

***THE COMPABILITY OF THE EUROPEAN UNION'S RED II WITH WTO
PRINCIPLES: A LEGAL STUDY ON RESTRICTIVE EFFECTS ON
INDONESIAN PALM OIL BIOFUEL EXPORTS***

**KESESUAIAN RED II UNI EROPA DENGAN PRINSIP-PRINSIP WTO:
KAJIAN HUKUM TERHADAP DAMPAK PEMBATAHAN EKSPOR
BIOFUEL KELAPA SAWIT INDONESIA**

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ABSTRACT

This research examines the EU's justification for implementing RED II under GATT 1994 and the Indonesia government's efforts to minimize its impact. Data were drawn from GATT 1994, TBT, books, journals, articles, websites and interviews, using literature review, interviews and identification methods. The result show: (1) the EU justifies RED II through living-thing protection, deforestation concerns and high ILUC risk; (2) impacts include reduced palm oil export quotas, declining income for smallholders and companies and strained Indonesia-EU relations; (3) Indonesia's advocacy involves strengthening RSPO certification and diversifying export markets.

Keywords: Palm Oil, RED II, Trade

ABSTRAK

Penelitian ini menganalisis justifikasi Uni Eropa dalam menerapkan Renewable Energy Directive II (RED II) berdasarkan GATT 1994 serta upaya Pemerintah Indonesia dalam meminimalkan dampak penerapan kebijakan tersebut. Data penelitian diperoleh dari GATT 1994, Technical Barriers to Trade (TBT), buku, jurnal, artikel, situs web dan hasil wawancara dengan menggunakan metode studi kepustakaan, wawancara dan identifikasi. Hasil penelitian menunjukkan bahwa: (1) Uni Eropa menjustifikasi penerapan RED II berdasarkan alasan perlindungan lingkungan hidup, kekhawatiran terhadap deforestasi dan risiko tinggi Indirect Land Use Change (ILUC); (2) penerapan RED II berdampak pada pembatasan ekspor minyak kelapa sawit, penurunan pendapatan petani dan perusahaan, serta memburuknya hubungan perdagangan antara Indonesia dan Uni Eropa; dan (3) upaya advokasi Indonesia dilakukan melalui penguatan sertifikasi Roundtable on Sustainable Palm Oil (RSPO) dan diversifikasi pasar ekspor.

Kata Kunci: Minyak Kelapa Sawit, Perdagangan, RED II

A. INTRODUCTION

Indonesia is a developing country rich in natural resources, which attracts the interest of other nations to engage in cooperation, especially in the realm of international trade law and policy. This is what encouraged Indonesia to accede to the World Trade Organization (WTO), which serves as a platform to protect cooperation with other countries, acts as a stepping stone to increase access to partnerships and promotes Indonesia to the international market. Indonesia has been a WTO member since 1995 after ratifying the WTO agreement as stipulated under Law Number 7 of 1994 regarding the ratification of the Agreement establishing the WTO.” However, cooperation facilitated by Indonesia and haused by the WTO has not always proceeded smoothly, obstacles have arisen, even leading to disputes in international cooperation. A notable example is the dispute between Indonesia and the European Union (EU) regarding export from palm oil. In fact, cooperation between Indonesia and the EU has been long-standing and has brought significant impacts, even benefits, to the economy and trade relations of both parties. In 2020, Indonesia filed a complaint with the WTO through the Dispute Settlement Proceeding Designated DS593 (EU-Certain measures concerning palm oil and oil palm crop based biofuels, arguing that the EU had violated based of Pacta Sunt Servanda by disregarding the content within agreement concerning palm oil export cooperation. The EU also implemented new rules unilaterally as a form of internal policy without negotiation between the two parties, namely by implementing the RED II.

RED II constitutes a regulatory instrument that establishes sustainability requirements applicable to renewable feedstocks utilized for transport fuel and solid biomass criteria related Greenhouse gas (GHG) effects criteria. The RED II target is to increase the consumption of renewable energy sources to 32% by 2030, up from the initial target of 20% in the RED I provisions. The increase in the renewable energy target 32% of RED II provisions benefits the EU because the EU has found a renewable energy source produced domestically without needing distribution from other countries. However, this certainly results in losses for Indonesia. The losses for Indonesia arise because the renewable energy source exported by Indonesia to the EU, in the form of raw material derived from palm oil,

will be subject to phase-out process, leading to a 0% export quota by 2030. In Indonesia's complaint to the EU, it was explained that the EU had violated GATT 1994 Article 1:1, Article 3:2, Article 3:4, Article 10:III(a), Article 11:I. Up to 2023, Indonesia has attempted various measures to find resolution with the EU, including requesting the formation of a panel on the dispute between the two countries and stating objections to the RED II policy. In the mediations conducted, Indonesia, through the permanent Representative of the Republic of Indonesia (PTRI) in Geneva, submitted a list of one hundred and eight questions resulting from coordination among relevant ministries/agencies, palm oil associations/business actors, expert teams and the Government of Indonesia's legal team. In the subsequent step of filling the application, Indonesia requested the WTO's Dispute Settlement Body (DSB) to review the root cause of the issue and provide a fair ruling to resolve this dispute. The EU implemented the RED II provisions with considerations it deemed protective of the interests of its member state, without properly considering that the agreement and the resulting benefits should be enjoyed by both parties. Indonesia and the EU both hope that the WTO DSB will make the fairest possible decision for both sides to support the continuity of this cooperation. Or, if this cooperation can not be maintained, the EU's accountability becomes an essential right currently being fought for by Indonesia. Another reason put forward by Indonesia for the DSB's consideration is the risk of job losses for palm oil workers and smallholders. In view of this drawing on the background outlined above, this study seeks to examine title "... to review the extent of the EU's justification for the RED II policy and the effect of the RED II implementation on Indonesia, which disregards the continuation of the agreement made with Indonesia, as the resulting dispute is caused by the provisions implemented by the EU. Furthermore, the research also reviews the extent of the advocacy of Indonesia Government to minimize the legal impact of the RED II policy. The research questions are therefore as follows:

1. How is the justification for the enactment of the RED II Policy by the EU reviewed from perspective of GATT 1994?
2. What are the consequences of enforcing the RED II policy for Indonesia as a crude palm oil exporting state?

3. What diplomatic and legal measures have been undertaken by the Indonesian government to minimize the consequences of RED II's enforcement?

B. RESULTS AND DISCUSSION

1. Justification of the European Union for the Enactment of the RED II Reviewed under GATT 1994

a. Justification for the Protection of the Environmental and Living Beings

The RED II policy by the EU is a directive and regulation concerning the Biofuel energy sources used by the EU. RED II regulates increase from the renewable energy target from 20% in RED I too 32%.¹ The RED II policy is more ambitious, meaning that energy sources considered to cause deforestation, forest damage and ILUC will have their supply to the EU discontinued because the EU is committed to realizing "Clean Energy for all Europeans," published by European commission in accordance with the EU's legislative decisions.² The target of this RED II:

Article 10 (a) (b):

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures;

- a) Necessary to protect public morals;
- b) Necessary to protect human, animal or plant life or health;"³

¹ World Trade Organization, *European Union — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels (DS593)*, World Trade Organization, Geneva, 2019.

² European Parliament and Council of the European Union, *Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (Recast)*, Publications Office of the European Union, Luxembourg, 2018.

³ World Trade Organization, *The General Agreement on Tariffs and Trade (GATT 1947)*, World Trade Organization, Geneva, 1947.

Article 10 of GATT can be legitimately applied provided that it does not lead to discriminatory and protectionist measures against palm oil products from Indonesia. If this legitimate objective is not achieved and there is only a disguised necessary and Indonesia should raise these obstacles at the litigation stage with the WTO Panel and DSB. Regarding the implementation of the RED II policy, the EU has resolutely and emphatically stated its ambition to use renewable energy that avoids environmental destruction and carbon increase, a rise in GHGs and the risk of ILUC, which directly relate to the health and safety of humans, plants, animals and the environment. This GATT Article XX aligns with the EU's determination and is therefore used as a justification for the enactment of the RED II policy. Another justification from the EU is Article 2 paragraph (2) of the Technical Barriers to Trade (TBT) Agreement, which is a subsidiary regulation from GATT governing the trade system. Every party that has ratified the GATT is indirectly subject to the TBT provisions. TBT Article 2 paragraph (2) is used as a justification to protect the environment and prevent deforestation and the increase of ILUC, which can cause and increase in carbon and GHG effects that impact the climate. Every GATT member carrying out cooperation must guarantee that technical regulation are developed, established or enforced so as to the intent or effect of creating unnecessary obstacles to international trade. Therefore, in implementing this objective pursuant to this provision, technical regulations must not impose trade restrictions exceeding what is necessary to achieve a legitimate regulatory purpose, such legitimate purposes encompass, among others, national security interests, the prevention of deceptive practices and the safeguarding of human health and safety, animal or plant life and the environment. In evaluating the risk associated with these objectives, relevant factors to be considered include the availability of scientific and technical data, associated production processes and the intended application from products concerned.

The EU invokes Art. 2.2 of the TBT Agreement as the legal basis for implementing the RED II policy, contending that RED II functioning as a technical regulation serves both national security purposes and the broader objective of protecting human health, animal and plant life and environmental sustainability. Furthermore, GATT Article XX paragraphs (1) and (2), which are used as the EU's justification for applying RED II, are in line with the provisions of TBT Article 2 paragraph (2).

b. Justifications Related to Deforestation and High ILUC Risk

The European Parliament has considered the implementation of RED II by looking at: Sustainable Development Goals (SDGs) United Nations 2015- 2030, Paris Agreement, Amsterdam Declaration, UN Convention on Biological Diversity (CBD), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity, UE Biodiversity Strategy to 2020, Reslotion of 2 February 2016 on the mid-term review of the UE's Biodiversity Strategy, IUCN World Conservation Congress held in Hawaii in 2016 and its Motion 066 on mitigating the impacts of palm oil expansion and operation biodiversity, UN Declaration on the Right of Indigenous Peoples (UNDRIP), rule 52 of its rules of Procedures, report of the Committee on thr Environment, Public Health anf Food Safety ang the opinions of the Committee on Development, the Committee in International Trade and the Committee on Agricultural anf Rural Development (A8-0060/2017).⁴ Based on the provisions of the RED II issued by the European Parliament, palm oil is identified as a product that can cause deforestation and ILUC, leading to forest damage, increased carbon emissions and GHG effects. In the EU's Report of palm oil and deforestation of rainforests within RED II, the impacts of palm oil produced in Indonesia are explained, namely:

⁴ European Parliament, *Democracy in Action*, accessed from <https://www.europarl.europa.eu/portal/en?>, accessed on 31 Agustus 2026.

- f. Whereas the wildfires of 2015 in Indonesia and Borneo were the worst observed for almost two decades and occurred as result of global climate change, land use changes and deforestation; whereas the extremely dry conditions in the regions in question are likely to become more common events in the future, unless concerted action is taken to prevent fires;
- g. Whereas the wildfire in Indonesia and Borneo exposed 69 million people unhealthy air pollution and are responsible for thousands of premature deaths;
- h. Whereas fires in Indonesia are typically the result of the clearing of land for palm oil plantations and other agricultural uses; whereas 52% of fires in Indonesia in 2015 occurred in carbon-rich peatlands, turning the country into one of the largest contributors to global warming earth.⁵

EU views that the massive land clearing in Indonesia through forest and land burning, without considering the sustainability of the various ecosystems living on that land and in those forests, is a detrimental and inefficient step for opening up palm oil plantations. The forest fires in 2015 have continued, resulting in numerous cases of forest fires that have caused widespread forest destruction and impacted the safety and health of people, animals and plants. These forest fires cause air pollution, global warming, soil fertility decline, increased carbon emissions leading to a high greenhouse gas effect, respiratory tract infections and irritation to the skin and other body parts.⁶ The enactment of RED II is in the national interest of all EU countries, aiming to realize an EU that is oriented toward renewable energy and free from the use of energy that can cause deforestation and ILUC, as the resulting impacts can affect the life and health of humans, animals and plants. Palm oil is categorized as a crop that can lead to deforestation and forest destruction and also cause GHG effects due to the carbon produced by palm oil and the clearing of forest land, which can be categorized as ILUC. The provisions of RED II should not become an obstacle for other countries cooperating with EU,

⁵ Kateřina Konečná, *Report on Palm Oil and Deforestation of Rainforests*, European Parliament, Brussels, 2017.

⁶ BPBD Natuna, *Efek Buruk dari Karhutla yang Harus Diwaspadai, Diantaranya Dapat Menyebabkan ISPA*, accessed from <https://bpbd.natunakab.go.id/efek-buruk-dari-karhutla-yang-harus-diwaspadai-diantaranya-dapat-menyebabkan-ispa/>, accessed on 31 Agustus 2026..

so as not to restrict trade and cooperation necessart to fulfillthe EU's own legitimate objectives. In the latest Panel report on January 10, 2025, the essence of the RED II implementation is:

- a. an UE-wide binding consumption target of at least 32% renewable energy by 2030, to be achieved collectively by EU member states;
- b. biofuels, bioliquids anf biomass fuels can only be taken into account the calculation of this target if they fullfil certain sustainability and GHG emission savings criteria.....”⁷

In RED II Art. 29 (4) (c), the classification of highcarbon stock and has been outlined, namely, biofuels, bioliquids and biomass fuels produced from agricultural biomass that are taken into account for the purposes referred to in sub-paragraphs (a), (b) and (c) of the first paragraph must not be mande from raw materials obtained from land with high carbon stock, which in land that has one of the following statuses:

- c. Land spanning more than one hectare with trees higher than five meters and canopy cover between 10% and 30% or trees able to reach those thresholds in situ, unless there is evidence that the carbon stock of the areabefore and after conversion is such that, when the methodologi set out in part C of Annex V is applied, the conditions lain down paragraph 10 of this Article are fulfilled.⁸

Article 29 (4)(c) of RED II affirms that the purpose of enacting the RED II policy is to protect high carbon stock land due to the classification of such land, as mentioned in point (c), which serves function in carbon stockage and climate change mitigation. Conversation of such land can also cause the atmospheric discharge of carbon dioxide and acclerate climate change. Therefor, this fuels derived from biofuels, especially palm oil, do not contribute to climate change up to an extreme level of climate change. There is an exception for land with a canopy cover between 10% and 30% because ith has a lower carbon capacity than other land types, but it must be proven with factual data that the

⁷ World Trade Organization, *European Union — Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels (DS593)*, *Op.Cit.*.

⁸ European Parliament and Council of the European Union, *Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (Recast)*, Publications Office of the European Union, Luxembourg, 2018.

volume of carbon stored in the area preceding and subsequent to its conversion meets the established requirements. The purpose of this article is also to prevent the use of land that can be categorized as ILUC. In many cases, forests and lands are burned to be converted into palm oil cultivation areas. In other cases, land is also forcibly seized from indigenous and local communities occupying an area for the benefit of the elite for palm oil land clearing, which leads to disputes and acts of violence occurring in the disputed land. In the "Analysis of the risk of forest loss in Indonesia due to the FOLU NET SINK 2030 Policy,"⁹ by Green Peace, it is explained that Indonesia does not actually aim to reduce deforestation to zero.¹⁰

The Indonesian government still permits deforestation under the guise of massive development. This deforestation is divided into planned and unplanned deforestation. Planned deforestation is deforestation activities permitted by the government to clear forests and open up land for palm oil. Unplanned deforestation is the government's estimate of the potential impacts that could occur from palm oil land clearing due to natural forest fires or illegal logging.¹¹ International Greenpeace has also published the latest report, namely *Stopo Baku Tipu: Sisi Gelap Perizinan di Tanah Papua*, as a strategic step to show alleged violations of the licensing system for plantations and the release of forest areas in Papua Province during the 2011-2019.¹² In 2024, controversy over the seizure of customary land from the indigenous people of Papua occurred again with the opening of 36,094 hectares of land by PT. Indo Asiana lestari, which has the potential to cause deforestation.¹³

⁹ Greenpeace Indonesia, *Main Api dengan Deforestasi: Basa-Basi Komitmen Iklim Lewat FOLU Net Sink 2030*, Greenpeace Indonesia, Jakarta, 2023.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Greenpeace Indonesia, *Deforestasi Terencana Mengancam Tanah Adat dan Lanskap Hutan di Tanah Papua*, Greenpeace Indonesia, Jakarta, 2021.

¹³ Mohammad Ivan, *Masyarakat Papua Demo di MA, Desak Izin Buka Lahan Sawit 36 Ribu Hektar Dibatalkan*, accessed from <https://teropongnews.com/2024/06/masyarakat-papua-demo-di-ma-desak-izin-buka-lahan-sawit-36-ribu-hektar-dibatalkan/>, accessed on 31 Agustus 2026.

In TreeMap and Gecko Project's investigation, there were 53 concessions that cleared more than 50 hectares of forest for oil palm. As many as 20 of them exploited peatlands. Like 2022, the Ciliandry Anky Abdi (CAA) group converted the most forest to oil palm in 2023. The company cleared 2.302 hectares of forest in one of its subsidiaries, including 1.702 hectares in the Inti Kebun Sawit concession, West Papua, which was recently acquired. The concession was one of the main contributors to forest destruction due to oil palm in 2022 and 2023.¹⁴ From the cases of land grabbing that occurred for the massive opening of palm oil plantations, the fact is that it has led to opposition and friction and even violence against communities. Another impact of this land clearing is also the substitution of green land that function as an oxygen supplier, a habitat for all terrestrial biota, a means of preventing natural disasters and a source of biodiversity that is beneficial to human life,¹⁵ changed into monocultural land, namely palm oil, which leads to deforestation and environmental damage, increased carbon emissions and an increased risk of ILUC. Although this activity obtained permits as forest concessions or HPH (Hak Pengusahaan Hutan/Forest Exploitation Rights), upon review, there are deviations from the interests of living beings and the environment.

2. Consequences of implementation of Renewable Energy Directive II Policy

a. Effects of RED II on the Export Quota for Indonesian Palm Oil

Export palm oil from Indonesia to the EU plays a vital role in Indonesia's trade as they contribute significantly to export value, thereby holding an important place in the Indonesian economy. The EU uses biofuel as a source of fuel for transportation and electricity, serving as a substitute for fossil-based fuels.

¹⁴ Forest Digest, *Deforestasi Akibat Kelapa Sawit Kembali Naik*, accessed from <https://www.forestdigest.com/detail/2519/deforestasi-perkebunan-sawit>, accessed on 31 August 2026.

¹⁵ DLH Semarang, *Manfaat Hutan bagi Keberlangsungan Hidup Manusia dan Lingkungan – Dinas Lingkungan Hidup Kota Semarang*, accessed from <https://dlh.semarangkota.go.id/manfaat-hutan-bagi-keberlangsungan-hidup-manusia-dan-lingkungan/>, accessed on 31 August 2026.

The dispute is disrupting the cooperation and diplomatic relations between Indonesia and the EU, as Indonesia is in the process of renewing and enhancing its trade quality and standing on the international stage. RED II also introduced a policy on environmental deforestation which has the potential to impede Indonesian trade with the EU. These policies will also impact other products such as coffee, cocoa and timber.¹⁶ The implementation of RED II policy will certainly affect the income of palm oil farmers whose livelihoods depend on the palm oil crops sold and exported to other countries, including the EU. Through a press release response, Sondang Anggraini, head of the trade Advocacy Bureau at the Ministry of Trade, explained that the RED II policy and the Delegated Regulation (DR) will reduce Indonesian palm oil exports to EU countries. We in Indonesia will lose an important market, commodity prices will drop and a snowball effect will occur because of this policy.”¹⁷ The foreign exchange earnings from Indonesia’s palm oil exports to the EU have fluctuated (or ‘experienced ups and downs’) since 2017 to this year due to the implementation of RED II in 2018. This led to a very significant drop in market demand from the EU for renewable energy based on Indonesian palm oil. This decline can be observed in the export statistics published by the Central Statistics Agency (BPS) of Indonesia. The Indonesia government continuously implements policies and reforms for palm oil products to maintain them as a trade export commodity between Indonesia and the EU, although the data indicates that a significant drop is unavoidable.

Table 1. Export of Palm Oil from Indonesia to European Union (in tons)

No	Negara	2017	2018	2019	2020	2021	2022	2023
1.	Belanda	1.428,6	1.262,3	1.103,7	765,5	580,1	551,5	392
2.	Italia	1.128,5	899,8	753,4	944,7	622,9	595,8	401,4
3.	Spanyol	1.377,5	1.170,9	1.086,1	1.143,6	994,8	636,7	655,1

¹⁶ Interview with Angga Handian Putra, Indonesia’s Negotiator at the World Trade Organization (WTO), 25 Agustus 2026.

¹⁷ Aa.com, *Indonesia Siapkan Gugatan Soal Kelapa Sawit ke WTO*, accessed from <https://www.aa.com.tr/id/ekonomi/indonesia-siapkan-gugatan-soal-kelapa-sawit-ke-wto-/1605621>. accessed from 31 Agustus 2026.

Source: Statistics Indonesia, Palm Oil Data for Riau Province, Indonesia¹⁸

Table 2. Value in US\$ Exports of Palm Oil to the European Union from Indonesia

No	Negara	2017	2018	2019	2020	2021	2022	2023
1.	Belanda	1.117,0	808,1	598,8	526,4	636,0	712,1	362,0
2.	Italia	759,3	556,7	411,7	626,7	623,1	660,0	369,6
3.	Spanyol	943,2	721,3	576,8	763,3	999,3	681,2	588,2

Source: Statistics Indonesia, Palm Oil Data for Riau Province, Indonesia¹⁹

The consequences of the EU's environmental policy system, if implemented and upheld by the WTO, is that other developed countries will adopt similar policies, hindering and even complicating the export of palm oil from other developing nations.²⁰ In the latest report by the WTO Panel on January 10, 2025, Indonesia successfully demonstrated the discrimination carried out by the EU against palm oil products in international trade. This includes the differential treatment given to domestic products like rapeseed and sunflower, which are EU domestic products but are not categorized as crops that impact ILUC and the effect of carbon and greenhouse gases. The EU is also required to adjust its policies within the DR that were found to be in violation of WTO rules, because the RED II policy is a form of protectionism under the guise of using the issue of environmental sustainability. Which is often championed by the EU, said Trade Minister Budi Santoso.²¹ The Panel also assessed that the EU failed to review the data to prove that palm oil based biofuels falls into the high risk of ILUC category under the provisions of RED II.²²

¹⁸ Badan Pusat Statistik Provinsi Riau, *Statistik Kelapa Sawit Provinsi Riau 2023*, Badan Pusat Statistik Provinsi Riau, Pekanbaru, 2024.

¹⁹ *Ibid.*

²⁰ Interview with Angga Handian Putra, *Op.Cit.*

²¹ Pusat Data dan Sistem Informasi Kementerian Perdagangan Indonesia, *Di WTO, Indonesia Berhasil Buktikan Tindakan Diskriminasi Uni Eropa atas Minyak Sawit dan Biofuel Berbahan Baku Kelapa Sawit*, accessed from <https://www.kemendag.go.id/berita/siaran-pers/di-wto-indonesia-berhasil-buktikan-tindakan-diskriminasi-uni-eropa-atas-minyak-sawit-dan-biofuel-berbahan-baku-kelapa-sawit>, accessed on 31 Agustus 2026.

²² F.N.Heriani, *WTO Putuskan UE Diskriminasi, Indonesia Menangkan Sengketa Dagang Kelapa Sawit*, <https://www.hukumonline.com/berita/a/wto-putuskan-ue-diskriminasi--indonesia-menangkan-sengketa-dagang-kelapa-sawit-lt67921aeeb4bb5/>, accessed on 31 Agustus 2026.

The outcome of the DSB ruling will not go so far as to revoke the RED II policy, because the scope of regulation within RED II does not solely concern the restriction of palm oil and related environmental issues but covers many other matters. Therefore, the DSB ruling will not affect the amendment of the RED II policy or the removal of policies categorized as discriminatory treatment against palm oil products.²³ During the period for the promulgation from the panel report, the parties also have to prepare arguments and justifications to be presented to the WTO DSB. The decision set for both parties requires commitment from the parties to respect the rulings in implementing them after the WTO DSB decision is issued. The panel's ruling recommendations will either be adopted or not by the DSB because they are optional. However, if the DSB's decision is not implemented within the specified timeframe, then compensation must be determined for both disputing parties. If this compensation does not lead to a satisfactory agreement, the complainant, in this case Indonesia, may request the authority of the DSB to authorize the suspension of concessions or obligations owed towards the respondent or the EU.²⁴

b. The Impacts of RED II on the Income of Palm Oil Farmers and Plantation Companies

The enactment of RED II may also threaten the welfare and sustainability of life for Indonesians whose livelihoods depend on palm oil cultivation, as this policy has restricted the export of crude palm oil, which could result in the loss of jobs and livelihoods for palm oil farmers and entrepreneurs.

Table 3. Area. Production and Productivity of Crude Palm Oil in
Smallholder Plantations of Riau Province, 2018-2023

²³ Interview with Angga Handian Putra, *Op.Cit.*.

²⁴ Riyadus Solikhin, *Sistem Penyelesaian Sengketa Dagang Internasional dalam Kerangka WTO: Mekanisme, Efektivitas Pelaksanaan Putusan dan Tindakan Retaliasi sebagai Upaya Pemulihan Hak*, Padjadjaran Law Review, Vol.11, No.1 (2023).

No.	Year	Total Land Area (Ha)	Production (Ton)
1.	2018	1.733.959	4.789.191
2.	2019	1.733.959	4.789.191
3.	2020	1.762.163	4.731.888
4.	2021	1.762.163	4.817.725
5.	2022	1.762.164	4.818.207
6.	2023	2.288.586	5.260.275

Source: Statistics Indonesia, Palm Oil Data for Riau Province, Indonesia²⁵

Table 4. Income of Smallholders and Palm Oil Plantation Companies in Riau 2018-2023

No.	Year	Average Price ($\bar{x}$) of Income for Smallholders and Plantation Companies
1.	2018	$\geq$ Rp. 1.000/Kg
2.	2019	$\geq$ Rp. 6.501/Kg
3.	2020	$\geq$ Rp. 8.504,48/Kg
4.	2021	$\geq$ Rp. 11.504,74/Kg
5.	2022	$\geq$ Rp. 13.625,75/Kg
6.	2023	$\geq$ Rp. 12.320,80/Kg
7.	2024	$\geq$ Rp. 3.252,25/Kg

Source: Statistics Indonesia, Palm Oil Data for Riau Province, Indonesia²⁶

The vast area of smallholder plantations in Riau Province, with a very large production volume, indicates that palm oil products contributes to a very crucial role in the welfare and livelihoods of the people in Riau Province. Riau is the number one largest of palm oil producing province in Indonesia.

²⁵ Badan Pusat Statistik Provinsi Riau, *Statistik Kelapa Sawit Provinsi Riau 2023*, Op.Cit..

²⁶ *Ibid.*.

The provisions of RED II will certainly have an impact on the production and export of palm oil, as well as on market prices. The market prices shown in the table from 2018 to 2024 indeed show a significant increase, but in reality, the price of palm oil is very volatile because it can change every month or even every week. These selling prices are the average prices received by the farmers throughout the year.²⁷

c. Consequences Arising from the Enactment of RED II for the Indonesian Economy and European Union Diplomatic Relations and Trade

In this legal writing, the theory used is opportunity cost, which plays a crucial role in reviewing and identifying the dispute and the impact on diplomatic relations between Indonesia and the EU due to alternative choices implemented by the EU. It also examining the benefits and losses in the more efficient processing of resources for the EU. Opportunity cost is also related to the cost or benefit of a forgone opportunity or an option that was missed, rejected or eliminated.²⁸ The unselected, missed and eliminated opportunity refers to the chance to continue collaborating with Indonesia on exporting palms oil as a renewable energy source; however, this is overshadowed by an alternative option that is perceived to offer greater value and profit: diverting palm oil renewable energy from Indonesia to the EU's domestic energy market. The EU did not take into account the value success, benefits and losses of this domestic energy. The EU is solely focused on energy that can realize clean energy for all Europeans.²⁹ This energy sources that the EU will substitute.³⁰

²⁷ JDIH Riau, *Harga TBS Kelapa Sawit di Riau Naik Rp31,01 Per Kg*, accessed from <https://jdih.riau.go.id/berita/981/2019-12-11/harga-tbs-kelapa-sawit-di-riau-naik-rp31-01-per-kg.html>, accessed on 31 Agustus 2026.

²⁸ Agus Prawoto, *Teori dan Praktek Penilaian Properti: Buku Pegangan bagi yang Berminat Mendalami atau Bermaksud Menjadi Penilai Properti*, BPFE-Yogyakarta, Yogyakarta, 2015,

²⁹ European Comission, *Renewable Energy – Recast to 2030 (RED II) - European Commission*, accessed from https://joint-research-centre.ec.europa.eu/welcome-jec-website/reference-regulatory-framework/renewable-energy-recast-2030-red-ii_en, accessed on 31 Agustus 2026.

³⁰ Interview with Angga Handian Putra, *Op.Cit.*.

3. Indonesia's Government Advocacy Steps to Minimize the Impact from Implementation of the RED II Policy.

a. Improvements and Regulation of Palm Oil Products Towards the Certification Standard of the Roundtable on Sustainable Palm Oil (RSPO)

The Indonesian government, or in this case the ministry of trade, is urging business actors and the public to remain optimistic and take advantage of various opportunities to continue exporting palm oil and its derivative products to other countries.³¹ This was also affirmed by the expert staff for international relations at the ministry of trade, Dandy Satria Iswara, who stated, "These government steps are expected to be able to overcome various existing challenges, increase market access to countries that are increasingly concerned with sustainability and open up new markets for palm oil and its derivative products. The Head of the Community Institutions and Civil Society Division of the *Badan Pengelola Dana Perkebunan kelapa Sawit* (BPD PKS), Aida Fitri, explained that BPD PKS will continue to encourage research and innovation to advance the Indonesian palm oil industry in order to achieve community prosperity.³² Deputy Minister of Trade Jerry Sambuaga, in his speech at the 2nd Press Conference in Mumbai, India (September 27, 2023) mentioned that there is still a black campaign by a number of countries against palm oil products, but Indonesia is ready to provide literacy to the public by presenting factual data to defend palm oil products against accusations of being cause of deforestation damage. Short term solution to the DS593 dispute that Indonesia can pursue as a form of advocacy are:

- 1) Overseeing the adoption of the WTO DSB ruling;

³¹ Pusat Data dan Sistem Informasi Kementerian Perdagangan Indonesia, *Kemendag Ajak Pelaku Usaha Manfaatkan Peluang di Tengah Tantangan Sektor Sawit Indonesia*, accessed from <https://www.kemendag.go.id/berita/siaran-pers/kemendag-ajak-pelaku-usaha-manfaatkan-peluang-di-tengah-tantangan-sektor-sawit-indonesia>, accessed on 31 Agustus 2026.

³² *Ibid.*.

- 2) The Indonesian government must comprehensively review whether Indonesia's victory can revoke the enforcement of RED II and whether this RED II policy interferes with market access in international trade, so that the WTO DSB decision will be accepted or whether there will be an appeal attempt by the government of Indonesia through the Indonesia's delegation in settlement of the DS593 dispute at the WTO;
- 3) This victory has not yet been ratified because it is a Panel ruling of subject to a ceiling of 7% of total transport sector energy consumption (hereinafter referred to as the 7%cap);
- 4) The ruling by the panel did not grant all of Indonesia's claims and there were 2 rulings that were not granted by the panel. The reason is that Indonesia still has not been able to prove that the high risk of ILUC limit and the gradual phase-out are inconsistent with the obligation of Art. 11 paragraph (1) of the GATT.

Long term solution to the DS593 dispute that Indonesia can pursue as a form of advocacy are:

- 1) Regardless of the WTO DSB decision, the Ministry of the Trade has a major role in this ruling to pursue an appeal and other efforts related to the RED II policy.
- 2) If the dispute proceeds to an appeal, the Indonesian delegation must comprehensively review and identify the errors in the considerations and ruling of the panel and the DSB and Indonesia's justification must be strengthened,
- 3) In the future, Indonesia must begin to consider fulfilling the requirements for palm oil export policy as stipulated by RSPO certification.
- 4) Enhancing the standards for palm oil processing and supervision.
- 5) To arrange and establish policies related to the management and supervision of palm oil that meet standards and include the protection of plantation areas and humans, animals, plants and environmental life.³³

³³ Interview with Angga Handian Putra, *Op.Cit.*.

b. Diversirication of Indonesia's Palm Oil Market

Palm oil export figures have shown an increase with respect to other that the EU has had a real impact on economic profit, as a demonstrated by the trade conducted between Indonesia and Indoa. India's imports of palm oil derivatives have reached USD 420 thousand or the equivalent of Rp. 6. 75 billion.³⁴ According to minister of trade Budi Santoso, "The release of palm oil derivative product exports is tangible proof of the synergy between the government and the private sector in supporting national economic growth. The government's support for the palm oil sector is provided through the issuance of policies and through easier market access for Indonesia palm oil in trade agreements. We hope all parties can work together in synergy to encourage the development of this strategic commodity."³⁵ The Indonesian government must also pursue advocacy steps in the form of market diversification so that Indonesia does not rely solely on the EU but can enhance palm oil export cooperation with ither countries. Although the consumption of other countries may not be as large as the EU's, this step can help avoid massive losses to the production and income of farmers, plantation companies and the state. Farmers and plantation companies must also be given support in the form of technical training and assistance regarding palm oil management and certification in accordance with ISPO and RSPO provisions, so that they can improve the quality of their palm oil to compete woth other products and reduce the impact of the RED II enforcement, Indonesia is also accused of being an exporter of deforestation causing products and therefore, there must be a role for related to deforestation of NGOs and the preservation from sustainable palm oil, such as Green Peace.

³⁴ Kontan.co.id, *Mendag Budi Santoso Lepas Ekspor Produk Turunan Sawit Senilai Rp 6,75 Miliar ke India*, accessed from <https://pressrelease.kontan.co.id/news/mendag-budi-santoso-lepas-ekspor-produk-turunan-sawit-senilai-rp-675-miliar-ke-india>, accessed on 31 Agustus 2026.

³⁵ *Ibid.*.

Greenpeace Indonesia is an NGO that focuses on environmental issues with the goal of halting the rate of deforestation and peatland destruction in Indonesia caused by massive new land clearing.³⁶ Greenpeace Indonesia uses the strategies outlined by Keck Sikkink, which are: first, Information Politics, which involves disseminating science-based information so that the public can be responsive and care about the issue being raised. In this context, Indonesia needs to convey accurate and comprehensive information about sustainable palm oil production practices in accordance with ISPO and RSPO standards and certification. Second, Symbolic Politics, used to attract public attention and thus shape public opinion. The NGO frames and identifies issues by providing up to date explanations so that the public can care about environmental issues. Indonesia must build the most current arguments and justifications regarding palm oil production and cultivation that do not fall under the exclusions of the RED II policy. Third, Leverage Politics is the ability to use and call upon actors who have power and are stronger to make an impact when weaker network members experience a power vacuum and lack authority. The actors in question are government actors, institutions or private actors such as transnational companies that have strong influence and power. This influence is divided into two parts: material influence (involving money and goods) and moral influence. Indonesia can negotiate and lobby with EU member states so that there is still a possibility for export activities to continue and to market palm oil to other countries that still need palm oil exports. Fourth, Accountability Politics, which is an effort to bind the commitment of the more powerful actors to act in accordance with the formal principles and policies supported by the actors.³⁷

³⁶ Muhammad Arief Virgy, dkk., *Strategi Jaringan Advokasi Transnasional Greenpeace Indonesia Terkait Isu Deforestasi Hutan Indonesia oleh Wilmar International*, Journal of Political Issues, Vol.1, No.2 (2020).

³⁷ *Ibid.*.

C. CONCLUSION

The justifications by the EU for the implementation of the Renewable Energy Directive II policy is based on several articles, including: Article XX (a) (b) of the GATT, Art. 2 Paragraph (2) of the TBT Agreement which is a derivative of GATT, summary of Panel January 10, 2025 and Article 29 Paragraph (4) (c) of RED II.

The Implementation of the EU's RED II has significantly impacted Indonesia's palm oil biofuel exports, causing a marked decline in export volume since 2018 due to the discriminatory "high ILUC-risk" classification. This has reduces the income of Indonesia smallholders and plantation companies while straining bilateral diplomatic and trade relations, evidenced by Indoneia's WTO dispute settlement claim. RED II thus exhibis unresolved legal weaknesses regarding transparency and non-discrimination under GATT 1994, necessitating remedy through multilateral adjudication, bilateral negotiation anf strengthened domestic sustainability certification (ISPO).

Advocacy steps implemented by Indonesia can include: improving and regulating palm oil products to meet international standards in accordance with the RSPO and diversifying the palm oil market to other countries.



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