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LEGAL AND NON-LEGAL AGRICULTURAL PRACTICES: TOWARD A SUSTAINABLE FUTURE IN MALAYSIA'S PALM OIL INDUSTRY

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Abstract

As a major global producer of palm oil products, Malaysia is familiar with criticisms of its palm oil cultivation, poor agricultural practices and decisions during the planting process. Loss of biodiversity and deforestation resulting from unsustainable palm oil practices are perceived as major setbacks for the environment in Malaysia. However, at the same time as Malaysia stands committed to the palm oil industry and its contribution to job growth and poverty reduction, the relevant stakeholders are creating strategies for sustainable production. Together with relevant environmental laws to prevent and control impacts from climate change, loss of biodiversity and deforestation, environmental impact assessment (EIA) procedures to limit environmental impacts are also being applied. Many legal and non-legal measures to ensure sustainable palm oil production practices have been continuously debated, created or implemented over the past decades. These include certification schemes, penalties for environmental offenses, imposing environmental taxes or incentives as corrective and rehabilitative tools, and contributions to an Environmental Fund, as provided in the Environmental Quality Act (EQA) 1974. Furthermore, any new initiatives must ensure that palm oil cultivation practices adhere to and embrace the principles envisaged in the UN Sustainable Development Goals (SDGs) 2030, Roundtable Sustainable Palm Oil (RSPO), and Malaysia Sustainable Palm Oil (MSPO), in order to achieve SDGs 2030.

Keywords: palm oil, sustainability, Malaysia, SDGs.

Abstrak

Sebagai produsen global dari produk minyak kelapa sawit, Malaysia telah terbiasa menghadapi kritik terhadap perkebunan kelapa sawit dan gagasan mengenai praktik perkebunan yang tidak memadai, dan keputusan tentang proses penanaman. Hilangnya keanekaragaman hayati dan deforestasi yang disebabkan praktik perkebunan sawit yang tidak berkelanjutan dianggap sebagai kemunduran bagi perlindungan lingkungan hidup di Malaysia. Meskipun demikian, Malaysia tetap berkomitmen pada industri minyak sawit mengingat industri tersebut berkontribusi pada pertumbuhan pekerjaan dan pengurangan tingkat kemiskinan, pemangku kepentingan terkait untuk menciptakan strategi yang berkelanjutan terhadap produksi minyak sawit. Bersama dengan hukum lingkungan untuk mencegah dan mengendalikan dampak dari perubahan iklim, hilangnya keanekaragaman hayati dan deforestasi, prosedur analisis terhadap dampak lingkungan (AMDAL) yang ditimbulkan dari praktik pertanian juga diterapkan. Terdapat sejumlah upaya hukum dan nonhukum untuk menjamin bahwa perkebunan sawit menjalankan praktik yang berkelanjutan terus menerus diperdebatkan, diciptakan, atau diimplementasikan selama dekade terakhir, upaya tersebut termasuk skema sertifikasi, denda terhadap pelanggaran lingkungan, penerapan pajak atau insentif sebagai alat korektif dan rehabilitatif dan kontribusi terhadap dana lingkungan yang ditentukan dalam Environmental Quality Act 1974. Lebih lanjut berbagai inisiatif baru yang diimplementasikan yaitu untuk menjamin bahwa praktik perkebunan sawit di Malaysia menerapkan prinsip yang tercermin dalam Sustainable Development (SDGs) 2030, Roundtable Sustainable Palm Oil (RSPO) dan Malaysia Sustainable Palm Oil (MSPO).

Kata kunci: minyak sawit, keberlanjutan, Malaysia, SDGs.

I. INTRODUCTION

Malaysia has experienced severe forest area loss since the 1970's, caused by land clearing for palm oil development. Forest fragmentation¹ rose twofold between 1990 and 2007, from 2.03 million hectares to 4.44 million hectares (Omar, 2012). Malaysia produces about 39% of the world's palm oil and 44% of world exports. 4.49 million hectares of land are under oil palm cultivation. The palm oil sector produces some 17.73 million tons of palm oil and 2.13 tons of palm kernel oil annually, providing employment to more than half a million people and livelihood to an estimated one million in all.

Problems resulting in harm to the environment and society caused by palm oil activities have repeatedly surfaced over the last two decades. The visible side-effects of habitat loss and destruction, such as pollution haze and deforestation, have led to international criticism and reaction from the global community.

According to the Food Sustainability Index (FSI), developed by The Economist Intelligence Unit with the Barilla Center for Food and Nutrition²:

"... the cultivation of palm oil, which involves the felling of tropical forests or the burning of peatlands, has played a major role in elevated levels of deforestation in Southeast Asia, and notably in Indonesia and Malaysia, which account for 85% of global palm oil production."

The challenge of resolving environmental impacts arising from palm oil-linked activities in Malaysia involves complexities related to corporate social responsibility, national policies and the legal framework. Economic growth and development aligned with sustainability, as envisaged in the 2030 SDGs Agenda, are well acknowledged concerns for integrating palm oil practices with the sustainable economy.

II. LEGISLATION FRAMEWORK

The legislative requirement to prevent fires in Malaysia can be found in Section 29A of the Environmental Quality Act of 1974 that prohibits open burning activities. If open burning occurs on any premises, the owner or occupant in control of the premises shall be liable to a fine, imprisonment or both. Open burning activities are specifically provided for in the Environmental Quality (Declared Activities) (Open Burning) Order 2003, unless they are carried out under proper supervision and control that include:

- a. fires purposely set to plantation lands for disease and pest control,
- b. fires purposely set to carcasses of infected animals or poultry,
- c. fires purposely set to solid or liquid fuels or structures for carrying out research into causes and control of fires, or for training of public, volunteer and industrial fire-fighting personnel in the methods of fighting fires under the direct control and supervision of qualified instructors,
- d. fires purposely set to lands for shifting cultivation,
- e. fires purposely set to paddy stalks, paddy straw and paddy field weeds prior to replanting,
- f. fires purposely set to sugar cane leaves prior to harvesting,

¹ Malaysia Ministry of Housing and Local Government, National Physical Plan 2010 (Kuala Lumpur: Ministry of Housing and Local Government, 2010).

² See Indonesia – Investments, <https://www.indonesia-investments.com>. Date of access 26 October 2017.

- g. fires purposely set to clear plantation land by smallholders in an area that does not exceed 2 hectares per day for convention to food, fruit and crops,
- h. fires purposely set to pineapple stumps prior to replanting,
- i. fires purposely set to articles as part of religious rites or worshiping activities,
- j. fires purposely set for crematorium,
- k. fires purposely set for camping activities,
- l. fires purposely set as outdoor grills and barbecue and
- m. fire for preparation of food, burning in remote sensing of plantation plant materials for the purpose of land clearing or replanting by small holders and subsistence farmers, burning of leaves, tree branches, and yard trimmings, in villages in rural areas, and properly operated industrial flares for combustion of flammable gas.

The guiding principles adopted in formulating the 2003 Order are for controlling open burning activities on plantations and waste disposal through better management. Open burning is to be strictly controlled. Burning of industrial or construction wastes, and at waste dumping sites, are prohibited, and open burning of peat soil is not allowed at all.³ Even with the above legislation, though, open burning cases are still prevalent. Seventy-nine cases of open burning were brought to court from 2011 to June 2016⁴ and many involving palm oil plantation companies are not covered in the above list of prescribed activities. Other related laws⁵ governing palm oil activities include: Environmental Quality (Prescribed Premises) (Crude Palm Oil) Regulations 1977,⁶ Environmental Quality (Prescribed Premises) (Crude Palm Oil) Order 1977,⁷ Environmental Quality (Clean Air Regulations) 2014, Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015.⁸

The Environmental Quality (Amendment) Act 1985 amended the Environmental Quality Act 1974. Amendments include the insertion of Section 34A, which requires any person intending to carry out a prescribed activity to first submit an environmental impact report to the Director of Environmental Quality for examination. The amended act was gazetted on 9 January 1986.

The Environmental Impact Assessment Guideline, referred to as the EIA Guideline, was prepared in accordance with the requirements of Section 34A (2C) of the EQA, 1974 (Act 127). It comprises EIA procedures, preparation, and submission of the EIA Report for review and approval. Compliance with the requirements set out in this Guideline will fulfill the Project Proponent's obligations, as stated under Section 34A (2C) of the EQA.

The EIA Quality (Prescribed Activities) (Environmental Impact Assessment)

³ H. K. Lee, "Controlling Open Burning, Malaysia's Experience," *Proceedings of World Conference on Land & Forest Fire Hazards*, Kuala Lumpur, Malaysia (2002).

⁴ Malaysia Department of Environment, "Rumusan Kes Mahkamah," available at <http://www.doe.gov.my/portalv1/en/awam/maklumat-umum/rumusan-kes-mahkamah>. Date of Accessed 15 July 2016.

⁵ The Land Acquisition Act 1960, Pesticides Act 1974 (Pesticides Registration Rules), Occupational Safety and Health Act (1977), and Protection of Wildlife Act 1972.

⁶ Malaysia, *Environmental Quality (Prescribed Premises) (Crude Palm-Oil) Regulations 1977*, P.U.(A) 342/77

⁷ Malaysia, *Environmental Quality (Prescribed Premises) (Crude Palm Oil) Order 1977*, P.U.(A)199/77

⁸ Malaysia, *Environmental Quality (Prescribed Premises) (Environmental Impact Assessment) Order 2015*, P.U.(A) 195/2015

Order 2015 (EIA Order 2015) divides prescribed activities under two Schedules. The activities under the First Schedule do not require public display or public comment unless otherwise instructed, in writing, by the Director General. However, activities specified in the Second Schedule require public display and public comment. Although palm oil plantations are not specifically listed as one of the prescribed activities, the EIA Order 2015 does cover agricultural development in both Schedules,⁹ which implicitly covers palm oil plantation activities.

The application of EIA Order 2015 is restricted in Sabah and Sarawak.¹⁰ In Sabah, since September 1999, the Environmental Conservation Department has been charged with regulating the development of oil palm plantations, to ensure that plantation development takes place in an environmentally responsible manner. In 2002, Sabah published its own “Environmental Impact Assessment (EIA) Guidelines Oil Palm Plantation Development” guidelines. Oil palm plantation development is defined as opening up of land areas for the purpose of cultivating oil palm and carrying out other related activities such as land clearing, biomass management and disposal, earthworks, planting and re-planting activities. Subsequent to this guideline, oil palm plantation development has been used in an abbreviated form to cover all of the above activities. As of December 1999, the area of land in Sabah planted with oil palm far exceeded that of other states in Malaysia¹¹.

The Environmental Quality Act 1974 also provides for the establishment of an Environmental Fund¹² whereby contributions derive from any person engaged in the oil and gas industry, environmentally hazardous substances or waste. Notably, this provision does not indicate any contribution from palm oil companies that have been identified as major sources of environmental hazards in their planting processes.

The palm oil industry also complies with Hazard & Critical Control Points (HACCP) and is actively pursuing ISO 14000 standard series discussions and formulations especially pertaining to climate change, life cycle analysis (LCA), eco-labeling & Design for the Environment (DfE), environmental communications, and environmental management system (EMS). These strategies are aimed at reducing the impact of the industry on the environment in oil palm plantations, palm oil mills, and refineries.

III. SUSTAINABLE PALM OIL PRACTICES

The zero-burning technique was developed and adopted in Malaysia as part of Good Management Practices (GMP), adhering to guidelines from the RSPO. RSPO was established in 2004 to promote the growth and use of sustainable oil palm products through credible global standards and the engagement of stakeholders. A set of environmental and social criteria was introduced for companies to comply with an order to produce Certified Sustainable Palm Oil (CSPO). These criteria can help to minimize the negative impact of palm oil cultivation on the environment and

⁹ First Schedule entails, under item (1) Agriculture (a) Land development schemes covering an area of 20 hectares or more but less than 500 hectares to bring forests into agricultural production; (b) Development of agricultural estates covering an area of 500 hectares or more involving changes in types of agricultural use. Second Schedule entails, under item (1) Agriculture, (a) Land development schemes covering areas of 500 hectares or more to bring forests into agricultural production.

¹⁰ Order 4

¹¹ State Environment Conservation Department (ECD), Sabah, Malaysia, “Environmental Impact Assessment (EIA) Guidelines Oil Palm Plantation Development,” http://ww2.sabah.gov.my/jpas/Assessment/eia/handbook/Handbook%20Oil_Palm.pdf, date of access 12 December 2017

¹² Section 36 B

communities in palm oil-producing regions. RSPO certification acts as an assurance to buyers of palm oil products that the standard of production is sustainable, based on RSPO Principles & Criteria for Sustainable Palm Oil Production by accredited certifying bodies. They can be withdrawn at any time in the event of infringement of the rules and standards. With all that, the nature of compliance is not binding. It's strictly voluntary in nature.

A similar scheme known as the MSPO (MPSO) certification¹³ was implemented by the Malaysian Palm Oil Certification Council (MPOCC), an independent organization established in October 2015. Basically, local palm oil producers must comply with the environmental standards outlined in the MSPO certification scheme. These include observing a total ban on the use of chemical pesticides, and the outlawing of large-scale land acquisitions (popularly known as land grabs). These are often carried out by foreign corporations in cooperation with national governments, for the purpose of palm oil production. The MSPO standard is split into four parts: General Principles, General Principles for Smallholders, General Principles for Palm Oil Plantations and Organized Smallholders, and General Principles for Palm Oil Mills. The scheme, which aims for all palm oil producers to be in full compliance of the environmental standards laid out in MSPO, is to be made mandatory in 2019.

IV. ENVIRONMENTAL TAX INCENTIVE AS PRACTICED IN MALAYSIA

As an environmental practice, using tax policies to deal with problems associated with environmental risks can encourage or discourage behaviors that may impact the environment. Environmental tax is defined by the Organization for Economic Cooperation and Development (OECD) as *"taxes which have been introduced to achieve a specific environmental objective, and are explicitly identified as environmental taxes, as opposed to taxes which are introduced initially for non-environmental reasons, but which impact on environmental objectives, and may be increasingly modified or reduced for environmental reasons."*

Malaysia paired environmental policies and laws with environmental taxes in the 1990s but initiated a more aggressive approach in 2010, when the country started enforcing its commitments as a signatory to the Kyoto Protocol. A comprehensive policy addressing environmental sustainability was introduced in the form of the 2002 National Policy of the Environment, followed by the 2009 National Green Policy. The main taxation laws in Malaysia are the Income Tax Act 1967, Real Property Gains Tax 1976, Promotion of Investments Act 1986 and Stamp Duty Act 1949. Several types of green incentives for environmental conservation were introduced to encourage key industries to be environmentally friendly. These include areas connected to renewable energy, energy conservation, biotechnology, research and development, storage, treatment and disposal of toxic and hazardous waste, recycling, Green Building Index Certificates, capital allowances, double deductions, and purchases of green technology equipment.

Such tax incentives are available only for certain industries such as manufacturing, information technology services, biotechnology, Islamic finance, energy conservation, and environmental protection.¹⁴ In practice, it should be noted that enforcement

¹³ As of January 2017, the total planted area in the three regions certified under MSPO—Peninsular, Sabah and Sarawak—comprised 221,575.14 hectares. The certification scheme is to be made mandatory by 2019.

¹⁴ Deloitte Touche Tohmatsu Limited, "Taxation and Investment in Malaysia 2015: Reach, relevance

of environmental tax penalties in Malaysia is lacking. It is further apparent that deforestation and haze-linked activities are not explicitly included in the tax penalty scheme. Thus, the palm oil plantation sector that contributes 10% to Malaysia's GDP¹⁵ is excluded from the environmental tax scheme even though it is identified as a fragile, risk-prone sector causing deforestation.¹⁶ As a UN-REDD Program partner country, Malaysia is committed to reducing emissions from deforestation and to sustainably manage forest cover through adaptation and mitigation strategies. However, the national strategy plan is currently still in the development stage.¹⁷

V. "POLLUTER PAY PRINCIPLE" AS ENVIRONMENTAL TAX STRATEGY

The environmental tax endorses the "polluter pays principle," evidenced in corporate practices by incorporating the costs of environmental services and damages directly into the prices of goods, providing incentives, and raising revenues to improve environmental costs or overcome environmental challenges. In general, the government employs a mixture of cost-covering charges, incentive taxes, and fiscal environmental taxes. Taxes can play an important role in achieving cost-effective control on climate change impacts and greenhouse gas emissions. Multiple EU countries introduced carbon taxes in the 1990s.

An earlier study¹⁸ concluded that environmental taxes are effective, beneficial, and incentivizing, and, in general, environmentally effective when the tax is high enough to stimulate abatement measures. However, there are several political barriers to the introduction of environmental taxes. These include:

- perceptions that taxes must be high if they are to work;
- conflicts between lowering taxes and maintaining revenues;
- existing subsidies and regulations that provide environmentally perverse effects; and
- other policies and cultures which negate or inhibit environmental taxes.

The 2006 Stern Review on the Economics of Climate Change argued strongly for urgent and immediate action to mitigate the potential costs of climate change. The report played a major influence on UK environmental policy. For example, a number of tax measures were introduced and implemented involving landfill, industrial energy use (cf. Climate Change Levy), and extraction of aggregates from quarries. The European Union implemented green tax reforms in various ways, including restructuring of existing environmental taxes, or introduction of new ones. In Japan,

and reliability," available at http://www.iberglobal.com/files/2016-2/malasia_deloitte_guide.pdf. Date of access 14 January 2016.

¹⁵ Okezie Chukwukere Austin Amir Hussin Baharuddin, "Risk in Malaysian agriculture: the need for a strategic approach and a policy refocus," *Kajian Malaysia (Journal of Malaysian Studies)* 30, no. 1 (2012): 21-50.

¹⁶ Blame has mostly been placed on oil palm companies plantations mostly on peatlands on issues of deforestation and haze in Malaysia. See J. Miettinen, C. Shi, and S. C. Liew, "Land cover distribution in the peatlands of Peninsular Malaysia, Sumatra, and Borneo in 2015 with changes since 1990," *Global Ecology and Conservation* 6 (2016): 67-78.

¹⁷ UN-REDD Programme "Malaysia," available at <http://www.unredd.net/regions-and-countries/asia-pacific/malaysia.html>, Date of Accessed on 11 June 2016.

¹⁸ European Environment Agency (EEA), *Environmental Taxes Implementation and Environmental Effectiveness* (Copenhagen: EEA, 1996).

tax policies have been introduced as carbon taxes, fossil fuel taxes, research and development tax credits, petroleum and coal tax on the shipment of crude oil, gaseous hydrocarbons or coal from extracting stations or bonded areas, and tax credits for job creation and salary growth.

Malaysia has also given greater consideration to sustainable development in recent years and encouraged companies to embrace green technology and policies. Such measures include the introduction of a series of tax incentives to the public and private sectors. For example, incentives are offered to companies that generate energy from renewable sources and energy conservation. The Green Building Index (GBI), launched in 2009, was developed specifically for Malaysian tropical climate buildings as a rating tool in the construction industry. There have been other efforts to commit to responsible business strategy and practices using corporate social responsibility initiatives, such as policy frameworks to make companies environmentally aware of the impacts they have on the environment and society. However, these efforts are often piecemeal and voluntary, with limited tax incentives, and without actual implementation and enforcement. The taxes only cover the needs of the company but not the public that's equally affected by the environmental impacts. Such plans to incorporate certified emission reduction units with a "Green Palm Oil" initiative would only be implemented if there were a comprehensive and binding carbon trading and emissions regulation that encouraged producers to use sustainable methods.

The rule of "*polluter pays principle*" provides for the costs of pollution control, prevention, and remediation to be borne by the entity that profits from the process that caused the pollution. Said principle can be found in Section 47 of the EQA that allows the Director General to recover all costs and expenses incurred to remove, disperse, destroy or mitigate pollution from persons responsible in connection therewith. It has succeeded as a form of mitigation measure in the rate and quality of effluent charges into watercourses by palm oil producers. The concept of the "*polluter pays principle*" is also implemented in Section 36A-E of the EQA 1974 that established the Environmental Fund. It is administered for the purpose of:

- Conducting, promoting, and coordinating research, environmental audit or any activity as the Minister sees fit in relation to any aspect of pollution or the prevention thereof;
- Waste recovery, removal, dispersal, destruction, cleaning, disposal or mitigating pollution;
- Preventing or remediating the following occurrences;
 - a. Spillage, discharge or dumping of oil;
 - b. Discharge, deposit, or dumping of environmentally hazardous substances; or
 - c. Discharge, deposit or dumping of waste; and
- Encouraging conservation measures against any damage that may be caused by any of the occurrences noted above.

Funds are obtained from monies provided by the government, donations and contributions received from within or outside Malaysia, imposed or collected in accordance with Section 36 of the EQA 1974, or money paid or received in accordance with Section 36D from exploration, extraction, refining, production, bulk movement, production, distribution or storage of environmentally hazardous substances, including but not limited to oil, or waste storage. In the process of transforming scheduled waste management, the relevant industries are encouraged to minimize waste generation. Meanwhile, the Environmental Fund is used for research to

improve management of scheduled waste in Malaysia. This exercise provides an incentive in the form of reduction of cess rate offered the industrial sector, according to the 4R approach—Reduce, Reuse, Recycle, and Recovery. Specific focus is therefore given to the hazardous waste cess framework, with the aim of encouraging waste minimization and resource recovery. The proposed framework would include reporting of scheduled waste quantities via notification, scheduled waste reduction, scheduled waste quantities, and qualities liable to cess. Add to that, cess payments into the company's cess waste fund, the company's cess payment status, lapsed payment reminders, warnings or fines, and withholding of operating licenses until all cess payments are cleared and disbursed from the research and development fund. Disbursement of cess funds for scheduled waste management will also be utilized for hazardous waste awareness campaigns. In effect, this practice would shift the environmental responsibility from governments to the companies producing the waste or pollution.

The laws that govern taxes and incentives in Malaysia grant partial or total relief from income taxes for a specified period, while indirect tax incentives exist in the form of exemptions from import and excise duties, and sales tax. The major tax incentives for companies investing in the manufacturing sector, high technology companies, specialized machinery and equipment companies, companies that utilize oil palm biomass to produce value-added products, and strategic projects are eligible for Pioneer Status and the Investment Tax Allowance that are based on certain priorities. Those priorities include the level of value added, technology used, and industrial linkages. Small scale companies incorporated in Malaysia with shareholder funds—not to exceed RM500,000 and having at least 60% Malaysian equity—are eligible for tax small scale company tax incentives under the Promotion of Investments Act (PIA), 1986.¹⁹

A person or company involved in plantation activity, such as palm oil planting, can claim Capital Allowances and special Industrial Building Allowances for certain expenditures under the Income Tax Act 1967. Capital expenditures which qualify include, for instance, those incurred for the clearing and preparation of land, and planting of crops. To date, there has been no implementation of environmental taxes in the form of penalties for the Malaysian plantation sector. Most are weighted heavily in the form of green incentives to ensure sustainable economic development.

As a policy instrument, assuming careful design packaging, successful implementation of environmental taxes can greatly benefit production and consumption trends. In this case, research is needed in areas such as economic modeling and the evaluation of externalities.²⁰ Malaysia has yet to develop a policy of environmental taxation laws imposed on companies' activities that cause, for example, carbon emissions from deforestation and haze, or reforestation. Perhaps it is an opportune time for the Malaysian government to review its taxation system as a means to exert responsibility and accountability on the shoulders of palm oil companies, not least by forcing them to respond to the environmental consequences of their activities. Hence, Malaysia could consider the various tax regimes from the OECD countries, where establishing prices on pollution creates opportunities for innovation, as companies seek out cleaner alternatives. For instance, in Australia, implementation of a carbon price mechanism in 2012 led to a drop in carbon

¹⁹ Malaysian Investment Development Authority (MIDA). Available at www.mida.gov.my. Date of accessed 27 July 2016.

²⁰ (EEA), *Environmental Taxes Implementation*

emissions from the electricity sector the very next year. Several OECD countries, such as Australia, Austria, Belgium, Turkey, and the UK, are differentiating their motor fuel tax rates according to the sulfur content of the fuels. That's given oil companies an incentive to develop low sulfur content varieties.²¹ In green tax policy, the US leads the tax and incentives ranking while France is leading in the imposition of tax penalties.²² In addition, Singapore occupies first place in pollution control and ecosystem protection where taxes or penalties are imposed on pollution and land use change. In 1999, France imposed a general tax on pollution activities (Taxe Générale sur les Activités Polluantes or TGAP) on a "pay as you pollute" basis, covering the disposal of waste, atmospheric industrial pollution and air traffic noise, washing products, and insecticide products for agricultural use.²³ Similar efforts could take the form of a built-in evaluation process to design and implement an environmental tax regime:²⁴

- identify and define the environmental problem;
- discuss the need for policy intervention and setting objectives;
- design and assess effective and efficient options;
- select, discuss, and adapt the chosen instrument;
- introduce the instrument (mix), implement the control and enforcement; and
- modify the instrument (mix) after evaluation.

In conclusion, a sustainable tax system should be less complex and more efficient in its administration and collection process, while promoting green innovation and technology.²⁵ By incorporating the "polluter pays principle" and adapting environmental taxes into key sectors, such as plantations, and contributing to the Environmental Fund, these suggestions would appear to improve areas of public policy, especially the environment and the tax system. Therefore, we should immediately move to address issues related to the impacts of the palm oil sector, where companies are motivated to add value to environmental sustainability in Malaysia. However, it is noteworthy that there is skepticism toward the "polluters pays principle." It should be applied in its entirety to impose liability on all responsible parties for harm and damage to the environment.²⁶

²¹ OECD, "An OECD Framework for Effective and Efficient Environmental Policies," *Meeting of the Environment Policy Committee (EPOC) at Ministerial Level, Environment and Global Competitiveness, Paris*. Available at <http://www.oecd.org/env/tools-evaluation/41644480.pdf>. Date of Accessed 11 February 2016.

²² KPMG, "The KPMG Green Tax Index 2013," Available at <https://home.kpmg.com/xx/en/home/insights/2015/03/green-tax-index-an-exploration-of-green-tax-incentives-and-penalties.html>. Date of Accessed 22 November 2015.

²³ ASD, "TGAP: General Tax on Polluting Activities," Available at <http://www.asd-int.co.uk/tgap-general-tax-on-polluting-activities.html>. Date of accessed 25 May 2016.

²⁴ (EEA), *Environmental Taxes Implementation*

²⁵ Abang Salihin, "Sustaining the Taxation System Towards a Sustainable Economy," presentation at *Malaysian Tax Conference: Sustainable Tax System*, Kuala Lumpur Malaysia, 3-4 June 2014. Available at <http://salihin.com.my/Sustainable%20Tax%20System.pdf>. Date of Accessed 22 November 2015.

²⁶ Barbara Luppi, F. Parisi, & S. Rajagopalan, "The rise and fall of the polluter pays principle in developing country," *International Review of Law and Economics* 32 (2011): 135-144.; Roy E. Cordato, R. E. *The Polluter Pays Principle: A Proper Guide for Environmental Policy* (Washington: Institute for Research on the Economics of Taxation, 2001).

VI. CONCLUSION

This article has reviewed strategies and practices in pursuit of a sustainable future for the Malaysian palm oil industry. It indicates the need for palm oil companies to comply with existing laws and other sustainable strategies to ensure that any action take into consideration their legal responsibilities to protect the environment from impacts of pollution and deforestation. While efforts to include an environmental tax regime in the corporate business structure remain, at best, a piecemeal strategy, there should be a greater use of the tax system and reinforcement of legal contributions made to the Environmental Fund, especially for issues of deforestation and haze in Malaysia. Environmental taxes help to implement the *"polluter pays principle,"* whereby polluters are held accountable for the costs of their pollution. These must be wholly embraced and effectively enforced within the existing legislative framework. Hence, the need to continue to use economic instruments such as taxes that promote economic, social and environmental sustainability and include both incentives and penalties. In addition, Malaysia should reinforce the use of the Environmental Fund by expanding the scope of industries available to contribute. This would aid in regenerating forests and advancing corporate green initiatives for environmental protection and preservation. Contributions to the Environmental Fund will establish itself as a legal tool for corporate responsibility and become an integral part of environmental protection. The outcome is to propose an initiative to endorse, implement, and enforce green taxes to tackle environmental problems such as "diffuse" pollution sources from palm oil plantation practices. These methods would become emerging environmental laws in Malaysia focusing on enhancing legal and non-legal strategies for ensuring a sustainable product from the palm oil sector.

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