

JOINT POSITION PAPER

**IEU CEPA: A Threat to the Environment,
Indigenous Peoples, and Biodiversity**



**WAHANA LINGKUNGAN HIDUP (WALHI) AND
INDONESIA FOR GLOBAL JUSTICE (IGJ)**

2024

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IEU CEPA: A Threat to the Environment, Indigenous Peoples, and Biodiversity

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**Published by Wahana Lingkungan Hidup (WALHI) &
Indonesia for Global Justice (IGJ)**

2024

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The Dangers of the IEU CEPA and the Omnibus Law

No Free Trade Agreement (FTA) negotiations have been as prolonged and complex as those for the Indonesia-Europe Comprehensive Economic Partnership Agreement (IEU CEPA) between the Government of Indonesia and the European Union Commission. Officially initiated on 18 July 2016, these negotiations have entered their eighth year in 2024.

These negotiations continued virtually even during the COVID-19 pandemic in 2021. Moreover, the IEU CEPA campaign persisted despite the devastating global impact of the pandemic.

Discussions on the IEU CEPA were held in September 2021. At the time, Vincent Piket, the European Union Ambassador to Indonesia and Brunei Darussalam, highlighted the agreement's potential benefits. He stated that the IEU CEPA would promote qualitative changes in trade and industry through investments in technology,

infrastructure, and human resources while also expanding employment opportunities, particularly in Indonesia.¹

Meanwhile, the Centre for Strategic and International Studies (CSIS) emphasized the agreement's economic potential. A CSIS report estimated that the IEU CEPA could boost Indonesia's GDP by approximately 0.19%, or USD 2.8 billion annually. The IEU CEPA promises enhanced market access, improved competitiveness, and greater export diversification for Indonesia. Additional benefits include more affordable and higher-quality goods and services, increased investment, and deeper integration into the global value chain of EU companies.²

However, significant concerns remain unaddressed. Key questions arise regarding the social, environmental, and biodiversity impacts of the IEU CEPA, as well as potential human rights violations, particularly those affecting Indigenous Peoples. The Government of Indonesia has not conducted any impact studies on these critical issues.

According to Indonesia for Global Justice (IGJ), all FTA negotiations, including the IEU CEPA, have been conducted in secrecy, shielded from public scrutiny. No documents have been made accessible to the public, and even parliamentary approval processes lack transparency. As a result, FTAs often become binding and effective without adequate public engagement. This violates

¹ Presented during a CSIS session Opportunities for Post-Pandemic Economic Reform and Recovery in the Indonesia-EU CEPA Negotiations on 6 May 2021. See link for further details: <https://www.csis.or.id/events/opportunities-for-post-pandemic-economic-reform-and-recovery-in-the-indonesia-eu-cepa-negotiations>

² The full report on the CSIS study can be downloaded at the following link: <https://csis.or.id/publications/memetik-keuntungan-dari-perjanjian-transformatif-studi-mengenai-indonesia-eu-cepa>

the Constitutional Court Decision No. 13/PUU-XVI/2018 on the judicial review of Law No. 24/2000 on International Agreements, which emphasized that public participation in international treaty processes is both LEGALLY REQUIRED and ESSENTIAL.³

The IEU CEPA negotiations also risk triggering multidimensional crises for marginalized communities. Therefore, they should be suspended to allow for critical public evaluation of the proposed cooperation. Parliament must also actively oversee and monitor the negotiation process to ensure alignment with constitutional principles.⁴

A further concern is the prioritization of transnational corporations over public welfare. In the context of services and investment, the agreement includes high standards for investor protection, such as Investor-State Disputes Settlement (ISDS) mechanisms. Additionally, government procurement provisions propose eliminating requirements for joint ventures, local content levels, and export restrictions, particularly for raw materials.⁵

The IEU CEPA is riddled with injustices. It enforces binding sanction mechanisms through state-to-state dispute resolution and ISDS but lacks strict enforcement of sustainable development regulations to hold investors accountable for environmental damage or human rights violations.⁶ Consequently, the agreement is unlikely to deliver broad benefits to Indonesians. Instead, it risks harming the public and leaving them vulnerable to the long-term consequences of unchecked investment.

³ https://igj.or.id/wp-content/uploads/2018/12/13_PUU-XVI_2018.pdf.

⁴ Without Public Participation, the IEU CEPA negotiations have the potential to cause a multidimensional crisis. <https://igj.or.id/2023/02/09/tanpa-partisipasi-publikperundingan-indonesia-eu-cepa-berpotensi-menimbulkan-krisis-multidimensi-di-indonesia/>.

⁵ Ibid.

⁶ Ibid.

In this context, the environment and natural resources are exploited for economic growth. This unsustainable approach sets the stage for ecological crises and natural disasters, turning these challenges into ticking time bombs.

Concerns about the IEU CEPA are further amplified by the introduction of the Omnibus Law on Job Creation, formally known as Law No. 11 of 2020 and later amended by Law No. 6 of 2023. The Omnibus Law reflects the government's pragmatic approach to

improve fiscal conditions through increased foreign investment and export expansion. The Indonesian Government is pursuing this goal through two main strategies: large-scale industrialization and the expansion of trade liberalization. The law promotes industrialization to increase value-added products, create jobs, and attract investment in the real sector. However, this approach heavily relies on the extensive exploitation of natural resources. The Government envisions positioning Indonesia as a supplier of raw materials in global value chains, where these resources are processed into semi-finished goods to boost exports.⁷

While these policies drive natural resource extraction and exploitation under the banner of economic growth, the term "economic growth" is misleading. It represents an increase in production rather than a genuinely sustainable economic pathway. Although production figures may rise, Indonesia's finite natural resources are being depleted at an alarming rate, leading to economic injustice and exacerbating socio-ecological crises, particularly for communities at the grassroots level.⁸

⁷ This statement can also be accessed at the following link: https://igj.or.id/wp-content/uploads/2020/04/Framing-Paper-IGJ_RUU-Omnibus-Cilaka.pdf

⁸ Ibid

The enactment of the Job Creation Law will undoubtedly shift the direction of the Indonesia-EU CEPA negotiations. This shift is further shaped by the EU's updated trade policy framework, Trade Policy Review: An Open, Sustainable and Assertive Trade Policy, introduced in February 2021. The policy aims to address various criticisms that FTAs contribute to and exacerbate the global climate crisis, which are the facts. In general, trade agreements are designed to facilitate global trade and increase the exchange of products and services.

However, the primary objective of such policies is not to end poverty or reduce carbon emissions but to increase the production and trade of goods. This inherently involves more significant use of natural resources and increased fuel consumption for transporting goods. Consequently, it is unsurprising that trade rules established by the World Trade Organization (WTO) and reinforced through FTAs have intensified challenges such as deforestation, pollution, and human rights violations.

The Trade Policy Review appears to respond to the growing demand for sustainable trade practices by emphasizing the inclusion of social and environmental factors alongside economic considerations. In this document, the European Commission outlines various strategies to address the climate issues in global trade.⁹

1. Promoting climate and sustainability as considerations within the WTO frameworks by taking concrete actions to ensure that climate and sustainability are integral parts of the WTO policies;

⁹ Further details can be accessed at the following link: https://trade.ec.europa.eu/doclib/docs/2021/february/tradoc_159438.pdf

2. Securing commitments from G20 partners: Advancing climate neutrality and strengthening collaboration on green initiative agreements, including biodiversity, sustainable food policies, pollution, and the circular economy. The policy also proposes making adherence to the Paris Agreement a core element of all future trade agreements;
3. Securing commitments from G20 partners: Advancing climate neutrality and strengthening collaboration on green initiative agreements, including biodiversity, sustainable food policies, pollution, and the circular economy. The policy also proposes making adherence to the Paris Agreement a core element of all future trade agreements;
4. Enhancing sustainable development enforcement: Reviewing sustainable development chapters in existing trade agreements based on an initial review in 2021, and incorporating the findings into ongoing and future negotiations to strengthen their implementation; and
5. Promoting sustainable and responsible value chains: Introducing due diligence obligations and enforcement mechanisms to eliminate forced labor from the value chains of EU companies.

The Trade Policy Review reflects the EU's commitment to sustainability through its Green Deal, with aims to extend sustainable trade and investment practices beyond Europe. However, an important question remains: does the EU's Green Deal truly ensure ecological justice and environmental sustainability in the Global South, particularly in countries like Indonesia, which are vital locations for EU trade and investments?



Criticism of the EU's Green Deal

The EU's Green Deal, promoted under the IEU CEPA, faces significant criticism for prioritizing the interests of EU member states over genuine environmental protection. Rather than safeguarding the planet, the Green Deal aims to position the EU as a global leader in green technology, inevitably creating new dependencies for developing countries striving to achieve a green economy.¹⁰

As Vicente Paolo Yu highlights in his *Green Deals and Implications for the Global South*, the Green Deal operates as a tool for developed

¹⁰ Further information can be accessed through the following link: <https://igj.or.id/2021/11/10/isu-lingkungan-hidup-dan-iklim-di-wto-untungkan-negara-maju-rugikan-negara-berkembang/>

countries to impose additional conditions on developing nations in exchange for official development aid, loans, debt restructuring, or debt relief.¹¹ In this context, environmental and climate issues become instruments of domination and hegemony, with the EU leveraging these agendas to exert influence over Indonesia.

The EU's Green Deal also reflects its hypocrisy. Historical data on carbon emissions from 1751 to 2017 indicates that the EU has contributed 353 billion tons of carbon emissions—22% of total global emissions. This staggering figure excludes emissions from EU multinational corporations, many of which rank among the world's top 100 Carbon Majors.¹²

According to the Third World Network (TWN), incorporating environmental and climate considerations into trade and investment agreements, such as the IEU CEPA, could be exploited by large, powerful business entities. This risk undermines the competitiveness of products and services from developing countries while expanding and strengthening the market dominance of goods and services from developed countries. Although these concerns are often raised in the context of the WTO, they are highly relevant to the IEU CEPA negotiations.

Consequently, the inclusion of environmental provisions in the IEU CEPA, presented under the pretext of a "green deal," appears less focused on protecting the environment or supporting communities and more on advancing the UE's strategic interests. TWN advocates for discussions on environmental and trade issues to be conducted within official United Nations forums, such as the United Nations

¹¹ Further information can be accessed through: <https://twn.my/title/end/end20.htm>, particularly page 38, in the chapter on "Green" Conditionalities

¹² Further information can be accessed through <https://climateaccountability.org/pdf/CAI%20PressRelease%20Dec20.pdf>

Environment Programme (UNEP) or the United Nations Conference on Trade and Development (UNCTAD), where a more balanced and inclusive approach can be ensured.¹³

¹³ See: <https://www.twn.my/title/env-ch.htm>



Threats of the IEU CEPA to the Environment, Indigenous Communities, and Biodiversity

In its WTO and FTA Guidebook, IGJ emphasizes several ways in which negotiations related to environmental and trade issues, particularly environmental goods and services under agreements like the IEU CEPA could harm Indonesian society:¹⁴

1. **Commodification and Privatization of Natural Resources.** Essential environmental services such as biodiversity, clean air, and water, traditionally treated as public goods, risk being commodified and assigned monetary value. This shift could escalate conflicts over resource ownership and access
2. **Exploitation of Forests and Biodiversity**Indonesia's vast forests and biological resources will likely attract large-

¹⁴ See: <https://igj.or.id/2014/01/21/booklet-panduan-wto-dan-fta/>

3. **scale environmental business investments, further marginalizing communities dependent on these areas for their livelihoods.**
4. Expansion of Palm Oil Plantations If approved, the Government of Indonesia's push to categorize palm oil as an environmental good could drive the plantation expansion, leading to environmental degradation and the conversion of agricultural lands.

In addition to its rich biodiversity in forested areas, Indonesia possesses significant biodiversity in coastal regions, marine areas, and small islands. These areas are also prime targets for environmental business ventures. Such activities potentially displace coastal communities, undermining their livelihoods and living spaces.¹⁵ Ultimately, the IEU CEPA negotiations are likely to disproportionately benefit EU member states while exacerbating socio-environmental challenges in Indonesia.

Energy and raw materials are critical points in the IEU CEPA and require careful consideration.¹⁶ To provide further context, the following excerpt from the Energy and Raw Materials chapter sheds light on this issue:¹⁷

Article X.2

Authorisation for Exploration and Production of Energy Goods [Hydrocarbons; Electricity], Raw Materials [Ores and Concentrates] and Forestry Goods

¹⁵ See: https://igj.or.id/2021/11/10/isu-lingkungan-hidup-dan-iklim-di-wto-untungkan-negara-maju-rugikan-negara-berkembang/#_ftn9

¹⁶ See: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/indonesia/eu-indonesia-agreement/documents_en

¹⁷ For more details, please download via the following link: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/26847620-d033-4b8b-8171-3e33a15e4c97/details>

1. *If a Party requires an authorisation to explore for or produce energy goods [hydrocarbons; electricity], raw materials [ores and concentrates] and forestry goods, that Party shall grant such an authorisation in accordance with the conditions and procedures set out in Articles [X.X] and [X.X] of Section [XX] (Domestic Regulation).*
2. *That Party shall publish, inter alia, the type of authorisation, the relevant area or part thereof, and the proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.*
3. *The Parties may grant authorisations without complying with the conditions and procedures set out in Articles [X.X] and [X.X] of Section [XX] (Domestic Regulation) in any of the following cases related to hydrocarbons:*
 - (a) the area has been subject to a previous procedure complying with Articles [X.X] and [X.X] which has not resulted in an authorisation being granted;*
 - (b) the area is available on a permanent basis for exploration or production; and*
 - (c) the authorisation granted has been relinquished before its date of extinction.*
4. *Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The contribution shall be fixed in such a manner so as not to interfere with the management and the decision-making process of the entity which has been granted an authorisation.*
5. *Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application so as to enable such a person to have recourse to procedures for appeal or*

review where necessary. The procedures for appeal or review shall be made public in advance.

The Articles in the Energy and Raw Materials chapter highlight one of the main objectives of the IEU CEPA: facilitating the trade of energy products, raw materials, and forest products. For EU nations, particularly those with industries focused on electric vehicles and “green energy” hailed as the cornerstones of a zero-carbon, environmentally friendly future, Indonesia’s natural resources are essential to advancing their sustainability goals. For Indonesia, especially after the enactment of the Omnibus Law, this aligns with its industrialization agenda, emphasizing the extraction of nickel and other critical minerals, including its downstream initiatives.

For example, Germany, a key player in the EU, is heavily reliant on raw materials from the Global South. Data from PowerShift shows that Germany is the fifth-largest consumer of raw materials globally, consuming 69 million tons directly and 723 million tons indirectly each year. The environmental cost from emissions is significant; copper extraction for Germany’s industrial needs alone emits 4.8 million tons of CO₂ annually.¹⁸

The use and production of smartphones in Germany provide another example. Over the past decade, 220 million smartphones were sold in Germany, containing over 6.58 tons of gold. The extraction of this gold produced 8.3 million tons of waste (tailings), a volume equivalent to a convoy of 330,000 trucks (weighing 40 tons with an average load of 25 tons), stretching from the North Cape to Tunisia. Gold is just one of 30 raw materials used in smartphones

¹⁸ Indirect consumption includes all resources used in the extraction and transportation of iron ore, as well as all the equipment required. For more details, please access: <https://power-shift.de/12-arguments-for-a-raw-material-transition/>

in Germany.¹⁹ The demand for these materials is expected to grow further.

Thus, the goal of the IEU CEPA negotiations is clear: sourcing raw materials at minimal cost to support their sustainability agenda, particularly in the EU's major economies like Germany.

Indonesia has already experienced such exploitation. Since 2013, Indonesia has exported 64.8 million tons of nickels to China, valued at USD 1.6 billion, accounting for 50% of China's nickel ore supply that year.²⁰

From an environmental perspective, raw material extraction, especially minerals and critical minerals, has devastating effects on forests, coastlines, oceans, biodiversity, and the rights of indigenous peoples.²¹ According to the Indonesian Forum for the Environment (WALHI), nickel mining concessions mining in Indonesia covered 1,037,435.22 ha in 2022, with 765,237.07 ha located within forested areas, a significant increase from the previous year. In 2021, WALHI recorded nickel mining concessions covering 999,587.66 ha, including 653,759.16 ha of forested areas.²²

Furthermore, WALHI reported that nickel mining activities in South Sulawesi have led to the loss of at least 4,449.2 ha of rainforest, polluted Mahalona Lake by mining sludge, and caused sedimentation

¹⁹ Ibid

²⁰ See: <https://www.aeer.or.id/rangkaian-pasok-nikel-baterai-di-indonesia-dan-persoalan-sosial-ekologi/>

²¹ Based on the Minister of Energy and Mineral Resources Decree No. 296 of 2023 concerning the Determination of Commodities Classified as Critical Minerals, it is stated that there are 47 critical minerals, including Nickel, Cobalt, Lithium, and others, which are categorized as critical minerals.

²² See: <https://www.cnnindonesia.com/nasional/20230516193135-20-950479/walhi-765-ribu-ha-kawasan-hutan-jadi-konsensi-tambang-nikel>

in the Pongkeru and Malili Rivers, which has extended to the Lampia Coast. A similar incident occurred in the Bungku Coast of Central Sulawesi, where mining sludge exposure caused siltation in rivers and coastal areas, affecting the income of traditional fishers.²³

North Maluku, an Indonesian province comprising 1,474 islands, faces significant environmental and socio-economic challenges due to nickel mining investments. Land acquisition and management processes have severely affected local communities' environmental quality and economic productivity. Obi Island, a mere 2,500 km², is home to five Mining Business Permits (IUPs) covering a total concession of 10,769.53 ha. This intense mining activity has devastated local communities, particularly Kawasi Village, one of the oldest villages on the island. The expansion of nickel mining operation has deprived the village of its natural water sources. The once pristine Toduku River, a vital resource for drinking, bathing, and recreational activities, is now polluted with sediment from nickel ore waste. As a result, Kawasi Village communities are forced to rely on bottled water for their daily needs. Moreover, widespread deforestation has become a severe consequence of nickel mining in North Maluku.²⁴

Over the past 15 years, Central Halmahera Regency in North Maluku has lost 16,000 ha of forest, an average of 1,000 ha per year, due to nickel mining. Nickel mining in North Maluku has also caused severe marine pollution, leading to the decline of traditional fishing grounds and the reduction in fishers.²⁵

23 See: https://www.walhi.or.id/uploads/blogs/Foto%20Rilis/tolak_investasi_nikel.pdf

²⁴ Ibid

²⁵ Ibid

On Wawonii Island, Southeast Sulawesi, nickel mining has similarly led to significant environmental degradation and adverse effects on local communities. WALHI has documented the following impacts:²⁶

1. Nickel mining activities have severely damaged the coastal ecosystem.

Local fishers report the destruction of more than two hectares of coral reefs, drastically reducing their ability to catch reef fish. Despite the mining operations being concentrated in upland forest areas, waste inevitably flows downstream, threatening the coastal ecosystem. In Roko-Roko Village, South Wawonii, the construction of a 20-meter-wide port covering six hectares has further exacerbated coastal damage. If left unchecked, the destruction of coral reefs is likely to expand.

2. Increased Vulnerability to Natural Disasters

Mining has heightened the island's vulnerability to disasters, including earthquakes and high waves. According to local fishers, before the mining project existed, they sought shelter in the highlands during severe waves that hit their settlements. However, by 2012, those highlands had been turned into mining sites, leaving the community without safe refuge during natural disasters.

²⁶ See: <https://walhi.or.id/ambisi-kendaraan-listrik-dan-tragedi-ekologis-di-pulau-wawonii/>. Compare with the more detailed version <https://www.walhi.or.id/uploads/buku/Temuan%20Lapangan%20Tambang%20Nikel%20di%20Wawonii.pdf>

3. Community Divisions

The mining project has created social divisions, splitting the Wawonii Island community into pro-mining and anti-mining factions. In several villages, mining companies have provided electricity access exclusively to pro-mining groups, while anti-mining groups remain without essential utility.

4. Destruction of Water Sources

The nickel mining project threatens vital water sources in several districts. Springs in Wawonii highlands feed several rivers that supply water to communities in the Southeast Wawonii and South Wawonii districts. According to the 2019 Konawe Islands Regency Statistics data, 76.63% of Wawonii Island's population depends heavily on these springs for daily water needs.

The expansion of nickel mining also poses a severe threat to Indigenous Peoples, as seen in North Maluku. According to the British Broadcasting Corporation (BBC) Indonesia, the Indigenous Tobelo Dalam community, with nearly 1,500 families, faces increasing pressure from nickel mining activities, compounding earlier threats from the timber industry.²⁷ The Tobelo Dalam community plays a crucial role in managing forest resources sustainably. Contrary to negative stereotypes that label Indigenous Peoples as irrational or primitive, research shows they coexist harmoniously with nature, employing traditional wisdom to utilize natural resources sustainably. By operating within the environmental carrying capacity, these communities have maintained ecological balance

²⁷ See: <https://www.bbc.com/indonesia/articles/crgp0g6k8mvo>

in their forests for generations.²⁸ However, the expansion of nickel mining jeopardizes this balance, endangering both their way of life and the ecosystems they help preserve.

From a biodiversity perspective, the extraction and exploitation of critical minerals, especially nickel, are highly dangerous. Below are examples of the threats to biodiversity, particularly flora and fauna, especially endemic wildlife.

Table I. Threats to Biodiversity

LOCATION	FLORA AND/ OR FAUNA
North Halmahera, North Maluku	Standardwing bird-of-paradise, White Cokatoo, Freshwater Tortoise, Ternate Lory
South Halmahera, North Maluku	White Cokatoo, Lory, Dusky Friarbird, Ternate Lory, Yakis
East Halmahera, North Maluku	White Cokatoo, Lory, Dusky Friarbird, Ternate Lory, Wallace’s Giant Bee
Central Halmahera, North Maluku	White Cokatoo, Lory, Dusky Friarbird, Ternate Lory, Wallace’s Giant Bee, Sombre Kingfisher
West Halmahera, North Maluku	White Cokatoo, Lory, Dusky Friarbird, Ternate Lory, Wallace’s Giant Bee, Sombre Kingfisher

²⁸ Ibid. Please access the original source in the Jurnal Makila: Jurnal Penelitian Kehutanan. DOI: <https://doi.org/10.30598/makila.v13i1.2322>

Sula Islands	White Cockatoo, Lory, Ternate Lory
Taliabu Islands	White Cockatoo, Lory, Ternate Lory
Morotai Islands	White Cockatoo, Lory, Ternate Lory, Wallace's Giant Bee, Long-billed crow
Tidore Islands	White Cockatoo, Lory, Ternate Lory, Wallace's Giant Bee, Halmahera Crow, Long-billed crow, Rufous-bellied triller
Wawoni'i Island, Southeast Sulawesi	Coral Reefs and Mangrove Forests

The widespread deforestation, coastal and marine destruction, and threats to Indigenous Peoples and biodiversity are further accelerating ecological collapse. According to a recent report by the International Union for Conservation of Nature (IUCN) and Botanic Gardens Conservation International (BGCI) presented at the United Nations Biodiversity Summit (COP-16) in Bogota, Colombia, one in three tree species globally faces extinction. Research involving over 1,000 scientists reveals that at least 16,425 of the 47,282 evaluated species are at risk of extinction. These threatened tree species are found in 192 countries worldwide.²⁹

In terms of forest products, the EU remains a major consumer of wood derivatives, particularly paper and furniture. Indonesia exports 19% of its furniture, 8% of its wood, and 6% of its paper to the EU. However, WALHI advocacy

²⁹ See: <https://www.kompas.id/baca/opini/2024/10/29/mutilasi-pohon-kehidupan>

highlights that the production of raw materials for wood, pulp and paper sourced from forest plantations is associated with severe environmental damage. These include conflicts, deforestation, loss of biodiversity, and even forestry crimes such as illegal logging and forest and land fires.

In the energy sector, the EU's Renewable Energy Directive (RED III) continues to classify wood-based energy as renewable. This aligns with policies under the IEU CEPA, the Omnibus Law on Job Creation, and Indonesia's energy policies, all of which are expected to increase the issuance of new permits and activate previously dormant forest plantation energy permits. According to Trend Asia (2023), the establishment of energy plantations will require at least 2.3 million ha of forest. This will undoubtedly extend the chain of land conflicts, encroach on Indigenous Peoples' and local communities' lands, and destroy biodiversity.



Absurdity of the Trade and Sustainable Development Chapter

One of the most ironic elements of the IEU CEPA negotiations is the inclusion of the Trade and Sustainable Development (TSD) Chapter. While the EU emphasizes its significance, alongside the Green Deal, the TSD Chapter seems at odds with the agreement's broader agenda. Spanning over ten pages and containing 14 articles, the chapter addresses environmental, climate, and labor issues based on various international frameworks, including:

- Agenda 21 and the Rio Declaration on Environment and Development (1992);
- The Johannesburg Plan of Implementation on Sustainable Development (2002);
- The 2008 Declaration on Social Justice for a

Fair Globalization from the International Labour Organization (ILO);

- The Outcome Document of the UN Conference on Sustainable Development (2012), titled “The Future We Want”; and
- The UN Agenda for 2030 on Sustainable Development, adopted in 2015.

However, the TSD Chapter appears highly paradoxical when considered in the broader context of the IEU CEPA negotiation document. While it ostensibly aims to uphold sustainability principles, the chapter merely supplements an agreement that fundamentally promotes the extraction and exploitation of Indonesia’s natural resources, as outlined in the Energy and Raw Materials chapter. Furthermore, the TSD Chapter is non-binding, reducing its functions to a symbolic component of the EU’s Green Deal rather than a genuine mechanism for ensuring sustainability practices.

To gain a general understanding, it is helpful to quote some relevant articles from the TSD Chapter.³⁰

TRADE AND SUSTAINABLE DEVELOPMENT

Article X.1

Objectives and Scope

1. *The objective of this Chapter is to enhance the integration of sustainable development in the Parties’ trade and investment relationship, notably by establishing principles and actions concerning labor and environmental aspects of sustainable development of specific relevance in a trade and investment context.*

³⁰ See: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/95a40e1f-c256-4039-9076-b6a109fd4c6d/details>

2. *The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Plan*
3. *of Implementation on Sustainable Development of 2002, the Declaration on Social Justice for a Fair Globalization of 2008 of*
4. *the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" and the UN 2030 Agenda for Sustainable Development of 2015.*
5. *Consistent with the instruments referred to in paragraph 2, the Parties shall promote:*
 - (a) *sustainable development, which encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing; and*
 - (b) *the development of international trade and investment in a way that contributes to the objective of sustainable development.*

Article X.5

Trade and Climate Change

1. *The Parties recognise the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (hereinafter referred to as "UNFCCC") in order to address the urgent threat of climate change and the role of trade to this end*
2. *Pursuant to paragraph 1, each Party shall:*
 - (a) *effectively implement the UNFCCC and the Paris Agreement established thereunder;*
 - (b) *promote the positive contribution of trade to the transition to a low-carbon economy and to climate-resilient development; and*

(c) cooperate with the other Party on trade-related climate change issues bilaterally, regionally and in international fora as appropriate, including in the UNFCCC, the WTO and the Montreal Protocol on Substances that Deplete the Ozone Layer.

In these articles and clauses, it is evident that the EU is highly focused on climate issues and sustainable development, as seen by the chapter's title, Trade and Sustainable Development. Upon closer examination, the chapter prioritizes trade and development that is aligned with the EU's version of sustainability rather than addressing ecological or climate justice. Consequently, terms such as "climate justice" or "ecological justice" are conspicuously absent from the TSD Chapter document.

WALHI critiques the sustainable development paradigm underlying the TSD Chapter. The paradigm originates from the 1987 Brundtland Report *Our Common Future* by the UN's World Commission on Environment and Development, which later shaped the 17 Sustainable Development Goals (SDGs) and 169 additional targets announced in 2015.

While intended as a "blueprint" for achieving a better and more sustainable future for all people and the world by 2030, WALHI argues that the framework falls short in addressing the root causes of climate and ecological crises.

WALHI provides the following critique of "Sustainable Development":³¹

1. The sustainable development framework, as derived from the SDGs, has fallen short of addressing the global climate and ecological crises. It follows an

³¹ See: <https://www.walhi.or.id/respon-walhi-terhadap-kisi-kisi-debat-calon-wakil-presiden-pada-isu-lingkungan-hidup>

extractive economic growth model that commodifies nature, leading to overconsumption beyond the planet's environmental carrying capacity. This model assumes that natural services can be exchanged and relies on technological fixes/approaches to mitigate industrial risks.

2. Economic expansion is not merely an assumption in the sustainable development model but an integral part of the effort to achieve growth. For example, while the SDGs Goals 6, 12, 13, 14, and 15 highlight "harmony with nature" and environmental protection, Goal 8 simultaneously calls for sustained global economic growth of around 3% annually. The model assumes efficiency improvements will reconcile economic growth with ecological sustainability, a claim widely challenged by critics.
3. The growth-oriented model assumes that economic growth alleviates poverty, hunger, and health and promotes equity. However, empirical evidence refutes this, showing that it often exacerbates disparities in income, ownership, status, and rights, deepening poverty for marginalized communities. It has become clear that economic growth does not always equate to equity and that uncontrolled economic growth has harmful social consequences. The gap between the rich and the poor continues to widen. Recent reports show that the wealthiest 1% of the world controls almost two-thirds of global wealth. Over the past three years, there has been an unprecedented surge in extreme wealth, with billionaires now \$3.3 trillion richer than they were in 2020, growing three times faster than inflation. Meanwhile, the Global North,

representing only 21% of the world's population, controls 69% of global wealth and houses 74% of the world's billionaires.

4. The model's reliance on technological advancement and resource efficiency assumes industries can grow without depleting natural resources, harming biodiversity, or emitting excessive carbon. However, a 2019 study by the University of London found that economic growth under the SDG framework is incompatible with its sustainability goals. Current growth rates fail to sufficiently reduce global resource use and carbon emissions to stay within the carbon budget to limit global warming to 2°C.
5. The sustainable development strategy also relies heavily on technological fixes, which are believed to address production efficiency problems and economic production impacts. For example, decarbonization now focuses on the development of batteries and new storage technologies. This approach significantly increases the demand for critical minerals such as lithium, graphite, nickel, cobalt, and rare earth metals. The International Energy Agency (IEA) estimates a 4200% rise in demand for these minerals by 2040. The consequences include land grabs from Indigenous Peoples and local communities, toxic and radioactive waste produced from mining and refining processes, and extensive ecological damage. In Indonesia, nickel mining alone has caused 25,000 ha of deforestation in the past 20 years, with mining concessions now covering 765,237 ha of forest. This deforestation could add 83 million tons of CO₂ emissions.

Thus, the TSD Chapter fails to curb the extractivist agenda entrenched in the IEU CEPA negotiation documents. Instead, it allows the continued exploitation of natural resources, worsening ecological and climate crises that disproportionately impact grassroots communities. This failure underscores the absurdity of the TSD Chapter and its inability to address the very issues it purports to tackle.



The Danger of ISDS or ICS (Investor Lawsuits Against State Sovereignty and Community Rights)

The IEU-CEPA agreement includes provisions for an investment dispute resolution mechanism, with the EU proposing the Investment Court System (ICS) as an alternative to the traditional Investor-State Dispute Settlement (ISDS) mechanism.

Both the EU's preference for ICS and the Government of Indonesian preference for ISDS mechanism³² have faced significant criticism. These mechanisms often prioritize investment protection over the state's ability to regulate public policies effectively.

Both ISDS and ICS allow investors to sue countries, which potentially undermines the government's ability to implement

³² See: <https://ekon.go.id/publikasi/detail/5253/pemerintah-perkuat-posisi-indonesia-dalam-perdagangan-global-dengan-percepat-penyelesaian-perjanjian-multilateral>

policies in the public interest. This creates a “regulatory chill,” where governments hesitate to implement necessary but potentially controversial policies, such as those in social policy, environmental protection, and others, for fear of facing legal action.

A critical flaw of ISDS and ICS mechanisms is their focus solely on protecting investor rights by resolving their disputes without imposing reciprocal obligations. Investors are not held accountable for human rights violations, environmental degradation, or damages they may cause in the host country. Furthermore, countries cannot initiate cases against investors, reinforcing the one-sided nature of these systems. The fiscal implications of these mechanisms are incredibly high. Arbitration processes under ISDS or ICS are notoriously expensive, and compensation claims often include “Future Profit”³³ or projected earnings the investor expected during the investment period. This opens the door for unlimited claims, placing an immense financial burden on the countries.³⁴

The high costs and unlimited claims associated with these mechanisms ultimately strain the state finances, with the burden falling on the public. To fund arbitration cases, Governments may increase taxes or cut budgets for critical public services, such as education, healthcare, or infrastructure development. Ultimately, it is the public who pays the price, either through diminished services or higher taxes.

³³ Foreign investors can claim losses not only on the capital they have invested but also on the profits they expected to earn if their investment had proceeded as planned. The determination of this value often involves long-term projections that are difficult to verify, which can result in a significantly large compensation amount. Source: <https://www.somo.nl/wp-content/uploads/2018/02/The-EU-Indonesia-CEPA-negotiations.pdf>

³⁴ See: <https://www.somo.nl/wp-content/uploads/2018/02/The-EU-Indonesia-CEPA-negotiations.pdf>

In summary, neither the ICS nor the ISDS mechanism resolves the fundamental weaknesses of the current investment dispute resolution system: the lack of a balance between investor privileges and a binding framework that enforces investor obligations to uphold human rights and environmental protection.

The protection of public, social, health, and environmental rights must remain a top priority and should not be compromised in favor of FTAs or investment protection practices. Ignoring these protections can result in several detrimental impacts:

- **Decline in Living Standards:** A lack of health and environmental protection can degrade the quality of life, manifesting in issues such as pollution, ecosystem damage, or limited access to healthcare.
- **Social Inequality:** Replacing social policies with pro-corporate free trade rules can widen the wealth gap between the rich and poor.
- **Environmental Degradation:** Weak regulations on foreign investment can lead to excessive exploitation of natural resources, resulting in irreversible ecosystem damage.

Both ISDS and ICS unilaterally favor investor interests. Unfortunately, the Government of Indonesia reinforces this bias through policies like the Omnibus Law on Job Creation. By enacting this law, the Government has indirectly strengthened the position of foreign investors at the expense of domestic rights, including labor rights, human rights, and environmental protection, ostensibly to attract foreign investment.

The combination of ISDS/ICS mechanisms and national regulations like the Omnibus Law creates two key challenges:

First, Foreign Investors Receive Double Privileges. The Omnibus Law provides domestic incentives (such as deregulation and tax cuts), while the ISDS/ICS mechanisms shield investors from potential future policies that may negatively affect their investments.

Second, the Loss of Government Sovereignty: Policies aimed at protecting the environment, strengthening labor rights, or promoting local industries become challenging to implement due to the threat of lawsuits or pressure from foreign investors.

A stark example of the challenges (protecting the environment contradicts the interests of the FTA to attract foreign investment) is Indonesia's Forestry Law No. 41/1999, which prohibits open-pit mining in protected forest areas. However, exceptions were made for certain foreign investors after they threatened arbitration against Indonesia.

The Government issued Government Regulation in Lieu of Law (Perppu) No. 1 of 2004 to avoid costly arbitration disputes that could strain the national budget. This allowed exceptions for 13 mining companies with permits issued before the 1999 Forestry Law. As a result, mining operations in protected forest areas continued, undermining environmental safeguards.

Indonesia's economy has long relied on the exports of raw materials, including forestry, plantations, and mining products. This dependency poses a significant challenge to sustainable development, as extractive industries dominate investor lawsuits.

Since 2011, Indonesia has faced eight (8) investor lawsuits, half of which (50%) involved the mining sector. High-profile cases include Churchill Mining, Planet Mining, Newmont Mining, and India Metal Ferro Alloys (IMFA). Additionally, one case from the palm oil sector involving Oleovest Ltd. further highlighted the conflict between extractive practices and Indonesia's efforts to protect its natural resources and communities.

Table II. Three Examples of Investor Lawsuits Against Indonesia

Years	Facts
2011	Churchill Mining and its Indonesian partner, PT Ridlatama, filed a lawsuit after the Samarinda District Court in East Kalimantan revoked four (4) mining permits. The litigation process cost the state approximately USD 1.85 million (equivalent to IDR 29,4 billion).
2014	Newmont Mining Company initiated a legal action under the Indonesia-Netherlands Bilateral Investment Treaty (BIT) at the International Centre for Settlement of Investment Disputes (ICSID).
2015	India Metals and Ferro Alloys Limited (IMFA) sued the Government of Indonesia through international arbitration, demanding compensation of USD 581 million (approximately IDR 9,2 trillion)

Source: *Indonesia for Global Justice, Gugatan ISDS: Ketika Korporasi mengabaikan Kedaulatan Negara*.³⁵

³⁵ See: <https://igj.or.id/wp-content/uploads/2019/10/Majalah-IGJ-ISDS-Lawsuit-compressed.pdf>

Although the cases above involved investor lawsuits filed under Indonesia's Bilateral Investment Treaties, CEPAs and similar FTAs also contain provisions and functions that enable investors to initiate legal action against the country.

Therefore, it is important for the Government of Indonesia to exercise greater caution in formulating, approving, and ratifying any FTA. Such agreements must prioritize the protection of national sovereignty, public welfare, and the environment while ensuring alignment with long-term strategic policy objectives.

Public Demands

Based on the issues above, WALHI and IGJ present the following demands:

1. Urge the Government of Indonesia to evaluate and suspend negotiations for the IEU CEPA and other FTAs that have the potential to exacerbate environmental destruction and negatively impact the socio-economic livelihoods of Indonesians, particularly women, Indigenous Peoples, workers, farmers, and small-scale fishers.
2. the Government of Indonesia to evaluate and suspend negotiations for the IEU CEPA and other FTAs that have the potential to exacerbate environmental destruction and negatively impact the socio-economic livelihoods of Indonesians, particularly women, Indigenous Peoples, workers, farmers, and small-scale fishers.
3. Demand the Government of Indonesia to revoke the Omnibus Law on Job Creation and refrain from using it as a framework for managing FTAs, particularly the IEU CEPA, which undermines the rights of vulnerable groups, including women, Indigenous Peoples, workers, farmers, and small-scale fishers.
4. Call on the Government of Indonesia to recognize that FTAs, particularly the IEU CEPA, are not the best way to strengthen Indonesia's economy since

they primarily aim to exploit natural resources, particularly critical minerals, for European industries. Instead, the Government of Indonesia should adhere to the Economic Democracy principles outlined in the 1945 Constitution, Article 33, Paragraph 4, which mandates an economy based on mutual cooperation, fair efficiency, sustainability, environmental awareness, and independence while maintaining the national economic balance and unity.

5. Urge the Government of Indonesia to cease promoting critical mineral extraction and halt mining activities across the country, whether for global, national, or regional supply chains.
6. Urge the European Commission to evaluate and halt the negotiations of the IEU CEPA, ensuring that the Green Deal agenda is not used to subjugate the economic interests of developing countries, particularly Indonesia.
7. Urge the European Commission to involve official UN agencies, such as the United Nations Environment Programme (UNEP) or the United Nations Conference on Trade and Development (UNCTAD), in both bilateral and multilateral FTA processes.
8. Call for a firm commitment from both the European Commission and the Government of Indonesia to prioritize climate justice. This includes ensuring that FTAs do not threaten global efforts to limit temperature increase below 1.5°C.

9. Urge the Government of Indonesia to enhance transparency in ongoing FTA negotiations by publishing key documents, such as draft agreements, official government positions, and negotiation progress reports.
10. Urge the Government of Indonesia to involve Civil Society Organizations (CSOs) in negotiations and official consultation processes for FTAs. Additionally, the Government of Indonesia should establish a public consultation forum to enable the public to provide input or raise concerns about the negotiation points, in line with the public participation principles mandated by the Constitutional Court Decision Number: 13/PUU-XVI/2018 on Law No. 24 of 2000 on International Agreements.



WALHI
Wahana Lingkungan Hidup Indonesia



**Indonesia
For Global Justice**