

CHAPTER III

DUMPING ALLEGATION AND THE IMPLEMENTATION OF ANTI-DUMPING POLICY IN INDONESIA

In chapter 3, the author would like to explain about allegations of dumping on biodiesel product and the beginning of the implementation of an anti-dumping policy on biodiesel export products. In this chapter, the author will be explaining more detail by describing essential points such as the beginning of the emergence of allegations of biodiesel dumping in Indonesia, especially in the dispute of Indonesia-EU DS480 biodiesel exports. Continued by explaining how the anti-dumping policy provides by the EU on Indonesian biodiesel can be implemented. Then the last point that will be explained by the author is about the impact of anti-dumping policy on Indonesian biodiesel product. On this impact, the author will elaborate more the decreasing of Indonesian biodiesel import demand that refers to the case of Indonesia's biodiesel dispute with the EU.

A. The Emergence of Biodiesel Dumping Allegations in Indonesia

International trade is one part of the economic activity which has recently experienced very rapid development. The attention of the business world to international business activities is also increasing; this can be seen from the growing flow of circulation of goods and services between countries. International business activities can occur through export-import relations, investment, trade services, as well as licenses and franchises. Like other countries, Indonesia also has an essential role in the international trade circle. Especially after Indonesia entered as one of the members of the *World Trade Organization* (WTO) in 1995. Indonesia entered as a member of world trade through ratification of Law No.7 of 1984 concerning Ratification of the Agreement on Establishing The

World Trade Organization. The entry of Indonesia as a member of the WTO has consequences both external and internal. In the external consequences, Indonesia must fulfill all the results of the agreement in the WTO forum, while the internal consequence is that Indonesia must harmonize national legislation following the results of the WTO agreement. Indonesia's participation in free trade then encouraged domestic industries to compete, both domestically and in the international (export) market.

Indonesia is one of the developing countries with an increasingly advanced economy and began to attract the attention of countries in the world, especially Europe. The relationship between the Indonesian Union and the European Union has been established for so long since 1980 with its primary focus being on the economy. Because the abundant potential of Indonesia's natural resources makes the European Union interested in becoming a market destination for agricultural products from Indonesia. At present, one of the export products that the European Union sees from Indonesia is biodiesel products. This derivative oil product from CPO has been oriented to the export market, especially the European export market. Without a doubt, the longer the export demand for Indonesia's biodiesel products is higher in the European Union. It is because of the high demand for fuel transportation and electricity generation in the European Union. As for the EU confirms duties on Argentine imports, so far, the European Union has used a mixture of biofuel in its transport sector since ten years ago, whose raw materials taken from rapeseed oil. That is why palm oil biodiesel is more in demand in the European Union because the price is more competitive than other vegetable oil biodiesel. Moreover, recently the European Union is implementing the development of environmentally friendly vegetable oil-based biofuels (Bridges, 2013).

Nowadays, despite the European Union being interested in order to import the CPO-based biodiesel from Indonesia, there is still a problem regarding the biodiesel

product. One of the most problematic sectors of dumping. Dumping is a trading practice carried out by exporters by selling commodities on the international market at prices less than the fair value or lower than the price of the goods in their own country, or from selling prices to other countries in general. In the notes of the Ministry of Trade of the Republic of Indonesia, the following are some cases of alleged dumping aimed at Indonesia, including DS312: Korea - Certain Paper (Anti-dumping), DS406: US - Clove Cigarette (NT, TBT, SS), DS467: Australia - Plain Packaging (TBT, TRIPs), DS442: EU - Fatty Alcohol (Anti-dumping), DS480: EU - Biodiesel (Anti-dumping, Anti-subsidies), DS491: US - Coated Paper (Anti-dumping, Anti-subsidies) and DS529: Australia – Anti-dumping Measures on A4 Copy Paper (Ministry of Trade, 2018). In this research, the author would like to examine more about Indonesia as a complainant in the problem of biodiesel dispute (DS480) Indonesia-EU.

This case began in the early of 2013 when the European Biodiesel Board (EBB), a European biodiesel entrepreneur organization petitioned the EU Commissioner of Trade on imports of biodiesel products (DS480) Indonesia which was accused of dumping practices and harming the domestic industry of EU biodiesel. As a result, it can be ascertained that the relationship between Indonesia and Europe will worsen because the European Union is the leading destination for Indonesia's biodiesel exports. Since then, the turmoil for industries in the European Union has also become increasingly frequent, allegations of dumping biodiesel products have resulted in Indonesia's biodiesel export performance getting worse, resulting in declining state revenues. Also, the incident will also kill the biodiesel entrepreneur itself, because biodiesel entrepreneurs are very dependent on the export market (Riananda, 2018).

In the world of international trade, the practice of dumping is a problem which is fraud. Indonesia is one of the countries that often get allegations of dumping from importing countries. The practice of dumping considered unfair because

it can damage the market and harm competing producers in the importing country. The increasing number of imported products at prices that are far cheaper than the prices of domestic goods will eventually turn off the domestic market, while at the same time causing market bankruptcy in a country. The European Union is currently feeling this. The EU considers that actions due to the dumping of Indonesia's biodiesel products have an impact on the death of the biodiesel industry sector in their country. This dumping action then triggered the birth of an act of resistance from the European Union called the "Anti-dumping" policy.

B. Implementation of Anti-Dumping Policy on Biodiesel Indonesia

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. Based on data from the Ministry of the Trade Republic of Indonesia, since 1995-2016 the number of applications of Trade Remedies instruments faced by Indonesia were 300 cases and Non-Tariff Barriers as many as 128 cases. Trade remedies are instruments that can be used legally and are regulated by the *World Trade Organization* (WTO) regulations to protect domestic industries from severe losses due to unfair trade practices or a surge in imports. While Non-Tariff Barriers is a non-tariff rule that can 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.

In the case of biodiesel exports to the European Union, the trade barriers faced by Indonesia are about the application of instruments of Trade Remedies. The instruments of Trade are exactly divided into three types of instruments: (1) anti-dumping policy, (2) anti-subsidies and (3) safeguard. The anti-dumping policy is a counter sanction in

the form of additional import duties imposed on a product sold below the average price of the same product in the exporting and importing countries. This anti-dumping policy is commonly known as Anti-dumping duties (ADDs). The anti-dumping policy stated in Article VI of the GATT and the Anti-Dumping Agreement.

Meanwhile, the anti-subsidy policy is the role and interference from the government in supporting export activities. This anti-subsidies policy stated in Article IX of the GATT. Meanwhile, Safeguard policy is an act of saving trade. It is usually done if a domestic industry faces difficulties due to the flood of imported products. This policy is a list in the XIX GATT Article. Therefore, in this case, the research, the instrument of Trade Remedies will be more is the anti-dumping policy.

WTO is a trade organization that has a role in eliminating barriers among fellow WTO members. In order to reduce barrier among fellow members, the WTO prepares basic principles. Basic principles of WTO are divided into four principles each consist of (a) Most Favored Nation (MFN), which is a discrimination between imports of origin or destination, (b) National treatment that prohibits discrimination between imported and locally produced products, (c) Binding of the principle of adherence to the bound rates in the schedules of tariff concessions and last (d) Quantitative rules for prohibiting the introduction of quantitative restrictions. The WTO's task indeed seems very noble, but on the other hand, there is still a mechanism that is allowed by the WTO to protect the export products of a country. These activities can be carried out through the Trade Remedies instrument as mentioned previously, one of which is through the anti-dumping policy (Australian Government, 2017).

The anti-dumping policy is contained in Article VI of GATT and the Anti-Dumping Agreement. The provisions of Article VI of the GATT require WTO member countries to implement the GATT anti-dumping provisions in their

respective national laws. This provision in Article VI of the GATT is only an outline of regulations concerning anti-dumping. Therefore, in order to implement the interpretation of article VI of the GATT, anti-dumping code (1979) was agreed upon in the Tokyo Round. This anti-dumping code (1979) was agreed and bound by 22 countries and became effective from 1 January 1980. Later in the second round, Anti-dumping code (1979) was replaced by anti-dumping code (1994) which produced in the Uruguay Round negotiations. In this case, the WTO acts as an institution to advance world free trade among its member countries following the Multilateral Trade Agreement which is an integral part of the WTO Agreement Establishing. Indonesia has ratified the WTO Agreement Establishing in Law No.7 of 1994 concerning Trade Chapter IX article 67-72 which mandates the function of trade protection and security policies to the Indonesian Ministry of Trade. That Law No.7 of 1994 later became the legal basis and institutional of Trade Remedy. The institutions include: (a) the Directorate of Trade Safeguards & Rovodag, namely the institution that regulates security of foreign market access, (b) the Indonesian Anti-Dumping Committee, the institution that regulates the security of the domestic market and (c) the last is the Indonesian Trade Safeguard Committee namely institutions that tasked with securing the domestic market (Pradnyawati, 2019).

Nowadays, the most prominent problem between Indonesia and the European Union is the issue of Anti-dumping duties (ADDs) imposed by the EU on Indonesia's biodiesel export products. The primary cause why the anti-dumping policies can emerge in Indonesia is because of the growing pressure of trade liberalization such as protectionism and global trade competition. As we can see, 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. Protectionist practices are permitted by the WTO as long as they are through the right mechanism, following the Article VI GATT agreement established by the WTO. In the Anti-Dumping agreement that has been set, the WTO allows member countries to take action against imports from countries suspected of exporting at dumping prices. WTO member countries can impose anti-dumping measures if, after an investigation in accordance with the agreement, it is determined: (1) that dumping occurs, (2) that domestic industries were producing similar products in the importing country suffer material losses, and (3) that there is a causal relationship between the two. In addition to these substantive rules, this agreement also stipulates detailed procedural rules for initiation and conducting investigations, imposing actions, and duration as well as reviewing actions. At least, the member can impose anti-dumping duty on imports after fulfilling the requisite substantive and procedural requirements (Australian Government, 2017).

In the case of Indonesia's biodiesel, the initial stages began on 27 May 2013 with the imposition of Temporary Anti-Dumping Duties (TADDs) on Indonesian biodiesel products. Indonesian biodiesel products are subject to TADDs of 2.8% - 9.6%. Then the second stage, in this case, continues with a more severe stage, namely after going through a series of investigations, the EU authorities also set Anti-dumping duties (ADDs) on biodiesel imports from Indonesia with a dumping margin of 8.8% - 23.3%. The 5 Indonesian biodiesel producers and exporters that must comply with the ADDs include PT Musim Mas, PT Pelita Agung Agrindustri (Permata Hijau Group), PT Wilmar Nabati Indonesia, PT Wilmar Bioenergi Indonesia (Wilmar Group), and PT Ciliandra. With this amount of margin, the EU considers that the imposition of Anti-dumping duties has become a final decision, so that on November 26, 2013, the European

Commission officially publishing the Council Implementing Regulation Number 1194/2013. Then, since 2013-2016 Indonesia's biodiesel exports to the European Union were declared to be declining. The Indonesian government and other biodiesel industry players said they were disappointed with the decision on the Anti-dumping duties (ADDs) given by the European Union. Indonesia also believes that the actions taken by the European Union are discriminatory. The imposition of ADDs by the European Commission is not fundamental and seems forced to protect the domestic industry. EU biodiesel products with rapeseed raw materials are far more expensive, inefficient and require unique storage so that oil is not easily frozen. When compared with biodiesel from Indonesia which made from palm oil, this is undoubtedly very contradictory. Palm oil has a comparative advantage compared to other biofuels because the productivity of oil palm is higher than others. In addition, Indonesia believes that this is because the EU made a method change in calculating cost of production in determining reasonable value, where the European Commission reconstructed the price of raw materials so that it was not in accordance with what Indonesian producers had said when investigating on the spot verification (Ministry of Trade, 2013).

C. Impact of Anti-Dumping Policy for Indonesia

The injustice in the sector of international trade continues to run and decided to the result in losses and disrupting the development of industry in a country. In the case of Indonesian and European Union biodiesel exports, the injustice also occurred due to the impact of the imposition of Anti-dumping duties (ADDs) applied by the European Union in 2013. Indonesia's biodiesel export commodities are known to experience significant obstacles from 2013 to 2017. In the case of biodiesel exports, Indonesia as a country complainant, that means Indonesia is a defendant country in the case of exports suffered losses. The impact caused by the imposition

of EU Anti-dumping duties (ADDs) on Indonesia's biodiesel products is the decline in demand for imported biodiesel.

The case of the anti-dumping policy that afflicts nowadays Indonesia, the Anti-dumping duties (ADDs) implemented by the European Union since November 19, 2013, has caused obstacles in Indonesia's biodiesel marketing. At first, the European Union took steps to ban every country in the region from importing biodiesel from Indonesia. The EU did it because they assumed that Indonesia was practicing dumping on the biodiesel product. That is mean Indonesia sells biodiesel products on the EU market at prices that are far cheaper than domestic prices, which is why biodiesel producers in the EU suffer losses. The few industries that experienced material losses in the EU were Verbio AG (VBK) from Germany, Diester Industrie SAS from France and Novaol Srl from Italy.

Meanwhile, the European Union considers that biodiesel from Indonesia still has interference from the government. The EU believes that the intervention is related to the subsidies provided by the President of Indonesia in the form of the National Independent Community Empowerment Program. On the other hand, the problem of deforestation, the slaughter of forest people, child labor and the planting of oil palm in protected forests has caused the EU to strengthen its argument if biodiesel from Indonesia is not good enough. These concrete problems then make the EU increasingly convinced to stop the import of biodiesel from Indonesia, because biodiesel from Indonesia does not meet the standard of biodiesel production from the EU. The standards for biodiesel production have been set by the EU such as the Common Agricultural Policy (CAP) and the Renewable Energy Directive (RED). That two kind of standards production has their purpose, which is first (1) Common Agricultural Policy is designed to promote the development of bioenergy production, the second (2) Renewable Energy Directive has a purpose of addressing climate change and increasing the use of renewable energy. Therefore, due to the

imposition of anti-dumping import duties, Indonesia's biodiesel exports are not only for that, but the EU biodiesel imports demand from Indonesia also declined. In the other side, it is feared that the other Indonesian cooperation partners will do the same. Due to the influence of the EU, other countries consumers will be pessimistic and negatively assess Indonesian biodiesel products. The influence of other countries not to import biodiesel from Indonesia then made the number of Indonesia's biodiesel exports to the more decreasing world. The data below will show more about the condition of Indonesia's biodiesel exports to the world, the EU biodiesel imports demand from Indonesia and also data about Indonesia's biodiesel export to the EU.

Table 3. 1 Indonesia's Biodiesel Exports to World year 2013 - 2017

*In US dollars

Product code	Product label	Indonesia's exports to world				
		Value in 2013	Value in 2014	Value in 2015	Value in 2016	Value in 2017
382600	Biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum . . .	1,406,997	1,141,338	195,163	287,247	123,275

Source : International Trade Centre. (2012). *Trade Map: Indonesia's Biodiesel Exports to World and EU*. Retrieved December 30, 2018, from Trade Map:

https://trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c42%7c360%7c%7c3826%7c%7c6%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1

According to the data obtained from www.trademap.org, the condition of Indonesia's biodiesel exports to the world since 2013-2017 has decreased

significantly. The value of Indonesia's biodiesel exports to the world in 2013 is the US \$ 1,406,997. On the next year which is in 2014, the amount becomes the US \$ 1,141,338. Then the value became more decrease into the US \$ 195,163 in 2015, continued in 2016 with value US \$ 287,247 which is higher from the year 2015, and in the year 2017, and the value became decrease again into the US \$ 123,275. The decreasing amount of Indonesia's export to the world in the year 2013 to 2014 is 19%. Continued in the year 2014 to 2015 decreased more drastic which amount 83%. Then, in 2016 increase became 47% and in the year of 2017 decreasing back with the amount of 57%. So, it can be concluded that the decreasing of Indonesia's biodiesel exports to the world since 2013-2017 is 91% (International Trade Centre, 2012) . Furthermore, for the value of EU biodiesel imports demand the author already get the data also from *www.trademap.org*. For more details, the author will describe it with the data below.

Table 3. 2 EU Biodiesel Imports Demand from Indonesia year 2013 - 2017

*In US dollars

Product code	Product label	European Union (EU) imports from Indonesia				
		Value in 2013	Value in 2014	Value in 2015	Value in 2016	Value in 2017
382600	Biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum . . .	401,251	10,432	14,988	27,860	26,813

Source : International Trade Centre. (2012). *Trade Map: European Union Biodiesel Imports from Indonesia*. Retrieved December 30, 2018, from Trade Map:

https://trademap.org/Bilateral_TS.aspx?nvpm=1%7c360%7c%7c%7c42%7c3826%7c%7c%7c6%7c1%7c1%7c2%7c2%7c1%7c1%7c1%7c1%7c1

Regarding the data above, it can be seen that the EU biodiesel imports demand from Indonesia year 2013-2017 has decreased. In 2013, the value of EU import demand was US\$ 401,251. Then, in 2014 the value decreasing became the US \$ 10,432. In 2015, the EU import from Indonesia a bit higher than the previous year which is the US \$ 14,988. Continued in 2016, the value increasing became US \$ 27,860 and in 2017 decrease into US \$ 26,813. The decreasing amount of EU biodiesel imports demand from Indonesia in the year 2013 to 2014 is 74%. Continued in the year 2015 a bit increase rather than the previous year which amounts 44%. Then, in 2016 the increase became 86% and in the year of 2017 decreased again to 4% (International Trade Centre, 2012).

Also, there is another critical data that relate to the biodiesel dispute between Indonesia-EU. The author will elaborate on the number of Indonesia's exports to the EU starting from the biodiesel conflict begin in 2013 until 2017 based on the data obtained from *www.trademap.org*. For the details, the author will analyze below.

Table 3. 3 Indonesia's Biodiesel Exports to European Union year 2013 - 2017

*In US dollars

Product code	Product label	Indonesia's exports to European Union				
		Value in 2013	Value in 2014	Value in 2015	Value in 2016	Value in 2017
382600	Biodiesel and mixtures thereof, not containing or containing < 70 % by weight of petroleum ...	415,842	135,320	15,925	29,838	116,737

Source : International Trade Centre. (2012). *Trade Map: Indonesia's Biodiesel Exports to World and EU*. Retrieved December 30, 2018, from Trade Map:

https://trademap.org/Bilateral_TS.aspx?nvpm=1%7c%7c42%7c360%7c%7c3826%7c%7c6%7c1%7c1%7c1%7c2%7c1%7c1%7c1%7c1

Based on the data that already mentioned above, the value of Indonesia's biodiesel export to EU in 2013 is US \$ 415,842 continued in 2014 become the US \$ 135,320, and the value has to decrease around 67%. Then, in 2015 the decrease became 88% with the US \$ 15,925. In 2016 a bit increase than the previous year with 87% which is the US \$ 29,838 and in 2017 raise drastic until 3,9 times from the previous year, the value increase 391% which is the US \$ 116,737. From the table of data that already elaborate, it can be concluded that the lowest value of Indonesia's biodiesel exports to the EU occurs in 2015, which is the only US \$ 15,925. The decreasing on Indonesia's biodiesel exports to the EU is due to a decreasing on EU demand for biodiesel imports (International Trade Centre, 2012).

In addition, the decreasing on the value of Indonesia's biodiesel exports to the world is due to the reduced demand for imported biodiesel from the EU. If it continues to be ignored, it will have a bad impact for Indonesia because it will cause Indonesia's biodiesel consumer countries in the world start moving to other countries markets which are more better and more profitable for their countries. This problem certainly must be anticipated, so that it does not continuously. The Indonesian government holds important role in order to face that anti-dumping policy. In this case, decisive action from the government is needed to combat the negative stigma on the market, if it is not immediately addressed it is very possible if the global world will continue to assess that the negative stigma about Indonesian palm oil is true. Even though palm oil is one of the main potential commodities from Indonesia's in exports sector.

Therefore, Indonesia's need for proper regulation from the government in dealing with Anti-dumping duties (ADDs). The regulation can be a strategy to combat the problem. The Indonesian government together with Indonesian associations, producers and exporters have agreed to continue to fight for the imposition of Anti-dumping duties (ADDs) can be canceled because the calculation of the normal value in

determining the dumping margin carried out by the European Commission is not in accordance with the Anti-Dumping requirement in the anti-dumping Agreement of WTO. The Anti-dumping duties (ADDs) that set by the European Union is from the range of € 76.94 or 1,249,266 IDR to € 178.85 or 2,904,693 IDR per ton, which will ultimately be prejudice the producers of Indonesia (Pradnyawati, 2019).