

**INDONESIAN STRATEGY IN FACING THE ANTI-DUMPING POLICY ON  
BIODIESEL DISPUTE (DS480) AGAINST EU  
(2013-2018)**

**Baiq Kartika Wulandari**

20150510039

International Program of International Relations Department

Faculty of Social and Political Sciences

baiq.kartika.2015@fisipol.umy.ac.id

**Abstract**

This study aims to explain the strategy of the Indonesian government in facing the anti-dumping policy regarding on biodiesel dispute (DS480) Indonesia-EU. In this study, the researcher conducted research from various legitimate sources to support this research. The researcher methods are did interview session, library studies and website searching. Using the theory of bargaining techniques in negotiations, this research findings proof that *pressure groups* has become a bargaining techniques for Indonesia to threat the European Union to eliminate the imposition of anti-dumping duties. Therefore, Indonesia continuously conducting consultations with the WTO because they can not balancing the EU.

**Keywords:** Anti-dumping policy, Biodiesel dispute (DS480), Indonesian strategy

## **Background**

In free trade activities, trade barriers often trigger problem. The tendency to increase the application of Trade Remedies and Non-Tariff Barriers instruments has an impact on the export value which in turn causes the imposition of import duty sanctions. According to the case of this undergraduate thesis, the trade barriers faced by Indonesia are about the application of instruments of Trade Remedies, namely the anti-dumping policy. The anti-dumping policy is contained in Article VI of GATT and the Anti-Dumping Agreement (WTO, 2018).

The issue of Anti-dumping duties (ADDs) become most prominent problem between Indonesia and the European Union. The anti-dumping policies can emerge in Indonesia is because of the growing pressure of trade liberalization such as protectionism and global trade competition. The strong trade liberalization nowadays already reached the economic sector. It can be seen from the fundamental cause which is the increasing of a healthy level of global competition in the field of biodiesel production. Then, as a result of that global competition, EU countries decided to take protectionism to protect their domestic products. That protectionism then continued by using the Trade Remedies instrument, which was to provide an anti-dumping policy on biodiesel products from Indonesia (Pradnyawati, 2019).

In order to analyze the strategy government of Indonesia in facing the anti-dumping policy on biodiesel dispute (DS480) against EU, theories and concepts are required. The basic framework used by the author uses concepts or theories that are closely related to the title chosen by the author. Theory and concept in which these study stands are bargaining techniques in negotiations and concepts of third-party interventions.

### **1. Bargaining Techniques in Negotiations**

In International Relations, diplomacy and negotiation for a country are a tool for communicating with other actors (Odell, 2006). In this case, the one who conducts diplomacy is a representative of a country called a diplomat. A diplomat or negotiator is required to be able to carry out diplomacy and negotiation processes with attitudes and traits that should be possessed by a representative of the country, namely competent and have a useful skill in speaking. Both diplomacy and negotiation are essential because they can be used as a useful tool for a country to communicate with other actors, especially in international relations. The term negotiation can be interpreted as a process of bargaining between two or more parties to

find common ground and reach a joint agreement to solve problems of mutual concern or to resolve conflicts (Pon Staff, 2018).

Furthermore, one of the most critical aspects of negotiations is a concession. The term concession is one of the most commonly mentioned words when discussing negotiations. The concession is something that can be given to the opposing party to exchange something desired, resolve conflicts and get an agreement. Then, the parties involved in the negotiations do not know the concession, they cannot persuade the opposing party to approve the request. Then, they will fail to get what they want. The concession is vital for successful negotiations.

In bargaining paradigm system, states are always confronted with a security dilemma: threats from other states require that they take defensive positions, which may in turn appear threatening to other parties, requiring them also to adopt defensive positions. The bargaining approach to negotiations focuses primarily on states as represented by a group of negotiators who have to achieve specific national interests (A. Crocker, Osler Hampson, & Aall, 2007).

Refers to the imposition of anti-dumping duties (ADDs) on biodiesel product (DS480) Indonesia finally submitted to *Dispute Settlement Body* WTO in 2014. The result of the panel held by the WTO was to win Indonesia over the dispute. It happened because the accusations directed by the EU to Indonesia regarding biodiesel products were incorrect and not following the anti-dumping agreement set by the WTO (A. Lax & K. Sebenius, 1987). Related to the bargaining in negotiation, in this case, the term “zero-sum or win-lose” exactly happen while Indonesia won the biodiesel dispute and get back the rights. Then on the other side, the EU must bear its defeat (Spangler, 2003).

## 2. Concept of Third Party Interventions

Third parties often become involved at the behest of one or more of the disputants, on their initiative, or by institutional arrangement. The form of third-party investigation that has received the most attention in research, theory, and practice is *mediation*. A third party is an individual or collective that is external to a dispute between two or more people and that tries to help them reach an agreement. Intervention by the third party may be classified broadly into two types; contractual and emergent. Contractual intervention is performed by a conflict management specialist such as professional mediator or judge who has expertise and experience with the issues under discussion. Emergent intervention is performed by a nonspecialist who has an interest in resolving the conflict. The third party typically has an

ongoing relationship with the disputants and often has a stake in the outcome of the dispute (Rubin, Pruitt, & Kim, 1994).

Third party intervention is like a strong medicine that may have undesirable side effects, and that should, therefore, be employed with caution and some reluctance. Laue & Cormick explains that there are five third party roles offered, which: (1) activists, who work closely with one of the parties in conflict, especially the weak, (2) advocates, not elements or members in the conflicting parties, but just an advisor, (3) a mediator, has no basis among the conflicting parties and helps the conflicting parties to obtain satisfactory solutions, (4) researchers, independent evaluation providers regarding certain conflict situations, and (5) intervenors or law enforcement, enforce and pushing certain conditions on the parties to the conflict beyond their wishes (Fisher, 2010). According to the discussion above, the writer will use the roles of *mediator* and *activists* to analyze the form of third party intervention. For the *mediator*, to know about the WTO's efforts as a third party helped Indonesia in resolving the biodiesel dispute (DS480) against the EU. This role is considered to be more suitable because as a mediator, the WTO does not have a base between the warring parties. However, the WTO can help resolve conflicts with satisfactory results. Then, *the activist* is the country alliance of Indonesia which is Argentina. Argentina becomes the third party for Indonesia in this case. Argentina can prove that because they work closely with one of the parties conflict, which is Indonesia as the weak parties.

## **Research Method**

This research was formulated in three methodologies, which is: type of research, data collection methods and methods of analysis.

### **a. Type of Research**

In this research study, the authors used this type of qualitative research. Namely by using the analytical method and the elaboration of each existing data. This research does not use count numbers in it. The author only describes existing data with qualitative methods.

### **b. Data Collection Methods**

The data collection methods are used were primary and secondary data collection. As the primary method, the data obtained comes from interviews. In this method, interviews are the main data used to answer research problems. Then, the secondary data collection can be through a literature study. The materials of the study literature are found from textbooks,

scientific journals, e-journals, government decisions, reports of government and non-government institutions, and also from websites which discuss strategy government of Indonesia in facing the anti-dumping policy on biodiesel dispute (DS480) against EU.

### c. Methods of Analysis

The methods of analysis that used is descriptive analysis, which is a research method that seeks to collect, compile, and interpret existing data with the aim of describing or explaining current events and events in a systematic, factual, and accurate manner regarding the facts and characteristics of a particular population. This research is limited to the effort to express a problem or event or event as it is so that it is fact-finding, which is then proposed by analyzing the data or phenomenon to find solutions and links with new strategies. With this descriptive method, the author wants to find out the strategy of Indonesian government in facing the anti-dumping policy on biodiesel dispute (DS480) against EU.

## **Result and Discussion**

### **1) The Problem of Trade Dispute on Biodiesel Product Indonesia-EU**

The *first process* of this dispute began with the determination of dumping in the early of 2013 by the European Union's authority on Indonesian biodiesel products. It is a rule set by the WTO as an international trade organization. Then, the parties from the European Union informed the defendants namely Indonesia through the Indonesian Embassy in the EU; then the news was transferred by the Indonesian Embassy to the Ministry of the Trade Republic of Indonesia. The *second process* is the importing party namely the European Union, notifying it by giving a note to the World Trade Organization (WTO) if the EU will implement an anti-dumping policy in the form of anti-dumping duties (ADDs). The anti-dumping policy is a trade policy tool that is causing damage to domestic industry material.

The *third process*, together with the imposition of anti-dumping duties (ADDs), parties from the EU also sent questionnaires to producers and exporters in Indonesia. The questionnaire contains questions about the feasibility of biodiesel owned by Indonesia, whether it is following the standards of biodiesel production in the EU that are environmentally friendly or not. In order to fill out, the questionnaire will be assisted by the representative from the Directorate of Multilateral Negotiations. Those companies from Indonesia will be guided in dealing with this problem by the Directorate of Trade Defense, Ministry of the Trade Republic of Indonesia. They then recommend the companies to use international lawyers. It is done to give an answer containing legal drafting because this case is a severe problem that is not easy to win.

Therefore, to reduce the rate of biodiesel exports from Indonesia, the EU wore 2.8% - 9.6% of anti-dumping duties on May 27, 2013. *The fourth process* continued with the imposition of anti-dumping duties on November 19, 2013, by 8.8% to 23.3 %. As an official form of the anti-dumping policy stipulation, the European Union issued Council Implementing Regulation Number 1194/2013 on November 26, 2013. Therefore, the Indonesian biodiesel export to EU decided has been significantly decreased. An official web related to world trade namely *www.trademap.org* noted that Indonesia's biodiesel exports to the European Union fell by 72% between 2013 and 2017, from the US \$ 415,842 million to the US \$ 116,737 million in 2017. Indonesia did not remain silent about the incident, companies from Indonesia together report to the Directorate of Trade Defense, Ministry of the Trade Republic of Indonesia. Then the Directorate of Trade Defense continues to do the investigation for the next stage.

*The fifth process* was on June 10, 2014, Indonesia complained to the secretariat of WTO and requested for consultations with the European Union. Indonesia requested consultations with the European Union on; (1) provisions of Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community, and (2) anti-dumping measures imposed in 2013 by the European Union on imports of biodiesel originating in Indonesia (WTO, 2018).

*Sixth* is Indonesia filed a lawsuit to the General Court of European Union, through the biodiesel companies from Indonesia namely: PT Musim Mas, PT Pelita Agung Agrindustri (Permata Hijau Group), PT Wilmar Nabati Indonesia, PT Wilmar Bioenergi Indonesia (Wilmar Group), and PT Ciliandra. The trial process then started from February 19, 2014, on the General Court of the EU, then the result in September 15, 2016, the EU court rejected the application of anti-dumping duties on imports of Indonesian biodiesel and this means Indonesia was declared won on the first round at the General Court level of the EU. While, the European are not satisfied with the decision and on November 24, 2016, appealed to the Court of Justice of the EU. In this court, Indonesia won again because the judge of the Court of Justice of the EU reaffirmed the decision of the General Court of the EU judge to reject the application of the anti-dumping duties (ADDs).

Then, in the *seventh process*, Indonesia sued the European Union through the forum of *Dispute Settlement Body* WTO. Because feeling dissatisfied with the results at the General Court of the EU, Indonesia decided to appeal with the European Union through the DSB WTO. In this process, the WTO acts as a mediator between Indonesia and the European Union. In this phase, Indonesia holds periodic meetings, namely the First Substantive

Meeting and Second Substantive Meeting held at the WTO office in Geneva, Swiss. The third party also attended the meeting: United States, Japan, Turkey, Singapore, India, China, Canada, Argentina, Australia, Norway, Russia, Brazil, and Ukraine. The First Substantive Meeting was held on March 29-30, 2017. In the first meeting, Indonesia first defended its biodiesel products. Indonesia also explained that they would be concerned with this case seriously.

On the other hand, the reason that Indonesia continues to appeal is because of the alliance country of Argentina. As is known, Argentina previously had the same problem with Indonesia regarding its DS473 biodiesel, but Argentina had already won first. By becoming the third party on DS473's before, Indonesia then uses the moment of AB DS473's decision as the basis of the lawsuit which ultimately resulted in a victory for Indonesia. Continued on May 12, 2017, Indonesia sent submissions to the European Commission and several EU embassies in Jakarta. That submission sent through the Ministry of Trade in the form of objection letters is related to the decision of the Council Implementing Regulation Number 1194/2013 (EU). Then, the Second Substantive Meeting held on July 4-5, 2017. At this stage, Indonesia brought the lawyers team according to the advice of the Directorate of Trade Defense. The aims is, of course, to facilitate the making of legal drafting and win the disputes.

The *eighth process* is after going through the process above, the WTO Dispute Settlement Body (DSB) finally reports that Indonesia has won the biodiesel dispute (DS480) against the EU on January 26, 2018. Then, *the ninth process* is on March 16, 2018, with that victory, anti-dumping duties (ADDs) on Indonesia's biodiesel eliminated. It is Indonesia's double victory over the Dispute Settlement Body WTO after previously also winning a lawsuit at the General Court of European Union.

The decision of the *World Trade Organization* (WTO) won Indonesia over the biodiesel case because the European Union violated the anti-dumping agreement of WTO. Based on the decision of the *Dispute Settlement Body* WTO, there are 6 points of violated by EU in the provisions of the anti-dumping agreement of WTO related to the biodiesel dispute (DS480) Indonesia.

According to the discussion above, we can take several essential points in order to overcome the conflict on biodiesel dispute (DS480), Indonesia will take the legal route, which is firstly by submitting a lawsuit to the General Court of EU and secondly, through the *Dispute Settlement Body* WTO.

## **2) Indonesia's Strategy in Facing the Biodiesel Dispute**

First, gathering stakeholders that come from companies, associations, related government institutions such as the Ministry of Foreign Affairs and other interested parties. In order to face the biodiesel dispute (DS480) Indonesia-EU, the Ministry of Trade invited the stakeholders to do coordination regarding the dispute that occurs. It is very influential on achieving goals because stakeholders have high power, legitimacy and strong influence on the cases to be faced.

Second, coordination meeting. In this strategy, the scientific evidence is used by the government of Indonesia through the Directorate of Trade Defense to help various sources for supporting the argument in defense submission. Ms. Pradnyawati also explains that the Directorate of Trade Defense conducted a long time for national coordination meeting which in the timeframe for 18 months. That time used by the government to investigate and study deep related to the biodiesel dispute specific cases. It is following the rules of the WTO. Indonesia needs to do this in order to develop a robust strategy by not only adopting the International Trade Lawyers in resolving the cases.

Third, sending submissions. The submission is an agreement letter made by Indonesia related to the issue of anti-dumping duties (ADDs) in the biodiesel dispute (DS480). Submissions made depend on the size of the case discussed. The letter that will be sent is base on the level of authority. For this problem, the government sent a letter of approval through the Ministry of Trade of the Republic of Indonesia to the EU Minister of Trade to the EU Minister of Trade.

Fourth, hearing. Informant Ivan Riananda said that through the hearing section, the European Parliament opened a dialogue to the disputing parties which is from Indonesian biodiesel companies and EU biodiesel companies to express their opinions regarding the problem at that time. During the hearing activity, the European Parliament acts as a mediator in the hearing.

Fifth, conduct the bilateral meeting. One of the tactics that will be undertaken on that occasion is to hold meetings in Geneva for two times, namely first substantive meetings and second substantive meetings.

Sixth, a pressure group. Using threats to the EU. There are two forms of threats provided by the Indonesian government to the EU on the imposition of anti-dumping duties (ADDs): first Indonesia will increase the price of biodiesel imported by the EU and second is Indonesia ask the EU to reduce profits. It can be seen that the pressure group is the way of the



group that tries to influence public policy in the interest of a particular cause. Pressure is carried out by pressing the EU government and producers on the imposition of anti-dumping duties (ADDs) in Indonesia.

In this case, the position of a pressure group seeks to influence people who hold power. Pressure groups are a group that represents specific interests or issues to achieve goals by putting pressure on the government. In this case, pressure groups influence a policy that will be made by decision-makers, by putting pressure on the government both directly and indirectly (Grant, 1989). In this matter, which is the case on biodiesel dispute DS480 against EU, Indonesia moves as a pressure group that tries to influence the EU by threats them.

Seven, visit big brother country, the other tactics that will be used by the Indonesian government. Informant Ivan explained that Indonesia also visited a big brother country with the aim of adding support. The country visited by Indonesia is Britain, which is known to have recently escaped from the EU.

Eight, on the spot verification. This phase must be done to find out the truth in the field. At this stage, the EU accompanied by the Directorate of Trade Defense, the Republic of Indonesia in conducting an on-spot inspection of Indonesian oil palm plantations. And Ninth, regional meeting. It is the last method that will be taken by Indonesia if on the spot verification is unsuccessful. Indonesia through the regional meeting invited all ASEAN member countries to attend the meeting to get a support in order to balancing the EU.

Then, the author emphasizes that tactics are only the means used to carry out strategies. The above tactics categorized into a) first, *National Coordination* including gathers the stakeholders, coordination meeting, sending submissions and pressure groups, b) second, *International Trade Law* through hearing and on the spot verification and c) last, *International Geopolitical Cooperation* including visit big brothers country, held the bilateral & regional meeting.

## **Conclusion**

The case of Indonesia's biodiesel dispute (DS480) began with the determination of dumping on Indonesian biodiesel products in the early of 2013 by the EU authority. This problem then continued with implementing the anti-dumping policy on biodiesel product namely the imposition of anti-dumping duties (ADDs) on November 19, 2013, by 8.8% - 23.3 %. Because of that policy, Indonesia feels discriminate, so on June 10, 2014, they decided to complain to the secretariat of WTO and asked for a consultation with EU refers to the two important aspects on the anti-dumping policy that inappropriate. Then, Indonesia

filed a lawsuit to the General Court of the European Union on September 15, 2016. Continued with Indonesia sued the European Union through the forum of Dispute Settlement Body WTO on March 29-30, 2017. In those opportunities, the third parties also present the meeting which is; United States, Japan, Turkey, Singapore, India, China, Canada, Argentina, Australia, Norway, Russia, Brazil, and Ukraine. That opportunity has become a vital momentum for Indonesia to do a pressure group. Then, in the Second Substantive Meeting on July 4-5, 2017 Indonesia comes with team lawyers. In order to strengthen the legal standing, Indonesia coordinates with International trade lawyers who have good capacity and experience, and communication is maintained, so that input from each stakeholder as well as legal provisions from lawyers is structured in a balanced and robust manner considering not only the basis of WTO regulatory law but also the national interests. Furthermore, on January 26, 2018, Indonesia has won the biodiesel dispute against the EU. Finally, on March 16, 2018, the anti-dumping policy on biodiesel Indonesia has been removed.

Regarding the implementation of the theoretical framework, bargaining techniques in negotiations are evident from the *pressure groups* activities carried out by Indonesia to the European Union. Namely by giving two threats; first, the EU must eliminate the imposition of anti-dumping duties (ADDs) and second, the EU must reduce profits on biodiesel products in their country. Then, the concepts of third-party interventions proven by Indonesia's strategy in looking for assistance from the alliance countries and also conducting consultations with the WTO as a third party because they can not balance the EU. From the several tactics that already mentions above, the tactics that more related to this concept is *the bilateral meeting*. It can be seen during the bilateral meeting Indonesia found Argentina as an alliance country. Argentina becomes the third party for Indonesia in this case, as an *activist*. It is because Argentina works closely with one of the parties conflicts, that is Indonesia as the weak parties. In here, the WTO acts as a *mediator* in determining the dispute. As a *mediator*, WTO has an effort as a third party in order to help Indonesia in resolving the biodiesel dispute (DS480) against the EU. The effort was carried out by mediating between the two parties to the dispute, by considering all regulations according to the rules of the WTO.

Meanwhile, for the strategy of Indonesia's government in facing the biodiesel dispute (DS480) against the EU, the things that carried out by the Indonesian government are through: First, *National Coordination* including gathers stakeholders, coordination meeting, sending submissions and pressure groups. Second, *International Trade Law* through hearing

and on the spot verification and Third, *International Geopolitical Cooperation* including visit big brothers country, held the bilateral & regional meeting.

Then, the actor from Indonesia that has an essential role behind the dispute against the EU is the Directorate of Trade Defense. In order to face the biodiesel dispute DS480 against EU, the delegation of Indonesian governed by the Directorate of Trade Defense, Ministry of the Trade Republic of Indonesia. The Directorate of Trade Defense acts as the “head of leader” who handles the problem. The Directorate of Trade Defense has the highest position in resolving the biodiesel dispute, as well as the actor in full responsibility. In the other side, the Directorate of Multilateral Negotiations acts as a liaison between the Directorate of Trade Defense and the European Commission. Directorate of Multilateral Negotiations has to register the case, contact the European Union, prepare the panel, prepare participants and determine the meeting time. So in resolving the biodiesel dispute (DS480), the Directorate of Trade Defense become the first actor that has an essential role in handling the case. Meanwhile, the Directorate of Multilateral Negotiations only acts as a liaison between the Directorate of Trade Defense and the European Commission, then the World Trade Organization (WTO) acts as its mediator.

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