

5 Transnational Hybrid Governance

In the previous chapters, we saw that diverse public and private standard-setting projects are evolving in parallel. The EU-Eco-Regulation and the US National Organic Program (NOP) define what can be labeled Organic in their respective markets and are entirely voluntary. Supply-chain-related laws, such as the EU Timber Regulation and the US Legal Timber Protection Act (LTPA), have been giving further directions to the private sector by introducing mandatory due diligence/care and legality verification. At the same time, however, they have established a “distinct model of outsourcing” (Sarfaty 2015, 454). As consuming countries cannot directly implement rules outside their own territory, supply-chain-related laws continue to depend on compliance and enforcement by importing companies. This mix of public and private regulation is further advanced in the EU hybrid approach for “sustainable” biofuels (Ponte and Daugbjerg 2015). The EU Renewable Energy Directive (RED; 2009/28/EC) and its revised version (RED II; 2018/2001/EU) exemplify the pathway to polycentricism in global governance (Jordan et al. 2015). Here, in contrast to the timber-supply-chain-related laws, public and private regulation are deliberately entangled.

Japan, the EU, and the United States have been promoting biofuels as an alternative to fossil fuels as part of their contribution to climate-change-mitigation efforts since the early 2000s. European biofuels are receiving up to EUR 8.4 billion per year in subsidies (European Parliament 2015). Although only 8 percent of palm oil used in Europe was for biodiesel in 2010, this share grew to 45 percent in 2014 (Dings 2016). As consuming countries often do not have the domestic capacity to meet their growing demand for biofuels, supply chains have globalized (McNeely 2008). This

development has severe economic, environmental, and social consequences for producing countries of the Global South (Levidow 2013; Bailis and Baka 2011). For example, the Indonesian palm oil sector has expanded drastically as a result of European demand, with severe environmental and social consequences (Mukama, Mustalahti, and Zahabu 2012; Silva-Castaneda 2012). Of Indonesian palm oil exports, 15.6 percent goes to the EU, where Indonesia has become the largest importer of palm oil, accounting for 23 percent of biodiesel imports (Chatham House 2019; European Commission 2018b).

The RED introduced a transnational hybrid governance approach to create a captive market for sustainable biofuels in 2009. On the one hand, the EU adopted mandatory biofuel targets for member states while, on the other hand, it is trying to prevent negative harms inside and outside its own territory, essentially utilizing private certification (Afionis and Stringer 2012). RED requires that at least 20 percent of total energy needs to be from renewables by 2020, of which at least 10 percent must come from renewable transport fuels. RED II strengthened the overall renewable energy target to at least 32 percent by 2030, with a clause for a possible upward revision by 2023. Biofuels are seen as instrumental in reaching the original 10 percent target in the transport sector, but they may only count if they meet certain sustainability criteria (Ponte and Daugbjerg 2015). Thus, the EU makes these sustainable criteria de facto mandatory because if biofuels do not contribute to the renewable target, they are economically unviable in comparison to fossil fuels. The EU prescribes a meta-standard to which biofuel producers can demonstrate compliance through national systems of compliance, bilateral and multilateral agreements, or private certification (European Commission 2009, 2018a).

Similarly, in the United States, the Renewable Fuel Standard (RFS) has prescribed a mandatory and increasing share of biofuels in the overall energy mix, including transport fuels, since 2005. These biofuels also have to fulfill minimum requirements, including certain minimum thresholds of lifecycle greenhouse gas (GHG) emission reductions and land use restrictions (Schnepf 2013). The US Environmental Protection Agency (EPA) is administering the RFS and issued detailed compliance standards for fuel suppliers, including a tracking system (Schnepf 2013). Only the EU explicitly allows for private certification to prove compliance with the meta-standard, and the vast majority of biofuel producers rely on this option

(Moser, Hildebrandt, and Bailis 2014). In practice, for these producers, private certification has become *de facto* mandatory if serving the EU market. The private certification schemes must be approved by the European Commission, and for a scheme to be approved, it must meet RED meta-standard criteria but can choose whether or not to include additional criteria (European Commission 2009).

Despite criticism of this hybrid governance approach and scholars querying the normative intention behind the request for sustainability (Dauvergne 2018a; Levidow 2013), the European Commission (2016) proposed to increase the overall share of renewables by 2030. In a first response, the European Parliament voted in favor of excluding biofuels produced from palm oil from being counted toward this target (European Commission 2018b). Throughout the negotiations, it was not clear whether the EU would continue its hybrid approach, “whether they [the Europeans] will create a certification. In the original draft, it somehow says that the EU wants to have a single certification” (TS, interview, August 14, 2018). The final text, which was adopted in December 2018, stipulates the promotion of palm-oil-based biodiesel, but there are new limits regarding indirect land-use change (ILUC). ILUC occurs when biofuel cropland displaces other cropland, with negative consequences on food security. To prevent such harm, RED II requires biofuel certification initiatives to revise their criteria (European Commission 2018a).

In the following section, I will first describe the EU-RED hybrid approach to re-regulate biofuel supply chains in more detail. In the second section, in order to illustrate the consequences for and responses of producing countries, I use Indonesia as an illustrative case study. In the third section, I will then analyze the hybrid approach against the backdrop of power dynamics outlined in chapter 2—that is, the withdrawal of the state in the era of globalization, asymmetries between Northern consumers and Southern producers, and normative or ethical power in IR.

Methodologically, I reconstructed power dynamics in global biofuel supply chains by reviewing the literature and analyzing policy documents published by the European Commission and the EU-approved schemes certifying palm oil from Indonesia. Subsequently, I collected material published by international and domestic (Indonesian) NGO campaigns on palm oil in Indonesia. In addition, I conducted twenty-eight semi-structured interviews with key informants along the palm oil supply chain.

It is necessary to maintain interviewee anonymity against the backdrop of ongoing negotiations about RED II, as well as diplomatic consultations regarding the EU-Indonesian Voluntary Partnership Agreement (VPA; see chapter 4). I also used participatory observation in the annual meeting of the Forum on Sustainable Palm Oil (FONAP) in Berlin on September 27, 2017. The meeting gathered actors particularly from the EU, with only a few from palm-oil-exporting countries of the Global South. Because of this imbalanced representation, I complemented my empirical data collection with a field trip to Indonesia in August and September 2018.

This chapter shows that with EU-RED, power dynamics have changed among actors within the field of biofuels. Like private regulation and supply-chain-related laws, the hybrid regulation relies heavily on the commitment of nonstate actors. The *de facto* mandatory requirement for certification, however, gives more *power over* to NGOs vis-à-vis the biofuel industry and public authorities in exporting countries. The biofuel industry depends on NGOs in multistakeholder schemes, and grievance procedures allow NGOs to sanction companies in case of noncompliance. In essence, RED provides NGOs with a greater possibility to advocate for and enforce stricter environmental and social standards. With the empowerment of NGOs through RED, marginalized groups gain new resources and capabilities to make their voices heard. Against this backdrop, sustainability provides a new common ground for action. However, there are discrepancies in interpretation. To accomplish the sustainability of biofuels beyond climate mitigation, the EU would need to significantly strengthen the meta-standard. This could eventually come at the price of importing less biomass and changing unsustainable patterns of consumption domestically. The European Commission would need to stop approving new private standards that are weaker than existing ones in order for the EU to support a regulative race to the top.

5.1 Background: The EU Hybrid Approach for Sustainable Biofuels

The EU hybrid governance structure incites the private sector to establish certification schemes for sustainable biofuels. Different from the cotton/textile sector (see chapter 3), private certification of biofuels does not target the final consumers in the EU. Car drivers and electricity users do not see whether the biofuels from the service station or the electricity from the

socket come from certified biomass production. Moreover, in contrast to mandatory due diligence checks and legality verifications (see chapter 4), there is no general import requirement or ban on biofuels without reporting or certification, respectively. Certification is voluntary in the sense that the production and import of noncertified biofuels are not prohibited. This guarantees compatibility with the World Trade Organization's (WTO) rules (Ponte and Daugbjerg 2015). However, certification is required for biofuels to count toward the EU 10 percent renewables target in the transport sector. Thus, the EU provides financial incentives through the mandate system that makes biofuels economically unviable unless they can be produced at a lower price than fossil fuels. At the same time, relying on private certification systems helps the EU to apply regulative authority beyond its own borders (Kemper and Partzsch 2018; Ponte and Daugbjerg 2015). The Indonesian and Malaysian government therefore question RED's WTO compatibility (*Jakarta Post* 2017a, 2017b; Ching and Majid 2017).

5.1.1 Public Meta-Standard Plus Voluntary Add-On

The RED meta-standard, for which private certifiers approve compliance, initially required that biofuels achieve 35 percent GHG savings, which increased to 50 percent in January 2017 and 60 percent as of January 2018, for new installations (European Commission 2009). There are also several restrictions on the type of land that biofuels can be produced on: biofuels cannot be produced from raw material derived from land that has high biodiversity value, land that has high carbon stocks (such as wetlands), or peatland, unless it can be proven that cultivation and harvesting did not drain previously undrained soil (European Commission 2009). This applies to land that had these particular designations on or before January 2008, regardless of whether the designation is still in place (European Commission 2009). In an amendment in 2015, the EU put a cap of 7 percent on the contribution that biofuels produced from food crops (first generation) can make, which went into effect in 2017 (European Commission 2015). RED II, which was adopted in December 2018, requires biofuel certification initiatives to revise their criteria to lower ILUC risks in all biofuel production, including through oil palm plantations (European Commission 2018a).

The EU sustainability criteria for biofuels are considerably less ambitious compared to the EU requirements for organic certification defined by the Eco-Regulation (see chapter 3), although both are generally used to

certify and label palm oil products in the EU market (Kalfagianni, Partzsch, and Beulting 2019). At the same time, requesting sustainability is more ambitious than legality verification, which is demanded by the EU Timber Regulation (see chapter 4), except for countries with very strict regulations regarding sustainability.

The RED sustainability criteria have a strong focus on GHG savings as peatlands and lands with high biodiversity value, such as rainforests, usually have high carbon storage capacities (Reijnders and Huijbregts 2008; Afionis and Stringer 2012). In order for biofuels to contribute to commitments under the UN Framework Convention on Climate Change (UNFCCC), it is a prerequisite that they have fewer GHG emissions than fossil fuels. The Kyoto Protocol obliged the EU as a whole to reduce GHG emissions by 6.7 percent. In October 2017, the EU was among the signatories of the Paris Agreement, and it has promised to reduce carbon output “as soon as possible” and to work hard to attempt to keep global warming “to well below 2 degrees C” (UNFCCC 2019). Interviewees confirmed that the RED meta-standard intentionally focused on GHG emissions (JS, interviews, December 8, 2016; IP, interview, October 18, 2017): “The climate dimension has monopolized sustainability discussions and has had perverse effects. In the name of fighting climate change, you lose sight of equally important environmental concerns, and you have self-defeating policies. . . . Sustainability criteria are a reflection of a political compromise and of the dominant debate, which is about climate change. . . . So there is no match between what is politically important in terms of ensuring a sustainable future” (MH, interview, December 14, 2016).

Moreover, Ponte and Daugbjerg (2015, 105–108) explain that the European Parliament refrained from introducing a number of social sustainability criteria relating to land rights and workers’ rights when producer countries claimed these social criteria to contradict WTO rules. Brazil and seven other biofuel-producing states from the Global South warned in 2008 that they could file a WTO complaint over what they considered to be unfair barriers being raised against their biofuels (Ponte and Daugbjerg 2015, 107). Therefore, the European Parliament negotiators backtracked on social sustainability and accepted that RED limited the European Commission’s role to report on social sustainability issues every second year (Ponte and Daugbjerg 2015, 107). It was not until 2015 that the European Parliament established the cap of 7 percent on first-generation biofuels (European

Commission 2015). The cap implies that a maximum of 7 percent of biofuels contributing to the renewable energy targets could alternatively serve for food purposes. This amendment aims to prevent indirect land-use change. If biofuel cropland displaces other cropland, this has negative consequences on food security. When less food is produced locally, food prices rise, and rising food prices mainly affect poor people. The RED amendment therefore contributes to greater social justice. In addition, ILUC has also been shown to substantially increase GHG emissions for many biofuels, including palm oil from Indonesia in particular, through smallholders deforesting in order to regain land for food production (Bourguignon 2015).

Although scholars have continued to criticize the fact that emphasis lies on the ecological aspects of sustainability rather than on social sustainability, Kemper and Partzsch (2018) demonstrate that the meta-standard even falls short in terms of environmental considerations. For example, there are only indirect implications for water through biodiversity and peatland protection criteria (Kemper and Partzsch 2018). Furthermore, several interviewees pointed out that environmental issues were left out of the RED if they were not related to climate change mitigation: “Soil fertility and water issues are not so much linked to the climate issues, so this is perhaps why they were easier to be left on the weaker side” (JS, interviews, December 8, 2016).

Moreover, only a few private certification schemes address social and environmental issues beyond climate change (Moser, Hildebrandt, and Bailis 2014; Kemper and Partzsch 2018). Several scholars have drawn attention to human rights abuses, child labor, forced labor, and gender discrimination and food insecurity in and around plantations and mills (Nesadurai 2013; Silva-Castaneda 2012; Oosterveer et al. 2014). After a report by Amnesty International (2016), an international human rights NGO, certifiers started to seriously debate the consideration of additional social criteria in their standards (notes from FONAP, September 27, 2017, Berlin; Zudrags et al. 2015).

5.1.2 Private Certification to Prove Compliance

The Roundtable on Sustainable Palm Oil (RSPO) was the first multistakeholder scheme that offered certification to the biofuel industry. Currently, 20 percent of palm oil worldwide is RSPO certified (Efeca 2016, 2). The roundtable was founded in Switzerland in 2004 as a result of an informal

meeting initiated by WWF two years earlier with Aarhus United UK Ltd., Golden Hope Plantations Berhad, Migros, Malaysian Palm Oil Association, Sainsbury's, and Unilever (Partzsch 2011). RSPO RED was approved by the European Commission in 2011 and can be used to prove compliance to the meta-standard (European Commission 2019). It provides certification to companies that produce, source and/or use palm oil (RSPO 2019). From the beginning, (European) corporations and international NGOs have dominated the scheme. The Indonesian government and GAPKI (Gabungan Asosiasi Pengusaha Kelapa Sawit Indonesia), the Indonesian Palm Oil Association (with over six hundred members), withdrew their memberships in 2011. This occurred when the Indonesian government announced its own certification standard, Indonesian Sustainable Palm Oil (ISPO). Due to underrepresentation of actors from biofuel-producing countries, there is a need for the RSPO to legitimize its dominant position in the market (Hospes et al. 2017, 81; Wijaya and Glasbergen 2016).

Before and in parallel to the RED negotiations, European governments had pushed the creation and development of private certification schemes. In the Netherlands, Jacqueline Cramer, minister of housing, spatial planning, and the environment (2007–2010), chaired the Sustainable Production of Biomass project group. She invited a wide range of stakeholders to formulate criteria for sustainable biomass production and processing (Partzsch 2011). The results of the Cramer Commission (2006–2007) contributed to the setting of the Netherlands Technical Agreement (NTA) 8080 and Better Biomass certificate (Ponte and Daugbjerg 2015, 104). While the Cramer Commission was closely linked to Utrecht University, where Cramer is a professor of sustainability innovation, another multistakeholder standard was initiated at a university in Switzerland. A group at the Swiss *École polytechnique fédérale de Lausanne* (EPFL) initiated the Roundtable on Sustainable Biofuels (RSB; RSB 2016). Both multistakeholder schemes, NTA 8080 and RSB, were approved by the European Commission to prove compliance to the meta-standard. While NTA 8080's approval expired in August 2017, the RSB is still issuing certifications (European Commission 2019). In addition to the RSPO and the RSB, the International Sustainability and Carbon Certification (ISCC) was developed by a German consultancy with support from the German Federal Ministry of Food, Agriculture, and Consumer Protection (Ponte and Daugbjerg 2015, 103). The scheme includes only one NGO (WWF Germany). Therefore, some argue that

although the ISCC has a formal multistakeholder structure, it was originally developed as a business-driven scheme (Ponte 2014, 269; IP, interview, October 18, 2017).

Against the backdrop of the severe negative and social impacts of biofuels, it remains controversial among NGOs whether their participation matters, or whether they only serve to greenwash biofuels (Lin 2012; Kemper and Partzsch 2018). For international NGOs, engaging in certification is advantageous because it expands their playing field and provides them with status and influence in an industry. In return, they provide credibility to the schemes and legitimize the expansion of biofuels—in particular, of oil palm plantations. Some NGOs, such as Friends of the Earth, Greenpeace, and Amnesty International, therefore refuse to participate in palm oil certification and have generally lobbied against biofuels (Partzsch 2011; Silva-Castaneda 2012; Cheyns 2014). However, Kemper and Partzsch (2018) find that the higher the number of NGOs involved in a scheme, the more ambitious the sustainability criteria. In contrast, as complying with additional criteria creates additional costs, biofuel companies tend to go for a scheme requiring the least effort. For example, the RSPO, which has high NGO participation, formulated considerably stricter criteria in comparison with the ISCC, which has only one NGO member (Kemper and Partzsch 2018).

Since 2011, the European Commission has approved sixteen certification schemes (European Commission 2019). After the adoption of RED in 2009, biofuel companies started to create their own certification schemes, which were developed and operated solely by members of the biofuel industry, without NGO participation. One such example is the HVO Renewable Diesel Scheme (HVO RD; Ponte 2014; Pacini et al. 2013). HVO RD fulfills only the minimum requirements defined by the EU-RED meta-standard and helps companies to completely circumvent NGO demands regarding sustainability certification (Kemper and Partzsch 2018). In consequence, on the one hand, we have less costly business schemes, and on the other hand, these schemes compete with more ambitious and more credible multistakeholder schemes. As one interviewee pointed out: “When I think about RED, I actually think a lot about RED in the way ISCC or RSPO are using it. . . . I think that’s why it kind of serves the purpose of the industry because they can always say, ‘Well, it’s sustainable.’ Industry is going to take the easiest way and they are not, like, in the attention of the public. . . . Everybody is

hitting on RSPO; even ISCC is not getting that much criticism" (IP, interview, October 18, 2017).

Public certification is a third option; however, it is not directly related to RED, nor is it approved by the European Commission to fulfill the EU meta-standard. In response to RED and the de facto exclusion of noncertified palm oil from the EU market, the Indonesian and Malaysian governments launched their own public certification schemes for palm oil (UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016). The two countries account together for 90 percent of global palm oil production. The Indonesian Sustainable Palm Oil (ISPO) program was the first national standard of its kind established in 2011 (Wijaya and Glasbergen 2016; Chen Chen and Xin Yi 2016). The Malaysian Sustainable Palm Oil (MSPO) standard was created by the Malaysian government in 2013 and was officially implemented in 2015. Both ISPO and MSPO verify legality, which means that they confirm that a company followed all legislation related to its business practices (see also chapter 4). In Indonesia, the ISPO certification system is officially compulsory (except for independent smallholders, who are not required to comply until 2020; see UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016). In contrast, the MSPO is currently not mandatory. According to the Malaysian Palm Oil Board (MPOB), which oversees it, the standard was launched to help small and mid-range cultivators, who historically could not afford RSPO certification, operate sustainably (Efeca 2016).

Private (multistakeholder and business-driven) and public schemes for biofuel certification are completely integrated in the conventional palm oil market. Certification schemes allow for mass balance and book and claim approaches. *Mass balance* means that a company's overall share of certified biofuels needs to be consistent with, but not identical to, the share of the material from certified production; *book and claim* approaches allow companies to replace purchasing sustainable palm oil in physical volumes with electronic Green Palm certificates (Pesqueira and Glasbergen 2013, 302). In chapter 3, we noted that organic and fair-trade movements oppose such approaches as they aim to prevent the expansion of conventional agriculture and the reproduction of North–South asymmetries in world trade. Instead, they set up completely independent and alternative supply chains in which only certified products (or products with a minimum share of certified raw materials) are traded. This way, downstream producers pull

their suppliers out of the conventional system and into alternative markets. There is no such pull effect resulting from mass balance and book and claim approaches. In the biofuel sector, companies are forced into certification by the EU's de facto mandatory approach: "Businesses are there because they are looking at it as an opportunity. Most of them are cost-risk calculated. Most of them calculate. They look at it as 'Oh, there is a big market.' The market had been *created by an act of law*. So, somebody, with the stroke of a pen, created a market overnight. It's not a natural market" (VV, interview, September 26, 2017; emphasis added).

We need to acknowledge that palm oil certification only occurred after the adoption of RED in 2009. The EU is more than simply "orchestrating" (Schleifer 2013) the daily business of certification initiatives. There would not be a 20 percent share of certified palm oil in the global market without the RED hybrid approach (Efeca 2016, 2).

5.1.3 Impact in the Global South

Diverse scholars have claimed that the EU-RED is forcing private actors to take over public functions in the Global South through a process called "roundtabling sustainability" (Ponte 2014; Wijaya and Glasbergen 2016). In practice, biofuel producers often commit to several schemes in parallel (Bundesregierung 2011). While the commitment to multistakeholder standards, such as the RSPO, provides them with credibility to the outside, the business-driven schemes provide a safety net. If companies lose the certification of one scheme due to an auditor's notification of lack of compliance, for example, they can continue to sell their product to the EU based upon compliance with other, supposedly less ambitious certification schemes. One of the few examples of a large producer that saw its certification temporarily withdrawn is the Malaysian IOI Group (RSPO 2019). After a complaint, investigations and audits showed severe noncompliance with the RSPO principles and criteria, including issues of labor rights violations and deforestation, and reported a number of conflicts with local communities and NGOs. However, after six months of suspension, the plans of IOI to resolve conflicts were deemed sufficient to lift the suspension of RSPO certification (notes from FONAP, September 27, 2017, Berlin; Cuff 2016). During the period in which IOI Group's RSPO certification was suspended, the plantations continued to be certified by ISCC, which neglected to start any further investigations (BV, interview, September 27, 2017).

Transnational hybrid regulation—that is, RED—is driven by the Global North—that is, EU member states in cooperation with private actors mainly from the downstream parts of supply chains (e.g., in the RSPO, as discussed ahead; see Wijaya and Glasbergen 2016, 220). Southern governments had expected a much higher demand for biomass such as palm oil, in particular, after the adoption of RED (VV, interview, September 26, 2017). In this context, private sustainability standards need to be understood “as external initiatives from the top of the value chain, which are channeled downward as new conditions for production to producing, often developing, countries” (Wijaya and Glasbergen 2016, 221). The EU-RED and its demand for voluntary certification make market access more difficult for third (non-EU-member) countries (TS, interview, August 14, 2018; VV, interview, September 26, 2017).

The Indonesian and Malaysian governments called EU-RED a form of a nontrade barrier used to stimulate the production of European plant oils (Ribka 2017b). The EU also got into diplomatic controversies with Argentina (VV, interview, September 26, 2017). As the EU does not have the domestic capacity to meet its own biofuel and related climate-mitigation targets without importing biomass (McNeely 2008), some scholars argue that there is a “North–South co-dependence” (Pesqueira and Glasbergen 2013, 301). Developing countries produce palm oil and depend on the demand from consuming countries. However, while European farmers receive subsidies and also benefit from the growing demand for their produce, there is a more intense “drive . . . to produce and get as much money as possible” (VV, interview, September 26, 2017) in developing countries exporting their biomass to the EU.

The gold rush metaphor is frequently used to describe the development of biofuels (Balkema and Pols 2015). Biofuel business, like gold mining, is unprofitable for most of society, or diggers and mine owners, respectively. A win-win rhetoric can make a person believe that they can achieve abundant wealth almost instantly and become an “energy sheik” (Rathke and Diepenbrock 2006, author’s translation), but only a few actually make large fortunes. Several studies carve out the central role of knowledge and framing in this context (Baka and Bailis 2014; Hunsberger 2010; Kuchler and Linnér 2012). Social and political problems emerge through and by means of certain rationalities. In this vein, Levidow (2013, 221) outlines how the EU pursues global leadership for *sustainable* biofuels *because* it can then

continue importing resources from the Global South, not *although* (see also Dauvergne 2018a).

Against the backdrop of North–South dichotomies, several scholars have analyzed the impact of the promotion of biofuels in exporting countries. They highlight detrimental consequences of the biofuel boom. For example, Hunsberger (2010) argues that the expansion of *Jatropha* for biofuel purposes in Kenya has been rolled out as a development strategy driven by multiple discourses that often (though not always) differ from the priorities of smallholders who are actually growing the crop. Baka and Bailis (2014) demonstrate that the Indian government supported the cultivation of *Jatropha* for biofuel purposes on so-called wastelands (degraded land; see country case ahead). However, these lands served local people before to harvest *Prosopis* as fuelwood with several times more useful energy. Replacing *Prosopis* with *jatropha* hence engendered changes in economic and property relations (Baka and Bailis 2014). Li (2017) describes that what comes after such a land grab is even more devastating for smallholders. She identifies a “mafia system” that is “an extended, densely networked, predatory system in which everyone in a plantation zone must participate in order get somewhere, or simply to survive. . . . Anyone who does not become mafia—become both defensive and predatory—is simply prey” (Li 2017, 2).

In this context, it comes as no surprise that if there are incidences of breach of law, like human rights violations in the previously mentioned IOI case, people turn to private certification schemes instead of calling for public law enforcement. Southern governments’ self-determination is hence challenged twice, both by the foreign voluntary standards competing with domestic legislation and by their own citizens’ demand for private regulation (Haufler 2003; Wijaya and Glasbergen 2016). In consequence, Wijaya and Glasbergen (2016) argue that there has been a five-stage process in Southern governments’ response to private standards from the North.

First, there was a process of learning, in which Southern governments became aware of the relevance of sustainability standards for international trade. Similar to how we can explain business participation in voluntary certification schemes as a result of “the twin threats” (Haufler 2003, 248; see chapter 3), Southern governments supported certification because this created a good image at the international level. For instance, by supporting the RSPO, the Indonesian government considered that the country might be able to address the negative campaigns of international NGOs against

the environmental effects of the palm oil industry (Wijaya and Glasbergen 2016, 230). Related to this reputational threat, in the shadow of hierarchy or negotiations with international donor institutions, certification demonstrates good governance, which conveys transparency, accountability, and efficiency. Supporting certification initiatives indicated that governments were willing to leave behind bad governance practices, such as corruption and mismanagement of natural resources. Moreover, certification sometimes resulted in transfer of technology, knowledge, and skills; induction of more efficient market-management systems; and, therefore, upgrades of agricultural market conditions in developing countries (Wijaya and Glasbergen 2016, 222).

Second, following this phase of supporting certification, Southern governments started to reconsider the enforcement of their own regulations on environmental and social issues in the field of the production of agricultural commodities. Asymmetric power relations between Northern and Southern countries due to imbalances of power and competitiveness became less accepted (Wijaya and Glasbergen 2016, 240). A few national NGOs also believe that the establishment of the ISPO was a reaction of the Indonesian government to muffle negative campaigns of international NGOs on oil palm plantations because support of the RSPO was not able to reduce those campaigns (Wijaya and Glasbergen 2016, 231).

Third, due to “feelings of disadvantage and exclusion” (Wijaya and Glasbergen 2016, 240), exporting countries’ governments decided to develop their own national standards. The increasing number of private standards similar to the RSPO created doubts about the logic of the private regulatory system as a whole (Wijaya and Glasbergen 2016, 240). In particular, the Indonesian and Malaysian governments have begun to resist voluntary schemes, with resistance taking the form of their public standards, ISPO and MSPO (Efeca 2016).

Fourth, while the private standards from the North were developed in close cooperation between businesses and NGOs, the Southern standards evolved from close cooperation, with potentially corporatist governance characteristics, between producer organizations and the government (Wijaya and Glasbergen 2016). In consequence, the Southern standards tend to emphasize economic prospects rather than social and environmental protections. The central Indonesian government frames this approach as paying more attention and respect to the specific conditions of production

and preferences in the local or national context (Wijaya and Glasbergen 2016).

Fifth, Southern governments redirect their trade of agricultural commodities to parts of the world other than Europe and the United States. For example, China and India are not interested or at least are less interested in compliance with private sustainability standards as a prerequisite for a trade relationship (TS, interview, August 14, 2018; Wijaya and Glasbergen 2016, 240). Further, the Indonesian and Malaysian governments announced a plan to merge their two national sustainability standards—ISPO and MSPO—to form the Council of Palm Oil Producing Countries (CPOPC), with the aim of coordinating control of the palm oil market (Efeca 2016). However, another scenario that might be even more likely would consist of ISPO cooperating more closely with the RSPO in the future (UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016, 232).

5.2 Case Study: Palm Oil and Indonesia

Indonesia is the largest producer of palm oil in the world and produces thirty-five million tons per year (Amnesty International 2016, 3). Therefore, due to its significance, the country serves as a case study in this chapter (see figure 5.1). After the adoption of mandatory biofuel targets in the EU, palm oil imports from Indonesia increased by 117 percent from 2010 to 2011 alone (Mukherjee and Sovacool 2014), and the EU is now the second-biggest importer of Indonesian palm oil after India (and before China and Pakistan; European Commission 2018b; UNDP, MoA, and RSPO 2015). As mentioned earlier, in response to EU-RED and private certification, such as the RSPO, the Indonesian Minister of Agriculture launched the ISPO, the country's own national certification standard, in 2011 (UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016; Sahide et al. 2015).

In the following section, I will first explain in more detail the environmental and social challenges of palm oil production in Indonesia. Second, I will look more closely at certification, using the example of the RSPO as a voluntary scheme approved by the EU-RED and ISPO as a public response scheme by the Indonesian government. Finally, I will sum up this section on Indonesia by comparing the two certification schemes against the backdrop of the literature review in the background part of this chapter.



Figure 5.1
Indonesia on map of Southeast Asia

5.2.1 Environmental and Social Challenges of Palm Oil Production in Indonesia

Oil palm (*Elaeis guineensis*) is originally from West Africa and was introduced to Indonesia in 1911 by the Dutch colonial administration (Susanti and Budidarsono 2014, 120). The Indonesian government began to stimulate oil palm expansion in the 1970s. However, production only really took off in the 1990s, with an average of 10 percent annual growth in oil palm plantations as a result of expanded Indonesian trade, economic liberalization, and policy deregulation to attract investment (see figure 5.2; Susanti and Budidarsono 2014, 121; Wijaya and Glasbergen 2016). Compared to other vegetable oils, palm oil has the highest production yield per hectare at a lower price point (UNDP, MoA, and RSPO 2015, 5).

The Indonesian government categorizes oil palm plantations into smallholders (twenty-five hectares max.) and large estates (one hundred thousand hectares max.), with the exception of Papua, where ceiling limits are twice as large (Susanti and Budidarsono 2014, 122). Smallholders account for around 35 to 40 percent of all palm oil production in Indonesia compared to 55 percent for large-scale private companies and 10 percent for state-owned companies (OECD 2012, 229). In 2010, ten companies owned 67 percent of all large-scale plantations, including Astra Astro Legari, Musim Mas, Cargill, Asian Agri, Wilmar, Golden Agri, and Kadin Indonesia (OECD

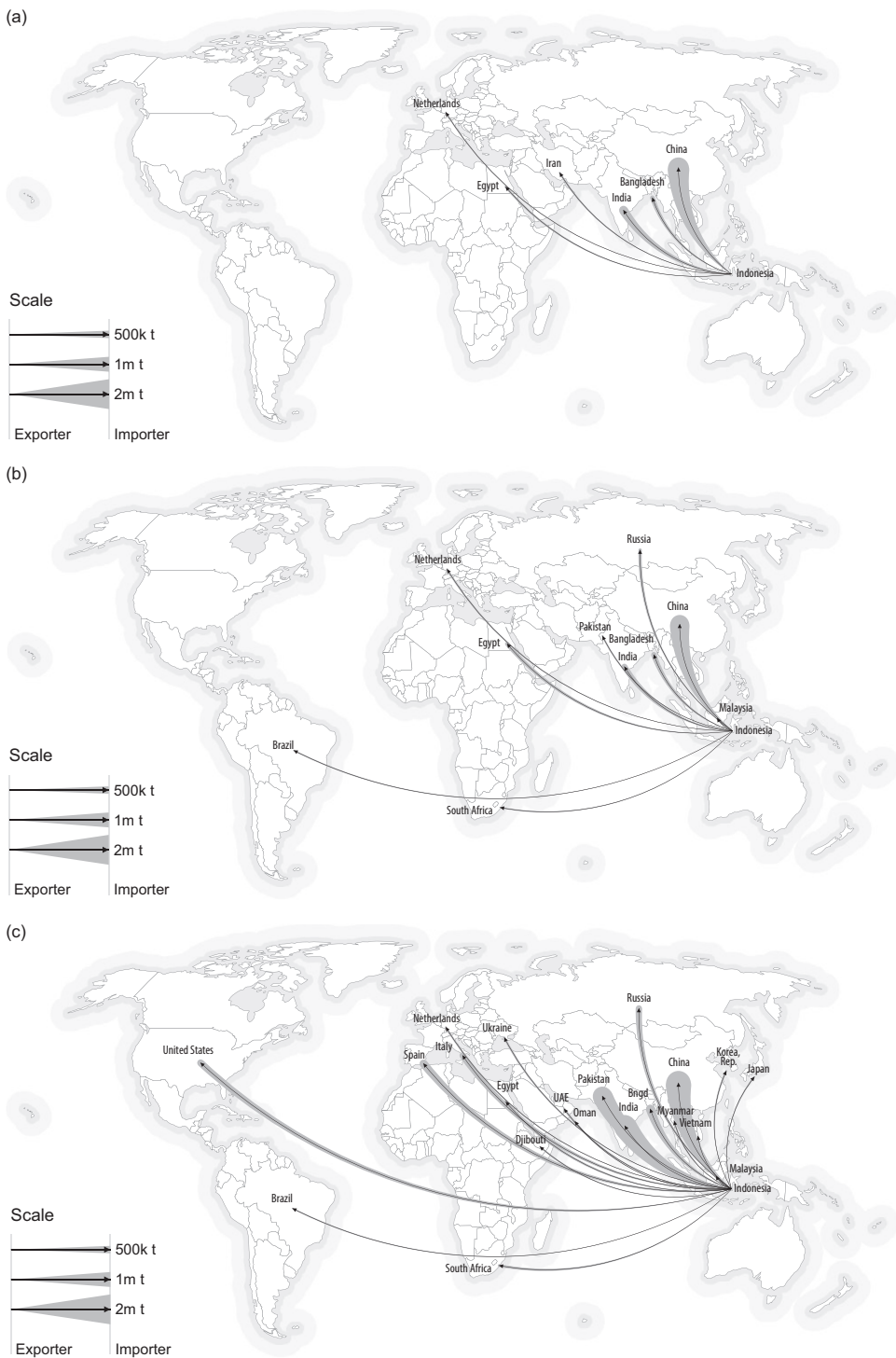


Figure 5.2

Palm oil (or fractions simply refined) exports from Indonesia in (a) 2009, (b) 2011, and (c) 2016. *Source:* Chatham House 2019.

2012, 229). Foreigners or foreign legal entities that are willing to apply for plantation licenses must collaborate with Indonesian citizens or legal Indonesian entities. Therefore, there is high interest from domestic investors, including smallholders, to participate in land investments. In many cases, foreign entities provide the required investment, but domestic investors are responsible for approximately 60 percent of the total investment in oil palm plantations in Indonesia, including government-funded projects (Susanti and Budidarsono 2014, 122).

The Indonesian government's priorities are economic development and preparing the industry to meet the sustainability standards demanded by the global market (Pramudya, Hospes, and Termeer 2017, 72). In the Master Plan for Acceleration and Expansion of Indonesian Economic Development (2011–2025), palm oil has been selected as one of the key economic activities in so-called economic corridors. The palm oil corridors are to be developed in Sumatra, Kalimantan, Papua, and Maluku Islands. Sumatra is already hosting most oil palm plantations, particularly in North Sumatra and Riau Province. In comparison, Kalimantan's development is particularly less advanced thus far (Susanti and Budidarsono 2014, 122). The government aims to support replanting, mainly on the existing smallholder estates, yet it also intends to support new estates developed on "degraded land" (Pramudya, Hospes, and Termeer 2017, 72; for critique of the term *degraded land*, see Baka and Bailis 2014).

Large-scale oil palm expansion has generated substantial land use change, and increasingly smallholders from all over Indonesia are involved in converting land into oil palm plantations (Susanti and Budidarsono 2014, 119). There are incompatible and inconsistent regulations and land use maps (there is data only for 5 percent of the total area of Indonesia with many errors; see Pramudya, Hospes, and Termeer 2017, 69). It is estimated that 56 percent of oil palm expansion from 1990 to 2005 in Indonesia replaced forest areas and 44 percent replaced crop lands (Susanti and Budidarsono 2014, 124). In addition, ILUC prevents biofuels from contributing toward achieving GHG emission reduction targets (European Commission 2018b).

Where land rights are not clear, land is often purchased in an effort to capture water resources (Mehta, Veldwisch, and Franco 2012). A report commissioned by the European Commission found that an increase in demand for bioenergy poses the risk of shifting water problems to third countries,

which is particularly prevalent in palm oil production in Indonesia and Malaysia (Diaz-Chavez et al. 2013). There have been several grievances filed in Indonesia about toxins in drinking water, drying up of wells, declining fish stocks, and instances of drought in other community land next to plantations (Larsen et al. 2014). In addition, palm oil processing also produces approximately 0.75 tons of palm oil mill effluent (POME) per ton of crude palm oil, which is frequently emitted into natural water sources (Mukherjee and Sovacool 2014). Palm oil production is also extremely chemical-intensive. High pesticide, herbicide, and fertilizer levels contaminate water sources and render river water unsafe for daily uses (Obidzinski et al. 2012). Furthermore, to develop palm oil plantations, natural drainage is often destroyed and peatlands are frequently drained (Obidzinski et al. 2012; Tan et al. 2009). Besides contributing to biodiversity loss, palm oil production can therefore exacerbate droughts and floods in Indonesia (Obidzinski et al. 2012). Women and other socially marginalized groups are particularly affected by such environmental degradation (Basnet, Gnych, and Anandi 2016; Li 2014).

Smallholders (women), who often have no official land rights, are principally vulnerable. Investors, as well as certifiers and auditors, often only recognize titled land ownership and fail to recognize the wide range of property rights that exist and the complexity of men's and women's rights and responsibilities in communities (Basnet, Gnych, and Anandi 2016, 2; Silva-Castaneda 2012). Without formal land rights, smallholders face difficulties accessing funding to expand oil palm cultivation (Pramudya, Hospes, and Termeer 2017). Although both women and men were involved in all aspects of the smallholder economy prior to the arrival of large-scale oil palm plantations, Basnet, Gnych, and Anandi (2016, 2) found the smallholder oil palm plots allocated by the Indonesian government were generally registered in the name of the male head of household. Women were not represented in the smallholder cooperatives, and the monthly income from sale of the oil palm fruit was paid to men (Basnet, Gnych, and Anandi 2016, 3). In addition, as "shadow workers" or working at the provincial minimum wage, women were denied independent access to agricultural inputs, training, and credit (Basnet, Gnych, and Anandi 2016, 3).

In sum, the Indonesian palm oil sector can be linked to deforestation, biodiversity loss, and increased food insecurity, among other negative consequences that lead to further marginalization of (women) smallholders.

However, the government of Indonesia plans to further expand oil palm production, especially for exports to the EU and China, which is argued to serve national and regional incomes and provide employment for rural populations (Susanti and Budidarsono 2014, 120; Schleifer and Sun 2018). Voluntary certification schemes, enhanced by the EU-RED, as well as ISPO, are efforts to address the biofuel's negative environmental and social impacts.

5.2.2 Private Certification of Palm Oil from Indonesia: The Roundtable on Sustainable Palm Oil

The Roundtable on Sustainable Palm Oil (RSPO) takes a pioneering position in Indonesia regarding the private certification of palm oil (UNDP, MoA, and RSPO 2015). It has certified more than 2,500 projects in Indonesia, in addition to about eighty thousand smallholders (RSPO 2019). In total, there are six EU-approved schemes that offer certification for palm oil produced in the country (Kemper and Partzsch 2018). These include three multistakeholder schemes: the RSB, RSPO, and ISCC. In addition, there are three business schemes: the HVO RD, the Grain and Feed Trade Association Trade Assurance Scheme (GTAS), and RED Bioenergy Sustainability Assurance (RBSA; see table 5.1). In addition, Indonesia's largest palm oil producers (Astra Astro Legari, Musim Mas, Cargill, Asian Agri, Wilmar, Golden Agri, and Kadin Indonesia) set up their own partnership, the Indonesian Palm Oil Pledge (IPOP), for sustainable palm oil in 2014, but the Indonesian government instructed them to dissolve their organization in 2016 (SK, interview, August 21, 2018). Reportedly, the IPOP sustainability standard was more ambitious than the ISPO program (Chen Chen and Xin Yi 2016). This resulted in tensions between state agencies and IPOP and was followed by a public announcement by the IPOP signatories explaining that that the platform would dissolve in order to better support the ISPO program (Indonesian Palm Oil Pledge 2016; SK, interview, August 21, 2018).

Out of 3,872 members, the RSPO has only 124 members in Indonesia (RSPO 2019). Scholars have repeatedly criticized the fact that the region with the largest number of members is Europe, where no oil palm is grown (Wijaya and Glasbergen 2016). This circumstance reflects the supply-chain-related character of the scheme, of course. However, besides international NGOs, such as WWF and the Rainforest Alliance, who both have local offices in Indonesia, a number of local NGOs, such

Table 5.1
Palm oil certification schemes in Indonesia

Scheme	Type	Initiator	Members in Indonesia (Total)	Projects in Indonesia (Total)	Timing	Feedstock
Grain and Feed Trade Association Trade Assurance Scheme (GTAS)	Industry	Grain and Feed Trade Association	12 (871)	1 (297)	Initiated prior to RED Operational in 2005 RED-approved in 2014	Palm oil and others
HVO Renewable Diesel Scheme (HVO RD)	Industry	Neste Oil	0 (1)	0 (6)	Initiated after RED Operational in 2014 RED-approved in 2014	Palm oil and others
International Sustainability and Carbon Certification (ISCC)	Multistakeholder	Meo Carbon Solutions Consulting	1 (102)	1,015 (18,592)	Initiated prior to RED Operational in 2011 RED-approved in 2011	All
RED Bioenergy Sustainability Assurance Scheme (RBSA)	Industry	Abengoa Bioenergy	0 (1)	0 (52)	Initiated after RED Operational in 2011 RED-approved in 2011	All
Roundtable on Sustainable Biomaterials (RSB)	Multistakeholder	Various; hosted by the Swiss Federal Institute of Technology in Lausanne	0 (86)	0 (35)	Initiated prior to RED Operational in 2011 RED-approved in 2011	All
Roundtable on Sustainable Palm Oil (RSPO)	Multistakeholder	WWF with Aarhus United, Migros, MPOA, and Unilever, among others	124 (3,872)	269* (2,508)	Initiated prior to RED Operational in 2010 RED-approved in 2012	Palm oil
Indonesian Sustainable Palm Oil (ISPO)	Public	Ministry of Agriculture of the Republic of Indonesia (MoA)	N/A	646 (N/A)	Initiated in 2011	Palm oil

*Does not include certified smallholders; total with smallholders = 88,753 (July 2018). *Source:* Homepages of certification schemes.

as Sawit Watch from Indonesia, have joined the RSPO in recent years (Silva-Castaneda 2012, 365).

The RSPO members agree to its process of certification and follow a set of principles and criteria with the proclaimed aim of producing and using palm oil in a sustainable way (see textbox 5.1). The principles and criteria focus on environmental sustainability, planning, and implementation for the long-term socioeconomic well-being and continuous improvement of the sector (RSPO 2013). Several studies highlight the RSPO's High Conservation Value (HCV) approach. The RSPO requires that HCV areas be maintained or enhanced (while minimum requirements for maintaining HCV areas are subjective; Efeca 2016, 3; UNDP, MoA, and RSPO 2015, 30–37; Wijaya and Glasbergen 2016, 232). The RSPO uses the HCV approach to fulfill the EU-RED meta-standard regarding biodiversity and peatland protection (discussed earlier). Studies also highlight that the second RSPO principle implies compliance with applicable laws and regulations in the countries of production (Efeca 2016; UNDP, MoA, and RSPO 2015). Wijaya and Glasbergen (2016, 228) consider this principle to be a direct result of the Indonesian government's influence on the RSPO. They argue that the government stipulated an indirect role as the legal provider of requirements that need to be fulfilled to receive RSPO certification.

Textbox 5.1

Principles of the Roundtable on Sustainable Palm Oil (RSPO)

- Commitment to transparency
- Compliance with applicable laws and regulations [in countries of production]
- Commitment to long-term economic and financial viability
- Use of appropriate best practices by growers and millers
- Environmental responsibility and conservation of natural resources and biodiversity
- Responsible consideration of employees, and of individuals and communities affected by growers and mills
- Responsible development of new plantings
- Commitment to continuous improvement in key areas of activity

Source: RSPO 2013, 6.

The RSPO is funded mainly through membership fees (RSPO 2019). Some member organizations receive public and/or donor funding; for example, German development aid is channeled through GIZ, or UK aid through Oxfam (MR, interview, September 4, 2018). This means that there is a conflict of interests: On the one hand, the RSPO has an interest in maintaining a high number of members to preserve funding. On the other hand, it has to safeguard the proper implementation of its principles and criteria. To conduct the certification audits, Accreditation Services International (ASI) accredits third party-auditors on behalf of the RSPO. Currently, there are twenty-three different institutions that control practices at plantations and in mills to define whether certification can be accredited based upon the RSPO's principles and criteria. An auditor must prove that he or she has not worked for the company being audited for at least five years in order to safeguard objectivity, and the ASI is mandated to suspend auditors if necessary (UNDP, MoA, and RSPO 2015). However, while the RSPO is based on the commitment to transparency and ethical conduct in business operations and transactions, like other voluntary certification schemes (see chapter 3), NGOs found strong indications of corruption (EIA and Grassroots 2015, 3). They criticize the RSPO's weak ability to implement measures against its own members, who frequently do not comply with criteria (Voge and Hütz-Adams 2014, 24). Too much leeway for interpretations of principles and criteria complicates the process of excluding noncompliant members and hampers the RSPO's effectiveness in achieving its goals (Ruysschaert and Salles 2014).

Third-party auditors are financially dependent on their clients (first-party companies). If state regulation in favor of plantation companies conflicts with customary law, auditors are likely to decide in favor of their clients and at the expense of local communities. In particular, regarding land issues, "auditors rarely recognize as valid evidence the forms of proof put forward by local communities. As a result, the whole process risks compounding local power imbalances" (Silva-Castaneda 2012, 362). Silva-Castaneda (2012, 362) emphasizes such "reverse effects" of certification and demands that the RSPO recognize customary law and respective proofs of legality in practice too. However, she conducted her study before the RSPO recognized the Free, Prior, and Informed Consent (FPIC) principle. FPIC ensures that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy, or otherwise use (FFP 2018; Pesqueira and Glasbergen 2013, 300).

Moreover, the RSPO has a grievance procedure that mandates that members develop a response and a corrective action if a complaint is judged to have validity (without juridical consequences, even if the second principle is not applied—i.e., noncompliance with domestic laws and regulations). There are twelve people on the complaints panel, including NGO and business members.¹ It does not matter whether a complaint is issued by a member or an outsider (RSPO 2019). In total, almost ninety complaints have been filed by diverse international and local NGOs (July 2018), including several complaints against IOI, including the above-mentioned grievance that led to the temporary suspension of one of the largest plantation groups from the certification scheme (RSPO 2019). (However, as IOI remained an ISCC member, the group could continue to export to the EU.)

In general, the structure of the RSPO is characterized by a balance of interests between business on one side and NGOs on the other side. As mentioned, the Indonesian government and GAPKI, the Indonesian Palm Oil Association, withdrew their memberships from the RSPO in 2011 (when ISPO was announced). Although NGOs still make up only 5 percent of the RSPO General Assembly, they have a strong ability to affect decision making due to a mutually beneficial alignment with downstream manufacturers and retailers (Nesadurai 2017). Moreover, NGOs are more committed and participate in meetings on a more frequent basis (notes from FONAP, September 27, 2017, Berlin). In addition to individual donor funding, NGOs often receive public funding for their participation in schemes—for example, from the UK Department of International Development (DFID). However, domestic NGOs in Indonesia face particular challenges regarding the costs of participation (KSP, interview, August 20, 2018; SK, interview, August 21, 2018). An industry representative argued that despite being underrepresented in overall numbers, NGOs play a very strong role in decision making: “Looking at the general assembly of the RSPO, the NGOs are very often overrepresented. Out of those fifty NGOs, at least half of them are attending all the general assemblies. Mainly another fifty supply chain members are participating at this general assembly, out of 2,500, because many of them are not interested in the process” (DM, interview, October 9, 2017).

Another industry representative argued that NGOs “only saw the negative” and described them as “total idiots” in regard to their demands to strengthen social aspects in certification standards (VV, interview,

September 26, 2017). An NGO representative confirmed this discussion and respective tensions between NGO and business representatives in the RPSO: “There are some producers who think that NGOs should not have such a high impact on the RSPO, and they think our voice is heard way too much. Of course, we think it’s not heard enough! The producers do have a lot of power over the RSPO, if not the most power. . . . Everything depends on them” (IL, interview, October 18, 2017).

On the one hand, many NGO representatives question whether there is such a thing as sustainable palm oil at all and hence whether they should continue participating in certification schemes, especially since they are a minority position in all schemes (e.g., SM, interview, September 26, 2017; KSP, interview, August 20, 2018). On the other hand, interviewees emphasized that without NGO participation, certification standards would be less ambitious and not as well implemented (VV, interview, September 26, 2017; IP, interview, October 18, 2017; SK, interview, August 21, 2018). Several interviewees expressed the desire to pursue a multistranded strategy, in which certification is only one means among others. For example, Sawit Watch participates in the RSPO, while Walhi—a domestic partner NGO—criticizes the scheme “from the outside” (MR, interview, September 4, 2018).

A general challenge is the representation of (women) smallholders inside the schemes due to the costs associated with membership and certification (Cheyns 2014; Basnet, Gnych, and Anandi 2016). Many farmers do not see sustainability standards as mechanisms that will benefit their livelihoods (Wijaya and Glasbergen 2016, 239). While the Indonesian government fixes a price each year that smallholders should receive, there are intermediaries who further reduce the price actually paid to the smallholders themselves. In 2018, a smallholder farmer received IDR 300 (USD 0.02), compared to the fixed price of IDR 1,300 (USD 0.10), per kilogram of fresh fruits bunch (FFB, *tandan buah segar*; MR, interview, September 4, 2018). This amounted to a monthly average income of about IDR 2–3 million (USD 100) per smallholder. At the same time, the expenditure for auditing was about IDR 20 million (USD 1,300) per smallholder for a five-year period (SP, interview, September 5, 2018). Therefore, it is very difficult for smallholders to pay for certification themselves. Instead, they acquire the certification as part of externally funded NGO projects. Once these projects are over, many smallholders do not follow the standards anymore, and, for

example, an interviewee estimated that about 20 percent of the smallholders leave the RSPO once the NGO projects have culminated (VB, interview, August 28, 2018).

The RSPO now works with 88,753 individual smallholders—both male and female—and 336,841 hectares of smallholder-certified area (RSPO 2019). In order to empower this marginalized group to participate in the arrangement and to ensure that their local demands are linked to global processes, the RSPO established a Smallholder Task Force, funded by a group of Dutch NGOs (Oxfam Novib, Hivos, Cordaid, and Stichting Doen) and the Dutch government (Pesqueira and Glasbergen 2013, 300). Sawit Watch, an Indonesian NGO, and the Forest Peoples Program (FFP), an international NGO with a focus on Indonesian forests, led the task force on their behalf. FFP and other NGOs also ensured that the RSPO recognizes the FPIC principle (FFP 2018; Pesqueira and Glasbergen 2013, 300).

Scholars emphasize that the RSPO structures allow for a wide range of organizations to participate in certification. Oxfam and Sawit Watch often serve as examples of NGOs that voice the interests of marginalized people in the RSPO (Wijaya and Glasbergen 2016, 236; Silva-Castaneda 2012). However, in the cases of both international and local NGOs, Pesqueira and Glasbergen (2013, 302) find that “the RSPO . . . only deal[s] with issues *about* smallholders. Hence, failing to make smallholders constitutive participants of the governance arrangement. . . . The creation of new spaces of participation, such as FPIC, the Smallholder Task Force, and the Dispute Settlement Facility, needs to be appraised within the context in which they have been created. Although most participatory spaces within the RSPO have been created collaboratively by various stakeholders, none of them have been demanded through collective action and mobilization from ‘below.’”

Local entities and especially women struggle to be heard in the RSPO (Basnet, Gnych, and Anandi 2016). Cheyns (2014) argues that the RSPO is based on a liberal format of participation that discredits voices of smallholders and local communities, who come with a desire to raise and solve critical issues of injustices and/or engage in the most familiar attachments of their daily lives, sometimes with strong emotions. Local NGOs, which could build bridges, are often overshadowed by the large international organizations (Cheyns 2014). They often see the international NGOs as donors who fund particular implementation projects, which may serve certification, but which they themselves conduct in the first place to help

smallholders and local communities (SA, interview, September 5, 2018). An interviewee explained this situation as follows: “If a new, local NGO gets involved, it’s a bit harder to get in at the beginning to figure out how it works. . . . Language is . . . a problem because most of the stuff is in English. The RSPO is getting better with having stuff in Bahaza and Spanish and all the other kinds of languages, but (local NGOs) are heard. . . . There’s also a community of (local) NGOs, so that we align ourselves and help each other. . . . The local NGOs . . . have to get organized and you need staff and resources to get involved. And knowledge!” (IL, interview, October 18, 2017).

In sum, the RSPO faces major challenges in terms of representation, rigorousness/flexibility, and implementation. NGOs have manifested themselves both as members inside and critical voices outside the RSPO, but there continues to be a discussion about how rigorous or flexible the certification standard should be, especially with regard to smallholders. So far, though there are some rigorous criteria in place, the scheme does not effectively sanction its own members. Some Indonesian NGOs expressed their appreciation that the RSPO acts on behalf of smallholders and the environment (KSP, interview, August 21, 2018; SOE, interview, September 5, 2018). However, as most of the RSPO members are non-Indonesian, the standard is also seen as an illustration of European consumer power and hence external power undermining the sovereignty of the palm-oil-producing country (Wijaya and Glasbergen 2016, 233). Thus, the ISPO standard was usually mentioned in tandem with the RSPO (e.g., KSP, interview, August 21, 2018; TS, interview, August 14, 2018).

5.2.3 Public Certification: Indonesian Sustainable Palm Oil (ISPO)

The Indonesian government launched the Indonesian Sustainable Palm Oil (ISPO) standard through the Ministry of Agriculture of the Republic of Indonesia in 2011 (and updated it in 2015). Based on existing Indonesian legislation, it aims to improve the sustainability and competitiveness of the Indonesian palm oil industry while contributing to the Indonesian government’s commitment to reducing GHG emissions (UNDP, MoA, and RSPO 2015, 7). ISPO is also referred to as Indonesia’s “legality standard” for palm oil (Efeca 2016, 1). The system relies heavily on AMDAL, the Indonesian Environmental Feasibility Assessment, in its requirements (Efeca 2016, 1). If verified legal, palm oil is certified as sustainable (Efeca 2016). In other

Textbox 5.2

Principles of Indonesian Sustainable Palm Oil (ISPO)

- Licensing system and plantation management
- Technical guidelines for palm oil cultivation and processing
- Environmental management and monitoring
- Responsibilities for workers
- Social and community responsibility
- Strengthening community economic activities
- Sustainable business development

Source: Efeca 2016.

words, the Indonesian state equates legality with sustainability. ISPO neither refers to nor fulfills the EU-RED meta-standard (see textbox 5.2). For example, following the meta-standard, biofuels cannot be produced from raw material derived from peatland (European Commission 2009). In contrast, ISPO allows planting on peat under specified conditions: peat may not be developed where more than 70 percent of the concession is more than three meters deep, and adverse impacts need to be avoided and water levels maintained at specified levels (Efeca 2016, 4). Moreover, ISPO mentions transparency, but does not establish it as an explicit principle (Efeca 2016). Different from the RSPO, which introduced the FPIC principle, ISPO does not request companies to get consent for a project: “The . . . RSPO also requires the company to provide FPIC to confirm that there is no social conflict, but in ISPO we don’t use the FPIC. I don’t know about the future ISPO, but there was just a recognition for some group of people in the area which is not clearly stated how it can show that there is no conflict. RSPO is more difficult to comply” (MI, interview, August 15, 2018).

Essentially, unlike the RSPO, which is voluntary and complies with the EU-RED meta-standard (i.e., allows for EU market access), ISPO, as an Indonesian government regulation, is mandatory for all oil palm growers operating in Indonesia, from large plantation companies to smallholders, although requirements for each vary. Large producers were required to comply with ISPO by 2014 or face penalties and risk losing their license to operate. For smallholders, the standard is voluntary until 2020 (UNDP, MoA, and RSPO 2015; Efeca 2016; Ernah, Parvathi, and Waibel 2016). Most of

the large palm oil growers in Indonesia are organized through GAPKI, and, as outlined earlier, the government has limited capacity in governing the economic actors (Pramudya, Hospes, and Termeer 2017, 74). ISPO is funded by the Indonesian state but developed in close cooperation with GAPKI (Wijaya and Glasbergen 2016, 228). This demonstrates GAPKI's influence on palm oil politics in Indonesia. An industry representative stated that "up to fifty million people's lives depend on palm oil in Indonesia. So, if 25 percent are voters? We have many votes already, if everybody votes palm oil party" (TS, interview, August 14, 2018).

In contrast to palm oil businesses, NGOs were not officially involved in the ISPO development process. While Wijaya and Glasbergen (2016, 236) state that ISPO unsuccessfully tried to invite NGOs at the implementation stage, some interviewees said that they were consulted informally (e.g., KSP, interview, August 20, 2018; SK, interview, August 21, 2018). Interviewees underlined that Indonesian NGOs have been closely following the ISPO development (e.g., MR, interview, September 4, 2018; SP, interview, September 5, 2018). While many NGOs were initially in favor of the ISPO scheme, despite being excluded, diverse Indonesian and local branches of international NGOs² published a letter in which they criticized the government for not implementing the recommended changes (Indonesian Civil Society 2017).

Scholars explain the creation of ISPO as a function of Indonesian "national pride" (Wijaya and Glasbergen 2016, 233). Indonesia wanted to assert its identity as a nation by establishing ISPO as a national standard (Wijaya and Glasbergen 2016, 233). At the same time, the RPSO made the Indonesian government recognize the need for better enforcement of many laws and regulations (Wijaya and Glasbergen 2016, 235). When announcing ISPO in 2011, the Indonesian Minister of Agriculture explained the need for a public certification scheme, claiming that private certification schemes had too little outreach (Hospes and Kentin 2014). However, while the RPSO is currently certifying at least 20 percent of global palm oil (Efeca 2016, 2), ISPO is less successful. Even though ISPO is mandatory for large-scale plantations, the authorities could only announce that 12 percent of the 11.9 million hectares of oil palm plantations in Indonesia had been certified in 2017 (since 2011). This accounts for around 266 oil palm plantations (no numbers for voluntarily certified smallholders are available; see table 5.1; see Efeca 2016; Ribka 2017a). In particular, smallholders have no economic

incentive to get certified (Ernah, Parvathi, and Waibel 2016). Moreover, many of them lack the legal documents, for example, on land ownership, that allow them to proceed with the certification (KSP, interview, August 20, 2018; SW, interview, September 5, 2018). There is also a controversy over which land counts as forest and agricultural land (KPS, interview, August 20, 2018; TS, interview, August 14, 2018): “The problem is that the regulation is still not good to accommodate the situation. That is why there is so much abuse by many authorities in Indonesia. That’s one of the causes of the deforestation because one authority says, ‘This is a forest,’ while the other says, ‘This is the definition of forest’” (MI, interview, August 15, 2018).

ISPO certification is carried out by third-party auditors, like most private certification schemes, including the RSPO (see chapter 3). Auditors must have specific knowledge on palm oil farming and agricultural practices and must speak Indonesian and, if possible, local languages (there are 1,300 ethnic groups with 746 local languages in Indonesia).³ They must also pass a training course. Moreover, auditors must prove they did not work for a company they audited in the last three years in order to avoid corruption (UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016, 231). However, again, the legal situation is not always clear, and according to NGOs, corruption is common among auditors (EIA and Grassroots 2015). While ISPO has established complaint procedures (Efeca 2016, 5), Indonesian laws are also enforceable through the country’s juridical system.

The lack of implementation signifies a general dilemma for ISPO. For palm oil producers, the certification effort along the EU-RED standard is incentivized by European market access, while compliance with Indonesian law is not rewarded (different from timber-supply-chain-related laws, for which lack of legality verification precludes exporting to Australia, the EU, and the United States; see chapter 4). “The problem is that the law enforcement is not working, so when the government says that something is mandatory but without enforcement people ask, ‘Why should we comply?’ I think that’s happening in many developing countries when you make regulations but don’t put law enforcement. . . . After the centralization in Indonesia, since 1998, there are so many allies in the regions who protect the plantations in the region, even if they’re doing bad things” (MI, interview, August 15, 2018).

Access to new markets where there is a demand for legally verified palm oil may give a new impetus to ISPO, in particular if China makes a similar

request in the future (Schleifer and Sun 2018). In this regard, the Indonesian and Malaysian governments have the same intentions, which is demonstrated by discussions on merging ISPO and MSPO (Efeca 2016). At the same time, the RSPO is increasingly cooperating with ISPO and makes use of the state's legitimacy and at least limited resources to enforce compliance (UNDP, MoA, and RSPO 2015; Wijaya and Glasbergen 2016, 232). The Indonesian government faces the challenge of governing the palm oil sector in regard to environmental and social issues and, simultaneously, to follow its priority of economic development.

5.2.4 Summary of Case Study Results

Membership in the RSPO and in the ISPO is driven neither by companies' motivation to become sustainable nor by consumers' individual demand. Private certification is incentivized by European market access (i.e., the exclusion of noncertified palm oil to contribute to the EU target of 10 percent renewables in the transport sector by 2020). ISPO is compulsory for all plantations in Indonesia without further incentives or rewards. Although it was adopted in response to the increase of private certification in the country, ISPO simply equates legality with sustainability, without compliance to the EU-RED meta-standard. In contrast, the RSPO fulfills and even goes beyond the meta-standard—for example, by requiring FPIC, which prioritizes communities' interests in land conflicts over the interests of the central government and palm oil industry (FFP 2018; Pesqueira and Glasbergen 2013, 300).

Comparing the two schemes, RSPO and ISPO, supports Wijaya and Glasbergen's (2016) claim that Southern standards tend to emphasize economic prospects, rather than the social and environment consequences of the industry at hand. However, in contrast to the Indonesian government's framing of the issue (Wijaya and Glasbergen 2016), the study reveals that this does not generally reflect the specific conditions of production and preferences on the ground. Rather, the RSPO tends to be closer to marginalized people, as NGOs make those people's voices heard.

Both the RSPO and ISPO programs face serious implementation deficits. The case against IOI demonstrates that the RSPO cannot guarantee the legality of each certified project. At the same time, this case shows that Indonesian citizens, represented by NGOs, turn to the private grievance panel of the RSPO instead of to the Indonesian judiciary. Interviewees underlined

that for NGOs, the private grievance procedure is only one strategy among others to achieve justice for local communities. They actually use grievance cases to record land conflicts vis-à-vis the Indonesian state authorities (MR, interview, September 4, 2018; SP, interview, September 5, 2018). At the same time, they need to provide legal documents to the private grievance panel. What looked like a competitive situation between the RSPO and ISPO, in particular with regard to the entitlement of land ownership, turned out to be a chicken-and-egg problem on the ground (MR, interview, September 4, 2018). Whereas the private sector challenges the public sector at a theoretical level, the RSPO and ISPO programs complement each other in practical terms.

5.3 Discussion: Joint First Steps to Make Business Sustainable

The hybrid governance approach of the EU-RED represents a deliberate entanglement of public and private regulation. Because biofuel producers need to prove compliance through private certification, there is an additional power shift (Mathews 1997) to the private sector. A closer look reveals that, with the hybrid approach, NGOs in particular gain new *power over* through their crucial role in standard-setting, enforcement, and monitoring. The RED hybrid approach helps NGOs to confront the biofuel industry and contributes to NGOs' ability to challenge and discipline public authorities in exporting countries. Moreover, regarding North–South asymmetries, through the empowerment of NGOs, marginalized groups gain new resources and capabilities to make their voices heard. Sustainability provides a new common ground for action. However, though the EU uses its market power to enforce its own meta-standard as a predefined interpretation of sustainability on a worldwide scale, it prevents exporting countries from setting their own priorities. In the appendix, the fifth column summarizes my findings for the RED approach of hybrid transnational governance.

5.3.1 The NGOs New Power over Business and State Actors

The first dominant perspective on power in global supply chains, which I formulated in chapter 2, states that there is a withdrawal of the state, and this withdrawal led to a new private power over nation-states at the expense of environmental and social considerations. Do hybrid approaches confirm

or contradict this perspective? The new hybrid governance approach reflects not only the shadow of the WTO, but also that of the UNFCCC. There is no official EU ban on biofuels that do not comply with the RED meta-standard (and the RFS in the United States); certification is voluntary in the sense that the EU does not prohibit the production and import of noncertified biofuels. Because certification does not further discriminate against products with a different country of origin, it thus does not conflict with GATT (Ponte and Daugbjerg 2015). At the same time, the increased use of renewables in the transport sector is supposed to contribute to the commitments of the EU and other Western states under the UNFCCC (2019). For this purpose, these states need to guarantee that biofuels effectively contribute to GHG emission reductions, including when the biofuels are produced abroad.

Therefore, in addition to the adoption of mandatory targets regarding the share of biofuels in the overall energy mix, the EU (and the United States) adopted minimum requirements. First of all, in terms of GHG emission reductions in the EU, compliance with the meta-standard is proven by private certification. Compared to public supply-chain-related laws (chapter 4), the private proof of compliance indicates a more explicit shift of regulative authority to the private sector. The EU excludes noncertified biofuels from the mandatory target and respective subsidies. This lack of market incentive makes private certification *de facto* mandatory for biofuels in the EU. In consequence, we have seen the emergence of several multistakeholder and business-driven certification schemes, approved by the European Commission to comply with RED. In addition, there are new public certification schemes created by exporting countries—and, in the future, potentially other importing countries as well (Ponte 2014; Moser, Hildebrandt, and Bailis 2014). In particular, China may develop its own regulation in partnership with ISPO (TS, interview, August 14, 2018). Therefore, the RED hybrid approach has clearly led to further fragmentation.

As mentioned previously, the EU-RED makes certification *de facto* mandatory for all biofuels. There is no dependence on individual consumers, and the dissemination of sustainability certification into mainstream business signifies a regulative race to the top in regard to production standards (Cashore and Stone 2014). Therefore, examples like the German government's support of ISCC demonstrate the active withdrawal of the state, handing over standard-setting capacities to private entities (Ponte and

Daugbjerg 2015). However, the shifting of sustainability certification into the mainstream comes at the price of lower standards. As outlined earlier, the meta-standard focuses only on GHG emission reductions that are required under the UNFCCC (Kemper and Partzsch 2018).

After the adoption of RED, many companies did not start to participate in the RSPO or other early and comparatively ambitious multistakeholder schemes (Kemper and Partzsch 2018; Stattman et al. 2018). Instead, they adopted less ambitious business-driven standards, such as the HVO RD, that fulfill only the RED meta-standard (Ponte 2014). The most recent schemes of ISPO and MSPO further lower entitlements by equating sustainability with legality (while they are not approved by the European Commission as compliant with RED). Thus, while RED caused more companies to be certified (race to the top), fragmentation in response to RED has caused a race to the bottom among certification schemes in terms of the overall sustainability content. Plans to harmonize the private schemes, or ISPO and MSPO, have so far only been discussed, not implemented (Wijaya and Glasbergen 2016, 232). A possible scenario is IPSO cooperating with the RSPO in future (MI, interview, August 15, 2018). Hence, we find a similar dynamic as with the public supply-chain-related laws discussed in chapter 4. States are recentering the problem of definition and the choice of policy tools (Montouroy 2016; Bartley 2014). At the same time, states are lowering the reference (meta)standards compared to earlier private schemes. Again, therefore, NGOs are crucial actors for both standard definition and implementation.

Although NGOs are not members of all certification schemes approved by the European Commission (nor by ISPO and MSPO), the hybrid approach of RED increases their *power over* the biofuel industry significantly. NGOs play a very strong role inside the multistakeholder schemes due to their alignment with downstream manufacturers and retailers (Nesadurai 2017) and their resolute presence in committees and working groups as outlined previously (DM, interview, October 9, 2017). Compared to public supply-chain-related laws, with the hybrid approach, NGOs are better equipped to exercise *power over* state and business actors, as they play a more crucial role in defining, enforcing, and monitoring standards. If companies are interested in certification by a more esteemed multistakeholder scheme, they depend on the NGOs' cooperation.

At the same time, though some NGOs are increasingly involved in biofuel certification, the same and other NGOs have continued to publicly

campaign against biofuels. Due to these campaigns, an EU import ban of even certified palm oil became a viable option in the RED II negotiations for the post-2020 phase (European Commission 2018b). Moreover, NGOs make use of grievance procedures as provided by private certification. In the case of the RSPO, the NGOs have several members on the complaints panel, and NGOs (and local communities) issued the most complaints (RSPO 2019). This demonstrates that, like in the cases of private regulation and public supply-chain-related laws discussed in chapters 3 and 4, NGOs are key when it comes to monitoring. Moreover, NGOs' power to enforce (codefined) rules is more direct. If NGOs demonstrate noncompliance and companies lose their accreditations in consequence, this has immediate economic consequences for those companies, which are de facto losing access to the European market (if they are not certified by a second scheme, as happened in the case of the IOI suspension; BV, interview, September 27, 2017).

By taking over roles of standard setting, monitoring, and enforcement that were formerly associated with the state, NGOs contribute to undermining the authority of nation-state governments. It should be the state's role to use its sovereignty to protect natural resources in its territory. However, the Indonesian government prioritizes the country's economic development over social and especially environmental considerations (MR, interview, September 4, 2018). While NGOs cooperate with business in private schemes, such as the RSPO, they are not participating in but instead criticizing the public schemes, such as the ISPO program (Wijaya and Glasbergen 2016). NGOs are using the certifiers' grievance procedures instead of turning to the state judiciary. This is most obvious for conflicts over land between local communities and the central government (FFP 2018; Pesqueira and Glasbergen 2013, 300). Local interests may diverge from what international NGOs advocate for (Silva-Castaneda 2012; Cheyns 2014; Nesadurai 2013), but NGOs definitely promote greater recognition of marginalized communities in Indonesia. The RED hybrid approach helps them to do so.

In conclusion, by explicitly shifting biofuel governance to the private sphere, hybrid governance approaches most significantly increase the power of NGOs over biofuel business, either in line with or in opposition to Southern governments. In contrast to the first prevalent perspective on power dynamics in IR, globalization and the withdrawal, or rather push back, of the state in Indonesia have not necessarily led to the dominance of private business. The RED hybrid approach strengthens NGOs. If we assume

power to be zero-sum, the new power of NGOs comes at the expense of bio-fuel business, which needs to fulfill additional environmental and social obligations, but potentially only at the expense of governments in exporting countries.

5.3.2 Marginalized Groups' Power to Participate

Regarding North–South asymmetries, at first sight, the governance of bio-fuels perfectly illustrates Sachs and Santarius's (2007, 36) observation of Northern states being “omnivores.” As it is impossible for these consuming countries to meet their biofuel and related climate-mitigation targets based purely on the biomass grown on their own territory, these countries increasingly import and consume biomass of an amount beyond their fair share (Chatham House 2019). However, when environmental and social burden shifting to the Global South are on the agenda, the exporting countries insist on free-trade rules (Ponte and Daugbjerg 2015). Southern governments have been the ones keen on exporting biomass to the omnivores for the sake of exchange revenue and economic development (VV, interview, September 26, 2017; Wijaya and Glasbergen 2016).

The EU request for sustainability certification (and the US RFS request for GHG reductions and land use restrictions) limits Northern market access. Therefore, as was evident from my empirical research, it is seen as a direct offense to the development of the Global South (MB, interview, August 16, 2018; TS, interview, August 14, 2018). Southern countries hence warned they would file a WTO complaint over what they considered to be unfair barriers raised against their biofuels instead of make an effort for better environmental and social production conditions (in accordance with domestic rules and laws; Ponte and Daugbjerg 2015, 108). However, similar to the case of Austria, when the government had to rescind its antitropical timber law in the 1990s and instead funneled the money allocated for the implementation into the emerging Forest Stewardship Council (see chapter 3; Bartley 2007, 321), the EU's move to voluntary certification in the RED hybrid approach allowed it to effectively bypass the opposition of the biomass-exporting countries.

In this vein, scholars associate the creation of ISPO with an Indonesian attempt to limit foreign (or private) interference (Wijaya and Glasbergen 2016, 233; Chen Chen and Xin Yi 2016). The development of the ISPO program was followed in 2015 by the MSPO. The two programs demonstrate

the new Southern governments' *power to* accomplish things without outside assistance.

All private schemes, not only the RSPO, are dominated by members from consuming countries (Partzsch 2011; Wijaya and Glasbergen 2016). However, these actors cooperate with local NGOs, such as FFP and Sawit, in representing the interests of marginalized groups in respective exporting countries. The NGOs bring forward issues of indigenous land rights and smallholders' well-being by means of private certification (Wijaya and Glasbergen 2016; Silva-Castaneda 2012). NGOs have the potential to prevent TNCs from taking advantage of inconsistent regulations and unclear land use maps. In particular, NGOs made the RSPO acknowledge the FPIC principle to prevent land grabs (FFP 2018; MI, interview, August 15, 2018). Moreover, if businesses accept decisions made by a nonstate grievance panel, this can potentially solve land conflicts in favor of marginalized groups in the Global South. However, following Wijaya and Glasbergen (2016, 228), the private schemes, such as the RSPO, depend on the governments in the countries of production for implementation and for filling "the blank space that could not be filled by the private actors" (Wijaya and Glasbergen 2016, 228).

RED further empowers NGOs, which are supposed to and de facto do counterbalance business interests (FFP 2018; MI, interview, August 15, 2018). Through NGOs, private certification offers marginalized groups new opportunities to make their voices heard. They gain new resources and capabilities to bring their issues into the political agenda. Private schemes hence strengthen NGOs vis-à-vis public authorities of the nation-state, but the main addressee of NGO advocacy and private grievance is the biofuel industry. By holding companies (and governments) accountable for environmental and social issues *on behalf* of the people living in the Global South, hybrid governance arrangements represent accountability by proxy (Koenig-Archibugi and Macdonald 2013). The request for certification can be seen as an attempt of the EU, on behalf of local communities, to create a more sustainable and fairer trade system. Due to RED, business has committed to new sustainability rules. However, the RED meta-standard is purely defined by the EU, and the private schemes are likewise dominated by actors from the Global North. So far, only those actors in line with respective definitions of sustainability gain additional resources and capabilities in the biofuel sector.

5.3.3 Sustainability as Common Ground for Joint Action

Sustainability provides a common ground for joint action in transnational biofuel governance. A third central perspective regarding power dynamics in a globalized world is that actors are not continuously selfish, but rather exercise power with others to pursue collective norms of environmental sustainability and social justice (see chapter 2). Afionis and Stringer (2012) apply the concept of *normative power Europe* (NPE; Manners 2002) to RED. At first glance, one may argue that this hybrid approach demonstrates NPE. Biofuel certification is supposed to serve sustainability as a common good (climate change mitigation, biodiversity protection, etc.). When demanding sustainability certification for biofuels, the EU exercises *power with* rather than *power over* affected parties, such as the biofuel industry, consumers, and small farmers in the Global South (Partzsch 2017a). On the surface, sustainability certification is neither in the self-interest of the certifying producers nor the European Commission. To the contrary, certification increases costs of production, limits potential biomass imports for fossil fuel replacement, and hence may even risk European energy security. However, Afionis and Stringer (2012) find that the EU is only paying lip service with RED. By erecting barriers aimed at shielding its own inefficient domestic biofuels production, the authors argue, the EU is in essence placing trade competitiveness and economic growth above environmental protection, thus permitting sustainability concerns to be addressed only in part. Renckens, Skogstad, and Mondou (2017) support Afionis and Stringer (2012). Moreover, these authors argue that no other country adopted EU-like biofuel sustainability standards.

However, when Afionis and Stringer (2012) apply the NPE concept to RED, they define the EU as one single actor. In contrast, Kemper and Partzsch (2018) differentiate between public actors, the biofuel industry, and NGOs. These authors find that higher NGO presence in biofuel certification schemes correlates with stronger sustainability criteria. Interviews revealed that NGOs are indeed responsible for stricter criteria in multi-stakeholder schemes. Therefore, Kemper and Partzsch (2018) conclude that though the EU, as a whole, is not acting as a normative power, NGOs pursue norms of environmental sustainability and social justice.

In addition, in contrast to Renckens, Skogstad, and Mondou (2017), my case study of palm oil and Indonesia found the RED approach to have an impact on other actors and countries. The fact that the Indonesian and

Malaysian governments introduced their own certification schemes for sustainable palm oil, ISPO and MSPO, demonstrates that producing countries generally share sustainability norms—although potentially with less focus on environmental sustainability compared to international NGOs in particular.

Whereas the EU-RED meta-standard focuses on climate change mitigation (similar to RFS and the United States), ISPO equates sustainability with legality. This interpretative discrepancy demonstrates that the EU enforces its own predefined version of sustainability in third countries. Southern governments and TNCs are coerced to cooperate by means of the EU's market power (Damro 2012). Using a simple political economy logic, we find that sustainability certification serves mainly the Global North to continue its dominance in the Global South (Levidow 2013; Baka and Bailis 2014). Sustainability certification does not prevent the EU from importing ever-growing quantities of palm oil and other biomasses at “discounted prices” (Swilling and Annecke 2012, 188). We see that imports have been increasing since adoption of RED, with horrible consequences in exporting countries, as described by Li (2017) and others.

Sustainability provides a common ground for action. However, RED (and US RFS) represents hard power (Nye 2011) and effectively limits market access. Although the same requirements apply to producers inside and outside the EU, the request for certification impedes access to the European market for producers from the Global South, as seen for private regulation in chapter 3 and public supply-chain-related laws in chapter 4 (Lesniewska and McDermott 2014; McDermott, Irland, and Pacheco 2015).

5.4 Summary

In contrast to voluntary certification, discussed in chapter 3, biofuel certification is not voluntary but rather mandatory for companies exporting to the EU. Furthermore, unlike the public supply-chain-related laws discussed in chapter 4, RED does not only demand legality and disclosure. Therefore, under RED, companies may generally have no choice but to comply with private standards and accept decisions by private grievance. Otherwise, they lose their certification and access to the European market. This circumstance leaves not only NGOs but also marginalized groups in the Global South represented by NGOs with new *power to* participate in sustainability.

While the request for private certification in particular strengthens NGOs vis-à-vis the palm oil industry and public authorities in exporting countries, the EU-RED also risks undermining the authority of Southern governments. FPIC illustrates this dilemma most clearly. If marginalized groups gain new resources and capabilities through certification, they can use them to oppose the central government's position in many land conflicts. At the same time, we have to acknowledge that the RSPO, with NGO membership and grievance procedures, is an outstanding case among private certification schemes. While "everybody is hitting on RSPO" (IP, interview, October 18, 2017), biofuel companies also have their own business schemes without NGO participation and without grievance procedures, such as the HVO Renewable Diesel Scheme (HVO RD). These schemes fulfill only the minimum requirements defined by the EU-RED meta-standard (Kemper and Partzsch 2018; Ponte 2014). Their emergence after the adoption of RED in 2009 signifies a race to the bottom compared to earlier, more ambitious multistakeholder schemes. The EU should not have approved those more languorous, business-driven schemes in addition to the multistakeholder schemes in order to enable a regulative race to the top under RED.

In conclusion, the EU-RED hybrid approach uses sustainability as a new common ground for action. The approach demonstrates that the free-trade paradigm is not unconditionally prevailing anymore. However, the normative impetus is followed by different normative interpretations. With EU-RED, sustainability certification is de facto mandatory for all companies producing biofuels for the European market. However, RED is not effective in addressing negative social and environmental impact. The meta-standard would need to be essentially strengthened if sustainability was meant to mean more than climate mitigation.