

ECPR Joint Session (10-15 April 2014, Salamanca) on "Mapping the emerging hybrid world order: how global governance networks and regimes interact with shifting inter-state hierarchies in shaping global policies"

Coping with the emergence of new sovereignties over sustainability: dilemmas and decision-making of the Indonesian state in a plural legal order

by Otto Hospes, Greetje Schouten and Johanne Deike¹

Abstract: This paper describes how the Indonesian state copes with the emergence of a global network of business and civil society as a new, complex sovereign over sustainability of an economically very important activity on its territory: the production of palm oil. Indonesia is the largest producer and exporter of palm oil in the world and plans to double its current production of Crude Palm Oil by 2020, mainly by expanding palm oil production. Multinational companies and environmental organisations fear that this will lead to further loss of forest, biodiversity and peat soils, and herewith increase of greenhouse gas emissions. Local NGOs and smallholder movements expect that expansion of palm oil production will fuel new land conflicts between communities and plantation companies. To map the plural legal order that has evolved as a result of non-state actors claiming political legitimacy to define sustainability of palm oil production in Indonesia, three types of sovereignties are distinguished (based on Comaroff and Comaroff 2009): sovereignties over territory and its inhabitants, sovereignties over transactional spheres and commodity flows, and sovereignties over people conjoined in faith or culture. To describe the dilemma's and strategies of the Indonesian state in political decision-making over sustainability in a plural legal order, the concepts of the cunning state (Randeria 2003) and the entrepreneurial state (Andonova 2014) are used, examined and adapted. Our analysis suggests that Indonesian state actors both challenge and reproduce the global sustainability regime framed and dominated by European non-state actors. They do so by competing and cooperating with global private-civil networks and by establishing agreements with other states and intergovernmental agencies.

Key words: sovereignty, plural legal order, cunning state, entrepreneurial state, sustainability, palm oil, Indonesia

1. Introduction

The 1990s and 2000s are characterized by the emergence of global networks of business and civil society actors to develop standards for sustainable production of agricultural commodities, like coffee, tea, cacao, cotton, palm oil, soy, etc.

¹ Dr Otto Hospes is associate professor Public-Private Governance of Food at Wageningen University. Dr Greetje Schouten is post-doctoral researcher at Wageningen University. Johanne Deike is a master student at Wageningen University. Corresponding author: otto.hospes@wur.nl.

Their emergence can be situated against the backdrop of three historical events that have shaped world order and are part and expression of a new era of globalization: the fall of the Berlin Wall in 1989, the UN Conference on Environment and Development of 1992, and the establishment of the WTO in 1995. These events paved the way for the emergence of non-state market driven systems (NSMD) to promote sustainable production of global agricultural commodities (Bernstein and Cashore 2007). The fall of the Berlin Wall created political space for non-state actors to manifest themselves as new authorities to address top issues on the new global political agenda. One of these issues was how to balance agricultural development and environmental sustainability. Whereas heads of states politically committed themselves to sustainable development, the WTO regime - geared towards reducing trade barriers at the border - gave them no legal room to take the lead in developing transnational standards and new governance arrangements for sustainable production of global commodities. By establishing global standards and roundtables for sustainable cropping, private actors filled an institutional void created by inactivity of states and intergovernmental agencies to formulate principles and criteria for sustainable production of global commodities.

The new era of globalization fostered a new plural legal order or global legal pluralism (Berman 2007). This plural order is characterized by the weakening of territorial synchrony of political authority and cultural identity through the nation-state (Hajer 2003) and the emergence of non-state actors as new sovereigns over transnational flows, territory and cultural identity (Comaroff and Comaroff 2009). In the new era of globalization, sovereignty is not any longer singular, absolute and all-inclusive but plural, relative and segmented. As a result, traditional dimensions of sovereignty that are based on a state-centric approach (Risse 2011), lead to new questions. For instance, if international sovereignty does not only include seeking acceptance at UN level but also getting support from multinational companies and foreign consumers, what does this imply? Likewise, what does external sovereignty mean if external non-state actors intervene or interfere in agricultural practices and environmental processes on the territory of the state? In a similar vein, sovereignty over cross-border flows or interdependency sovereignty has to be treated in a different way if a part of cross-border flows is governed by non-state actors.

Whereas one could expect that the emergence of global networks of business and civil society actors as new sovereigns over sustainability since the 1990s would have triggered quite some research to explore how state actors have positioned or re-positioned themselves vis-a-vis these global networks, there is actually very little scholarly work on this issue. Andonova (2014) concludes that, "While there is hardly a disagreement in the literature on the rise of transnational actors and new modes of governance, their impact on the state remains debated and insufficiently illuminated by empirical research" (p.481). The rise of private governance arrangements for sustainable production of global commodities did lead to a new body of literature that explains the logics of business and civil

society actors in collaborating with each other and creating legitimacy without the state (Bäckstrand 2006; Bernstein and Cashore 2007; Pattberg 2005; Schouten 2013; Schouten and Glasbergen 2011). Though very insightful, this body of literature upholds the notion of a sustainability regime that exclusively consists of non-state actors and that is global in the sense of being accepted at any place on earth. The use of concepts like Non-State Market Driven systems and global private partnerships, have certainly contributed to this notion.

Very few scholars have analysed the dilemmas and strategies of state actors, whether from the South or the North, in coping with the rise of non-state actors as new sovereigns over sustainable cropping. For instance, little research has been done to explore whether state actors from the South have accepted and supported non-state market driven systems to define sustainability of production and producers on their territory. Also, hardly any research has been geared towards collecting data on interactions between state and non-state actors in interpreting and implementing global private standards for sustainable cropping at the national or local level. Finally, few scholars have studied new regulatory initiatives of states parallel to the implementation of global sustainability standards at the national level.

At a more abstract level, there is a lack of understanding of patterns and changes in the way or ways in which state actors cope with the rise of non-state actors as new sovereigns over sustainable cropping and what this again implies for mapping and conceptualizing transnational sustainability regimes. To increase our understanding of these patterns and changes and to contribute to mapping and alternative conceptualization of transnational sustainability regimes, we first examine different propositions of Andonova (2014) on the changing role of the state in environmental governance as a policy arena characterized by a high interdependence and complexity and on the engagement of state actors in transnational partnerships for sustainability. Second, we review the concepts of scattered sovereignties and the cunning state, as coined by Randeria (2003), to refer to a new pattern and collaborative strategy of the state in coping with norms, policies and other claims of transnational movements and intergovernmental agencies over the use of natural resources on the territory of the state.

Our case study is about dilemmas and strategies of the Indonesian state in coping with the emergence of non-state sovereigns over sustainability of an economically very important activity on its territory: the production of palm oil. The case study consists of two parts: the first part is about dilemma's and strategies of the Indonesian state in engaging with the Roundtable on Sustainable Palm Oil (RSPO) as an initiative of European business and civil society to develop principles and criteria for sustainable palm oil. The RSPO was formally established in 2004 as a foundation under Swiss law; in 2005 the General Assembly ratified the RSPO principles and criteria for sustainable palm oil production. The second part is about dilemma's and strategies of the

Indonesian state in seeking support and recognition for the Indonesian standard for Sustainable Palm Oil (ISPO) at international, national and local level. The ISPO was launched in 2011 by ministerial decree.

Our first objective is to characterize and explain the (re)positioning of the Indonesian state vis-a-vis non-state actors and their network as new sovereigns over the production of sustainable palm oil in Indonesia. For this purpose, we analyse different or changing notions of sovereignty that are used in discursive and network strategies of Indonesian state actors. Our second objective is to identify what pattern or change can be identified in the way(s) in which the Indonesian state copes with the rise of non-state actors as new sovereigns over sustainable palm oil. For this purpose, we use the proposition(s) of Andonova (2014) and the concept of the cunning state of Randeria (2003). Our third objective is to contribute to a more systematic understanding of the newly emerging sustainability regime of palm oil, in which the RSPO and the Indonesian state both seek recognition and support for their own standard at the same levels but primarily targeting different actors.

Data on the (re)positioning of the state have been collected through desk study, participation in international conferences of the RSPO and GAPKI, and semi-structured interviews with key informants in the period 2010-2014. Several sources serve as a basis for the descriptive analysis: a desk study of the participation of state actors in RSPO working groups and national interpretation and implementation teams in 2010 (Hospes and Howard 2010), a study of the strategic use of scale frames in the development of global and national principles for sustainable palm oil in Indonesia in 2012 (Hospes and Kentin 2014, Kentin 2012) and studies on the rise of national sustainability initiatives in Brazil and Indonesia as copies or competitors of global standards in 2014 (Deike 2014, Hospes 2014). The key sources of the latter study are semi-structured interviews on the emergence of national standards in Indonesia and Malaysia with 23 key players in the palm oil industry in Kuala Lumpur, Singapore and Jakarta.

The structure of the article is as follows: the next section offers a theoretical perspective on how to conceptualize the (re)positioning of the state in complex sustainability regimes, based on a review of different propositions on the engagement of the state in transnational partnerships on sustainability and the concept of the cunning state and scattered sovereignty in plural legal order. Then the case study is presented in two parts: the first part describes dilemma's and strategies of the Indonesian state in coping with the emergence of the RSPO as a new sovereign and global standard over sustainable palm oil on its territory from 2005 till 2011; the second part describes dilemma's and strategies of the Indonesian state in seeking support and recognition for the national standard for sustainable palm oil at international, national and local level from 2011 onwards. The two concluding sections offer an analysis of the case study and draw implications for our understanding and conceptualization of a newly emerging sustainability regime on palm oil.

2. Theorizing on the (re)positioning of the state towards global private partnerships

As there is a lack of theorizing on the (re)positioning of the state vis-a-vis partnerships of business and civil society at the global level to develop new forms of governance and standards for sustainable cropping, we start with reviewing literature that tries to explain state participation in public-private partnerships for sustainability. Possibly, some explanations of participation of states in such partnerships can offer counter explanations on the lack of participation and the positioning of the state vis-a-vis global private partnerships for sustainable cropping. Drawing on literature, Andonova (2014) has developed six hypotheses to explain state participation in transnational hybrid governance of sustainability. For each proposition, we propose a counter thesis that could help to understand the lack of participation of states in global partnerships for sustainable cropping and in particular the positioning of the Indonesian state vis-a-vis the RSPO as a non-state sovereign over sustainable palm oil.

The first proposition of Andonova (2014) is that the participation of states in public-private partnerships is evidence of insufficient state capacity and serves as a compensatory mechanism to fill governance voids by drawing on the resources, competencies and reach of non-state actors (p.485). The counter thesis to understand the lack of participation of states in global partnerships for sustainable cropping would be that states have, or consider to have, sufficient capacity. Her second proposition is that donor states are more likely to initiate and participate in transnational partnerships as an alternative means of global influence (p.487). The counter proposition to explain lack of participation of donor states in global partnerships over sustainable cropping would be that donor states consider bilateral and multilateral channels as sufficient to promote sustainable cropping in recipient countries. Her third proposition to explain state participation in transnational partnerships for the environment is that countries that are more consolidated liberal democracies are more likely to engage in transnational partnerships (p.489). The counter thesis would be that countries that apparently have a more authoritarian regime are less likely to engage in transnational partnerships for sustainability. Andonova's fourth proposition is that states are more likely to participate in transnational partnerships if there are stronger domestic constituencies of transnational advocacy and/or business networks for the environment (p.490). This would suggest that lack of participation of states in partnerships for sustainable cropping points at a weak domestic constituency of transnational advocacy and/or business networks for the environment. Her fifth proposition is that states with a pro-active environmental policy and bureaucracy are more likely to initiate or participate in transnational environmental partnerships (p.491). The counter proposition is that states that do not participate in global partnerships for sustainable cropping are characterized by a policy and bureaucracy that is not a front-runner in the field of sustainable cropping but rather passive, lagging or reactive. Her sixth proposition is that states that are more engaged in international environmental

institutions are more likely to participate in transnational environmental partnerships (p.492). The counter proposition would be that states that do not participate in global partnerships for sustainable cropping, are less likely to be actively discussing environmental issues at the international stage in intergovernmental regimes.

In our analysis of the case of the Indonesian state vis-a-vis the RSPO we want to assess to what extent the counter propositions are helpful to explain the lack of participation of the Indonesian state in the RSPO. But before doing so, we need to point at some shortcomings in the propositions of Andonova (2014) to explain the participation of states in transnational partnerships. The first problem lies in the term 'participation': Andonova (2014) assumes participation of states to be 'off' or 'on' and somehow equal to (formal) membership. Participation can, however, also refer to the status of observer or participant of a conference or expert group. The second problem is that Andonova's analysis helps to identify conditions that favour (increasing) state participation in transnational partnerships for sustainability but does not give insight into different and changing justifications, motivations and strategies of state actors to engage more or less with private actors in partnerships. Interestingly, Andonova concludes that (increasing) state engagement with non-state actors in transnational partnerships is the result of political agency and transformation in both domestic and international spheres: it is the combination of entrepreneurship of units of government, domestic agency of transnational actors and international opportunity structure that explains (increasing) state participation in transnational partnerships on sustainability. However, she does not give insights in discursive and power struggles between state and international non-state actors to negotiate, transfer or share sovereignty over sustainability, territory and people. Third, whilst Andonova emphasizes that partnerships do 'not reflect a wholesale shift of authority toward nonstate actors, nor are they merely new instruments of traditional state influence' (p.507), she does not show how state actors redefine or selectively use new concepts of sovereignty or legitimate political authority.

Much more than Andonova (2014), Randeria (2003) emphasizes the strategic behaviour of the state in developing alliances with non-state actors and supranational institutions under processes of globalization. According to Randeria (2001), it would be a mistake to consider states as weak or weakening because their monopoly over the production of law has been challenged by both international institutions and civil society actors. She emphasizes that the state is cunning in different aspects: first, it capitalizes on its perceived weakness in order to render itself unaccountable to both its citizens and to international institutions. Second, the cunning state acts strategically by forging different alliances with different non-state actors at different levels. Third, the cunning state is selectively implementing norms and policies designed by supranational institutions (p.306).

Unlike Andonova (2014), Randeria (2013) tries to qualify or conceptualize how processes of globalization affect the state as a sovereign. She not only presents the state as a networker and negotiator but also as a 'scattered sovereignty': as a result of processes of transnationalization, privatization and decentralization, the state and its powers have been dispersed. States at the national level may have lost some of their powers to regional governments or representatives at the supranational level. This means that state actors at the national level do not only have to cunningly forge coalitions with non-state actors but also have to negotiate the implementation of national policies with supranational and local governments.

In different ways, Andonova (2014) and Randeria (2003) explain why states participate in transnational partnerships or forge coalitions with non-state actors. What we miss in their description and analysis is an understanding and exploration of how state actors at the national level perceive sovereignty vis-a-vis non-state actors and to what extent the emergence of global private forms of governance has led to changes or strategic use of their perception of sovereignty. To address this shortcoming we would like to first of all distinguish three conceptualizations or notions of sovereignty: simple or classical sovereignty, complex sovereignty (Grande and Pauly 2005), and plural sovereignty (Brauer and Haywood 2010; Comaroff and Comoroff 2009). In the simple or classical version, the state considers itself as the supreme authority over people and activities within a territory. In the version of the complex sovereign, the question is what part of the state is sovereign over what. In the notion of plural sovereignty, both state and non-state actors may perceive themselves to be sovereign over a space, activity, or some category of people. This could lead to concerted action and shared sovereignty but also to conflict and contestation between state and non-state actors, also when these actors perceive themselves to be sovereigns over different things or people. Soils, crops, commodity flows and people are connected to each other, which means that claiming sovereignty over, for instance, cropping is somehow to claim sovereignty over territory and people. When a state would accept such a claim, it also gives up or shares its sovereignty over territory and people.

Our second proposal is to assume that state actors time and again have to consider what perception of sovereignty they want to frame and use in the face of emerging transnational partnerships and global private governance. We want to explore what notion of sovereignty is part of discursive strategies of state actors to come to terms with non-state actors and to rationalize their positioning, response and parallel initiatives.

Our third proposal is to make a distinction between discursive and network strategies of state actors in seeing how they cope with global partnerships of non-state actors that have evolved as new sovereigns over sustainability.

3. Dilemma's and strategies of the Indonesian state in governing the production of sustainable palm oil

Indonesia is the largest producer and exporter of palm oil in the world and plans to double its current production of Crude Palm Oil by 2020, mainly by expanding palm oil production. The palm oil sector has been a major contributor to the export earnings of Indonesia. The export earnings are estimated at USD 19.11 billion in 2013 (GAPKI 2014). Palm oil is a major source of government revenue from tax (like value-added tax, income tax, land tax and export tax). Since 2006 the accumulated value of export tax has reached Rp. 80.4 trillion (Indonesian Ministry of Finance 2013).

The global demand for palm oil is huge and expected to grow. Palm oil is a widely used source for production of food (cooking oils, margarine, specialty fats, ice cream, cookies and chocolates), non-food applications (oleo-chemicals, soaps, detergents and cosmetics) and increasingly feedstock for biodiesel. The three largest palm-oil importing countries of the world are India, China and the EU. The fourth largest consumer of palm oil is Indonesia itself. Its commitment to increasingly use palm oil as a biofuel provides an extra incentive for the palm oil industry to increase the production.

The production, expansion and processing of palm oil in Indonesia have not only generated enormous economic benefits but also strongly affected ecosystems, landscapes and community life. Environmental effects include deforestation, loss of biodiversity, greenhouse-gas emissions and spreading of haze due to conversion of peatland, clearing of forest and forest fires. Social effects include tensions and conflicts between communities and companies over land and licences to deforest and produce palm oil.

The balancing of economic growth, environmental sustainability and social development has been a major concern of the Indonesian state since independence from the Dutch colonial occupier. Sustainability is presented in the 1945 Constitution of the Republic of Indonesia as one of the key principles for the organization of the national economy.² Between 1960 and 2010 at least 27 environmental laws and regulations have been declared by the Indonesian state. These are all confirmed in the 2011 decree of the Ministry of Agriculture to launch the standard for Indonesian Sustainable Palm Oil (ISPO). However, the Indonesian state was not the first to launch a sustainability standard that is specifically about palm oil production. Some six years before this launch, non-

² Article 33(4) of the Constitution of the Republic of Indonesia: "The organization of the national economy shall be based on economic democracy that upholds the principles of solidarity, efficiency along with fairness, sustainability, keeping the environment in perspective, self-sufficiency, and that is concerned as well with balanced progress and with the unity of the national economy" (certified English translation downloaded from http://www.humanrights.asia/countries/indonesia/laws/uud1945_en as per April 4 of 2014).

state actors convened by the Roundtable on Sustainable Palm Oil (RSPO) ratified principles and criteria for the production of sustainable palm oil at their General Assembly in 2005. The RSPO is an initiative of WWF and European demand-side actors of the global palm oil industry, particularly Unilever (Schouten 2013: 64). These non-state actors did not approach governments of Indonesia and Malaysia as the major palm oil producing countries to join and support their initiative but invited associations of palm oil growers from these two countries to become members.

Taking the launch of the RSPO and ISPO standards as two critical moments in the changing governance landscape of sustainable palm oil, we will now discuss major challenges and dilemmas of the Indonesian state in governing the production of sustainable palm oil. First, we will focus on the period between 2005 and 2011 in which the RSPO was still the only standard on sustainable palm oil. Then, we will discuss the period in which the ISPO co-exists with the RSPO standard. The challenges and dilemmas of the Indonesian state during the first period are: Shall we ignore the RSPO as a new form of governance for palm oil, or try to get actively engaged with this form? Shall we embrace the RSPO standard and support its implementation at the national and local level in Indonesia? How to get engaged with the RSPO and support its implementation if state actors cannot become member and be given decision-making power in the RSPO?

The challenges and dilemma's of the Indonesian state during the second period are: How to gain credibility for the ISPO at the international level in a situation in which the RSPO has been accepted by many non-state actors and European governments as the 'worldwide standard' for sustainable palm oil and outcome of a multi-stakeholder process involving business and NGOs: shall we primarily seek understanding and recognition with business or rather government actors? How to organize the implementation of the ISPO at the local level in a general context of decentralisation and in places where licenses to produce palm oil have been allocated in a non-legal way? How to organize concerted action in promoting the ISPO at international and national level through the ministry of agriculture when also three other ministries (trade, environment, forestry) are involved? Finally, what to do about the RSPO standard?

3.1 Coping with the RSPO

A first dilemma of the government of Indonesia after the formal establishment of the RSPO in 2004 was to decide whether or not to engage with this private form of global governance. Not engaging would provide less opportunities to influence the debate. Engaging could be seen as accepting the leading role and political authority of the RSPO in defining and promoting sustainable palm oil in Indonesia.

The European initiators of the RSPO had excluded the government of Indonesia from the preparation of the RSPO and its formal establishment. In spite of this,

the government decided not to disqualify or ignore the RSPO but to get as much as possible engaged in organizing public debate on sustainable palm oil through the RSPO as a multi-stakeholder platform and in discussing the interpretation and implementation of the RSPO standard in Indonesia.

Every year since 2003 the RSPO organizes an international conference or RT (Roundtable) to discuss problems and challenges in the palm oil sector. The first one (RT1) was held in Kuala Lumpur, the second one (RT2) in Jakarta. Since the formal establishment of the RSPO in 2004, every RT is followed by the General Assembly meeting. Whereas the international conference is not open for a wider public, only members of the RSPO are allowed to participate in the decision-making process at the General Assembly.³ The Indonesian Minister of Agriculture delivered the opening address of RT2. The chair of the organizing committee of the conference of RT2 was Dr Rosediana Suharto, also chair of the Indonesian Palm Oil Commission (IPOC) as a special commission falling under the auspices of the Ministry of Agriculture.⁴ From that RT onwards, the Indonesian Ministry of Agriculture and particularly its officials from the Directorate General for Estates and IPOC, would be regular contributors to the RT, certainly when held in Indonesia, by providing key-notes and other presentations and chairing sessions.

A second dilemma for the Indonesian state was whether or not to engage in the interpretation of the generic RSPO principles for the Indonesian situation. Engaging could provide opportunities to better adapt the generic RSPO standard to the Indonesian situation and insert own frames of sustainability. At the same time, such engagement would again imply recognizing the RSPO as the highest political authority and decision-making model.

The government of Indonesia decided not to refrain from engaging with non-state actors at RSPO meetings on this issue. Representatives from six Indonesian ministries participated in the multi-stakeholder team for the national interpretation of the RSPO principles and criteria for Indonesia, that was initiated in 2007 (Hospes and Kentin 2014). Representatives from the Indonesian Ministry of Agriculture joined the RSPO multi-stakeholder working group that was initiated in the same year to discuss “the best approach in co-ordinating and expediting the Smallholders Task Force (STF) related activities specifically for Indonesia”.⁵

A third dilemma was whether to adopt and use the RSPO standard in agricultural extension to palm oil growers, particularly independent smallholders, or rather a complex of Indonesian environmental and agricultural laws and regulations. As a follow-up of their work in the Smallholders Task Force, the Ministry of Agriculture signed a memorandum of understanding with the RSPO in 2009 to collaborate in

³ Participation in the conference is not free but requires payment of a registration fee. Non-members can be given access to the venue of the General Assembly as observers.

⁴ See [http://rspo.org/files/pdf/RT2/Proceedings/Day%201/Welcome%20Address%20\(DB\).pdf](http://rspo.org/files/pdf/RT2/Proceedings/Day%201/Welcome%20Address%20(DB).pdf) and [http://www.rspo.org/files/pdf/RT2/Invitation%20to%20RT2%20\(IPOC\).pdf](http://www.rspo.org/files/pdf/RT2/Invitation%20to%20RT2%20(IPOC).pdf), downloaded 24 March of 2014.

⁵ See http://www.rspo.org/en/indonesia_smallholder_ni_working_group, downloaded 24 March of 2014.

training trainers of smallholders.⁶ In two periods, a total of 40 local facilitators (Facilitator Daerah) were instructed how to train smallholders on the RSPO principles and criteria.⁷ More than 400 smallholders were then trained by these agricultural extension officers on complying with RSPO principles and criteria.

In spite of the contributions of high officials of the Ministry of Agriculture to the RSPO international conferences, the RSPO smallholder task force and the RSPO national interpretation team for Indonesia, and the training of agricultural extension officers to train smallholders in RSPO principles and criteria, the Ministry of Agriculture decided to prepare the Indonesian standard for Sustainable Palm Oil (ISPO). In his keynote speech at RT8 of the RSPO in 2010 the Indonesian Minister of Agriculture announces the ISPO. The official argument is that due to the voluntary character of the RSPO it will take too long to realize widespread and effective adoption of sustainable practices in Indonesia, where only a fraction of palm oil growers are members of the RSPO (Suharto 2010).

3.2 Dilemmas and strategies after the launch of ISPO

The Indonesian standard for sustainable palm oil was launched in 2011 with the aim “to improve the competitiveness of Indonesian palm oil on the global market and contribute to the objective set by the President of the Republic of Indonesia to reduce greenhouse gas emissions and draw attention to environmental issues” (ISPO 2014). The ISPO standard is based on existing Indonesian laws and legislation and, in contrast with the RSPO, is mandatory for all Indonesian oil palm producers. The certification itself is granted by third party auditing bodies, who assess the compliance of companies with the ISPO standard. Despite its mandatory character, the ISPO commission is facing several challenges for which it uses a range of - discursive and networking - coping strategies.

The first - and probably biggest - challenge for ISPO is to seek international recognition for their certification. On the global level ISPO certified palm oil is not (yet) accepted as a preferred standard. With the RSPO as their competing standard, which is global and developed through a lengthy and extensive multi-stakeholder process, many demand-side actors view this standard as the only credible one (several interviewees, 2014). A number of strategies is used by the Indonesian government to ensure international recognition of the ISPO standard.

To attain international recognition the ISPO commission uses a networking strategy, by approaching importing countries directly and ask for bilateral support and approval. A team of representatives from the ISPO commission and GAPKI (the Indonesian palm oil producer organization) visited governments, NGOs and businesses in Europe, the US, China and India. While China and India are thus far not particularly interested in buying certified sustainable palm oil, many countries in Europe exclusively focus on RSPO to make their imports more

⁶ Source: Presentation by Asril Darussamin entitled “Challenges Faced by Smallholders to Implement SPO Initiatives.

⁷ Source: interview with Asril Darussamin on 18 February of 2014.

sustainable. The ISPO commission so far failed to achieve explicit support from European governments for their standard. According a former high official of the Ministry of Agriculture, who has been part of the Indonesian delegation to present the ISPO in the USA, the presentation of ISPO was well received by India, China and Pakistan.

Despite the tense relationship with the RSPO, continuous efforts are made to establish relationships between the ISPO and RSPO standards. The RSPO and the ISPO commission of the Indonesian Ministry of Agriculture signed an agreement in 2013 which resulted in a joint study to explore the differences and similarities between the two standards. An independent certifier which was approved by RPSO and ISPO is conducting this study which is part of the sustainable palm oil (SPO) initiative led by UNDP. Smallholder development and GHG emission reduction are the specific focus of this initiative. A possible aim of the study is to develop a joint auditing process to reduce duplicity of efforts. However, the executive director of the ISPO commission claims this is impossible as the ISPO standard is an implementation of state law and can therefore never be combined with market-driven certification. Other stakeholders, including the executive director of GAPKI, firmly believe in this strategy. The RSPO and ISPO commission are negotiating about the possibility of co-recognition of each other's standards (interview data, 2014).

Besides this networking strategy, the Indonesian government also uses discursive strategies to attain international recognition for ISPO certified palm oil. The main discursive strategy is to present Indonesia as the sovereign power that has the exclusive right to regulate issues within their territorial boundaries. The ISPO commission presents the standard as being the only 'real' one, because it is based on national laws and legislation and therefore is mandatory. Their main concern is the equal treatment of Indonesia as a sovereign state who has the final say about the palm oil production within its own borders. It is made clear by the ISPO commission that Indonesia is not willing to bow to foreign pressure for environmental protection at the cost of their own producers, be it smallholders or big companies. The second discursive strategy is a reaction to criticism that ISPO, unlike RSPO, is not developed in a multi-stakeholder process. Therefore, the ISPO commission included multi-stakeholder elements into the presentation and execution of the ISPO policy. For example, in the ISPO assessment committee Indonesian NGOs and palm oil growers are represented. This committee checks the audits done by the independent certification bodies and decides whether or not a company is eligible for certification.

The second challenge relates to the implementation of the ISPO standard in Indonesia. The aim of the Ministry of Agriculture is to have all companies ISPO certified by the end of 2014. However, a recent article in the Jakarta Post (March 3, 2014, p.13) states that only 40 out of roughly 2500 plantations have secured a government-issued certificate on sustainability and another 153 applied for certification. Executive director of the ISPO commission, Dr Rosediana Suharto,

says in the article that the commission would not revise the deadline or launch specific initiatives to push the remaining plantations to apply for the certification. At the national level the ministry of agriculture is confronted with a lack of resources, while at the local level enforcement of the rules is difficult because of the high level of corruption in Indonesia. To deal with these challenges the ISPO commission for now limits its efforts to plantations rather than smallholders because these are better organized and hence easier to certify. Currently there is a task-force which develops an ISPO scheme particularly for smallholders, however the progress of this is currently unclear. Decentralization efforts have resulted in more powerful local government officials. National regulations are therefore subject to local interpretation and implementation. Therefore the Agricultural Ministry provides trainings for auditors within certification bodies to inform them about the ISPO standard. During audits these certification bodies will check if required permits for the palm oil operations exist. Whether or not these permits have been achieved rightfully is not checked. However, corruption is a big problem in issuing licences, permits and ownership titles. ISPO certification does not focus on tackling corruption, but the ISPO commission states it will report any case of corruption to the national anti-corruption agency KPK. However, KPK also is faced with a lack of resources and does not prioritize comparatively small corruption cases in land conflict issues.

The third challenge regards the position of ISPO within the Ministry of Agriculture and within the Indonesian government apparatus as a whole. The structure, objective and power of the ISPO are unclear to many stakeholders of the palm oil sector. The ISPO commission has been established by the Ministry of Agriculture, yet stakeholders report that the commission is lacking on the organization of the Ministry. Being established by the Ministry of Agriculture rather than by different ministries to form an interdepartmental commission, the ISPO commission is not in the position to coordinate between the ministries. Whereas the executive director of the ISPO presents the standard as a national and Indonesian initiative, we could not find evidence of other ministries being involved in the drafting of the ISPO. Also, it is not clear to what extent high officials of other ministries share the official view of the Ministry of Agriculture that the ISPO is going to compensate for the weaknesses of the RSPO standard.

4. Analysis

The strategies of the Indonesian state to cope with the emergence of the RSPO as a non-state global form of governance to define principles and criteria for sustainable palm oil on its territory suggest that these strategies cannot be understood in terms of participation or not, but in terms of positioning and repositioning, or countermeasures to moves of non-state actors. Using Andonova's (2014) propositions and our counter theses to analyse the positioning of the Indonesian state vis-a-vis the RSPO, the following can be said:

First, it is not very helpful to understand and conceptualize the participation of the Indonesian state in consultation processes organized by the RSPO as reflecting insufficient capacities of the state to alone address environmental and social effects of palm oil production. The participation of the Indonesian state in international conferences and working groups organized by the RSPO has to be seen as a coping strategy of the Indonesian government that was not invited or allowed to become member of the RSPO but very eager to discuss the implementation and interpretation of the RSPO principles for Indonesia and in particular for smallholders.

Second, our case study of the positioning of the Indonesian state vis-a-vis the RSPO as a private form of governance suggests that this positioning may change over time from active engagement and recognition of the RSPO as a multi-stakeholder platform to distancing and taking own initiatives. The launch of the ISPO has not only created new tensions between non-state actors organized through the RSPO and the Indonesian government but also between European governments and the Indonesian government. European governments, particularly the Netherlands, have expressed strong policy support for the RSPO as a form of private or industry-based governance over sustainable palm oil. The government of Indonesia has launched the ISPO to meet its international commitments to reduction of greenhouse gas emissions and to improve the competitiveness of Indonesian palm on the global market. To seek recognition at the international level, the government of Indonesia has adopted a government-to-government (G2G) approach, visiting tens of palm oil importing countries to seek understanding and recognition for the ISPO from governments. Reportedly, European and USA governments kindly listened to the presentation of the ISPO but did not applaud or embrace this standard whereas Asian governments expressed support.

Our case study shows that while the Indonesian government at first contributed to the RSPO process, thereby implicitly recognizing the RSPO as a legitimate political authority, their more recent strategy is to present Indonesia as the sole sovereign power that has the exclusive right to regulate issues within their territorial boundaries based on their democratic mandate. With the latter strategy, the government explicitly disqualifies any sovereignty the RSPO might claim in regulating palm oil production and industry.

The strategies of the Indonesian government, however, are slightly ambiguous or janus-faced. While the government recently claims to have the exclusive right to govern palm oil issues within their boundaries, it is also in active search for credibility and international recognition. Therefore, the government also employs a networking strategy at the international level in which officials try to connect with governments of importing countries (G2G strategy). Also, the government employs a strategy at the national level in which they include multiple

stakeholders into the implementation structure of the ISPO standard to increase their national and international credibility.

This means that the concept of 'scattered sovereignty' (Randeria 2003) is quite useful to understand how the Indonesian state copes with the emergence of the RSPO as a new sovereign over sustainability: our case study shows that the Indonesian state cunningly forges coalitions with non-state actors but also has to negotiate the implementation of the national standard with importing countries and domestically with local authorities. At the same time, our case study brings to the fore a new dimension of the concept of scattered sovereignty and the cunning state for that matter: sovereignty is used by the 'cunning' state as a discursive tool to pursue specific goals and to network with some, not with others. Discursive and networking strategies of the state may or may not reflect the same notion of sovereignty.

5. Conclusion and discussion

The initiative of the government of Indonesia to launch an Indonesian standard for sustainable palm oil and to seek international recognition for this standard marks a fundamental shift in the global governance landscape of sustainable palm oil. The era in which the RSPO was the single and world-wide standard for sustainable palm oil has ended. Not only has this created new tensions between non-state actors and the government of Indonesia but also between the Indonesian government and European governments. Possibly, we are not only witnessing the end of the hegemony of a coalition of environmental NGOs and European demand-side business actors over sustainability of palm oil in Indonesia but also the start of wider policy struggles between European governments and Asian governments on what governance model for promoting sustainable palm oil should prevail.

As a result of the initiative of the government of Indonesia to launch a national standard, the governance landscape of sustainable palm oil has become much more complex, certainly now that Malaysia is following the example of Indonesia. At the heart of the matter stands a conflict about who is the sovereign over sustainable palm oil. Analytically, we can make a distinction between sovereignty over territory, transnational flows of goods, people and culture, but practically or politically speaking the wicked problem of 'overlapping sovereignties' (Randeria 2007) remains: claiming sovereignty over one of these tangible or less tangible things is to claim sovereignty over another. Our prediction is that ambiguous alliances and ambivalent use of sovereignty will increasingly evolve as institutional features and modes of political decision-making over sustainability.

References

- Andonova, L.B. (2014). Boomerangs to partnerships? Explaining state participation in transnational partnerships for sustainability. *Comparative Political Studies* 47(3): 481–515.
- Bäckstrand, K. (2006). Multi-stakeholder partnerships for sustainable development: Rethinking legitimacy, accountability and effectiveness. *European Environment* 16: 290–306.
- Berman, P.S. (2007). Global legal pluralism. *Southern California Review* 80: 1155-1238.
- Bernstein, S. and B. Cashore (2007). Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance* 1: 347–371.
- Brauer, J. and R. Haywood (2010). Non-state sovereign entrepreneurs and non-territorial sovereign organizations. United Nations University - World Institute for Development Economics Research. Working paper. 2010/09.
- Comaroff, J.L. and J. Comaroff (2009). Reflections on the anthropology of law, governance and sovereignty. In: Benda-Beckmann, F. von, Benda-Beckmann, K. von, and J.M. Eckert, eds. *Rules of law and laws of ruling: On the governance of law*. Ashgate Publishing, pp.31-60.
- Grande, E. and L.W. Pauly, eds. (2005). *Complex sovereignty: reconstituting political authority in the twenty-first century*. University of Toronto Press.
- Hajer, M. (2003). Policy without polity? Policy analysis and the institutional void. *Policy sciences*, 36(2), 175-195.
- Hospes, O. (in press). Marking the success or end of global multi-stakeholder governance? The rise of national sustainability standards in Indonesia and Brazil for palm oil and soy. *Agriculture and Human Values*. Special Issue.
- Hospes, O. and A. Kentin (2014). Tensions between global-scale and national-scale governance: The strategic use of scale frames to promote sustainable palm oil production in Indonesia. In: Padt, F., N. Polman and K. Termeer, eds. *Scale-sensitive governance of the environment*. Oxford: John Wiley & Sons, pp. 203-219.
- Pattberg, Ph. (2005). The institutionalization of private governance: How business and nonprofit organizations agree on transnational rules. *Governance* 18(4): 589-610.

Randeria, S. (2003). Glocalization of law: Environmental justice, World Bank, NGOs and the cunning state in India. *Current Sociology* 51: 305-328.

Randeria, S. (2007). The state of globalization: legal plurality, overlapping sovereignties and ambiguous alliances between civil Society and the cunning state in India. *Theory, Culture & Society* 24(1): 1-33

Risse, Th. ed. (2011). Governance without a state? Policies and politics in areas of limited statehood. Columbia University Press.

Schouten, G. (2013). Tabling sustainable commodities through private governance: processes of legitimization in the Roundtables on sustainable palm oil and responsible soy. PhD dissertation, Utrecht University.

Schouten, G. and P. Glasbergen. (2011). Creating legitimacy in global private governance: The case of the Roundtable on Sustainable Palm Oil. *Ecological Economics* 70: 1891-1899.

Suharto, R. (2010). Why Indonesia needs ISPO. The Jakarta Post, Supplement, December 2. <http://www.thejakartapost.com/news/2010/12/02/why-indonesia-needs-ispo.html>. Accessed October 2013.