

Terpercaya study

Bridging Indonesian laws, the SDGs and commodity certification criteria for defining district sustainability

- The Sustainable Development Goals (SDGs) provide a unified set of globally accepted principles. The goals, targets and indicators can be used as a basis for defining and measuring jurisdictional sustainability.
- There are similarities and overlaps among the SDGs, the principles and criteria of commodity certification schemes, as well as Indonesian laws and regulations.
- These principles and criteria can be translated at the district level. However, they should align with existing legal and regulatory frameworks, as well as the delegated authority of district governments.
- These considerations, as well as stakeholder preferences and the possibility to collect relevant data, serve as a guide for the Terpercaya study in the identification of indicators for monitoring district-level sustainability.

This briefing is the second in a series of five on the Terpercaya study, 'Tracking sustainable palm oil and defining jurisdictional sustainability at scale.' The study was launched in April 2018 to respond to the challenges faced by farmers and market actors to access reliable information and data about sustainable palm oil. The study, which is being carried out in Indonesia by the Institute Penelitian Inovasi Bumi (INOBU) and the European Forest Institute, is based on jurisdictional approaches. It aims to provide innovative solutions for tracking sustainable palm oil from the production areas to international markets.

This Briefing starts by outlining the benefits of measuring sustainability at subnational jurisdiction level. It then outlines some possible components of jurisdictional sustainability and explores how the SDGs could help bridge certification standards with laws and regulations. It ends with some reflections on how the review of possible indicators for measuring progress towards jurisdictional sustainability could be rolled out.

1. Sustainable commodity production at the jurisdictional level



Palm oil smallholders, Indonesia Photo: Rebecca Lake, Pelalawan Riau.

Certification schemes have emerged as a means for companies to ensure the sustainability of their supply chains. Attaining certification, however, is a costly process. This is particularly true for smallholders whose tenure legality is sometimes unclear. In addition, their management capacity to adopt, comply and report upon such standards is limited. Furthermore, certification cannot address the deforestation that occurs at the margins or outside of certified concession areas or farms. Measuring sustainability performance at subnational jurisdiction level,¹ rather than at farm or concession level, has been proposed to achieve impact at scale while ensuring the participation of smallholders and indigenous peoples (Terpercaya briefing 1; IDH Verified Sourcing Areas;² Balikpapan Challenge).³

By working at the jurisdictional level, it is possible to safeguard forests, carbon and biodiversity across the landscape, not just at farm level. Such an approach would also reduce costs for groups of farmers and for small and medium agribusinesses allowing them to achieve certification.⁴ Local laws and regulations can also give legitimacy to processes of free, prior and informed consent when addressing social conflict at jurisdiction level. Finally, rather than focusing on a single commodity supply chain, the jurisdictional approach can offer wall-to-wall certification for all commodities produced in a jurisdiction (for example, timber, rubber, coffee, coconut and so forth).

In principle, this approach provides a strong incentive for identifying and supporting collective, joint solutions, given that failure to reach or maintain the standard impacts all actors involved. For example, working at jurisdictional level can lead to close collaboration and fair benefit-sharing arrangements among mills, industrial plantations, and so-called 'plasma' and independent smallholders.

The social and environmental diversity of subnational jurisdictions across the world complicates efforts to define and measure jurisdictional sustainability. An efficient jurisdictional approach should simplify this complexity to some extent. It would also provide commodity buyers and consumers with legitimate, cost-efficient, reliable assurances that the commodities have been produced sustainably. At the same time, it should also allow stakeholders to define or refine indicators of success, considering the local context.

The jurisdictional approach assigns accountability to subnational governments working together with agribusinesses, farmer groups and civil society. Democratically-elected local governments have both the authority and legitimacy to issue regulations and implement policies for sustainability. More importantly, local governments are responsible for, and able to, enforce laws and regulations for sustainability. This is the case for example of the moratorium on all new palm oil plantations signed by Indonesia's president in September 2018.⁵ Historically, there has been scepticism about the ability and efficiency of local governments in designing, implementing and enforcing conservation policies without solid financial incentives, and checks and balances. However, new pilot schemes experimenting with the devolution of tax revenue to village funds partly based on environmental performance show that local governments can be entrusted with such tasks.⁶

Since the fall of the New Order regime in 1998, Indonesia has made a transition to democracy through the reformasi (political reform) process. A central part of reformasi has been to decentralise authority to the subnational level, and ensure that sub-national government leaders, from the village to the provincial level, are all democratically elected. Decentralisation, however, has been a learning experience for Indonesia. Many powers that were initially decentralised to the district level have been redistributed to the provincial level. The most recent law on local governments in Indonesia, Law No. 23/2014, stipulates that district governments retain authority for agriculture, while provincial governments are responsible for forestry and forest areas. District governments, consequently, exert the most authority for agricultural commodity production, but have to work with provincial governments to protect forests throughout their jurisdiction. However, Indonesia is a unitary republic. The central government has the power to determine the scope and means of subnational governments' authority. Incidentally, the national policy for reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks (REDD+), the Indonesia-Norway memorandum of understanding and the Green Climate Fund's results-based,⁷ also act as financial incentives and impose obligations on the central government. For example, the central government is responsible for submitting forest emissions reference levels, and establishing safeguards and forest monitoring systems.

Considering both the autonomy of district governments as well as their need to respond and nest-in national policies and targets, what is a suitable definition of sustainable commodity production applicable at district level? And how does this definition align with the SDGs?

2. Possible components of jurisdictional sustainability

Commodity certification schemes,⁸ including those for palm oil and soy, global consumerawareness campaigns and IDH's Verified Sourcing Areas approach⁹ have focused on several critical sustainability issues for commodity production. These issues include:

- 1. Improving the participation, profitability and productivity of smallholders in fair commodity supply chains
- 2. Reducing social conflict and protecting human rights, including labour and indigenous land rights
- 3. Reducing deforestation and forest degradation in high conservation value and high carbon stock areas, including primary and secondary forests, as well as peatlands
- 4. Reducing fire and haze

As certification bodies, non-government organisations and buyer companies develop an interest in jurisdictional approaches to commodity production, several essential governance requirements for sustainable jurisdictions are emerging:

- A legal, multi-stakeholder and single entity responsible for implementing and monitoring jurisdictional certification, including standard operating procedures and a code of conduct for enforcers
- Traceable and legal supply chains, including regulations and mechanisms for ensuring the legality of the supply chain (certificates and/or licences for farmers and traders, guidance on pricing and contracts)
- A legal land-use plan for reducing deforestation and land degradation, protecting areas with conservation values, and rehabilitating degraded land and ecosystems
- The need for a one-map approach, in order to avoid conflicts among mining, infrastructure or agricultural projects
- A local regulation for ensuring free, prior and informed consent in processes of land acquisition, plantation and concession development
- · Mechanisms for tracking and addressing conflicts and grievances
- · Policies, programmes and incentives for improving smallholder productivity and participation
- Transparent and publicly-accessible mechanisms for monitoring social, environmental and economic indicators



Workshop on Collaborative Land Use Planning in Papua Photo: Mokhamad



Translating these elements and governance components into measurable indicators for jurisdictional sustainability calls for some general considerations:

- Finding a balance across different sustainability dimensions (economic, social, environmental and good governance, including transparency issues), and boosting synergies and addressing trade-offs across these dimensions
- Using a stepwise approach, combining outcome ('good') with process ('in progress') indicators
- Being audience-oriented, with indicators that are relevant and meaningful to various target groups, including national governments, district governments, trade partners and consumers
- Looking at feasibility, including by taking into account data availability and using efficient, objective collection methods, such as remote sensing, using secondary data, checks on government documents, surveys and others.

In addition, for the government to support sustainable commodity production, applicable 'principles and criteria' should simply reflect, clarify or consolidate existing mandates and competences of the national, provincial or district governments. For example, these principles and criteria should adopt terminology used in existing regulations. This will ensure that related actions can be integrated into planning documents for implementation through government-funded programmes.

Palm oil nursery in Indonesia Photo: Aul Rah Furthermore, selecting pragmatic indicators for sustainable commodity production at jurisdictional level in Indonesia calls for specific considerations:

- The most appropriate scale of measurement remains the district. Provinces can be very heterogeneous, while villages are too small and too numerous for biophysical measurements to be interpreted. In addition, evaluation and verification at this or smaller scale could become too expensive, burdensome and lengthy for potential monitors.
- District governments have specific mandates that are clearly specified and limited by regulations, particularly Law 23/2014 on Local Governments. They cannot pursue activities beyond their mandate.
- The work of district governments is based on specific processes in terms of planning, budgeting and implementation. These processes are stipulated by regulations. To be implemented, district government activities should first be integrated into planning documents. Only then can they be financed by the local budget.

Terpercaya and the importance of sustainability indicators

The Terpercaya study aims to explore, map and question possible indicators for measuring sustainability at jurisdictional level. In reviewing indicators, the study carries out an indepth review of applicable regulations and existing approaches. The expected outcome of the study is to better inform market actors in making decisions regarding their sourcing arrangement to implement their sustainability pledges or policies. For this, the Terpercaya study benefits from a collaboration with the initiative 'Transparency for Sustainable Economies' (Trase)¹⁰ to illustrate how these indicators can be used to inform commodity markets. This, in turn, has the potential to create incentives and reward districts that best implement and demonstrate sustainability in commodity production and trade.

3. Using the SDGs to bridge certification standards with laws and regulations

Finding a method for identifying pragmatic indicators for sustainable commodity production at jurisdictional level that takes into account all the above considerations can prove challenging. The SDGs can help bridge the principles and criteria of certification schemes on the one hand, and the legal and regulatory requirements on the other.

World leaders adopted the 2030 Agenda for Sustainable Development and its 17 SDGs in September 2015. The Goals officially came into force on 1 January 2016. Efforts to produce sustainable agricultural commodities play a key role in achieving national commitments towards the SDGs.

The 17 SDGs



According to the 2018 UN progress report on SDGs,¹¹ the Asia-Pacific region needs to accelerate the pace of change and reverse negative trends in several areas. However, the region has made satisfactory progress towards eradicating poverty (Goal 1) and in efforts to promote decent work and inclusive economic growth (Goal 8). It has also had limited success in reducing inequalities within and among countries (Goal 10). Progress towards SDGs focused on improving environmental stewardship has been limited, especially in relation to the protection, restoration and promotion of the sustainable use of terrestrial ecosystems (Goal 15). The protection of forest areas and the reduction in the degradation of natural habitats has weakened at regional level since 2015. The situation has worsened most significantly when it comes to containing the loss of natural forests. Goal 13, climate action, is unlikely to be met at the current pace of change.

Across all these areas, work to find multilateral solutions to overcome these transboundary challenges must be enhanced for the benefit of current and future generations. Large data gaps limit robust progress assessments and impede targeted solutions for overcoming development challenges, as well as for reassuring buyers and investors. These data gaps must be plugged by building new partnerships and embracing new data sources across the region. The most data-poor SDGs include responsible consumption and production (Goal 12), climate action (Goal 13), and peace, justice and strong institutions (Goal 16).

Both global and domestic consumers are increasingly aware of the environmental and social impacts of agriculture. They demand affordable, safe, but also sustainably and ethically produced commodities.



Palm oil smallholders in Indonesia Photo: Good Return

> In Indonesia, SDG implementation is outlined in Presidential Regulation 59/2017 on the SDGs. Six months after issuing the Regulation, the Government developed a National Action Plan for the implementation of the SDGs. And a year later, it developed a Regional Action Plan and Roadmap 2016-2030. At the local level, the Ministry of Home Affairs issued Decree 7/2018 to instruct provincial and district governments to carry out strategic environmental impact assessment (*Kajian Lingkungan Hidup Strategis or KLHS*) as part of the process of developing their medium-term development plan (*Rencana Pembangunan Jangka Menengah Daerah or RPJMD*). KLHS specifically includes the assessment of the necessary conditions at district level for achieving the SDGs. This assessment will provide the basis for developing sustainable development scenarios in districts. Based on these scenarios, local governments will identify the strategic issues and challenges foreseen for achieving SDGs and translating the SDG targets at district level for their integration into the RPJMD. By carrying out KLHS, local governments have already integrated efforts for achieving the SDGs into their development plans.

4. Terpercaya: Looking forward

These various legal, regulatory and voluntary initiatives provide the framework for a transition towards sustainability at district level. However, they are only a starting point for addressing various open questions linked to 'jurisdictional sustainability' that are at the core of the Terpercaya study:

- Can commodity buyers relate to and use the proposed measurement to identify sustainable jurisdictions?
- Could this trigger market incentives for jurisdictions to make the transition towards sustainable commodity production?
- Who should conduct periodic assessment and verification of the jurisdictions' progress towards sustainability?
- How do these indicators align with ongoing processes at national level, such as REDD+ incentives, the palm oil moratorium and/or the revamping of the Indonesian Sustainable Palm Oil standard, which aims at certifying all producers?

To inform stakeholders' discussions on possible indicators of progress towards a practical measure of sustainability at district level, it is proposed that such indicators:

- Bridge certification principles and criteria, Indonesian laws and regulations, and the SDGs;
- Relate to, and balance environmental protection, social protection, good governance and economy/quality; and are flexible enough to capture different levels of progress:
 - **Basic Legality:** District governments are required to implement laws related to sustainable and inclusive commodity production. Their failure to do so will put them in breach of national laws and regulations.
 - Legality+: District governments comply with applicable laws and regulations, including those related to spatial planning, and have adopted supporting local regulations, tools or processes to fill identified gaps towards sustainability in the short to medium term (for example, five years).
 - **Sustainability:** District governments already meet the requirements of Legality+ and, with the collaboration of market actors, non-government organisations, donors and/or incentives, meet the highest standards.



Palm oil production Photo: oneVillage Initiative

In this final section, we illustrate how the review of possible indicators could be rolled out, based on the approach outlined above, using environmental protection as an example. Generally, in government regulations in Indonesia, all issues related to environmental principles and criteria can be clustered around four major themes:

- 1. Land management, including spatial planning, licensing and monitoring: This theme covers all principles and criteria for sustainable commodity production standards relating to the preservation of high conservation value areas and primary forests, protection of steep terrain, and/or marginal and fragile soils such as peat, and others.
- 2. Waste management and pollution control: This theme covers all principles and criteria for sustainable commodity production standards relating to mitigating water, air and soil pollution caused by commodity production or processing.
- **3. Climate change mitigation:** This theme covers all principles and criteria for sustainable commodity production standards relating to efforts aimed at reducing greenhouse gases, including reducing deforestation through the protection of high carbon stock areas.
- Biodiversity management: This theme covers all principles and criteria for sustainable commodity production standards relating to the protection of rare, threatened or endangered species and other high conservation value habitats.

The table below provides an example of an environmental district sustainability indicator, fire, and how it relates to Indonesian laws and regulations as well as the SDGs. Fire is subject to some of the strictest environmental regulations in force in Indonesia at present. Enforcing the regulation (Presidential Instruction No. 11/2015) would mean ending all deliberate burning in the district. However, the regulation does not provide mechanisms for alternative livelihoods or clearing methods. A total fire ban is unrealistic, as it would disadvantage indigenous and other small-scale farmers. Consequently, in the table, we provide examples of how district governments and jurisdictional partnerships could provide support for alternative livelihoods and clearing methods, as well as more resources for monitoring and handling fires. The indicator would measure the incidence and extent of fire, and hotspot and burn scar analyses would provide the means for verification. The relevant SDGs in this example relate to human health, in particular the effects of smoke and haze, land degradation, climate change and biodiversity loss.

Illustration of possible district sustainability indicators, the case of fire mitigation

Sustainability issue: Preventing and mitigating fire	Legality	Legality+	Sustainability Partnerships
	All fires should be prevented; fires that still occur are followed by an administrative response	Districts improve the infrastructure for mitigating, monitoring and handling fires, including supporting alternative livelihoods	Districts and non- government actors' efforts lead to the effective prevention of all fires
Legal basis	Presidential Instruction No. 11/2015 Environmental Law (Law No. 32 of 2009)	Law No. 25/2004 The Ministry of Home Affairs Decree 13/2006 The handling of fired area within forest concessions MoEF Regulation 77/2015 Procedures revoking Business Use Licence on burned area - Head of Land Agency Regulation 15/2016	
Related SDG indicators	 3.9.1 Mortality rate attributed to household and ambient air pollution 15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation neutral world 15.5.1 Red List Index 		
Possible Indicators	Number and extent of fires per districtBudget spent in preventing, handling and monitoring fires		
Verification means	Hotspot and burn scar analysesPublic expenditure review		

References

- ¹ A jurisdiction is an administrative area a municipality, a district, a province, and so forth where a particular system of law is applied. It is led by an authority that has the right and power to govern under this legal system.
- ² What are Verified Sourcing Areas, IDH, available at <u>https://www.idhsustainabletrade.com/publication/what-are-verified-sourcing-areas-vsas/</u>
- ³ The Balikpapan Statement: Moving from commitments to action in the efforts to reduce deforestation across the tropics, 17 July 2017, INOBU, available at <u>http://inobu.org/balikpapan/2017/07/17/the-balikpapan-statement-moving-fromcommitments-to-action-in-the-efforts-to-reduce-deforestation-across-the-tropics/</u>
- ⁴ Stickler, CM, AE Duchelle, JP Ardila, DC Nepstad, OR David, C Chan, JG Rojas, R Vargas, TP Bezerra, L Pritchard, J Simmonds, JC Durbin, G Simonet, S Peteru, M Komalasari, ML DiGiano, MW Warren, 2018, *The State of Jurisdictional Sustainability*, San Francisco, USA: Earth Innovation Institute/Bogor, Indonesia: Center for International Forestry Research/Boulder, USA: Governors' Climate & Forests Task Force Secretariat, available at <u>https://earthinnovation.org/state-of-jurisdictional-sustainability/</u>
- ⁵ Presidential Instruction No. 8 Year 2018
- ⁶ A noteworthy initiative here is the Kabupaten Regulation on Dana Desa for Climate Change Control see for instance the Pidie District pilot (Aceh).
- 7 GCF in Brief: REDD+, Green Climate Fund, available at <u>https://www.greenclimate.fund/-/gcf-in-brief-redd-?inheritRedirect</u> <u>=true&redirect=%2Fwhat-we-do%2Fnewsroom%2Fpublications</u>
- ⁸ See the list of sustainable standards at <u>https://sustainabilitymap.org/standard-identify</u>
- ⁹ IDH's approach of 'Verified Sourcing Areas' (VSA) has a mandatory core, the VSA performance standard, which covers five key themes of global concern: forest and peat protection, good governance, labour, land tenure and transparency. In addition to the VSA performance standard, separate goals and targets respond to local sustainability priorities. These local goals and targets may differ from jurisdiction to jurisdiction.
- ¹⁰ Trase is working to establish a comprehensive tracking system for the palm oil sector in Indonesia based on diverse publicly accessible data sources (see Terpercaya briefing 1).
- ¹¹ *The Sustainable Development Goals Report,* United Nations, 2018, available at <u>https://unstats.un.org/sdgs/files/</u> report/2018/TheSustainableDevelopmentGoalsReport2018-EN.pdf

More information at info.terpercaya@efi.int

Disclaimer

This briefing was developed by Inovasi Bumi (INOBU) and the European Forest Institute (EFI), with support from the Partnership Instrument of the European Union. The contents of this briefing are the sole responsibility of the authors and can in no way be taken to represent the views of the European Union.

October 2018.





