GOVERNMENT STRATEGIES FOR PALM OIL TRADE DISPUTES AFTER THE 2021 CRUDE PALM OIL PHASE-OUT POLICY

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Abstract
The termination of the policy of using crude palm oil issued by the European Union Parliament which states that it is necessary to suppress the use of palm oil to a maximum of 7% as energy for its use aimed at transportation use by 2030 will have an impact on CPO export producers, namely Indonesia and Malaysia, which will lose their market. With the impact of this problem, it will also affect the workers who have been making a living by working as oil palm day laborers. The research method used in this research is normative juridical. The results of this study are the Government's Strategy Regarding Coconut Oil Trade Disputes After the CPO Termination Policy is First, the ban on nickel ore exports since January 1, 2020 to the European Union, trade disputes that occur between Indonesia and the European Union can be resolved through the DSB at the WTO and the steps that can be taken are to approach the disputing parties based on the needs of each party.

I. Introduction

The European Union Parliament passed a policy to stop the use of Crude Palm Oil (hereinafter "CPO"), crude palm oil, which was taken after the parliament encouraged the use of environmentally friendly energy. According to the "report on the proposal for a directive of the european parliament and of the council on the promotion of the use of energy from renewable sources", the parliament reduced the use of palm oil to a maximum of 7% as energy used for transportation until 2030. This policy threatens Indonesian and Malaysian CPO manufacturers with losing their markets in the European Union.

Indonesia's total exports of palm oil consisting of CPO, palm kernel oil (PKO) and its derivatives to the European Union during the first semester of 2017
reached 2.7 million tons, up about 42% from 1.9 million tons in 2016. According to the Central Bureau of Statistics (BPS), the export growth of the processing industry is still dominated by palm oil commodities (16.30%). Meanwhile, the growth of the mining industry was dominated by coal (43.59%). This situation is due to increasing commodity prices in the global market, which has helped boost export growth for raw material commodities. Meanwhile, Indonesia’s exports to the European Union in the palm oil industry still rely on raw material exports, so they will not provide Indonesia with the value added that other competitive countries get.

Furthermore, there are at least five reasons for the European Union Parliament to issue a ban on imports of CPO and its derivative products, namely the palm oil industry creates deforestation, degradation of animal habitats, corruption, child labor, and human rights violations. The EU Parliament considers the Indonesian palm oil industry as one of the triggers of these problems. There are two major labor confederations in the Netherlands, one of which is CNV. CNV has a foundation called CNV international that manages projects in various countries, one of which is Indonesia. CNV International is an independent foundation and as a department closely associated with the CNV Vakcentrale. CNV International would not be able to do its work without the support of a large number of parties.

Lastly, the Federation of Forestry Workers Union (hereinafter referred to as HUKATAN), Plantation and Agriculture of Indonesian Prosperous Workers Union. Indonesian workers are determined to succeed national development as the implementation of Pancasila and optimize the welfare of workers in Indonesia. October 15, 1997 united the common struggle by establishing the Federation of Forestry, Woodworking and Agriculture Workers Union of Indonesian Prosperous Workers Union abbreviated as FSB HUKATAN SBSI. Based on research conducted by SOMO (State Oil Marketing Organization), CNV Internationaal and HUKATAN there are at least three types of workers in oil palm plantations.

First, workers employed in CPO processing companies have fixed contracts and receive monthly wages. Secondly, oil palm harvesters, they are often

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5 'Who We Are - 100 % Fair Work’, CVN Internasional <https://www-cnvinternational-nl.translate.goog/ons-werk_x_tr_sl=nl&x_tr_tl=en&x_tr_hi=en&x_tr_pto=sc >.
6 'Tentang Organisasi'.
contracted for one or two years (but workers do not get a copy of the contract) and are paid based on targets achieved. Third, plantation maintenance workers, most of whom work seasonally and depend heavily on their work days. Plantation maintenance workers spray pesticides, spread fertilizer and weed the plantations. They work without a contract. Workers who work in oil palm processing companies, they receive wages according to the minimum wage. Meanwhile, palm oil harvesters are paid on a target basis (for example: a target of 1,300 kg per day). As for reaching the daily target, many harvesters bring their wives and children to help them. Meanwhile, the working conditions are very dangerous for the condition of the child workers. Even though Indonesia has ratified ILO Convention 182 on the Worst Forms of Child Labor, this situation still occurs. Awareness of OSH is still low. The quality of personal protective equipment is still below standard, for example the safety shoes given to workers were damaged within two months but no replacement was given from the company.

Meanwhile, the production, processing and trade of palm oil products in Indonesia by domestic and foreign companies cause tremendous environmental, social, human rights and labor problems. This is contrary to existing policies in Indonesia, which until now has not been able to fulfill the rights and obligations according to the standards of the policy of stopping the manufacture of palm oil by the European Union Parliament. This right will certainly have an impact on CPO production in Indonesia and have an impact on workers.

In an inclusive dialog outside of trade negotiations, involving all stakeholders, Indonesia and the EU should pursue an ambitious roadmap to address the issues surrounding palm oil in a democratic, transparent and holistic manner. Including palm oil access regulations in CEPA will result in increased trade in palm oil products, based on weak voluntary certification schemes such as RSPO and ISPO that lack implementation and enforcement mechanisms and have proven to fail to protect the interests of local communities, workers, smallholders and the environment.

Based on the above problems, the researcher formulates the problem, namely: How is the Government's strategy regarding coconut oil trade disputes after the CPO phase-out policy?

2. Research Method

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8 ‘CPO Indonesia Ditolak Uni Eropa, Kenapa?’
10 ‘CPO Indonesia Ditolak Uni Eropa, Kenapa?’
The author in conducting this research uses a normative juridical method approach. Research with a normative juridical approach examines data derived or sourced from legal norms found in society and contained in laws and regulations\(^{11}\). This research will focus on the legal norms contained in the laws and regulations relating to palm oil trade disputes and the cessation of crude palm oil. This research uses document studies related to the problem under study whose data is taken from literature, scientific works, books and laws and regulations as well as documents or other library sources.

The author based on the data will analyze it through a qualitative method that produces descriptive-analytical.\(^{12}\) In analyzing the data, the author thinks by starting from specific things to general conclusions or commonly referred to as inductive thinking\(^{13}\). The data that the author collects will be selected and made in a narrative form and put together in scientific work on this research.\(^{14}\)

3. Results and Discussion

The EU parliament's policy to cut the use of palm oil actually began with the issuance of the RED I policy on April 23, 2009.\(^{15}\) RED aims to increase energy power and minimize gas emissions, making the shift from fossil fuels to renewable energy. New and renewable energy (NRE) is energy that comes from sustainable natural processes. Examples include energy derived from solar power, wind power, water currents, biological processes, and geothermal energy.\(^{16}\) Not stopping there, RED II was again submitted as a revision of RED I to the European parliament which was agreed by EU member states on June 14, 2018 and officially enacted on December 11, 2018\(^{17}\).

The Delegated Regulation (DR) which is the implementing regulation of RED II that officially took effect on June 10, 2019, classifies CPO as a commodity that has Indirect Land Use Change (ILUC) with high risk. The rules set by the European Union through RED II basically assume that in producing CPO, Indonesia has committed deforestation. When compared to other vegetable oils, Indonesia's CPO production is 9 times more economical. This can be seen from details quoted from data from the Palm Oil Plantation Fund Management

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\(^{17}\) ‘Energi Baru Terbarukan (EBT) / Renewable Energy’. 
Agency (BPDPKS) which states that oil from sunflower seeds and soybeans utilizes an area of 5 to 9 times greater than palm oil. Pendapatan ekspor dari produk kelapa sawit pada tahun 2014 mencapai US$19,56 miliar atau setara dengan Rp250 triliun, atau lebih dari 10% APBN Indonesia. Dengan produksi 29,34 juta ton CPO pada tahun 2014, Indonesia merupakan produsen minyak kelapa sawit terbesar di dunia bersama dengan Malaysia. Lebih dari 50% kebutuhan minyak nabati dunia saat ini bersumber dari minyak kelapa sawit. Most palm oil is produced in Asia, Africa and South America as palm trees require warm temperatures, sunshine and high rainfall to maximize their production.

However, if you look at the case between Indonesia and the European Union, the production of soybean oil by the United States is not disputed by the European Union. There are various types of vegetable oils such as soybean, rapeseed, sunflower seed, and palm oil. Of the various types of vegetable oils, the most effective and efficient vegetable oil production is palm oil. This is due to the much larger production within the scope and area of 1 hectare compared to other vegetable oils.

It is reasonable for Indonesia to assume that the European Union has discriminated against Indonesian CPO by providing unfair policies in using vegetable oils in the European market through RED II. The establishment of bioenergy utilization policies by the European Union is certainly not in accordance with the principles set by the WTO and GATT because it has caused conflicts in international trade. The Most Favored Nation (MFN) principle demands the creation of fair and just international trade activities by not discriminating against member countries and upholding equality of treatment between WTO member countries. Therefore, it is necessary to analyze more deeply the regulation of CPO in the regulatory order at the WTO and the implementation of the MFN principle in international trade. In addition, Indonesia is also trying to resolve this issue with the European Union, so a study is needed that can be used as a basis for resolving trade disputes between the two parties.

In this case, CPO exports to the European Union over time can be said to be 80% of the country's financial deficit solution. However, the SDGs movement launched by the UN led the European Union to issue a policy that addresses

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biofuels derived from palm oil called the Renewable Energy Directive (RED).²¹

The RED is basically made with reference to the Kyoto Protocol and the UNFCC, which are international environmental law. In principle, renewable energy policy is one of the European Union's environmental policies. Moreover, in the RED there are standard criteria for fuels that may be used by the European Union, which are sustainable fuels whose manufacture and use do not cause environmental damage or increase greenhouse gas carbon emissions.²²

The policy that was promoted by the European Union in 2009 was motivated by the failure of CPO to meet the target of reducing gas emissions by 35%. Not enough to stop there, the European Union again issued the RED II policy and Delegated Regulation as the implementing rules by classifying CPO as a commodity that has Indirect Land Use Change (ILUC) with high risk. The policies issued by the European Union against Indonesia for boycotting CPO have been refuted by the Indonesian government by showing the certification that has been carried out for CPO including those recognized by the WTO. These certifications include the Roundtable on Sustainable Palm Oil (RSPO), International Standard for Carbon Certification (ISCC), Sustainable Agriculture Network (SAN) and Indonesian Sustainable Palm Oil (ISPO). The European Union utilized the sustainable CPO certification issued by RSPO in 2011 in implementing CPO exports in the global market with the aim of adhering to the requirements in sustainable certification by exporters. Meanwhile, from the perspective of the Indonesian government, the CPO certification issued by the RSPO is very important with the aim that Indonesian CPO can survive in the midst of competitive competition in the international market, including maintaining its market in European Union countries. RSPO certification is needed so that consumers can accept Indonesia in the United States through equalization of standards or mutual recognition agreements between RSPO policies carried out with NODA.

In addition to RSPO, Indonesian CPO has also received ISCC certification. The certification was issued by SGS Germany on October 24, 2014. SGS Germany is an independent certification body with a focus on inspection, verification, evaluation or testing, and certification. Meanwhile, Indonesian palm oil companies also carry out CPO certification through SAN (Sustainable Agriculture Network) to strive for sustainable palm oil products at the international level. SAN is an international network of NGOs that focuses on helping companies and producers develop their products sustainably through effective and efficient methods (sustainableagriculture.eco). In addition to international CPO certification, the Indonesian government also seeks to issue

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²² Wahyudi.
domestic certification to maintain CPO competitiveness in the global market with sustainable products. The standardization was carried out by establishing the Indonesian Sustainable Palm Oil (ISPO) coupled with the Regulation of the Minister of Agriculture Number 11 of 2015 concerning the Indonesian Sustainable Palm Oil Certification System. ISPO has 3 important objectives including:

1) foster and raise awareness of CPO producers to be environmentally responsible through environmentally friendly production procedures;
2) maintaining the existence of CPO in the global market in the midst of increasingly competitive trade competition;
3) commit to reducing greenhouse gases which is also a key requirement from importing countries to CPO producers.

If referred to the applicable principles, the WTO has actually provided opportunities for its member countries to form policies that are technical in nature related to product standardization in their respective countries. This is in accordance with what is stipulated in the TBT (Technical Barrier to Trade) Agreement. These provisions must be implemented based on the principle of fairness without discrimination (Most Favored Nation/MFN). TBT Agreement is one of the agreements in GATT that provides procedures and provisions regarding the authority of WTO member countries to formulate technical policies, adopt regulations, and implement policies with appropriate technical standardization. The purpose of these technical regulations as through the TBT Agreement are:

“Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.”

In addition, neither the GATT nor the TBT Agreement provides restrictions on the technical rules of product standardization from a country to products imported from other countries. However, the implementation of standardization of products imported from other countries must be in accordance with the principles of international trade, especially the principle of non-discrimination or Most Favored Nation as stated in Article I paragraph (1) and Article III paragraph (1) of GATT. Thus, the regulation of CPO in the WTO is not explicitly explained but is based on the provisions in the TBT Agreement which already represents that the products of a country including CPO have been regulated in the WTO provisions.

However, in reality, the application of the MFN principle in international trade often does not work easily. This can be seen from the case of the European Union boycotting CPO against Indonesia through the RED policy. The EU government accused Indonesia of ignoring environmental damage due to the CPO production process which tends to be environmentally unfriendly and considers that ISPO is not yet suitable to be used as a sustainable CPO standard at the international level. Even though the RED issued by the European Union still needs to be reviewed because it has violated the MFN principle including discriminating Indonesian CPO from other vegetable oils. This is because the application of the MFN principle does not only produce positive effects but can also have negative effects for WTO member countries.

Some of the negative effects include: a) uneven power of countries, b) expansion of harmful agreements, c) dependency tendency in trade transactions. Despite the negative implications of the MFN principle, in essence, the application of the MFN principle as the main principle of the GATT aims to eliminate discriminatory treatment and ensure the protection of the rights of developing countries in international trade. It is said to be the main principle in the GATT, the MFN principle is always placed in the first place by experts in each of their opinions because the application of the MFN principle that is truly fit for purpose will certainly have a very positive impact on the implementation of healthy and fair global trade. As explained above, article I of GATT stipulates several obligations that must be carried out by WTO member countries, including : 1) obligations relating to duties on both the import and export of goods; 2) obligations relating to the methods of determining duties and other levies; 3) obligations relating to export and import policies; 4) obligations relating to each of the matters mentioned in article III of the GATT, especially paragraphs (2) and (4) concerning domestic taxes.

With reference to the explanations above, it can be said that the Indonesian government has carried out various certifications for domestic CPO products, both certification through RSPO, ISCC, SAN and ISPO. These certifications have certainly been carried out based on the mandate given by the WTO through the TBT Agreement which allows each country to standardize its own products as long as they are in accordance with the principles of international trade, especially the principle of non-discrimination or MFN. In practice, this principle is not well realized considering the case that befell Indonesian CPO. The EU government continues to accuse Indonesia of environmental damage due to the CPO production process which tends to be environmentally unfriendly and

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25 Luh Intan Purnama Dewi; et.al.
26 Luh Intan Purnama Dewi; et.al.
considers that ISPO is not yet suitable to be used as a sustainable CPO standard at the international level. Whereas the description above has mentioned various CPO certification efforts that have been carried out by Indonesia in accordance with the criteria set by the European Union government. Whereas the RED issued by the European Union still needs to be reviewed because it has violated the MFN principle including discriminating Indonesian CPO from other vegetable oils. So it is not surprising that the RED I, RED II and DR policies are considered as steps to boycott Indonesian CPO products in the international market.

Meanwhile, the RED and DR policies implemented by the European Union can be included in the Violation Complaint category, which is a complaint category that indicates that a member country can make a complaint because there are other member countries that have taken actions that are contrary to the provisions of the WTO (Suherman, 2012: 15). This category is considered appropriate to the problems that occur between Indonesia and the European Union because the policies issued have violated the provisions of GATT. In this case, the RED II policy has discriminated against Indonesian CPO products which is not in accordance with the provisions of GATT 1947, especially in Article XX letter g on the prohibition of discrimination. In addition, the policy is also not in accordance with Article 2 paragraph (1) of the TBT Agreement which relates to the implementation of the MFN principle, namely the obligation of importing countries not to provide less favorable treatment to products from exporting countries, including contrary to Article 1 paragraph (1) of the GATT 1947 which also regulates the MFN principle.

Based on these problems, Indonesia can make several efforts to resolve its dispute with the European Union. First, power-based actions. These actions can be carried out by using the strength or power of a country so that other countries do or do not do something either by sending messages / letters from a country’s officials to the officials of the intended country, showing the dislike or disappointment of the aggrieved country in an international forum, and making threats in the economic field against the opposing country. This action has been taken by the President of Indonesia, Joko Widodo through the ban on nickel ore exports since January 1, 2020 to the European Union. Second, right-based actions. These actions can be carried out based on the appropriate legal provisions and resolved through the legal process, in this case the trade dispute that occurred between Indonesia and the European Union can be resolved through the DSB at the WTO.

This step has also been taken by Indonesia, which has filed a lawsuit at the WTO on December 9, 2019 with lawsuit number DS 593. However, the process has not yet found a bright spot due to the Covid-19 situation which caused the postponement of the trial process and the European Union which continues to insist on its opinion that RED II has never discriminated against Indonesian CPO. Third, interest-based actions. If the dispute resolution process carried out
through legal channels still does not provide appropriate results, then the steps that can be taken are to approach the disputing parties based on the needs of each party. These efforts can be done by improving and optimizing ISPO together so that it can become a global-based CPO standard. So that the certification carried out by Indonesia both ISCC, SAN, and RSPO can also be strengthened through ISPO which is globally recognized.

4. Conclusion

The Government's Strategy Regarding the Coconut Oil Trade Dispute After the CPO Termination Policy is First, making efforts to resolve the dispute with the European Union has been carried out by the President of Indonesia, Joko Widodo through a ban on nickel ore exports since January 1, 2020 to the European Union. Second, actions that are right based can be carried out based on appropriate legal provisions and resolved through legal processes, in this case the trade dispute that occurred between Indonesia and the European Union can be resolved through the DSB at the WTO. This step has also been taken by Indonesia, which has filed a lawsuit at the WTO on December 9, 2019 with number: DS 593. However, the process has not yet found a bright spot due to the Covid-19 situation which caused the postponement of the trial process and the European Union which continues to insist on its opinion that RED II has never discriminated against Indonesian CPO. Third, interest-based actions, if the dispute resolution process carried out through legal channels still does not provide appropriate results, then the steps that can be taken are to approach the disputing parties based on the needs of each party. This effort can be done by improving and optimizing ISPO together so that it can become a global-based CPO standard. So that the certification carried out by Indonesia both ISCC, SAN, and RSPO can also be strengthened through ISPO which is globally recognized globally.

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