

# CHAPTER I

## INTRODUCTION

### A. Background of Issue

In the scope of international trade, the dynamics of free trade often trigger conflicts between developed countries and developing countries which ultimately damage developing countries. Furthermore, in the free trade activities, trade barriers becomes one of problem, the tendency to increase the application of *Trade Remedies* and *Non-Tariff Barriers* instruments has an impact on export value which in turn causes the imposition of import duty sanctions. Trade remedies are instruments that can be used legally and are regulated by the *World Trade Organization* (WTO) regulations to protect domestic industries from serious losses due to unfair trade practices or a surge in imports. The instruments of Trade Remedies are exactly divided into three types of instruments in which: anti-dumping policy, anti-subsidies and safeguard. While Non-Tariff Barriers is a non-tariff rule that is able to inhibit the entry of foreign products into the domestic market. These obstacles are in the form of technical requirements that must be fulfilled by a product before entering the export destination market (Schmelzer, 2007).

Regarding the export performance, palm oil is one of the most consumed and produced market products in the world. It is because this cheap, easily produced and very stable oil to used which are for a variety of foods, cosmetics, cleaning products and many more. Palm oil also can be used as a source of biofuel or biodiesel. Palm oil is a tree plant that originates from the African continent. Palm oil is widely cultivated in tropical regions such as Asia, Africa, and South America because oil palm trees require warm temperatures, sunlight, and high rainfall to maximize production. Palm oil can grow to reach 24 meters — many benefits obtained from oil palm plants in each part. The meat and skin from palm oil contain useful oil for cooking oil, soap, and wax. Moreover,

the shell of palm oil can be used as fuel and charcoal (Ministry of Agriculture, 2016).

As an agricultural country, Indonesia's agriculture and plantation sector is one sector that can support the development and economy of the country. Indonesia is a country with the largest exporter of palm oil products in the world, which is 25.75 million tons and Malaysia in second place with 18 million tons. One of the results of oil palm plants that Indonesia produces is CPO (*Crude Palm Oil*). CPO is the first palm oil derivative product that functions as an alternative biodiesel fuel. CPO has excellent prospects for world vegetable oil trade. That is why the Indonesian government is trying to develop palm oil plantations. The development of palm oil areas is mainly carried out in Kalimantan, Sumatra, Sulawesi, and Papua. CPO is classified as a vegetable oil commodity, which is one of the main non-oil and gas commodities that are exported abroad. In the past 30 years, the trend of world markets began to shift to palm oil. It has resulted in a ten-fold increase in palm oil consumption. Palm oil has the advantage of being able to attract the world's consumers. These advantages include being more durable stored, resistant to pressure and high temperatures, not smelly quickly, and having a relatively high nutrient content. Besides, palm oil is beneficial for raw materials in the food and non-food industries (Ministry of Agriculture, 2016).

According to the topic of this undergraduate thesis, the relationship between Indonesia and the European Union has begun since the 1980s, covering the fields of trade, economy, and development. During the implementation of the relations between the two countries, the European Union is the third largest trade partner country which is quite essential and stable for Indonesia and is the first destination country for Indonesia's non-oil and gas exports. Indonesia's primary export commodities to the European Union include footwear, electronics, cocoa, rubber and rubber products, wood and wood products, palm oil, automotive components, coffee, textiles and textile products, and shrimp. Regarding the total

Indonesian CPO exports to the European Union, 90% of them are used as raw materials for food, shampoo, detergent, and the remaining 10% for biodiesel. The European Union is one of the areas of a country consume vegetable oil, both for food and non-food needs. One of the vegetable oils consumed by the European Union is palm oil. There, palm oil is widely used for industrial purposes. Besides, the EU also uses palm oil as a biofuel, replacing fossil fuels. The European Union is one of the regions that are starting to work to reduce their dependence on the use of fossil fuels. It has increased the EU's need for vegetable oil.

Furthermore, it decided the European Union to imported CPO (*Crude Palm Oil*) more from other countries, particularly Indonesia (Nurhayati & Antoni, 2012). The type of *Crude Palm Oil* that EU import from Indonesia is CPO based-biodiesel. That is a product that has code 382600, which is a product label contains biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum.

Nowadays, there are several negative issues about palm oil are began to develop in Indonesia. The first is the issues of deforestation on CPO cultivation and second is the allegations of dumping on Indonesian biodiesel. The European Union accused of various reasons and on the first accusation, related to the issues of deforestation on CPO cultivation. The European Union assumes that biodiesel produced by Indonesia has not met the CPO production standards set by the European Union. There are two standards set by the European Union; those standards include CAP (*Common Agricultural Policy*) and RED (*Renewable Energy Directive*). The *Common Agricultural Policy* (CAP) is one form of the European Union's encouragement of farmers in their region to grow energy-producing crops.

Under the CAP scheme, there is a rural development policy and cohesion policy. The policy is designed to promote the development of bioenergy production, including farmer training and investment, as well as support for the processing of energy-producing plants. In addition to establishing

Common Agricultural Policy, the European Union also sets product standards, which is named as *Renewable Energy Directive* (RED). The purpose of the RED policy is to address climate change and increase the use of renewable energy. Under the policy, products that will enter the EU market must be environmentally friendly products. Indonesian biodiesel is claimed to be not environmentally friendly because its production causes deforestation. This problem then caused the European Union to limit its biodiesel imports from Indonesia in 2011. The establishment of the RED policy is because of the efforts of European Union countries to start producing biofuels domestically, as an effort to overcome environmental problems (Stattman, Gupta, & Partzsch, 2018). The two EU policy packages are policies that are used by the European Union to develop and protect its domestic industry, especially the biofuel industry. These policies are affecting EU export-import activities. Therefore, each biofuel or biodiesel product or other product that contains palm oil that will enter the European Union should be suspended on these policies.

Then, refers to the second accusation which is the allegation of dumping on Indonesian biodiesel products. The European Union considers Indonesia to be practicing dumping by selling biodiesel products on international markets with lower prices than the prices of biodiesel in their country. The European Union assumes that these trade activities will significantly kill the local CPO industry market in the EU. Therefore, the European Union decided to implement the instrument of *Trade Remedies* namely the anti-dumping policy in 2013 and reject the Indonesian biodiesel exports to enter the European Union market (A.Vermulst, 2010). The anti-dumping policy is a counter-sanction given by the European Union in the form of anti-dumping duties (ADDs) imposed on biodiesel product export Indonesia. Indonesia is given anti-dumping duties (ADDs) which is 8.8% - 23.3 % in the early of 2013. It is very crucial because it reduces Indonesia's exports to the EU from 72% between 2013 and 2017, with the US \$

415,842 million in 2013 became the US \$ 116,737 million in 2017.

The Indonesian government indicated that the EU policy is discriminatory and not based on the facts. It is just an effort of EU protection to protect their domestic economy, by prioritizing the local palm oil industry in the European region to keep that local industry more developing. Furthermore, it focuses on the problem of biodiesel dispute (DS480), the author is interested in analyzing the strategy of the Indonesian government in facing the anti-dumping policy.

## **B. Research Question**

Based on the background of the problem that described above, the problems in writing this thesis can be formulated in a question as follows:

*“How does Indonesian strategy in facing the anti-dumping policy on biodiesel dispute (DS480) against EU?”*

## **C. Theoretical Framework**

To explain the background of the problem and then answer the subject matter, in this theoretical framework the author uses the relevant theory.

### **1. Concept of Alliance**

According to Stephen M. Walt, alliance theory is one way to increase strength by cooperating with other actors. This is usually done when a country is faced with a threat from another country, the greater the threat it faces, the greater the likelihood of a weak country forming an alliance. The theory of alliance has two concepts of alliance, namely *balancing* and *bandwagoning* (M. Walt, 1985).

*Bandwagoning* is the attitude of the country by approaching the source of the threat. This strategy is taken by a weak country. Weak countries in approaching or befriending more powerful opposing countries and those who are considered stronger are free to profit by what they want. Then, *balancing* is allied with other countries to deal with external threats. Some countries will unite when there are strong

opponents who want to control the territory. This attitude was taken because he was aware that the strength of a single country was not strong enough to defeat the opposing country so that the country cooperated with other countries to solve a problem with other countries. The stronger the opponent's country, the stronger the alliance formed by the relevant state to defeat the opposing country. According to Walt, how much the tendency of a country to form an alliance is influenced by four things: aggregate power, geographical proximity, military capability, and level of aggressiveness. The higher or greater the level of the four things, the higher a country will form an alliance to fight it.

Regarding the discussion, the author uses the concept of balancing alliance to analyze the specific strategy of Indonesia to cooperate in order to get support. It is proven by the existing relations between Indonesia with the alliance country such as Argentina, another alliance country like Britain as a big brother country of Indonesia or even though the other country in ASEAN region namely Malaysia that has the same problem on biodiesel dispute. The aims of this balancing concept of the alliance are to aggregate power in order to face the dispute more prepared.

## **2. Bargaining Techniques in Negotiations**

Scholars of the Machiavellian art have treated international negotiation for centuries, which since Francois de Calieres in 1716 and Fortune Barthelemy de Felice in 1778. However, it has only been since about 1960 that the systematic study of negotiations has begun to push the analysis of this fundamental process in international relations beyond a set of case studies that diplomacy is no more than an art form. Negotiation assumed as an art to be mastered only by experienced diplomats who develop a subjective understanding of the process (A. Crocker, Osler Hampson, & Aall, 2007).

The term of diplomacy means as an affair or organization of official relations between one country and

another. Diplomacy can be understood as a skill in using the right choice of words for the benefit of the parties concerned, both in terms of negotiations, answering questions, expressing opinions and many more. Besides, in practice, diplomacy is closely related to negotiations. These two activities cannot be separated in practice. It is because both are related to each other. The proof can be seen when practicing diplomacy, and people also need to negotiate at the same time to fight for their interests. So it can be concluded that diplomacy and negotiation are two different components but remain in the same frequency (Korobkin, 2002).

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).

According to the book of *The Challenges of Managing International Conflict* by Chester A. Crocker, the critical aspects of the negotiation process were characterized by *bargaining* process, which are: 1) Each party to the other makes initial offers; 2) Commitments are made to certain positions in an effort to hold firm; 3) Promises of rewards and threats of sanctions are issued to induce other parties to make concessions; 4) Concessions are made as one party moves closer to the other; 5) Retractions of previous offers and concessions are issued as parties draw apart; and, 6) Finally, if the dynamics of concessions making overcome the pressures

to diverge, the parties tend to converge upon agreement somewhere between their opening offers (A. Crocker, Osler Hampson, & Aall, 2007).

Regarding the discussion above, a negotiation with the bargaining technique was declared successful if it had fulfilled several key aspects above. One of the most critical aspects of it 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. If someone gives a concession to another party and wants to get a reward, somebody can use the word "If." An example is "If you agree with our request, we will consider your request."

Furthermore, it can be concluded that if 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.

The bargaining paradigm became the dominant approach to the topic of international negotiations in the 1960s and 1970s. It especially tended to become linked with realist interpretations of international politics more broadly, since realism emphasizes the inherently competitive nature of relations among sovereign nation-states in an anarchic international system. In this system, states are always confronted with a security dilemma: threats from other states require that they take defensive positions, which may in turn appeal 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. Generally, these interests are assumed to be fixed and unitary, and the diplomat's task is to try to maximize those national interests through negotiation (A. Crocker, Osler Hampson, & Aall, 2007).



Meanwhile, there are four models negotiation theory according to the book of Sherwyn P. Morreale, namely: game theory, distributive negotiations, integrative negotiations, and principled negotiations.

*Game theory* was first formulated in the 1940s which was rooted in an economic model that presents a mathematical system to model conflict and predict conflict behavior. Also, game theory also emphasizes the way individuals make decisions in communication situations such as negotiations. Game theory analyzes rationally about conflicts between players whom each pursue interests and choose between various alternative actions. Players form or develop strategies to maximize results and minimize losses. In game theory, players reason consistently. Therefore, a player will try to maximize what he wants to achieve.

*Distributive Negotiation* is described as a negotiation between two parties where each party has competing fixed values. Each party will compete to get more profits. Every advantage for one party is a loss for the other party. So, if an agreement is reached, there are parties who benefit and there are parties who are harmed or sacrificed (Spangler, 2003). The term or win-lose can also be used to describe this type of negotiation. Zero-sum is a competitive negotiation strategy used to decide how the case can be resolved (A. Lax & K. Sebenius, 1987). In this type of negotiation, the reputation or relationship of the parties involved in negotiations does not have a significant influence on the course of the negotiations because each party will try to get the maximum value possible (Shonk, 2018).

*Integrative Negotiation* model was introduced as a negotiating study. In integrative bargaining, it is often interpreted as a win-win phrase that refers to joint problem solving compared to the competition. Communication theorists use integrative negotiation models and distributive negotiations to develop theories of collective bargaining, mediation, and interpersonal conflict. Conceptually, the two models are distinguished between strategy and tactics. The

strategy is planning action while tactics are individual messages that support the strategy.

Then, *Principled Negotiation* position bargaining orientates in individual actions to achieve desired goals. However, principled negotiation is oriented to the negotiation process which creates a fifty-fifty result (Morreale, Spitzberg, & Barge, 2006).

Furthermore, the most appropriate negotiation models to use is *Distributive Negotiation*. The example of distributive negotiation can be seen when Indonesia disputes with the European Union, refer 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. Related to the concept of distributive 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.

### **3. 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.

#### **D. Hypothesis**

Based on the correlation of background and the theoretical framework that has been explained above, in order to handle the dispute, which is the anti-dumping policy of EU, the author came up with the hypothesis.

The Indonesian strategy in facing the anti-dumping policy on biodiesel dispute (DS480) against the EU is going through some ways:

Indonesia negotiated by increasing bargaining techniques, threatening tactics and utilizing third parties.

1. Indonesia cooperates with the alliance country, namely Argentina.
2. Indonesia uses threat techniques by doing pressure method to the European Union.
3. Indonesia conducts consultations with the WTO regarding inappropriate implemented of anti-dumping duties (ADDs) by the EU.

#### **E. Research Purpose**

The purpose of this research is to identify and understand the strategy government of Indonesia in facing the anti-dumping policy on biodiesel dispute (DS480) against the EU. The other important purpose of research purposed is to implement the knowledge which has already been obtained from the process of studying in the International Relations program by analyzing theory with the real phenomenon in the hope that it will give a positive contribution especially for the students of International Relations. This undergraduate thesis is required to achieve an undergraduate degree in International Relations program, Faculty of Social and Political Science, Universitas Muhammadiyah Yogyakarta.

#### **F. 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.

**G. Scope of Research**

To limit the focus of the discussion in this study, the authors analyzed Indonesia's strategy in facing the anti-dumping policy on biodiesel dispute DS480 against the EU from 2013 to 2018. The author focused on the time limit from 2013 to 2018 because in that year Indonesia and the EU are disputing regarding the biodiesel product. The government of the EU implementing the anti-dumping policy to Indonesia's biodiesel product. That policy then influences the Indonesian biodiesel exports becomes decline.

## **H. Thesis Outline**

This thesis consists of 5 chapters, and an explanation of each chapter will be described in detail in the sub-chapters. This case is described in detail in chapter I as a case of trying to write a coherent and systematic paper. The research outline is as follows:

### **CHAPTER I**

This chapter will describe the background of the problem, research questions, theoretical framework, hypothesis, research objectives, research methodology, the scope of research and writing system.

### **CHAPTER II**

This chapter will explain the dynamic of Indonesia's CPO industry particularly the development of Indonesian palm oil production and exports.

### **CHAPTER III**

This chapter will explain the dumping allegation and the beginning of implemented anti-dumping policy, namely the *anti-dumping duties* (ADDs) on biodiesel Indonesia.

### **CHAPTER IV**

This chapter will explain the EU-Indonesia biodiesel dispute process and analyze about Indonesia's strategy in facing the anti-dumping policy on biodiesel dispute (DS480) against the EU.

### **CHAPTER V**

This chapter will contain the conclusions of all the explanations that have been presented in the previous chapters.