

EU DEFORESTATION REGULATION AND PALM OIL: ENVIRONMENTAL PROTECTION OR NON-TARIFF BARRIER?

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ABSTRACT

The EU Deforestation Regulation (EUDR) requires all European Union-based companies to ensure that their imports and exports are free from deforestation and that human rights are upheld throughout their international supply chains, including with respect to palm oil commodities. The palm oil industry, which is closely associated with deforestation issues, is the most affected by the enactment of the EUDR. The issuance of the EUDR is therefore regarded as a form of non-tariff barrier imposed by the European Parliament to protect domestic products from competition with palm oil commodities. The EUDR may be considered as a form of green protectionism or a green barrier applied by the European Union under the pretext of environmental protection, specifically deforestation arising from oil palm plantation expansion in forest areas. Indonesia, as the world's largest producer of palm oil, has undertaken various measures to address deforestation, including through regulatory frameworks such as the Indonesian Sustainable Palm Oil (ISPO) certification, the Roundtable on Sustainable Palm Oil (RSPO), and other national regulations. Numerous efforts have been advanced in response to the issuance of the EUDR, which is discriminatory in imposing unfair rules or requirements on products from certain countries. Diplomatic engagement with the European Union continues, in coordination with like-minded countries, with the objective of seeking solutions to the divergence of views arising from the implementation of the EUDR.

Keywords: Palm Oil, Environmental Protection, No-Tariff Barrier

A. INTRODUCTION

The issues of global warming, rising temperatures, and increasingly extreme and unpredictable weather conditions have largely stemmed from human activities that often neglect their environmental consequences. One such activity is deforestation, defined as the depletion or destruction of forests by human intervention. Deforestation is the second largest contributor to greenhouse gas emissions after the burning of fossil fuels and is one of the primary drivers of climate change, along with the extinction of flora and fauna.¹

This situation has raised concerns among various countries, including the European Union. Consequently, the European Parliament approved the European Union Deforestation-free Regulations: Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No 995/2010, also known as the European Union Deforestation-Free Product Regulation (“EUDR”). The core of the EUDR requires every company based in the European Union to ensure that their imports and exports are free from deforestation and uphold human rights within their international supply chains, including the palm oil commodity.

The European Commission will conduct benchmarking of commodity-producing countries based on deforestation rates, legal compliance, human rights protection, and indigenous peoples’ rights protection, categorizing them into low-risk, standard-risk, and high-risk countries. The introduction of the EUDR will undoubtedly impact commodity imports, as every commodity entering the European Union market must comply with all the requirements stipulated under the EUDR, which will incur additional costs and resource expenditures. Moreover, the procedures that producers must follow are not simple and require specific expertise to fulfill. The imposition of EUDR requirements, particularly on the national palm oil industry, has a significant impact as it may disrupt economic stability. While large-scale palm oil industries may be able to meet the EUDR procedures, small and medium-sized palm oil enterprises (smallholder palm oil industries) may find it difficult or even

¹ Bager, S. L., Persson, U. M., & Dos Reis, T. N. P., 2021, *Eighty-six EU Policy Options for Reducing Imported Deforestation*, One Earth, Pg. 289– 306. (<https://doi.org/10.1016/j.oneear.2021.01.011>).

impossible to comply due to limited financial resources and capabilities to carry out the required procedures. This situation poses a risk to the survival of small and medium palm oil industries and, inevitably, could serve as a method to eliminate these industries in the global palm oil market. Such developments will have national-scale repercussions, including disruptions to economic stability, increased unemployment rates, and the potential emergence of unfair competition within the national palm oil industry.

Subsequently, various speculations have arisen suggesting that the issuance of the EUDR constitutes discrimination and a form of non-tariff barrier created by the European Union to protect its own vegetable oil industry. The European Union is a major consumer of vegetable oils, with the most widely consumed types are palm oil, canola (rapeseed) oil, soybean oil, and sunflower seed oil. Palm oil consumed within the EU is primarily imported from producing countries, particularly Indonesia and Malaysia, whereas other types of vegetable oils are largely produced domestically or imported by EU member states. Palm oil has often been the target of negative campaigns. The Indonesian government affirms its commitment to producing palm oil that meets sustainability requirements and supports efforts to address deforestation. These efforts include the implementation of certification systems such as the Indonesian Sustainable Palm Oil (ISPO) and the Roundtable on Sustainable Palm Oil (RSPO), which ensure that crude palm oil (CPO) originates from environmentally friendly plantations. Furthermore, the Indonesian government has ratified the Paris Agreement at the Conference of the Parties (COP), established the National Peatland Restoration Agency (Badan Restorasi Gambut Nasional), imposed a moratorium on new development on peatlands, and plans to issue a moratorium on the issuance of permits in the palm oil and mining sectors.

B. BACKGROUND OF THE ISSUE

Based on the background outlined above and to ensure that the study has clear and focused objectives, the Author formulates the following research questions:

1. Can the implementation of the EUDR, particularly regarding the import requirements for palm oil commodities, be regarded as a form of non-tariff barrier imposed by the

European Parliament to protect domestic products from competition by palm oil commodities?

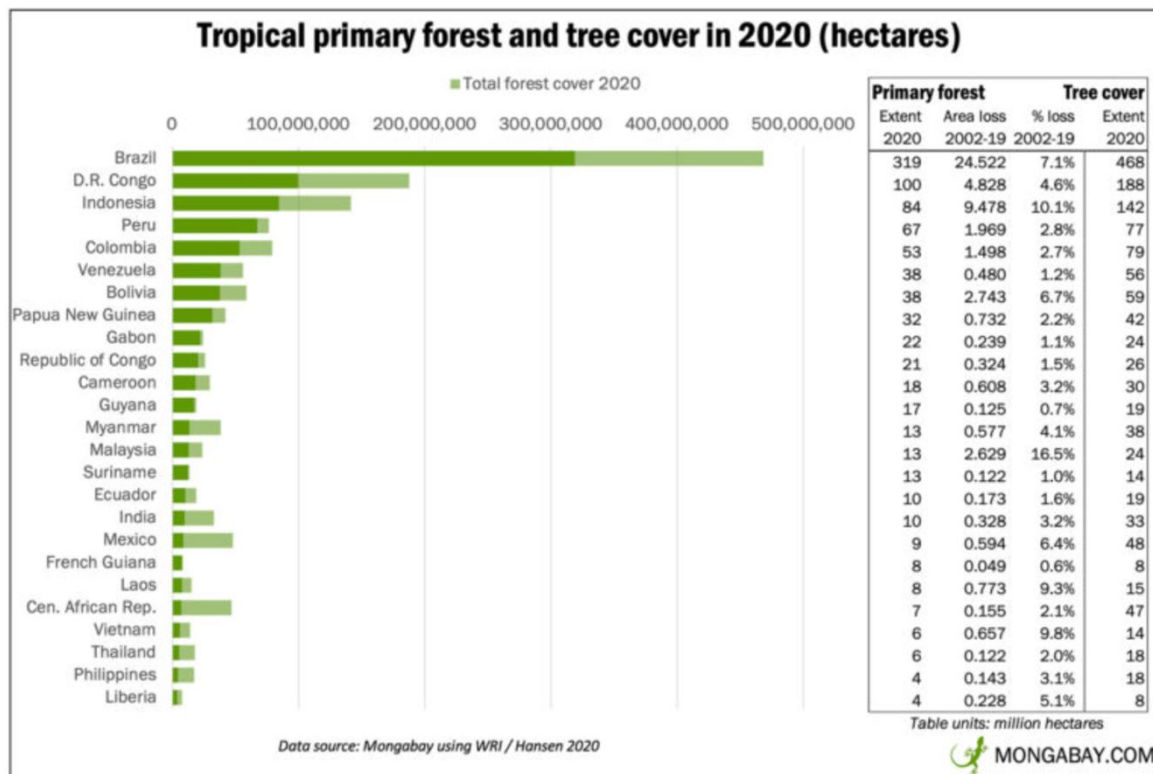
2. What is the impact of the implementation of the EUDR on the national palm oil industry?

C. RESULTS AND DISCUSSIONS

1. PALM OIL AND DEFORESTATION

Palm oil (*Elaeis guineensis*) is a plant species belonging to the genus *Elaeis* and the family *Arecaceae*, commonly cultivated in commercial agriculture for the production of crude palm oil (CPO). CPO is oil extracted from the flesh of the oil palm fruit and one of the primary products of the palm oil commodity industry. It serves as a fundamental raw material in various industries, including cooking oil, margarine, soap, lotion, wax, biodiesel, and others. Palm oil is considered more efficient because it produces a higher yield of oil per hectare compared to other vegetable crops such as soybean or sunflower. Additionally, the production cost of palm oil is comparatively lower.

The palm oil industry faces numerous environmental and social challenges at the international level, including regulatory trade measures such as the European Union's Deforestation-free Regulation (EUDR), which is often perceived as discriminatory and a form of non-tariff barrier. The palm oil industry is closely linked to deforestation, primarily due to the rapid expansion of oil palm plantations driven by rising global demand. Many palm oil producers have responded by opening new lands, which inevitably changes land use and leads to environmental degradation. Below is the global deforestation data for the year 2020:



Keadaan tutupan hutan tropis pada tahun 2020. Analisis oleh Mongabay menggunakan Hansen/WRI 2020.

Table 01. Tropical forest cover conditions in 2020. Analysis conducted by Mongabay using Hansen/WRI 2020 data.

Based on the data, the largest percentage decline in forest area occurred in Malaysia and Indonesia, partly due to the expansion of the palm oil commodity industry. In Indonesia, palm oil and its derivative products, especially crude palm oil (CPO), play a significant role in the economy, including providing raw materials for various industries, absorbing labor, and supporting regional development. The palm oil industry has even become a key source of non-oil and gas foreign exchange earnings for Indonesia. The Indonesian palm oil industry is highly attractive due to its large market prospects and the relatively open potential for palm oil production. However, the industry faces numerous challenges, including environmental and social issues at the international level. Among these challenges are various trade regulations perceived as discriminatory forms of non-tariff barriers.

A forest is a unified ecosystem comprising an expanse of land containing biological natural resources dominated by trees in their natural environment, which are inseparable from

one another (Minister of Environment and Forestry Regulation of the Republic of Indonesia No. 7 of 2021). Forests provide numerous benefits to human life; as an ecosystem, forests serve as habitats for various flora and fauna on earth. Forests also function as oxygen providers, water reserves, and regulators of climate change. Indonesia ranks eighth in the world in terms of the largest forest area and third in terms of the largest tropical forest area, after Brazil and the Democratic Republic of the Congo. Moreover, Indonesia's forests boast unique biodiversity, including 10% of the world's flowering plant species, 12% of mammal species, 16% of reptile and amphibian species, and 25% of fish species.²

Forest protection has faced challenges related to the functions of forests, including land clearing within forest areas to meet human needs. As the human population and its demands increase, the existence of forests is increasingly threatened due to forest land-use changes. Such changes are often driven by the need for agricultural land, including the clearing of land for oil palm plantations. However, land clearing for plantations or agriculture is important for improving community economic welfare, driving development, and serving as a source of foreign exchange for the country. Nonetheless, the utilization of forests has adverse impacts, namely forest degradation that affects the flora and fauna within these ecosystems. The conversion of forest land into agricultural or plantation land can lead to a decline in soil quality and cause physical and chemical changes to the soil.

Deforestation is a condition characterized by the reduction or loss of forest area caused by land conversion for human needs such as infrastructure, settlements, agriculture, mining, and plantations. Indonesia's deforestation has attracted global attention, particularly in relation to the surge in plantation development, especially oil palm plantations, driven by high global demand. Various palm oil producers have sought to meet this demand through the expansion of plantation areas by opening new lands. The development and expansion of oil palm plantations clearly alter land functions and result in environmental degradation. While palm oil contributes significantly to Indonesia's economy, the expansion and development of oil palm plantations have the potential to cause forest damage. The

² Sutoyo, 2010, *Keanekaragaman Hayati Indonesia Suatu Tinjauan: Masalah Dan Pemecahannya*, Pg. 101.

environmental risks associated with the expansion and clearing of land for oil palm plantations include, but are not limited to, the following:³

1. Forest Destruction. Clearing forests for oil palm plantations results in extensive tree felling. Such deforestation generates emissions and triggers greenhouse gas effects. Moreover, many parties resort to forest burning as it is considered easier, cheaper, and more efficient.
2. Threat to Various Habitat Types within Forest Areas. Deforestation causes many animals to lose their natural habitats, leading to declining wildlife populations and, in many cases, placing species at risk of extinction.
3. Creation of Carbon Dioxide Emissions. The clearing of oil palm plantations is often carried out through forest burning. As a result, these fires release carbon dioxide emissions, which cause significant health hazards.
4. Soil Erosion. Tree logging causes soil to lose its vegetative cover, rendering the land unstable and prone to erosion. If left unchecked without remediation efforts, this can result in soil degradation and landslides. Additionally, soil washed into watercourses may cause sedimentation and the shallowing of rivers.

Thus, although land clearing has positive impacts such as enhancing economic growth and community welfare, driving development, and serving as a source of foreign exchange, the adverse effects of deforestation and forest degradation—particularly on habitats—must also be anticipated and addressed.

The rapid expansion of monoculture palm oil plantations is one of the primary drivers of deforestation in Indonesia.⁴ This indicates that the increasing number of independent smallholder farmers involved in palm oil production results in greater land acquisition for the establishment of new palm oil plantations. Forest land is often targeted for palm oil plantation expansion due to the following reasons:⁵

³ Clearestha Nakita, Fatma Ulfatun Najicha, 2022, *Pengaruh Deforestasi Dan Upaya Menjaga Kelestarian Hutan Di Indonesia*, Jurnal Ius Civile Volume 6, Pg. 98.

⁴ Fitzherbert, E.B., Struebig, M.J., Morel, A., Danielsen, F., Brühl, C.A., Donald, P.F., Phalan, B., 2008, *How Will Oil Palm Expansion Affect Biodiversity?*, Trends Ecol. Evol. 23, Pg. 538–545.

⁵ Susanti, A., 2016, *Oil Palm Expansion in Riau Province, Indonesia: Serving People, Planet and Profit?*, Eburon Academic Publishers.

- a. Forest area maps used as references by various parties often lack consistent data;
- b. Boundaries on the ground are unclear, causing forest land to be perceived as unclaimed or ownerless; and
- c. The existence of overlapping regulations governing land management.

Ownership of palm oil plantations is not solely dominated by large-scale companies. Statistical data shows that 41% (forty-one percent) of the total palm oil plantation area is owned by smallholders, numbering approximately 2.3 million people. This data demonstrates that the palm oil industry is a strategically important sector for Indonesia. Accordingly, Indonesia has a vested interest in continuing to develop its palm oil industry while simultaneously ensuring productivity, environmental sustainability, and maximizing economic benefits—particularly for smallholder farmers—through the implementation of sustainable principles.

The involvement of smallholder palm oil farmers, who generally come from economically disadvantaged backgrounds, in the palm oil plantation development program is regarded as inclusive development and represents one of the successful poverty alleviation initiatives. However, this positive perception of the palm oil industry has shifted and increasingly conflicted with environmental sustainability concerns in Indonesia, particularly due to the high rate of deforestation, where palm oil expansion is often cited as a significant contributing factor.⁶ In addition to deforestation, the palm oil industry also impacts the lives of local communities (indigenous peoples) who depend on forest resources and are frequently involved in conflicts related to land expansion⁷.

The palm oil industry in Indonesia is considered to play a significant role in improving the economy of local communities, particularly through the involvement of smallholder farmers who often come from lower class backgrounds, thereby contributing to poverty alleviation. However, the industry has also been accused of causing various environmental problems, including climate change driven by the high rate of deforestation

⁶ Susanti, A., 2016, *Oil Palm Expansion in Riau Province, Indonesia: Serving People, Planet and Profit?*, Eburon Academic Publishers.

⁷ KPA, 2015, *Reforma Agraria dan Penyelesaian Konflik Agraria Disandera Birokrasi*, Konsorsium Pembaruan Agraria, Jakarta.

resulting from the expansion of palm oil plantations, which is regarded as a significant contributing factor. Additionally, the palm oil industry is seen to impact the lives of local communities, particularly indigenous peoples, who depend on forest resources and are frequently involved in conflicts arising from land expansion. The expansion of oil palm plantations corresponds with an increasing number of small and medium-scale farmers participating in palm oil production, which in turn leads to the clearing of new plantation areas from forest lands. This expansion into forest areas often occurs due to unclear forest boundaries, causing forest lands to be perceived as unowned, compounded by overlapping land governance regulations and inconsistent forest area mapping. Although there are inconsistencies in data regarding the total area of palm oil plantations in Indonesia, the prevailing trend indicates a continual increase. The environmental impacts of converting natural forests for palm oil cultivation have drawn global criticism, as such conversion not only leads to increased carbon emissions but also elevates the risk of species extinction due to habitat destruction.

Despite inconsistencies in data regarding the total area of oil palm plantations in Indonesia, it can be concluded that there is a clear trend of annual expansion, with an average growth rate of approximately 10.31 percent per year.⁸ The environmental impacts of converting natural forests for the palm oil industry have been widely highlighted and criticized globally. Such conversion not only leads to significant carbon emissions, especially when it involves peat swamp forests, but also causes habitat fragmentation of endemic species, thereby increasing the risk of species extinction due to habitat destruction.⁹ Furthermore, numerous reports indicate that a substantial portion of forest and peatland fires involve the palm oil industry.

The Government of Indonesia has made efforts to address deforestation, among others through certification regulations for sustainable palm oil plantation management,

⁸Katadata.co.id, 2018, *Dimoratorium, Berapa Luas Lahan Perkebunan Kelapa Sawit?*, <https://databoks.katadata.co.id/datapublish/2018/09/21/dimoratorium-berapa-luas-lahan-perkebunan-kelapa-sawit>.

⁹Katadata.co.id, 2018, *Dimoratorium, Berapa Luas Lahan Perkebunan Kelapa Sawit?*, <https://databoks.katadata.co.id/datapublish/2018/09/21/dimoratorium-berapa-luas-lahan-perkebunan-kelapa-sawit>.

namely ISPO (Indonesia Sustainable Palm Oil) and RSPO (Roundtable on Sustainable Palm Oil). However, certification alone is deemed insufficient because the scope of certification remains limited to the technical management of palm oil plantations, leaving unresolved issues, including environmental problems (such as deforestation) and social concerns related to the palm oil industry. The persistently high rate of deforestation, including in Indonesia, if not promptly addressed, will inevitably result in the loss of forest areas, subsequently causing adverse impacts on environmental sustainability. Therefore, efforts to reduce and combat deforestation need to be optimized to preserve Indonesia's natural environment. This situation has raised concerns among various countries, including the European Union, which imports a significant volume of commodity products from countries suspected of being involved in deforestation, including palm oil products from Indonesia. Besides Indonesia, the European Union also imports commodities suspected to be linked to deforestation from other countries. Examples of deforestation cases related to EU imports include, among others¹⁰:

- According to data from the Observatory of Economic Complexity (OEC), a trade database, nearly one-tenth (9.6 percent) of Malaysia's sawn timber exports were shipped to countries within the European Union in 2021. Malaysia's forestry sector has been implicated in widespread deforestation and land grabbing from indigenous communities without free, prior, and informed consent.
- According to OEC data, nearly half (44 percent) of all cocoa beans and more than half (54 percent) of cocoa paste imported by the EU originated from Côte d'Ivoire in 2021. The cocoa industry in Côte d'Ivoire drives deforestation that damages forests, fuels illegal logging, and has been repeatedly associated with child labor.
- Based on Brazil's leather industry data, more than a quarter (26 percent) of leather exports from Brazil were destined for the EU market. Additionally, OEC reports that in 2021, more than half (54 percent) of all frozen beef imported by the EU came from Brazil. Livestock farming is the single largest driver of illegal deforestation in the Amazon. Moreover, Brazil's cattle industry has been involved in encroachment on indigenous peoples' territories.

¹⁰ *Uni Eropa: Langkah Besar Untuk Perdagangan 'Bebas Deforestasi'*, April 19, 2023 11:37AM EDT, <https://www.hrw.org/id/news/2023/04/19/eu-major-step-deforestation-free-trade>

- According to OEC data, over one-tenth (11 percent) of the EU's coffee imports came from Vietnam in 2021. The Vietnamese coffee industry has been linked to deforestation and alleged use of child labor, including children as young as six, particularly among ethnic minority groups.
- OEC data shows that more than one-third (39 percent) of Colombia's palm oil exports were directed to EU countries. Several Colombian palm oil plantations have been associated with significant deforestation and encroachment into indigenous territories, as well as involvement in violence against rural communities.
- European companies must also ensure that commodities produced domestically comply with these regulations, raising questions about practices in certain EU member states. For example, in Sweden, the forestry industry has been known to encroach upon lands relied upon by the Sami people for reindeer herding, a practice central to their cultural identity.

2. THE ISSUANCE OF EUDR AND OBJECTIONS FROM PALM OIL PRODUCING COUNTRIES

The development of globalization in trade, investment, and finance has resulted in an increasing interdependence in international relations.¹¹ Therefore, international trade becomes a crucial factor for a country's economy and serves as a solution to meet the increasingly complex needs of society. Each country may have its own specialization or comparative advantage in conducting international trade, which arises from differences in resources among countries. A surplus production of a particular product can generate economic benefits for a country by enabling exports to other countries in need of that product. Conversely, if a country is unable to produce a certain product and its population requires it, the country can import the product from countries that have a surplus.

International trade refers to commercial activities conducted between the inhabitants of one country and those of another based on mutual agreement. The parties involved may include individuals trading with other individuals, individuals trading with foreign

¹¹ Prof. Dr. Ida Bagus Rahmadi Supancana, 2022, *Rejim Pengaturan Kontrak Komersial Internasional*, Penerbit Bintang Kejora, Bekasi, Pg. 1.

governments, or government-to-government transactions.¹² International trade is also defined as an activity involving trade conducted by governments or inhabitants through the exchange of goods and services that mutually benefit the parties involved.¹³ The purpose of international trade activities is to fulfill the domestic needs of a country's population. The factors causing the occurrence of international trade include, but are not limited to, the following:

3. Price differences. Price differences are generally related to the production costs of goods. Consumers naturally desire to purchase products that have good quality at affordable prices. Such consumer desires can be fulfilled through international trade, which facilitates access to quality goods at reasonable prices from other countries.
4. Differences in production output. The goods and services produced vary from one country to another. Consequently, goods required by the domestic population can be imported, while surplus domestic products can be exported.
5. Income. Every individual engages in consumption activities to meet their living needs, and therefore, a person's income influences the level of consumption they perform, including products originating from abroad.¹⁴

The scope of international trade activities is as follows:¹⁵

- a. International sales transactions (exports and imports), which are based on an exclusive sales agreement or contract;
- b. Activities conducted within the scope of trade, such as negotiable instruments or banking credit;
- c. The existence of a set of regulations, including those that govern and those that prohibit certain trade practices;
- d. Insurance as a risk mitigation measure for potential liabilities;

¹² Serlika Aprita dan Rio Adhitya, 2020, *Hukum Perdagangan Internasional*, PT. Raja Grafindo Persada, Depok, Pg. 1.

¹³ Katadata.co.id, 2018, *Dimoratorium, Berapa Luas Lahan Perkebunan Kelapa Sawit?*, <https://databoks.katadata.co.id/datapublish/2018/09/21/dimoratorium-berapa-luas-lahan-perkebunan-kelapa-sawit>.

¹⁴ Nazaruddin Malik, 2017, *Ekonomi Internasional*, Universitas Muhammadiyah Malang, Malang, Pg.5.

¹⁵ Venantia Sri Hadiaranti, 2019, *Langkah Awal Memahami Hukum Perdagangan Internasional Dalam Era Globalisasi*, Penerbit Universitas Katolik Indonesia Atmajaya, Jakarta, Pg.5-6.

- e. Transportation or shipment, including the movement of goods by land, sea, or air;
- f. Settlement of trade disputes, such as resolution through arbitration.

To ensure the smooth operation of international trade activities, it is necessary to have regulations governing international trade, known as international trade law. International trade law is a rapidly evolving field of law, developing alongside advances in science and technology, and encompasses a broad scope. Legal rules in international trade originate from various international agreements, whether bilateral, regional, or multilateral. One example of a multilateral international agreement is the General Agreement on Tariffs and Trade (“GATT”).

GATT was established out of the need for countries to negotiate the terms of international trade. It underwent changes and was ultimately replaced by the World Trade Organization (“WTO”) in 1994 through the final Uruguay Round. The Uruguay Round was a series of multilateral trade negotiations under GATT that took place from 1986 to 1994, aimed at reducing international trade barriers and strengthening the global trading system. The WTO is a multilateral international trade organization that functions integrally to facilitate and regulate the cross-border trade of goods and services.¹⁶ The World Trade Organization (WTO) has 159 member countries, with Indonesia being one of the 81 countries that officially became a member in 1995 through Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. Indonesia’s participation in the WTO, along with the commitments it has undertaken, has had a significant influence on the formulation of government policies in the field of international trade.¹⁷ International trade policy refers to government actions aimed at managing the dynamics of foreign economic relations, which may influence the structure, pattern, and direction of trade flows and international payments, particularly in the areas of exports and imports.

¹⁶Katadata.co.id, 2018, *Dimoratorium, Berapa Luas Lahan Perkebunan Kelapa Sawit?*, <https://databoks.katadata.co.id/datapublish/2018/09/21/dimoratorium-berapa-luas-lahan-perkebunan-kelapa-sawit>.

¹⁷ Meria Utama, 2012, *Hukum Ekonomi Internasional*, PT. Fikahati Aneska, Jakarta, Pg. 128.

The principles of international trade law as regulated under GATT/WTO are as follows:¹⁸

- Most-Favoured Nation (MFN) Principle. This principle, enshrined in Article I of the GATT, obliges all member states to extend equal treatment to one another, prohibiting discrimination in the implementation of import and export policies as well as in the imposition of related charges. Such equal treatment must be granted immediately and unconditionally to products originating from or destined for all GATT members. Accordingly, no state may accord preferential treatment to one country or discriminate against another.
- Reciprocity Principle. As provided under Article II of the GATT 1947, this principle requires reciprocal treatment among WTO members in determining international trade policies. In essence, where one state reduces import tariffs on products from another state, the exporting state is likewise obliged to reduce tariffs on imports from the former. This principle is also one of the fundamental principles of the GATT, as stipulated in Paragraph 3 of the GATT Preamble, which underscores that tariff negotiations are premised upon reciprocal and mutually beneficial cooperation between the parties.
- National Treatment (NT) Principle. Under Article III of the GATT 1947, this principle prohibits discrimination between domestically produced goods and imported goods. This entails that imported products entering a country must be granted treatment no less favorable than that accorded to domestically produced like products.
- Prohibition of Quantitative Restrictions Principle. Codified in Article XI of the GATT 1994, this principle prohibits the application of quantitative restrictions on exports or imports in any form (such as import or export quotas, licensing requirements, or controls on payments for imports or exports), which are designed to avoid disturbances in normal trading practices.

¹⁸ Huala Adolf, 2005, *Hukum Perdagangan Internasional*, PT. Raja Grafindo Persada, Depok, Pg. 108.



- Transparency Principle (Publication and Administration of Trade Regulations). Enshrined in Article X of the GATT 1994, this principle requires transparency and uniform administration of trade regulations. It obliges that trade-related information be published and made publicly accessible so as to ensure clarity and legal certainty.
- Fair Trade Principle. This principle prohibits dumping practices under Article VI of the GATT 1947 and subsidies under Article XVI of the GATT 1947, aimed at preventing states from gaining undue advantage through policies that cause injury to other countries. It is intended to eliminate unfair competition in international trade.

In conducting international trade activities, Indonesia has adopted export and import strategies since the 1980s as a driver of national development. As a country with an open economic system, trade plays a vital role in efforts to promote sustainable economic growth, to enhance the implementation of national development aimed at achieving equitable distribution of development and its outcomes, and to preserve the stability of national security and order.¹⁹ The benefits and advantages of international trade include enabling a country to specialize in the production of goods and services that are cost-efficient and competitive, as well as facilitating export activities which ultimately contribute to increasing national revenue, foreign exchange reserves, capital transactions, and broader employment opportunities.²⁰ Export constitutes a form of international trade involving the continuous sale and purchase of goods with the objective of generating profit, including market expansion, enhancement of national foreign exchange, and the creation of employment opportunities. Conversely, import refers to the purchase or entry of products from abroad into a country.

¹⁹ Siswanto, Budi & Priyatno, Priyatno, *Peningkatan Daya Saing Produk Dan Kinerja Ekspor Indonesia Dalam Rangka Pemulihan Perekonomian Indonesia (Kategori Sektor Riil)*, Buletin Ekonomi Moneter Dan Perbankan, Bank Indonesia Institute, Vol. 2, Nomor 1 Oktober 2003, Pg. 101.

²⁰ Rinaldi, M., Jamal, A., & Seftarita, C., 2017, *Analisis Pengaruh Perdagangan Internasional Dan Variabel Makro Ekonomi Terhadap Pertumbuhan Ekonomi Indonesia*. *Jurnal Ekonomi Dan Kebijakan Publik Indonesia*, 4(1), Pg. 49–62.

6. EUDR

The European Union Deforestation-free Regulations: REGULATION (EU) 2023/1115 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (“**EUDR**”) embody a series of policies reflecting the European Union’s commitment to addressing the rising greenhouse gas emissions resulting from high levels of consumption within the Union, as well as a response to the ineffectiveness of global policies and initiatives that have been deemed unsuccessful in halting deforestation, structural changes to forest cover, and the depletion of flora and fauna. The Regulation aims to strengthen the European Union’s contribution to reducing deforestation and structural changes in forest cover, to promote awareness of human rights and the rights of indigenous peoples, and to ensure that commodities placed on the EU market comply with the prescribed requirements.²¹

The European Union is an international organization established through the unification of European states following the entry into force of the Treaty of Maastricht on 1 November 1993, which had been signed on 7 February 1992. Its objectives are to strengthen economic, social, and political relations in order to achieve stable economic growth and ensure military security.²² The treaty, also known as the Treaty on European Union, formally marked the establishment of the European Union through further cooperation in the fields of population, foreign and common security policy, justice, and home affairs. The Treaty on European Union was signed in Maastricht, the Netherlands, by twelve (12) state representatives—namely the Netherlands, Belgium, Denmark, the United Kingdom, Ireland, Italy, Germany, Luxembourg, France, Portugal, Spain, and Greece. It also laid the foundation for the introduction of a single currency within the European Union, the Euro (€), and the

²¹ Kapoor, A., & Klindt, T., 2023, *The New EU Deforestation Regulation – What Companies Need To Do To Ensure Supply Chains Do Not Involve Deforestation*, NOERR, <https://www.noerr.com/en/insights/the-neweu-deforestation-regulation-what-companies-need-to-do-to-ensuresupply-chains-do-not-involve-deforestation>.

²² Gabel, M. J., 2023, *European Union*, Encyclopedia Britannica, <https://www.britannica.com/topic/European-Union#ref224461>.

establishment of the European Central Bank (ECB) together with the European System of Central Banks, in order to facilitate price stability within the European Union market.²³ The principal institutional structure of the European Union consists of: the European Council, the European Commission, the Council of the European Union (also referred to as the Council of Ministers), the European Parliament, and the European Court of Justice.²⁴

The European Union is a region well known for its strong commitment to environmental issues, as reflected in the 8th Environment Action Programme, under which an agreement was reached concerning environmental and climate matters. This programme is aligned with the United Nations 2030 Agenda, the Sustainable Development Goals (SDGs), as well as the Paris Agreement, the Rio Convention, and a number of other relevant international agreements. The priority objectives set forth in the 8th Environment Action Programme include, among others:²⁵

- Achieving the greenhouse gas emission reduction targets for 2030 and climate neutrality by 2050;
- Enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change;
- Advancing a regenerative growth model by decoupling economic growth from resource use and environmental degradation, and accelerating the transition towards a sustainable economy;
- Achieving zero pollution, including in air, water, and soil, and safeguarding the health and well-being of the European population;
- Protecting, conserving, and restoring biodiversity and enhancing natural capital;
- Reducing environmental and climate pressures associated with production and consumption, particularly in the sectors of energy, industry, buildings and infrastructure, mobility, tourism, international trade, and food systems.

²³ European Central Bank, 2018, *Five Things You Need to Know About the Maastricht Treaty*, https://www.ecb.europa.eu/ecb/educational/explainers/tellmemore/html/25_years_maastricht.en.html).

²⁴ European Commission, 2012, *The European Union explained - How the European Union Works*, European Commission Directorate-General for Communication Publications, http://publications.europa.eu/resource/cellar/bdc6e27e-e519-4308-8e47-73acd9b3977b.0022.02/DOC_1.

²⁵ European Union, *Environment Action Programme to 2030*, European Commission, https://environment.ec.europa.eu/strategy/environmentaction-programme-2030_en.

To achieve the objectives of the 8th Environment Action Programme as mentioned above, it is deemed necessary for the peoples of the European Union to undertake the following measure:²⁶

- Reducing consumption and promoting the use of products sourced from deforestation-free supply chains;
- Cooperating with producer countries to curb deforestation by developing deforestation-free partnerships;
- Strengthening international cooperation to prevent deforestation;
- Supporting the availability of, and access to, adequate information regarding forests, commodity supply chains, accessibility of data, as well as research and innovation.

Accordingly, the EUDR constitutes one of the subsequent policies expected to serve as a more effective solution than existing policies and initiatives in the conservation, restoration, and management of forests, with the aim of curbing deforestation, reducing forest land conversion, and preventing biodiversity loss, as reflected in the considerations expressed by the Member States of the European Union in Article 11 of the EUDR:

“Member States have repeatedly expressed their concern about persistent deforestation and forest degradation. They have emphasised that since current policies and action at global level on conservation, restoration and sustainable management of forests do not suffice to halt deforestation, forest degradation and biodiversity loss, enhanced Union action is needed in order to contribute more effectively to the achievement of the Sustainable Development Goals (SDGs) under the 2030 Agenda for Sustainable Development, which was adopted by all United Nations (UN) Member States in 2015. The Council has specifically supported the Commission announcement in its communication on Stepping up EU Action to Protect and Restore the World’s Forests that it would assess additional regulatory and non-regulatory measures and that it would present proposals for both types of measures. The Union and Member States have also endorsed the UN Decade of Action for the SDGs, the UN Decade on Ecosystem Restoration and the UN Decade of Family Farming.”

²⁶ European Commission.,2019, *Stepping up EU Action to Protect and Restore the World’s Forests*, <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A52019DC0352>.

It is expected that, through the issuance of the EUDR, the objectives of the 8th Environment Action Programme as previously described can be achieved, *inter alia*, by undertaking the following measures:

- Avoiding the purchase, use, and consumption of soy, palm oil, coffee, cocoa beans, timber, rubber, livestock, and their derivative products in order to prevent contributing to deforestation within the European Union and globally;
- Reducing carbon emissions resulting from consumption and production within the European Union;
- Addressing deforestation caused by the expansion of agricultural land.

The EUDR regulates seven (7) commodities, including their derivatives, namely: palm oil, coffee, cocoa beans, timber, rubber, and livestock. Since its adoption on 9 June 2023, the EUDR has been implemented in phases with an adaptation period of eighteen (18) months, while small and micro enterprises were granted an adaptation period of twenty-four (24) months from 29 June 2023. This period was subsequently extended following calls for postponement and requests for global negotiations through Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024, which amended Regulation (EU) 2023/1115, thereby establishing the adaptation period until 30 December 2025, and for small and micro enterprises until 30 June 2026. This adaptation period is intended to allow businesses to prepare for compliance with the requirements set forth by the European Commission under Article 3 of the EUDR, as follows:

- Products must be deforestation-free, meaning they are not produced on land subject to deforestation after 31 December 2020;
- Products must be produced in compliance with the laws of the country of production; and
- Products must be subject to due diligence.

In general, the EUDR can be understood as a due diligence procedure designed to trace and ensure that the origin of a commodity is deforestation-free. This is carried out by disclosing the place of production of the commodity (covering the upstream and downstream supply chain) and the legality of its production. In addition, a risk assessment is conducted on commodities intended for import in relation to their potential impact on deforestation,

which is classified into high risk, standard risk, and low risk. The procedure further provides for risk mitigation, monitoring, and audits conducted on a professional and scientific basis. The European Commission will conduct benchmarking and publish lists of producer countries categorized as low-, medium-, or high-risk, measured inter alia by levels of deforestation, legal compliance, protection of human rights, and the safeguarding of indigenous peoples' rights. As stipulated under Article 8 of the EUDR, due diligence encompasses the collection of data, information, and documentation demonstrating that the products comply with the prescribed requirements, including compliance with harvesting conditions and geolocation of the production land, risk assessment based on the review of available documents to identify risks of non-compliance, risk mitigation, independent surveys, and audits.

Risks will be assessed on the basis of the factors set out in Article 10 of the EUDR, including: the presence of forests in the country of production; the presence of local populations; cooperation with local communities; the history of deforestation or forest land conversion in the country of production; issues of corruption; human rights violations; falsification of documents and information; enforcement of laws; armed conflicts; sanctions imposed by the UN Security Council or the Council of the European Union; complexity of the supply chain; and obfuscation through the mixing of products with those produced on deforested land. The results of this risk assessment will then be classified into three (3) categories, namely: low risk, standard risk, and high risk, as follows:

- Low Risk: Commodities in this category are considered to pose a low risk of deforestation. Importing countries generally apply lighter procedures to commodities in this category.
- Standard Risk: Commodities in this category are considered to pose a moderate risk of deforestation. Importing countries apply stricter procedures to commodities in this category.
- High Risk: Commodities in this category are considered to pose a high risk of deforestation. Importing countries apply mandatory and stricter due diligence procedures to commodities in this category.

Compliance with the EUDR requirements will undoubtedly entail significant costs and resources, making it challenging for Indonesia's industrial sector to fully meet them. The adoption of the EUDR has clear implications for Indonesia's commodity exports, particularly for the national palm oil industry, as Indonesia is the largest producer and supplier of palm oil products to the European Union. If all palm oil producers are required to comply with the EUDR procedures in order to supply the EU market, this will involve substantial costs, resources, and complex procedures for the Indonesian palm oil industry to fulfil. The procedures to be undertaken encompass the entire upstream–downstream supply chain, including the downstream industries (oleofood complex, oleochemical complex, and bioenergy complex). Refineries, in particular, must disclose and map from which CPO mills (PKS) the crude palm oil (CPO) is sourced, and each CPO mill must in turn be able to disclose (including data, coordinates, legality, and other relevant information) the plantations supplying their fresh fruit bunches (FFB), and so forth throughout the supply chain²⁷.

Sanctions for violations of this Regulation, as provided under Article 25 of the EUDR, include the following:

- a. Fines. The calculation of fines shall be determined in such a manner as to ensure that operators lose the economic benefit derived from the infringement, with fines increasing progressively in cases of repeated violations.
- b. Confiscation of the products concerned.
- c. Confiscation of revenues obtained from transactions involving the products.
- d. Temporary exclusion, for a maximum period of twelve (12) months, from participation in public procurement, access to public funding, including tender procedures, grants, and concessions.
- e. Temporary prohibition on placing products on the market or exporting commodities.
- f. Prohibition on making use of simplified due diligence in the event of serious or repeated infringements.

²⁷ Dr. Ir. Tungkot Sipayung, 2023, *Pilihan Strategis Industri Sawit Nasional Merespon Kebijakan European Union Deforestation-Free Regulation (EUDR)*, Journal 2023, <https://palmoilina.asia/jurnal-kelapa-sawit/kebijakan-european-union-eudr/>.

7. OBJECTIONS OF PALM OIL PRODUCING COUNTRIES TO THE ADOPTION OF THE EUDR

The EUDR, adopted on 29 June 2023, represents a joint commitment of the European Union Member States to establish deforestation-free supply chains, enhance supply chain transparency, and minimize the risk of deforestation and forest degradation associated with the import of commodities into the European Union, as reaffirmed through the European Green Deal, the EU Biodiversity Strategy, and the Farm to Fork Strategy. Nevertheless, the enactment of the EUDR has raised considerable concern and opposition from various stakeholders and countries, as the process of discussion and formulation of the Regulation has been regarded as unilateral, without involving the producing countries of the seven (7) regulated commodities, namely palm oil, coffee, cocoa beans, timber, rubber, and livestock.

Objections to the implementation of the EUDR were expressed in the form of a Joint Letter signed by the Ambassadors of seventeen (17) like-minded countries in Brussels—namely Argentina, Brazil, Bolivia, Ecuador, Ghana, Guatemala, Honduras, Indonesia, Colombia, Malaysia, Mexico, Nigeria, Côte d'Ivoire, Paraguay, Peru, Thailand, and the Dominican Republic—on 7 September 2023. The Joint Letter, initiated by Indonesia and Brazil, was intended to collectively convey the concerns and disappointment of the producing countries regarding the enforcement of the EUDR by the European Union on 29 June 2023, as follows:²⁸

- The Regulation is deemed not to take into account the capacity and local circumstances, national legislative instruments, certification mechanisms, efforts undertaken to prevent deforestation, and the multilateral commitments of commodity-producing countries, including the principle of common but differentiated responsibilities.

²⁸ Ministry of Foreign Affairs of the Republic of Indonesia, 2023, *17 Negara Sampaikan Keprihatinan Atas Pemberlakuan Undang-Undang Anti Deforestasi Uni Eropa*, Brussel, <https://kemlu.go.id/portal/id/read/5234/berita/17-negara-sampaikan-keprihatinan-atas-pemberlakuan-undang-undang-anti-deforestasi-uni-eropa>.

- The Regulation inherently establishes a benchmarking system that is discriminatory and punitive in nature, and which potentially contravenes the provisions of the WTO.
- The Joint Letter requests that the European Union duly consider the interests of producing countries in the drafting of the implementing rules of the EUDR.
- Producing countries urge the Leaders of the European Union to involve more closely the affected commodity-producing countries in formulating detailed and clear implementing acts and guidelines under the EUDR, which should encompass compliance regimes and due diligence requirements specific to each commodity and to products produced by smallholder farmers in the producing countries.
- The Joint Letter further sets out several matters that the European Union should take into account in preparing the implementing rules of the EUDR, *inter alia*:
 - a. Ensuring greater involvement of commodity-producing countries in a substantive and open dialogue;
 - b. Recognising the efforts undertaken by producing countries to improve the livelihoods of their people through sustainable development, notwithstanding the challenges of limited access to financing, technology, and technical assistance;
 - c. Preventing adverse impacts arising from the implementation of the EUDR through the adoption of guidelines that acknowledge and respect existing sustainable practices within the agricultural supply chains of producing countries;
 - d. Avoiding trade disruptions and excessive administrative burdens in relation to requirements on geolocation and traceability, certification, and customs procedures.

In the Joint Letter, it was conveyed that the “one-size-fits-all” approach adopted by the European Union in the due diligence and traceability model would place a burden on both exporting and importing countries and would have adverse effects, such as increasing

poverty, diverting resources, and hindering the achievement of the Sustainable Development Goals (SDGs).

Subsequently, Indonesia, Malaysia, and the European Union agreed to establish an Ad Hoc Task Force on the European Union Deforestation Regulation (“**Joint Task Force**”) to address various issues related to the implementation of the EUDR faced by Indonesia and Malaysia. The Task Force was also established to identify challenges and explore solutions regarding the implementation of the EUDR. The kick-off meeting of the Joint Task Force was held in Jakarta on 4 August 2023, co-chaired by the Deputy for Food and Agribusiness Coordination of the Indonesian Coordinating Ministry for Economic Affairs, Musdhalifah Machmud, the Secretary General of the Ministry of Plantation and Commodities (MPC) of Malaysia, YBhg. Dato' Mad Zaidi bin Mohd Karli, and the Director for Green Diplomacy and Multilateralism of the European Commission (EC), Astrid Schomaker. The meeting was convened to achieve a mutual understanding between producer and consumer countries. The Joint Task Force thereafter served as a platform functioning as a consultative mechanism to support coordination and foster a shared understanding among Indonesia, Malaysia, and the European Union with respect to the EUDR. The European Union, in turn, acknowledged the progress made by Indonesia and Malaysia in reducing deforestation and welcomed further exchange of information and clarification concerning the deforestation regulation.²⁹ Within the framework of the Joint Task Force, five (5) key areas of discussion were identified, namely: the inclusion of smallholders in commodity supply chains; the gap analysis between the provisions of the EUDR and national standards (ISPO and RSPO); traceability tools developed in producer countries; country benchmarking, for which no methodology and data sources have yet been established; and the protection of personal data.

²⁹ Coordinating Ministry for Economic Affairs of the Republic of Indonesia, 2023, *Indonesia, Malaysia, dan Uni Eropa Bentuk Gugus Tugas Untuk Mengatasi Berbagai Hal Terkait European Union Deforestation Regulation*, Jakarta, <https://www.ekon.go.id/publikasi/detail/5294/indonesia-malaysia-dan-uni-eropa-bentuk-gugus-tugas-untuk-mengatasi-berbagai-hal-terkait-european-union-deforestation-regulation>.

8. THE EUROPEAN UNION DEFORESTATION REGULATION (EUDR) AS A NON-TARIFF PROTECTION MEASURE FOR THE EU'S VEGETABLE OIL SECTOR AGAINST COMPETITION FROM IMPORTED PALM OIL

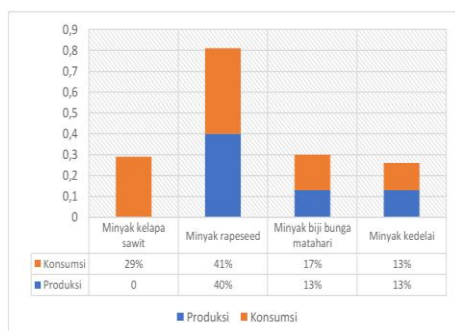
Indonesia is both the world's largest producer and consumer of palm oil, making the palm oil industry an integral part of the Indonesian economy. Indonesia supplies approximately half of the global palm oil demand, with oil palm plantations covering about 14.03 million hectares in 2007, producing around 38.17 million tons of crude palm oil.³⁰ With this production volume, Indonesia is able to supply approximately 55% of the total global palm oil output of 58.9 million tons, thereby positioning Indonesia as the world's largest producer of palm oil, surpassing Malaysia, Thailand, and Colombia.³¹

The issuance of the EUDR has given rise to various speculations, including the view that the European Parliament's resolution constitutes a form of discrimination against palm oil and is driven by political interests. The European Union is a region with a high consumption of vegetable oils, the most widely consumed being palm oil, soybean oil, canola oil, and sunflower seed oil. However, all palm oil and its derivative products consumed within the European Union are entirely imported from producing countries, particularly Indonesia and Malaysia. In contrast, other vegetable oils are both imported and domestically produced by EU Member States. The principal producers of vegetable oils in Europe include France, Hungary, Spain, Romania, and the Netherlands. France and Hungary are renowned for their sunflower cultivation, with 850,000 hectares under cultivation in France as of 1986 and 317,000 hectares in Hungary. Rapeseed oil (canola) is produced mainly in Germany, which contributes 30% of total production, followed by France (26%) and Poland (12%). Nevertheless, the overall increase in production remains relatively low. This situation has triggered concerns of underlying political motives behind the EU's regulatory approach to vegetable oils.³²

³⁰ Info Sawit 31 Januari 2018, *2017 Produksi Minyak Sawit Indonesia Capai 41,9 Juta Ton*, <https://www.infosawit.com/news/7672/2017-produksi-minyaksawit-indonesia-capai-41-9-juta-ton>.

³¹ Rifai, N., 2014, Dampak Pengembangan Produk Turunan Minyak Sawit terhadap Peningkatan Ekspor Produk Minyak Sawit Ke Pasar Amerika Serikat, *Jurnal Agro Ekonomi*, Pg. 32.

³² Kusumaningtyas, A. S., 2017, *Upaya Hambatan Non-Tarif oleh Uni Eropa terhadap Minyak Sawit Indonesia*, *Jurnal Hubungan Internasional*, <http://repository.unair.ac.id/68023/1/Fis.HI.82.17%20.%20Kus.u%20-%20JURNAL.pdf>.



Grafik 2. Gap Konsumsi dan Produksi Minyak Nabati Uni Eropa tahun 2018

Sumber: (United States Department of Agriculture, 2018)

Tabel 1. Perbandingan Produktivitas Minyak Berbagai Tanaman Penghasil Minyak Nabati

Jenis Tanaman	Produktivitas Minyak (Ton/Ha/Tahun)
Kelapa Sawit	4,27
Rapeseed (Kanola)	0,69
Bunga Matahari	0,52
Kacang Tanah	0,45
Kedelai	0,45
Kelapa	0,34
Kapas	0,19

Sumber: Oil World Statistic ISTA Meilke GmbH Hamburg (Oil World, 2008)

Table 02. Gap between consumption and production of vegetable oil

Table 03. Comparison of oil productivity of various plants

Accordingly, the resolution of the European Parliament declaring palm oil products as drivers of deforestation, human rights violations, and unsustainable practices can be perceived as being primarily motivated by the interests of business actors within the European Union. Indonesian palm oil is regarded as a threat to the competitiveness of other vegetable oil industries produced within EU Member States. For example, olive oil and sunflower seed oil—both highly popular and widely produced in Europe—risk being displaced in the European market should palm oil products gain broader access.³³

In fact, palm oil can form part of the solution to reducing greenhouse gas emissions and positively contribute to the growing global demand for biofuels as an alternative to fossil fuels. Palm oil remains the most productive vegetable oil in terms of land use efficiency and yield compared to sunflower and rapeseed (canola) oil produced within the European Union. Indonesia itself has already established a domestic strategy to mitigate the potential negative impacts of the palm oil industry through Minister of Agriculture Regulation No. 38 of 2020 concerning the Implementation of Indonesian Sustainable Palm Oil Certification (ISPO). This policy has proven effective in curbing the adverse effects often attributed to the palm oil sector, as elaborated in the previous chapter.

³³ Julianto, P. A., 2017, *Pemerintah Anggap Resolusi Sawit Uni Eropa Bermotif Bisnis*, <https://ekonomi.kompas.com/read/2017/05/03/100000326/pemerintah.anggap.resolusi.sawit.uni.eropa.bermotif.bisnis>,

In conducting economic diplomacy, the government seeks to reconcile three forms of tension: (1) the tension between politics and economics; (2) the tension between domestic and international pressures; and (3) the tension between the government and other actors, including private business entities and non-governmental organizations.³⁴ In reference to the foregoing, the issue of palm oil commodities may be categorized as a tension between politics and economics. This is because the matter of palm oil commodities does not solely concern economic considerations but also entails complex political dimensions, particularly the impact of the EUDR on palm oil-producing countries. The EUDR identifies palm oil and its derivatives as a serious concern, alleging that they contribute to deforestation, habitat destruction, human rights violations, the displacement of indigenous communities, and other related issues.

a. Negative Campaign Against Palm Oil by the European Union

The EUDR policy may be construed as a form of trade protectionism by the European Union, as the EU itself produces vegetable oils other than palm oil, such as soybean, rapeseed (canola), and sunflower seed oil. Consequently, palm oil is perceived as its greatest competitor, thereby prompting the introduction of regulatory measures aimed at restricting palm oil exports from entering the EU market.

The European Union has frequently exploited negative narratives to obstruct Indonesia's palm oil exports, particularly through allegations regarding environmental damage caused by the palm oil industry. In reality, however, oil palm is the most productive crop and requires less land compared to other oilseeds. It may therefore be concluded that palm oil cultivation uses significantly less land while generating higher yields, making it a far more efficient source of vegetable oil than its counterparts. The European Union is also in the process of phasing out the use of palm oil-based biodiesel, a measure that contravenes the principles of fair and free trade and amounts to a form of discrimination. This policy has been deemed unjust by the Government of Indonesia, as the production methods employed in the EU's vegetable oil industry do not substantially differ from those used in Indonesia's palm

³⁴ Bayne, N., & Woolcock, S., 2007, *The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations*, Aldershot: Ashgate.

oil industry. Accordingly, such regulation constitutes an unhealthy trade practice, designed solely to ensure that only domestically produced vegetable oils within the EU remain marketable.

The European Union has also repeatedly engaged in negative campaigns against palm oil under the pretext of environmental unsustainability. In fact, such campaigns serve the underlying purpose of undermining competing products and protecting the EU's vegetable oil market. As a result, palm oil has been portrayed negatively among European consumers. With this stigmatization, European consumers are likely to cease using palm oil and instead shift to alternative vegetable oils, thereby increasing demand for EU-produced oils. In response, the Government of Indonesia should counter the EU's negative campaigns by launching positive advocacy efforts to enhance palm oil's reputation on the global stage—for example, by promoting palm oil as being produced through environmentally sustainable practices and highlighting its efficiency relative to other vegetable oils..

b. EUDR as a Form of Non-Tariff Barrier

International trade and global competition expose domestic industries to challenges from foreign competitors, as every country has the opportunity to export its products to multiple markets while also importing goods to meet domestic needs.³⁵ This situation clearly creates competition with the domestic products of the respective country. Competitiveness in an economic relationship is one of the key factors that determines the existence of competition among nations in order to derive benefits from the increasingly open global economy. A country's balance of payments is said to be in surplus when there is an excess of trade and investment compared to the obligations to be paid, and in deficit when the value of imports exceeds that of exports. Such conditions directly affect economic growth. Numerous empirical

³⁵ Farina, F., & Husaini, A., 2017, *Pengaruh Dampak Perkembangan Tingkat Ekspor dan Impor Terhadap Nilai Tukar Negara Asean Per Dollar Amerika Serikat (Studi Pada International Trade Center Periode Tahun 2013-2015)*, Jurnal Administrasi Bisnis (JAB), 50(6), Pg. 44–50.

studies have demonstrated that international trade and more open trade policies are among the principal factors in explaining economic growth.³⁶

In connection with environmental protection in relation to market access within the framework of the WTO, Article 11 of the 1992 Rio Declaration provides as follows: “States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.” Based on this provision, any environmental requirements established by a State for the purpose of environmental protection may have an impact on international trade. The existence of such regulations raises concerns among developing and least-developed countries, as such measures amount to “green protectionism,” namely a disguised form of international trade restriction imposed by developed countries under the pretext of environmental protection.³⁷ Such regulations are often regarded as a means for developed countries to protect their domestic markets under the pretext of environmental preservation or public health. Consequently, the term “eco-imperialism” has emerged, referring to the imposition of environmental values and principles by developed countries upon developing and least-developed countries.³⁸ Developing and least-developed countries contend that unilateral measures undertaken by developed countries have resulted in the emergence of “green barriers” within the international trading system.³⁹ Such barriers may be considered as non-tariff barriers.

³⁶ Astuti, I. P., & Ayuningtyas, F. J., 2018, Pengaruh Ekspor Dan Impor Terhadap Pertumbuhan Ekonomi Di Indonesia, *Jurnal Ekonomi & Studi Pembangunan*, Pg. 19(1), <https://doi.org/10.18196/jesp.19.1.3836>.

³⁷ Maria Victoria Lottici and Carlos Galperin, *Green Trade Protectionism: An Analysis of Three New Issues that Affect Developing Countries*, Chinese Journal of Urban and Environmental Studies, Vol. 2, No. 2, 2014, Pg. 3-4.

³⁸ Carmen G. Gonzales, *Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade*, Denver University Law Review, Vol. 78, Issue 4, 2001, Pg. 982-1019.

³⁹ Gekun Wei, 2017, *Analysis of Environmental Barriers in International Trade*, Advances in Social Science, Education and Humanities Research, Volume 119, 3rd International Conference on Economics, Social Science, Arts, Education and Management Engineering (ESSAEME), Pg. 1441-1444.

Broadly speaking, there are two (2) types of barriers commonly recognized in international trade, namely:

- **Tariff Barriers.** Tariff barriers refer to trade restrictions imposed through customs duties (taxes) on products entering and crossing a country's border.
- **Non-Tariff Barriers (NTBs).** Non-tariff barriers are any governmental policies or national regulations designed to restrict international trade in forms other than tariffs. Examples include sanctions, quotas, embargoes, and other limitations. In this context, it can be said that the impediment to the entry of foreign products (imports) is not caused by the imposition of tariffs, but rather by prohibitions, policies, or other measures intended to obstruct a country's external trade transactions.

The Palm Oil Research Institute of Malaysia (PORIM) has identified a wide range of products that can be derived from palm oil, including paints, resins, crayons, candles, shortening, cocoa butter substitutes, and four types of bread fats. Palm oil derivatives may also be used in the production of soap, detergents, shampoos, margarine, cosmetic raw materials, vitamin A, vitamin E, and cooking oil.⁴⁰ Furthermore, the processes of hydrogenation and fractionation of olein—the liquid component of Crude Palm Oil (CPO) following separation—produce salad oil, baking fat, and cooking oil. Meanwhile, its glycerol content can be utilized to manufacture emulsifiers, food additives, and organic solvents. From its fatty acids, various products may be developed, such as soap, tin lubricants, inks, polishing agents, detergents, steel lubricants, cosmetics, and biodiesel. Looking ahead, oleochemicals (derivatives of palm oil) are expected to increasingly substitute petrochemicals (derivatives of petroleum), which implies that fuels for motor vehicles will no longer rely on gasoline or diesel derived from fossil petroleum, but rather from palm oil.⁴¹ Accordingly, it is reasonable that the global consumption of palm oil continues to increase while other vegetable oils are being displaced. The EUDR policy on palm oil is clearly discriminatory, as in every sector of vegetable oil production—regardless

⁴⁰ Telapak, 2000, *Menanam Bencana*, Telapak, Bogor.

⁴¹ *Ibid.*

of the type—land conversion is inevitably required, thereby entailing the potential for environmental degradation.

The critical question here is how one determines that a particular type of vegetable oil is more environmentally friendly than another. Other vegetable oil plantations are incapable of absorbing carbon emissions as effectively as oil palm plantations, given that shorter plants are inherently unable to maximize carbon absorption. Furthermore, it is a fact that alternative vegetable oils are less efficient for use when compared to palm oil.

On the basis of the grounds, rationale, and background underlying the adoption of the EUDR by the European Parliament, it may therefore be concluded that the enactment of the EUDR potentially constitutes a non-tariff barrier. This conclusion is reinforced by the protectionist character of the measure, which recommends a gradual phase-out of palm oil consumption while simultaneously promoting the use of rapeseed oil, sunflower oil, and other vegetable oils that, in reality, are neither more productive nor more environmentally sustainable than palm oil.

9. IMPACT OF THE EUDR ON PALM OIL COMMODITIES IN INDONESIA

As the world's largest producer of palm oil, the EUDR clearly has the potential to affect Indonesia's economy and may directly impact smallholder oil palm farmers. This is because the majority of Indonesian smallholders cultivate oil palm through monoculture practices, with palm oil often constituting the principal source of household income. Consequently, even a slight decrease in the price of Fresh Fruit Bunches (FFB) may directly reduce household income. Moreover, this would lead to oversupply, which in turn depresses prices and adversely affects Indonesia's trade balance, which has long been supported by palm oil exports.

The EUDR also fails to consider and disregards the rights of smallholder farmers whose livelihoods depend on oil palm cultivation. In Indonesia, approximately 16 million people rely on the palm oil sector, either directly or indirectly, with 41% of them being smallholders in rural areas. This decision further neglects the substantial efforts made by the Indonesian government and multi-stakeholders to balance development and environmental concerns. These efforts include the moratorium on palm oil plantation expansion,

collaborative schemes between government, private sector, and civil society for peatland restoration, the application of sustainable management practices in palm oil cultivation, and Indonesia's active role in implementing the Paris Agreement. The Paris Agreement is an international treaty on climate change mitigation, adaptation, and financing, aimed at limiting the global average temperature rise to well below 2°C above pre-industrial levels. Through the Agreement, countries are expected to reduce carbon dioxide and greenhouse gas emissions in order to mitigate global warming. Indonesia ratified the Paris Agreement through Law No. 16 of 2016 on the Ratification of the Paris Agreement to the United Nations Framework Convention on Climate Change.

The expansion of the palm oil industry has significantly contributed to poverty reduction, making it crucial to safeguard and enhance the value of palm oil as an essential component of Indonesia's poverty alleviation strategy. Supportive policies are therefore required to enable smallholders to compete with large-scale producers and gain access to the EU market, including through assistance in meeting the requirements under the EUDR.

According to data from the Ministry of Agriculture of the Republic of Indonesia, in 2018 there were 2.67 million households engaged in oil palm cultivation, managing approximately 5.8 million hectares of smallholder plantations, which contributed 34.51% to national palm oil production. The palm oil industry in Indonesia has played a pivotal role in strengthening the people's economy, as the participation of smallholder farmers—who generally come from economically disadvantaged backgrounds—has proven effective in alleviating poverty. Nevertheless, issues of deforestation and the impact of land clearing on indigenous communities remain major challenges for the industry. The expansion of smallholder plantations has often translated into the reduction of forested areas. This situation arises from the frequent ambiguity of forest boundaries, which are often perceived as unclaimed land, compounded by overlapping land governance regulations and inconsistencies in official forest mapping.

The EUDR, which imposes specific requirements for importing palm oil commodities into the European Union, is expected to have significant economic impacts on Indonesia, particularly affecting employment. The scale of Indonesia's palm oil industry has generated substantial employment opportunities for local communities, making the sector a major

contributor to labor absorption. Approximately 4.2 million Indonesians rely directly on the palm oil industry for their livelihoods. Smallholder farmers play a crucial role in the expansion of the industry, with nearly half of Indonesia's total palm oil plantations currently managed by small-scale farmers.

Mukhammad Faisol Amir, a researcher at the Center for Indonesian Policy Studies (CIPS), notes that smallholders currently produce 34.62% of Indonesia's palm oil and should be supported in transitioning toward sustainable agriculture. However, the implementation of the EUDR may hinder the export of palm oil produced by these smallholders. The regulation's traceability requirements present a significant challenge for small-scale farmers, who often lack the necessary capital and resources, and achieving compliance may take a prolonged period. Consequently, the EUDR may incentivize buyers in the EU to procure palm oil exclusively from large plantations and plasma farmers that meet full traceability standards, effectively excluding independent smallholders from the market.⁴²

Given the burdensome requirements imposed by the EUDR for exporting palm oil commodities to the European Union, the Indonesian palm oil industry is expected to reduce its workforce, and smallholder farmers may lose their livelihoods. It is not unlikely that the implementation of the EUDR could result in the gradual exclusion of smallholder farmers in the future. These farmers clearly face significant challenges in meeting the complex requirements, which demand substantial resources. Consequently, over time, smallholder farmers may be marginalized from both the domestic and international palm oil markets.

10. GOVERNMENT EFFORTS IN RESPONSE TO THE ISSUANCE OF THE EUDR

The Government of the Republic of Indonesia has undertaken various measures to preserve forest resources and promote sustainable palm oil production by issuing several regulations. One such measure is the mandatory implementation of the Indonesian Sustainable Palm Oil (ISPO) certification, as stipulated in Presidential Regulation No. 44 of 2020 on the Indonesian Sustainable Palm Oil Plantation Certification System (Perpres

⁴² Mukhammad Faisol Amir Peneliti Center for Indonesian Policy Studies (CIPS), 2023, *CIPS: Kebijakan EUDR Berpotensi Diskriminasi petani Sawit Kecil*, <https://www.antaranews.com/berita/3576999/cips-kebijakan-eudr-berpotensi-diskriminasi-petani-sawit-kecil>.

44/2020). This regulation aims to enhance the sustainability of production, strengthen the competitive advantage of Indonesia's palm oil industry, and contribute to the reduction of national greenhouse gas emissions. Smallholder farmers are required to comply with ISPO within a five-year period from the enactment of Perpres 44/2020, or by 2025.

To protect peatlands from the expansion of palm oil plantations, the Government of Indonesia issued Government Regulation (PP) No. 57 of 2016, which amends Government Regulation No. 71 of 2014 concerning the Protection and Management of Peatland Ecosystems. Furthermore, the Government issued Presidential Instruction (Inpres) No. 8 of 2018 on the Suspension and Evaluation of Palm Oil Plantation Licensing and the Improvement of Palm Oil Plantation Productivity. This regulation aims to ensure that smallholder palm oil plantations are managed under replanting programs, including the replanting of smallholder plots and the proper governance of their plantations.

Indonesia is committed to protecting its natural resources, particularly protected forests, through Government Regulation (PP) No. 23 of 2021 on Forestry Management. In addition, to safeguard flora and fauna, the Government enacted Government Regulation (PP) No. 7 of 1999 on the Conservation of Plant and Animal Species. These regulations are intended to mitigate or minimize the negative impacts of the palm oil industry, which is often perceived as contributing to deforestation and biodiversity loss, thereby ensuring that forest ecosystems and their flora and fauna are not disturbed. The Government has also promoted inclusive palm oil production practices by integrating palm oil with other plant species, particularly in smallholder monoculture plantations located within forest areas. This approach aims to transform single-stratum plantations into multi-strata systems, enhancing biodiversity within the plantation. Research indicates that incorporating additional plant species into monoculture palm oil plantations can also increase palm oil yields.

Air pollution in the palm oil industry primarily results from environmentally harmful land clearing practices. Frequently, palm oil companies resort to forest burning as a quick and cost-effective method for preparing land, rather than employing more environmentally friendly alternatives. Such practices could be avoided if all stakeholders maintained a strong commitment to environmental protection. As the regulatory authority, the Government should conduct monitoring and impose strict sanctions on forest burning, in accordance with

Article 78(3) of Law No. 41 of 1999 on Forestry. To date, many palm oil companies and smallholders have been negligent in enforcing regulations, focusing primarily on maximizing production and profit efficiency. For example, forest burning is often used for land clearing because it is faster, simpler, and cheaper, without regard for environmental considerations. In this context, strong governmental involvement is essential to ensure proper guidance, supervision, and management of the environmental impacts arising from palm oil plantation activities.

Despite the challenges, including the issuance of the EUDR by the European Union, the Government of Indonesia continues to strive to increase palm oil productivity, among other measures through the replanting program or Smallholder Palm Oil Rejuvenation (PSR). Dr. Gulat Manurung, Chairman of APKASINDO, stated that in the implementation of PSR, the greatest obstacle faced by smallholder farmers is the rejection of their certification applications. This is because the Ministry of Environment and Forestry of the Republic of Indonesia still classifies a significant portion of smallholder palm oil land as forest areas, whereas under the Job Creation Law (Undang-Undang Cipta Kerja), palm oil plantations established prior to 2020 may legally be recognized as plantation land⁴³, as follows:

Article 110A, Job Creation Law:

Any person conducting business activities that were established and have Business Licenses within forest areas prior to the enactment of this Law, and which have not yet fulfilled the requirements under forestry legislation, is obliged to complete such requirements no later than three (3) years from the effective date of this Law.

Accordingly, it is expected that the Government of Indonesia should pay close attention to, harmonize, and simplify all regulations and licensing related to smallholder palm oil plantations, while still ensuring supervision to prevent the misuse of any policies by irresponsible parties that could exacerbate deforestation.

⁴³ Ketua Umum APKASINDO, Dr. Gulat Manurung, 2023, *Buka Penas Petani Sawit, Menko Airlangga Berkomitmen PSR Terus Dilanjutkan*, <https://news.majalahhortus.com/buka-penas-petani-sawit-menko-airlangga-berkomitmen-psr-terus-dilanjutkan/>.

Should the EUDR take full effect, Indonesia risks losing its export consumers in the European Union, which could negatively impact demand for palm oil production. In response to this EU policy, the Government of Indonesia has threatened to report the EU to the WTO as a measure to protect national interests, particularly economic stability related to revenues from palm oil commodities. The government has also signaled potential retaliatory actions against EU products, such as Airbus aircraft. In parallel with diplomatic efforts and legal measures, the Government of Indonesia must continue to advance the Sustainable Development Goals (SDGs) and maintain open dialogue with all stakeholders concerning environmental sustainability. Demonstrating Indonesia's seriousness in addressing deforestation and environmental degradation is expected to be taken into consideration by the EU and the WTO when deliberating and deciding on imports of Indonesian palm oil. Furthermore, Indonesia continues to collaborate with other palm oil-producing countries to promote sustainable palm oil while simultaneously opposing the discriminatory measures imposed by the EU through the EUDR. The Government of Indonesia is also developing a digital platform, namely a National Dashboard, to strengthen the supply chain for smallholder agriculture and industries affected by the EUDR policy.

D. CONCLUSION

Based on the foregoing, it is evident that the enactment of the EUDR, particularly regarding the import requirements for palm oil commodities, can be classified as a form of non-tariff barrier (NTB) implemented by the European Parliament to protect domestic products from competition with palm oil. The EUDR can be considered a form of "green protectionism" or a "green barrier," namely an international trade barrier imposed by the European Union under the pretext of environmental protection, in this case addressing deforestation linked to the conversion of forest areas into oil palm plantations. Fundamentally, the primary motivation underlying the EUDR appears to be the protection of vegetable oil commodities produced within the EU, such as sunflower oil and canola oil. From the perspective of utility and efficiency, palm oil is far more efficient and superior compared to other types of vegetable oils. Consequently, this policy is highly

disadvantageous to Indonesia, as the country is the world's largest producer and supplier of palm oil to the European Union.

Palm oil is one of the key commodities contributing to Indonesia's economic growth and public welfare, driving development, and serving as a source of foreign exchange for the country. In fact, the Government of the Republic of Indonesia has implemented anticipatory measures to mitigate the adverse impacts of deforestation and forest degradation caused by land conversion, including mandatory sustainability certification for palm oil, namely the Indonesian Sustainable Palm Oil (ISPO) and the Roundtable on Sustainable Palm Oil (RSPO). However, the additional requirement for full traceability—from palm oil commodities to the end consumer product—demonstrating that the commodities do not originate from deforested land, imposes a significant burden on small- and medium-scale farmers (smallholder farmers). The requirements set forth in the EUDR may be difficult for small- and medium-scale palm oil industry actors to fulfill due to limited financial and other resources necessary to comply with the mandated procedures. It is not inconceivable that the EUDR could thus serve as a mechanism that threatens small- and medium-scale palm oil industries, potentially leading to their exclusion from the global palm oil market. Such outcomes would inevitably impact economic stability, increase unemployment rates, and potentially foster unfair business competition within the national palm oil industry.

Indonesia has an interest in developing its palm oil commodity industry; however, such development must be carried out with due consideration for productivity, environmental sustainability, and the maximization of positive economic impact—particularly for smallholder farmers—through the application of sustainability principles. In light of the enactment of the EUDR, the Government of Indonesia must play an active role in mitigating the negative impacts arising from its implementation, including the following measures:

- Undertake legal actions before the WTO, as certain provisions contained in the EUDR are discriminatory, imposing unfair rules or conditions on products from specific countries in violation of the Most-Favored-Nation (MFN) principle.
- In parallel with the aforementioned legal actions, the Government of Indonesia continues diplomatic engagement with the European Union, together with like-minded countries, aiming to seek solutions to the disagreements arising from the enactment of the EUDR.

- Enforce and monitor efforts to preserve forest resources and promote sustainable palm oil production, including the implementation of ISPO and RSPO, protection of forest areas—especially protected forests and their habitats—protection of peatlands from palm oil plantation expansion, as well as replanting and sustainable management of smallholder palm oil farms.
- Continuously improve productivity, given that the palm oil industry has proven to contribute to economic growth and poverty alleviation.
- Formulate policies that enable smallholder farmers to meet the requirements set forth in the EUDR so that they can compete and access the European Union market.
- Harmonize and simplify regulations to ensure smallholder farmers can obtain the certificates, documents, and requirements mandated under the EUDR. In addition, the government provides assistance, facilities, and outreach programs to support smallholders in fulfilling EUDR standards, thereby enabling their palm oil products to be exported to the EU.
- Promote positive advocacy regarding palm oil as a countermeasure to the negative campaigns frequently propagated by the European Union, by disseminating information that palm oil is the most efficient vegetable oil and is produced using environmentally friendly methods, among other advantages.

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