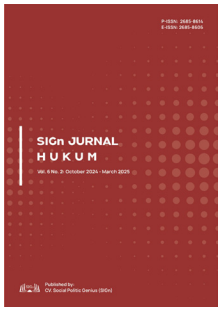

SIGn Jurnal Hukum

E-ISSN: 2685 – 8606 || P-ISSN: 2685 – 8614
https://jurnal.penerbitsign.com/index.php/sjh/article/view/v6n2-8

Vol. 6 No. 2: October 2024 - March 2025 Published Online: December 12, 2024

Article Title

Palm Oil Smallholders in Peril: Indonesia Urgency in Aiding Smallholders to Compete Fairly in their Playing Field

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How to cite:

Yenny, O., & Simbolon, P. G. M. (2024). Palm Oil Smallholders in Peril: Indonesia Urgency in Aiding Smallholders to Compete Fairly in their Playing Field. *SIGn Jurnal Hukum, 6*(2), 124-143. https://doi.org/10.37276/sjh.v6i2.372

ABSTRACT

This research is conducted to express the urgency for the Government of Indonesia to adopt a regulation concerning the protection of palm oil smallholders. Such adoption is necessary since the partnership agreement between this minor group with the non-plantation enterprise is ineffective due to the conflicting interests between the Minister of Agriculture and the Minister of Industry. To achieve this purpose, this article is written based on doctrinal research by gathering rules under the MSMEs Law, the Competition Law, the Capital Investment Law, the Job Creation Law, and the SCM Agreement. This article is also supported by the justice fairness theory by Rawls. The first discussion of this article discusses the urgency to adopt this government regulation based on the MSMEs Law and the Competition Law which is to enforce the partnership agreement. Furthermore, the second discussion analyzes the Capital Investment Law and the Job Creation Law so that this aspired law shall balance the rights and obligations of the smallholders and the non-plantation enterprise. Last but not least, the third discussion discusses what to anticipate according to the WTO rules on subsidies. In the aftermath, this article suggested next research discussing the distribution of authorities between the MOA and the MOI.

Keywords: *Fairness; Non-Plantation Enterprise; Palm Oil Smallholders; Playing Field.*

INTRODUCTION

Palm oil smallholders have an important role in the palm oil value chain and rural livelihood. This type of producer is from the large palm oil enterprise due to various factors including farm size, use of family labor, market orientation, level of integration into the input and output supply chains, and production method (Ogahara et al., 2022). Regardless of their inferior position, Indonesian palm oil smallholders played an important role in the output production of this commodity in each of these state provinces (Brandi et al., 2020). In 2023, palm oil smallholders' contribution to exports was quite high since they cultivated an area of 6.04 hectares (Witjaksono et al., 2023).

Since these inferior groups are qualified as small businesses, their protection is mainly regulated under Law Number 20 of 2008[1] (Widiarty, 2023). Article 11 point b of this Law inter alia stated that the partnership mechanism under this regulation shall be aimed at realizing the partnership amongst MSMEs and large enterprises. Article 25 section (2) of the MSMEs Law furthermore states that the MSMEs and Large Enterprises partnership shall cover the process of skill transfers in the production and processing, marketing, capital, human resources, and technology. In practice, the palm oil smallholder cooperates with large palm oil enterprises, especially the non-plantation enterprise through the core-plasma partnership agreement[2] (Anggraini et al., 2023).

[1]Law Number 20 of 2008 is hereinafter referred to as the MSMEs Law.
[2]The Core-Plasma Partnership Agreement is hereinafter referred to as the Partnership Agreement.

Regardless of its noble action which is to increase the quality of smallholder's human capital, the implementation of this core-plasma mechanism is not effective in practice. This legal issue is caused by a bigger issue, which is the conflicting interests between the Minister of Agriculture[3] and the Minister of Investment and Downstream Industry, the two government agencies responsible for the palm oil production process. The MOA in this case promulgates and implements MOA Regulation Number 98/Permentan/OT.140/9/2013, as amended twice. These regulations constitute the sustainable management partnership mechanism between palm oil smallholders and a non-plantation large palm oil enterprise. Article 11B of these regulations states that the partnership between these two entities can be carried out through the agreement between the planter (palm oil smallholder) and the plantation processing industry company (the large palm oil enterprises).

Although the provision as presented above explicitly states that it is the MOA's authority to regulate the palm oil sector including the rights and obligations of the smallholders, such conflict of interest still occurs. This is because the Coordinating Minister Circular Number PI.06.01/101/SES.M.EKON/04/2024 was issued stating that the business sector under KBLI 10431 concerning the palm oil industry shall be qualified as an industrial product. The letter therein has caused the Minister of Industry[4] to exercise its authority to regulate this sector, which conflicts with the MOA authority under MOA Regulation Number 21/Permentan/KB.410/6/2017.

In illustrating this issue, this article implements Hart's open texture theory stating that legislators have limitations in foreseeing the consequence of a promulgated regulation (Escher, 2023). Such limitation has caused a conflict of interest between the apparatus implementing the promulgated regulation and with parties related to the implementation of such regulation (Zeifert, 2022). In other words, in the case of conflict between two state organs, one shall understand that such collision is caused by the conflicting authorities between those organs, instead of the conflict of norms existence. In this case, such conflict exists between the MOA and the MOI.

This conflict of interest has caused non-plantation enterprises to partner with their smallholders to exercise their authority arbitrarily. As a consequence, this inter-institutional also distorted the price of the fresh fruit sold by the smallholders in the market, causing them to be unable to compete in their playing field. Facing a circumstance that caused them to sell their fruit below the cost of a plant or produce such a commodity, the basic rights of these inferior groups are indeed in great peril. This market situation not only causes the palm oil smallholder unable to compete in the domestic market, but it will also affect the export of Indonesia's palm oil products to its trade partners.

[3]Minister of Agriculture is hereinafter abbreviated as MOA.
[4]Minister of Industry is hereinafter abbreviated as MOI.

As an antithesis to this issue, this article raises the four discussions below to solve the denial of justice faced by palm oil smallholders. The first discussion discusses the rights of palm oil smallholders according to the relevant provisions in the MSMEs Law and Law Number 5 of 1999[5]. After identifying the main regulation concerning smallholders, the second discussion dives deeper into the provision under Law Number 25 of 2007[6] which constitutes the rights of investors related to smallholders' protection. Since this article has an international dimension, the third discussion discusses how the aid by the Government of Indonesia to palm oil smallholders should be implemented without violating the rules on international trade. Last but not least, the fourth discussion expresses the lean back for the government of Indonesia, to ensure that the palm oil smallholders may gain an advantage to compete fairly in the market, and to contribute to Indonesia's palm oil exports.

RESULTS AND DISCUSSION

A. Palm Oil Smallholders Protection under the MSMEs Law and the Competition Law

Indonesian law protects smallholders through the MSMEs Law, as consolidated by Law Number 6 of 2023[7], which enacts Government Regulation in Lieu of Law Number 2 of 2022 and amends several provisions of the MSMEs Law. One shall understand that Indonesian law qualifies smallholders as small enterprises that require extra protection in running their business. Article 16 section (1) of the MSMEs Law obliges the Indonesian central and regional governments to facilitate the development of business in the production and processing, marketing, human resources, and design and technology sectors. This primary obligation obliges the Government of Indonesia to facilitate the business development of smallholders, including palm oil smallholders. By referring to the amendment of the MSMEs Law under Article 87 of the Job Creation Law, it can be understood that no changes are made in the provision above. According to the third preamble of the MSMEs Law, it can be understood that this regulation is aimed to achieve the following purpose:

> *"**Whereas the empowerment of Micro, Small, and Medium Enterprises** as referred to in letter b has to be conducted in comprehensive, optimum, and continually **through the development of a conducive climate, granting of business opportunities, support, protection, and development of enterprises to a great extent, therefore, it is capable to improve the position, role, and potentials of Micro, Small, and Medium Enterprises** in realizing the economic growth, even distribution, and increasing people's income, creating job opportunities, and poverty alleviation;" (Emphasis added).*

[5]Law Number 5 of 1999 is hereinafter referred to as the Competition Law.
[6]Law Number 25 of 2007 is hereinafter referred to as the Capital Investment Law.
[7]Law Number 6 of 2023 is hereinafter referred to as the Job Creation Law.

This theological interpretation of this law has shown that this law is meant to ensure that MSMEs may acquire equal opportunity, legal protection, and welfare in running their business (Asmah et al., 2022). The fair play concept herein is indeed in line with one of the elements in the theory of justice as expressed by Rawls (1971). From the excerpt by Roberts-Cady (2003), it can be understood that Rawls stated that the fundamental principle of justice consists of equal opportunity for everyone to acquire their social and economic rights. Ingarasi and Suwigno (2022) stated that this principle guarantees the realization of the proportionality and the exchange of rights and obligations in a reasonable manner, as long as such transaction is in line with good faith and fairness. Such compatibility has plausibly demonstrated the fact that the MSMEs Law is implemented based on the spirit of justice (Said & Nurhayati, 2021).

Under the legal text of this law, the implementation of Justice Theory can be seen from the funding arrangements presented herein. Article 21 of the MSMEs Law states that the Government of Indonesia shall provide funding for MSMEs in the form of loans, guarantees, grants, and other types of funding. This article also obliges both the central and regional governments to provide ease of doing business incentives such as licensing, and relaxation of tariffs in accordance with the prevailing regulation. By referring to Rawls's point of view, this incentive shall be granted by the government since the MSMEs are potentially subject to the social and economic inequalities in Indonesia (Ikwuamaeze & Dukor, 2022). In other words, this article is in line with Rawls's doctrine stating that the distribution of wealth and income need not be equal, yet it must be in favor of every individual's advantage.

Another provision that reflects this principle can be seen in the partnership framework set forth in the MSMEs Law (Crisyanti et al., 2023). Article 26 of the MSMEs Law not only obliges the government, business sector, and the community to support and stimulate partnerships with MSMEs or smallholders. Such partnership is conducted through skill transfers in production and processing, marketing, capital, human resources, and technology. To be more precise, Article 26 of the MSMEs Law states that such partnership shall be conducted through one of the non-exhaustive lists including core-plasma, subcontract, franchise, general trade, distribution and agency, and other forms of partnership patterns. The amended version of this article adds one of the partnership mechanisms in this law, and it is the supply chain mechanism.

In practice, palm oil smallholders prominently conducted partnerships through the written core-plasma partnership agreement. Under this partnership mechanism, these small enterprises cooperate with palm oil enterprises to operate palm oil production and sales. Ideally, the development of the plasma plantation

owned by the MSMEs shall be in line with the development of the enterprise's core plantation. Furthermore, this partnership mechanism is also attached with the support in the form of training, and basic rights fulfillment by the enterprise to the farmers.

Furthermore, this partnership mechanism is also complemented by the cooperative[8] which provides the economic needs of the smallholder farmers. Such fulfillment is achieved by the loan provided by the bank for the cooperative based on its application, and such capital is distributed to the farmers. Topan and Ifrani (2021) also stated that this financial aid is aimed at revitalizing the plantations owned by the smallholders.

Besides the establishment of cooperatives, the implementation of the core-plasma agreement is also conducted through the one-roof management pattern. This management is conducted by the enterprise in the case of planning, maintenance, harvest, and replanting of the palm oil, meanwhile, the smallholders will acquire the net outcome of such production and sales process. Hardianto et al. (2022) stated that this operation is conducted to ensure that the smallholder will receive their profit from the production and sales of the French Brunch Fruit. As the cooperatives, the revitalization is the spirit of the one-roof management pattern.

In practice, not all palm oil smallholders are acquiring such an advantage. A general issue occurs in the case of palm oil smallholders cooperating with the non-plantation enterprise. The development of the palm oil business trend presents the rise of a new type of palm oil enterprise known as the non-plantation enterprise. Unlike the conventional palm oil manufacturing enterprise having its plantation, this business sector highly depends on the smallholder plantation. This is because as its term, this palm oil enterprise does not have its own plantation for its production process.

It is important to note that the non-plantation enterprise is cooperating with the smallholders through the partnership mechanism as constituted under Article 26 of the MSMEs Law. However, most of these partnership agreements are not implemented in good faith where the smallholders do not acquire the benefit of the agreement therein. At a glance, such injustice is caused by the absence of good faith in the non-plantation enterprise. However, this article does not issue such bad faith on a case-by-case basis, yet it targeted the conflict of authorities between the MOI and the MOA as a circumstance causing the empty space of this agreement, thereby giving space for such enterprises not to fulfill their obligations.

[8]Cooperative is known as "koperasi" in Indonesian.

The conflict of interest between the MOA and the MOI in regulating the palm oil sector has caused the absence of certain transparent regulations concerning the partnership mechanism of the non-plantation enterprise and the palm oil smallholders. On one side, the MOA invokes the MOA Regulation Number 21/Permentan/KB.410/6/2017 which also constitutes the implementation of a partnership agreement involving smallholders. On the other side, Coordinating Minister Circular Number PI.06.01/101/SES.M.EKON/04/2024 states that it is the MOI authorized to regulate the palm oil industry. This bigger problem has opened a loophole for non-plantation enterprises to exercise their rights under the partnership agreement without taking into account the smallholder economic rights.

The ratio d'etre of the statement above is justified under the Indonesian Civil Law provision. Where Article 1339 of the Civil Code among others states that an agreement or a contract shall be conducted in accordance with morals, justice, and propriety. By viewing this according to the legality principle (Jurdi, 2016), one may understand that the absence of a harmonized regulation concerning the protection of palm oil smallholders under the partnership agreement with the non-plantation enterprise has also caused the absence of propriety to implement this agreement (Sastro et al., 2022). Such absence has caused an open door to the ignorance of the smallholder rights. Furthermore, although Article 26 of the MSMEs Law has a non-exhaustive nature, the unclear characteristics of the partnership agreement between the non-plantation enterprise and the smallholders have also triggered a revolving door.

Smallholder is indeed an inferior group that requires extra protection due to the difference as explained by Rawls. However, such circumstances shall not be perceived as permission to let this group's basic rights to play on the same level playing field not be fulfilled. The law in the book clearly indicates that smallholders or the MSMEs need to be fulfilled. Article 50 point h of the Competition Law states that the following law is not applicable for MSMEs. In other words, this article give permission for MSMEs to conduct action or adopt an agreement contrary to the Competition Law. In practice, the MSMEs Law and the Job Creation Law attributed authority to the Indonesian Competition Commission to condemn an enterprise breaching the partnership agreement with the smallholders or to enforce the prevailing provisions under these laws (Artharini, 2023).

Although in general, this breach of contract phenomenon can be solved through law enforcement by the Indonesian Competition Commission, such measures won't be efficient in the context of legislation. This article therefore suggests the adoption of a higher legislation that specifically accommodates the partnership between non-plantation enterprises and palm oil smallholders.

This higher legislation shall also constitute the rights of palm oil smallholders in general due to their large contribution to the Indonesian economy, especially in the context of export sales. The next discussion discusses how the smallholders shall obtain their incentives according to the prevailing investment measures.

B. The Type of Investment Facilities in Indonesia under the Capital Investment Law and the Job Creation Law

The following part of this discussion presents the rights of palm oil smallholders as MSMEs according to the Capital Investment Law and the Job Creation Law (Ansari, 2020). As a legal norm aimed to protect and promote both foreign and domestic investments in Indonesia, point b of the preamble of Capital Investment Law states that:

> *"Whereas in accordance with the mandate set forth in Decision of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998 on Economic Policy within the Framework of Economic Democracy[9], investment policy should at all times underlay the people's economy that involves developments of micro, small, and medium enterprises, and cooperatives."*

The MPR Decision as referred to in the Capital Investment Law Preamble provides protection to MSMEs including smallholders. Article 2 of the MPR Decision Number XVI/MPR/1998 stated that the national political economy should be aimed at establishing mutually advantageous partnerships of business actors in the form of small and medium enterprises, cooperatives, large enterprises, and State-Owned Companies to consolidate Economic Democracy and the competitive national efficiency. Furthermore, Article 3 prohibits the centralization of the economy to a single or group of business entities which violates the justice and equality principle. Article 4 obliges the government to provide incentives for economically inferior groups, including the MSMEs. Last but not least, Article 5 of the MPR Decision Number XVI/MPR/1998 inter alia stated that small and medium enterprises should obtain the main opportunity, support, protection, and expansion. Such aid is given to show the state is in favor of those minor groups without ignoring the role of large enterprises and State-Owned Enterprises.

The provision under the Capital Investment Law concerning investment facilities is in line with the primary obligations under Articles 2-5 of the MPR Decision Number XVI/MPR/1998. Article 18 section (1) of the Capital Investment Law obliges the government of Indonesia to provide facilities to investors operating in Indonesia. Such facilities also cover the support for MSMEs including

[9]Decision of the People's Consultative Assembly of the Republic of Indonesia Number XVI/MPR/1998 on Economic Policy within the Framework of Economic Democracy is hereinafter referred to as the MPR Decision Number XVI/MPR/1998.

smallholders. Section (2) of the article among others states that investors expanding their business or making a new investment may receive an investment facility. Section (3) of the article states that one of the requirements to obtain the facilities is the partnership of the investor with micro, small, and medium enterprises or cooperatives.

Furthermore, Article 18 section (4) of the Capital Investment Law concerning the incentives for foreign and domestic investors states that:

a. income tax through a reduction of net income up to a certain level toward total investments made within a certain period;
b. exemptions or relief on import duty of capital goods, machinery, or equipment for production purposes that are not yet produced domestically;
c. exemption or relief on import duty of raw materials or components for production for production purposes for specific periods and specific requirements;
d. exemption or deferment of Value-Added Tax on the import of capital goods or machinery or equipment for production purposes that are not yet produced domestically for a certain period;
e. accelerated depreciation and amortization; and
f. land and building tax relief, particularly for certain business sectors, in a specific territory or region or area.

Although this provision does not directly aid the business operations of the palm oil smallholders, such incentives are distributable to them under the following premise. It is important to note that the palm oil enterprise or the non-palm oil may be granted the incentives under Article 18 section (4) of the Capital Investment Law, once they conduct a partnership with the palm oil smallholders. By referring to the first discussion and additionally, Article 1338 of the Civil Code, such partnership shall of course be conducted in good faith or in accordance with the pacta sunt servanda principle (Hartawan et al., 2024). Therefore, the Capital Investment Law is a positive law supporting minor business entities including palm oil enterprises.

The general mandate concerning the incentives for MSMEs including palm oil smallholders is also mandated under the Job Creation Law itself. Article 2 section (1) of the Job Creation Law states that one of the principles of this law is the equal rights principle. Furthermore, Article 3 point a of this law among others states that this law is adopted to create and enhance employment to empower the micro, small, and medium enterprises for Indonesia's economic development. Therefore, it is crystal clear that the Government of Indonesia shall provide equal opportunities for MSMEs especially the palm oil enterprise so that they may play

in their playing field equally. The premise herein is in line with the justice fairness concept by Rawls as explained in the first discussion.

Since the benefit given by the Capital Investment Law is indirect, this article suggested that the aspired government regulation shall also constitute the tax benefit for non-plantation enterprises having a partnership with smallholders or MSMEs. Furthermore, such financial benefit may only be granted if the partnership agreement is implemented in good faith. By having this provision, the non-plantation enterprises shall be motivated to implement their partnership agreement by taking into account the smallholder rights. Therefore, this aspired law will not only be in line with the MSMEs Law, but it will also be in line with the Capital Investment Law.

From this second discussion, the Capital Investment Law can be perceived as a law that is aimed to promote and support MSMEs including smallholders since they contribute significantly to the development of Indonesia. By referring to the type of investment facility under Article 18 of the Capital Investment Law, it is important to note that this investment measure can be considered a financial contribution to palm oil sectors. Such financial contribution can be qualified as state revenue which is not collected by the Government of Indonesia from its enterprises.

C. The Financial Contributions to Palm Oil Smallholders and Potential Violation of WTO Rules Concerning Subsidies

The palm oil smallholder is the upstream producer of palm oil products by perceiving the production process of this sector. Since the palm oil sector in general contributes to Indonesia's economy through export sales and export levies (Immanuel et al., 2019), the following research also discusses this palm oil issue based on the prevailing rules of international trade law. The rules referred to in this discussion are the rules of unfair trade according to the Law of the World Trade Organization[10]. Bossche and Prévost (2021) stated that the WTO Law is a set of rules or provisions constituted under the Agreement Establishing the World Trade Organization[11] and the WTO case law under the reports of the panel and Appellate Body.

Furthermore, the rules of unfair trade are a set of regulations constituted under Article VI of the General Agreement on Tariffs and Trade[12], the Agreement on

[10]World Trade Organization is hereinafter abbreviated as WTO.
[11]Agreement Establishing the World Trade Organization is hereinafter referred to as the WTO Agreement.
[12]General Agreement on Tariffs and Trade is hereinafter abbreviated as GATT.

Implementation of Article VI of the GATT 1994[13], and the Agreement on Subsidies and Countervailing Measures[14]. Bossche and Zdouc (2022) stated that these set of WTO rules are detailed rules related to specific forms of unfair trade consisting the dumping and subsidized trade. It is important to note that this article will not discuss what to anticipate if Indonesia's palm oil products are alleged as dumped products (exported to consumers abroad at a less-than-normal value) (Sharma, 2014). This is because the Anti-Dumping Agreement mainly regulates how the dumping margin shall be calculated due to the export sales conducted by the exporters/producers (Hasyim et al., 2023). It discusses what to anticipate if this aspired law will be alleged as a countervailable subsidy to Indonesia's palm oil product prices.

According to the national law perspective, the incentives by the government of Indonesia under the Capital Investment Law as stated above indeed bring a positive impact on the nation's economic development. However, by perceiving this issue according to the WTO law, a different point of view shall be taken while perceiving this palm oil smallholder issue. The implementation of the investment measures and the MSMEs protection measures above might potentially violate the relevant provision under the SCM Agreement. To provide a clear understanding, this discussion presents the nexus of the SCM Agreement with this issue.

According to the provisions constituted under Article 1.1 of the SCM Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfer of funds or liabilities (e.g loan guarantees);

(ii) government revenue that is otherwise due is forgone or not collected (e.g fiscal incentives such as tax credits);

(iii) a government provides goods or services other than general infrastructure, or purchased goods;

(iv) a government makes payments to a funding mechanism, or entrust or directs a private body to carry out one or more the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

[13]Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is hereinafter referred to as the Anti-Dumping Agreement.

[14]Agreement on Subsidies and Countervailing Measures is hereinafter referred to as the SCM Agreement.

or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

The element mentioned in Article 1.1 of the SCM Agreement is also known as the financial contribution. By referring to Article 1.1(a)(1)(ii) of the SCM Agreement, it can be understood that the incentives for palm oil smallholders under Article 18 of the Capital Investment Law are qualified as a non-collected revenue of the Government of Indonesia. However, this investment measure may only be considered as a subsidy if it fulfills the specificity mentioned in Articles 1.2 and 2 of the SCM Agreement. Article 1.2 of the SCM Agreement states that:

> *"A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2."*

The specificity requirement under Article 2 of the SCM Agreement states that a subsidy will only be qualified as a specific subsidy if it is aimed at an enterprise or industry or group of enterprises or industries. Sykes (2010) stated that this provision indicates that such specificity may arise de jure and de facto. The de jure arises when the granting authority or the legislation implemented as a basis to operate explicitly limits the access to a subsidy to certain enterprises. Furthermore, the de facto arises when the measure concerning such subsidy is not aimed at certain enterprises, however, the fact has shown that the contrary situation, or in fact that it is used by a limited number of certain enterprises, there is a predominant use by certain enterprises, or disproportionately large amounts of subsidy to certain enterprises. Knowing that this aspired government regulation will support the minor group in the upstream industry, it can be understood that this aspired law will also fulfill the specificity character under Article 2 of the SCM Agreement.

Although the traffic light rules in the SCM Agreement have expired (Bigdeli, 2011), it is important to note that this agreement has classified the type of subsidies into prohibited subsidies, actionable subsidies, and non-actionable subsidies (Bossche & Zdouc, 2022). To be concise, this article discusses the prohibited subsidies under Article 3 of the SCM Agreement due to its connection with the discussion in this article. This provision under Article 3.1 of the SCM Agreement prohibits the subsidies that cause the maximum distortion to international

trade, namely through the subsidies contingent upon export performance and the subsidies contingent on the use of domestic over imported goods (Hoda & Ahuja, 2005). By referring to this article, it is important to note the drafters of this aspired law shall ensure that such government regulation shall not consist of any provision concerning import substitution and export performance.

The intention in adding this discussion is realized based on the fact that Indonesia has ratified the WTO Agreement under Law Number 7 of 1994 (Simbolon, 2023a). This has brought a consequence for Indonesia to bring all of its national laws to be in conformity with the provisions under the WTO Agreement (see. Article XVI paragraph 4 of the WTO Agreement). In other words, such a multilateral agreement shall be implemented in good faith by Indonesia (Schmalenbach, 2018). As a consequence, other WTO members may allege Indonesia subsidized palm oil measures under the unilateral track through the countervailing subsidies investigation by the alleging country or under the multilateral track through a direct challenge through the WTO Dispute Settlement Body (Venkataraman, 1999). In conclusion, these prevailing rules of international trade law shall be taken into account to avoid the imposition of countervailing duties or breach of the WTO law.

D. Lean Back Discussion Concerning How Indonesia Shall Settle the Conflict of Interest between MOI and MOA

From the previous three discussions above, it can be understood that Indonesia needs to adopt a government regulation concerning the protection of palm oil smallholders, especially in exercising their partnership agreements with non-plantation enterprises. This government regulation will be implemented according to the relevant provisions in the MSMEs Law, the Job Creation Law, and the Capital Investment Law. Since palm oil smallholders' competing competitiveness is a subject not to be taken for granted, this aspired law shall be able to reconcile the conflicting authorities between the MOA and the MOI.

According to Article 7 section (1) of Law Number 12 of 2011[15], the position of a Government Regulation is higher than minister regulations (Laia, 2024). Although Article 7 section (1) of the Legislation Law does not explicitly mention the minister's regulation, such vagueness can be answered by referring to Article 17 of the 1945 Constitution. This article states that the ministers are the servants of the Republic of Indonesia President and Vice President. Knowing that the government regulation is adopted by the President, it is clear that this regulation is higher than minister regulations.

The implementation of the legal norms as explained above is in line with the hierarchy of law doctrine by Kelsen (1978). Asshiddiqie (2020) quoted Kelsen's

[15]Law Number 12 of 2011 is hereinafter referred to as the Legislation Law.

explanation of this theory by stating that a legal norm will only be valid if it is in line with the higher legal norm. The higher legal norm referred to by Kelsen in explaining this theory is a norm that becomes the basis for the adoption of the following legal norm. From here, the upcoming MOI and MOA Regulations concerning the palm oil smallholders and their partnership agreement won't be conflicting since both legal products will be adopted based on the same government regulation.

This article believes that this higher regulation may reconcile the conflict of interests that occurred between the MOA and MOA. This premise is in line with the law as a tool of social engineering concept by Pound (1997) which states that the law has a role in balancing the interest of conflicting parties (Martinelli et al., 2023). This theory among others classifies the interests in the society into the individual interest and the collective interest (Simbolon, 2023b). By referring to Pound's theory concerning social engineering, this article has successfully proven that this theory may not only be implemented in the context of the judiciary through jurisprudence (As-Suvi & Zainullah, 2022). This theory is also reflected in the case where the government shall present through the legislation process, to create a law that may reconcile a conflicting interest.

The idea offered in this article will help the palm oil smallholders to play on the same level playing field as other big palm oil producers. This is because the presence of this strict regulation will cause the non-plantation enterprise to take their partner in a serious manner, therefore they may sell their commodities according to the prevailing market price. Therefore, the idea concerning equal opportunity as presented by Rawls will be realized, and the social and economic rights of smallholders shall be fulfilled through the adoption of this regulation. The relevancy of the justice fairness theory by Rawls in this article can be seen, by knowing the fact that this theory is relevant in the context of national law (Adolf & Chandrawulan, 2019). Meanwhile, this theory is irrelevant in the context of savages and the international society (Adolf, 2020).

Besides it is legal according to the relevant Indonesian legislation, this article also stated that this aspired law will also be legal according to the international trade law. This is because the incentives given by the Government of Indonesia under this regulation will not be implemented as an import substitution. Furthermore, this regulation is not specifically aimed at increasing the export performance of Indonesian palm oil products. In the case where Indonesia's palm oil products are imposed with countervailing duties due to the applicability of this regulation, Indonesia may exercise its rights to challenge such duties according to the relevant provision in the WTO law explained above.

To ensure that the idea in this article can be realized, further research concerning the allocation of the MOA authorities and the MOI authorities shall be conducted. This research is necessary to be conducted due to the two-faced nature of palm oil products. On one hand, this commodity can be considered an agricultural commodity since a plantation is regulated and administered by MOA. Meanwhile, on the other side, the complexity and the heavy machinery used for the palm oil products production process have caused this product to fall into the administration of the MOI.

This article also suggests that further research concerning palm oil subsidies according to the WTO cases on subsidies is necessary to be conducted. This research shall be conducted since India and the European Union as Indonesia's trade partners initiated countervailing subsidies investigation on Indonesia's palm oil products. For the purpose of evaluation, such research is also necessary to be conducted.

CONCLUSIONS AND SUGGESTIONS

In wrapping up this article, it is important to note that palm oil smallholders need to be protected due to the presence of a partnership agreement between them and the non-plantation enterprise which impaired the smallholders' rights. Such denial of justice is mainly caused by the conflict of authorities between the MOA and the MOI. As a means to reconcile this conflict, this article suggests the adoption of a government regulation that regulates the partnership agreement between the smallholders and the non-plantation enterprise, and the incentives for the non-plantation enterprises. This aspired law shall be in line with the MSMEs Law, the Capital Investment Law, the Competition Law, and the Job Creation Law. Furthermore, this law shall also be adopted by taking into account the prevailing rules under the SCM Agreement to avoid a subsidy claim by other WTO members importing palm oil products originating from Indonesia.

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