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Indonesia

Consultation Coordinator at Defra,
2nd Floor, Foss House,
Kings Pool, 1-2 Peasholme Green,
York,
YO1 7PX

05 October 2020

Dear DEFRA,

We the undersigned are writing to you in response to the UK consultation on a Due Diligence Regulation.

We the members of the Indonesian Civil Society Communications Forum (FKMS)¹ for Fair and Sustainable Palm Oil Governance, working on palm oil issues and its link to forest and sustainability in Indonesia, would like to share our views and inputs on the United Kingdom's (UK) Proposal for a Due Diligence Regulation for Forest Risk Commodities (FRC)² produced and traded in the UK. We welcome the UK Government's plans to create a new legislation ensuring that the commodities produced and traded are legally and sustainably accountable.

We have noted that the UK's Proposal for a Due Diligence Regulation is vague and not robust enough to warrant effective implementation. We are concerned that this regulation will not lead to the improvement of the governance of palm oil as well as other commodities in producer countries, including in Indonesia, as mandated by the proposal's objective, which is to eliminate deforestation and the land use change footprint from commodities traded in the UK.

¹ FKMS consist of over 40 non-governmental civil society organisations.

² Forest Risk Commodities are commodities that can cause wide scale deforestation (DEFRA).

We noted the following points:

- The UK's proposal for a Due Diligence regulation has yet to include human rights -including the rights to a healthy environment and well-being for all people where these commodities are produced. The UK is one of the countries that has committed to the protection of business and human rights through the National Action Plan on Business and Human Rights entitled Good Business – Implementing the UN Guiding Principles on Business and Human Rights (NAP) launched on September 2013 and last revised on May 2016.³ This Due Diligence proposal therefore should be coherent with regulations on business and human rights currently in effect in the UK.
- The UK's proposal for a Due Diligence Regulation has yet to include the financial sector as its subject. We believe that implementation of this due diligence must be placed in a value supply chain framework, because these risky commodities are marketed through the global trade system, involving not only producers, but also financial institutions backing the supply of raw materials, production, distribution, and trade.
- The current scope of the proposal for a Due Diligence Regulation is limited to illegal deforestation and therefore it is a concern that the regulation would not be able to halt all deforestation and land use change. Currently, large areas of natural forests in Indonesia have been issued with palm oil permits and are ready to be converted into oil palm plantations. In 2019, at least 3.58 million ha of natural forest (almost 22 times the size of London) is allocated inside oil palm plantation concessions.⁴
- There is a concern about the UK unconditionally accepting national standards from producer countries. For Indonesia, national policy and standards are required that include sustainability, transparency, justice, comply with legality requirements and respect human rights, as well as recognizing and protecting the rights of indigenous peoples. Therefore, this policy could also serve as a scheme to improve the governance of forest and land-based commodities in Indonesia that is binding in nature.
- The Due Diligence to be carried out by UK companies/businesses lacks a clear mechanism – including whether this will include supply chain tracing – which will influence the credibility of the due diligence, especially if independent monitoring or at least a grievance mechanism is not included as part of compliance with accountability.
- It is feared that fines will make for ineffective penalties, because they will not create a deterrence and will not influence improvement in governance. In addition, it is a concern that this will create the opinion that Indonesia's forests can be converted in nominal terms.

³ <https://globalnaps.org/country/united-kingdom/>

⁴ Madani Berkelanjutan. 2019. Merayakan Satu Tahun Moratorium Sawit: Merawat Harapan Di Dua Tahun Tersisa. Unpublished Policy Paper

- A two-way (Indonesia and UK) monitoring scheme by multi-stakeholders is required for supply chains that meet the sustainability values as stated in the No Deforestation, No Peat, and No Exploitation (NDPE) scheme and that refers to the Paris Agreement to contribute to reducing climate change by 1.5°.

Indonesia has a number of policies in effect on improving palm oil governance, including: (1) in 2011, the Government of Indonesia passed a Ministerial Regulation on Indonesian Sustainable Palm Oil, amended to Presidential Regulation and passed on March 2020; (2) Presidential Instruction No. 8 of 2018 on the Postponement and Evaluation of Oil Palm Plantation Permits and Enhancing Oil Palm Plantation Productivity, which ends in 2021; and (3) Presidential Instruction No. 6 of 2019 on the National Action Plan on Indonesian Sustainable Palm Oil.

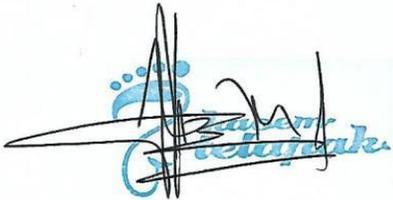
We realize that the Government of Indonesia has attempted to improve its palm oil governance, but this still requires further policy strengthening and commitment in its implementation and oversight.

Furthermore, from the aforementioned observations, we ask the UK Government to take the following recommendations into consideration:

1. Synchronize this regulation with other UK policies regarding the implementation of principles on business and human rights;
2. Assess national standards and only accept these national standards if they fulfil requirements on legality, sustainable practices, transparency, justice, and respect human rights as well as recognize the protection of indigenous peoples' rights, and protection of labour, or create its own stronger and binding standards in accordance with international standards and through engagement with stakeholders;
3. Implement a monitoring and evaluation system involving various stakeholders to protect system credibility;
4. Implement the same policies to all FRCs without discrimination;
5. Provide technical and non-technical support to producer countries to meet these standards and for policy implementation, including providing tangible incentives for businesses that are meeting these standards;
6. Develop a grievance mechanism for stakeholders as part of the system accountability;
7. Provide support for oil palm smallholders (with plantations <6 ha) and indigenous peoples who have supported anti-deforestation policies and at the same time are victims of deforestation;
8. Implement the same Due Diligence Regulation for the finance sector to stop the financing of activities causing deforestation;

9. Develop an independent platform to identify and monitor supply chains from companies linked to deforestation for FRC;
10. Focus not only on deforestation issues, but also on the impacts of deforestation, including human rights, as well as forest and land fires, because these three are linked to palm oil production development;
11. Due diligence is not limited to only document review, but also verification on the ground.
12. Collaborate and synergize with the Government of Indonesia, palm oil businesses, smallholders, and civil society to ensure that Indonesia's palm oil products are free from conflicts, whether economic, social, and environmental.

Your sincerely,



Abu Meridian, Executive Director of Kaoem Telapak

On behalf of:

1. Alam Hijau (A-Hi) Jambi
2. Burung Indonesia
3. Forest Watch Indonesia
4. Greenpeace Indonesia
5. Independent Forest Monitoring Network (JPIK)
6. Komunitas Teras
7. Link-AR Borneos
8. LPMA Borneo Selatan
9. Madani Berkelanjutan
10. Perkumpulan Panah Papua
11. Sawit Watch
12. Tropical Forest Foundation Indonesia
13. The Institute for Ecosoc Rights
14. The Institute for Policy Research and Advocacy (ELSAM)
15. TuK Indonesia
16. Wallacea
17. Yayasan Pusaka Bentala Rakyat