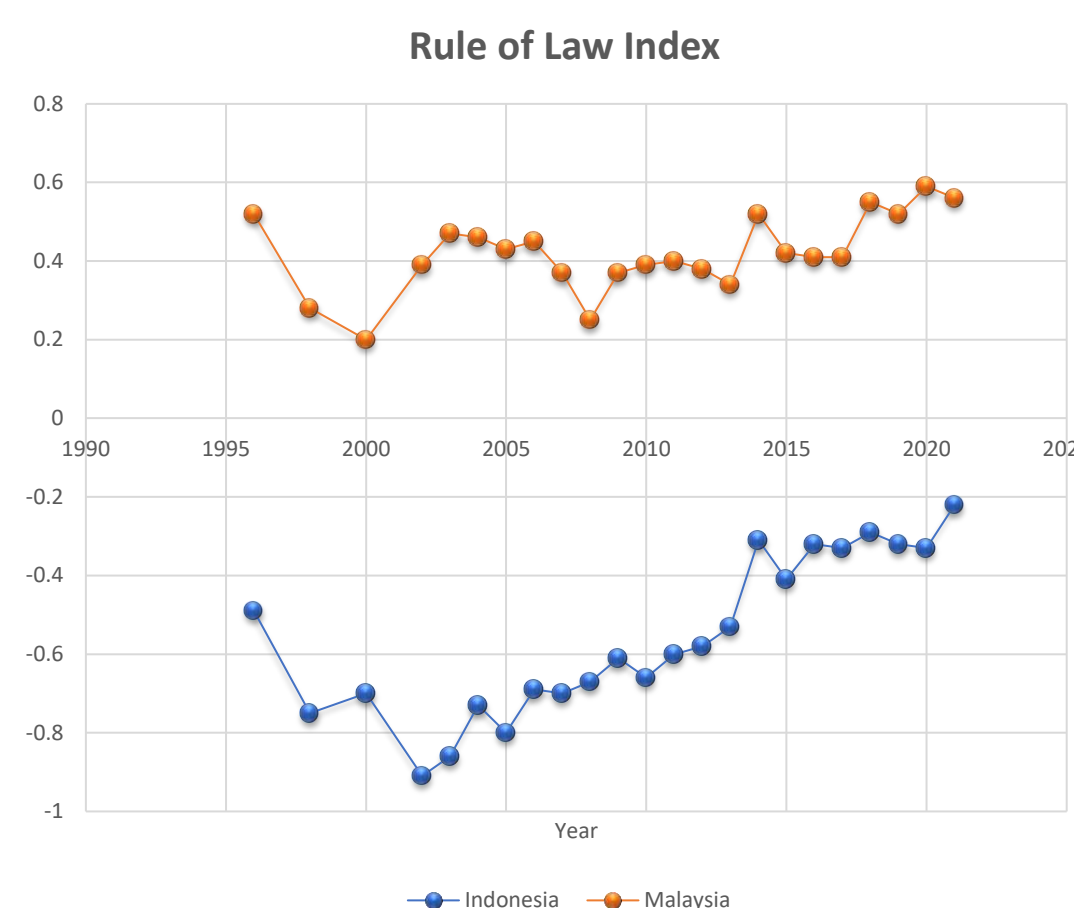
Indonesia's key environment laws are **Law No. 5 of 1990** and **Law No. 32 of 2009**. Law No. 5 of 1990 principles and regulations for managing conservative and protected areas. The Law No. 32 of 2009 defined environment as "systematic and integrated effort made to preserve the environment and to prevent the pollution." (Windodo & Hum, 2016). Besides, the **Strategic Environmental Assessment** should be the basis of development, and **Environmental Impact Analysis** is needed (The Republic of Indonesia, 2009).

In both nations, the **regional government** has greater authority over natural resource management. In Indonesia, Law No. 22/1999 on Regional Autonomy offers the regional government some authority over the natural resource matter (Tan, 2004). Under Part VI of Malaysia's Federal Constitution, the **state government** mainly governs land, agriculture, forestry, local government, and water issues.

Sustainable Certificate in Legal Comparison

MSPO		ISPO
Legal Aspects		
Malaysian Palm Oil Board Regulations	Legal Background	Established by Peraturan Menteri Pertanian Nomor 19/Permentan/OT.140/3/2011. Regulate by Presidential Regulation Number 44 of 2020
Malaysian Palm Oil Certification Council (MPOCC), a subsidiary of a MPOB of a federal ministry sat the rules, which approved by MPOCC. Technically, it is a policy , implements and enforces by MPOB.	Legal Legitimacy of Standards and Principles	Standards have more legal validity because it is written into the nation's agriculture regulation by the ministry of agriculture. Law in nature. e.g.,
MPOB (Licensing) 2005 regulation No 15	Mandatory Law for Certification	Peraturan Menteri Pertanian Republik Indonesia Nomor 11 Tahun 2015
Environmental Aspects		
Formally recognized High Conservation Value (HCV), including forests. Primary forests can be cleared under certain circumstances like permit.	Primary Forest	No formal recognition on HCV. Primary forest should be preserved unless (1) permit was obtained (2) Forest no longer considers as designated forested area.
Criteria 2 of Principle 1 prohibits expansion into HCV after 31 December 2019.	New Planting Procedures	In principle, prohibit new expansion into primary forest (IPOA, 2021).
There exists independent assessment of MSPO certification scheme. Auditor works under a separate organization.	Independent Audit	ISPO is supervised by ISPO Commission, which reports to the Ministry of Agriculture. ISPO's auditors are trained by ISPO Training Institute and are compulsory to register under ISPO Commission.

Confidence in Judicial and Enforcement Systems



Rule of Law Index captures households' and firm's confidence in the judicial and enforcement system such as the quality of enforcement, police, and property right, and likelihood of crime and violence.

Malaysians have higher confidence in their judicial and enforcement systems than Indonesians but lower than the average developed nation (score~1.2).

Notable Cases



Cases	Year	Outcomes
North East Plantations Sdn Bhd V. Pentadbir Tanah Daerah Dungun & Anor	2011	The appellant was granted the right to cultivate palm oil on 10,000 acres of reserved forest land, but the new state government revoked the alienation. The appellant challenged the revocation in court but lost.
Syarikat Khidmat Saujana Trading Sdn Bhd V. Bumi Terbit Sdn Bhd	2014	The company was awarded the right to harvest oil palm on a piece of land, but it was later found out that the land was owned by the forestry department.



Cases	Year	Outcomes
Putusan MAHKAMAH AGUNG Nomor 2905 K/Pdt/2015	2016	The Supreme Court of Indonesia (SCI) imposed a USD 61 million fine on PT. KUMAI SENTOSA, a palm oil company, for causing a forest fire that burned 1200 hectares of forest land. Besides, "the damaged lands must be restored... The burning peat must be carried out with material which has a close function, namely compost "
Putusan PT PEKANBARU Nomor 6/PDT/2017/PT. PBR	2017	PARA TERGUGAT converted 2599 hectares of forest land without going through forest area release procedures. SCI ordered TERGUGAT I to finance the reforestation. It must cut down all oil palm plantations on the land and reforest it.
Putusan MAHKAMAH AGUNG Nomor 121 K/TUN/2017	2017	SCI ordered the National Land Agency to open Cultivation Right Title on palm oil data , which includes the holder name, location and size, and map of the title granted (Polontoh, 2023; SCI, 2017).
Putusan PN PALANGKARAYA Nomor 213/Pdt.G/LH/2018/PN PIK	2019	The court sentence the 6.5 million USD for forest fire and Sentenced the Defendant to carry out environmental restoration measures.
Putusan PN PELALAWAN Nomor 23/Pid.B/LH/2020/PN Plw	2020	The court sentenced the defendant to two years imprisonment and USD 130, 000 for illegally converted forest land into palm oil.
PUTUSAN PN SIAK SRI INDRAPURA 240/PID.B/LH/2020/PN SAK	2021	The court ordered the defendant to carry out environmental restoration measures on burned forest land with the distribution of compost and compensate for ecological damage.

Discussion and Recommendation

Law in sustainability aims to prevent deforestation and environmental harm with clear regulations and effective enforcement. Malaysia should empower public prosecutors to leverage on National Forest Act 1984 for environmental preservation. **Data transparency** is important for effective enforcement. Malaysia can refer to Indonesia's Nomor 121 K/TUN/2017 as a model. Lack of **public access to Malaysia's legal data is a limitation of this paper**. Besides, Besides, a unique contribution of this research is its presentation on **environmental restoration punishment in Indonesia** for palm oil planters.

Malaysia has a clearer regulation on HGV, while Indonesia's seem to have more **biocentric in principle** by including the environmental restoration clause in the sentencing. Besides, Indonesia offers **broader public access to legal information**. For example, Indonesia's Court Verdict Directory release over 8.5 million electronic documents of decisions of all Courts for public access, while Malaysia lags on this aspect. Besides, **ISPO's auditor should be more independent**.

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Notable Environmental Laws



Vs



Malaysia Palm Oil Board Act 1998	Law No. 5 of 1967
National Forest Act 1984	Law No. 5 of 1990
Environmental Quality Act 1974	Law No. 32/2009 on Environmental Protection and Management
Sabah Forestry Development Authority Enactment 1981 (Sabah En. 24/81)	Law No. 39 of 2014 about Plantations -It covers sustainable plantation
Laws of Sarawak. Chapter 71. Forests Ordinance	