



HARMONIZATION OF NATIONAL LAW AND INTERNATIONAL LAW REGARDING THE INDONESIAN PALM INDUSTRY IMPACT ON GLOBAL CLIMATE CHANGE

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Palm Oil, Paris Agreement, and Climate. Indonesia is the country with the largest palm oil commodity in the world. This can be proven by the extensive palm oil plantations throughout Indonesia, especially in the provinces of Riau, West Kalimantan, Central Kalimantan, North Sumatra and East Kalimantan. However, the palm oil industry actually has a negative impact on the environment, because every stage of palm oil processing can produce gasses that cause greenhouse gasses. Indonesia feels a dilemma with the presence of international regulations in the Paris Agreement. On the one hand, there is Indonesia's push to ratify the agreement and support the global greenhouse gas reduction mission. But on the other hand, the Indonesian palm oil industry is a contributor to the country's foreign exchange which can improve the Indonesian economy. By using normative juridical methods through a statutory approach, and an analytical approach, the author finds two problem formulations (1) harmonization of national law and international law regarding Indonesia's main palm oil export commodity, (2) the role of the Indonesian government in implementing the ratified agreement regarding climate change international.

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A. Introduction

The Paris Agreement is a legally binding international agreement regarding climate issues in the world. There were 196 parties who agreed to this convention at the United Nations Climate Change Conference on December 12, 2015 in Paris, France. However, on November 4, 2016, this convention only came into force. The aim of this convention is to maintain a stable increase in global average temperature, namely below 2°C above pre-industrial levels and limit the temperature increase to 1.5°C above pre-industrial levels. In recent years, world leaders have emphasized the need to limit global warming to 1.5°C by the end of the century. This is because the UN (United

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Nations) Intergovernmental Panel on Climate Change points out that exceeding the 1.5°C threshold risks much more severe climate change impacts, including more frequent and severe droughts, rainfall and heat waves. The Paris Agreement is an important milestone in the international climate change process, because this agreement binds all countries in the world to unite to fight climate change and adapt to the impacts it causes (Change).

As a country that has a large territory and consists of many islands, Indonesia is a country blessed with endless natural riches. Its natural beauty is an attraction for tourism, while its natural wealth can also be processed into energy sources, including through the agricultural and plantation sectors. Since ancient times, Indonesia has continued to generate wealth from the agricultural and plantation sectors, one of which is palm oil. Data from the Ministry of Agriculture processed by the Central Statistics Agency (BPS), in 2022 Indonesia will have oil palm plantations covering an area of 14.9 million hectares (Data Indonesia, 2023). Indonesia's oil palm plantations are spread across 26 provinces. The largest oil palm plantations are in the provinces of Riau, Central Kalimantan, West Kalimantan, East Kalimantan and North Sumatra. The following is data on the area of oil palm plantations in 10 provinces in Indonesia which have been named the provinces with the largest oil palm plantations, namely Riau covering an area of 2,7 million hectares, West Kalimantan covering an area of 2 million hectares, Central Kalimantan covering an area of 1,9 million hectares, North Sumatra covering an area of 1,4 million hectares, East Kalimantan 1,3 million hectares, South Sumatra 1,2 million hectares, Jambi 1 million hectares, Aceh covering 487.526 hectares, and South Kalimantan covering 471.264 hectares (kompas).

Article 33 paragraph (3) of the 1945 Constitution emphasizes that "the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Palm oil itself plays a crucial role in the national economy, because it functions as a source of income for the region and the country as a whole, as a provider of employment opportunities, and increases the country's foreign exchange. Apart from that, palm oil has various benefits, such as being able to be used as alternative biodiesel fuel, compost fertilizer, and a basic ingredient for the cosmetics, food and medicine industries. The market prospects for processed palm oil products are very promising, due to increasing demand both at home and abroad. Indonesia, as a tropical country with sufficient land area, has a great opportunity to develop palm oil agriculture, which can become a superior source of vegetable oil in the future, and play an important role in national development.

In 2022, Indonesia achieved extraordinary achievements in palm oil exports, namely US\$ 34,94 billion or the equivalent of 39,65 million tonnes, this is an increase of 5,76 percent compared to the previous year (2021). Data from the Ministry of Trade shows that India is the largest export destination for palm oil in Indonesia with a value of US\$ 5,65 billion, followed by China at US\$ 4,91 billion, the European Union at US\$ 4,36 billion, Pakistan at US\$ 3,14 billion, and the United States US\$ 2,37 billion (Infosawit). These countries are also significant markets for Indonesian palm oil

products and provide economic benefits that extend throughout the world through export activities. For example, in the European Union, the use of Indonesian palm oil has a positive impact on Gross Domestic Product (GDP) of 5,7 billion Euros, government revenue of 2,6 billion Euros, and creates 117 thousand jobs every year (GAPKI, 2020).

Even though there are many positive impacts from oil palm plantations, there are also negative impacts of oil palm plantations on environmental sustainability, especially related to Greenhouse Gas (GHG) or carbon emissions which result in extreme climate change. Sources of carbon emissions from oil palm plantations result from burning land, clearing peatlands, palm oil mill waste management, use of chemical fertilizers, processing of fresh fruit bunches (FFB) into palm oil (CPO) (Siska forum, 2023). Clearing of land for oil palm plantations by burning forests continues, this increases carbon emissions. Land clearing that leads to deforestation of forests and peat raises concerns, especially in the context of burning forests to clear new land. Some parties say that palm oil is the main factor in the destruction of tropical rainforests and the increase in greenhouse gas emissions that cause global warming. According to a study by The Brenthurst Foundation, the global palm oil industry accounts for 85% of deforestation (forest destruction) in Indonesia and Malaysia. Most of the deforestation that occurs in Kalimantan is related to the production of oil from palm oil. Even though they look "green", oil palm plantations sequester less carbon than native forests and this harms biodiversity (Komitmeniklim, 2021).

This is a big dilemma for Indonesia, on the one hand Indonesia is committed to ratifying Paris Agreement Law Number 16 of 2016 concerning ratification Paris Agreement. The contents of the ratification are accompanied by provisions regarding Nationally Determined Contribution (NDC) as a form of Indonesia's contribution to efforts to reduce global temperatures roadmap the NDC was submitted to the UN in 2019. In its development, Indonesia has adapted and submitted the Long Terms Strategy (LTS)-LCCR 2050. These plans illustrate Indonesia's commitment to efforts to reduce global warming (Airlangga, 2022). On the other hand, it can be said that palm oil plantation commodities in Indonesia have a huge positive impact, especially on the industrial sector, which can increase Indonesia's exports, increase the country's foreign exchange, and reduce unemployment in Indonesia.

B. Method

The research used s normative juridical research methods with a study of the legal norms and principles contained in statutory regulations. This type of research requires primary, secondary and tertiary data obtained from library research. The approach used is a statute approach by reviewing and incorporating it into the 1945 NRI Constitution, Law on Environmental Protection and Management, Law on the Establishment of Legislative Regulations, Law on Plantations, Law on Ratification of the Paris Agreement, Government Regulation on the Implementation of Environmental Management and Protection, Presidential Regulation on the Indonesian Sustainable

Palm Oil Plantation Certification System, Regulation of the Minister of Agriculture regarding Indonesia Sustainable Palm Oil (ISPO), and presidential instructions.

C. Result & Discussion

1. Harmonization of National Law and International Law on the Main Commodity of Indonesian Palm Oil Exports

Indonesia is one of the largest palm oil producing countries in the world. This main commodity has significantly contributed greatly to the Indonesian economy, both through exports and employment in various regions in Indonesia. According to data from the Directorate General of Plantations in 2018, oil palm plantations in Indonesia in 2017 had a land area of 12,3 million hectares with 60% or around 7,5 million hectares managed by palm oil companies, both state-owned and private, while the remaining around 4,8 million hectares are community-owned plantations (Asia, 2019). Based on information from the Central Statistics Agency, Indonesia's CPO exports in 2022 will reach US\$ 29,62 billion. This figure increased by 3,56% compared to the previous year and recorded the highest achievement in the last ten years (Databoks, 2023). Apart from that, Bambang Brodjonegoro, as Minister of National Development Planning/National Development Planning Agency said that the palm oil industry plays an important role in improving the welfare of 16,2 million workers consisting of 12 million indirect workers and 4,2 million direct workers (BPDP, 2018).

In the midst of production that continues to dominate the global market, the palm oil industry has become the subject of complex and intense debate, especially in the context of environmental, social and economic issues. The palm oil industry is one of the producers of greenhouse gas (GHG) emissions (Asia, 2019). The palm oil industry process produces quite a lot of gas emissions, starting from the fertilization process, maintenance, harvesting, to transportation to the factory for processing. Palm oil is considered environmentally unfriendly because it is often associated with deforestation, wetland conversion, use of pesticides and chemical fertilizers as well as social issues such as land conflicts and human rights. The practice of clearing land by burning forests can also cause forest fires and significant carbon emissions. In the biodiesel supply chain in Indonesia, the plantation stage has the most significant contribution to greenhouse gas (GHG) emissions, reaching 80% or more. Companies that consider land use change (LUC) impacts in their calculations report that GHG emissions for B20 biodiesel range from 2,67 kilograms CO₂eq/L to 4,11 kilograms CO₂eq/L. This proves that palm oil mills and plantations contribute 83% - 95% to GHG emissions.

In response to this, the Indonesian government has taken several significant policy steps. The Indonesian government is taking strategic steps which include implementing the B20 program, using funds from the Palm Oil Plantation Fund Management Agency, as well as supporting the preparation of draft presidential regulations by encouraging certification of sustainable palm oil companies such as Indonesian Sustainable Palm Oil (ISPO) to ensure that palm oil production is

processed taking into account environmental and social aspects. The government plans to implement a series of economic policies that include agrarian reform to improve standards in the agricultural sector. In addition, cooperation between the governments of Indonesia and Malaysia within the framework of the Council of Palm Oil Producing Countries (CPOPC) is directed at expanding the global market for palm oil products (Ekon, 2017).

Indonesia, with all its wealth of palm oil which can be used as cooking oil, is obliged to process palm oil well by paying attention to a sustainable environment. As a country that is not part of Annex I to the UN Framework Convention on climate change, Indonesia has promised by 2023 to reduce Greenhouse Gas (GHG) emissions by 29%. In this regard, Indonesia passed regulations relating to environmental protection and sustainability for the palm oil industry such as Law no. 32 of 2009 concerning Environmental Protection and Management which establishes a broad legal basis to protect life from damage caused by industrial activities, including in the plantation sector. Apart from that, Law no. 39 of 2014 concerning Plantations emphasizes the legal framework that regulates land use permits and sustainable management practices in the plantation industry, including oil palm. The Republic of Indonesia Government Regulation no. 71 of 2004 which regulates the implementation of environmental management and protection as well as Ministerial Regulation of Agriculture no. 19 of 2011 concerning Indonesia Sustainable Palm Oil (ISPO) (Disbun, 2017) which provides an important role for palm oil industry players in ensuring environmentally friendly production practices. Roundtable on Sustainable Palm Oil (RSPO) also plays a role in minimizing the negative effects of oil palm on the surrounding ecosystem (Mutucertification, 2023).

A number of international agreements related to palm oil are an important basis for regulating the trade and agricultural sectors at the global level. The World Trade Organization (WTO) agreement plays a role in establishing the framework for international trade in palm oil. Meanwhile, Indonesia ratified the Paris Agreement in accordance with Article 23 Paragraph (2) of Law no. 12 of 2011 concerning the Formation of Legislative Regulations. With this, it is an important effort for Indonesia to deal with climate change by reducing greenhouse gas emissions which are relevant to environmental issues related to palm oil production (Aisya, 2019). As for the Lacey Act in the United States which plays an important role in ensuring that forest products entering the market include legal and sustainable palm oil derivative products. On the regional side, AFTA (ASEAN Free Trade Area) participates in regulating palm oil trade in the Southeast Asia region to support member countries committed to promoting fair and sustainable trade. Thus, effective implementation of this agreement has an important role to play in ensuring that palm oil production is carried out responsibly and sustainably globally.

Regarding national and international laws that regulate the reduction of emissions that cause greenhouse gasses, efforts are needed in particular for Indonesia to produce palm oil with sustainable environmental principles. Emission reduction can be done by creating and preserving mangrove forests. Mangrove

forests are proven to have the ability to absorb three to four times more carbon than terrestrial forests because the capacity of mangroves to store significant carbon reserves provides great benefits in efforts to reduce Greenhouse Gas (GHG) emissions (David, 2023). In addition, the spread of emissions can be reduced by good palm oil production management, such as using fertilizers with lower emissions, implementing land clearing without burning (Zero Burning Policy), utilizing liquid waste from palm oil processing to be used as an energy source, implementing fertigation (irrigation with fertilizer), utilizing palm oil shells to be used as an alternative energy source, and using technology methane capture to minimize the spread of emissions due to burning palm oil waste which produces large amounts of methane gas (Ardelia, 2023).

2. The Role of the Indonesian Government in Implementing the Ratified Agreement Concerning International Climate Change

Rights and obligations of member states of the convention Paris Agreement is in accordance with the principles in the draft declaration on the rights and obligations of states prepared by the UN International Law Commission in 1949. At the convention Paris Agreement, Indonesia has rights and obligations as stated in the draft declaration. In accordance with the theory of state responsibility, the Indonesian Government is obliged to resolve the negative impacts of climate change which poses a serious threat to human survival and the environment. It should be a necessity for the state to protect all its citizens. In line with the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia and linked to sustainable development, the Government is obliged to strive to protect and control the impacts of climate change by actively participating in the convention Paris Agreement.

Ratify the convention Paris Agreement Into Law no. 16 of 2016, meaning that the law has become Indonesian national law in accordance with the principle *Pacta Sunt Servanda*, thus making Indonesia part of the international community and a subject of International Law. Binding regulations in conventions Paris Agreement based on the principles of International Law *Pacta Sunt Servanda* namely, it is regulated in Article 26 of the Vienna Convention of 1969 concerning the Law of Treaties which states "every applicable agreement is binding on the countries that are members of the agreement and must be implemented in good faith" (UNAIR).

Form of commitment of the Indonesian state in the Convention Paris Agreement, then Indonesia has an obligation to obey and respect the convention Paris Agreement like other members in general. In the context of international treaty responsibilities, Indonesia has an obligation and responsibility to carry out what has been regulated in the convention Paris Agreement regarding reducing greenhouse gasses. Article 1 Articles on The Responsibility of States for the Internationally Wrongful Act 2001, confirms that "every internationally wrongful act of a State entails the international responsibility of that State". This emphasizes that the most important principle in international law is state responsibility, because it regulates the obligations of one country to other countries. It can be concluded that state

responsibility is a necessity in carrying out what a state should do (United Nations, 2001).

The Indonesian government ratified the convention Paris Agreement in Law no. 16 of 2016, this is in line with the Sustainable Development Theory which states that "meeting the living needs of the present by considering meeting the living needs of future generations". Convention Paris Agreement is also in line with the Indonesian Government, namely climate-resilient and low-carbon development. Ratification of the Paris Agreement in accordance with Sustainable Development Goals (SDGs) point 13, namely handling climate change. The conclusion is a convention Paris Agreement is one step to achieve sustainable development by reducing the causes of greenhouse gasses which can cause drastic climate change (Sustainable Goals Development).

The Indonesian government is trying to improve the governance of palm oil plantations to create an environmentally friendly palm oil industry. One of them is by ratifying Law no. 39 of 2014 concerning Plantations (Plantation Law). In this regulation, the Government regulates plantation procedures and the obligations of oil palm business actors. Apart from that, the Indonesian government has also issued Presidential Instruction no. 8 of 2018 concerning Postponement and Evaluation of Palm Oil Plantation Licensing and Increasing the Productivity of Palm Oil Plantations. The Presidential Instruction aims to provide legal certainty, improve sustainable management of palm oil plantations (Krishna, 2020), safeguard and protect the environment by reducing carbon and greenhouse gas (GHG) emissions, increase the productivity of palm oil plantations, and develop palm oil producers.

The Indonesian government also issued Presidential Instruction no. 6 of 2019 concerning the National Action Plan for Sustainable Palm Oil Plantations for 2019-2024 (RAN-KSB). RAN-KSB functions to improve the status and legalization of oil palm land, increase the capacity of small farmers, utilize palm oil as new renewable energy (EBT), can accelerate the achievement of a sustainable palm oil industry, and strengthen diplomacy to achieve a sustainable palm oil industry in Indonesia. With the passing of these regulations, it is hoped that there will be improvements in the governance of palm oil as a sustainable industry in Indonesia. This can answer Indonesia's dilemma regarding internal agreements.

Furthermore, the government has also strengthened certification Indonesian Sustainable Palm Oil (ISPO). However, in reality, more than 10 years have passed and the governance of this certification still needs to be refined so that implementation is better and the level of market acceptance in terms of the palm oil industry is higher. Therefore, the Indonesian government issued regulations in the form of Presidential Regulation no. 44 of 2020 concerning the Indonesian Sustainable Palm Oil Plantation Certification System. This presidential regulation aims to improve and ensure the management of oil palm plantations in accordance with the principles and criteria in certification ISPO, apart from that, it can increase the competitiveness and acceptability of Indonesian palm oil products both in the domestic market and in the

international market, as well as the government's efforts to accelerate the reduction of greenhouse gas emissions from the palm oil production process.

In 2019, the government also issued Presidential Instruction no. 5 of 2019 concerning the Termination of the Granting of New Permits and Improving the Governance of Primary Natural Forests and Peatlands, as a form of improvement from Presidential Instruction No. 6 of 2017. Issuance of Presidential Instruction No. 5 of 2019 is a strong step for the government to improve the management of peatlands and primary natural forests. In this Presidential Instruction, relevant ministries and sectors can stop issuing new permits related to peatlands and primary natural forests located in protected forests, conservation forests and production forests, including limited production forests. Production forests are usually listed in the Indicative Map for the Termination of Granting of New Permits (PIPIB), with several exceptions for designation such as ecosystem restoration and the implementation of vital national development. With improvements to the previous Presidential Instruction, it is hoped that Presidential Instruction No. 5 of 2019 can activate certification that has not been running optimally, apart from that it can improve better forest management for sustainable palm oil plantations.

D. Conclusion

The harmonization of national and international legal regulations related to the palm oil industry in Indonesia can be said to be in line, seen by the uniformity of national regulations that support Indonesia's approval of the Paris Agreement and the results of its ratification. Indonesia passed regulations related to environmental protection and sustainability for the palm oil industry such as Law no. 32 of 2009 concerning Environmental Protection and Management, Law no. 39 of 2014 concerning Plantations, as well as Indonesian Government Regulation no. 71 of 2004 which regulates in detail the implementation of environmental management and protection as well as Minister of Agriculture Regulation no. 19 of 2011 concerning Indonesia Sustainable Palm Oil (ISPO).

The role of the Indonesian government in implementing the results of ratification of the Paris Agreement namely by improving the governance of oil palm plantations as regulated in Law no. 39 of 2014 concerning Plantations, issued Presidential Instruction no. 8 of 2018 concerning Postponement and Evaluation of Palm Oil Plantation Licensing and Increasing the Productivity of Palm Oil Plantations, issued Presidential Instruction No. 6 of 2019 concerning the National Action Plan for Sustainable Palm Oil Plantations 2019-2024, or RAN-KSB, the government strengthens the implementation of certification Indonesian Sustainable Palm Oil (ISPO), and the issuance of Presidential Instruction No. 5 of 2019 concerning Termination of the Granting of New Permits and Improving Governance of Primary Natural Forests and Peatlands, as a form of improvement to Presidential Instruction No. 6 of 2017 concerning Postponement and Improvement of Governance for Granting New Primary Natural Forest and PeatLand Permits.

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