

Indonesian Civil Society Position Paper:

# Considerations for benchmarking Indonesia's EUDR readiness – What the palm oil example reveals



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## I. Executive Summary

Indonesia presents a complex context for implementation of European Union Deforestation-Free Regulation (EUDR) obligations, and a significant challenge for developing a methodology to assess its risk of deforestation. With this civil society report, the case of Indonesia's palm oil sector is examined in light of the regulation's criteria to provide suggestions for developing 'benchmarking' methodology.

**In Indonesia, domestic legislation** has been adopted that could limit the conversion of natural forests and support the EUDR's objective to rein in deforestation. In recent years, however, these rules have been overshadowed by the Omnibus Job Creation Law of 2020 and its implementing regulations, which enshrine a bias in favour of commercial activities, to the detriment of community and Indigenous rights, environmental protection and, indeed, efforts to eradicate corruption.

Civil society analysis shows that deforestation caused by palm oil, which had been declining for several years, is once again on the rise; conversion of forest cover to oil palm has continued after the EUDR's 31 December 2020 cut-off date, and even accelerated in 2022. An upward trend in Indonesia's palm oil exports, as well as its domestic consumption of palm oil, contribute to the increasing pressure of agricultural expansion in the palm oil sector.

Against this backdrop, physical and legal conflicts between **Indigenous/local communities** and plantation owners often lead to violence, intimidation, criminalization of traditional/community activities, and forced displacement of local populations to make way for industrial plantations.

**The threat to forests is amplified** by the fact that currently 2.6 million hectares of natural forest across Indonesia are encumbered by palm oil area permits and have received Forest Area Release Permits. Forest clearing has not yet begun, and therefore would take place after the EUDR cut-off date. The current mandatory

national certification scheme, ISPO, offers insufficient protection against deforestation and does not yet require traceability all the way to plantation level; basic compliance with it is also problematic. The traceability features of the SVLK system, developed under the EU-Indonesia Voluntary Partnership Agreement, could offer both positive insights (also as regards civil society access) and pitfalls to be avoided in developing benchmarking methodology.

**Lack of transparency and restricted availability of data** related to deforestation, on the legality of oil palm plantations, and even about what counts as ‘forest’ are persistent obstacles to assessing Indonesia’s context accurately. Difficulties here hinder civil society efforts to contribute to practical implementation and monitor compliance, and to help protect community rights.

**Smallholders** are particularly disadvantaged: few possess the cultivation registration letter (STDB) that is necessary to make their operations traceable/‘legal’, leaving them vulnerable to eviction; even when smallholders are aware of the need to register, the STDB scheme for smallholder activities is not prioritized by the government and delays are prohibitive. On top of this, smallholders frequently find themselves excluded from large commercialized supply chains.

Finally, Indonesia is a large territory with significant **regional variation** in current and projected deforestation rates, in governance challenges and **in the types of agricultural commodities produced; subnational data** must be considered in the benchmarking process. Also, transparent data collection is more straightforward at local government level, avoiding the administrative delays of collating data by centralized government, and helping to ensure that genuine efforts towards sustainability are rewarded with a place in the supply chain.

### **Recommendations:**

After analyzing Indonesia’s palm oil sector, we propose general suggestions, as well as factors that should be integrated into the methodology used to benchmark the risk of deforestation.

#### **Generally, the EU should consider:**

- Encouraging Indonesia to **improve its policies and laws** to protect forests, by amending those that undermine environmental protection (e.g., Omnibus Job Creation Law No. 6/2023) and strengthening rules that contribute to forest protection efforts (e.g., PIPPIB and the Corruption Eradication Commission);
- Examining the **SVLK’s traceability system’s** positive elements and its openness to civil society (which allows civil society to contribute as independent monitors), as well as its weaknesses;
- Creating inclusive **multistakeholder forums, with regional/commodity representation**, that insist on independent civil society participation, and requiring that civil society be given transparent access to relevant data;
- Recommending that Indonesia build a **mapping system** that aligns with FAO and EUDR definitions of ‘forest’;
- Formalizing the need to **prioritize sustainability-certified smallholders** and to purchase directly from smallholder cooperatives, and directing EU



Operators to ensure that imports entering the EU also contain smallholder products.

#### Points to incorporate into risk assessment methodology:

- **Land conflicts, violence and human rights violations**, and corruption are problematic in themselves and can drive future deforestation; the methodology should clarify that these risks cannot be ignored, and include a policy of non-tolerance for such violations, to encourage accountability.
- Given Indonesia's significant regional differences, a requirement to **take subnational variations into account** should be integrated into the methodology. As seen, the rates of deforestation in certain Indonesian provinces are higher, and the projected deforestation is much greater, than in others. Integrating subnational differences would be more equitable, and allow more targeted assessment of governance challenges. Sub-national benchmarks also encourage transparent, publicly traceable systems and avoid the delays of centralized data.
- Benchmarking also should be carried out on a **commodity-specific basis**, as the expansion rates of rubber, coffee, and cocoa plantations are significantly lower than that of palm oil. To treat producers of each commodity equitably, they cannot be grouped together. Yet it is unclear whether the Article 29(3)c ('must criteria') reference to "production trends of relevant commodities and of relevant products" explicitly requires per-commodity benchmarking; the methodology should integrate this, and clarify how to go about it.

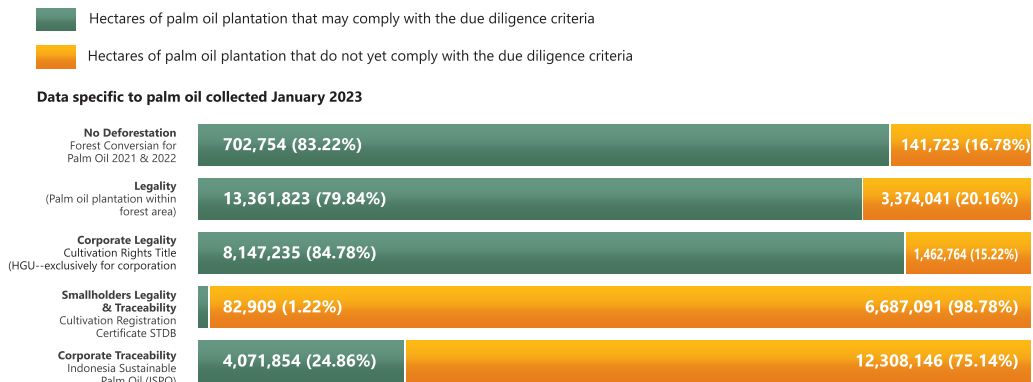
## II. Indonesia’s Projected Position in EUDR Implementation

In late 2022, the European Union passed the EU Deforestation-free Regulation (EUDR), a historic law that makes it illegal to place certain goods on the EU market, if they are the products of deforestation. Under the EUDR’s provisions, countries and regions will be ‘benchmarked’ according to deforestation risk (standard, low- or high-risk) to guide Competent Authorities during implementation. This civil society position paper provides information on the state of oil palm plantation governance in Indonesia, to be used as a reference in the development of methodology for the benchmarking process. It is based on the results of an in-depth discussion with 15 civil society organizations on 3 October 2023, and subsequent discussions; we brought together 29 organizations in the drafting process.

To gauge Indonesia’s projected risk position vis-à-vis EUDR due diligence, we have examined relevant data on conversion of natural forests to oil palm plantations in 2021 and 2022, as well as legality and traceability data of larger companies and smallholders.

The data below (Graph 1) indicate that 3,374,041 hectares of palm oil plantation (20.16%) are illegally located in forest area.

**Graph 1: Data from 2022 - 2023 indicate Indonesia’s potential compliance with due diligence criteria**



**Explanation:**

- First bar: Of 844,477 ha of palm oil plantations created in 2021 and 2022, 83.22% did not come from forest conversion.
- Second bar: More than 13 million hectares of plantations are located outside forests, and more than 3 million hectares are forests illegally planted with palm oil.
- Third bar: 84.78% of corporate plantations hold cultivation rights; 15.22% do not meet legal requirements.
- Fourth bar: Only 1.22% of smallholders hold the Cultivation Registration Letter (STDB); due mainly to administrative delays and smallholders’ lack of awareness of STDB, 98.78% still do not meet legal requirements.
- Fifth bar: 24.86% of both palm oil corporation and palm oil smallholders possibly meet Indonesia’s mandatory certification criteria, ISPO.

**Data sources:** Palm oil conversion: Mapbiomas, 2023; Palm oil in forest area: Madani, 2022; Right to Cultivate (HGU): The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, 2023; Cultivation Registration Certificate for smallholders (STDB): The Ministry of Agriculture, 2023; Indonesia Sustainable Palm Oil (ISPO): The Ministry of Agriculture, 2023.

**Registering Land Use and Traceability:** In Indonesia, the legality and traceability required by the EUDR depend on plantations’ registration. Plantations register under two principal schemes: the Cultivation Rights Title (*Hak Guna Usaha*, HGU) scheme is for plantations larger than 25 hectares; the cultivation registration letter (*Surat Tanda Daftar Budidaya*, STDB) is a (supposedly) simpler scheme for smallholders. Notably, the success rate in registering under the STDB is extremely low: only 1.22% of smallholder plantations have obtained the ‘cultivation registration letter’ that is



necessary to meet the due diligence traceability criteria. Difficulties with smallholder registration are linked to the fact that data coordinates of smallholder plantations are not available in a harmonized source, and the Government does not prioritize gathering this data or processing smallholder applications. By contrast, for corporate plantations, the success rate of processing registration under the HGU scheme is dramatically higher, 84.78%.

An additional difficulty with traceability is that no registration process covers the entire supply chain: traceability exists at plantation level, but stops at factory level.

**Deforestation:** Regarding deforestation, the data in Table 1 indicate that conversion of forest cover to oil palm, both legal (with permits) and illegal (unpermitted), has continued after the EUDR’s 31 December 2020 cut-off date, and even accelerated in 2022.

**Table 1: Percentage of forest conversion for palm oil plantations 2021 - 2022**

Year	New palm oil plantations (ha)	Total forest conversion for palm oil (ha)	Palm oil plantation from forest conversion (%)
2022	99,047.74	26,324.00	27%
2021	603,706.36	115,399.00	19%

Source: MapBiomass 2023, compiled by the authors

Indonesia must strengthen governance in the palm oil industry to prevent deforestation; currently no regulations are in place that prohibit deforestation for palm oil plantations.

In addition, Indonesia must improve its administration of cultivation registration processes to ensure that smallholders are not excluded from legal supply chains.

### III. The current situation and benchmarking criteria, EUDR Articles 29(3) and 29(4)

For the benchmarking process, the EUDR makes a distinction between ‘must criteria’, Article 29(3), which must be integrated into risk assessment, and ‘may criteria’, Article 29(4), which can be considered but are not mandatory. The process produces a risk ranking of Indonesia using three main criteria, which will be explored here, namely:

- 1) deforestation and forest degradation rates, ‘must criteria’
- 2) commodity plantation expansion rates and commodity production trends, ‘must criteria’; and
- 3) criteria that can be considered, ‘may criteria’.

Despite some criticism, the EUDR is supported by various civil society organizations in Indonesia who also urge the Government of Indonesia to support the EUDR’s objectives by strengthening its political commitment to reduce deforestation.<sup>1</sup> This study contains a description of factual conditions based on data, important issues and policies relevant to palm oil, a commodity covered by the EUDR, as well as the position of smallholders in the EUDR’s implementation, to be considered in efforts to build a deforestation-free economy that is appropriate to the Indonesian context.

#### 1. Deforestation and Forest Degradation Rates (‘must criteria’)

##### Methodology and Data

The data pertaining to deforestation per annum is collected through the forest cover transition analysis tool, [MapBiomias Indonesia](#). This tool facilitates documenting the transition of land use to oil palm plantations from various previous land uses, particularly forest cover. In addition to MapBiomias, various other tools are available to provide information on forest cover changes to palm oil plantations, such as the [Atlas Nusantara](#).

Both tools employ different methodologies to generate data on palm oil expansion originating from forest cover. Atlas Nusantara specifically outlines its methodology in a 2022 article by [David Gaveau \*et al.\*](#) MapBiomias utilizes a modeling approach based on the Google Earth Engine algorithm, initiated and elucidated by [Carlos Souza \*et al.\* in 2020](#). This paper utilizes data generated by MapBiomias because they provide detailed year-by-year figures on land cover transitions from forest to oil palm in an easily accessible metric format. MapBiomias demonstrates that deforestation because of palm oil plantations increased in 2022.

Policies to prevent forest conversion mainly limit utilization, i.e., by restricting the issuance of new permits, and by strengthening administration of forest conversion. In practice, however, protective rules are not effectively enforced (EUDR Article 29(4) c), and have been weakened in recent years to facilitate plantation activities (Table 2).

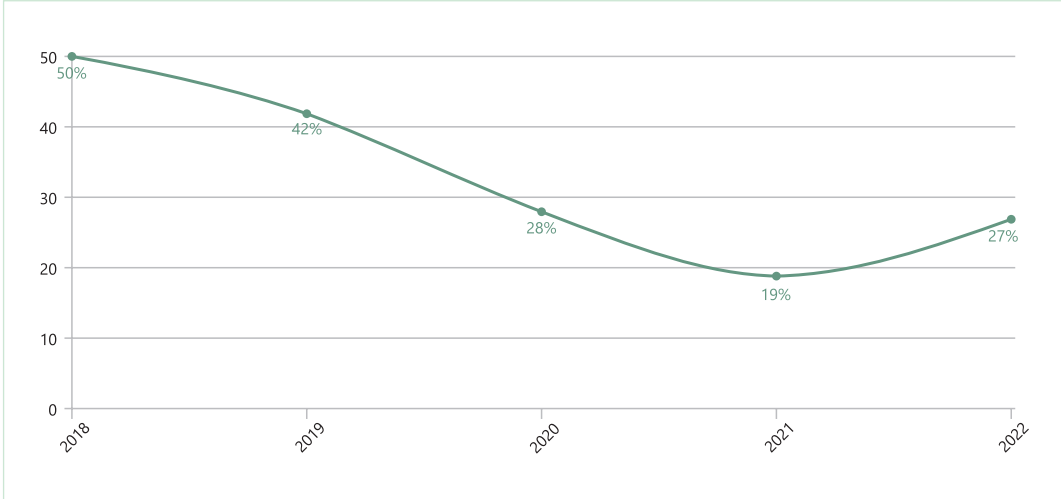
Three main policies were introduced after 2010: the Presidential Instruction for the Suspension of New Permits on Primary Forest and Peatland (PIPPIB); Government Regulation on Procedures for Changing the Designation and Function of Forest Areas; and Government Regulation 57/2016 on Peat Protection (discussed in Table 2). These

<sup>1</sup> Organisasi Masyarakat Sipil Penandatanganan. 2022. Sikap Bersama CSO Indonesia mengenai Proposal Regulasi Uji Tuntas Uni Eropa.



rules helped reduce deforestation and forest degradation, including on peatlands<sup>2</sup>, but no regulation explicitly and directly prohibits – or even curbs – deforestation.

**Graph 2: Share of total deforestation caused by palm oil plantations over the last five years.**



Source: MapBiomass 2023, compiled by the authors.

After decreasing for several years, thanks to the ongoing palm oil moratorium policy and PIPPIB, deforestation is once again on the rise. In 2022, palm oil plantations caused 27% of total deforestation (Graph 2).

**Table 2: Indonesian policies on forest conversion and forest use restrictions**

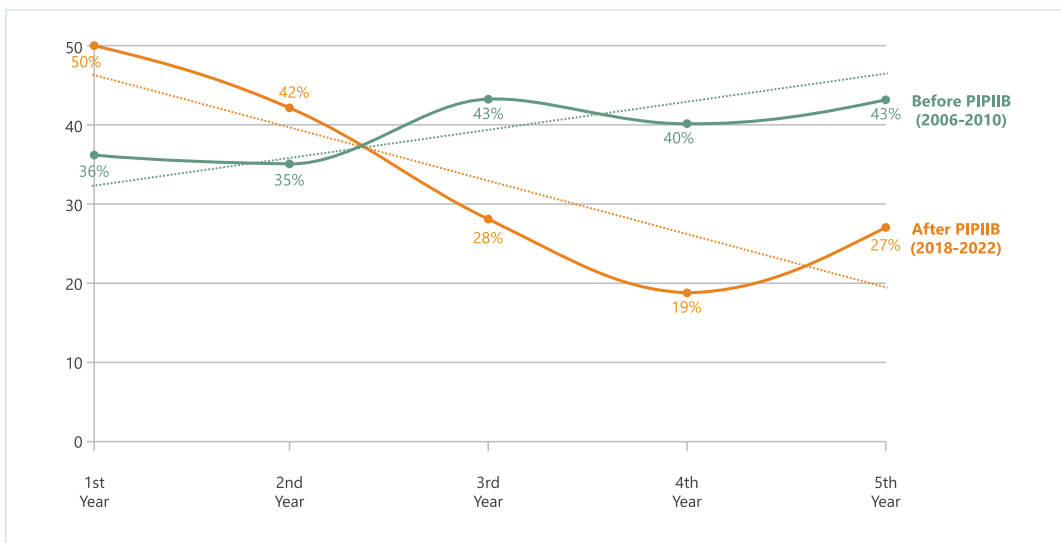
Policy	Intended Protection	Policy Notes
Government Regulation 10/2010, now replaced by Government Regulations 23/2021 and 24/2021 on Procedures for Changing the Designation and Function of Forest Areas	The government extended time limits for plantation owners to complete administrative documents for deforestation and forest conversion that was carried out without permits. Following this ‘amnesty’, to obtain a Forest Area Release permit, Plantation Business permit and cultivation rights, the administrative fines for illegal conversion and deforestation have been strengthened, starting in 2023.	In fact, the new regulations weaken sanctions for illegal deforestation. Prior to 2021, illegal deforestation was subject to criminal penalties and restoration obligations; now illegal deforestation is subject only to state fines; no restoration is required.

<sup>2</sup> Astuti, R. 2020. ‘Fixing flammable forest: The scalar politics of peatland governance and restoration in Indonesia’, Asia Pacific Viewpoint, vol. 61, no. 2, pp. 1-18.

<p>Government Regulation 57/2016 juncto Minister of Environment and Forestry Regulation No.10/2019 Determining and Managing Peat Dome Peaks Based on Peat Hydrological Units</p>	<p>Identifying and establishing governance over peatland hydrological areas</p>	<p>Contrary to carbon sink commitments, regulatory protection of peatlands has been weakened, resulting in an increase in deforestation on peatlands. Prior to 2019, extractive industries and cultivation were prohibited in peatlands to achieve the 41% emission reduction target in FOLU (Forest and Other Land Use). In 2019, standards were lowered to allow industrial activities in hydrological peatland areas, requiring that only 30% of peat domes remain. In addition, because the policy map related to peat utilization cannot be accessed publicly, Indonesian civil society cannot assess how much of the protected peat area has been destroyed.</p>
<p>Presidential Instruction 10/2010 and its 2019 revision for the Suspension of New Permits on Primary Forest and Peatland (PIPIB)</p>	<p>Delineating primary forests and peatlands that are not covered by permits and prohibiting logging/ conversion permits therein.</p>	<p>The area of protected forest delineated is adjusted every six months, in light of palm oil plantation permits. In reality, protected peat and forest areas are decreasing, and largely exclude the vast amount of secondary forest that it would be critical to protect.</p>

Source: Satya Bumi analysis, compiled by authors

**Graph 3: The reduction in deforestation, before and after the introduction of PIPiB**



Source: Mapbiomas 2023, compiled by the authors.





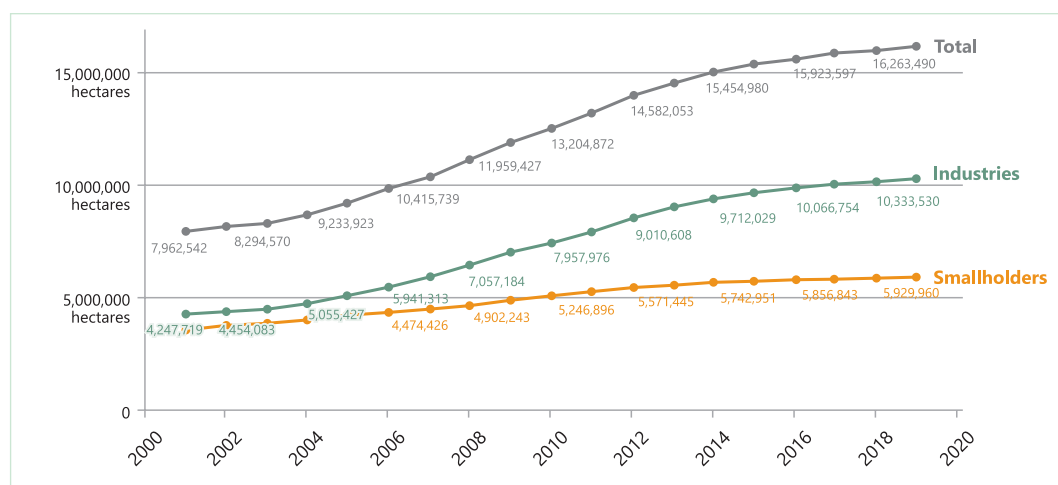
Regulating protection for peatlands and primary forests by Presidential Instruction (PIPIB) means that protection can be easily revoked without further parliamentary involvement, according to the political preferences of different presidents. Given the complex political context surrounding Indonesia’s carbon emission reduction policy, nothing guarantees that the provisions of the PIPIB will be maintained in future.

**Omnibus Law 6/2023 on Job Creation** enshrines a bias in favour of land-based business activities, and undermines anti-deforestation policies and community rights. For example, the Job Creation Law eliminates the involvement of civil society in the preparation of environmental assessment documents, although clearly civil society could contribute considerable on-the-ground observations about companies’ land degradation and deforestation impact. In the absence of adequate policies to stop deforestation, palm oil plantations’ share of responsibility for driving conversion of natural forests is rising (Graph 2).

## 2. Commodity Plantation Expansion Rates and Trade Trends (‘must criteria’): Palm Oil

Plantation expansion continues to rise despite various land-use restriction policies (Graph 4), as does the conversion of natural forests to palm oil plantations (Graph 2).

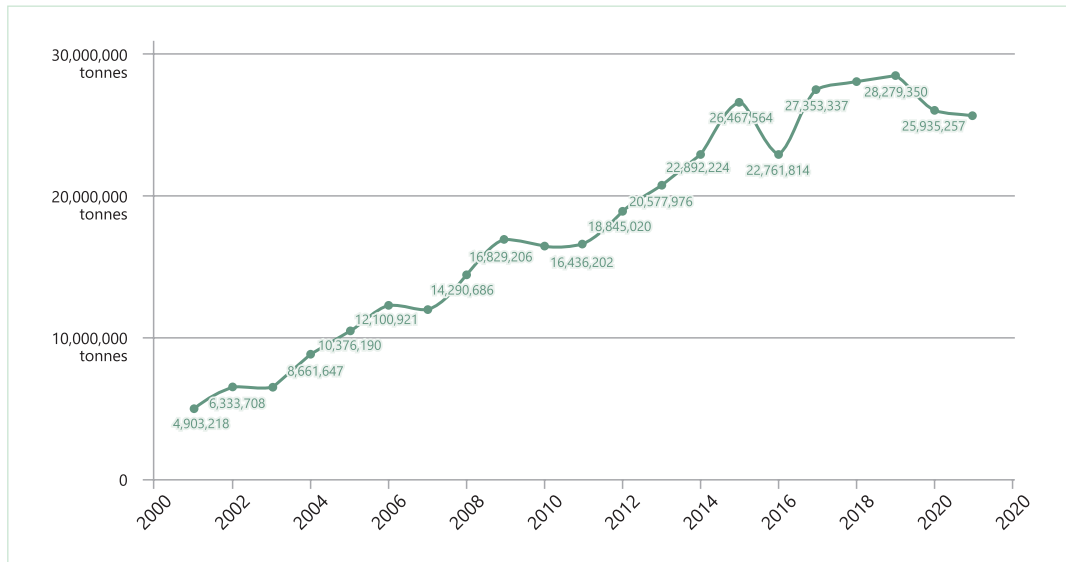
**Graph 4: Development of plantation land expansion in Indonesia 2001 - 2019 in hectares**



Source: Gaveau, David, Salim, Mohammad Agus, Husnayaen, & Manurung, Timer. (2022). Industrial and Smallholder Oil Palm Plantation Expansion in Indonesia from 2001 to 2019 [Dataset]. Zenodo.

In recent decades (2000-2020), Indonesia’s total palm oil exports have trended upwards (Graph 5). Significantly, a large proportion of palm oil production is destined for the domestic market, and domestic demand continues to rise.

**Graph 5: Indonesia’s total palm oil exports**



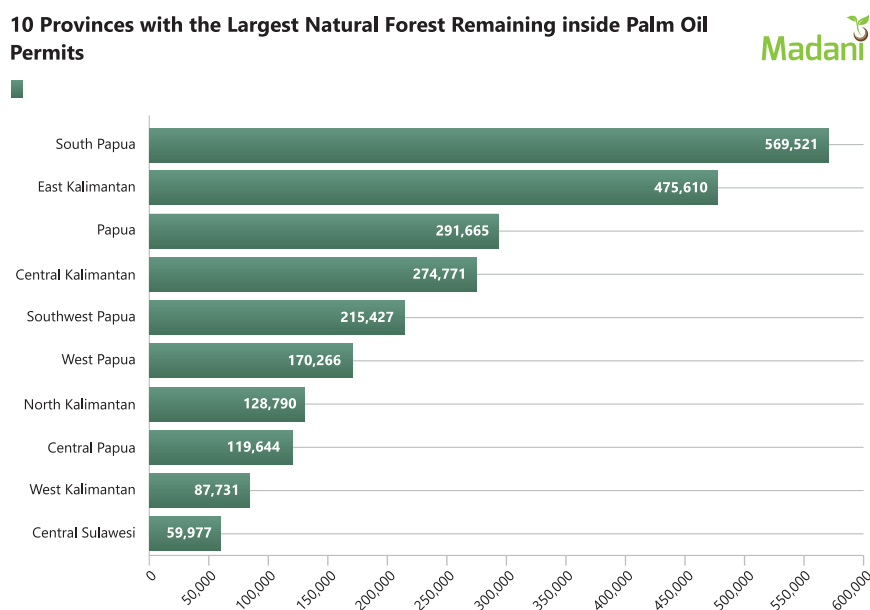
Source: BPS 2022.

**Projected deforestation by palm oil plantations in natural forests:** To protect Indonesia’s remaining natural forests, future commodity expansion must also be examined in the benchmarking process. The EUDR prohibits the EU import of the products of deforestation that occurred after the 31 December 2020 cut-off date. A January 2024 report by CSO [Madani Berkelanjutan](#) on Indonesia’s readiness to implement the EUDR found that currently 2.6 million hectares of natural forest are encumbered by palm oil area permits and have received Forest Area Release Permits; forest clearing has not yet begun, and would take place after the EUDR cut-off. The threat of deforestation for these delicate natural forests is great, especially as demand for biofuel from palm oil increases every year, both for [domestic](#) needs and for [export](#).<sup>3</sup>

In Indonesia’s 10 largest provinces (below), almost 2.4 million hectares of Indonesia’s natural forests are encumbered with palm oil plantation permits; 2.6 million hectares in all of Indonesia.

<sup>3</sup> 10.4 billion litres for domestic use, and 516 million litres for export in 2022

**Graph 6: 10 Provinces with the largest natural forests remaining inside palm oil permits**



Source: KLH, 2022, CSO Network Hub 2020, processed by MADANI Berkelanjutan

### 3. Other Important Considerations, ‘May Criteria’

In addition to mandatory criteria, the EUDR benchmarking process examines other factors – ‘may criteria’ – when ranking the risk of exporting countries<sup>4</sup>: commitment to the Paris Agreement and other relevant international agreements, ongoing law enforcement of anti-deforestation obligations, compliance with the protection of the rights of Indigenous Peoples and local communities, whether the country gives transparent access to relevant data. We focus here on certification, and the rights of local populations, mentioning also transparency and civil society access to information.

#### 3.1. Other national instruments and laws that address deforestation

**Palm Oil Certification:** Palm oil certification was introduced in Indonesia, and was made mandatory in 2011. The current certification regulation, Presidential Regulation 44/2020 on the Indonesian Sustainable Palm Oil Plantation Certification System (ISPO)<sup>5</sup>, is now being revised to require ISPO compliance from plantation all the way to factory level by November 2025, in response to EUDR obligations. Ministry of Agriculture data indicate that in 2023, at least 5.3 million hectares of palm oil plantations were certified, covering 31% of the total plantation area.<sup>6</sup> It is difficult to ascertain the environmental impact of certification, however, as compliance is lacking with even the most minimal requirements at the lowest level of certification.

The ISPO criteria attempt to strengthen efforts to reduce deforestation by restricting forest conversion in natural forests and peatlands. By law, ISPO operational maps of plantation areas should detail forest, peatlands and other land uses, and the location of forest operations. These maps, however, are not publicly accessible (EUDR Article

<sup>4</sup> <https://www.fern.org/publications-insight/an-eu-strategic-framework-for-working-with-countries-to-achieve-deforestation-free-production/>

<sup>5</sup> <https://www.indonesiapalmoilfacts.com/ispo/>

<sup>6</sup> Ministry of Agriculture. ISPO Certification Data as of June 2023; <https://ditjenbun.pertanian.go.id/template/uploads/2023/07/Rekap-update-sertifikat-ISPO-per-Juni-2023.pdf>.



29(4)d), and it is unclear whether they make a distinction between primary forest and very early-stage reforestation projects/secondary forest, of far less biodiversity or climate value. This lack of distinction is a common problem: when the Government states that deforestation is decreasing overall (e.g., as it did in November 2023, at COP 28), it counts as ‘forest’, as-yet unsuccessful reforestation, which does not meet EUDR definitions of ‘forest’ or fulfil climate obligations.

PIPIB maps do distinguish between primary and secondary forest/reforestation projects, and include areas where exploitation permits have been suspended; civil society considers that relying on PIPPIB definitions of forest would already be more effective, although these would need to be taken up in a stronger, more permanent legal instrument than a Presidential Instruction. Indonesian civil society views that use of the term ‘natural forest’ would also be effective in reducing further forest destruction, as it could allow for mapping and protecting areas considered to have high conservation value and high carbon stocks. As currently formulated, the EUDR does not distinguish between primary and secondary forest; this would be useful in encouraging Indonesian actors to address such issues.

**Table 3: Criteria in ISPO that can be linked to forest protection efforts**

ISPO’s Certification Criteria	Notes
Legality of forest area use is shown with a Forest Area Release Permit.	Currently, administrative settlements of forest area releases are seen merely as a formality to absolve illegal forest area use, rather than a means of improving environmental performance.
Protected areas and high conservation value areas.	The availability of information on high conservation value areas varies widely and depends on the quality of governance of the companies running the palm oil plantation operations.
Protection of natural forests and peatlands.	The ISPO requirement to layer plantation operations with natural forest maps has the potential to strengthen efforts to curb deforestation, but the burden of monitoring and enforcement is high and susceptible to weaknesses; that the maps are not publicly accessible is problematic.

*Source: Regulation of the Minister of Agriculture of the Republic of Indonesia 38/2020 on the Organization of Indonesian Sustainable Palm Oil Certification.*

EUDR legality and traceability requirements present additional challenges, especially for smallholders. ISPO attempts to manage these challenges by applying certain criteria, albeit with different levels of detail, but falls short of resolving traceability issues. For example, ISPO has no polygon-based (by plantation name/address) traceability requirement.

**Lessons from SVLK:** *Notably*, polygon-based traceability is a requirement that the Voluntary Partnership Agreement (VPA) framework’s Legality and Sustainability Verification System (SVLK) for timber is now setting up. SVLK offers valuable indications of instruments that could be useful for EUDR traceability requirements: e.g., government-recorded upstream-downstream supply chain documentation, barcode technology, and monitoring by civil society.<sup>8</sup>

<sup>7</sup> As stipulated in Government Regulation Number 105/2015, the Forest area Release Permit legalizes past forest conversion after payment of an administrative fine.

<sup>8</sup> Jaringan Pemantau Independen Kehutanan. 2023. Kekuatan dan Kelemahan Sistem Ketelusuran Dalam SVLK. Presented in a focus group discussion on 3 October 2023.

Many aspects of Indonesia's wood traceability system must be improved, however<sup>9</sup>, and SVLK's shortcomings can also be instructive for EUDR traceability and legality systems:

- Monitoring compliance is limited mainly to formal document verification, rather than in practice<sup>10</sup>; certification of 'on-paper' compliance grants wood exports access to the EU market without further oversight<sup>11</sup>;
- Where field verifications take place, excessive discretion and flexibility is problematic;
- Conflicts of interest are common;
- Auditors' supervision burdens are not practically realistic, and difficulties surround how assiduously, or independently, they carry out their duties;
- No requirement exists to mitigate/remedy SVLK violations;
- Adequate, publicly accessible information about effectiveness of traceability is lacking.<sup>12</sup> Concession/plantation data can be obtained, but no data about transporting and processing wood is publicly available;
- The system cannot distinguish which products have undergone verification and which have not, and mixing legal with illegal timber occurs.<sup>13</sup>

Both EUDR and ISPO must explore effective ways to establish a segregated approach and prevent mixing raw materials from deforestation or illegal plantations with legally produced commodities (thus, 'laundering' illegal commodities).<sup>14</sup> It is essential to develop a chain-of-custody system that ensures traceability, but does not overburden the nation's institutional capacity; expanding civil society's role could help with this.

Mitigating and reducing deforestation requires the government and stakeholders to be capable of carrying out effective monitoring and law enforcement after 30 December 2024 (when the EUDR enters into force) to ensure the compliance of all economic actors, both large-scale industries and smallholders.<sup>15</sup> Civil society does not have a sufficient platform for public engagement with the government in stakeholder processes related to the EUDR.

SVLK acknowledges that civil society participation is vital, and SVLK is largely successful because of this (according to the [Ministry of Environment](#)). Yet even here CSOs, chosen by government to participate in these processes are few, and their discretion is advisable. If the EUDR placed greater emphasis on increasing civil society's role, and specifically on independent monitoring, it could help lessen the institutional burden, as CSOs have considerable on-the-ground information about practical implementation.

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<sup>9</sup> Susilawati and Kanowski, 2019

<sup>10</sup> Maryudi *et al.*, 2017

<sup>11</sup> Overdeest and Zeitlin, 2018

<sup>12</sup> Monitoring in 2020 indicated that official transport documents could be falsified based on the report findings produced by Jaringan Independen Pemantau Kehutanan. JPIK. 2020. Assessing Compliance of Forest Timber Product Utilization and Trade Permit Holders; <https://drive.google.com/file/d/1NTH6YAZbjnvlBP9EKksqfes80ufwoE/view>.

<sup>13</sup> Susilawati *et al.*, 2019

<sup>14</sup> Rainforest Alliance. 2023. What is mass balance sourcing?; <https://www.rainforest-alliance.org/business/certification/what-is-mass-balance-sourcing/>.

<sup>15</sup> Tropenbos. 2020. ISPO: Harapan Baru Indonesia. Infobrief October 2020; [https://www.tropenbos-indonesia.org/file.php/2197/202010\\_infobrief\\_ispo-bahasa.pdf](https://www.tropenbos-indonesia.org/file.php/2197/202010_infobrief_ispo-bahasa.pdf).

### 3.2. Transparency, access to information, and the welfare of Indigenous and local peoples

Considered in EUDR Article 29(4)d, the welfare of Indigenous and local peoples represents a significant stumbling block. Indonesia’s plantation sector, and especially its industrial operations give rise to many legal disputes and conflicts: difficulties concern corruption, and community dispossession through the initial grant of corporate title to lands traditionally held by local and Indigenous populations. Criminal penalties remain applicable to communities if they continue to access these forests/lands for traditional usage, but criminal penalties are no longer available to punish illegal corporate deforestation.

Disputes between Indigenous/local communities and plantation owners often lead to violence, intimidation, and criminalization of traditional/community activities (Table 4). Deforestation, forced displacement of local populations and violations of community rights to make way for industrial plantations have become common phenomena. Thus, it is urgent to look beyond the EUDR’s technical issues and export statistics, to seriously examine practical social impacts when structuring an assessment that can influence future risk mitigation measures.

**Table 4. Illegality, Corruption, and Conflict in Plantation Business Activities.**

Issues	Notes	Cases or Data
<b>Illegal commercial land and forestry usage</b>	Numerous occurrences in Indonesia, with various policies and laws passed to streamline and facilitate the administrative ‘on paper’ legality of palm oil plantation businesses to the serious detriment of community/ Indigenous rights and environmental/ climate laws and policies.	In 2021, the Corruption Eradication Commission (KPK) conducted a review on land use permits for plantation businesses in Papua. After the review, it was <a href="#">found</a> that six enterprises in West Papua had violations that warranted the revocation of 10 permits and the return of 52,000 ha of land. A further 224,000 ha may potentially be revoked.
<b>Palm oil plantation permit corruption</b>	Numerous cases of corruption exist in the palm oil plantation sector due to the discretion of permits, weak law enforcement, and patron-client relations between business owners and political actors in Indonesia. At the same time, the Corruption Eradication Commission (KPK) institution is being undermined (e.g., Firli Bahuri’s dismissal for his <a href="#">involvement</a> in bringing an extortion case against former Minister of Agriculture Syahrul Yasin Limpo, 2023).	Corruption can exist even at high levels. For example, a prominent 2012 corruption case exposed that the ex-Buol Regent, Amran Batalipu, had received a bribe to authorize the permits for palm oil location and business usage. In July 2022, the former Governor of Riau, Annas Maamun, was arrested for freely authorizing the use of forest areas in Riau. Numerous, other examples exist, involving <a href="#">land use permits</a> , and <a href="#">export permits</a> .

<p><b>Conflicts, Violence, Intimidation, and Criminalization of traditional land use/activities.</b></p>	<p>Conflicts on the plantation sector, to this day, have little resolution. Efforts to mitigate conflicts were made sporadically in various areas, but, with the continuous expansion of plantations areas, conflicts will likely continue and even increase over time.</p>	<p>Data from the Consortium on Agrarian Reform indicate that, compared to previous years, in 2022 agrarian conflicts increased; of 212 cases of land use conflict, 99 were caused by plantation business activities, involving 377,000 hectares of land, and affecting 141,000 families. Conflicts also occur frequently on plasma plantations. <a href="#">The Gecko Project</a> investigated conflicts between plasma farmers and companies and found that between 2012 - 2022, 137 companies were suspected of not setting aside enough plasma plantations.</p>
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Source: [Consortium on Agrarian Reform, 2023](#).

**Transparency and Access to Information:** Civil society typically experiences great difficulty accessing pertinent data (discussed throughout). This severely restricts the role that they could play in monitoring implementation, and alerting to the possibility of human rights violations and community conflicts before these become problematic. Lack of transparency, and the inaccessibility of data related to deforestation, of data on the legality of oil palm plantations, and the overly generous representation of forest area data (counting early-stage planting as 'forest') must be seriously considered in the benchmarking process. Furthermore, good data governance would benefit Indonesia's sustainable palm oil commodity traceability practices.



## IV .Other Essential Benchmarking Considerations

### 1. Smallholders' Stance on EUDR

As currently formulated, the EUDR risks pushing independent smallholders still further from global supply chains – especially when they even confront difficulties of access in selling their palm oil fruit to the company-owned mill.

In 2023, the Ministry of Agriculture estimated that smallholder palm oil plantations totaled 6,678,091 million hectares – 41% of Indonesia's approximately 16.3 million hectares of palm oil plantations. This figure is misleading: it includes among 'smallholders', small and medium enterprises (SMEs) affiliated with corporate plantations; in 2020, these SMEs accounted for 3.7 million hectares<sup>16</sup>. Civil society analysis<sup>17</sup> of satellite imagery in 2020, shows that **only 1.9 million hectares are genuinely held by those whom civil society refer to as 'independent smallholders' with land holdings smaller than five hectares, by contrast with smallholders with lands of up to 25 hectares**. The EUDR should clarify such distinctions, to avoid magnifying the already overbearing influence of industrial operations.

Another issue that suffocates smallholders is that lack of the cultivation registration letter is often raised when they interact with the government. Regulation 23/2021, an implementing regulation of the Job Creation Law, sets legal targets for establishing forest areas: for example, [35,563,893 hectares of forest in 2022 - 2023](#). Chasing these targets has caused harm to independent farmers who do not hold cultivation rights (HGU). Exploitation below 25 hectares falls under the STDB scheme and is legally exempt<sup>18</sup> from HGU, but STDB delays and backlogs mean that small farmers have no documentary proof of legality, and are vulnerable to eviction. The government can then unilaterally classify undocumented smallholder exploitations as 'forest' (although forest is no longer present) to 'meet' targets on paper only.

It is a challenge for smallholders to apply for certification, whether it be the mandatory ISPO scheme, or the voluntary RSPO. The EUDR should urge the Indonesian Government to effectively enforce existing anti-deforestation measures (EUDR Article 29(4)c)<sup>19</sup>, while also pushing for a just partnership scheme between corporations and smallholders.

In December 2023, the Palm Oil Smallholders Union (SPKS) stated that the EU should simplify financial support and geolocation requirements to ensure that access to EU markets is not a practical impossibility for smallholders. Focus on easing the smallholders' burden of compliance with EUDR traceability and other requirements is also needed to protect smallholder access.<sup>20</sup>

Consideration 50 of the EUDR preamble commits producers to pay a just price to improve smallholders' livelihoods. Notably, the Indonesian Government, as yet, has taken no affirmative action to ensure a proper selling price for smallholders. The

<sup>16</sup> Data processed by Palm Oil Workers Union (SPKS) based on Auriga and SPOS Indonesia and Directorate General of Plantations data (2020)

<sup>17</sup> Auriga Nusantara and SPOS Indonesia

<sup>18</sup> Regulation of the Minister of Agriculture Number 29/Permentan/Kb.410/6/2017 concerning Business Licensing Guidelines

<sup>19</sup> Such as Presidential Instruction for the Suspension of New Permits on Primary Forest and Peatland (PIPIB), Government Regulation No. 10/2010 on Procedures for Changing the Designation and Function of Forest Areas; and Government Regulation No. 57/2016 on Peat Protection. In addition, Indonesia should be encouraged to adopt domestic legislation that enshrines a commitment to prevent deforestation.

<sup>20</sup> Noting that the [Team Europe Initiative](#) is a welcome and important step.

Sustainable Palm Oil Farmers Forum (FORTASBI) [gave special attention](#) to the need to increase smallholders' value in the supply chain.

The EUDR should create an enabling, inclusive environment for smallholders too often excluded from supply chains. For example, crude palm oil processing plants are often owned by large corporations, which do not purchase palm oil fruit directly from independent smallholders. The EU must formalize the need to prioritize sustainability-certified smallholders and purchasing directly from smallholder cooperatives, without intermediaries/brokers taking a cut, as currently occurs. The EUDR should obligate EU Operators in particular, in their due diligence processes, to ensure that imports entering the EU also contain smallholder products, rather than focus only on the data and the legality of the products. It must further encourage the Indonesian government to give smallholders practical support with legality issues, and area mapping.

## 2. Variation, by region and by commodity

Indonesia possesses a large territory with considerable regional differences. As this study shows, the rates of deforestation in certain Indonesian provinces are higher, and the projected deforestation is much greater, than in others.

Variations between commodities are also significant: the expansion rates of rubber, coffee, and cocoa plantations are significantly lower than that of palm oil. In order to treat producers of each commodity equitably, they cannot be grouped together, yet it is unclear whether the EUDR Article 29(3)c ('must criteria') reference to "production trends of relevant commodities and of relevant products" explicitly requires per-commodity benchmarking.

**Benchmarking criteria must integrate subnational and commodity-specific differences.** Assessing data at a region<sup>21</sup> or at an island level<sup>22</sup> would allow:

- *Greater Fairness and Representation:* Subnational benchmarking accounts for varying forest degradation conditions across different locations, and ensures more equitable representation. Commodity-specific benchmarking avoids penalizing commodities that have less destructive power (in Indonesia, for instance, coffee and cocoa) and less deforestation risk;
- *Identifying Governance Constraints:* This method allows the identification of governance challenges at the sub-jurisdictional level in a more targeted manner, and encourages work toward improvement. It rewards regional governance for genuine efforts to resolve community conflict and to eradicate illegal plantation expansion and corruption, by distinguishing them from regions that tolerate these with impunity.
- *Promoting Transparent Traceability Systems:* By implementing sub-national benchmarks, we encourage transparent public traceability systems. Transparent data collection is more straightforward at local government level, avoiding delays of the central government, which often takes a year merely to collect data from local authorities. Reliance on local data could help ensure that genuine efforts towards sustainability are encouraged more effectively.

<sup>21</sup> By 'region' we mean: Sumatera, Kalimantan, Jawa, Bali-Nusra, Sulawesi, Maluku, and Papua.

<sup>22</sup> By island level we mean: Sumatera, Jawa, Bali, Kalimantan, Sulawesi, Maluku, Nusa Tenggara, and Papua.

- *Sustainable Palm Oil Industry*: It also motivates palm oil-producing provinces to operate sustainably, by encouraging awareness and knowledge of sustainability, and exchanging best practices through benchmarking, traceability and legality processes.



## V. Conclusion and Civil Society Recommendations

The challenge confronting the EUDR is the extent to which trade in certain commodities can foster improvements in forestry management elsewhere.

Indonesia faces several challenges related to the benchmarking criteria outlined in Article 29, paragraphs 3 and 4. Risks include data transparency for traceability and due diligence, weak commitments to halting deforestation, the issuance of palm oil licences covering 2.6 million hectares of natural forests, and the vulnerable position of smallholders in the country. Indonesia's palm oil sector demonstrates that deforestation, illegal use for plantations, conflict between local community and the state apparatus, criminalization of traditional activities, and corruption are common.

Government capacity, the legal framework, and the practical implementation of forest protection are issues that remain to be tackled. This, despite considerable effort, for example, to limit conversions of natural forests and wetlands, to strengthen permit management – or even revocation – in the plantation sector, and to require palm oil business certification.

Indonesia's context should be assessed not only in terms of risk, but also in terms of its effort to decrease deforestation. Examples of existing instruments – whether effective or problematic – can inform mitigation.

After analyzing Indonesia's palm oil sector, we propose general suggestions, as well as factors that should be integrated into the methodology used to benchmark the risk of deforestation.

### Generally, the EU should consider:

- Encouraging Indonesia to **improve its policies and laws** to protect forests, and to amend legal developments that can devastate forest coverage. These include the implementation of Law No. 6/2023 on Job Creation, which weakened environmental and forest protection; periodic revisions to the PIPPIB Map, and revisions to the ongoing spatial development in Indonesia; and government reissue of land use permits that the Corruption Eradication Commission had revoked due to irregularities/illegalities affecting lands, and which would more properly be returned to communities or used in reforestation.
- Examining the **SVLK system's** example for constructing a transparent traceability instrument, and publicizing the data on waivers of forestry area for plantations, plantation permits data, on deforestation allowed in the permit, on the permissible increases of palm oil production, plantation conflicts, and other relevant matters, while also providing effective risk mitigation. The SVLK's openness to civil society also allows the latter to contribute to practical implementation as independent monitors.
- Creating inclusive **multistakeholder forums, with regional/commodity representation**, that insist on independent civil society participation, and requiring that civil society be given transparent access to relevant data. Limited transparency and access to relevant data restrict civil society involvement. Improved access would allow civil society to help troubleshoot and prevent problems of practical implementation, in addition to helping find solutions once problems arise.



- Recommending that Indonesia build a **mapping system** that aligns with FAO and EUDR definitions of ‘forest’; Also, at present the EUDR does not distinguish between primary and secondary forest; this could help encourage Indonesian actors to avoid overly generous classifications of new reforestation projects as ‘forest’.
- Formalizing the need to **prioritize sustainability-certified smallholders**, and to purchase directly from smallholder cooperatives, paying a just price; directing EU Operators to ensure that imports entering the EU also contain smallholder products.

#### Points to incorporate into risk assessment methodology:

- **Land conflicts, violence and human rights violations**, and corruption are problematic in themselves and can drive future deforestation; the methodology should clarify that these risks cannot be ignored, and include a policy of non-tolerance for such violations, to encourage accountability and the examination of practical social impacts of policies.
- Given Indonesia’s significant regional differences, a requirement to **take subnational variations into account** should be integrated into the methodology. As seen, the rates of deforestation in certain Indonesian provinces are higher, and the projected deforestation is much greater, than in others. Integrating subnational differences would be more equitable, and allow more targeted assessment of governance challenges. Sub-national benchmarks also encourage transparent, publicly traceable systems and avoid the delays of centralized data.
- Benchmarking also should be carried out on a **commodity-specific basis**, as the expansion rates of rubber, coffee, and cocoa plantations are significantly lower than that of palm oil. To treat producers of each commodity equitably, they cannot be grouped together. Yet it is unclear whether the Article 29(3)c (‘must criteria’) reference to “production trends of relevant commodities and of relevant products” explicitly requires per-commodity benchmarking; the methodology should integrate this, and clarify how to go about it.

Pushing for sustainability improvements in the management of Indonesia’s palm oil industry through multilateral cooperation would help to reinforce various policies, including climate commitments, law enforcement, and ongoing measures to eradicate corruption in Indonesia.

## Glossary:

<b>ISPO</b>	<b>Indonesia Sustainable Palm Oil (ISPO):</b> a certification system for palm oil plantations in Indonesia. ISPO was established by the Indonesian Government's Ministry of Agriculture in 2009. The ISPO certification became mandatory for all oil palm plantations in Indonesia in 2011, and will be mandatory for all oil palm growers and smallholders by November 2025. Now the newest regulation for ISPO is the Regulation of The Minister of Agriculture No. 38/2020.
<b>RSPO</b>	<b>Roundtable on Sustainable Palm Oil:</b> a global partnership of stakeholders across the palm oil supply chain that develops and implements global standards for producing and sourcing certified sustainable palm oil.
<b>HGU</b>	<b>Hak Guna Usaha:</b> a type of land tenure regulated by the state. According to the Basic Agrarian Law (UUPA) Number 5 of 1960, HGU is the right to cultivate land directly controlled by the state for a certain period of time, used by agricultural, fisheries, or livestock businesses. HGU is given with a minimum land area of 5 hectares.
<b>STDB</b>	<b>Surat Tanda Daftar Budidaya:</b> Cultivation Registration Letter that is the basic legal requirement for small-scale commodity producers in Indonesia under 25 hectares. The STDB is particularly important for farmers who are not part of cooperatives or formal businesses, as their participation in supply chains is mostly informal. STDB regulated in the Decree of the Director General of Plantations Number 105/2018.
<b>PIPIB</b>	<b>Indicative Map for Termination of Granting Business Permits, Approval for Use of Forest Areas, or Approval for Changes in the Allocation of New Forest Areas in Primary Natural Forests and Peatlands,</b> first introduced in 2011. Presidential Instruction No. 6/2019, which extended and expanded the moratorium, made it a more permanent policy measure. This instruction reinforces the government's commitment to environmental conservation and sustainable land management. The aim of the indicative map issued by the Indonesian Ministry of Environment and Forestry is to halt granting business permits, approval of forest area use, or approval of new forest area designation changes in primary natural forests and peatlands. The maps must be renewed every six months.
<b>SVLK</b>	<b>Sistem Verifikasi Legalitas Kayu</b> (the Indonesian Timber Legality Assurance System, INDO-TLAS): a mandatory legality and sustainability certification system built on national multistakeholder consensus. The Indonesian Government has taken steps to assure the international market of the legality and sustainability of its timber products through SVLK certification, which not only ensures that only legal timber is exported from Indonesia, but also effectively manages sustainable forestry practices, reducing illegal logging and trading.
<b>Smallholder</b>	According to the Regulation of the Minister of Agriculture, Republic of Indonesia, Number 21/Permentan/Kb.410/6/2017, 'smallholders' refers to planters with fewer than 25 hectares of land. This includes those who work in plasma and those who use independent financing.
<b>Independent smallholder</b>	'Independent smallholders' is not a legal term. Indonesian CSOs use it to refer to small-scale plantation (smaller than 5 hectares) holders who, due to knowledge and finance gaps, face challenges in achieving sustainability certification, accessing markets, and obtaining financial resources due to their lack of affiliation with larger commercial interests.
<b>Plasma Schemes</b>	The plasma scheme is a program that requires palm oil companies in Indonesia to allocate 20% of their land to smallholder farmers. It was introduced in the 1980s and made mandatory in 2007. Currently, this requirement is stipulated in the Regulation of the Indonesian Minister of Agriculture No. 98/Permentan/OT.140/9/2013.

## Annex

### The EUDR's 'Must' and 'May' criteria

**'Must criteria'** as per EUDR Article 29(3) The classification of low-risk and high-risk countries or parts thereof, pursuant to paragraph 1 shall be based on an objective and transparent assessment by the Commission, taking into account the latest scientific evidence and internationally recognised sources. The classification shall be based primarily on the following assessment criteria:

- (a) rate of deforestation and forest degradation;
- (b) rate of expansion of agriculture land for relevant commodities;
- (c) production trends of relevant commodities and of relevant products.

**'May criteria':** Article 29 (4) The assessment referred to in paragraph 3 may also take into account:

- (a) information submitted by the country concerned, regional authorities concerned, operators, NGOs and third parties, including indigenous peoples, local communities and civil society organisations, with regard to the effective covering of emissions and removals from agriculture, forestry and land use in the nationally determined contribution to the UNFCCC;
- (b) agreements and other instruments between the country concerned and the Union and/or its Member States that address deforestation and forest degradation and facilitate compliance of relevant commodities and relevant products with Article 3 and their effective implementation;
- (c) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to tackle deforestation and forest degradation, and to avoid and penalise activities leading to deforestation and forest degradation and in particular whether it applies penalties of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation;
- (d) whether the country concerned makes relevant data available transparently; and, if applicable, the existence, compliance with, or effective enforcement of laws protecting human rights, the rights of indigenous peoples, local communities and other customary tenure rights holders;
- (e) sanctions imposed by the UN Security Council or the Council of the European Union on imports or exports of the relevant commodities and relevant products.





