MORFAI JOURNAL Multidiciplinary Output Research For Actual and International Issue
Multidiciplinary Output Research For Actual and International Issue (MORFAI Journal) ISSN (e): 2808-6635
Volumes 5 No. 1 (2025)

HARMONISING NATIONAL ECONOMIC SOVEREIGNTY AND INTERNATIONAL TRADE STANDARDS THROUGH THE RECOGNITION OF THE CONSTITUTIONAL RIGHTS OF INDIGENOUS COMMUNITIES TO NATURAL RESOURCES

Abdul Razak Nasution[1]*, Muhammad Juang Rambe[2], Rahul Ardian Fikri[3]
[1,2,3] Universitas Pembangunan Panca Budi
E-mail: abdulrazak@dosen.pancabudi.ac.id[1]*, muhammadjuangrambe@gmail.com[2], rahulardian@dosen.pancabudi.ac.id

Received : 10 February 2025	Accepted : 12 March 2025
Revised : 20 February 2025	Published : 26 March 2025

Abstract

The application of extraterritorial non-tariff barriers within the international trade framework, such as the *European Union Deforestation Regulation* (EUDR), gives rise to jurisdictional conflicts regarding the principle of permanent sovereignty over the natural resources of developing countries. Such unilateral policies have implications for the vulnerability of the protection of the constitutional rights of Indigenous Peoples (IP) within the governance of commodity supply chains at the domestic level. This study aims to analyse the alignment of a state's economic sovereignty with global environmental standards through the fulfilment of IP customary rights. Using a normative legal research method with legislative, conceptual, and policy analysis approaches, this study finds that legal mitigation of international market regulations is inadequate if it relies solely on a formal compliance approach within the *Indonesian Sustainable Palm Oil* (ISPO) instrument and the *National Dashboard* system. Legal loopholes resulting from procedural obstacles to establishing MHA status in regions risk legalising land tenure that is legally flawed for the sake of meeting certification requirements. Harmonisation of the legal system requires the enactment of specific legislation (*lex specialis*) on MHA, the establishment of *Free, Prior and Informed Consent* (FPIC) as an absolute prerequisite for business licensing, and the integration of indigenous territory mapping into the national geospatial database. This legal framework serves as a guarantee of domestic rights certainty whilst also functioning as a legitimate strategic diplomatic instrument in countering environmental protection justifications used as barriers to global trade.

Keywords: Non-tariff barriers; Economic sovereignty; Indigenous communities; International trade; Free Prior and Informed Consent.

INTRODUCTION

Current developments in the international economic order indicate a shift in trade policy, from tariff liberalisation towards the implementation of regulatory instruments in the form of non-tariff barriers (*Non-Tariff Barriers*/NTB) (Karlina et al., 2021). The development of the international trade legal framework is underpinned by a global commitment to environmental protection, which encompasses efforts to mitigate climate change, prevent deforestation, and conserve biodiversity (Reboah et al., n.d.). In light of these dynamics, a number of countries, including the European Union, have established trade policies requiring compliance with cross-border environmental protection provisions (Reboah et al., n.d.). The implementation of such unilateral policies conflicts with the principles of international law, particularly regarding the limits of jurisdiction and the sovereignty of commodity-producing developing countries, including Indonesia (Camelia & Sulaksana, 2012). Indonesia's position as a producer and exporter of strategic plantation and forestry commodities necessitates legal mitigation measures against international market regulations, to protect national economic sovereignty in line with the direction of the National Long-Term Development Plan ((nabilainass), n.d.). There are indications that the unilateral application of environmental protection standards has the potential to become a form of disguised restriction on international trade, which implies the protection of domestic substitute commodities in the policy-implementing country against global market competition (Camelia & Sulaksana, 2012). Discourse on such international trade policies generally centres on inter-state relations (between developed and developing nations), thereby potentially sidelining domestic constitutional law aspects, particularly regarding the constitutional status and rights of Indigenous Peoples (IP) over the control of natural resources (Tehupeiory, 2021). The existence of Indigenous Legal Communities (ILCs) in Indonesia

OPEN ACCESS

represents a form of community unity that has, for generations, controlled and managed customary rights and their natural resources; their existence and traditional rights are inherent and predate the formation of the Unitary State of the Republic of Indonesia (Rambe, 2025). Their spatial management system embodies a community-centred approach (*communocentricity*) that is inherently aligned with the principles of sustainable conservation (Rahman, n.d.). Within the framework of accelerating economic growth, increasing state foreign exchange earnings, and expanding employment opportunities, the issuance of business permits in the extractive sector and large-scale monoculture plantations by the Government frequently overlaps with the territories of Indigenous Legal Communities, leading to structural agrarian disputes (Alfian et al., 2025). This study aims to analyse three key issues in Indonesia's economic legal policy, namely: (1) the protection of economic sovereignty and the integrity of the national legal system against the application of extraterritorial jurisdiction; (2) the alignment of national policy with non-tariff barrier instruments, including the *European Union Deforestation Regulation* (EUDR) and sustainability standards, to maintain export market access; and (3) the fulfilment of the constitutional mandate regarding the recognition and protection of Indigenous Peoples' rights to customary territories and natural resources (Reboah et al., n.d.). Through a normative legal approach and policy analysis, this research aims to formulate a legal framework that integrates compliance with international environmental standards with the guarantee of protection for the constitutional rights of Indigenous Peoples.

METHOD

This study is a normative legal study with a descriptive-analytical focus. The approaches employed include the statutory approach, the conceptual approach, and the policy analysis approach. The research sources are based on primary legal materials, which include national legal instruments (the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960, Constitutional Court Decision No. 35/PUU-X/2012, Presidential Regulation No. 44 of 2020) and supranational instruments (Article XX of the GATT, the *European Union Deforestation Regulation*, and the UN Resolution on *Permanent Sovereignty over Natural Resources*). Secondary legal materials were sourced from literature, academic journals, and policy documents, and supported by empirical data in the form of export trade balance statistics (*International Trade Centre*). All legal materials were gathered through library research, then systematised and analysed qualitatively. Conclusions were drawn using deductive reasoning to construct a legal solution for the mitigation of extraterritorial regulations and the fulfilment of the rights of Indigenous Peoples at the domestic level.

RESULTS AND DISCUSSION

State Economic Sovereignty within the International Trade Legal System

The concept of sovereignty is the axiomatic foundation of the legal existence of an independent state. In the context of the governance of natural resources, this sovereignty is formally expressed through the principle of Permanent Sovereignty over Natural Resources (*Permanent Sovereignty over Natural Resources* – PSNR). This principle of customary international law was enshrined in United Nations General Assembly Resolution 1803 (XVII) of 1962 and reaffirmed in *The Charter of Economic Rights and Duties of States* of 1974 (Camelia & Sulaksana, 2012). The PSNR doctrine mandates that every state possesses an absolute and inalienable autonomous right to regulate, manage, and exploit its natural resources for the advancement of national development and the welfare of its people (Camelia & Sulaksana, 2012). The exercise of this sovereignty encompasses exclusive legal authority to dictate the terms of foreign investment, formulate domestic regulations, and independently regulate the cross-border trade of natural resource products (Camelia & Sulaksana, 2012).

At the domestic level, Indonesia manifests this sovereignty through the philosophy of State Control Rights (HMN) enshrined in Article 33(3) of the 1945 Constitution. This constitutional provision declares that the earth, water, and the natural resources contained therein are controlled by the state and utilised for the greatest prosperity of the people (Tehupeiory, 2021). Building on this legitimacy, the Indonesian government has designed centralised economic policies regarding the issuance of Land Use Rights (HGU), Mining Business Licences (IUP), and forestry concessions (Tehupeiory, 2021). The state holds full control to balance conservation needs with the expansion targets of strategic industries that serve as the driving force behind Gross Domestic Product (GDP) growth and foreign exchange earnings. However, the exercise of this domestic economic sovereignty does not operate in a vacuum. Within the international trade legal framework overseen by the *World Trade Organization* (WTO), the manifestation of state sovereignty is theoretically constrained by the principles of *Most Favoured Nation* (MFN) and *National Treatment*, which prohibit discrimination (Karlina et al., 2021). With the adoption of the *General Agreement on Tariffs and Trade* (GATT), the scope for states to protect their domestic industries through traditional tariff

CC BY OPEN ACCESS

instruments (such as quotas and import duties) has been increasingly curtailed in the name of promoting free trade (Karlina et al., 2021). The logical consequence of this narrowing of tariff policy space is the emergence of the theory of neo-mercantilism, whereby states seek loopholes through non-tariff regulatory instruments to covertly protect the interests of their domestic industries (Hukum et al., 2025). The conflict between sovereignty over the management of natural resources and the interests of environmental protection finds its legal justification in Article XX of the GATT (Camelia & Sulaksana, 2012). This article provides for general exceptions for member states to deviate from free trade obligations, provided that the restrictive measures taken meet certain criteria. Specifically, Article XX(b) permits policies that are "necessary to protect human, animal or plant life or health" (underpinning the establishment of *Sanitary and Phytosanitary Measures*), whilst subparagraph (g) justifies measures "relating to the conservation of exhaustible natural resources, provided they are accompanied by restrictions on domestic production or consumption" (Camelia & Sulaksana, 2012).

The highly broad and interpretative wording of the exceptions in Article XX of the GATT frequently triggers cross-border litigation disputes (Camelia & Sulaksana, 2012). Industrialised nations in the *Global North* argue that ecosystem damage, greenhouse gas emissions, and the loss of biodiversity in the *Global South* constitute a transboundary crisis threatening global public goods (*global public goods*). In the name of Article XX of the GATT, they feel entitled to impose standards on process and production methods (PPMs) that prohibit the entry of commodities linked to environmental degradation. Conversely, developing countries vehemently reject environmental standards imposed extraterritorially. They argue that such standards, which violate the principle of permanent sovereignty (PSNR), are a guise for green protectionism, created solely to undermine the competitiveness of developing countries' flagship commodities such as palm oil, which is agronomically far more efficient than European vegetable oils (Camelia & Sulaksana, 2012). To clarify the differing perspectives that fuel this structural conflict, the following is a comparison of paradigms between the two groups of nations:

Table. Comparison of Environmental Governance and Natural Resource Sovereignty Paradigms

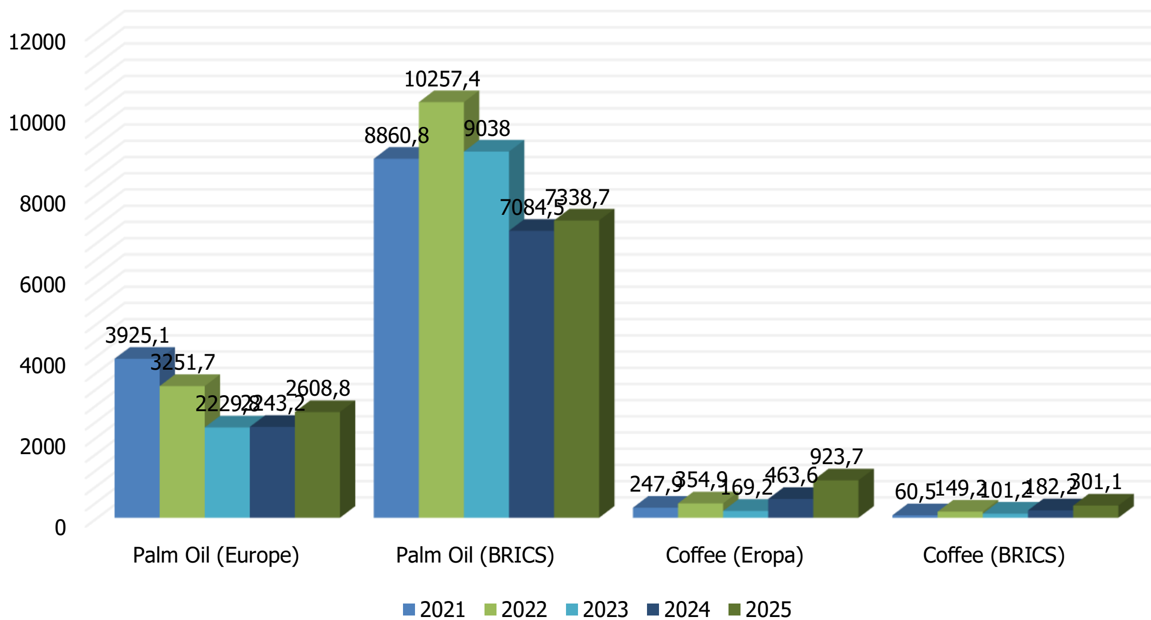
Paradigm Characteristics	Producer Sovereignty Approach (Developing Countries)	Global Environmental Approach (Developed Countries)
Development Focus	Extractive industrialisation, job creation, macro-level poverty alleviation, downstream processing of commodities.	Energy transition, preservation of tropical rainforests, mitigation of global climate change, protection of universal human rights.
Legal Basis	UN Resolution 1803 (PSNR), National Constitution, State Sovereignty Rights (SSR).	Article XX of the GATT (General Exceptions for Human Rights and the Environment), the Paris Agreement, instruments of the European Green Deal.
Stance on Regulations	Firmly rejects the application of regulations with extra-jurisdictional dimensions; demands respect for domestic policies.	Supply chains know no national borders; the ecological footprint of production has a direct impact on international consumers.
Policy Instruments	Increased production volume, centralised land licensing, limited moratoriums, mandatory certification (compliance-based).	Strict voluntary certification, due diligence, precise geolocation, bans on commodities linked to deforestation.

Source: compiled by the author from various sources (2026).

The main challenge faced is that this kind of green protectionism is not merely a business competition tactic, but has become a serious threat to the stability of the rules-based international trade system (Hukum et al., 2025). If these unilateral policies disguised as ecological measures are allowed to continue without harmonisation of fair standards, this will trigger legal fragmentation, whereby producer nations may retaliate by diversifying their export markets towards 'non-traditional' alliance nations such as the BRICS group, which disregard European sustainability standards (Hukum et al., 2025).Such market diversification measures have a measurable empirical basis in national trade balances. A comparative review of fluctuations in the value of Indonesia's strategic commodity exports to the European Union and the BRICS group of nations is outlined in Figure 1 below:

CC BY OPEN ACCESS

Figure. Comparison of Indonesian Palm Oil and Coffee Export Values in European and BRICS Jurisdictions (2021-2025)



Source: Compiled by the author based on the International Trade Centre's statistical database (2026).

Based on these data, the application of extraterritorial environmental regulations gives rise to two legal and economic implications. Firstly, in the palm oil sector, the imposition of non-tariff barriers by the European Union has led to a decline in the significance of the European market, followed by a substantial shift in trade (*trade diversion*) towards BRICS countries. Second, in the coffee sector, the high exposure of exports to Europe places independent smallholder farmers in a legally vulnerable position regarding the EUDR's due diligence obligations. Nevertheless, the trend of increasing export value to the BRICS region confirms that market diversification has functioned effectively as both a risk mitigation instrument and a safeguard for national economic sovereignty.

Alignment of International Environmental Standards and National Regulatory Instruments

The adoption of the European Union Deforestation Regulation (EUDR) constitutes an extraterritorial regulatory instrument established as the legal framework for implementing the European Green Deal (EGD), with the aim of achieving the European Union's climate neutrality target by 2050 (Hartanto, n.d.). In line with other related policies, such as the Farm to Fork (F2F) Strategy and the EU Biodiversity Strategy, the establishment of the EUDR is driven by the objective of minimising the impact of the EU's domestic market consumption on global deforestation (Reboah et al., n.d.). The provisions of the EUDR impose a due diligence obligation on all operators and traders placing or exporting seven commodities classified as high-risk—namely palm oil, coffee, cocoa, rubber, timber, soya, and beef—into or out of the EU market jurisdiction (Nasution et al., 2025).

This regulation sets out two absolute prerequisites that must be met: firstly, the commodity must meet the 'deforestation-free' criteria, meaning that it must not have been produced on land that has undergone deforestation after the cut-off date of 31 December 2020; and secondly, the commodity must be produced legally in accordance with the positive law of the producer country, including compliance with laws on the promotion of human rights and the protection of Indigenous Peoples (Reboah et al., n.d.). The fulfilment of these obligations requires high-level traceability. Businesses are required to provide precise geolocation polygon data for every plot of land where the commodity is produced (Jong, n.d.). In practice, this burden of proof has significant implications for the structure of the national commodity supply chain. Although positioned as a player in the global market, plantation commodities in Indonesia, including palm oil, rubber and coffee, are predominantly managed by smallholders ((nabilainass), n.d.). Smallholder groups often face obstacles in formal land registration, the absence of legally valid title deeds, and uncertainty regarding the spatial planning status of forest areas due to past land administration issues (Norway, 2025).

OPEN ACCESS

These conditions relate to the risk-ranking provisions in the EUDR. Regulatory policies categorise producer countries into high, standard, or low-risk levels to determine the intensity of physical inspections of commodities at European destination ports Eropa (Koalisi 44 Organisasi Masyarakat Sipil Indonesia (antara lain: AMAN, FWI, Kaoem Telapak, Sawit Watch, SPKS, WALHI, n.d.). A number of civil society organisations consider that the EUDR's risk-ranking parameters do not yet accommodate differences in commodity risk profiles within a single jurisdiction, nor the complexity of domestic social conditions and history domestik (Koalisi 44 Organisasi Masyarakat Sipil Indonesia n.d.). Furthermore, the EUDR excludes European financial and banking institutions from due diligence obligations. This exemption is deemed not to address the financing of the extractive industry sourced from credit disbursements by international financial institutions (Koalisi 44 Organisasi Masyarakat Sipil Indonesia (antara lain: AMAN, FWI, Kaoem Telapak, Sawit Watch, SPKS, WALHI, n.d.). In addition to the disparity in the regulation of due diligence obligations, the legal issues surrounding the EUDR instrument are also evident in the establishment of its deforestation standards.

The application of the definition of deforestation based on the Food and Agriculture Organisation of the United Nations (FAO), which has been adopted by the EUDR, has legal implications for the status of Indigenous Peoples. Land management practices such as shifting cultivation or agroforestry systems risk being classified as forms of deforestation through satellite monitoring, particularly if the land in question is unilaterally claimed as a state forest area of a certain size (Oil, 2025). The absence of exemption clauses in these regulations risks restricting market access for smallholder farmers and Indigenous Peoples, thereby limiting their constitutional right to a decent standard of living (Akbar & Palupi, n.d.). As a precautionary measure ahead of the implementation of the EUDR by the end of 2025 and mid-2026 for micro, small and medium-sized enterprises, the Government of the Republic of Indonesia is developing traceability data integration through the National Dashboard for Commodities ((nabilainass), n.d.). The Indonesian Government, together with the Malaysian Government, has initiated global negotiations through a Joint Task Force facilitated by the Council of Palm Oil Producing Countries (CPOPC) to align the European Union's forestry geospatial data (EU Forest Observatory) with the official zoning designations of the Ministry of Environment and Forestry (Jong, n.d.).

The National Dashboard system is designed to integrate tracking data for Fresh Fruit Bunches and raw materials from the upstream level to the port, in line with Malaysia's information management system (Maryam, 2025). The system's database is sourced from the registration of smallholder farmers via the Electronic Cultivation Registration Certificate (e-STDB) and the Plantation Licensing Information System (SIPERIBUN) ((Ditjenbun), n.d.). The Ministry of Agriculture allocates funding through the State Budget (APBN) and the Palm Oil Plantation Fund Management Agency (BPDPKS) to optimise this registration process. Operationally, efforts to optimise registration and integrate traceability data intersect with a number of policy instruments From a civil society organisation perspective, the development of the National Dashboard system has legal vulnerabilities. A tracking system that prioritises technological aspects risks legitimising land tenure that is legally flawed (legalising illegality). The application of digital polygons to land still subject to tenure disputes with Indigenous Communities risks unilaterally transforming land tenure into globally recognised certified commodities (Bhawono, n.d.). Without being preceded by fair mechanisms for resolving agrarian disputes, the implementation of the National Dashboard is seen as being more oriented towards meeting administrative compliance with European regulations rather than efforts to uphold agrarian justice at the implementation level.

The complexity of complying with these public regulatory instruments essentially marks a shift in the governance regime of the global supply chain. Historically, prior to the enactment of the EUDR, trade dynamics between developed countries as importers and developing countries as exporters were accommodated through technical instruments facilitated by multi-stakeholder forums. This provided the backdrop for the establishment of international commodity certification standards, including the *Roundtable on Sustainable Palm Oil* (RSPO) in the palm oil sector, the *International Sustainability and Carbon Certification* (ISCC), and the *Forest Stewardship Council* (FSC) in the forestry sector. These private transnational governance schemes are voluntary in nature, designed to fill the gaps in binding international environmental law.

As a follow-up to the implementation of these certification standards, the Government of the Republic of Indonesia has established a national certification scheme in the form of the Indonesian Sustainable Palm Oil (ISPO), which is mandatory. The enactment of Presidential Regulation No. 44 of 2020 on the Indonesian Sustainable Palm Oil Certification System represents an exercise of state sovereignty, integrating various provisions of national positive law into a single integrated compliance indicator (Maharani, 2025). There are substantial and operational differences between international voluntary certification schemes and mandatory national schemes, particularly regarding the recognition of the status and resolution of disputes involving Indigenous Peoples. The RSPO and FSC

OPEN ACCESS

instruments have definitively adopted mechanisms for the protection of High Conservation Value (HCV) areas and the principle of obtaining Free, Prior and Informed Consent (FPIC) (Indonesia, n.d.). In the 2024 standard update, the RSPO instrument comprehensively reinforces the provisions of the FPIC process without reducing requirements, to ensure the fulfilment of communal rights to full information and explicit consent prior to the implementation of business activities ((RSPO), n.d.). Conversely, the ISPO regulations under Presidential Regulation No. 44 of 2020 do not explicitly refer to instruments for the protection of Indigenous Peoples and have not established FPIC as an independent fundamental principle. The legal framework of ISPO is considered to have the potential to cause overlapping of authority across agencies and regulatory disharmony. The formulation of these instruments tends to be dominated by a formal compliance approach (legality-based compliance), which implies that substantive social justice has not yet been accommodated (Demadevina, n.d.). ISPO regulations place greater emphasis on resolving disputes after a violation has occurred (post factum) and on the provision of financial compensation, rather than on measures to mitigate land conflicts and the involvement of local communities from the spatial planning stage onwards (Kamim & Abrar, 2020).

Although the RSPO instrument has a conceptually comprehensive protection framework, its practical implementation still faces a number of legal challenges. The RSPO's authority is limited in ensuring compliance by certified sustainable business entities. The dispute resolution procedures under these instruments require a lengthy resolution process. Furthermore, the voluntary nature of membership creates a legal loophole for businesses suspected of violating human rights to withdraw from RSPO membership, rather than fulfilling their obligations to restore the rights of Indigenous Peoples (Kamim & Abrar, 2020). Based on the above, certification instruments at the international and national levels have weak legal force (soft law) in ensuring legal certainty and the protection of customary rights against the expansion of business licensing.

The Constitutional Status and Rights of Indigenous Peoples to Natural Resources

Economic sovereignty in the extractive sector and international trade policy must incorporate the fulfilment of the fundamental rights of Indigenous Peoples. Conceptually, the protection of human rights intersects directly with environmental protection (Arsika & Ningsih, 2024). The national legal system has established a constitutional foundation regarding this matter. Article 18B(2) of the 1945 Constitution of the Republic of Indonesia mandates that the state recognises and respects the unity of customary law communities and their traditional rights, provided they remain in existence and are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law (Rambe, 2025). Furthermore, Article 5 of Law No. 5 of 1960 on the Basic Principles of Agrarian Law stipulates that national agrarian law is derived from customary law, provided it does not conflict with national interests (Tehupeiory, 2021).. Article 3 of that regulation also provides protection for customary land rights and communal control. In the realm of coastal governance, customary maritime law recognises the principle of communocentrism—that is, the interaction of communities with the marine environment to ensure the sustainability of shared resources—as a legitimate legal framework (Djajaatmadja, 2005).

Theoretically, the status of Customary Law Communities over customary territories constitutes a natural right (Rambe, 2025). This right does not derive from the grant of state administrative authority, but has existed based on generations of interaction with the geographical area that shapes autonomy as well as communal social and cultural systems. This status differs fundamentally from the concept of granted rights, where authority is delegated or distributed by the central government (Tehupeiory, 2021). The constitutional recognition of Customary Law Communities was reaffirmed through Constitutional Court Decision No. 35/PUU X/2012. This ruling reviewed the provisions of Article 1(6) of Law No. 41 of 1999 on Forestry, stating that the phrase 'customary forests' being classified as state forests is contrary to the constitution (Hasanah et al., 2024). This ruling legally distinguishes the nomenclature of Customary Forests from the status of State Forests, which implies the recognition of management rights over customary territories to these communal entities. This legal certainty has been realised, amongst other things, through the designation of the status of the Kampa and Petapahan Customary Forests in Riau Province (Hasanah et al., 2024). However, the implementation of this ruling faces procedural obstacles at the level of sectoral regulations. A number of regulations, such as the Forestry Act and the Act on the Protection and Management of the Environment, stipulate that recognition of the existence of Indigenous Legal Communities must be established through a Regional Regulation or a Decision of the Regional Head (Tehupeiory, 2021). These administrative procedures necessitate a lengthy process of proving sociological parameters, entail significant costs, and are vulnerable to local political dynamics (Jamrudin & Widowaty, 2026). The complexity of these procedures results in a legal vacuum at the implementation level.

CC BY OPEN ACCESS

This legal vacuum at the regional level is further exacerbated by the reorientation of national legislative policy. Within the framework of accelerating economic growth, the formulation of legislation through the omnibus method is aimed at simplifying bureaucracy, expanding employment opportunities, and increasing foreign investment (Norway, 2025). Nevertheless, this legal framework implies a withdrawal of regional autonomy. The authority to issue Environmental Permits through Environmental Impact Assessments (EIA) and business licensing in the extractive sector, which was previously the responsibility of district or provincial governments, has been fully transferred to the central government (Norway, 2025). This centralisation of authority has further restricted the public's right to participate. Legal access for Indigenous Peoples and civil society organisations to conduct oversight, lodge objections, or reject plans for the issuance of permits affecting communal management areas has become increasingly restricted. Furthermore, restrictions on public access to environmental approval documents risk creating legal uncertainty regarding national forest governance commitments at the global level.

This uncertainty in domestic governance, in turn, conflicts with international legal standards. The recognition of the status of Indigenous Peoples has a normative link to supranational human rights instruments. The United Nations adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. Article 26 of the Declaration mandates the right of Indigenous Peoples to possess, use, develop and control territories and natural resources on a communal basis (Rambe, 2025). State parties are obliged to provide legal protection for such customary land tenure systems in a non-discriminatory manner (Tehupeiory, 2021). These provisions are consistent with the Convention on Biological Diversity (CBD), which recognises Indigenous Peoples as legal subjects holding rights (rights holders) with an essential role in the conservation of biodiversity (Revianti, n.d.). At the regional level, the ASEAN Intergovernmental Commission on Human Rights (AICHR) has also developed mechanisms to address alleged violations of communal rights (Arsika & Ningsih, 2024). This reinforces the United Nations Human Rights Council Resolution establishing the right to a clean and sustainable environment as a universal pillar.

The fulfilment of this protection is implemented through the principle of Free, Prior and Informed Consent (FPIC). This procedural principle mandates the equal involvement of Indigenous Communities prior to the issuance of business permits by the competent authorities, including the fulfilment of the right to approve or reject plans for extractive activities (Jamrudin & Widowaty, 2026). However, the harmonisation of the FPIC principle into the national natural resource governance system has not yet been comprehensively accommodated. This situation has implications for implementation at the operational level, which is often limited to the fulfilment of administrative obligations (Jamrudin & Widowaty, 2026). This weakness in the implementation of the FPIC principle at the domestic level becomes a point of legal vulnerability when faced with global trade instruments. To protect the sovereignty of national strategic commodities from the implications of the EUDR regulations, the Government of the Republic of Indonesia needs to refine Presidential Regulation No. 44 of 2020 on the Indonesian Sustainable Palm Oil Certification System (ISPO). The ISPO regulatory framework must be adapted, shifting from a formal compliance approach (legality check compliance) towards the fulfilment of substantive sustainability standards that integrate human rights protection aspects (Demadevina, n.d.).

ISPO mechanisms must be aligned with international legal instruments, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labour Organization (ILO) Convention 169. Components relating to the resolution of land disputes, the restoration of ecosystem damage, and the protection of indigenous workers and women must be established as absolute prerequisites for certification approval ((Jamrudin & Widowaty, 2026). If national verification instruments meet standards equivalent to or exceeding the due diligence requirements of European regulations, a country's economic sovereignty can be protected from potential unilateral trade discrimination (Maharani, 2025). Compliance with these international market standards essentially embodies legal certainty and equitable land governance in Indonesia.

Furthermore, the fulfilment of such governance justice also plays an essential role in foreign diplomacy. In international diplomacy, the recognition of Indigenous Peoples as stewards of biodiversity and rights holders constitutes a strategic geopolitical instrument. If the Government of the Republic of Indonesia can demonstrate domestic ecological protection through local wisdom underpinned by national legal instruments, the European Union's allegations regarding the failure to prevent deforestation can be clarified using indicators of human rights advancement and sociological compliance (Rahman, n.d.). Such a soft diplomacy approach possesses greater legal effectiveness compared to trade retaliatory measures. The success of this diplomacy fundamentally rests on the reconceptualisation of the doctrine of sovereignty itself. The application of the doctrine of Permanent Sovereignty over Natural Resources (PSNR) and the interpretation of State Control Rights (SCR) must be aligned with the principle of distributive justice. The exercise of state sovereignty should not be realised through absolute authority to unilaterally issue business permits for forest utilisation within the territories of Indigenous Communities. The

OPEN ACCESS

governance paradigm needs to be reconstructed towards inclusive sovereignty, namely state control realised through legal safeguards for the inherent rights of citizens (Alfian et al., 2025). Resolving conflicts of interest between state sovereignty, sustainable international trade, and the protection of communal rights requires legal harmonisation. Progressive legislative intervention and policy adjustments are necessary to ensure the national economic system is resilient to the dynamics of international regulatory instruments. As a concrete manifestation of such legal harmonisation, the resolution of forestry and plantation disputes requires a systemic national approach, not merely a case-by-case resolution ((Humas), n.d.). Lawmakers must promptly enact regulations concerning Indigenous Legal Communities. Such specific regulations (lex specialis) serve as a legal breakthrough to overcome procedural obstacles at the local government level, which have hitherto required recognition to be established through Local Regulations with complex and time-consuming academic proof requirements (Tehupeiory, 2021).

Such comprehensive regulations must integrate the Free, Prior and Informed Consent (FPIC) procedure into the state administrative legal system. The FPIC principle no longer functions as a voluntary guideline within private instruments such as the RSPO, but is established as an absolute requirement for the issuance of Business Use Rights or Mining Business Licences (Jamrudin & Widowaty, 2026). If the implementation of FPIC is marred by coercive actions, the competent authorities are legally obliged to revoke the business licences of the relevant corporations (Jamrudin & Widowaty, 2026). In line with this, the initiative by the Indigenous Territory Registration Agency (BRWA) in collaboration with the Indigenous Peoples Alliance of the Archipelago (AMAN) to map indicative polygons of indigenous territories must be integrated into the geospatial database of the One Map Policy and the National Dashboard portal ((AMAN), n.d.). The integration of communal sociological data with satellite tracking systems aims to ensure legal certainty and prevent the issuance of sustainability certifications for land parcels that remain in a state of ownership dispute.

CONCLUSION

The application of non-tariff barriers with extraterritorial implications in international trade law necessitates legal mitigation measures to safeguard national economic sovereignty. Efforts to harmonise policies through domestic certification schemes (ISPO) and commodity traceability systems (*National Dashboard*) are insufficient if they rely solely on a formal compliance approach (*legality-based compliance*). Such policies must integrate substantive sustainability standards to prevent the legalisation of land acquisitions that are legally flawed, whilst maintaining access to export markets without compromising the integrity of the national legal system. Fulfilment of the constitutional mandate regarding the status of Indigenous Peoples is a prerequisite for the harmonisation of natural resource governance. Legal vacuums resulting from procedural obstacles to the recognition of customary status at the local level require legislative intervention in the form of the enactment of specific legislation (*lex specialis*) concerning Indigenous Peoples. As an operational implication, the formulation of spatial planning policies and administrative law on business licensing must establish the principle of *Free, Prior and Informed Consent* (FPIC) as an absolute (imperative) requirement, followed by the integration of sociological data on customary territories into the national geospatial database. This inclusive legal framework serves a dual purpose: ensuring the fulfilment of fundamental rights over customary territories domestically, whilst also acting as a legitimate diplomatic instrument to address claims of cross-border environmental protection within the global market order.

REFERENCES

(AMAN), A. M. A. N. (n.d.). Petisi untuk Putusan Mahkamah Konstitusi No. 35. *Aliansi Masyarakat Adat Nusantara (AMAN)*. http://www.aman.or.id/petisi-mk-35-bahasa-indonesia

(Ditjenbun), H. D. J. P. (n.d.). Pemerintah Indonesia Dorong Dashboard Komoditas Sebagai Alat Ketertelusuran yang Terintegrasi. *Kementerian Pertanian Republik Indonesia*. https://ditjenbun.pertanian.go.id/pemerintah-indonesia-dorong-dashboard-komoditas-sebagai-alat-ketertelusuran-yang-terintegrasi/

(Humas), S. J. M. R. (n.d.). *Bamsoet Desak Kementerian ATR Selesaikan Konflik Agraria di Deli Serdang*. Majelis Permusyawaratan Rakyat Republik Indonesia (MPR RI). https://mpr.go.id/berita/bamsoet-desak-kementerian-atr-selesaikan-konflik-agraria-di-deli-serdang

(nabilainass), N. I. (n.d.). *Perkebunan Karet Sumatera dan Tantangan EUDR: Peluang di Tengah Isu Deforestasi*. https://sumatranomics.com/artikel-blog/perkebunan-karet-sumatera-dan-tantangan-

CC BY OPEN ACCESS

eudr-peluang-di-tengah-isu-deforestasi/

(RSPO), R. on S. P. O. (n.d.). RSPO Tegaskan Bahwa FPIC Tetap Menjadi Komponen Utama dalam Standar RSPO 2024. *Roundtable on Sustainable Palm Oil (RSPO)*, 24 Oktober 2024. https://rspo.org/id/rspo-menegaskan-kembali-bahwa-fpic-tetap-menjadi-komponen-utama-dalam-standar-rspo-2024/

Akbar, A. A., & Palupi, S. (n.d.). The EU's New Deforestation Regulation Faces Significant Challenges in Indonesia. *Fern (Fern.Org)*. https://www.fern.org/id/publications-insight/article/the-eus-new-deforestation-regulation-faces-significant-challenges-in-indonesia/

Alfian, A., Kudussisara, K., Maimunah, N. S., & Susana, I. (2025). Masyarakat Adat dan Toba PULP Lestari: Pemetaan Aktor dan Analisis Konflik Agraria. *Aceh Anthropological Journal*, *9*(1), 53–69.

Arsika, I. M. B., & Ningsih, D. I. U. (2024). Mengarustamakan Pendekatan HAM Dalam Perlindungan Lingkungan Hidup di Asia Tenggara: Bagaimana AICHR Memainkan Peran? *Simbur Cahaya*, 345–367.

Bhawono, A. (n.d.). Dashboard Nasional Dinilai Akal-Akalan Pemerintah Patuhi EUDR. *Betahita*. https://betahita.id/news/detail/10807/dashboard-nasional-dinilai-akal-akalan-pemerintah-patuhi-eudr.html?v=1735265450

Camelia, A. I., & Sulaksana, I. W. T. (2012). Pelaksanaan Kedaulatan Negara Atas Pengelolaan Sumber Daya Alam Melalui Mekanisme Persyaratan Perdagangan: Pelaksanaan Kedaulatan Negara Atas Pengelolaan Sumber Daya Alam Melalui Mekanisme Persyaratan Perdagangan. *YURIDIKA*.

Demadevina, N. (n.d.). *Opini Hukum April 2020: Perpres 44/2020 tentang Sistem Sertifikasi Perkebunan Kelapa Sawit Berkelanjutan Indonesia*. https://web.huma.or.id/app/uploads/2020/06/Opini-Hukum-Perpres-44-2020.pdf

Djajaatmadja, B. I. (2005). *Laporan Akhir Penyusunan Kerangka Ilmiah Perencanaan Pembangunan Hukum tentang Harmonisasi Hukum Pengelolaan Sumber Daya Kelautan dalam Kerangka Desentralisasi*.

Hartanto, A. (n.d.). *Measuring the Impact of the EU Deforestation Regulation (EUDR) on Indonesia's Palm Oil Sector*.

Hasanah, U., Basarah, B., & Lofi, R. M. (2024). Implementasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 Terhadap Eksistensi Masyarakat Adat Di Kabupaten Kampar. *JATISWARA*, *39*(1), 110–120.

Hukum, D., Internasional, P., & Proteksionisme, E. (2025). VISA : Journal of Visions and Ideas VISA : Journal of Visions and Ideas. *VISA: Journal of Visions and Ideas*, *5*(2), 1379–1390. https://doi.org/47467/visa.v5i2.9539

Indonesia, P. S. (n.d.). HCV, FPIC, dan Peran Masyarakat Adat dalam Sertifikasi Keberlanjutan RSPO, ISCC, dan FSC. *Peterson Solutions Indonesia*. https://www.petersonindonesia.com/id/post/hcv-fpic-dan-peran-masyarakat-adat-dalam-sertifikasi-keberlanjutan-rspo-iscc-dan-fsc

Jamrudin, H., & Widowaty, Y. (2026). Penguatan Prinsip Free, Prior and Informed Consent (FPIC) dalam Perlindungan Hak Tanah Masyarakat Adat. *Bina Hukum Lingkungan*, *10*(2), 249–266.

Jong, H. N. (n.d.). Indonesia, EU reconcile forest data ahead of new rules on deforestation-free trade. *Mongabay*. https://news.mongabay.com/2024/08/indonesia-eu-reconcile-forest-data-ahead-of-new-rules-on-deforestation-free-trade/

Kamim, A. B. M., & Abrar, M. I. (2020). Bagaimana Sertifikasi Kelapa Sawit Berkelanjutan Gagal Mencegah Perusahaan Anggota RSPO dan ISPO Merampas Tanah Adat di Indonesia? *BHUMI: Jurnal Agraria Dan Pertanahan*, *6*(2), 145–157.

Karlina, W. R., Sari, I. K., Rampengan, F. D., & Saputra, R. D. (2021). Penerapan Regulasi Barrier To Trade Terkait Perlindungan Public Health Dalam Perspektif Hukum Perdagangan Internasional. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, *19*(1), 84–105.

Koalisi 44 Organisasi Masyarakat Sipil Indonesia (antara lain: AMAN, FWI, Kaoem Telapak, Sawit Watch, SPKS, WALHI, dan lain-lain). (n.d.). *Respon CSOs Indonesia terhadap Kesepakatan Final*

Regulasi Bebas Deforestasi Uni Eropa (The Response of Indonesian Civil Society in Regards to the Agreed EUDR). https://kaoemtelapak.org/wp-content/uploads/2023/06/Respon-CSOs-Indonesia-terhadap-Kesepakatan-EUDR.pdf

Maharani, D. (2025). EU deforestation regulation and palm oil: environmental protection or non-tariff barrier? *Jurnal Paradigma Hukum Pembangunan*, *10*(2), 112–154.

Maryam, S. (2025). *PEMBENTUKAN AD HOC JOINT TASK FORCE INDONESIA–MALAYSIA–UNI EROPA SEBAGAI RESPON ATAS KEBIJAKAN EUROPEAN UNION DEFORESTATION REGULATION*. Universitas Satya Negara Indonesia.

Nasution, A. R., Fikri, R. A., Fatmawati, I., & Perangin-Angin, M. E. (2025). Conflicts Between Environmental and Trade Norms: A Legal Analysis of the Application of the European Union Deforestation Regulation (EUDR) to Indonesian Palm Oil Exports Based on the GATT-WTO Legal Framework. *International Journal of Economic, Technology and Social Sciences (Injects)*, *6*(1), 308–317.

Norway, R. F. (2025). *Indonesia: EUDR Risk Benchmarking Country Profile*. https://www.regnskog.no/uploads/documents/EUDR-Risk-Benchmarking-Indonesia.pdf

Oil, K.-S. of M. and I. P.-E. F. I. (2025). *Petani Adat Komoditas Kelapa Sawit di Kawasan Hutan Indonesia dan Peraturan Deforestasi Uni Eropa (Policy Brief).* https://efi.int/sites/default/files/files/flegtredd/KAMI/Resources/Indigenous_oil_palm_BI.pdf

Rahman, F. (n.d.). Peranan Masyarakat Adat dalam Konservasi Lingkungan. *Pusat Studi Lingkungan Hidup (PSLH) Universitas Gadjah Mada*. https://pslh.ugm.ac.id/peranan-masyarakat-adat-dalam-konservasi-lingkungan/

Rambe, M. J. (2025). Conditional Recognition: The Juridical Gap Between Normative Rights and Implementation Reality for “Indigenous Peoples” in Indonesia. *International Journal of Economic, Technology and Social Sciences (Injects)*, *6*(1), 249–257.

Reboah, C., Mbaididje, H., & Daldeniz, B. (n.d.). *Overview of Impact of the EUDR on RSPO Independent Smallholders: GAP & Impact Analysis (Final Version)*.

Revianti, N. (n.d.). *Menuntut Pengakuan Masyarakat Adat sebagai Aktor Utama Konservasi Keanekaragaman Hayati dalam Skema UN CBD*. https://www.huma.or.id/en/isu-strategis/menuntut-pengakuan-masyarakat-adat-sebagai-aktor-utama-konservasi-keanekaragaman-hayati-dalam-skema-un-cbd

Tehupeiory, A. (2021). *Monograf Pengakuan & Perlindungan Hak-Hak Masyarakat Adat*. UKI Press.

CC BY OPEN ACCESS