

**INDONESIA'S URGENCY IN ADOPTING GOVERNMENT
REGULATION CONCERNING SMALLHOLDER-ENTERPRISE
PARTNERSHIP**

***KEBUTUHAN MENDESAK INDONESIA DALAM MENGADOPSI
PERATURAN PEMERINTAH TENTANG KERJA SAMA ANTARA
PETANI KECIL DAN USAHA KECIL***

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ABSTRACT

This research aims to provide a solution for the Indonesian Crude Palm Oil Smallholders so that they can play on the same level playing field and may acquire international market access. Such urgency exists since a conflict of interest exists between the Indonesian Ministry of Industry and the Ministry of Agriculture in efforts to regulate the KBLI 10431 sector regarding the CPO palm oil industry. In aiming for this purpose, this research is implementing the normative method through the implementation of Indonesian regulations related to industries, agriculture, and trades. This method is also implemented by applying the rules of international trade law. The article herein consists of two discussions involving Indonesia's domestic regulations and Indonesia's compliance with the World Trade Organization. The first discussion explains Indonesia's necessity to adopt regulations that accommodate the interests of the ministries of industry, agriculture, and trade. The second discussion explains Indonesia's urgency to adopt the government regulation therein due to the urgency in responding to unilateral environmental acts imposed by developed countries. From these discussions, this article recommends that the Indonesian government adopt a government regulation that may reconcile the conflicting interests within its executive branches. The article herein also stresses the urgency of adopting such a regulation to minimize Indonesia's climate litigation in the WTO Dispute Settlement Body.

Keywords : Crude Palm Oil, Smallholders, Non-Plantation PKS, World Trade Organization, Market Access.

ABSTRAK

Penelitian ini bertujuan untuk memberikan solusi bagi petani kecil kelapa sawit Indonesia agar dapat bermain di level yang sama dan dapat memperoleh akses pasar internasional. Urgensi tersebut muncul karena adanya benturan kepentingan antara Kementerian Perindustrian dan Kementerian Pertanian dalam upaya pengaturan sektor KBLI 10431 terkait industri kelapa sawit. Untuk mencapai tujuan tersebut, penelitian ini menggunakan metode normatif melalui penerapan peraturan perundang-undangan di Indonesia yang terkait dengan industri, pertanian, dan perdagangan. Metode ini juga diterapkan dengan menerapkan aturan hukum perdagangan internasional. Artikel ini terdiri dari dua pembahasan yang melibatkan peraturan domestik Indonesia dan kepatuhan Indonesia terhadap Organisasi Perdagangan Dunia. Pembahasan pertama menjelaskan perlunya Indonesia mengadopsi peraturan yang mengakomodasi kepentingan kementerian perindustrian, pertanian, dan perdagangan. Pembahasan kedua menjelaskan urgensi Indonesia untuk mengadopsi peraturan pemerintah di dalamnya karena urgensi dalam menanggapi tindakan lingkungan sepihak yang diberlakukan oleh negara-negara maju. Dari pembahasan tersebut, artikel ini merekomendasikan agar pemerintah Indonesia mengadopsi peraturan pemerintah yang dapat mendamaikan benturan kepentingan dalam cabang eksekutifnya. Artikel ini juga menekankan urgensi mengadopsi regulasi semacam itu untuk meminimalkan litigasi iklim Indonesia di Badan Penyelesaian Sengketa WTO.

Kata Kunci : Minyak Sawit Mentah, Petani Kecil, Kelapa Sawit Non-Perkebunan, Organisasi Perdagangan Dunia, Akses Pasar.

I. INTRODUCTION

Smallholder palm oil producers are inferior actors that require protection under Indonesian law. This protection is necessary to play on the same level playing field as palm oil enterprises. Indonesia currently protects its smallholder producers under Law Number 20 the Year 2008 concerning Micro, Small, and Medium Enterprises (MSMEs Law).¹ This regulation was updated by the Government Regulation on the Lieu of Law Number 2 Year 2022 concerning Job Creation (Job Creation Law).² Article 7 paragraph (1) of this Law emphasizes that the Government fosters business advertising by establishing laws and policies. This includes a partnership between

¹ Irfan Ridwan Maksum, Amy Yayuk Sri Rahayu, and Dhian Kusumawardhani, "A Social Enterprise Approach to Empowering Micro, Small and Medium Enterprises (SMEs) in Indonesia," *Journal of Open Innovation: Technology, Market, and Complexity* 6, no. 3 (September 2020): 50, <https://doi.org/10.3390/joitmc6030050>.

² Abdul Kadir Jaelani, Resti Dian Luthviati, and Reza Octavia, "Indonesia's Omnibus Law on Job Creation: Legal Strengthening Digitalization of Micro, Small and Medium Enterprises," *Relações Internacionais No Mundo Atual* 3, no. 41 (June 2023): 41, <https://doi.org/10.21902/Revrma.v3i41.5833>.

enterprises and smallholders. Those regulations obligate palm oil enterprises (Pengusaha Kelapa Sawit, “PKS”) to cooperate with the smallholders.

However, the complexity of these Indonesian regulations and the conflict of interest have become obstacles for non-plantation PKS to cooperate with smallholders.³ Such a constraint occurred with the PKS, which can be seen from the impairment of their rights to obtain a business permit. The partnership mechanisms between this PKS, therefore in fact can help this PKS in operating their business on one side. On the other hand, it may also help the palm oil smallholders.⁴

The regulatory constraint is caused by the conflict of interest between the Indonesian Ministry of Industry (MOI) and the Indonesian Ministry of Agriculture (MOA). This occurs because palm oil commodities under KBLI 10431 can be qualified as industrial products as well as agricultural products. Such a qualification is caused by the production process of the palm oil commodities. This conflict of authority not only harms the smallholders’ rights to run businesses, but it also harms the non-plantation PKS. Furthermore, the conflict may also harm the non-plantation PKS’s rights to play in the multilateral trade system. Lastly, this regulatory issue prevented Indonesia from adopting proper trade-related regulations concerning Process Production Methods (PPMs).

This issue has a higher threat due to the collision between the trade and environmental rules. The World Trade Organization (WTO) law and the multilateral environmental agreements (MEAs) are subjects that shall not be taken for granted by Indonesia.⁵ This is due to the implementation of a unilateral act with an extraterritorial dimension formulated under MEAs.⁶ Furthermore, such measures also oblige the producing state to provide optimal protection for its smallholders. This is because smallholders are part of the global supply chain.⁷ Although such an act may help a state in reducing its anthropogenic Greenhouse Gas emissions, such creativity may impair the transboundary movement of goods.⁸ The WTO Dispute Settlement Body (DSB) can be perceived as a climate litigation forum in challenging this unilateral

³ Elizabeth Oliphant and Adam C. Simon, “The Cost of Sustainable Palm Oil: Should an Indonesian Smallholder Pursue RSPO-Certification?,” *World Development Perspectives* 26 (June 2022): 100432, <https://doi.org/10.1016/j.wdp.2022.100432>.

⁴ Asri Elies Alamanda et al., “Perjanjian Pola Kemitraan Dalam Pelaksanaan Peremajaan Tanaman Kelapa Sawit,” *Jurnal Hukum Mimbar Justitia* 9, no. 2 (December 2023): 2, <https://doi.org/10.35194/jhmj.v9i2.3663>.

⁵ Daniela M. Carranza et al., “Socio-Environmental Conflicts: An Underestimated Threat to Biodiversity Conservation in Chile,” *Environmental Science & Policy* 110 (August 2020): 46–59, <https://doi.org/10.1016/j.envsci.2020.04.006>.

⁶ Giulia Claudia Leonelli, “Environmental Unilateralism and the Chapeau of Article XX GATT: The ‘Line of Equilibrium’ and the Question of ‘Differently Situated’ Countries,” *Journal of World Trade* 57, no. 5 (October 2023), <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\TRAD\TRAD2023030.pdf>.

⁷ *EU Deforestation Regulation: An Opportunity for Smallholders - Team Europe Initiative on Deforestation-Free Value Chains*, Library, December 1, 2023, <https://zerodeforestationhub.eu/eu-deforestation-regulation-an-opportunity-for-smallholders/>.

⁸ Leona, “International Trade and the Environment: An Outright Concern of the WTO,” *International Journal of Law Management & Humanities* Vol. 6, No. 1 (2023): 330.

act for the sake of market access. Nevertheless, such a legal remedy is not the best means to secure market access.⁹

The explanations above reflect how the Indonesian regulatory constraints in the palm oil sector might impair the producers' market access in the territory of other WTO members. A gaping hole, therefore, exists in the form of the failure of Indonesian national law in protecting its enterprises and smallholders. Furthermore, it can be seen that the Job Creation Regime has not fully accommodated the interests of the palm oil sector actors to obtain their market overseas. To solve this research gap, the discussion of this research is conducted based on the following previous research.

The first previous research is an article titled "Economic Risk Characteristics of an Indonesian Palm Oil Value Chain and Identifying Sources of Uncertainty in Policy Making" by Falatehan dan Setiawan. This previous research discusses how the Indonesian government should regulate the palm oil sector. This is due to the high domestic and international demands for the products produced from this commodity.¹⁰ Both this article and this previous research discuss the role of smallholder farmers in the supply chain. However, this previous research does not present how the domestic market obligations and the export demand shall be reconciled.¹¹ This article, therefore, complements this first previous research by answering how the palm oil smallholders' regulations may enhance their position in the international market. Furthermore, this article also reconciles the domestic obligation and the export demand.

The second previous research is an article titled "The Effect of Increasing Cooking Oil Prices and Material Export Prohibition Cooking Oil Standard on National Food Security" by Agastya, Widodo, and Laksmono. This research recommended that the government not impose the export restriction policy due to its distortive nature.¹² This article recommends that the Indonesian government adopt measures concerning the palm oil production process. Furthermore, it not only describes the current applicable regulations related to the palm oil sector.¹³ Yet it also describes the existing constraints and how the related ministries may integrate themselves in solving such issues.

⁹ Henok Asmelash, "The WTO Dispute Settlement System as a Forum for Climate Litigation?," *Review of European, Comparative & International Environmental Law* 32, no. 2 (2023): 321–33, <https://doi.org/10.1111/reel.12490>.

¹⁰ A. Faroby Falatehan and Budi Indra Setiawan, "Economic Risk Characteristics of an Indonesian Palm Oil Value Chain and Identifying Sources of Uncertainty in Policy Making," in *Supply Chain Resilience: Reducing Vulnerability to Economic Shocks, Financial Crises, and Natural Disasters*, ed. Venkatachalam Anbumozhi, Fukunari Kimura, and Shandre Mugan Thangavelu (Singapore: Springer, 2020), 109–37, https://doi.org/10.1007/978-981-15-2870-5_5.

¹¹ Falatehan and Setiawan.

¹² Rozy A. Pratama and Tri Widodo, "The Impact of Nontariff Trade Policy of European Union Crude Palm Oil Import on Indonesia, Malaysia, and the Rest of the World Economy: An Analysis in GTAP Framework," *Jurnal Ekonomi Indonesia* 9, no. 1 (April 2020): 1, <https://doi.org/10.52813/jei.v9i1.28>.

¹³ Rejang Musi Agastya A. S. W, Pujo Widodo, and Rudy Laksmono, "The Effect of Increasing Cooking Oil Prices and Material Export Prohibition Policy Cooking Oil Standard on National Food Security," *East Asian Journal of Multidisciplinary Research* 2, no. 1 (February 2023): 1, <https://doi.org/10.55927/eajmr.v2i1.2778>.

The third research implemented in this article, titled “The Impact of Nontariff Trade Policy of European Union Crude Palm Oil Import on Indonesia, Malaysia, and the Rest of the World Economy: An Analysis in GTAP Framework” by Pratama and Widodo. This article explains how the European Union's (EU) unilateral acts concerning environmental protection, human rights, and the recognition of indigenous people and smallholders affect Indonesia's palm oil market access to other WTO members.¹⁴ This previous research presents the protection imposed by the EU on Indonesian palm oil products. However, it does not present how the adverse effect of EU policy shall be responded to through the WTO rules.¹⁵ Since this research does not glorify climate litigation strategies, this article complements it by explaining how Indonesia shall re-regulate its measures concerning palm oil. This article presents such a proposal to enhance its level playing field according to the relevant WTO rules.

The previous studies above emphasized how international trade has a causal link with the palm oil sector. Furthermore, those studies also describe how inferior actors shall be taken into account in the policy-making of this sector. However, none of those three studies suggests that the adoption of a government regulation is relevant to solving the conflicts within this sector. Those conflicts consist of the collision between the MOI and MOA authorities, and the conflict between enterprises and smallholders. The suggestion offered by this article shall therefore be perceived as its novel feature.

It is important to note that Indonesia is the biggest palm oil producer, with most of Indonesia's palm oil production coming from smallholders. From the three previous research studies above, this article seeks to discuss how Indonesia shall restructure its domestic regulations concerning the palm oil sector. Such reconstruction shall be conducted through the adoption of a government regulation that may reconcile the conflicting ministry regulations. Such reconciliation may also play itself as a solution to the economic aspects of palm oil. Furthermore, it also seeks to discuss how those government regulations may enhance Indonesia's position in the multilateral trade system. Those two issues are solved through this article by implementing the research method as explained below.

II. METHOD

This article is written through the implementation of normative research. The following method is conducted by implementing the prevailing Indonesian law and international law concerning trade and the environment. Furthermore, this normative research is supported by the statutory, case, comparative, and conceptual approaches.

Those approaches are explained in this paragraph. The statutory approach is conducted by implementing the Job Creation Law, MSMEs Law, and their implementing ministerial regulations. Furthermore, this research implements a case approach by adopting the WTO panel and Appellate Body reports on environmental disputes. Those cases consist of the United States – Tuna I, United States – Gasoline, and the United States – Shrimp. The

¹⁴ Pratama and Widodo, “The Impact of Nontariff Trade Policy of European Union Crude Palm Oil Import on Indonesia, Malaysia, and the Rest of the World Economy.”

¹⁵ Pratama and Widodo.

comparative approach is implemented by gathering deforestation regulations imposed by the European Union, the United States, and the United Kingdom. Finally, this article is also supported by a conceptual approach by implementing the Open Texture Theory by Hart, the Social Engineering by Pound, and doctrines related to palm oil industries, international trade, and environmental protection.

This research is also supported by the following analysis method and legal sources. The first applicable analysis method is the systematic interpretation conducted through the implementation of statutes, treaties, and cases based on expert commentaries. Meanwhile, the second analysis method is conducted by concisely presenting the comparisons between those due diligence obligations. This comparison is conducted to present how Indonesia can enhance its palm oil regulations. The primary legal sources gathered while writing this article are the Job Creation Law, the MSMEs Law, the WTO Agreement, the Paris Agreement, and their related case laws. Those primary sources are supported by journal articles and books explaining how those provisions are applicable or relevant in answering the research gap.

III. ANALYSIS AND DISCUSSION

a. Indonesia's Urgency to adopt a Government Regulation concerning PKS-Smallholder Partnership

1. The Palm Oil Sector and Its Importance in Indonesia's Economic Development

The Conflict of Interest between the MOA and the MOI regarding the authority to regulate CPO production is related to this business sector.¹⁶ They contested whether CPO is part of the agricultural sector or the industrial sector. This conflict can be illustrated through the open texture theory by Hart. This theory illustrates how human limitations in foreseeing the future trigger the conflict of interest. The following sub-section implements Hart's theory above in this discussion.

In explaining Hart's doctrine, Zeifert expresses that humans have limited capabilities in foreseeing the future. This is relevant especially when it comes to formulating legislation.¹⁷ In line with this, Escher stated that such a limitation has caused the existence of a legislative product that may not accommodate the upcoming period.¹⁸ In elaborating on this Theory, Radi stated that this practice triggers the conflict of interests between parties. This conflict is caused by the collision of two different legal regimes.¹⁹ The

¹⁶ Twotik Lestaringtyas and Muhammad Roqib, "Perlindungan Data Pribadi Pengguna Sistem Layanan Perizinan Berusaha Terintegrasi Secara Elektronik Oss 1.1 Dan Oss Rba (Risk Basic Approach)," *Jurnal Jendela Hukum* 8, no. 2 (September 2021): 25–34, <https://doi.org/10.24929/fh.v8i2.1576>.

¹⁷ Mateusz Zeifert, "Rethinking Hart: From Open Texture to Prototype Theory—Analytic Philosophy Meets Cognitive Linguistics," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 35, no. 2 (April 2022): 409–30, <https://doi.org/10.1007/s11196-020-09722-9>.

¹⁸ Ana Escher, "The Concept of Open Texture in 'The Concept of Law,'" SSRN Scholarly Paper no. 4530348, Rochester, NY, August 3, 2023, <https://doi.org/10.2139/ssrn.4530348>.

¹⁹ Isabella Seif, "Business and Human Rights in International Investment Law: Empirical Evidence," in *Handbook of International Investment Law and Policy*, ed. Julien

illustrations, as elaborated by Radi herein, are applicable not only in the practice of international law but also in the practice of domestic law. Under this doctrine, it is necessary to explain the issue that arose due to the implementation of the partnership mechanism. This article perceives that this phenomenon shall be solved through the enhancement of Indonesia's regulatory discipline.

Such enhancement is necessary since the palm oil industry is one of the pillars of the Indonesian economy that contributes to exports, employment, and improving community welfare. Darmawan and Ahmadi perceive palm oil as a hope for many independent farmers to improve their welfare.²⁰ This triggers investors to invest in plantations and palm oil processing plants. Such competition exists due to the increasing global demand for sustainable palm oil production. Such demand requires an effective strategy focusing on environmental, economic, and social factors.²¹ Furthermore, palm oil plays a vital role in the national economy and offers opportunities to improve the welfare of independent farmers. This illustration is relevant in Kalimantan and Sumatra, as the largest palm oil-producing islands in Indonesia.²²

Irmayani classifies Indonesia's palm oil smallholders into two groups. The first group is the plasma farmers partnering with corporations. Meanwhile, the second group is independent farmers who carry out palm oil cultivation efforts independently without PKS involvement.²³ These two types have been established since most people believe that the presence of PKS can improve the welfare of the smallholders and the local communities. Such improvement can be achieved through the partnership mechanism, or what is known as plasma farming.²⁴ On the other hand, some people choose to plant and manage oil palm trees independently in their plantations. This approach was taken so that their palm oil can be managed. The plantation production output is then sold to palm oil companies to social conflict.²⁵

Chaisse, Leïla Choukroune, and Sufian Jusoh (Singapore: Springer, 2021), 1759–82, https://doi.org/10.1007/978-981-13-3615-7_26.

²⁰ Arif Darmawan and Dwi Ahmadi, “Development of an Environmental Insurance Program Based on Islamic Values in the Palm Oil Industry in Indonesia for Community Welfare,” *ILTIZAM Journal of Shariah Economics Research* 6, no. 2 (December 2022): 2, <https://doi.org/10.30631/iltizam.v6i2.1385>.

²¹ Almasdi Syahza and Brilliant Asmit, “Development of Palm Oil Sector and Future Challenge in Riau Province, Indonesia,” *Journal of Science and Technology Policy Management* 11, no. 2 (January 2020): 149–70, <https://doi.org/10.1108/JSTPM-07-2018-0073>.

²² Nadjia Mehraban et al., “Oil Palm Cultivation, Household Welfare, and Exposure to Economic Risk in the Indonesian Small Farm Sector,” *Journal of Agricultural Economics* 72, no. 3 (2021): 901–15, <https://doi.org/10.1111/1477-9552.12433>.

²³ Irmayani et al., “Comparative Income of Independent Farmers and Plasma Farmers in Oil Palm Farming in Rural Areas, Central Mamuju District,” *Jurnal Agribisnis Perikanan* 16, no. 2 (October 2023): 2.

²⁴ Irmayani et al.

²⁵ Rofikoh Rokhim et al., “Palm Oil Social Conflict Resolution and Mediation in Jambi,” *Cogent Social Sciences* 6, no. 1 (January 2020): 1812831, <https://doi.org/10.1080/23311886.2020.1812831>.

2. The Palm Oil Partnership Mechanism and Its Issues: The Unfair Practice by Palm Oil Enterprises

Historically, the palm oil partnership mechanism was recognized from 1982 until 2010 (before the MSMEs Law was even adopted). This was recorded that at least 1.5 million hectares of oil palm land were managed with a partnership system between farmers and companies. According to data from the Indonesian Palm Oil Farmers Association (APKASINDO), it is known that the total area of Indonesian oil palm plantations is 16.38 million hectares, of which oil palm farmers manage 42% or 6.87 million hectares.²⁶ Of the 6.87 million hectares, it is known that farmers who carry out plasma partnerships are only 7% or 480,900 hectares. Meanwhile, the remaining 93% or 6.39 million hectares are independent farmer groups.²⁷

However, by referring to the previous research by Aisyah, Irham, and Mulyo, this palm oil partnership mechanism sharply decreased. The data recorded in 2023 indicates that only 480 thousand hectares of land were currently used in a partnership between the PKS and the smallholders.²⁸ Furthermore, research by Watts explained that the partnership agreement between PKS and smallholder discontinuities has been the major cause of such a declining trend. Such termination is caused by the breach of contract in giving the benefit to smallholders by the non-plantation PKS. Those breaches caused them to be unable to enjoy the benefit that is supposed to be earned through this partnership agreement.²⁹ In practice, it can be seen that the profit-sharing scheme is far from its expected outcome.

This issue is caused by the large amounts of costs that significantly undercut the smallholder's profits. Furthermore, Irawan stated that the lack of transparency has caused ambiguity concerning the benefits of those smallholders.³⁰ In this case, PKS lacks accountability due to an absence of conformity with the related regulation. Lastly, and by referring to Siregar and Handayani's opinion, the excessive cuts in exploitation costs cause a lack of information for farmers. Such uncertainties caused farmers to be unable to make the right decisions in managing their plantations. This affects their income and their financial stability.³¹ The failure to achieve the expectation

²⁶ Gulat Manurung and Rino Afrino, "Apkansindo's Response and Recommendations Regarding the Crisis Between Conventional Palm Oil Mills and Palm Oil Mills Without Plantations and Loose Palm Oil Mills and Its Relation to Palm Oil Farmers," Letter of the Palm Oil Farmers Association (APKASINDO) No. 08/DPP-APKS/IV/2024," Press Article, April 5, 2024.

²⁷ Gulat Manurung, Rino Afrino.

²⁸ D. D. Aisyah, Irham, and J. H. Mulyo, "Understanding the Palm Oil Smallholders Characteristics and Their Compliance towards the Indonesian Sustainable Palm Oil (ISPO): A Case Study in North Sumatera, Indonesia," *IOP Conference Series: Earth and Environmental Science* 637, no. 1 (January 2021): 012041, <https://doi.org/10.1088/1755-1315/637/1/012041>.

²⁹ John D. Watts et al., "Challenges Faced by Smallholders in Achieving Sustainable Palm Oil Certification in Indonesia," *World Development* 146 (October 2021): 105565, <https://doi.org/10.1016/j.worlddev.2021.105565>.

³⁰ Norbertus Citra Irawan et al., "Analisis Gaps Strategi Peningkatan Produktivitas Kerja Buruh Perkebunan Kelapa Sawit Dengan Petani Dan Perusahaan Mitra Dalam Kemitraan Inti Plasma," *Jurnal Agronomika* 22, no. 02 (August 2024): 02.

³¹ Ahmad Faisal Siregar and Leni Handayani, "Analisis Komparasi Tingkat Pendapatan Usahatani Karet Rakyat Dengan Usahatani Kelapa Sawit Rakyat (Studi Kasus : Desa Pasar

that shall be fulfilled under the partnership mechanism. This mechanism will trigger the smallholders to stand on their own feet.

The large number of smallholders who switched to independent farmers caused the number of independent farmers has increase significantly, reaching 93% in 2023. This triggers PKS that have core and plasma plantations (Conventional PKS) to potentially distort the trade in purchasing Fresh Fruit Bunches (FFB). Such distortion is conducted through arbitrary price determination. These monopolistic practices may impair the rights of smallholders.³² Furthermore, this practice may violate the principle of compliance with the fresh fruit bunch trade system. This principle obliges the palm oil trade to be managed fairly, transparently, and competitively to increase value added.³³ This violation of the fair trading system occurred because the purchase price of FFB by Conventional PKS was not based on the special price. This price determination was issued by each Regional Plantation Service (also known as “Disbun”) in 22 Palm Oil Provinces in Indonesia.³⁴ This fact is further supported by data from APKANSINDO, which states that since 2021, not a single Conventional PKS has complied with the Disbun's FFB price determination.³⁵

As a result, the FFB produced by independent smallholders will be impaired because Conventional PKS that have Core-Plasma only focus on their Core-Plasma FFB according to their production capacity.³⁶ In addition, the price of Conventional PKS for smallholder farmers' FFB is purchased at a lower price than the purchase price of Plasma FFB.³⁷ This problem should actually trigger non-plantation PKS to accommodate independent farmers to be able to sell their FFB according to the prevailing market price. This issue shall also be seen as a motor for non-plantation PSK to ensure their smallholders play in the multilateral playing field.³⁸ This condition is indeed a dead weight loss for the non-plantation PKS and the smallholders. Therefore, both parties shall cooperate to accommodate FFB harvests so that they can continue to be produced. From the discussion above, this article perceives the partnership mechanism as the best solution for enhancing the welfare of both PKS and the smallholders. Nevertheless, this issue is not yet solved due to the lack of compliance and the lack of regulatory discipline.

Sayur Matinggi Kecamatan Dolok Sigompulon Kabupaten Padang Lawas Utara),” *AGRISENTRUM* 1, no. 2 (October 2023): 2.

³² Asosiasi Petani Kelapa Sawit Indonesia, “Surat Nomor 08/DPP-APKS/IV/2024: Tanggapan Dan Rekomendasi APKASINDO Terhadap Kisruh Saling Sikutnya PKS Konvensional Dengan PKS Tanpa Kebun Dan PKS Brondolan Dan Hubungannya Kepada Petani Sawit,” Open Letter, Asosiasi Petani Kelapa Sawit Indonesia, April 5, 2024, <https://dpp-apkasindo.com/>.

³³ Asosiasi Petani Kelapa Sawit Indonesia.

³⁴ Asosiasi Petani Kelapa Sawit Indonesia.

³⁵ Asosiasi Petani Kelapa Sawit Indonesia.

³⁶ Asosiasi Petani Kelapa Sawit Indonesia.

³⁷ Gulat Manurung, Rino Afrino, “APKANSINDO’s Response and Recommendations Regarding the Crisis Between Conventional Palm Oil Mills and Palm Oil Mills Without Plantations and Loose Palm Oil Mills and Its Relation to Palm Oil Farmers,” Letter of the Palm Oil Farmers Association (APKASINDO) No. 08/DPP-APKS/IV/2024,” April 5, 2024.

³⁸ Gulat Manurung, Rino Afrino.

3. The MOA-MOI Conflict of Authorities: The Overlapping Authorities and A Way Forward

The conflict of interests caused by the limited authorities on each of the related ministries (MOA and MOI) is explained in the following paragraphs. In exercising its regulations, the MOA promulgates the MOA Regulation Number 98/PERMENTAN/OT/140/9/2013 concerning Guidelines for Plantation Business Licensing. This regulation constitutes the business licensing of the business entities consisting of PKS with plantation (also known as the Conventional PKS), PKS without plantation, plasma farmers (palm oil smallholders), and palm oil farmers' partners having land for sustainable processing.³⁹

This regulation was then amended by the MOA Regulation Number 21/PERMENTAN/KB.410/2017, which regulates further concerning the PKS without the plantation through the Sustainable Management Partnership Mechanism. Article 11A paragraph (1) of this consolidated MOA Regulation states that plantations that are managed independently can be obtained from the ownership rights to the Planter's land, the right to cultivate, and/or the right to use.⁴⁰ This article opens up opportunities for non-plantation PKS to manage their core plantations by collaborating with farmers or cooperatives that have their own plantations. Article 11B paragraph (1) furthermore stated that plantations obtained from the ownership rights of the Planter's land can be carried out by rent or according to an agreement between the Planter and the Plantation processing industry company.⁴¹ The provisions above clearly fit the for both the non-plantation PKS and their smallholders.

These provisions, as explained above, constitute the business license having a nexus with the non-plantation PKS rights to operate its business. This right shall be exercised along with the smallholder's rights to be involved in this partnership mechanism. Regardless of those provisions, a breach of contract often occurs in practice since this partnership mechanism involves a large amount of capital. In practice, the validity of this regulation was then rejected. Furthermore, this regulation is also disputed by Conventional PKS through peer pressure on the non-plantation PKS. This is due to the ideal principle that palm oil factories should have their core plantation purchased by PKS and managed by themselves.⁴²

³⁹ Minister of Agriculture Regulation Number 21/PERMENTAN/KB.410/6/2017 Year 2017 Concerning the Second Amendment on the Minister of Agriculture Regulation Number 98/PERMENTAN/OT.140/9/2013 Concerning the Licensing Guideline for Plantation Business, Pub. L. No. 796, 21 Minister of Agriculture Regulation (2017).

⁴⁰ Minister of Agriculture Regulation Number 21/PERMENTAN/KB.410/6/2017 Year 2017 Concerning the Second Amendment on the Minister of Agriculture Regulation Number 98/PERMENTAN/OT.140/9/2013 Concerning the Licensing Guideline for Plantation Business.

⁴¹ Minister of Agriculture Regulation Number 21/PERMENTAN/KB.410/6/2017 Year 2017 Concerning the Second Amendment on the Minister of Agriculture Regulation Number 98/PERMENTAN/OT.140/9/2013 Concerning the Licensing Guideline for Plantation Business.

⁴² Muhammad Topan and Ifrani Ifrani, "Peran Koperasi Pada Program Kemitraan Inti Plasma Perkebunan Kelapa Sawit Untuk Meningkatkan taraf Hidup Masyarakat," *Al-Adl: Jurnal Hukum* 12, no. 2 (January 2021): 2, <https://doi.org/10.31602/al-adl.v12i2.4145>.

In principle, the complaints or the challenge by the Conventional PKS are caused by the arrangement of the digital-based permit management under the Investment Coordination Board (BKPM) since June 3, 2021.⁴³ This licensing arrangement is prominently known as the Online Single Submission (OSS). This system has a purpose to achieve the ease of doing business for every enterprise investing within Indonesia's jurisdiction.⁴⁴ The presence of OSS also has an impact on the licensing sector for Conventional PKS and PKS without plantations. This is because of the Indonesian Standard Classification of Business Fields (KBLI), which is specifically for Palm Oil Processing Factories with KBLI 10431, then for Palm Oil Plantations with KBLI 01262.⁴⁵ The KBLI, as presented herein, is the basis of Conventional PKS and non-plantation PKS to operate their business according to the MOA regulations above.

Since the implementation of the Risk-Based Approach OSS (RBA-OSS) in 2022, there have been various changes. Those changes relate to the authority of the investment sectors and the level of risk according to the capital size and scope of the business sector. Debates then occurred between the MOA and the MOI as the organizers of KBLI 10431 concerning Crude Palm Oil (Palm Oil Mill). This dualism is caused by the conflicting authorities between the MOA, MOI, and BKPM, which has made this business sector problematic.

These overlapping authorities have a complex nature as explained herein. The MOI stated that the Palm Oil Mill is an industrial sector. This is stated under the reasoning that palm oil downstream products are industrial products. Meanwhile, the MOA stated that KBLI 10431 shall be under its authority. This is addressed since the establishment of a palm oil mill as an upstream activity, which falls under the agricultural sector. This caused the MOA to perceive the palm oil factory and the plantation as an activity managed under its authority.

For this reason, the Coordinating Ministry for Economic Affairs of the Republic of Indonesia (The Economic Menko) held a meeting involving both ministries on February 24, 2022.⁴⁶ This meeting discussed the settlement of the KBLI 10431 concerning the Crude Palm Oil Industry. The coordinative meeting was then concluded with an agreement stating that this sector shall be managed by the MOI.⁴⁷ The existence of this agreement is a reference for regional governments in issuing business permits for the palm oil industry. This agreement also plays a role as the basis for business actors to manage their operational permits for palm oil mills. The following provision is basically transitional and it was applicable until the management of business permits is fully operated by the MOI.⁴⁸

⁴³ "OSS - Sistem Perizinan Berusaha Terintegrasi Secara Elektronik," accessed August 13, 2024, <https://oss.go.id/>.

⁴⁴ "OSS - Sistem Perizinan Berusaha Terintegrasi Secara Elektronik."

⁴⁵ "OSS - Sistem Perizinan Berusaha Terintegrasi Secara Elektronik."

⁴⁶ Kementerian Koordinator Bidang Perekonomian Republik Indonesia, "Surat Keputusan Menteri Koordinator Bidang Perekonomian Republik Indonesia Nomor PI.06.01/101/SES.M.EKON/04/2024," personal communication, April 18, 2024.

⁴⁷ Kementerian Koordinator Bidang Perekonomian Republik Indonesia.

⁴⁸ Kementerian Koordinator Bidang Perekonomian Republik Indonesia.

The agreement between those ministries was then strengthened by the MOA with the issuance of Circular Letter Number: 245/Kb.410/E/03/2024 concerning Risk-Based Business Licensing Monitoring KBLI 10431 concerning the Crude Palm Oil Industry. This circular letter plays a role as guidance for the regional governments to conduct inspections and grant business licenses. However, on April 18, 2024, the Economic Menko issued The Letter Number: PI.06.01/101/SES.M.EKON/04/2024 concerning the Settlement of 28 Intersecting KBLIs, which also covers KBLI 10431.⁴⁹ This letter classifies the palm oil sector as an activity mainly regulated by the MOI, while the MOA shall only support the MOI in exercising its authority.⁵⁰

The issuance of this letter has backfired on business actors who are carrying out the permit management process and are still using a basis for managing KBLI 10431 in the agricultural sector.⁵¹ As a result, there has been a shift in the management of permits from the previous final product of the business permit to a standard certificate. This regulatory issue has become an obstacle to the operations of partnership agreements between non-plantation PKS and smallholders.⁵² The MOA-MOI conflict occurs due to the complex and complicated nature of palm oil production processes. In addition, this conflict of interest is caused by the ego-sectoral nature, which can be seen from both the MOA and MOI standing positions.

4. Law as a Tool of Social Engineering: The Adoption of Government Regulations as a Way of Balancing Conflict of Interests

This conflict harms the rights of non-plantation PKS and smallholders to run their businesses to meet Indonesia's domestic needs. The Government of Indonesia shall respond to this issue through the adoption of government regulations concerning palm oil production and smallholder protection. By adopting this government regulation, the related ministries may solve their conflict by complying with a single regulation. This issue is basically inseparable from the export of palm oil products to enhance cooperation with developed countries.⁵³ This article, therefore, perceives this issue as also related to Indonesia's market access to other WTO members. In line with the social engineering by Pound,⁵⁴ the existence of this higher regulation will reconcile this conflicting authority.

⁴⁹ Kementerian Koordinator Bidang Perekonomian Republik Indonesia.

⁵⁰ Kementerian Koordinator Bidang Perekonomian Republik Indonesia.

⁵¹ Asosiasi Petani Kelapa Sawit Indonesia, "Surat Nomor 08/DPP-APKS/IV/2024: Tanggapan Dan Rekomendasi APKASINDO Terhadap Kisruh Saling Sikutnya PKS Konvensional Dengan PKS Tanpa Kebun Dan PKS Brondolan Dan Hubungannya Kepada Petani Sawit."

⁵² Oshaba Gabriel Itodo, "H.L.A Hart on Legal Positivism: Implications for Contemporary Nigerian Legal," *Journal of International Relations Security and Economic Studies* 1, no. 1 (April 2021): 1.

⁵³ Pratama and Widodo, "The Impact of Nontariff Trade Policy of European Union Crude Palm Oil Import on Indonesia, Malaysia, and the Rest of the World Economy."

⁵⁴ Sai Abhipsa Gochhayat, "'Social Engineering by Roscoe Pound': Issues in Legal and Political Philosophy," SSRN Scholarly Paper no. 1742165, Rochester, NY, November 15, 2010, <https://doi.org/10.2139/ssrn.1742165>.

Pound states that the law has a role in balancing the conflict of interests that arise in society.⁵⁵ In expressing its social engineering theory, Pound divided interests within society into individual interest and the collective interest.⁵⁶ From this classification, Pound stated that law has a role in balancing conflicting individual interests by taking into account the collective interest.⁵⁷ By proposing an aspired law in the form of government regulation, this article would like to emphasize the fact that the balancing theory by Pound herein is not only relevant in the context of the judiciary.⁵⁸ But this balancing concept is also relevant in the context of the law-making process through the adoption of regulations.

This article provides a concrete illustration of how this government regulation shall be adopted. This concrete illustration is presented by describing what shall be constituted under the government regulation. Therefore, this aspired government regulation shall consist of the following main chapters:

1. Chapter I: General Stipulations: Definitions of Smallholders, Palm Oil Enterprises, Partnership Agreement, Authorized Ministries, Prevailing Market Price, and other necessary terms
2. Chapter II: General Principles: Harmonization, Fairness, and Smallholder Welfare
3. Chapter III: Mandatory Partnership Obligations for Non-Plantation PKS
4. Chapter IV: Mandatory Obligations for PKS with Plantations
5. Chapter V: Provisions on Smallholder Protections (Human Rights and Environmental Obligations)
6. Chapter VI: Traceability and Monitoring by the Relevant Ministries
7. Chapter VII: Sanctions: Criminal and Administrative Sanctions based on the MSMEs Law and the Job Creation Law
8. Chapter VIII: Transitional Clause for Ministerial Regulations and the Related Regulations

b. Indonesia's urgency to adopt the government regulation therein is due to the urgency in responding to unilateral environmental acts imposed by developed countries.

1. Article XX GATT and Its Case Law: Reciprocity, Compliance, and Indonesia's National Interest

The first discussion of this article shows that Indonesia needs to adopt a government regulation that will solve the MOA-MOI conflict. Such government regulation is necessary to be promulgated to complement the limited

⁵⁵ Ahmad Qiram As-Suvi and Moh Zainullah, "Sociology of Law in the Perspective of Roscoe Pound and Donald Black and Its Relevance in the Indonesian Context," *Peradaban Journal of Law and Society* 1, no. 2 (December 2022): 2, <https://doi.org/10.59001/pjls.v1i2.39>.

⁵⁶ Bernard L. Tanya, Yoan N. Simanjuntak, and Markus Y. Hage, *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Yogyakarta: Genta Publishing, 2019).

⁵⁷ Tanya, Simanjuntak, and Hage.

⁵⁸ Amr Ibn Munir, "Roscoe Pound's Theories of Interests and Sociological Jurisprudence: A Critical Appraisal," SSRN Scholarly Paper no. 4433213, Rochester, NY, April 29, 2023, <https://doi.org/10.2139/ssrn.4433213>.

authorities of those ministries. The previous discussion explains that such reconciliation is important to ensure Indonesia's regulatory discipline. This discussion will delve further into explaining why such regulation is necessary to balance Indonesia's legal obligations. Those obligations are set under the WTO Agreement and various provisions under MEAs.

As a member of the WTO, Indonesia is not only obliged to bring its domestic regulations into conformity with the WTO Agreement. But it also has rights to market access under the agreement.⁵⁹ This primary obligation is constituted under Article XVI.4 of the WTO Agreement.⁶⁰ Meanwhile, the reciprocal nature of the WTO Agreement can be seen from the preamble of this agreement. One of the paragraphs states that WTO members exercised their obligation under the reciprocity and mutual advantage.⁶¹ The existence of this right brings this article to state that any restriction on Indonesian palm oil products constitutes an impairment of Indonesian rights. Those rights are constituted under the WTO Agreement, and they are in line with the Indonesian national interest.⁶²

The WTO law is a part of public international law. Therefore, this regime is not an isolated legal regime.⁶³ This can be seen from what Cho and Alhassan stated as the confluence of the WTO law with the international environmental law, which in practice tends to conflict with one another.⁶⁴ Such a relation is caused by the fact that international trade, on the one hand, may bring harm to the environment. Such adverse effects are caused by the massive production and the transboundary movement of goods.⁶⁵ Meanwhile, international trade also triggers the effective production of goods. This reduces the adverse effects of goods production on the environment.⁶⁷

In the practice of the WTO law, two legal bases indicate how trade and the environment intertwine to a certain degree. This can be seen by referring to the findings of the panel in the *United States – Gasoline* Case. The finding of this case stated that Article XX GATT is prominently invoked by a WTO member implementing discriminatory or restrictive measures on its imported

⁵⁹ Chad P. Bown, "Modern Industrial Policy and the WTO," SSRN Scholarly Paper no. 4816776, Rochester, NY, December 3, 2023, <https://doi.org/10.2139/ssrn.4816776>.

⁶⁰ World Trade Organization, "WTO | Legal Texts - Marrakesh Agreement - Agreement Establishing World Trade Organization," 2023, https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.

⁶¹ World Trade Organization.

⁶² Jonah Busch et al., "Effects of Demand-Side Restrictions on High-Deforestation Palm Oil in Europe on Deforestation and Emissions in Indonesia," *Environmental Research Letters* 17, no. 1 (January 2022): 014035, <https://doi.org/10.1088/1748-9326/ac435e>.

⁶³ Peter Van Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases, and Materials* (Cambridge: Cambridge University Press, 2022).

⁶⁴ Kamo Sende, "International Trade Law and Sustainability: Balancing Trade Liberalisation and Environmental Protection" (2023), <https://doi.org/10.13140/RG.2.2.14534.24643>.

⁶⁵ Youngjeen Cho, *Bringing Trade and Environmental Norms Together: The Case of the WTO Fisheries Subsidies Negotiations*, Brill, October 26, 2022, <https://doi.org/10.1163/2667078x-bja10017>.

⁶⁶ Abdulkareem Alhassan et al., "Impact Assessment of Trade on Environmental Performance: Accounting for the Role of Government Integrity and Economic Development in 79 Countries," *Heliyon* 6, no. 9 (September 2020), <https://doi.org/10.1016/j.heliyon.2020.e05046>.

⁶⁷ Alhassan et al.

goods. This measure is implemented for environmental protection.⁶⁸ The WTO environmental cases, as presented by the Committee on Trade and Environment, indicate that such environmental protection is justifiable under paragraph (b) of Article XX GATT. This provision stipulates the protection of human, animal, and plant lives and health.⁶⁹⁷⁰ In citing the finding of this dispute, Bossche and Prevost stated that the protection of the environment can also be justified under Article XX paragraph (g) GATT. Such protection can be achieved if a member successfully proves that the measure is invoked in relation to the conservation of exhaustible resources.⁷¹

Bossche and Zdouc explained that this GATT provision is classified under the rules of balance between free trade and other interests of the member. These rules allow a WTO member to derogate its obligation under the agreement in a non-discriminatory manner.⁷² The Appellate Body in the *United States – Gasoline* Case stated that a measure may only be justified under Article XX GATT once it fulfils the two-tier test.⁷³ Such a test may only be passed once a member can prove that the invoked and implemented measure fulfils one or more of the elements in the subparagraphs of Article XX GATT.⁷⁴ Once the first test is passed, the responding member shall also prove that such a measure is not an unjustifiable or arbitrary discrimination or a disguised restriction on international trade.⁷⁵⁷⁶ The second test is conducted based on the introductory clause of Article XX GATT. This clause is prominently known as the *chapeau* of the article.⁷⁷

2. The WTO Agreement Interpretation and the International Environmental Law Position before the WTO

The second legal basis is Article 3.2 of the Dispute Settlement Understanding (DSU). This article allows disputing WTO members to settle the status quo of the dispute according to the general rules on interpretation. These general rules basically exist under customary international law.⁷⁸ Van

⁶⁸ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline,” 2023, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm.

⁶⁹ World Trade Organization, “WTO | Environment - Environmental Disputes in GATT/WTO,” World Trade Organization, 2024, https://www.wto.org/english/tratop_e/envir_e/edis00_e.htm.

⁷⁰ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline.”

⁷¹ Peter Van den Bossche and Denise Prévost, *Essentials of WTO Law* (Cambridge University Press, 2021).

⁷² Bossche and Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*.

⁷³ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline.”

⁷⁴ Bossche and Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*.

⁷⁵ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline.”

⁷⁶ World Trade Organization.

⁷⁷ Leonelli, “Environmental Unilateralism and the Chapeau of Article XX GATT.”

⁷⁸ World Trade Organization, “WTO | Legal Texts - Marrakesh Agreement | Understanding on Rules and Procedures Governing the Settlement of Disputes,” World Trade Organization, 2023, https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm.

Damme stated that Article 31 Vienna Convention on the Law of Treaties 1969 (VCLT 1969) is one of the rules identifying as “the general rules on interpretation” as expressed in Article 3.2 DSU.⁷⁹ By referring to the panel finding in the *United States – Shrimp* Case, the applicability of MEAs as an instrument for interpretation can be accessed through the implementation of paragraph 3.c. of Article 31 VCLT 1969.⁸⁰ This provision permits contracting parties to interpret the meaning within the text according to the prevailing rules of international law.⁸¹

This discussion also refers to Asmelash's explanation concerning the implementation of MEA in the DSB. From there, it can be understood that the DSB takes into account the applicable MEA in settling disputes between members.⁸² However, those MEAs are not implemented as an applicable law. Instead, they are implemented as an instrument in interpreting the stipulations under the WTO Agreement, disputed by the members.⁸³ Dupuy and Vinuales stated that the approach adopted by the DSB can be considered an open approach. This approach is inclusive once it is compared with the GATT panel, which only takes into account MEAs as legal facts. Back then, MEAs were taken as facts in settling disputes between GATT members.⁸⁴

The position adopted by the WTO, as explained above, is in line with paragraph 1 of the Marrakesh Agreement Preamble.⁸⁵ This paragraph states that environmental protection and the management of the world's resources under the sustainable development principle are the objectives of this organization.⁸⁶ However, this preamble itself does not change public opinion, stating that the WTO antagonized international environmental law.⁸⁷ This perception is caused by the conflicting rules of non-discrimination under the WTO Agreement and the common but differentiated responsibilities under various MEAs.⁸⁸

The WTO law is well known for its basic rules of non-discrimination. One of these rules is constituted under Article I: 1 GATT concerning the Most

⁷⁹ Isabelle Van Damme, *Treaty Interpretation by the WTO Appellate Body* (Oxford University Press, 2009).

⁸⁰ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS58 - United States — Import Prohibition of Certain Shrimp and Shrimp Products,” 2023, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm.

⁸¹ Yannick Radi, *International Investment Law Textbook Part II* (Louvain: UC Louvain & edX, 2021).

⁸² Asmelash, “The WTO Dispute Settlement System as a Forum for Climate Litigation?”

⁸³ Asmelash.

⁸⁴ Pierre-Marie Dupuy and Jorge E Vinuales, *International Environmental Law* (Cambridge: Cambridge University Press, 2022).

⁸⁵ World Trade Organization, “WTO | Legal Texts - Marrakesh Agreement | Understanding on Rules and Procedures Governing the Settlement of Disputes.”

⁸⁶ World Trade Organization.

⁸⁷ Csongor Nagy, “Trade Interests and Extraterritorial Value Considerations in New-Generation Free Trade Agreements: The Psychology of Redirection,” *Journal of International Business and Law* 19, no. 2 (March 2020), <https://scholarlycommons.law.hofstra.edu/jibl/vol19/iss2/3>.

⁸⁸ Erich Vranes, *Trade and the Environment: Fundamental Issues in International Law, WTO Law, and Legal Theory* (Cambridge: Cambridge University Press, 2009).

Favored Nations (MFN) Treatment.⁸⁹ As one of the pillars of the WTO, this rule obliges each WTO member to treat the products of other members immediately and unconditionally or in a non-discriminatory manner.⁹⁰ Besides the MFN Treatment, the WTO also recognizes the National Treatment under Article III: 4 GATT. This rule obliges a member to treat goods imported into its territories favorably vis-à-vis domestic goods.⁹¹ Furthermore, Article 2.1 of the Agreement on Technical Barriers to Trade (TBT Agreement) obliges the members to prepare, adopt, and implement non-discriminatory technical regulations.⁹²

3. The Paris Agreement Commitment and Unilateral Regulations on Deforestation and Due Diligence

Meanwhile, the MEA, which constitutes the reduction of carbon emissions, is well known for its Common But Differentiated Responsibility and Respective Capabilities (CBDR-RC).⁹³ In the Paris Agreement 2015, this obligation shall be implemented by its members according to the top-down approach.⁹⁴ This approach allows the contracting parties of this agreement to achieve their Nationally Determined Contribution (NDC) flexibly.⁹⁵ The Paris Agreement allows such unilateral acts to be implemented in the transboundary movement of goods.⁹⁶ It is important to note that the Paris Agreement also allows its members to regulate the carbon migration from one member to another.⁹⁷

The characteristics of the Paris Agreement cause its members to potentially violate the WTO rules. *First*, the obligation of results stance adopted by this MEA allows its members to adopt any means necessary to achieve each NDC or reduce their Green House Gas Emissions. *Second*, the various amounts of emissions brought by a contracting party to a territory of another contracting party have caused the pollution-importing member to

⁸⁹ World Trade Organization, “WTO | Legal Texts - Marrakesh Agreement - General Agreement on Tariffs and Trade 1994,” 2023, https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm.

⁹⁰ Juan Gabriel Vanegas Lopez and Jose Jaime Baena Rojas, “Virtual Protectionism: Overview Of Mfn Tariffs And Bound Tariffs In South America,” *Journal of International Studies* 12, no. 4 (2019): 63–78.

⁹¹ World Trade Organization, “WTO | Legal Texts - Marrakesh Agreement - General Agreement on Tariffs and Trade 1994.”

⁹² World Trade Organization, “WTO | Legal Texts - Marrakesh Agreement - Agreement on Technical Barrier to Trade,” 2023, https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

⁹³ Yuli Chen, “Reconciling Common but Differentiated Responsibilities Principle and No More Favourable Treatment Principle in Regulating Greenhouse Gas Emissions from International Shipping,” *Marine Policy* 123 (January 2021): 104317, <https://doi.org/10.1016/j.marpol.2020.104317>.

⁹⁴ Xi Yang et al., “The Environmental Co-Benefit and Economic Impact of China’s Low-Carbon Pathways: Evidence from Linking Bottom-up and Top-down Models,” *Renewable and Sustainable Energy Reviews* 136 (February 2021): 110438, <https://doi.org/10.1016/j.rser.2020.110438>.

⁹⁵ Dupuy and Vinuales, *International Environmental Law*.

⁹⁶ Cuixia Gao et al., “Spatio-Temporal Impact of Global Migration on Carbon Transfers Based on Complex Network and Stepwise Regression Analysis,” *Sustainability* 14, no. 2 (January 2022): 2, <https://doi.org/10.3390/su14020844>.

⁹⁷ Dupuy and Vinuales, *International Environmental Law*.

impose its territorial unilateral act differentially. Therefore, it is clear that the implementation of the primary obligations under the Paris Agreement may constitute a discriminatory measure that violates the WTO rules on non-discrimination. In the practical realm of international law, the European Union, the United Kingdom, and the United States implement such unilateral acts through deforestation regulations. These measures also cover the obligation to protect smallholders within the supply chain.

The deforestation regulations, as mentioned above, are explained in detail in the following paragraph. In combating deforestation, the European Union issued Regulation 2023/1115 (also known as the EU Deforestation-Free Regulation, “EUDFR”). This regulation constitutes the due diligence on the import of products deriving from palm oil, wood, coffee, cocoa, cattle, rubber, and soybean.⁹⁸ This regulation obliges the Union’s importers and traders to conduct information gathering, risk assessment, and risk mitigation on the importation of the product concerned. The due diligence process is conducted by taking into account, among others, the protection of the environment, human rights, Indigenous people, and smallholders.⁹⁹ The United Kingdom also takes the same approach by adopting the Environment Act. This act *inter alia* constitutes the import of products produced from cocoa, rubber, soya, and palm oil. Lord Goldsmith, as the International Environment Minister, stated that this due diligence regulation is necessary to tackle deforestation. This act also plays an important role in the UN Climate Conference.¹⁰⁰ Last but not least, the United States also adopted a unilateral act concerning deforestation through the Forest Act. This federal act regulates the import of meat, soy, palm oil, cocoa, rubber, and wood pulp.¹⁰¹

The explanations concerning those deforestation regulations above are summarized in the following chart. This chart provides similarities and differences between the regulations imposed by the European Union, the United States, and the United Kingdom. It is important to note that this comparative analysis does not provide a summary of Indonesian regulations, since it has not adopted the unilateral deforestation measures according to the WTO Agreement and the Paris Agreement.

⁹⁸ 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 (Text with EEA Relevance), 150 OJ L (2023), <http://data.europa.eu/eli/reg/2023/1115/oj/eng>.

⁹⁹ Nikolay Mizulin Antoshevska Paulette Vander Schueren, Dr Dylan Geraets, Irina, “DEFORESTATION REGULATION: IMPACTS OF A POSSIBLE DELAY IN RISK CLASSIFICATION OF COUNTRIES AND OTHER RECENT DEVELOPMENTS,” Eye on ESG, March 25, 2024, <https://www.eyonesg.com/2024/03/deforestation-regulation-impacts-of-a-possible-delay-in-risk-classification-of-countries-and-other-recent-developments/>.

¹⁰⁰ “Government Sets out World-Leading New Measures to Protect Rainforests,” GOV.UK, accessed August 11, 2024, <https://www.gov.uk/government/news/government-sets-out-world-leading-new-measures-to-protect-rainforests>.

¹⁰¹ “What Is the FOREST Act? Everything to Know About the US Bill to Fight Deforestation,” Global Citizen, April 21, 2022, <https://www.globalcitizen.org/en/content/what-is-the-forest-act/>.

Table 1 Comparisons of the Three Deforestation Regulations

Rules	EU DFR	Forest Act 2023	Environment Act 2021
Commodities	Cattle, cocoa, coffee, oil palm, rubber, soya, and wood	Palm oil, soybeans, cocoa, cattle, and rubber	Beef, cocoa, leather, palm oil, rubber, and soya
Due Diligence Mechanism	Information gathering, risk assessment, and risk mitigation	Information gathering, risk assessment, and risk mitigation	Information gathering, risk assessment, and risk mitigation
Country Benchmarking to the Exporting Countries	Implemented by the European Commission	Implemented by the United States Trade Administration	Not Implemented

4. The Climate Litigation and Why Indonesia Shall Bring Its Measures into Conformity with the International Trade and Environment Rules

This article does not suggest that climate litigation shall be perceived as a *prima facie* means of responding to these environmental measures. This is due to the WTO landmark decision on environmental disputes, which glorifies cooperation.¹⁰² The panel in the *United States – Tuna I* obliges its members to cooperate while implementing unilateral environmental measures having extraterritorial measures.¹⁰³ This step shall be implemented since such practice may only open market access to members having identical environmental policies.¹⁰⁴ The Appellate Body in the *United States – Gasoline* expresses that the WTO has no authority to prohibit its members from implementing measures to achieve their environmental protection. However, such an extraterritorial unilateral act shall be implemented through coordination with the Committee on Trade and Environment.¹⁰⁵ This opinion is consolidated by the panel and the Appellate Body in the *United States – Shrimp*. They emphasized the obligations of WTO members to implement

¹⁰² Vinitika Vij, “Changing Realities: Evolution and Extraterritoriality within Article XX(G) of GATT for Global Environmental Concerns,” *Trade, Law and Development* 14, no. 02 (2022): 195–238.

¹⁰³ Joana Stelzer, Everton das Neves Goncalves, and Keite Wieira, “WTO Understanding on Certification Dolphin Safe in Tuna Fishing: The US Tuna II Case,” *Veredas Do Direito* 16 (2019): 245.

¹⁰⁴ Heike Masahiro, “[WTO Case Review Series No.27] United States – ‘Tuna Labeling Case (Compliance Procedure) (DS381/RW2): Article 2.1 of TBT Agreement and Application of the ‘Calibration’ (Japanese),” *Policy Discussion Papers (Japanese)*, Policy Discussion Papers (Japanese), Research Institute of Economy, Trade and Industry (RIETI), November 2019, 19032, <https://ideas.repec.org/p/eti/rpdj/19032.html>.

¹⁰⁵ World Trade Organization, “WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline.”

extraterritorial environmental measures and to cooperate with the interested members.¹⁰⁶

This article also does not suggest that Indonesia take legal action through the DSB due to the current struggle of the Appellate Body. The United States' judicial activism on the Appellate Body has caused the WTO Crown Jewel, the DSB, to be unable to operate its Appellate Review.¹⁰⁷ The struggle herein has caused some members to follow the Multi-Party Interim Arbitration established by the European Union.¹⁰⁸ Meanwhile, other members decided to settle their dispute under ad-hoc arbitration as constituted under Article 25 DSU.¹⁰⁹ The chaos that occurred within the WTO Dispute Settlement system has become the basis for this article to recommend that Indonesia try its best efforts. Such a best attempt shall be conducted by adjusting their regulations with the demands of their trading partner amicably.

The reasoning above is supported by a real case presenting how Indonesia failed to secure its palm oil exports in the European Union market. Such failure can be seen in the European Union – Palm Oil Case.¹¹⁰ This WTO case is basically triggered by the Renewable Energy Directive II and its related regulations. These measures prohibited the import of palm oil products originating from Indonesia since they involved an adverse land expansion process.¹¹¹ This case ended with the panel stating that the RED II and its implementing regulations are discriminatory or WTO-inconsistent.¹¹² Nevertheless, this case clearly indicates Indonesia's failure to provide environmentally friendly export regulations.

This article opined that Indonesia may secure its palm oil market access in the territory of its trading partner without being contentious in the DSB. Such insurance can be actualized by following the recommendation in the first discussion. The existence of the *lege ferenda* represents Indonesia's good faith as a member of the Paris Agreement. This regulation will be in line with Article 26 Vienna Convention, which obliges the implementation of a treaty under good faith.¹¹³ Furthermore, the WTO Agreement is built under the reciprocity principle.¹¹⁴ Therefore, it is important to note that Indonesia, as a

¹⁰⁶ World Trade Organization, "WTO | Dispute Settlement - the Disputes - DS58 - United States — Import Prohibition of Certain Shrimp and Shrimp Products."

¹⁰⁷ Putu George Matthew Simbolon and Tiurma M. Pitta Allagan, "The International Centre for the Settlement of Investment Dispute (ICS' by Putu George Matthew Simbolon and Tiurma Mangihut Pitta Allagan," *Indonesian Journal of International Law* 21, no. 3 (2024): 467–502, <https://doi.org/10.17304/ijil.vol21.3.1>.

¹⁰⁸ Elisa Baroncini, "Saving the Right to Appeal at the WTO: The EU and the Multi-Party Interim Appeal Arbitration Arrangement," *Federalism.It.*, no. 22 (2020): 1–34.

¹⁰⁹ Julia Ya Qin, "Turkey-Pharmaceuticals: The First WTO Arbitration for Appellate Review," *Legal Issues of Economic Integration* 49, no. 4 (2022): 415–30.

¹¹⁰ World Trade Organization, "WTO | Dispute Settlement - DS593: European Union - Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels," World Trade Organization, 2025, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm.

¹¹¹ World Trade Organization.

¹¹² World Trade Organization.

¹¹³ Kirsten Schmalenbach, "Article 26," in *Vienna Convention on the Law of Treaties*, ed. Oliver Dörr and Kirsten Schmalenbach (Berlin, Heidelberg: Springer Berlin Heidelberg, 2018), 26, https://doi.org/10.1007/978-3-662-55160-8_29.

¹¹⁴ Bossche and Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*.

palm oil-producing country, shall also try its best efforts to ensure that its production process regulation is in line with the market demand.

From the second discussion herein, this article would also like to emphasize that the spirit of international law lies within international cooperation.¹¹⁵ To achieve cooperation based on reciprocity, Indonesia therefore needs to solve its domestic issues concerning its finest commodity production process. By having government regulation that regulates the palm oil production process and smallholders, Indonesia may enhance its partnership with its Western partners. Indonesia may also comply with its environmental obligation under the developing practice permitted by the Paris Agreement. Such compliance can be simultaneously achieved by benefiting from its right under the WTO Agreement at the same time.

IV. CONCLUSION

This article recommends the adoption of a government regulation concerning the palm oil industry and its smallholders. Such a recommendation is proposed based on the PKS-smallholder and the MOA-MOI conflicts. This government regulation shall, among other consist of the partnership obligation, fair price determination, traceability, and obligations for the ministries to adjust their sectoral regulations. The adoption of this government regulation is urgent and necessary to ensure the protection and the welfare of the palm oil smallholders. Furthermore, this adoption shall be taken to secure Indonesia's market access in importing from WTO members implementing deforestation-free regulations. The discussions in this article show how it has its own implications for Indonesia's market access rights. These market access rights are related to both the WTO Agreement and the Paris Agreement.

The closing of this article also consists of policy recommendations and notes for the next research. The Government of Indonesia shall adopt these government regulations based on national laws and international laws as presented in the discussions. Furthermore, further research concerning the relevant trade, environmental, and human rights laws on the protection of smallholders in the supply chain is necessary. This research is necessary to provide concise information for lawmakers in adopting regulations related to smallholders. In addition, further research concerning how Indonesia shall harmonize its palm oil regulations is also needed. The aspired research is necessary to solve the conflicts between the upstream and downstream palm oil business actors.

REFERENCE

Aisyah, D. D., Irham, and J. H. Mulyo. "Understanding the Palm Oil Smallholders Characteristics and Their Compliance towards the Indonesian Sustainable Palm Oil (ISPO): A Case Study in North Sumatera, Indonesia." *IOP Conference Series: Earth and Environmental Science* 637, no. 1 (January 2021): 012041. <https://doi.org/10.1088/1755-1315/637/1/012041>.

¹¹⁵ Pierre d'Argent, *International Law Textbook: Applying International Law* (Louvain: edX & UC Louvain, 2021).

- Alamanda, Asri Elies, Irma Mangar, Lailatul Mutmainah, and Nurul Fajriyah. "Perjanjian Pola Kemitraan Dalam Pelaksanaan Peremajaan Tanaman Kelapa Sawit." *Jurnal Hukum Mimbar Justitia* 9, no. 2 (December 2023): 2. <https://doi.org/10.35194/jhnmj.v9i2.3663>.
- Alhassan, Abdulkareem, Ojonugwa Usman, George N. Ike, and Samuel Asumadu Sarkodie. "Impact Assessment of Trade on Environmental Performance: Accounting for the Role of Government Integrity and Economic Development in 79 Countries." *Heliyon* 6, no. 9 (September 2020). <https://doi.org/10.1016/j.heliyon.2020.e05046>.
- Antoshevskaya, Nikolay Mizulin, Paulette Vander Schueren, Dr Dylan Geraets, Irina. "Deforestation Regulation: Impacts Of A Possible Delay In Risk Classification Of Countries And Other Recent Developments." *Eye on ESG*, March 25, 2024. <https://www.eyonesg.com/2024/03/deforestation-regulation-impacts-of-a-possible-delay-in-risk-classification-of-countries-and-other-recent-developments/>.
- Argent, Pierre d'. *International Law Textbook: Applying International Law*. Louvain: edX & UC Louvain, 2021.
- Asmelash, Henok. "The WTO Dispute Settlement System as a Forum for Climate Litigation?" *Review of European, Comparative & International Environmental Law* 32, no. 2 (2023): 321–33. <https://doi.org/10.1111/reel.12490>.
- Asosiasi Petani Kelapa Sawit Indonesia. "Surat Nomor 08/DPP-APKS/IV/2024: Tanggapan Dan Rekomendasi APKASINDO Terhadap Kisruh Saling Sikutnya PKS Konvensional Dengan PKS Tanpa Kebun Dan PKS Brondolan Dan Hubungannya Kepada Petani Sawit." Open Letter. Asosiasi Petani Kelapa Sawit Indonesia, April 5, 2024. <https://dpp-apkasindo.com/>.
- As-Suvi, Ahmad Qiram, and Moh Zainullah. "Sociology of Law in the Perspective of Roscoe Pound and Donald Black and Its Relevance in the Indonesian Context." *Peradaban Journal of Law and Society* 1, no. 2 (December 2022): 2. <https://doi.org/10.59001/pjls.v1i2.39>.
- Baroncini, Elisa. "Saving the Right to Appeal at the WTO: The EU and the Multi-Party Interim Appeal Arbitration Arrangement." *Federalism.It.*, no. 22 (2020): 1–34.
- Bossche, Peter Van den, and Denise Prévost. *Essentials of WTO Law*. Cambridge University Press, 2021.
- Bossche, Peter Van, and Werner Zdouc. *The Law and Policy of the World Trade Organization: Text, Cases, and Materials*. Cambridge: Cambridge University Press, 2022.
- Bown, Chad P. "Modern Industrial Policy and the WTO." SSRN Scholarly Paper No. 4816776. Rochester, NY, December 3, 2023. <https://doi.org/10.2139/ssrn.4816776>.

- Busch, Jonah, Oyut Amarjargal, Farzad Taheripour, Kemen G. Austin, Rizki Nauli Siregar, Kellee Koenig, and Thomas W. Hertel. "Effects of Demand-Side Restrictions on High-Deforestation Palm Oil in Europe on Deforestation and Emissions in Indonesia." *Environmental Research Letters* 17, no. 1 (January 2022): 014035. <https://doi.org/10.1088/1748-9326/ac435e>.
- Carranza, Daniela M., Katerina Varas-Belemmi, Diamela De Veer, Claudia Iglesias-Müller, Diana Coral-Santacruz, Felipe A. Méndez, Elisa Torres-Lagos, Francisco A. Squeo, and Carlos F. Gaymer. "Socio-Environmental Conflicts: An Underestimated Threat to Biodiversity Conservation in Chile." *Environmental Science & Policy* 110 (August 2020): 46–59. <https://doi.org/10.1016/j.envsci.2020.04.006>.
- Chen, Yuli. "Reconciling Common but Differentiated Responsibilities Principle and No More Favourable Treatment Principle in Regulating Greenhouse Gas Emissions from International Shipping." *Marine Policy* 123 (January 2021): 104317. <https://doi.org/10.1016/j.marpol.2020.104317>.
- Cho, Youngjeen. *Bringing Trade and Environmental Norms Together: The Case of the WTO Fisheries Subsidies Negotiations*. Brill, October 26, 2022. <https://doi.org/10.1163/2667078x-bja10017>.
- Damme, Isabelle Van. *Treaty Interpretation by the WTO Appellate Body*. Oxford University Press, 2009.
- Darmawan, Arif, and Dwi Ahmadi. "Development of an Environmental Insurance Program Based on Islamic Values in the Palm Oil Industry in Indonesia for Community Welfare." *ILTIZAM Journal of Shariah Economics Research* 6, no. 2 (December 2022): 2. <https://doi.org/10.30631/iltizam.v6i2.1385>.
- Dupuy, Pierre-Marie, and Jorge E Vinuales. *International Environmental Law*. Cambridge: Cambridge University Press, 2022.
- Escher, Ana. "The Concept of Open Texture in 'The Concept of Law.'" SSRN Scholarly Paper No. 4530348. Rochester, NY, August 3, 2023. <https://doi.org/10.2139/ssrn.4530348>.
- EU Deforestation Regulation: An Opportunity for Smallholders - Team Europe Initiative on Deforestation-Free Value Chains*. Library. December 1, 2023. <https://zerodeforestationhub.eu/eu-deforestation-regulation-an-opportunity-for-smallholders/>.
- Falatehan, A. Faroby, and Budi Indra Setiawan. "Economic Risk Characteristics of an Indonesian Palm Oil Value Chain and Identifying Sources of Uncertainty in Policy Making." In *Supply Chain Resilience: Reducing Vulnerability to Economic Shocks, Financial Crises, and Natural Disasters*, edited by Venkatachalam Anbumozhi, Fukunari Kimura, and Shandre Mugan Thangavelu, 109–37. Singapore: Springer, 2020. https://doi.org/10.1007/978-981-15-2870-5_5.
- Gao, Cuixia, Ying Zhong, Isaac Adjei Mensah, Simin Tao, and Yuyang He. "Spatio-Temporal Impact of Global Migration on Carbon Transfers

- Based on Complex Network and Stepwise Regression Analysis.” *Sustainability* 14, no. 2 (January 2022): 2. <https://doi.org/10.3390/su14020844>.
- Global Citizen. “What Is the FOREST Act? Everything to Know About the US Bill to Fight Deforestation.” April 21, 2022. <https://www.globalcitizen.org/en/content/what-is-the-forest-act/>.
- Gochhayat, Sai Abhipsa. “Social Engineering by Roscoe Pound’: Issues in Legal and Political Philosophy.” SSRN Scholarly Paper No. 1742165. Rochester, NY, November 15, 2010. <https://doi.org/10.2139/ssrn.1742165>.
- GOV.UK. “Government Sets out World-Leading New Measures to Protect Rainforests.” Accessed August 11, 2024. <https://www.gov.uk/government/news/government-sets-out-world-leading-new-measures-to-protect-rainforests>.
- Irawan, Norbertus Citra, Suswadi, Mahananto, Mutiarra Ridyo Arum, and Arbianti. “Analisis Gaps Strategi Peningkatan Produktivitas Kerja Buruh Perkebunan Kelapa Sawit Dengan Petani Dan Perusahaan Mitra Dalam Kemitraan Inti Plasma.” *Jurnal Agronomika* 22, no. 02 (August 2024): 02.
- Irmayani, Nirwana Sampara, Arman, Rahmawaty, Sitti Rahbiah, and Masnur. “Comparative Income of Independent Farmers and Plasma Farmers in Oil Palm Farming in Rural Areas, Central Mamuju District.” *Jurnal Agribisnis Perikanan* 16, no. 2 (October 2023): 2.
- Itodo, Oshaba Gabriel. “H.L.A Hart on Legal Positivism: Implications for Contemporary Nigerian Legal.” *Journal of International Relations Security and Economic Studies* 1, no. 1 (April 2021): 1.
- Jaelani, Abdul Kadir, Resti Dian Luthviati, and Reza Octavia. “Indonesia’s Omnibus Law on Job Creation: Legal Strengthening Digitalization of Micro, Small and Medium Enterprises.” *Relações Internacionais No Mundo Atual* 3, no. 41 (June 2023): 41. <https://doi.org/10.21902/Revrima.v3i41.5833>.
- Leona. “International Trade and the Environment: An Outright Concern of the WTO.” *International Journal of Law Management & Humanities* Vol. 6, No. 1 (2023): 330.
- Leonelli, Giulia Claudia. “Environmental Unilateralism and the Chapeau of Article XX GATT: The ‘Line of Equilibrium’ and the Question of ‘Differently Situated’ Countries.” *Journal of World Trade* 57, no. 5 (October 2023). <https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals\TRAD\TRAD2023030.pdf>.
- Lestaringtyas, Twotik, and Muhammad Roqib. “PERLINDUNGAN DATA PRIBADI PENGGUNA SISTEM LAYANAN PERIZINAN BERUSAHA TERINTEGRASI SECARA ELEKTRONIK OSS 1.1 DAN OSS RBA (RISK BASIC APPROACH).” *Jurnal Jendela Hukum* 8, no. 2 (September 2021): 25–34. <https://doi.org/10.24929/fh.v8i2.1576>.

- Lopez, Juan Gabriel Vanegas, and Jose Jaime Baena Rojas. "Virtual Protectionism: Overview Of Mfn Tariffs And Bound Tariffs In South America." *Journal of International Studies* 12, no. 4 (2019): 63–78.
- Masahiro, Heike. "[WTO Case Review Series No.27] United States Å€ Tuna Labeling Case (Compliance Procedure) (DS381/RW2): Article 2.1 of TBT Agreement and Application of the 'Calibration' (Japanese)." *Policy Discussion Papers (Japanese)*, Policy Discussion Papers (Japanese), Research Institute of Economy, Trade and Industry (RIETI), November 2019, 19032. <https://ideas.repec.org/p/eti/rpdppj/19032.html>.
- Mehraban, Nadjia, Christoph Kubitz, Zulkifli Alamsyah, and Matin Qaim. "Oil Palm Cultivation, Household Welfare, and Exposure to Economic Risk in the Indonesian Small Farm Sector." *Journal of Agricultural Economics* 72, no. 3 (2021): 901–15. <https://doi.org/10.1111/1477-9552.12433>.
- Minister of Agriculture Regulation Number 21/PERMENTAN/KB.410/6/2017 Year 2017 Concerning the Second Amendment on the Minister of Agriculture Regulation Number 98/PERMENTAN/OT.140/9/2013 Concerning the Licensing Guideline for Plantation Business, Pub. L. No. 796, 21 Minister of Agriculture Regulation (2017).
- Munir, Amr Ibn. "Roscoe Pound's Theories of Interests and Sociological Jurisprudence: A Critical Appraisal." SSRN Scholarly Paper No. 4433213. Rochester, NY, April 29, 2023. <https://doi.org/10.2139/ssrn.4433213>.
- Nagy, Csongor. "Trade Interests and Extraterritorial Value Considerations in New-Generation Free Trade Agreements: The Psychology of Redirection." *Journal of International Business and Law* 19, no. 2 (March 2020). <https://scholarlycommons.law.hofstra.edu/jibl/vol19/iss2/3>.
- Oliphant, Elizabeth, and Adam C. Simon. "The Cost of Sustainable Palm Oil: Should an Indonesian Smallholder Pursue RSPO-Certification?" *World Development Perspectives* 26 (June 2022): 100432. <https://doi.org/10.1016/j.wdp.2022.100432>.
- "OSS - Sistem Perizinan Berusaha Terintegrasi Secara Elektronik." Accessed August 13, 2024. <https://oss.go.id/>.
- Pratama, Rozy A., and Tri Widodo. "The Impact of Nontariff Trade Policy of European Union Crude Palm Oil Import on Indonesia, Malaysia, and the Rest of the World Economy: An Analysis in GTAP Framework." *Jurnal Ekonomi Indonesia* 9, no. 1 (April 2020): 1. <https://doi.org/10.52813/jei.v9i1.28>.
- Qin, Julia Ya. "Turkey-Pharmaceuticals: The First WTO Arbitration for Appellate Review." *Legal Issues of Economic Integration* 49, no. 4 (2022): 415–30.
- Radi, Yannick. *International Investment Law Textbook Part II*. Louvain: UC Louvain & edX, 2021.

- 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 (Text with EEA Relevance), 150 OJ L (2023). <http://data.europa.eu/eli/reg/2023/1115/oj/eng>.
- Ridwan Maksu, Irfan, Amy Yayuk Sri Rahayu, and Dhian Kusumawardhani. "A Social Enterprise Approach to Empowering Micro, Small and Medium Enterprises (SMEs) in Indonesia." *Journal of Open Innovation: Technology, Market, and Complexity* 6, no. 3 (September 2020): 50. <https://doi.org/10.3390/joitmc6030050>.
- Rokhim, Rofikoh, Arty Dwi Januari, Umar Atik, Siti Shara, and Nurul Rusdayanti. "Palm Oil Social Conflict Resolution and Mediation in Jambi." *Cogent Social Sciences* 6, no. 1 (January 2020): 1812831. <https://doi.org/10.1080/23311886.2020.1812831>.
- Schmalenbach, Kirsten. "Article 26." In *Vienna Convention on the Law of Treaties*, edited by Oliver Dörr and Kirsten Schmalenbach, 465–92. Berlin, Heidelberg: Springer Berlin Heidelberg, 2018. https://doi.org/10.1007/978-3-662-55160-8_29.
- Seif, Isabella. "Business and Human Rights in International Investment Law: Empirical Evidence." In *Handbook of International Investment Law and Policy*, edited by Julien Chaisse, Leïla Choukroune, and Sufian Jusoh, 1759–82. Singapore: Springer, 2021. https://doi.org/10.1007/978-981-13-3615-7_26.
- Sende, Kamo. "International Trade Law and Sustainability: Balancing Trade Liberalisation and Environmental Protection." 2023. <https://doi.org/10.13140/RG.2.2.14534.24643>.
- Simbolon, Putu George Matthew, and Tiurma M. Pitta Allagan. "The International Centre for the Settlement of Investment Dispute (ICS' by Putu George Matthew Simbolon and Tiurma Mangihut Pitta Allagan." *Indonesian Journal of International Law* 21, no. 3 (2024): 467–502. <https://doi.org/10.17304/ijil.vol21.3.1>.
- Siregar, Ahmad Faisal, and Leni Handayani. "Analisis Komparasi Tingkat Pendapatan Usahatani Karet Rakyat Dengan Usahatani Kelapa Sawit Rakyat (Studi Kasus : Desa Pasar Sayur Matinggi Kecamatan Dolok Sigompulon Kabupaten Padang Lawas Utara)." *AGRISENTRUM* 1, no. 2 (October 2023): 2.
- Stelzer, Joana, Everton das Neves Goncalves, and Keite Wieira. "WTO Understanding on Certification Dolphin Safe in Tuna Fishing: The US Tuna II Case." *Veredas Do Direito* 16 (2019): 245.
- Syahza, Almasdi, and Brilliant Asmit. "Development of Palm Oil Sector and Future Challenge in Riau Province, Indonesia." *Journal of Science and Technology Policy Management* 11, no. 2 (January 2020): 149–70. <https://doi.org/10.1108/JSTPM-07-2018-0073>.

- Tanya, Bernard L., Yoan N. Simanjuntak, and Markus Y. Hage. *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi*. Yogyakarta: Genta Publishing, 2019.
- Topan, Muhammad, and Ifrani Ifrani. "Peran Koperasi Pada Program Kemitraan Inti Plasma Perkebunan Kelapa Sawit Untuk Meningkatkan taraf Hidup Masyarakat." *Al-Adl : Jurnal Hukum* 12, no. 2 (January 2021): 2. <https://doi.org/10.31602/al-adl.v12i2.4145>.
- Vij, Vinitika. "Changing Realities: Evolution and Extraterritoriality within Article XX(G) of GATT for Global Environmental Concerns." *Trade, Law and Development* 14, no. 02 (2022): 195–238.
- Vranes, Erich. *Trade and the Environment: Fundamental Issues in International Law, WTO Law, and Legal Theory*. Cambridge: Cambridge University Press, 2009.
- W, Rejang Musi Agastya A. S., Pujo Widodo, and Rudy Laksmono. "The Effect of Increasing Cooking Oil Prices and Material Export Prohibition Policy Cooking Oil Standard on National Food Security." *East Asian Journal of Multidisciplinary Research* 2, no. 1 (February 2023): 1. <https://doi.org/10.55927/eajmr.v2i1.2778>.
- Watts, John D., Katryn Pasaribu, Silvia Irawan, Luca Tacconi, Heni Martanila, Cokorda Gde Wisnu Wiratama, Fauzan Kemal Musthofa, Bernadinus Steni Sugiarto, and Utami Putri Manvi. "Challenges Faced by Smallholders in Achieving Sustainable Palm Oil Certification in Indonesia." *World Development* 146 (October 2021): 105565. <https://doi.org/10.1016/j.worlddev.2021.105565>.
- World Trade Organization. "WTO | Dispute Settlement - DS593: European Union - Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels." World Trade Organization, 2025. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds593_e.htm.
- . "WTO | Dispute Settlement - the Disputes - DS2 - United States — Standards for Reformulated and Conventional Gasoline." 2023. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds2_e.htm.
- . "WTO | Dispute Settlement - the Disputes - DS58 - United States — Import Prohibition of Certain Shrimp and Shrimp Products." 2023. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm.
- . "WTO | Environment - Environmental Disputes in GATT/WTO." World Trade Organization, 2024. https://www.wto.org/english/tratop_e/envir_e/edis00_e.htm.
- . "WTO | Legal Texts - Marrakesh Agreement | Understanding on Rules and Procedures Governing the Settlement of Disputes." World Trade Organization, 2023. https://www.wto.org/english/docs_e/legal_e/28-dsu_e.htm.

- . “WTO | Legal Texts - Marrakesh Agreement - Agreement Establishing World Trade Organization.” 2023. https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm.
 - . “WTO | Legal Texts - Marrakesh Agreement - Agreement on Technical Barrier to Trade.” 2023. https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.
 - . “WTO | Legal Texts - Marrakesh Agreement - General Agreement on Tariffs and Trade 1994.” 2023. https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm.
- Yang, Xi, Jun Pang, Fei Teng, Ruixin Gong, and Cecilia Springer. “The Environmental Co-Benefit and Economic Impact of China’s Low-Carbon Pathways: Evidence from Linking Bottom-up and Top-down Models.” *Renewable and Sustainable Energy Reviews* 136 (February 2021): 110438. <https://doi.org/10.1016/j.rser.2020.110438>.
- Zeifert, Mateusz. “Rethinking Hart: From Open Texture to Prototype Theory—Analytic Philosophy Meets Cognitive Linguistics.” *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 35, no. 2 (April 2022): 409–30. <https://doi.org/10.1007/s11196-020-09722-9>.