

# The Importance of Co-opetition of Corporate Social Responsibility in the Palm Oil Industry in Indonesia

Rio Christiawan \* & Handoko Limaho \*\*

\* Department of Law, Universitas 17 Agustus 1945 Jakarta

\*\* Ph.D. Candidate, Universitas Pelita Harapan

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Corresponding Author:

Email:

rchristiawan@gmail.com

limaho.handoko@gmail.com

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## ABSTRACT

The concept of Corporate Social Responsibility (CSR) first started from the enactment of Law No. 40 of 2007 on Limited Liability Company, in particular Article 74. Implementation of CSR in the Indonesian palm oil plantation industry has always been integrated into the industry standards as well as relevant government regulations. This article also analyzes the decisions of the constitutional court regarding CSR in the plantation industry. Despite fulfilling all the necessary requirements demanded by the market and regulatory bodies, the industry is still and always has been under attack by Non-Governmental Organizations (NGOs) and the general public. Therefore, this paper attempts to conceptualize the importance of further research in developing co-opetition strategy among competitors in the palm oil industry and between the industry players with the NGOs as part of the stakeholder management. This paper is written using the normative-juridical method with focus on legal research regarding on legal aspect on CSR in plantation industry.

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## ABSTRAK

Konsep *Corporate Social Responsibility* (CSR) pertama kali dikenal dalam Undang-Undang No. 40 Tahun 2007 tentang Perseroan Terbatas, khususnya Pasal 74. Sejak itu pelaksanaan CSR di industri perkebunan kelapa sawit Indonesia telah diintegrasikan ke dalam standar industri serta berbagai peraturan perundang-undangan. Artikel ini akan menganalisis putusan Mahkamah Konstitusi tentang CSR di industri perkebunan. Meskipun memenuhi persyaratan yang diwajibkan oleh pasar dan oleh lembaga yang berwenang, industri ini masih kerap diserang oleh Lembaga Swadaya Masyarakat (LSM) dan masyarakat umum. Maka, tulisan ini akan mencoba mengkonseptualisasikan pentingnya penelitian lebih lanjut dalam mengembangkan strategi kerjasama antar kompetitor di industri kelapa sawit dan antara pelaku industri dengan LSM sebagai bagian dari stakeholders management. Makalah ini ditulis dengan menggunakan metode yuridis normatif dengan fokus pada penelitian hukum tentang aspek hukum pada CSR di industri perkebunan.

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## INTRODUCTION

The palm oil industry has always been the center of debates on deforestation due to its environmentally hazardous nature. Despite being the largest export commodity in Indonesia with a steadily increasing quantity – from 23 million tonnes in 2011 to 32

million tonnes in 2016 – palm oil has always been perceived as a more sustainable and renewable alternative to conventional fuel<sup>1</sup>.

However, on 17<sup>th</sup> September 2018 advocates from Greenpeace protested numerous palm oil plantation companies such as Wilmar, GAMA, Fangiono Plantation, and Djarum Group by climbing on Stolt Tenacity, a gigantic palm oil tanker, which was *en route* to supply palm oil for Mondelez – a global major player in the food industry which has produced many famous worldwide snack brands such as Oreo, Cadbury, Ritz, and others (Greenpeace Press Release). Not long after this incident, Iceland Foods (a supermarket retail chain) aired a Christmas advert made by Greenpeace which clearly depicted the destruction of rainforest. Even though it was banned by the local United Kingdom broadcast committee, the ad itself has made over 65 million views.<sup>2</sup>

The controversy further escalated when many palm oil plantation companies that were under fire by NGOs turned out to be members of the Roundtable Sustainable Palm Oil (RSPO), a multi-stakeholder body established by the Forest Stewardship Council (FSC) in 2005 and was also initiated by World Wildlife Fund (WWF). The members of RSPO were supposed to uphold certain principles and must meet certain criterias for sustainable production methodologies. This phenomenon brought up the need for further research into understanding that even though CSR has been incorporated into the principles and criteria of RSPO membership, the business method that can bridge the palm oil business and the NGOs – which will eventually lead to long-term lasting business models that can serve the end consumer a product that is less risk-averse in terms of CSR compliance – is still yet to be found.

Aside from being the largest Crude Palm Oil (CPO) producer and exporter which contributes a substantial amount to the GDP, the number of workforce involved in the industry is also very significant and thus the Indonesian government has a lot of vested interest to keep the industry moving. With the increasing business interruption and the volatility of the demands from the consumers, there is also an imperative need for the government to back the industry up by managing the allegations made by certain NGOs.

This paper uses the normative juridical writing method with focus on juridical research about the implementation of the CSR concept in plantation practices in Indonesia. To achieve the aforementioned purpose, this paper uses literature study which utilizes legal materials to address the relevant issue. This paper also uses the normative legal research approach through abstracting the deduction process of the prevailing legal norms, particularly by examining the law as a prevailing norm using deductive method based on coherent facts, in which the truth this paper arrives at has been declared to be credible without the need for further testing or verification process.

The data intended in this paper is materials or facts or can also be interpreted as sources of information. While legal materials intended by this paper consist of primary and secondary legal material. Primary legal material is authoritative legal material which includes regulations, official minutes and records, as well as court decisions. Whereas secondary

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<sup>1</sup> S Mekhilef, S Siga and R Saidur, 'A Review on Palm Oil Biodiesel as a Source of Renewable Fuel' (2011) 15 *Renewable and Sustainable Energy Reviews* 1937.

<sup>2</sup> Mark Sweeny, 'Iceland's Banned Palm Oil Advert Should Have Aired, Says ITV Chief' *The Guardian* (London, 5 December 2018).

legal material consists of books (of expert opinions), journals, and everything else that may provide guidance for the author(s). The acquired data is then analyzed so that rational reasons regarding the problem in question can be found. The analysis shall be discussed, and the conclusion regarding the implementation of CSR in the practices of plantation in Indonesia shall be drawn.

## **RESULTS AND DISCUSSION**

### **1. The Legal Concept of CSR in Indonesia**

Referring to the Academic Text of Article 74 of Law No. 40 of 2007 on Limited Liability Company (hereinafter referred to as the Company Law), CSR can be used as a form of social safety net as long as it is intended for community empowerment. This definition is in line with the Constitutional Court Decision No. 53/PUU-VI/2008 which states that CSR is a form of mutual cooperation, a local wisdom of Indonesian people. This means that in this case, CSR is seen a form of social solidarity built by all components of the nation.

The meaning of CSR as a social safety net is a form of activity aimed at empowering the community, giving it access to independence. The government and private companies need to immediately implement CSR programs as a form of social security net in Indonesia. The definition of CSR as a form of social safety net that involves relations between the private sector and the community is a mutually beneficial one. It is important to note, however, that in order to be a mutualistic arrangement, the implementation of CSR is directed at companies while the government provides incentives for companies that carry out such CSR.

The CSR program is a concrete form of social solidarity movement in Indonesian society. Effective and targeted CSR will undoubtedly bring positive benefits to the economic conditions of people who need it. CSR programs can be interpreted as a form of recovery with the aim of re-empowering the community after various community limitations have occurred in accessing basic needs and other potential social vulnerabilities, from unemployment to the threat of crime.

The Constitutional Court Decision No. 53/PUU-IV/2008 ensures that the relevant regulations set by the government will enable all Indonesians to benefit from the resources that Indonesia has, and the final goal of independence of the Republic of Indonesia as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution can be realized.

In essence, the formulation of CSR in a concrete article in a regulation is a legal effort to control the operation of companies engaging in natural resources or those related to natural resources on the implementation of commitments to build and realize the welfare of local communities, so that in order to safeguard these objectives the commitment of the company to the local community is respected.

The Constitutional Court in its Decision No. 53/PUU-IV/2008 can also be understood in Bredemeier's view that the function of law is to resolve conflicts that arise in society, which in this case the law shows its position as an institution (through the Constitutional Court) which integrates all processes that take place in society.

The role of law according to Bredemeier shows the flexibility of the law that accommodates economic interests which are then controlled by law to reduce existing conflicts.<sup>3</sup> "The outputs produced by the legal sub-system must also benefits other sub-systems, legitimacy is obtained from the political sub-system which must be used as the capital of authority to produce legal decisions that can help achieve goals, facilities, and capital obtained from the economic sub-system must be utilized to produce quick and precise decisions so as not to hinder the dynamics of the adaptation of economic production sources, while the moral and value contributions of the cultural sub-system must be utilized to obtain fair decisions according to ideal patterns embodied in culture. Only in this way can the legal sub-system truly function effectively in ensuring system integration."

In Decision No. 53/PUU-IV/2008, the Constitutional Court indicated that the law can still be a means of integration of other sub-systems including the economy so that with Decision No. 53/PUU-IV/2008 it shows that the law can still control sub-systems and interests. other interests, and also in the decision also prevent conflicts that will arise so that in this case the law shows its existence.

With the rejection of the application for judicial review of Article 74 of Law Number 40 of 2007 concerning Limited Liability Companies, the existence of Article 74 of Law Number 40 of 2007 is still valid and binding on certain business circles (*in casu* companies that run their business in the field of natural resources or are related to natural resources) then every company that runs its business in the field of natural resources or related to natural resources is obliged to budget for the fulfillment of Corporate Social and Environmental Responsibility in company costs so that the company's commitment to the welfare of local communities can be realized.

Not regulating social functions in a concrete manner has resulted in this period (the period of the enactment of Law No.1 of 1995) in which social functions cannot be properly implemented, resulting in the inability to eliminate conflicts that occur between companies and local communities. Because there is no guidance on the social function of the company, the company's social function will be delayed or not functioning.

The social function of the company in this case is intended to be able to play a role as a means of eliminating social conflicts besides that it also acts as a tool for companies to maintain sustainability (business continuity) because if the social function runs well then the "social license" from the company to be able to operate can be given. by the local community.

In the short term, the benefits of company and community relations that are built through CSR are obtaining a social license to operate a company (social license to operate). In the medium term the benefits for company and community relations are the emergence of social capital and social cohesion between the company and the community. Meanwhile, the long-term benefit from the long-term relationship between the company and the community in the CSR concept is high business sustainability.

## **2. Legal Concept of Co-opetition in CSR**

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<sup>3</sup> Bernard L Tanya, Yoan N Simanjuntak and Markus Y Hage, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang Dan Generasi* (Genta Publishing 2013).

By referring to the Japanese CSR model known as Hyogo Models, the government should be able to find cost-sharing opportunity in regards to post-disaster recovery. While the government cannot surrender all disaster management aspects to the private sector due to its own constitutional obligations, through CSR as required by law, corporations and government can share their burden and role in disaster mitigation. At present, the government needs to reorient CSR guidelines for corporations as stipulated in Article 74 of the Company Law.

CSR is a medium to build social cohesiveness in order to encourage a country's economic resilience through community development and empowerment. In this case, the government's immediate priority should be to formulate an implementing regulation of Article 74 of the Company Law to determine the direction of CSR orientation in Indonesia, one that should directly correlate to corrective measures in order to ensure that no economic vulnerability should occur.

Decision of the Constitutional Court No. 53/PUU-IV/2008 has actually mandated CSR orientation through the enactment of implementing regulations from Article 74 of the Company Law. During the material test of Article 74 of the Company Law, the Constitutional Court was of the opinion that CSR could not be erased, but the government must formulate an appropriate implementing regulation that shows how the implementation of CSR in Indonesia should be done in accordance with the needs of the nation, and in the end CSR can be carried out effectively and efficiently.

By realizing the looming potential of disasters and its own limitations in disaster management and recovery, the government together with the relevant stakeholders must formulate the aforementioned implementing regulations with regards to post-disaster management and CSR-based recovery. The basic concept of CSR is community empowerment and community development – it is a means of achieving strong social cohesiveness. CSR is a social investment to erode social inequality, in which economic growth and equity are the expected result.

Since Article 74 of the Company Law does not clearly regulate the technical implementation of CSR activities by companies, all stages will be given a legal umbrella in the form of government regulations (Peraturan Pemerintah) to supplement Law Number 24 of 2007 on Disaster Management alongside the Company Law at the operational level.

Ideally, when referring to the CSR model in Japan, the budget calculation is two percent of the annual net profit. In drafting the implementing regulations, the government must also include the amount of CSR obligations that must be fulfilled by the company. This will also ultimately reduce the government's burden.

The essence of the plan that must be accommodated is related to the ideal coverage area between the proportion of CSR partner companies and the affected communities, since CSR programs are meant to empower and develop communities so they can provide positive feedback on the sustainability of the corporation itself. CSR is different from donations because the ultimate goal of CSR is the existence of a long-term partnership between the company and the government in empowering and developing the community.

This proposed CSR concept is in line with the amendments to the 1945 Constitution, which has shifted from limited positive right to extensive positive right. The implication is that the government requires empowerment towards independence for the realization of the welfare state. CSR is seen as a tool that can realize prosperity through the realization of social justice for all Indonesian people.

### 3. The Concept of CSR in the Palm Oil Industry

The term CSR has been widely used in the later part of the 20<sup>th</sup> century as a way to ensure that business should be able to balance their growing profit with social, ethical, political, and environmental aspects, as well as with other stakeholders. The definition of CSR has greatly evolved from Friedman<sup>4</sup> who defined it simply as the pursuit of profitability without deception and or fraud, and then to Carroll<sup>5</sup> who adds and broadens up the definition into how the social responsibility of a business should also include the legal, ethical, and discretionary expectations that the market or society has, and finally to Scherer and Palazzo<sup>6</sup> who also expand the definition to include political dimension that can contribute to the working of the global governance.

Most of the time the CSR actions undertaken by the companies are voluntary. However, in the case of the palm oil industry, the CSR activities are already regulated and mostly predetermined by various government bodies such as the Minister of Agriculture which states the amount of land and or profit sharing mechanism that must be shared with the local communities and the Minister of Forestry which defines the environmental factors that must be taken into consideration when cultivating certain areas permitted for agriculture development and certain practices such as labor force, best agricultural practices, and many other factors. The aforementioned stipulations are all regulated and deemed compulsory by the Indonesian Sustainable Palm Oil (ISPO) commission under Indonesia's Ministry of Agriculture.

Therefore, the 'competitive advantage' of CSR in the palm oil industry as addressed by Porter and Kramer<sup>7</sup> is not entirely accurate, and perhaps the purpose of CSR in this particular industry is leaning towards the idea of Social License to Operate (SLO). The point of SLO is to gain Free Prior Informed Consent (FPIC) which, in the palm oil industry, is mostly related to the indigenous communities living in the vicinity of the palm oil plantation. However, if a company tries to use SLO as strategic decision making and perhaps gain positive feedback from the potential clients then it has clearly deviated from the intended purpose of license itself.<sup>8</sup>

### 4. Co-opetition and the Creation of a New Shared Value

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<sup>4</sup> Milton Friedman, 'The Social Responsibility of Business Is to Increase Its Profits' (1970) 32 New York Times Magazine 32.

<sup>5</sup> Archie B Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) 4 Academy of Management Review 37.

<sup>6</sup> A. G. Scherer & G. Palazzo, "Globalization and Corporate Social Responsibility" in Ruth Aguilera and others, *The Oxford Handbook of Corporate Social Responsibility* (Andrew Crane and others eds, Oxford University Press 2008).

<sup>7</sup> Michael E Porter and Mark R Kramer, 'Strategy & Society: The Link between Competitive Advantage and Corporate Social Responsibility' [2006] *Harvard Business Review* 78.

<sup>8</sup> Kathleen M Wilburn and Ralph Wilburn, 'Achieving Social License to Operate Using Stakeholder Theory' (2011) 4 *Journal of International Business Ethics* 1.

Co-opetition is a term that is popularized by Brandenburg and Nalebuff<sup>9</sup> that incites the idea that competing organizations, when combined together rather than individually, can create a larger and more valuable market and also secure mutual advantages by eliminating threats in the industry – thus increasing market opportunities<sup>10</sup>. Various business activities has succeeded in cooperation through mergers, long term contracts for supply and vertical integrations, but matters related to safeguarding the business activities itself should not be dismissed. Therefore, it can be concluded that businesses can be benefited from both the competition and the cooperation aspects.<sup>11</sup>



**Figure 1: The Stakeholders of Palm Oil Plantation Industry**

The real dilemma is to incorporate the co-opetition factor within the palm oil plantation industry. Looking at the stakeholders involved in the industry, the competitors and NGOs are the last stakeholders that should be involved in the business process. There have been many types of research simulating the difficulties of collaboration and co-creation because of various degrees of interest and the constant competition that has always been done in the

<sup>9</sup> AM Brandenburger and BJ Nalebuff, *Co-Opetition* (DoubleDay 1997).

<sup>10</sup> Katherine L Christ, Roger L Burritt and Mohsen Varsei, 'Coopetition as a Potential Strategy for Corporate Sustainability' (2017) 26 *Business Strategy and the Environment* 1029.

<sup>11</sup> Keith Walley, 'Coopetition: An Introduction to the Subject and an Agenda for Research' (2007) 37 *International Studies of Management & Organization* 11.

past. However, the firms must manage those tensions to ensure that the collaborative efforts are not jeopardized and that the main purpose is clearly stated<sup>12</sup>.

The stakeholders that are involved in the palm oil plantation industry that is rarely mentioned in any strategies are the competitors and the NGOs. The working relationship and the continuance of the palm oil plantation industry is highly interconnected – involving the government whom the necessary licenses are granted from; the buyers of the CPO which generates income for the palm oil plantation companies; the financiers such as banks and private equity funds who gives funding or equity stake for the business; and the local communities where the plantation is developed at. Rival plantation companies and NGOs, though, are almost always seen as opponents. In light of the different business landscapes that have landed upon the industry, there needs to be a change in the business' paradigm to tackle the issue at hand.

In order for co-opetition to work, Zinedin<sup>13</sup> has concluded that five conditions must be fulfilled: (1) all stakeholders or the ones that are involved must agree to establish the relationship; (2) the needs and demands of the ones that are involved must be met; (3) the relationship should be mutually rewarding; (4) the terms and conditions are constructed in a flexible yet limited manner; and (5) continuous communication between those who are involved must be maintained. These factors are common in any normal business transactions or joint ventures, but in the case of CSR co-opetition there might be opposing and extremely different interests. NGOs will definitely have different priorities than business entities; competitors will probably be reluctant to share their problems with other firms, and past sour relationship is a major factor in the collaboration.

One of the reasons why palm oil plantation companies do CSR is to avoid business interruptions and unnecessary risks that may disturb the business activities. On the other hand, the presence of NGOs are to be the “check and balances” in the industry. In order to do that, it is imperative for this industry to realize that collaboration with the unlikeliest allies is one of the key factors in addressing these issues at hand. By working together and having a common mutual understanding, the pros and cons of each action can be addressed and a collective agreement can be made.

The simple practicality of this process is explained by Cabrera<sup>14</sup> in three different steps:

- Information Sharing: The unlikeliest allies are made between Microsoft and Apple where Apple licensed their mobile patent technologies to Microsoft, and in return for the money that Apple gets, they are helping Microsoft with their mobile development department. The process of agreeing to share information should also be done in goodwill intention but also carefully. Apple and Microsoft have an anti-cloning agreement made between them. In the case of the palm oil industry, the agreement to share information between competitors and NGOs are important but also it must be done with the certain understanding that is made between all parties. Some examples to be considered are perhaps: agreement of confidentiality that any wrongdoing in sustainable practices will not be disclosed to any parties but will be fixed or remediate

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<sup>12</sup> Christina Scandellus and Geraldine Cohen, ‘Sustainability Program Brands: Platforms for Collaboration and Co-Creation’ (2016) 57 *Industrial Marketing Management* 166.

<sup>13</sup> Zineldin Mosad, ‘Co-opetition: The Organisation of the Future’ (2004) 22 *Marketing Intelligence & Planning* 780.

<sup>14</sup> Marquis Cabrera, ‘Use Co-Opetition to Build New Lines of Revenue’ [2014] *Harvard Business Review*.



as soon as possible, Memo of Understanding (MoU) concerning employees and hijacking practices shall not be done in a certain span of time, MoU with NGOs that future expansions and future business developments should be done with the involvement of certain NGOs to avoid environmental risks. The understanding between various stakeholders needs to start with information sharing however, it must be done in a secure and safe environment where each parties can collaborate together and aim for the future growth together.

- Focusing on building something new. Instead of looking at the past, by realizing each potential partner's competitive advantage, one can try to find the strength of its counterpart and maximize it together to gain and create a more competitive advantage. For example, if certain NGOs have a strong relationship with some countries and the society that resides in it, getting an endorsement for the CPO produced by the palm oil plantation company can be a fruitful endeavour. For NGOs, by working together with palm oil plantation companies instead of protesting and contesting the development in an active hostile way, they may be able to do more good and preserving the environment in a way that can be both profitable for the communities, the planet, and the business aspects as well.
- Choosing the right partnership in which all parties are contributing something new. Selecting potential partners requires an understanding of which specialty and uniqueness one can bring into the partnership. For example, a big and multinational NGOs might not be interested in working together with a palm oil company that only has 1,000 hectares planted area and have no interest in future expansion, and also a multinational palm oil plantation company might not be interested in working with an NGO that only focuses on certain areas where the palm oil plantation might not be a significant issue.

The concept of co-opetition may not work for every stakeholder. Certain cherry picking and a combination of collaborative effort need to be explored and trust between those stakeholders will be the cornerstone of the cooperation. Nevertheless, if a partnership happens then the co-creation value process can start, many extraordinary results may yield from the process.<sup>15</sup>

## CONCLUSION

The term 'social responsibility' comes from the world of common law. This term is not identical with the civil responsibility theory in the Roman Germanic Law tradition. The term CSR only applies to corporations, because in this world corporations are the dominant institution that will surely deal with environmental and social problems that affect human life. The World Bank Group defines CSR as a business commitment to contribute to sustainable economic development, through working with employees and their representatives, their families, local communities and the general public to improve the quality of life in ways that are beneficial, good for business itself and for development. Thus, CSR is a must or an obligation. CSR is not a marketing gimmick, but an integral part of the company's mission and values.

The concept of CSR itself has also changed. The old CSR concept stated that the company is only responsible to its shareholders. Furthermore, the new CSR concept states that

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<sup>15</sup> Scandeliuss and Cohen (n 12).

companies must also be responsible to workers, suppliers, communities, and the environment in which the company carries out its activities.

The CSR doctrine which was created as an ethical or moral in corporate behavior has been accepted into the laws, regulations, regulations contained in the Code-codes and the European System. However, the term CSR has a different meaning from ethics, morals, philanthropies and law.

CSR represents a compromise between ethics and certain behaviors. CSR appears to improve the company's image in the community where the company carries out its business activities. The idea to make corporate social care an element of marketing. Social planners must always be included in the company's strategic plan. This social activity is not a cost, but an investment in itself.

Co-opetition of CSR in the palm oil industry, especially when it involves NGOs which are often viewed as the “enemy” of the industry, is a new concept in the developmental plan of the business and is certainly revolutionary. The potential for the shared value creation, the impact of being environmentally responsible from the NGOs perspectives and the industries' point of view, the risk avoidance of business interruption, and the co-creation of new values are definitely something worthwhile to be researched more in depth. Co-opetition can also be an offensive strategy by pooling resources together and to achieve a common goal. In an industry where CSR matters but no longer gains competitive advantage due to the commonality between the industries, marketing co-opetition may be a game changer.

Companies need to set aside their ego, and instead build a forum where they can share resources and focus on marketing palm oil products across the globe – showing the positive impacts and the sustainability factors undertaken by the industry. The marketing communications should not be focused on the company but on the industry. One company will have limited resources, but by pooling together different industry players that have a vested interest to change the negative campaign for the end consumers, then the resources that the collective has is significantly higher and can bring more impact in a long-term way. Perhaps doing good is not enough, the consumers have to be able to know that companies are also doing good.

The strength of a palm oil plantation companies is not in the marketing part. CPO has always been viewed as a commodity, and thus a palm oil plantation company does not necessarily invest in brand marketing or company image. However, since the world is changing and the expansion of CPO consumers are diverse, non-direct consumers also become a factor that needs to be addressed since they voice their concern with the direct buyers which are; the refiners, food processing and producing companies, energy companies, and etc. The notion that the palm oil plantation is not environmentally friendly and contributes greatly to deforestation as depicted by Greenpeace's marketing campaign shows that palm oil plantation companies have done very little in order to create market awareness and knowledge of the commodity that they are selling.

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