

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia¹, Najwa Yorri Nordyaningrum²

^{1,2} Universitas Sugeng Hartono

Email: maranathalisatya@gmail.com, najwayorri@gmail.com

Received : 01 August 2025
Revised : 15 August 2025
Accepted : 20 September 2025

Published : 08 October 2025
DOI : <https://doi.org/10.54443/morfai.v5i4.4226>
Publish Link : <https://radjapublika.com/index.php/MORFAI/article/view/4226>

Abstract

The development of lifestyles and the complexity of human problems have led to changes in the concepts of sovereignty and national boundaries. One such complexity is environmental issues, the implications of which are not limited to one or a few countries but to the entire global community. Therefore, regulations aimed at environmental sustainability and preservation have become a primary objective of transnational activities. Deforestation is an international concern that requires serious attention. This spirit is manifested by the European Union in the European Union Deforestation-Free Regulation, which ensures that export products to the EU market are not made from materials derived from or through deforestation. This paper describes how the EUDR uses extraterritorial jurisdiction to strengthen a green economic climate, but at the same time, opens up weaknesses in sovereignty for developing countries that are exporters. This paper uses the theory of state sovereignty and the fundamental principles of international contract law as references. The research method used is a normative research method with a conceptual approach and a legislative approach.

Keywords: *State Sovereignty, Extraterritorial Measures, Due Diligence, EUDR*

Introduction

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia expressly states that "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This article serves as a guideline and reference for the state in managing natural resources. Article 33 paragraph (3) gives the state the authority and responsibility to carry out systematic management. The chapter on welfare also includes economic welfare, as stated in paragraphs (1) and (2).

(1) The economy is structured as a joint venture based on the principle of family.

(2) Branches of production that are important for the country and that affect the livelihood of many people are controlled by the state.

The constitution is a manifestation of state sovereignty. Therefore, in terms of managing natural resources for the economy, the state has the sovereignty to determine what it wants. State sovereignty in managing natural resources, especially in Indonesia, faced international challenges when the European Union established its deforestation policy through the European Union Deforestation-Free Regulation (hereinafter referred to as EUDR). The EUDR has a regulatory spirit of the European Union community to ensure that the European Union community uses and consumes products that do not go through a deforestation process. Article 2.3 of the EUDR states, 'deforestation' means the conversion of forest to agricultural use, whether human-induced or not;

¹ Universitas Sugeng Hartono

² Universitas Sugeng Hartono

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

Deforestation is the conversion of forests to permanent non-forest land uses such as agriculture, grazing, or urban development.³The EUDR addresses not only deforestation but also forest degradation. These two concepts are related because they address changes in forests, both functionally and structurally. Article 2.7 of the EUDR states,

'forest degradation' means structural changes to forest cover, taking the form of the conversion of: (a) primary forests or naturally regenerating forests into plantation forests or into other wooded land; or (b) primary forests into planted forests;

Deforestation results in the shrinking of tropical rainforest areas in tropical countries – and in broader discourse, developing countries, and results in the scarcity of biodiversity and an increase in the greenhouse effect.⁴Deforestation can be simplified as the loss or reduction of natural forests. This concept considers the conversion of natural forests to plantations as deforestation. The definition of forest also excludes tree plantations producing non-timber products. One relevant example is palm oil, a strategic commodity for Indonesia but frequently criticized by the international community for its perceived contribution to deforestation and environmental degradation. The EUDR also highlights land use for agricultural purposes.⁵,

For the purposes of this Regulation, agricultural use should be defined as the use of land for the purposes of agriculture. In this regard, the Commission should develop guidelines in order to clarify the interpretation of this definition, in particular in relation to the conversion of forest to land the purpose of which is not agricultural use.

The European Union, through the EUDR, has stated that deforestation has a negative impact on the global climate crisis by reducing forests' capacity to absorb carbon emissions, resulting in the reduction and loss of biodiversity and the decline in the health of the ecosystem as a whole. Effective December 30, 2024, every organization marketing, importing, or exporting to the European Union is required to conduct due diligence in accordance with the European Union Deforestation Regulation (EUDR). This regulation ensures that traded commodities are not linked to deforestation, forest degradation, or violations of environmental and social laws in the country of origin. The EUDR requires businesses to comply with due diligence mechanisms. The due diligence system involves tracking the supply chain down to the production site to ensure sustainable raw material production. The EUDR recognizes two legal entities: operators and traders. An operator is any individual or legal entity engaged in trade, either marketing or exporting related products to the European Union market. A trader is any individual or legal entity involved in the supply process, other than the operator, who provides related products to the European Union market for commercial purposes. The EUDR guarantees the presence of operators in every supply chain.⁶

The due diligence mechanism set out in the EUDR aims to verify that products imported into the European Union have been sustainably produced. Point 39 of the EUDR states,

To ensure that this Regulation achieves its objectives, it is important to ensure that feed used for livestock falling within the scope of this Regulation does not lead to deforestation. Therefore, placing operators on the market or exporting relevant products that contain or have been made using cattle which have been fed with relevant products that contain or have been made using other relevant commodities or relevant products, should ensure, as part of their due diligence system, that the feed is deforestation-free. In that case, geolocation requirements under this Regulation should be limited to referring to the geographical location of each of the establishments where the cattle were raised, and no geolocation information should be required for the feed itself. If the competent authority obtains or is made aware of relevant information, including information based on substantive concerns submitted by third parties, that there is a risk of the feed not being in compliance with this Regulation, the competent authority should immediately request detailed information on such feed. If the feed has already been subject to due diligence in a previous step of the supply chain, operators should use as evidence the relevant invoices, reference numbers of relevant

³GC Van Kooten, EH Bulte, *The economics of nature: managing biological assets* (Blackwells 2000); quoted based on Sumit Chakravarty et al., in 'Deforestation: Causes, Effects and Control Strategies' Okia Clement Akais (ed), *Global Perspectives on Sustainable Forest Management* (IntechOpen 2012) 3.

⁴Ibid.

⁵The EUDR focuses on the perspective of forests as affected or victimized areas, so it does not focus on distinguishing between forest, plantation, and agricultural areas. This distinction must be taken into account in its implementation and development to ensure legal certainty in law enforcement against deforestation.

⁶Paragraph (30) EUDR.

due diligence statements or any other relevant documentation indicating that the feed is deforestation-free and they could be required to make that evidence available to competent authorities upon request. The evidence should cover the lifetime of the animal, up to a maximum of five years.

Thus, through the EUDR, operators and traders have an obligation to implement a strict due diligence system.⁷

To strengthen the Union's contribution to halting deforestation and forest degradation, and to ensure that relevant products from supply chains related to deforestation and forest degradation are not placed on the market or exported, relevant products should not be placed or made available on the market or exported unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. To confirm that this is the case, they should always be accompanied by a due diligence statement.

Operators and traders must ensure that commodities or products imported into or exported from the EU are free from deforestation and produced in accordance with the laws of the producing country. Companies must also conduct risk assessments and mitigate negligible risks before importing or exporting. This reflects how the EUDR regulates producer countries' compliance with their own natural resource management.

Countries like Indonesia and Brazil, major producers of this commodity, face a significant burden in meeting due diligence requirements that are often perceived as burdensome and unrealistic. This challenge is exacerbated by limited infrastructure, a lack of traceability technology, and the limited capacity of small producers. The case study of Indonesia illustrates the challenges faced by producing countries in meeting the due diligence requirements stipulated in the EUDR. As one of the world's largest palm oil exporters, Indonesia has taken various steps to improve sustainability in the palm oil industry, including through the implementation of the Indonesia Sustainable Palm Oil (ISPO) certification. In this context, the EUDR adds a new layer of complexity with traceability requirements that are even more stringent than existing standards. Potential failure to meet the due diligence requirements stipulated in the EUDR impacts producers not only economically, where failure to comply with these regulations could result in product rejection in the EU market, which in turn could harm the producing country's economy, but also places producing countries in the EUDR as a form of international law.

This paper examines the EUDR due diligence mechanism as a measure of extraterritoriality by the European Union towards producer countries like Indonesia. Extraterritoriality is not a new issue and is closely related to state sovereignty. State sovereignty should be viewed positively, namely as granting the state the authority to exploit the natural resources of the national territory for the general welfare of the people. This is referred to as permanent sovereignty over natural resources.⁸ This paper examines the paradigm shift regarding state sovereignty and authority in universal cases such as environmental conservation. Specifically, this paper will explore the challenges faced by producing countries like Indonesia in meeting due diligence requirements, as well as the legal and economic implications of failing to comply with these regulations. It will focus on several key questions, including whether the due diligence mechanism set out in the EUDR constitutes a measure of extraterritoriality by the European Union. It will also state and explain how the due diligence mechanism is inconsistent with commonly used international treaty principles.

Due Diligence Mechanism

The due diligence mechanism is a mandatory process for operators and traders to ensure that the products they trade or export do not contribute to deforestation and forest degradation. This process aims to ensure compliance with the 'deforestation-free' and legality requirements set out in regulations. There is no specific definition of due diligence. The mechanism is explained through a series of information on the actions included in it. The explanation of due diligence appears alongside an explanation of how deforestation is prevented in cattle-exporting countries. Operators marketing or exporting related products containing, or manufactured using, cattle fed with related products containing, or manufactured using, other related commodities or related products must ensure, as part of their due diligence system, that the feed is deforestation-free.⁹

⁷Paragraph (49) EUDR.

⁸Jean Charpentier, *Institutions Internationales*, vol 158 of *Mémentos Dalloz* (Mémentos Dalloz 1972) 25-26; quoted from Boer Mauna, *International Law: Understanding Roles and Functions in the Era of Global Dynamics* (Alumni Publishers 2000), 24.

⁹Paragraph (39) EUDR.

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

In addition to animal feed control, deforestation measures are carried out by ensuring that relevant products from supply chains linked to deforestation and forest degradation are not placed on the market or exported,

To strengthen the Union's contribution to halting deforestation and forest degradation, and to ensure that relevant products from supply chains related to deforestation and forest degradation are not placed on the market or exported, relevant products should not be placed or made available on the market or exported unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. To confirm that this is the case, they should always be accompanied by a due diligence statement.¹⁰

The commodities regulated by the EUDR are cattle; cocoa; coffee; palm oil; rubber; soy; and wood. The EUDR also regulates derivative products derived from these commodities, which have been produced, manufactured, or fed using these commodities. The due diligence mechanism consists of three elements.¹¹ First, information requirements.¹² Operators must collect detailed information on relevant products and commodities. Operators must collect, organize, and retain for five years from the date of market placement or export of relevant products, such as the type of product or commodity; the geographic location (geolocation) of the land where the commodity is produced (in latitude and longitude coordinates); and information on suppliers and production processes. This information collection is detailed and rigorous, potentially becoming a standard clause stipulated in any international agreement between operators in producing countries and European Union member states.

Second, risk assessment and third step, risk mitigation measures.¹³ Risk assessment is the verification and analysis of relevant commodities or products. This step assesses whether the product complies with 'deforestation-free' criteria or legal requirements. Risk assessments use objective data and international standards as indicators. Risk mitigation is the action an operator must take when a risk is identified. Operators must take appropriate mitigation steps to ensure that the risk is reduced to zero or negligible. Due diligence mechanisms should be designed to provide access to information on the sources and suppliers of marketed commodities and products, including information demonstrating the absence of deforestation and forest degradation and that legality requirements are met, including by identifying the country of production or parts thereof and including the geolocation coordinates of relevant land parcels. Geolocation coordinates that depend on time, position, and/or Earth observation can utilize space data and services provided under the European Union space programs (EGNOS/Galileo and Copernicus). The following criteria should be considered in risk assessment:

- (a) assignment of risks to the relevant country of production or parts thereof in accordance with Article 29;
- (b) the presence of forests in the producing country or parts thereof;
- (c) the presence of indigenous peoples in the country of production or parts thereof;
- (d) consultation and cooperation in good faith with indigenous peoples in the country of production or parts thereof;
- (e) the existence of well-founded claims by indigenous peoples based on objective and verifiable information regarding the use or ownership of areas used for the purpose of producing the relevant commodity;
- (f) prevalence of deforestation or forest degradation in the producing country or parts thereof;
- (g) source, reliability, validity and links to other available documentation of the information referred to in Article 9(1);
- (h) concerns related to the country of production and origin or its parts, such as the level of corruption, prevalence of falsification of documents and data, lack of law enforcement, violations of international human rights, armed conflict or the existence of sanctions imposed by the UN Security Council or the Council of the European Union;
- (i) the complexity of the relevant supply chain and the relevant product processing stages, in particular the difficulty in linking the relevant product to the plot of land on which the relevant commodity is produced;
- (j) risk of EUDR circumvention or mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;

¹⁰Paragraph (48) EUDR.

¹¹Paragraph (49) EUDR.

¹²Article 9 EUDR.

¹³Article 10 and Article 11 EUDR.

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

- (k) conclusions of the Commission expert group meetings supporting the implementation of the EUDR, as published in the register of Commission expert groups; (l) substantiated concerns raised under Article 31, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;
- (l) any information that would indicate a risk that the relevant product is non-compliant;
- (m) supplementary information on compliance with the EUDR, which may include information provided through certification schemes or other third-party verified schemes, including voluntary schemes recognized by the Commission under Article 30(5) of Directive(EU) 2018/2001 of the European Parliament and of the Council, provided that such information meets the requirements set out in Article 9 EUDR.

To implement this mechanism, operators are required to submit due diligence statements (reporting obligations). This element requires operators to submit a document stating that their products have undergone a due diligence process with a result of zero or very low risk. This statement must be retained and made accessible to the relevant authorities. Operators are only permitted to market or export the relevant product if they conclude, after conducting due diligence, that there is no risk or only a negligible risk that the relevant product does not comply with the EUDR. This reporting obligation requires operators to review their previous due diligence activities.

An operator is "any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them." In this sense, the operator and the producing country are distinct entities. This would be easier if the operator were from a European Union member country. There is a potential for administrative capacity imbalances if the operator is from a producing country—which are generally third-world countries. First, the detailed data collection required for export requires infrastructure and data processing that are more readily accessible to developed countries. Developing countries tend to have changing bureaucracies and legal certainty that are constantly adjusted to dynamic political conditions. This presents a challenge, especially when complex bureaucracies and rigid requirements are combined. Second, the additional costs for verification and certification must be adjusted to European Union regulations. Third, there is no further explanation regarding the assistance provided by the European Union as a party that has a "need" for the legality and legitimacy of commodities. Besides operators, other subjects mentioned in the EUDR are traders. A trader is any individual or legal entity whose commercial activity only makes a product available on the European Union market but is not responsible for the product's initial placement on the market.

'trader' means any person in the supply chain other than the operator who, in the course of a commercial activity, makes relevant products available on the market;

The main difference lies in their legal responsibilities and obligations in the context of these regulations.

Aspect	Operators	Traders
Main Responsibilities	Placing a product on the market for the first time.	Making the product available in the market afterwards.
Due Diligence Obligation	Must carry out full due diligence.	Only large traders have due diligence obligations.
Compliance Statement	Mandatory to make a due diligence statement.	It is not mandatory to make a statement.

Table 1. Differences between Operators and Traders in EUDR

A trader is any distributor or market participant that brings relevant commodities into the EU market. Traders are responsible for ensuring the distribution of goods that comply with EU standards. Traders are responsible for collecting and storing information to ensure the transparency of the supply chain of the products they provide to the market. Non-SME traders have significant influence on the supply chain and play a crucial role in ensuring that the supply chain is free from deforestation. Therefore, they have the same obligations as operators, namely, being responsible for the compliance of relevant products with the EUDR and ensuring that, before making relevant products available to the market, they have conducted due diligence in accordance with the EUDR and have concluded that there is no or only negligible risk associated with the relevant products.¹⁴ The EUDR introduces a benchmarking system to classify countries

¹⁴Paragraph (53) EUDR.

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

or territories into three risk categories: low risk, standard risk, and high risk, as set out in Article 29. This classification affects the level of due diligence obligations:

1. Low Risk Countries refers to countries or parts thereof, whose assessment referred to in paragraph 3 concludes that there is sufficient assurance that production events in those countries or parts thereof, of relevant commodities whose products do not comply with Article 3, point (a), are exceptional. Here, operators face a simplified due diligence process and lower administrative and financial burdens to encourage compliance.
2. Standard Risk Countries refer to countries or parts thereof that fall neither into the 'high risk' nor the 'low risk' categories. Standard due diligence obligations apply, but thorough documentation and assessments are still required.
3. High Risk Countries, refers to countries or parts thereof, whose assessment referred to in paragraph 3 results in the identification of a high risk in producing in those countries or parts thereof, relevant commodities whose products do not comply with Article 3, point (a); Supervision becomes stricter and more stringent risk mitigation measures are required. In this case, operators must provide additional evidence to demonstrate compliance.

This benchmarking system promotes targeted law enforcement while recognizing variations in governance and deforestation risks across regions. The classification of low-risk and high-risk countries, or subsets thereof, as appropriate, is based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognized sources. The classification is based primarily on the following criteria: (a) levels of deforestation and forest degradation; (b) levels of expansion of agricultural land for relevant commodities; and (c) trends in production of relevant commodities and relevant products.¹⁵

Extraterritorial Jurisdiction and the Issue of State Sovereignty

Jurisdiction comes from the Latin word *jurisdictio*. This word is a combination of two words: *juris*, meaning lawful possession, and *diction*, meaning utterance, word, designation, or decree. Combined, jurisdiction means a word or decree that has a legal basis. Based on this understanding, jurisdiction in Latin means legal ownership of property; legal rights; legal power; and legal authority.¹⁶ Jurisdiction is a statement of the implementation of a country's sovereignty within its territorial corridor.¹⁷ Jurisdiction has several meanings. In some circumstances, jurisdiction can refer to territory. For example, the division of judicial jurisdiction. From an international criminal law perspective, jurisdiction is easily understood in the context of the jurisdiction exercised by the International Criminal Court (ICC). The ICC divides jurisdiction into four types.¹⁸ First, personal jurisdiction (*rationae personae*), namely the ICC's jurisdiction to try individuals (natural persons). The ICC can only try individuals over 18 years of age. *Rationae personae* is regulated in Article 25.1 and Article 26 of the Rome Statute. Second, material jurisdiction (*rationae materiae*), namely the ICC's jurisdiction over four types of crimes based on Article 5.1, namely the crime of genocide.¹⁹; crimes against humanity (crimes against humanity)²⁰; war crimes²¹; the crime of aggression (aggression)²², specifically regarding the crime of aggression has not been regulated in more detail in the Rome Statute, and the Court will exercise jurisdiction after a provision is adopted in accordance with Articles 121 and 123 of the Rome Statute. Third, territorial jurisdiction, which is based on Art. 4.2 of the Rome Statute which reads, 'The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State'. Fourth, temporal jurisdiction (*rationae temporis*) mentioned in Art. 11.2 of the Rome Statute, 'The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute'. From an international legal perspective, jurisdiction can be defined as the power of a state under international law to regulate or have influence over people, property and circumstances, and reflects the basic principles of state sovereignty, equality of states and non-interference

¹⁵Article 29.3 EUDR

¹⁶Kurnia Utami, Natalia Yeti Puspita, *RATIO DECIDENDI APPLICATION OF THE PRINCIPLE OF OBJECTIVE TERRITORIAL JURISDICTION AND PROTECTION IN THE EXTRADITION OF MARIA PAULINE LUMOWA*

¹⁷Kusumaatmadja, M. (1978) *Introduction to International Law*. Bandung: Bina Cipta.

¹⁸Informal expert paper: The principle of complementarity in practice, International Criminal Court

¹⁹Article 6 of the Rome Statute

²⁰Article 7 of the Rome Statute

²¹Article 8 of the Rome Statute

²²Article 121 jo. Article 123 The Rome Statute

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

in internal affairs.²³ State sovereignty in international law is certainly different from the theory of sovereignty developed in the discipline of statecraft. For example, Jean Bodin outlined his theory of sovereignty with the following elements:

1. Original in nature, which is not derived from another power;
2. Being at the highest level means that there is no power higher than sovereignty that can limit its power;
3. Of an eternal or everlasting nature;
4. There is only one supreme power or it cannot be divided;
5. Cannot be submitted or transferred to another agency or institution.

Sovereignty means supreme or superior.²⁴ Sovereignty is supreme power. Sovereignty, within international law, defines the power of a state. When examined in light of Bodin's concept of sovereignty, state sovereignty, or supreme power, may seem overly strong. However, in reality, sovereignty is not an unbounded element.

"Jurisdiction is a vital and indeed central feature of state sovereignty, for it is an exercise of authority which may alter or create or terminate legal relationships and obligations. It may be achieved by means of legislative, executive or judicial action. In each case, the recognized authorities of the state as determined by the legal system of that state perform certain functions permitted them which affect the life around them in various ways."²⁵

Sovereignty is a key characteristic that determines the existence of a state, and in this regard, it is important to understand that sovereignty is the result of recognition. A state whose sovereignty is recognized becomes a legal subject, both under national and international law. Recognition reflects respect for a state's identity. Furthermore, it determines the limits of sovereignty itself. Due to the coordinative nature of international law, which views all sovereign states as having equal standing before the law, the limits of state sovereignty in international law are the sovereignties of other states. As stated in Parrish,

In its ideal form, international law sought to serve as a constraint on power, not as its handmaiden. In this way, territorial sovereignty (at least its Twentieth Century version) was intended to be a foundational prerequisite for self-determination and democratic self-government. International law with its egalitarian focus on consent served as a way to constrain power, while enabling powerful states to still benefit from international legal regulation. Under a multilateral system where both internal and external sovereignty was protected, states would surrender some degree of sovereignty to the international system as a way of restoring control lost to external forces²⁶

In this way, international law allows for respect for the sovereignty of a country, especially when the issue of sovereignty is also balanced with the issue of political, legal and economic status that affects the position of certain countries – for example, the existence of developed and developing countries.

So what is meant by extraterritorial jurisdiction? Extraterritorial jurisdiction refers to the legal capacity of a government to exercise authority beyond its territorial boundaries.²⁷

It encompasses various forms, including prescriptive, enforcement, and adjudicative jurisdiction, each posing distinct challenges and opportunities in the realm of international law.²⁸

Extraterritorial jurisdiction essentially lacks formal rules, but it can be limited by the jurisdiction or authority of another country. In certain circumstances, this territorial jurisdiction can be referred to as an agreed jurisdiction or ETJ claim.²⁹ In his essay, Anthony J. Colangelo highlights extraterritorial jurisdiction by the United States, where the exercise of extraterritorial jurisdiction needs to be enshrined in the Constitution and falls within the regulatory authority of Congress. He argues that the concept of territoriality can, and has been, expanded to encompass foreign activity.

²³Malcolm N. Shaw, *International Law* (6th ed., reprint, Cambridge University Press, 2008), p. 645

²⁴Strong, C. F. (1972). *Modern political constitutions: An introduction to the comparative study of their history and existing forms*. London: Sidgwick and Jackson.

²⁵Shaw, Op.Cit.

²⁶Chayes & Chayes (1995) as cited in Parrish, Austen L., *The Interplay Between Extraterritoriality, Sovereignty, and the Foundations of International Law* (March 24, 2017). Chapter 12 in: *Standards and Sovereigns: Legal Histories of Extraterritoriality*, Forthcoming. p. 3

²⁷Aryudhanty, DD, Yen, LT, & Chan, NJ (2023). Pros and Cons of Application of Extraterritorial Jurisdiction in International Law: Various Practices in Southeast Asian Countries. *International Law Discourse in Southeast Asia*, 2(1), 57-74. <https://doi.org/10.15294/ildisea.v2i1.58389>

²⁸Ibid.,

²⁹Maier, Harold G. Interest balancing in extraterritorial jurisdiction. *American Journal of Comparative Law* (1983): 579-597; Kanalan, Ibrahim. Extraterritorial state obligations beyond the concept of jurisdiction. *German Law Journal* 19.1 (2018): 43-64; based on Ibid.,

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

Colangelo also adds that the scope of extraterritorial sources of legislative authority can depend on a fluid conceptualization of where a claim exists.³⁰

Extraterritoriality, or extraterritorial measures, is a classic issue in international law, given its nature and characteristics, which place states in a coordinating position and "thin out" national boundaries. Understanding the limits of a state's sovereignty and jurisdiction is not sufficient simply by measuring them through what is visible to the human senses, such as territorial boundaries. Essentially, territorial boundaries themselves evolve. For example, the territory of a particular country's embassy in another country will add to the sovereignty of the ambassador's country of origin. This practice is followed by the expansion of sovereignty through ships and aircraft flying the flags of certain countries.

Across invisible boundaries, the actors in this role are non-governmental or private entities that conduct international trade. International trade itself recognizes no exclusivity and is moving toward an open and free market. International trade law has several general principles adapted from the principles of the World Trade Organization.³¹

1. The principle of recognizing state sovereignty
2. The principle of equal state
3. The principle of free competition (asymmetrical economic conditions, empowering, free competition)
4. The principle of non-discrimination
5. Exceptions and special treatment
6. The principle of reciprocity
7. Peaceful settlement of dispute

With regard to international trade law, Huala Adolf compiled several principles which are considered fundamental in international contract law, namely,

1. The fundamental principle of the supremacy/sovereignty of law;
2. The fundamental principle of freedom of contract; And
3. The fundamental principle of autonomy of the parties;³²

There are several general principles in international contract law. He stated that these principles are one level below the fundamental principles of international law. These principles are the principle of *pacta sunt servanda*, the principle of good faith, and the principle of reciprocity.

The concept of extraterritoriality remains a vague and uncertain concept, as territorial and extraterritorial issues depend on the interests of those using them for political reasons or accusations against other countries. As mentioned, territorial boundaries and territorial concepts were not designed to be exclusive.³³ Regarding the issue of state sovereignty in international relations, it is necessary to examine the definition of sovereignty itself. Max Huber, arbitrator in the *Island of Palmas* case (US v Neth.), stated,

Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the function of a State. This development [...] of international law [has] established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the Paragraph of departure in settling most questions that concern international relations.³⁴

Historically, extraterritoriality and the issue of state sovereignty in interstate relations emerged through the struggles of former colonies and third-party economies, as the parties disadvantaged in the process of occupation and colonization by other countries. Therefore, it is natural that 'accusations' of extraterritorial actions mostly come from developing countries. The EUDR, as a regulation established by the European Union, also experiences a similar problem when applied to producer countries, which are generally developing countries and former colonies. Beyond this fact, the concept of extraterritoriality is also used by Western countries when invading local ports with concessions, based on unequal agreements. This treaty-based extraterritoriality means that citizens of Western countries are exempt from local

³⁰Anthony J. Colangelo, What Is Extraterritorial Jurisdiction, 99 Cornell L. Rev. 1303 (2014), p. 1306

³¹Ida Bagus Wyasa Putra, Ni Ketut Supasti Dharmawan, International Trade Law (Refika Aditama 2017), 45.

³² Huala Adolf, Basics of International Contract Law (Refika Aditama 2010), 20.

³³Cedric Ryngaert, Austen Parrish (ed), Introduction to the Research Handbook on Extraterritoriality in International Law (Edward Elgar Publishing 2023) 3.

³⁴Perm. Ct. Arb., *Island of Palmas* (US v Neth.), 2 RIAA 829 (1928); in *ibid* (n 2).

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

laws deemed barbaric, and are subject only to their own 'civilized' laws.³⁵ This concept has a strong political dimension and tends to demonstrate asymmetric power between stronger and weaker states in international politics. The more powerful state tends to engage in extraterritorial practices.³⁶ One criticism of this issue comes from Third World Approaches to International Law (TWAIL), which views the concept of extraterritoriality as a technique of post-colonial domination to accommodate Western countries in imposing their values on the rest of the world. There is a tendency to view extraterritoriality as an attempt at modern colonialism through international agreements that implicitly open up the boundaries of territorial concepts and jurisdiction. Extraterritorial actions have the potential to undermine multilateralism and balanced political and economic development through international agreements.

Criticism of extraterritorial action shifts from claims to states with greater political power to concerns about accountability for social justice. A limited understanding of territorial boundaries and jurisdiction potentially obscures state accountability in universally regulated matters such as the environment, illegal trade, and human rights. This new understanding also leads to institutional decisions that are necessarily limited by the jurisdiction of the targeted state. This increases the likelihood of diminished accountability within global capitalism. Excessive theoretical limitations also create loopholes for the possibility of denying extraterritorial responsibility. Extraterritorial jurisdiction (hereinafter referred to as ETJ) indicates the legal capacity of a government to exercise authority outside its territorial boundaries.³⁷ The ETJ also extends national legal jurisdiction beyond its borders and allows judicial institutions to assert their authority over violations of the law within the expanded jurisdiction. This is what occurred when the EUDR came into force, where the European Union imposed effective, proportionate, and non-punitive sanctions.³⁸ EUDR explains that the sanctions that can be imposed are:

- (a) a fine proportionate to the environmental damage and the value of the commodity or related product concerned, calculating the level of such fine in such a way as to ensure that it effectively deprives the responsible party of the economic benefits derived from their infringement, and gradually increasing the level of such fine for repeated infringements; in the case of legal persons, the maximum amount of such fine shall be at least 4% of the total annual turnover of the operator or trader throughout the Union in the financial year preceding the decision on the fine, calculated in accordance with the calculation of aggregate turnover for undertakings set out in Article 5(1) of Council Regulation (EC) No 139/2004 (24), and shall be increased, if necessary, to exceed the potential economic benefits derived
- (b) confiscation of related products from operators and/or traders;
- (c) confiscation of income obtained by operators and/or traders from transactions with related products;
- (d) temporary exemption for a maximum period of 12 months from public procurement processes and from access to public funding, including tender procedures, grants and concessions;
- (e) temporary prohibition to place or make available on the market or export relevant commodities and relevant products, in the event of serious or repeated violations;
- (f) the prohibition on conducting simplified due diligence set out in Article 13 in the event of serious or repeated violations.

The EUDR also authorizes competent authorities in EU countries to take provisional measures if potential non-compliance with the EUDR is detected. Such measures include the seizure of the relevant commodity or product, or the suspension of the placement, supply, or export of the relevant commodity or product. The indicators used are the examination of evidence or other relevant information, including information exchanged under Art. 21.³⁹ or proven

³⁵Daniel S Margolies, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877–1898* (University of Georgia Press 2011); quoted based on Cedric Ryngaert, Austen Parrish (n 3).

³⁶Nico Krisch, *International Law in Times of Hegemony* (2005) (16) EJIL 369, 400.

³⁷Desvia Dwi Aryudhanty et al, *Pros and Cons of Application of Extraterritorial Jurisdiction in International Law: Various Practice in Southeast Asian Countries* (2023) (2) (1), *International Law Discourse in Southeast Asia* 57, 60.

³⁸Article 25.2 EUDR.

³⁹Article 21 EUDR contains "Cooperation and exchange of information", contains

1. *Competent authorities shall cooperate with each other, the customs authorities from their Member State, the competent authorities and customs authorities from other Member States, the Commission and if necessary, with the administrative authorities of third countries in order to ensure compliance with this Regulation, including as regards the implementation of field audits.*
2. *Competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information on investigations and the conduct of investigations*

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

concerns raised under Art. 31.⁴⁰The examination also refers to Art. 18⁴¹and Art. 19⁴², while the identification of potential risks using the system refers to Art. 33. If, based on the available evidence, a European Union member state finds potential non-compliance, this must be informed to the Commission and the competent authorities of that member state.

Referring to historical aspects and the use of international agreements to impose certain standards on producing countries, this is considered unbalanced. Several factors contribute to the asymmetrical relationship between export and import agreements for relevant commodities, including:

1. Different compliance standards between producing countries and the EUDR;

3. *Competent authorities shall exchange information necessary for the enforcement of this Regulation, including through the information system referred to in Article 33. That shall include giving access to and exchanging information on operators and traders, including due diligence statements, and on the nature and results of the checks carried out, with other Member States' competent authorities to facilitate the enforcement of this Regulation.*
4. *Competent authorities shall immediately alert competent authorities of other Member States and the Commission when they detect any potential non-compliance with this Regulation and serious deficiencies that could affect more than one Member State. Competent authorities shall, in particular, inform competent authorities of other Member States when they detect a relevant product on the market that they consider to be a non-compliant product, to enable the withdrawal or recall of such product from sale in all Member States.*
5. *At the request of a competent authority, Member States shall provide it with the information necessary to ensure compliance with this Regulation*

⁴⁰Article 31 EUDR regulates the proven concerns of natural or legal persons, including,

1. *Natural or legal persons may submit substantial concerns to competent authorities when they consider that one or more operators or traders are not complying with this Regulation.*
2. *Competent authorities shall, without due delay, diligently and impartially assess the substantive concerns, including whether the claims are well-founded, and take the necessary steps, including carrying out checks and conducting hearings of operators and traders, with a view to detecting potential non-compliance with this Regulation and, where appropriate, taking interim measures under Article 23 to prevent the placing or making available on the market and export of relevant products under investigation*
3. *Within 30 days of receiving a substantial concern, if not otherwise stated in national law, the competent authority shall inform the persons referred to in paragraph 1, who submitted the substantial concern, of the follow-up given to the submission and shall provide the reasons for it.*
4. *Without prejudice to the obligations required to Directive (EU) 2019/1937 of the European Parliament and of the Council, Member States shall provide for measures to protect the identity of the natural or legal persons who submit substantial concerns or who conduct investigations with the aim of verifying compliance by operators or traders with this Regulation*

⁴¹Article 18 EUDR contains provisions for inspections of non-SME (SME) operators and traders,

1. *The checks on operators and non-SME traders shall include:*
 - (a) *examination of their due diligence system, including risk assessment and risk mitigation procedures, and of documentation and records that demonstrate the proper functioning of the due diligence system;*
 - (b) *examination of documentation and records that demonstrate that a specific relevant product that the operator has placed or intends to place on the market or intends to export or that the non-SME trader has made available or intends to make available on the market complies with this Regulation, including, when applicable, through risk mitigation measures, as well as examination of the relevant due diligence statements.*
2. *The checks on operators and non-SME traders may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions:*
 - (a) *on-the-ground examination of relevant commodities or of the relevant products with a view to ascertaining their correspondence with the documentation used for exercising due diligence;*
 - (b) *examination of corrective measures taken under Article 24;*
 - (c) *any technical and scientific means adequate to determine the species or the exact place where the relevant commodity or relevant product was produced, including anatomical, chemical or DNA analysis;*
 - (d) *any technical and scientific means adequate to determine whether the relevant products are deforestation-free, including Earth observation data such as from the Copernicus program and tools or from other publicly or privately available relevant sources; and (e) spot checks, including field audits, including where appropriate in third countries, provided that such third countries agree, through cooperation with the administrative authorities of those third countries.*

⁴²Article 19 EUDR contains provisions for inspections of SME traders,

1. *The checks on SME traders shall include the examination of documentation and records that demonstrate compliance with Article 5(2), (3) and (4).*
2. *The checks on SME traders may also include, where appropriate, in particular where the examinations referred to in paragraph 1 have raised questions, spot checks, including field audits.*

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

2. Country risk classification places countries with a high-risk label under strict due diligence procedures;
3. In relation to the classification of countries established by the European Union, it has the potential to become a discriminatory label for producer countries at a time when sustainable environmental empowerment is a shared desire;
4. Lack of detailed arrangements regarding technical support and capacity building by EU member states;

From a legal perspective, extraterritorial action under the EUDR has the potential to violate two general principles of international agreements. First, the EUDR is inconsistent with the principle of equality of states, which uses standard international agreements. This assumption stems from the potential use of several standard clauses inherent in the agreement, specifically the implementation of the EUDR in export-import arrangements. Producing countries dependent on exports lack sufficient time to adjust to the situation without export-import agreements. The choice not to cooperate with the European Union was not made based on legal or non-legal considerations, but rather on the interests of each producing country. The termination of cooperation and agreements is in fact an indication that the EUDR is a barrier to international market openness. Hondius stated,

Standard voorwaarden zijn schriftelijke concept bedingen welke zijn opgesteld om zonder onderhandelingen ontrent hun inhoud opgenomen te werden in een gewoonlijk onbepaald aantal nog te sluiten⁴³

A standard agreement is a written agreement drawn up without discussing its contents and embodied in an unlimited number of specific agreements. A standard agreement essentially creates a distinction between one party and another. This is because there is no room for negotiation. The party creating the standard agreement format has the freedom to determine its contents, while the other party is only given the freedom to choose whether to agree to the agreement's contents or not. An agreement is a legal relationship between two or more parties based on mutual agreement and giving rise to legal consequences.⁴⁴

Second, the EUDR is not based on the principle of freedom of contract. In reality, export-import agreements between countries do not operate like employment contracts, where the power imbalance between the employer and the employee is significantly different. International agreements or contracts still have the principle of freedom of contract that must be adhered to. The principle of freedom of contract is one of several fundamental principles of international contracts. This principle aligns with the principle of the supremacy or sovereignty of national law, which requires that national law be inviolable.⁴⁵ Article 1.1 of the UNIDROIT Principle states, "The parties are free to enter into a contract and to determine its content." All countries have the freedom to become parties to international agreements, but determining the content of export agreements to the European Union is not possible in the EUDR. The EUDR ensures that each EU member state imports relevant commodities whose standards have been standardized.

Closing

Based on the EUDR's elaboration and the due diligence mechanism used, the European Union's drive to reduce deforestation needs to be accompanied by further regulations to ensure that the burden on producing countries does not exceed their capacity. Due diligence mechanisms constitute extraterritorial measures that can burden producing countries and operators from producing countries with complex administrative requirements. Extraterritorial measures also serve as loopholes that weaken producing countries' sovereignty over their authority to manage their natural resources.

REFERENCES

Book

- Adolf, Huala, *Dasar-Dasar Hukum Kontrak Internasional* (Refika Aditama 2010).
Badrulzaman, Mariam Darus, *Aneka Hukum Bisnis* (Mandar Maju 2005).
Brownlie, I. (Ed.). 1997. *Dokumen-dokumen pokok hak asasi manusia*. Jakarta: UI Press.
Buerghenthal, T. 2009. *International human rights in a nutshell* (4th ed.). St. Paul, MN: West Publishing Co.

⁴³Mariam Darus Badrulzaman, *Various Business Laws* (Mandar Maju 2005), 47.

⁴⁴Salim HS, *Contract Law: Theory and Techniques of Contract Drafting* (Sinar Grafika 2010), 26.

⁴⁵Huala Adolf, (n 20).

EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL LAW: A CASE STUDY OF DUE DILIGENCE IN THE EUROPEAN UNION DEFORESTATION-FREE REGULATION

Maranatha Lisatyaningrum Hainekam Fobia and Najwa Yorri Nordyaningrum

- Charpentier, Jean, *Institutions Internationales*, vol 158 of *Mémentos Dalloz* (Mémentos Dalloz 1972).
- Chayes, A., & Chayes, A. H. 1995. *The new sovereignty: Compliance with international regulatory agreements*. Cambridge, MA: Harvard University Press.
- Kusumaatmadja, M. 1978. *Pengantar hukum internasional*. Bandung: Bina Cipta.
- Mauna, Boer, *Hukum Internasional: Pengertian Peranan dan Fungsi dalam Era Dinamika Global* (Penerbit Alumni 2000).
- Margolies, Daniel S, *Spaces of Law in American Foreign Relations: Extradition and Extraterritoriality in the Borderlands and Beyond, 1877–1898* (University of Georgia Press 2011).
- Putra, Ida Bagus Wyasa, Ni Ketut Supasti Dharmawan, *Hukum Perdagangan Internasional* (Refika Aditama 2017).
- Ryngaert, C., & Parrish, A. (Eds.). 2023. *Introduction to the research handbook on extraterritoriality in international law*. Cheltenham: Edward Elgar Publishing.
- Salim, HS, *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak* (Sinar Grafika 2010).
- Shaw, M. N. 2008. *International law* (6th ed., reprint). Cambridge: Cambridge University Press.
- Strong, C. F. 1972. *Modern political constitutions: An introduction to the comparative study of their history and existing forms*. London: Sidgwick and Jackson.

Van Kooten, G. C., & Bulte, E. H. 2000. *The economics of nature: Managing biological assets*. Oxford: Blackwells.

Book

Chakravarty, Sumit, et.al., 'Deforestation: Causes, Effects and Control Strategies' Okia Clement Akais (ed), *Global Perspectives on Sustainable Forest Management* (IntechOpen 2012).

Journal

- Aryudhanty, Desvia Dwi, et.al., 'Pros and Cons of Application of Extraterritorial Jurisdiction in International Law: Various Practice in Southeast Asian Countries' (2023) 2(1) *International Law Discourse in Southeast Asia* 57.
- Krisch, Nico, 'International Law in Times of Hegemony' (2005) 16 *EJIL* 369.
- Aryudhanty, D. D., Yen, L. T., & Chan, N. J. 2023. Pros and cons of application of extraterritorial jurisdiction in international law: Various practices in Southeast Asian countries. *International Law Discourse in Southeast Asia*, 2(1), 57–74. <https://doi.org/10.15294/ildisea.v2i1.58389>
- Charpentier, J. 1972. *Institutions internationales* (Vol. 158). Paris: Mémentos Dalloz.
- Colangelo, A. J. 2014. What is extraterritorial jurisdiction. *Cornell Law Review*, 99, 1303–1358.
- Krisch, N. 2005. International law in times of hegemony. *European Journal of International Law*, 16, 369–408.
- Maier, H. G. 1983. Interest balancing and extraterritorial jurisdiction. *American Journal of Comparative Law*, 31(3), 579–597.
- Margolies, D. S. 2011. *Spaces of law in American foreign relations: Extradition and extraterritoriality in the borderlands and beyond, 1877–1898*. Athens: University of Georgia Press.
- Utami, K., & Puspita, N. Y. [n.d.]. Ratio decidendi penerapan prinsip yuridiksi teritorial objektif dan perlindungan dalam ekstradisi Maria Pauline Lumowa.

Perjanjian Internasional dan Keputusan Arbitrase

European Union Deforestation Regulation (EUDR)

Permanent Court of Arbitration, *Island of Palmas (US v Netherlands)*, 2 RIAA 829 (1928).