

ANALYSIS OF GREEN PROTECTIONISM AGAINST THE BARRIERS OF INDONESIA'S CRUDE PALM OIL (CPO) EXPORT IN THE EUROPEAN UNION

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ABSTRAK

Artikel ini membahas mengenai "green protectionism" dalam hambatan ekspor CPO Indonesia ke Uni Eropa terkait kesesuaian dengan ketentuan GATT/WTO. Penulisan ini merupakan penelitian hukum normatif yang menggunakan statuta, fakta, dan pendekatan kasus. Dalam analisisnya, akan mengeksplorasi kebijakan tentang kebijakan green protectionism dan melihat berbagai instrumen hukum, inter alia Persetujuan GATT/WTO, yang mengatur isu hukum terkait.

Kata kunci : Green Protectionism, Minyak Kelapa Sawit, Ketentuan GATT/WTO Indonesia-Uni Eropa

ABSTRACT

This article analyzed concerning Green Protectionism against the Barriers of Indonesia's Crude Palm Oil (CPO) Export in the European Union in accordance with GATT / WTO provisions. This writing is a normative legal research that used statutory, fact, and case approaches. In the analysis, it will explore the policy of green protectionism and look at various existing legal instruments, *inter alia* GATT/WTO Agreements, regulating the legal issue in concern.

Keywords : Green Protectionism, Crude Palm Oil, the Provisions of GATT/WTO

I. INTRODUCTION

1.1. Background

Indonesia is currently the largest producer and exporter of palm oil worldwide.¹ Nevertheless, crude palm oil (hereinafter referred to as CPO) exports face any barriers related to the environmental issues. Since the black campaign against Indonesian CPO in Europe has been happening, reaping the pros and cons that is related to the enactment of the Renewable Energy Directive (RED) as part of the eco-friendly biofuel policy in the European Union (hereinafter referred to as EU). However, as a fellow member of the GATT/WTO (General Agreement on Tariffs and Trade/World Trade Organization), Indonesia and the EU, are bound by the norms of free trade that have been previously agreed WTO provisions related to the market protection. There is a rising trend in the

¹Anonim, 2014, "Palm Oil", available from: <http://www.indonesia-investments.com/doing-business/commodities/palm-oil/item166>, accessed on May, 15th 2014.

international economic policy recently, namely the existence of a “Green protectionism” that, for some parties, is considered contrary to the principles of the free trade.

The role of Indonesia in accepting the trade liberalization in the Uruguay Round, held that market access opportunities be greater for all trading partners, developing countries expected that could obtain the market access for the greater exports.² In fact, Indonesia is currently affected by 734 protectionist policies which conducted by its trading partners in the global market. Meanwhile, Indonesian CPO exports to Europe sentenced to anti-dumping tariffs amounting to 178, 85 euro per ton while this tariff resulted in the drastic exports declining of Indonesian biodiesel to European Union, decreased about 66 percent.³ There is a dualism of market protection policy impersonating the environmentalism or sheer protectionism. As Indonesian CPO has been claimed to cause an environmental damage. Some non-governmental organization (NGOs) such as Greenpeace and the World Wild Fund encourages the EU to limit Indonesia’s products that as no eco-friendly. However, similar products like vegetables oil and rapeseed oil in Europe unrivalled by cheap imported products such as crude palm oil. This brings out into the European protectionism now applied to the CPO, which has made big gains in the European market against competitor’s products.

1.2. Research Objective

Based on the background above, this article aims to analyze the “green protectionism” against Indonesia CPO export to European Union related to its compatibility with the law and policy of the World Trade Organization.

II. CONTENT

2.1. Research Method

This writing is a normative legal research that uses statutory, fact, and case approaches. Any facts obtained from the findings will be analyzed based on relevant legal documents and will then be presented in qualitative descriptive analysis.⁴

² Muhammad Soon, 2011, *Hukum Perdagangan Internasional*, Rajawali Pers, Jakarta, p. 278.

³ Anonim, 2014, “*Indonesia Lawan Proteksionisme Eropa lewat Animasi*”, available from: <http://www.tempo.co/read/news/2014/05/15/117578003/Indonesia-Lawan-Proteksionisme-Eropa-lewat-Animasi>, accessed on May, 15th 2014.

⁴ As referred to Lilik Mulyadi, 2009, “*Kajian Deskriptif Analisis tentang Hakikat Ilmu Hukum*”, available from: URL: <http://halamanhukum.blogspot.com/2009/03/kajian-deskriptif-analisis-tentang.html>, accessed on Aug, 6th 2014.

2.2. Research Result

Green Protectionism in European Union

Protectionism is the effort of a country to formulate economic policy in such a way in order to protect the domestic economy from the dominance of foreign products. Accordingly, Report on Manufactures (1791), a United States Economist Alexander Hamilton argued that the State should play an active role in developing a production system in such a way not only is the accumulation of capital, but it's also addressing the various things in the system of international trade that is detrimental to the national interest.⁵

The EU has enacted regulations by environmental standards in many industries. In 2003, the EU has the Forest Law Enforcement Governance and Trade (FLEGT), these programs limit imports unless the exporters of developing countries that implement EU standards in the field of forestry. In 2008, protectionist European and NGOs driven through new regulations EU imposes extra regulations “due diligence” burden on European importers of pulp and paper products.⁶ Then, the issue of palm oil was arranged through the Renewable Energy Directive (RED) is the directive's main standards-setting. It aims to promote the use of biofuels a certain type — or, more accurately, biofuels should effectively be qualified for consumption in Europe. This is not the first standard that has been used in the EU biofuels market competition. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 mandates that 20% of all energy usage in the EU, including at least 10% of all energy in road transport fuels, be produced from renewable sources by 2020.⁷ The political legislation behind this instrument is the greenhouse gas emission saving from the use of biofuels. Therefore, NGOs urge to adopt RED in the EU, which will significantly restrict imports of biofuels through the environmental standards. Hence, through the RED, the EU set the discriminatory terms of palm oil as a biodiesel feedstock. It

⁵ Bob Sugeng Hadiwinata, 2002, *Politik Bisnis Internasional*, Kanisius, Yogyakarta, p. 57.

⁶ World Growth, 2010, “*Green Protectionism: The New Tool against Forestry in Developing Countries*”, available from: http://worldgrowth.org/site/wp-content/uploads/2012/06/WG_Green_Protectionism_Forestry_Report_6_10.pdf, accessed on May, 25th, 2014.

⁷ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

certainly gives rise to the existence of *favoritism* in the policy trend of green protectionism.

Indonesia's CPO Export barriers to EU and the Compatibility with the Provisions of the GATT/WTO

The Trade Ministry noted that several countries of Europe put the CPO to the list of “not eco-friendly products”. In fact, most countries charge an additional import duty because of CPO is considered as destructive as alcohol.⁸ There are at least three EU countries which continue to do negative campaign against Indonesia CPO products through product labels “*No oil Palm, Zero-per-cent oil Palm and Palm Oil Free*”. The European Union implemented a specific tariff on crude palm oil from Indonesia by 2013 due regard vegetable oils sold below market price. The European Commission put on tariffs an average of 18.9 percent of vegetable oils from Indonesia exported to European countries. Therefore, Indonesia hit by anti-dumping tariffs.⁹

There are three relevant sections of GATT/WTO rules to compatibility of related RED. That is article I, III and VI. RED's potentially infringing “likeness product” in the provisions of article I of GATT, as it reads as follows: “With respect to custom, party to any product originating in or destined for any other country shall be this immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.”¹⁰ In fact, the Renewable Energy Directive in principle is inconsistent with this article because it is based on a look-alike product discrimination in its characteristics. The argument given by the European Union is that some of the fuel to not be produced in acceptable ways from the standpoint of the environment related to “process and production methods” (PPM) which was adopted in the European Union. For the criterion of “like product” can be seen based on the criteria of GATT working party in 1970, then palm oil products are similar to rapeseed oil that belongs to biofuels and renewable energy. This is giving rise to the unnecessary barriers and contrary to technical barriers to trade (TBT) WTO. In Article 2.1 stated that, “... members shall ensure that in respect of technical regulations, products imported from

⁸ Yud, 2014, “*Uni Eropa bantah hambat ekspor CPO Indonesia*”, available from: <http://www.merdeka.com/uang/uni-eropa-bantah-hambat-ekspor-cpo-indonesia.html>, accessed on May, 25th, 2014.

⁹ Bambang Priyo Jatmiko, 2014, “*RI Galang Kekuatan*”, available from: <http://bisniskeuangan.kompas.com/read/2014/01/07/0833528/RI.Galang.Kekuatan>, accessed on May, 25th, 2014.

¹⁰ See Article I Section (1) General Agreement on Tariffs and Trade 1947.

the territory of any member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country...”.¹¹ TBT agreement also highlights the unnecessary barriers on article 2.2 “...the technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create...” even the environment is categorized as the legitimate objectives, it is also limited to the “more trade-restrictive” than the goals are going to achieve by the policy itself.

The imposition of anti-dumping as well as the embodiment of protectionism and contrary to GATT article VI, because based on price discrimination but at least dumping CPO in the European Union, should take a look at how could Indonesia hold dumping CPO in the European Union market, at least two things should be fulfilled condition at such: the industry or market is on imperfect competition and segmented market.¹² While in European market, this is not actually happened. Indonesia also is unable to perform his monopolistic competition because there are other vegetable oil products that dominate the market in the European Union. Nor is GATT article III requires the existence of discrimination between domestic products and similar products from abroad. It means, if CPO export to the EU then be imported products and should get the same treatment as EU treatment of vegetable oil and rapeseed oil. This is obviously incompatible to the principle of non-discrimination which includes the principle of Most Favored Nation (MFN) and National Treatment.

III. CONCLUSION

RED represents of green protectionism which is enacted in European Union. It is based on product and price discrimination and contrary to the fair trade of GATT/WTO. Because of the technical barriers to trade (TBT) agreement of the WTO arise an unnecessary standard of technical barriers. In fact, there are competition of the EU domestic products related to the biofuel products have been losing of competitiveness with Indonesia’s CPO products which are much cheaper. These phenomenon are being faced by Indonesia and global market related protectionism vs. environmentalism.

¹¹ See Article II section (2) Uruguay Round Agreement, Agreement on Technical Barriers to Trade 1994 and see also continued section (3).

¹² Paul R. Krugman and Maurice Obstfeld, 2004, *Ekonomi Internasional*, Gramedia, Jakarta, p.176.

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Legal Instruments

General Agreement on Tariffs and Trade

Uruguay Round Agreement on Technical Barriers to Trade

Renewable Energy Directive 2009/28/EC