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# **JURIDICAL REVIEW REGARDING MALADMINISTRATION OF CRUDE PALM OIL EXPORTS IN INDONESIA**

### ***Abstract***

This paper tracks the maladministration of CPO exports by conducting a judicial review of CPO export policies by the Ministry of Trade of the Republic of Indonesia. This study uses a normative legal analysis with a field research approach. The results of the judicial review of this study are that the policy of temporarily stopping the export of Crude Palm Oil by the government is entirely appropriate, considering that previously there was maladministration carried out by individuals at the Ministry of Trade involving palm oil entrepreneurs in three companies, the occurrence of export permits has entered the criteria for maladministration because the three companies The CPO manager does not have an export permit which causes state economic losses due to rising cooking oil prices due to excess CPO being exported.

### ***Key Words***

*Maladministration, Export Restrictions, Judicial Review, CPO, Export.*

### **Introduction**

Indonesia has around 10.5 million ha of oil palm plantations, about 44% belonging to smallholder plantations, 49% to private companies (PBS), and 7% to state-owned plantation companies. In general, it can be estimated that 56% of these plantations have better agronomic practices, including land clearing practices than smallholder plantations because

they are supported by more robust capital and a more comprehensive network of companies (Haryati *et al.*, 2022). This places Indonesia as the world's producer of palm oil or Crude Palm Oil (CPO), the raw material for cooking oil and other derivative products. The ironic thing is that Indonesia, the world's largest palm oil producer, has a shortage of CPO or cooking oil (Nur Hayati, 2021).

Cooking oil shortage is accompanied by a rise in need and a short supply. The following causes have reduced stores, with manufacturers seeing a decrease in domestic selling of canola oil. CPO is one of the most widely used vegetable oils globally (Ifa *et al.*, 2022). On the global market, CPO is now facing a price hike. From 1100 to 1340 dollars, the rise was significant. The increase was also the impact of the Russian invasion of Ukraine, which caused the supply of European cooking oil to stagnate from Ukraine and Russia.

Because of the rise in CPO, cooking oil producers prefer to sell cooking oil abroad rather than domestically. Producers will get greater profits when selling cooking oil abroad. The second factor is the government's obligation related to the B30 program. The B30 project is a government initiative that mandates 30% diesel to be mixed with 70% fuel oil. Biodiesel manufacturing is becoming more popular (Yao-Say Solomon Adade *et al.*, 2022). Biodiesel is made from waste that would otherwise be used for cooking. It's because CPO enterprises must fulfil a 30% target for ethanol manufacturing. The incomplete nature of the Covid-19 epidemic is the third element. The third wave of Covid-19 is affecting some nations throughout the world. Consumers in other countries who previously used vegetable oil are beginning to move to CPO. As a result, there is a rise in international demand for CPO exports (Nur Hayati, 2021).

Oil product manufacturers are few and far between. Meanwhile, cooking oil is being distributed across Indonesia in various spots. The price rises as a result. Containers are considerably more expensive than they were previously in terms of logistics. The cost of freight or shipment has also increased. As a result, the price of cooking oil has risen.

On this basis, we need to examine Indonesia's legal perspective related to the scarcity of CPOs. The government then responded by restricting CPO exports, which led to a decline in palm oil prices by almost 50% in Sumatra. There are positives and negatives to the legal review related to export restrictions by the government. The problem for Indonesian palm oil entrepreneurs is that they are still exporting in the form of CPO. The raw material for cooking oil and B30 for gasoline and diesel has become a matter of polemic in the country. Meanwhile, the use of CPO overseas is more for producing biodiesel and synthetic engine oil, which has become the driving force of other industries because it is related to machinery.

When this CPO is used as an export commodity without regard to domestic stock, which is mainly used as raw material for consumptive residents, of course, this CPO is like *simalakama* fruit (Supriyanto, 2021). For farmers in upstream production, the price is low because of the

export restrictions, while it should be a valuable commodity for entrepreneurs. We sell high, but our entrepreneurs prefer to export them in semi-finished goods, which have different selling value from finished goods.

The export ban is not why palm oil mills lower the price of farmers' fresh fruit bunches. Because, he said, the cost of FFB is based on the world CPO price, not based on the volume of CPO exports. In fact, by stopping Indonesia's CPO exports, world CPO prices and their derivative products have the opportunity to rise. As for many cases of palm oil mills lowering fresh fruit bunches, Sungkot pointed out that this was due to misunderstandings among the palm oil mill managers. He said the managers of palm oil mills think the impact of the CPO export ban will make the CPO storage tanks full, so they cannot accommodate the new CPO (Halimatussadiah *et al.*, 2021).

This is a mistake because CPO storage will flow to refineries [capacity 54 million tons] and then to factories for migration [cooking oil], oleochemicals, and biodiesel. He also asked the government, especially the provinces and districts, to step in to explain the new policy, the ban on CPO exports (*Indonesia Dec 2017 CPO exports to fall slightly*, 2018). This legal issue has attracted many parties, apart from being a national issue due to the scarcity of cooking oil in the field. However, it is also the concern of legal practitioners to conduct in-depth studies related to the problems of export restrictions due to this maladministration.

### **Literature Review**

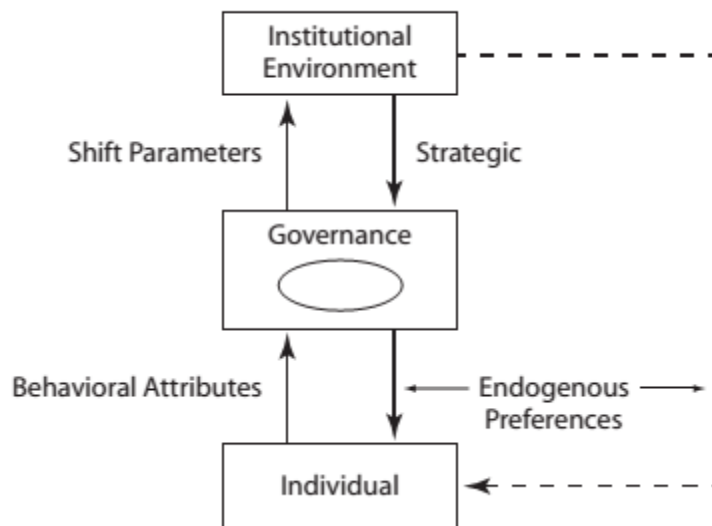
Many scientists agree believe the roots of forest loss are linked and socioeconomic (Lambin and Meyfroidt, 2011, FAO, 2012). FAO (2012) classifies both the causes and approaches to dealing with deforestation and forest degradation in a given country and often varies from country to country. In addition, other underlying causes, namely:

- Poverty;
- Communal land instability;
- Insufficient acknowledgment of indigenous and local trees peoples' rights and needs in national legislation and jurisdictions;
- Inadequate cross-sectoral policies;
- Decrease in the value of forest products and ecosystem services;
- Absence of involvement;
  
- Ineffective governance;
- There isn't a good economic atmosphere for forest management;

- Unauthorized commerce;
- Inadequate resources;
- Mostly at the national and international levels, there is a dearth of an institutional framework;
- Markets are distorted by federal policies, which favor the conversion of forest land to other purposes. (FAO, 2012).

Increasing community participation in forest resources does not guarantee ecological and economic success. However, effective community-level institutions in regulating the use of resources are also needed (Charnley and Poe, 2007, Chhatre and Agrawal, 2008). Therefore, there are two essential issues to define community-based forest management successfully: property rights to forest resources and local solid community institutions in forest use and management (Charnley and Poe, 2007, Taylor, 2009).

This bureaucratic complexity and error may be unintentional. This problem also makes the danger of smoke and the slash and burn culture on land in Indonesia increasingly massive. This problem can occur because the bureaucracy does not have sufficient information and is less able to process information, which encourages inappropriate policymaking, is prone to conflict, and is inefficient (Greenwald, 2008). Organizationally, the organizational structure of forest management in Indonesia is weak, and fragmentation occurs with power struggles, anarchy, conflicts and contradictions in the legal rules that are not clear between legal and illegal, making it easier for unlawful logging (Smith *et al.*, 2003). Individuals involved in forest management behave rationally and are constrained: individuals tend to maximize utility, even though it is limited because of uncertainty, asymmetric information, and imperfect cognitive abilities. (Nee in Smelser and Swedberg, 2005).



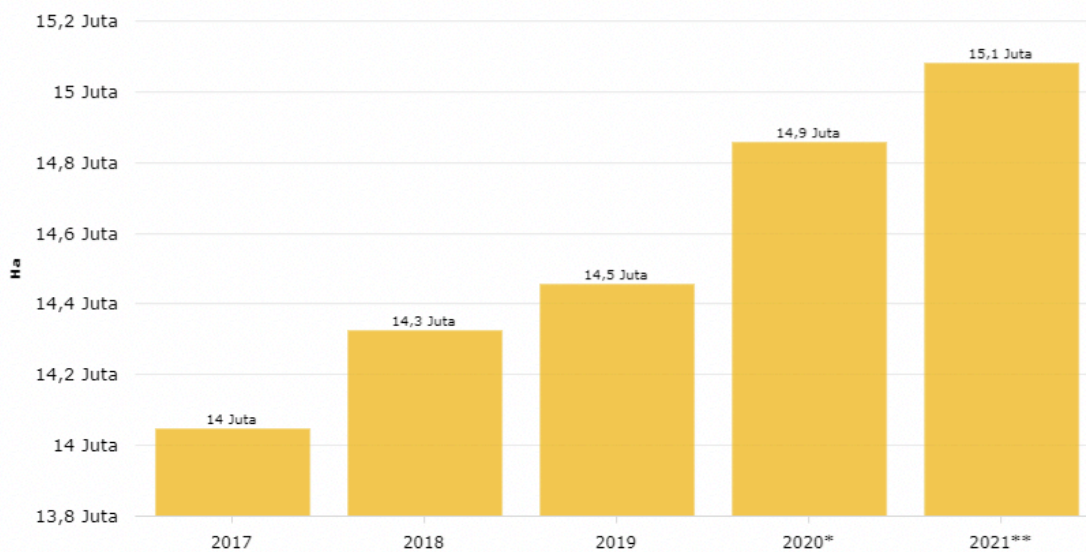
**Figure 1 New Institutional Economic Model**

Sumber: (Smelser and Swedberg, 2010)

The core of the above model is the transaction costs of negotiating costs, maintaining and completing transactions in a market economy (Smelser and Swedberg, 2010). The above model, mentioned by Smelser and Swedberg (2010) that the institutional environment (property rights, changes in the rule of law and norms) is shaped by the game's rules, while the downward arrow indicates that companies are trying to influence governance by lobbying. Meanwhile, government reflects the structure and characteristics of the transactions being managed, and this structure must be aligned with the institutional environment in which it is located. Alignment is essential for cost savings, establishing new norms, and accepting new ideas (Schermerhorn et al., 2011). Individuals also try to contribute their interests for personal gain (arrows up) self-interest seeking with guile" (Ramirez et al., 2010). The ability of the state to regulate landowners in the form of local regulations or government regulations is not directly correlated with a reduction in land burning. Adopting the hypothesis of Adam and Lomnitz (Smelser and Swedberg, 2010) stated that the more state regulations, the more developed informal economic activity, in this case, land burning.

The role of the palm oil industry in the national economy and the economy of the Riau province is very significant. Since 2009 palm oil has become a prima donna contributor to extraordinary export growth, replacing oil and gas commodities. According to GAPKI's records, for a year, in 2013, Palm Oil contributed nearly 6.5 million dollars to the growth of export value, even though from 1990-to 2000, palm oil never contributed export value at all.

However, the situation has reversed since 2009, when palm oil has increased to become the most significant contributor to the export share of Riau Province, which reaches 30–40% of the total share of existing exports. It started in 2005 when the percentage experienced a significant increase which beat the contribution of the non-oil and gas sector. And at its peak in 2008, the growth of palm oil exports was able to shift the oil and gas sector, which at the same time experienced a decline in the industry.



**Figure 2 Area of Palm Oil (Palm Oil) Plantation in Indonesia (2017-2021)**

The plantation area increased by 1.5% compared to the previous year, 1.48 million ha. Of the 15.08 million ha, the majority are owned by large private plantations (PBS), with 8.42 million ha (55.8%). Then, the People's Plantation (PR) covers an area of 6.08 million ha (40.34%), and the State Large Plantation (PBN) covers an area of 579.6 thousand ha (3.84%).

Oil palm plantation areas are spread across 26 provinces in Indonesia. Riau Province has the largest oil palm plantation area, with 2.89 million ha in 2021 or 19.16% of the country's total area of oil palm plantations.

CPO export activities are related to business competition and investment law; CPO processing activities in Indonesia are managed mainly by the private sector, both domestic and international investors, through FDI schemes (Supriyanto, Warsono, and Purnaweni, 2021). But this policy also has a value chain with the presence of oil palm farmers in the Sumatra and Kalimantan regions; of course, the government needs to make more considerable

improvements to the CPO export scheme to be wiser so that there is no domino effect on its derivative commodities.

The area of palm oil plantations in the country from 2017-to 2021 is experiencing an increasing trend. The Ministry of Agriculture (Kementan) noted that the location of palm oil plantations reached 15.08 million hectares (ha) in 2021. The plantation area increased by 1.5% compared to the previous year, 1.48 million ha. Of the 15.08 million ha, the majority are owned by large private plantations (PBS), with 8.42 million ha (55.8%). Then, the People's Plantation (PR) covers an area of 6.08 million ha (40.34%), and the State Large Plantation (PBN) covers an area of 579.6 thousand ha (3.84%) (Rusli *et al.*, 2022).

The Ministry of Agriculture also noted that the national palm oil production amounted to 49.7 million tons in 2021. This figure increased by 2.9% from the previous year, which amounted to 48.3 million tons. The Ministry of Agriculture also noted that the national palm oil production amounted to 49.7 million tons in 2021. This figure increased by 2.9% from the previous year, which amounted to 48.3 million tons. Meanwhile, oil palm production in Riau will reach 10.27 million tons in 2021. This number is the largest in Indonesia and accounts for 20.66% of national palm oil production.

There are 2,511 palm oil companies spread across 26 provinces. A total of 1,357 companies, or 54 per cent, are located in the Sumatra region. The total need for national cooking oil consumption processed from crude palm oil or crude palm oil (CPO) is around 5.06 million tons per year or 5.7 billion litres per year. Of the total needs, household consumption is approximately 3.4 million tons per year or about 3.9 billion litres per year (Hidayati, Mumtaz, and Hasibuan, 2018).

In implementing the supply of domestic cooking oil raw materials during February 14-March 12, 2022, the total domestic market obligations (DMO) collected amounted to 720 thousand tons or about 20.5 per cent of the total exports of CPO and its derivative products. Meanwhile, cooking oil produced by DMO has been distributed as much as 502,850 tons to 34 provinces and 356 districts/cities by 44 producers.

The policy banning the export of palm oil and raw materials for cooking oil has been in the spotlight and has pushed up the price of crude palm oil or CPO in the global market. However, three days after the first announcement, the government stated that the export ban did not apply to CPOs.

Cooking oil has been in the public's spotlight after a prolonged shortage, and the price skyrocketed—but the supply suddenly became available. The cooking oil problem even led to the arrest of one government official, who was said to be responsible for the cause of the chaos. The decision came after Jokowi chaired a limited meeting on meeting basic needs. The

President said the purpose of the export ban was to ensure the availability of cooking oil in the country so that the price is expected to be more controlled.

The policy of banning the export of CPO along with its derivative products has been in effect as of April 28, 2022. Economists view that this policy will affect the value of Indonesia's exports to the potential of widening the current account deficit (CAD). The value of the potential monthly export value loss is around US\$ 1.8 billion to US\$ 2.2 billion due to this policy. "Considering that CPO and its derivative products (HS 1511) account for more than 80% of vegetable animal fats and oils exports.

Meanwhile, CPO and its derivative products account for around 11.52% of Indonesia's total exports in 2021. According to data from the Central Statistics Agency (BPS), last year, Indonesia exported approximately 25.5 million tons of CPO and its derivatives with a value of US\$ 26.67 billion or an average of 2.13 million tons worth US\$ 2.22 billion per month.

### **Method**

This study uses a normative legal analysis using field research as the basis for data management. The data used in this study is secondary data processed based on facts in the field, which is then analyzed using the applicable laws in Indonesia. This study examines the principle of justice related to the export of CPO by several companies processing CPO and its derivatives.

On the basis that the company did not have an export permit, but due to the intervention of a Directorate official at the Ministry of Trade, the export permit for the three companies was approved. But a juridical review, of course, requires an in-depth study related to these problems.

### **Discussion**

#### **1. Indications of Corruption in the Case of Exports of Crude Palm Oils**

In April 2022, the Attorney General's Office of the Republic of Indonesia has named four suspects in the alleged corruption case in the export of crude palm oil (CPO) and RBD Palm Olein, and the suspect was named the Director-General of Foreign Trade at the Ministry of Trade and three suspects from the private sector. The four suspects fulfilled the element of committing an unlawful act that caused state losses. Namely, article 2 and article 3 of the Corruption Act.

Regarding the suspects' actions who are suspected of having agreed, the CPO export approval permit can be issued without the need to meet the requirements of government



regulations. The suspect from the private sector communicated with the Ministry of Trade to give export approvals related to CPO commodities to the three palm oil companies.

If we look further, it turns out that the three companies do not meet the export requirements because they define the price not according to the domestic sales price. Then, do not distribute cooking oil domestically as required in the domestic market obligation, 20 per cent of total exports.

The suspects' actions resulted in the loss of the country's economy. Because their actions are suspected of impacting the scarcity of cooking oil stocks in the country and ultimately making the price of cooking oil expensive. The climax of the state was to disburse cooking oil cash assistance, whose value reached 6.4 Trillion Rupiah.

For actions that indicate that they can cause financial losses to the state or the country's economy, of course, it will have a domino effect on other sectors, especially the economic sector, such as the increase in cooking oil and even rumours regarding the increase in cooking oil as a cost to raise the issue of extending the presidency, which will undoubtedly be a wild ball for President Joko's government. Widodo.

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Indonesia's export value will be eroded by around US\$ 2.2 billion if this policy is implemented for one month. With this reduced export value, Indonesia's current account balance could become a deficit in the second quarter of 2022. "Our rough estimate is that the current account balance will be in a surplus of around 0.1% of GDP in the first quarter of 2022, while in the second quarter of 2022, the CAD will be in the range of 0% GDP to 0.5% of GDP.

This will also have the potential to reduce the surplus-value of Indonesia's Balance of Payments (BOP) and then will affect the movement of the rupiah exchange rate. Joshua also estimates that the rupiah exchange rate will move in the range of Rp in the short term. 14,400 to Rp. 14,450 per United States (US) dollar. The impact of the propagation of the ban on the export of CPO and its derivatives is not the sole factor influencing the movement of the rupiah exchange rate. This movement in the short term could be affected by holidays, the policy of the US central bank The Fed, as well as the escalation of the war between Russia and Ukraine.

The export value of Indonesian crude palm oil (CPO) reached US\$ 35 billion in 2021. This value increased 52.8 per cent from US\$ 22.9 billion in 2020. This increase in export value was due to the high average price of CPO in 2021. an average of US\$ 1,194 per tonne, 67% higher than US\$ 715 per tonne in 2020. Despite the increase in export value, CPO production

was lower than in 2020. CPO production was recorded at 46.89 million tons in 2021, down from 47.03 million tons in 2020.

The volume of palm oil exports experienced a downward trend throughout 2020-2021, but the value increased, as shown in the rising world CPO prices graph. Palm oil is Indonesia's leading export commodity. The portion of the export value of this commodity is the largest compared to other items, reaching 13.01 per cent of Indonesia's total non-oil and gas exports in 2021.

The high price of CPO in the international market has caused a shortage of cooking oil. The wide disparity in the price of CPO exported has pushed palm oil entrepreneurs to violate their Domestic Market Obligation (DMO) obligations because of the government's highest retail price (HTE).

Some time ago, cooking oil disappeared from the market, so it was difficult for people to get it both for traditional and modern needs. The Attorney General's Office has named the Director-General of Foreign Trade of the Ministry of Trade Indrasari Wisnu Wardhana as a suspect in the cooking oil mafia, causing a shortage of cooking oil in the market. The Prosecutor's Office has also appointed the Permata Hijau Group Senior Manager for Corporate Affairs with the initials SMA, the Commissioner of PT Wilmar Nabati Indonesia with the initials MPT, and the General Manager of Musim Mas with the initials PT.

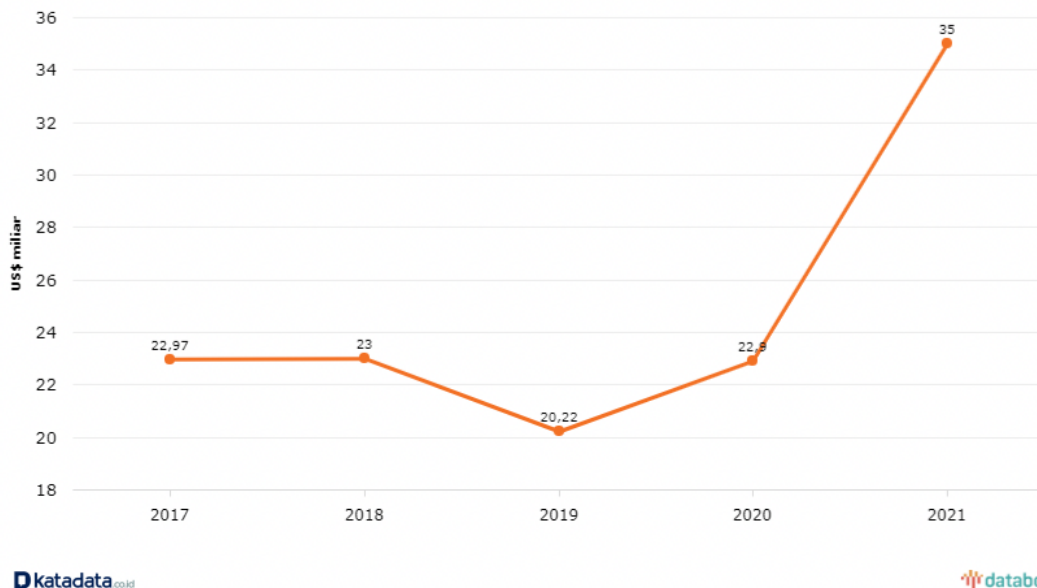


Figure 3 Indonesian CPO Export Value, 2017-2021

The export value in 2021 will be the highest in the last five years. In 2017, the export value was recorded at US\$ 22.97 billion. This value increased to US\$ 23 billion in 2018. The value of exports fell to US\$ 20.22 billion in 2019. The following year, the value of exports again increased to US\$ 22.9 billion.

The value of Indonesian palm oil exports increased due to the improvement in CPO prices in the global market, in line with rising food commodity prices. The price of CPO on the Rotterdam Futures Exchange was traded at US\$1,020 per metric ton on January 5, 2021. The price increased to US\$1,610 on April 19, 2022.

## **2. Juridical Review Regarding CPO Exports**

It was widely heard that the Indonesian CPO was rejected by the European Union parliament in 2018. There are five reasons why the European Union Parliament issued a policy prohibiting imports of CPO and its derivatives, namely the palm oil industry creates deforestation, degradation of animal habitats, corruption, child labour, and rights violations. Human rights (HAM). According to the European Union Parliament, the Indonesian palm oil business is one of the causes of these difficulties. Six hundred forty members of the European Union Parliament voted in favour of the rationale, while 18 citizens voted against it and 28 abstained.

European merchants, such as Iceland Foods (UK), Carrefour (France), Systeme U (France), Del Haize (Belgium), and Casino, are more cognizant of the environment and social and human rights issues stemming from the palm oil business, and consequently refuse to utilize CPO in the food goods they offer (France). The argument becomes whether European merchants were incorrect to deny CPO because of environmental, social, and human rights concerns. No, that is not the case. Vegetation and natural calamity result from oil palm plantations' domination of spatial control in Indonesia (Sidik, 2018).

This problem should not be solved through trade agreements. Indonesia and the European Union must follow an ambitious plan to address oil palm challenges in a democratic, transparent, and holistic way in an inclusive debate beyond trade negotiations involving all stakeholders. The inclusion of oil palm access regulations in the CEPA would result in increased trade in palm oil products based on weak voluntary certification schemes like the RSPO and ISPO, which lack policing and defined in law and have been shown to fail to safeguard the right of local communities, workers, smallholders, and the environment.

President Joko Widodo's policy of prohibiting the export of crude palm oil (CPO) and cooking oil as of April 28, 2022, has brought pros and cons. Although the goal is to maintain the stability of domestic cooking oil, the ban harms oil palm farmers. Currently, the price of Fresh Fruit Signs (FFB) owned by oil palm farmers has fallen to Rp. 1000 due to the export ban

policy. CPO mills don't want to receive too much FFB from farmers. This is because the factory's storage tank capacity (storage) is limited. After all, the factory also has FFB deposits from the plantation. Meanwhile, oil palm farmers do not have storage tanks. "So the position of oil palm farmers is awry; they sell the price down, they don't sell rotten finished goods.

On average, these small oil palm farmers have plantations of 2 to 10 hectares, while middle-class farmers have 500 to 1000 hectares. The rest is controlled by large companies that have processing plants. Millions of oil palm farmers live solely from oil palm plantations.

Palm Oil Mills (PMKS), located in North Sumatra, no longer receive/buy palm fruit harvested from our plantations until an undetermined time limit. "We got information from the public that private companies accommodating smallholders' palm oil are no longer buying. Many people expressed that punishing and imposing harsh sanctions on rogue CPO companies is better than banning CPO exports. The government should emphasize and tighten the implementation of the Domestic Price Bond (DMO) and Domestic Price Bond (DPO) policies. So there is no need to ban exports because small farmers receive the impact.

Returning to the maladministration of Indonesia's CPO export activities which caused the price of cooking oil to soar ahead of the month of Ramadan yesterday, of course, became the government's background to stop CPO exports. Of course, overall, the domino effect has not been seen in real terms, as we know that the price of cooking oil, whose raw material is CPO, is still high in the market.

Of course, this underlies many things related to the legal basis for limiting CPO exports by the government, which has been regulated through Minister of Trade Regulation No. 22 concerning the Temporary Prohibition of Exports of Crude Palm Oil, Refined, Bleached and Deodorized Palm Oil, Refined, Bleached and Deodorized palm olein and Used Cooking Oil. Through this regulation, the Ministry of Trade will provide sanctions for exporters who violate the provisions of the legislation.

However, this policy exempted CPO, Refine, Bleached and Deodorized Palm Oil (RBD Palm Oil). It Used Cooking Oil (UCO), which received an export customs notification registration number no later than April 27 2022, which can still be exported. As mentioned in paragraph (1), the evaluation is carried out through a coordination meeting organized by the ministry that coordinates, synchronizes, and controls the church's affairs in government administration in the economic sector.

## Conclusion

Related to the policy of banning the export of CPO because this results in state losses that have an impact on the scarcity of cooking oil so that the price of cooking oil soars uncontrollably, although this policy has many pros and cons, this policy is quite effective in implementing but not forever this CPO is restricted for export, of course. This policy needs evaluation. Is it effective in suppressing the price of cooking oil in the market? Or it doesn't have a positive impact on this policy; it harms oil palm farmers who will sell their fresh palm fruit to CPO processing factories. Of course, the government needs to consider the negative and positive impacts caused by the policies issued by the Ministry of Trade.

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## Файзал Сант'яго

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## ЮРИДИЧНИЙ ОГЛЯД ПОРУШЕНЬ ЕКСПОРТУ СИРОЇ ПАЛЬМОВОЇ ОЛІЇ В ІНДОНЕЗІЇ

*Дана стаття робить огляд чинного нормативного регулювання міністерством торгівлі Республіки Індонезія експорту сирої пальмової олії. Стаття поєднує нормативний аналіз з польовими дослідженнями. Нормативний аналіз привів до висновку, що чинна тимчасова заборона на експорт сирої пальмової олії повністю виправдана з огляду на численні попередні порушення з боку посадовців міністерства торгівлі Республіки Індонезія у поєднанні з низкою комерційних структур та їх посадовців, що призвели до економічних втрат бюджету, спричинених передусім надмірним експортом сирої пальмової олії.*

### Ключові слова:

Порушення, експортні обмеження, юридичний огляд, сира пальмова олія, експорт