Retalism mechanism in Indonesian and European Union trade disputes regarding CPO commodity exports

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Abstract. In 2019, the European Union Parliament made a policy to stop the use of Crude Palm Oil (CPO). The decision was taken after the European Union Parliament agreed to use environmentally friendly renewable energy as stated in the "Report on the Proposal for a Directive of the European Parliament and the Council on the Promotion of the use of Energy from Renewable Sources". This policy makes Indonesia one of the largest CPO producers with the potential to lose its market. This policy makes Indonesia conduct a counter attack (retaliation) by using the World Trade Organization (WTO). Previously the President Republic of Indonesia, Joko Widodo also conducted retaliation in the form of a boycott products from the European Union such as airplanes from the French manufacturer, Airbus. The retaliation is considered effective because Indonesia accounts for 5.7% of the Airbus market in Asia Pacific with a value of US $ 42.8 billion. This amount is still far greater than Indonesia's CPO exports on the European Union market which is only worth US $ 4 billion. Its means that if this retaliation occurs, Indonesia will have a better bargaining than the European Union, so it is hoped that the European Union can soften and end trade disputes between the European Union and Indonesia.

Keywords: Trade, Palm Oil, Foreign Policy

1. Introduction
Indonesia is one of the largest palm oil exporting countries in the world. One of Indonesia's largest export markets is the European Union, where Indonesia's palm oil exports on the EU market are worth up to US $ 4 billion. However, the European Union is currently taking a policy to stop importing palm oil from Indonesia starting in 2021 on the grounds that palm oil is an environmentally unfriendly material, following the United Nations Sustainable Development Goals (SDGs) agenda [1]. One of the important aspects in the SDGs is the environment, so that several countries in the European Union have agreed to support the program, one of which is by stopping imports of palm oil from Indonesia. The decision of the European Union made Indonesia feel disadvantaged, by stopping the import of palm oil from Indonesia, its market share reduced to 16.30%. Thus Indonesia gave retaliation to the European Union with the threat of stopping the import of Airbus aircraft production. Indonesia is one of the largest market share of Airbus in the Asia Pacific region, with a total of 5.7% of the Airbus market in the Asia Pacific region. The Indonesian government is also filing a lawsuit to the World Trade Organization (WTO). Indonesia feels that the policies implemented by the EU are a form of non-tariff discrimination. The response marked the Indonesian government's counter-attitude towards EU policy to protect the oil

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palm industry which was very profitable for Indonesia. The Indonesian government gave argument to European Union that this is a form of protection for the domestic industry, especially since palm oil is the largest commodity contributing to foreign exchange for Indonesia. In total, around 234 million hectares of land are used as oil palm plantations; 45% in Southeast Asia, 31% in South America, 7% in Africa, and 2% in Central America used to be tropical forests in 1989.

As a commitment to the points ecosystem sustainability in SDGs, the EU is responding to the facts in the palm oil industry with a policy to revise Renewable Energy Directive (RED) with Renewable Energy Directive II (RED II) which disqualifies palm oil from biofuel [2]. The EU raw materials RED contains agreements on the use of fossil raw materials with biofuel for climate improvement targets in 2020 to 2030, while RED II adds criteria to biofuel that can be used as fuel in the EU.

There are strong reasons behind the boycott of Indonesian palm oil by the European Union. The European Union strongly believes that the use of palm oil must be limited given the very high level of carbon dioxide. Besides, the European Union considers that palm oil poses environmental hazards in other sectors, for example the forestry sector. In addition, they argued that they would take part in campaigning for environmental diving policies that became a serious concern in SODs. SDGs are made by the UN with a target of a global action plan for the next 15 years (applicable since 2016 until 2030), to end poverty, reduce inequality and protect the environment. SDGs apply to all countries, so that all countries without exception developed countries have a moral obligation to achieve the SDGs Goals and Targets. Indonesia is one of the countries that participated in supporting the goals of the SDGs, evident from the steps President Jokowi has signed Presidential decree Number 59 Of 2017 concerning the Implementation of the Achievement of Sustainable Development Goals (SDGs). It is also a commitment that the implementation and achievement of SDGs will be carried out in a participatory manner involving all parties. On the other hand, the SDGs have become one of the basis for the European Union to stop the import of CPO commodities from Indonesia, where these reasons are deemed sufficient to hinder Indonesia’s progress in the palm oil market in the European Union.

This policy is strongly opposed by countries that have become the largest producers of palm oil, one of which is Indonesia. Palm oil-producing countries are afraid that if this is done, they will have difficulty finding another new market share. Especially for Indonesia, palm oil is the biggest foreign exchange earner for the country. Another problem is that Indonesia places the European Union as the second largest market share after India, which means that if the European Union really closes the Indonesian palm oil market share, then Indonesia might lose most of the country’s foreign exchange resources. For this reason, the Indonesian government tried to fight by suing the WTO.

Indonesia argues that the boycott of oil palm by the European Union is a form of non-tariff discrimination and Indonesia will struggle to regain its market. Indonesia argues that this resistance effort is solely to protect domestic production and immediately protect the interests of the Indonesian people. Palm oil is one of the kidneys for Indonesia, where if one kidney is damaged, then the other way is to struggle with just one kidney or find a new kidney, which in this case is looking for a new sector to maintain the Indonesian economy.

Indonesia’s protest against the European Union itself sues the European Union’s consistency in the SDGs since SDGs also fight for poverty eradication, while the Indonesian government argues that the palm oil industry is one of Indonesia’s weapons in eradicating poverty. As a developing country, Indonesia has a lot of homework related to the domestic economy. Rampant poverty is common in developing countries, including Indonesia. Therefore the Government of Indonesia deeply regrets the attitude taken by the European Union towards the commodity of palm oil which plays role as a driver of economic progress in Indonesia.

The European Union is deemed necessary to understand the conditions that occur in palm oil producing countries which are tropical countries, which are mostly developing countries. The European Union's consistency in the SDGs needs to be questioned if it only focuses on one point namely the environment and not paying attention to other aspects such as eradicating poverty [3].

Especially, the European Union has made a rule that contained in the regulation the obligation that EU countries must use RED II at least 32% of the country's total energy consumption. Moreover, in the
policy, there are also rules that exclude and issue palm oil as raw material for biofuel production. EU applies a Provisional Import Duty on Indonesian biodiesel with tariff rates ranging from 8-18%. and placing oil palm as a high risk commodity for forest destruction and potentially encouraging indirect land use change (indirect land use change/ILUC) compared to other vegetable oils [4].

Contributions of biofuels at low risk of ILUC are exempt from these limits based on objective criteria. RED II does not provide special treatment for one source of vegetable oil which includes, canola, sunflower seeds, soybeans, or palm oil. In a triilogue agreement, The European Commission is tasked with making a report on the status of expanding production of food crops and feed crops worldwide. The European Commission will enact a Delegated Act in determining the criteria for certifying food stocks whose production areas expand significantly so as to produce high carbon [5].

If seen in parallel, Indonesia already has Indonesia Sustainable Palm Oil (ISPO) which is mandatory. This policy has a focus on environmental protection and management. Thus, recommendations for gradually reducing the use of palm oil (phasing out) as stated in the Resolution of the European Parliament is considered as protectionist behavior and is not fundamental. In fact, the resolution recommends the promotion of canola oil and sunflower seeds which are not more productive and environmentally friendly when compared to oil derived from palm oil.

On the other side, the resolution also ruled out the rights of peasants who sought their eyes from mustard fields [5]. This resolution shows discriminatory actions against palm oil producing countries and contradicts the EU’s position as champion of open, rules based free, and fair trade. Data and information related to the development of palm oil and forest management in producing countries are not accurate and accountable, including data in Indonesia. In addition, this resolution also neglects the multi-stakeholder approach and makes a negative note on oil palm. It is mentioned that palm oil is a serious problem that is associated with issues of corruption, child labor, human rights violations, ignoring the rights of indigenous peoples, as a trigger for deforestation, and habitat destruction. The resolution also recommended the need for investment from palm oil commodities into sunflower seed oil and canola.

Efforts to block the palm oil industry are also carried out through a single certification scheme for palm oil entering the EU. Then, gradually the EU will eliminate the use of vegetable oils that trigger deforestation from 2020. The resolution made related to palm oil does not openly mention Indonesia, but the whole world knows that the largest palm oil producer in the world is Indonesia, which is then followed by Malaysia, Thailand, Colombia, and several other producing countries. Deforestation occurs in protected forests while Tree Cover Loss occurs due to human factors or due to forest fires and other forms of disaster. According to data from the World Resources Institute (WRI) there has been a decrease in deforestation from 2015 to 2016, according to data from the Ministry of Environment and Forestry of the Republic of Indonesia.

In this case the TCL that occurs according to Global Forest Watch (GFW) data is indeed 2,422,128 hectares, but from the KLHK data that there has been a decrease in deforestation in Indonesia since 2015 in the area of 1.1 million hectares to 630 thousand hectares. In this respect, it is very vague and political in evaluating the development of Indonesia's policies related to the forest problem. The issue of deforestation has spread into a statement from the European Commission pointing out, “Recalls that Indonesia has recently become the third highest polluter of CO2 in the world and suffers from decreasing biodiversity, with several endangered wildlife species on the verge of extinction.” From the results of a 2013 European Commission study, the most important cause of deforestation was the agricultural sector which reached 58 million hectares, while oil palm only caused 6 million hectares of the total 239 million hectares of deforestation.

This data places palm oil as the fourth leading cause of deforestation after soybeans and corn, which contribute around 2.5% of global deforestation. This consideration becomes vague because Malaysia and Indonesia have been accused of being the main source of deforestation due to palm oil. Although the European Parliament expresses its appreciation for the roles of Indonesia and Malaysia in overcoming the environment related to oil palm plantations, for a long time these efforts have not resulted in a resolution to help environmental problems [5].
Around 27 million tons of palm oil are exported to a number of countries, while the remaining 6 million tons are consumed domestically. The volume of palm oil exports succeeded in contributing to state revenues in 2016 amounting to USD17.8 billion, or 12.3% of the total value of Indonesia's exports. While in the non-oil and gas sector, this amount represents 13.6% of all Indonesian non-oil and gas exports.

Indonesia's palm oil products are exported to various countries. Data in 2016 shows that the main buyers of Indonesian palm oil, sorted by the largest import amounts are India, the EU, China, Pakistan, Middle East, Africa and United States. The Indonesian Palm Oil Association (GAPKI) estimates that the total demand for vegetable oil in the world by 2025 will increase to 226.7 million tons. In 2017, palm oil has held about 30.8% of the total 29 vegetable oils used worldwide.

The resolution of the European Parliament is also inaccurate and accountable, including in the case in Indonesia. In addition, this resolution also overrides the multi-stakeholder approach. Palm oil can be part of the solution to reduce greenhouse gas emissions and contribute positively to increasing global demand for biofuels as a substitute for fossil fuels. Palm oil, to date, is the most productive vegetable oil in terms of land area ratio and production yield. Compared to the yield of sunflower which is 0.52 tons/hectare/year and soybean 0.45 /ton/hectare/year, the production of palm oil can reach 4.27 tons/hectare/year [5].

On the other side, the resolution also overrides the rights of peasants who search for oil palm. Around 16 million people depend on the palm oil sector both directly and indirectly, 41% of whom are small farmers in rural areas. The resolution also ignores the continuing efforts of the Indonesian government and multistakeholders in maintaining and balancing development and environmental issues, including a moratorium on oil palm expansion, a collaborative scheme between government-private civil society for peat restoration, sustainable management practices in palm oil management, and Indonesia's leading role in efforts to implement the Paris Agreement [5].

Speculation has arisen that palm oil discrimination by the EU Parliamentary Council has political interests. This is related to vegetable oils produced by countries in Europe where deforestation is not questioned. The total area of the four main types of land for producing world vegetable oil (palm oil, soybeans, sunflower seeds, and canola) in 2016 is around 200.5 million hectares. 61% (212 hectares) are soybean plantation areas and only 10% are oil palm plantations. However, in terms of oil production, with this land area, soybean is only able to produce 53 million tons of oil or around 33% of the production of four vegetable oils [5].

In addition to vegetable oil, the issuance of a Parliamentary Resolution of the European Union Council which states that palm oil products cause deforestation, create human rights violations, and do not support sustainability is only the encouragement of business people in Europe. Because, Indonesian palm products are considered to threaten the existence of the olive oil business. Olive oil (olive oil) and oil derived from sunflower seeds are very popular and are widely produced in Europe. The impact, if palm products enter Europe, the two types of oil popular on the continent will be eroded [5]. For Indonesia, palm oil is one of the spearheads in reducing poverty and of course palm oil is very important and influences the movement of the Indonesian economy.

2. Methodology
The methodology used in this research is normative, with two legal sources, namely primary and secondary legal sources. The primary sources used in the form of trade rules, regulations and the secondary sources taken in the form of books from academics, journals from several legal experts and also related news. This approach is considered appropriate because it will provide many perspectives on the same topic.

2.1. Research of problems
The purpose of this paper is to answer the following questions:
- Is the retaliation mechanism appropriate for resolving disputes between Indonesia and the European Union regarding the export of CPO commodities?
- What is the impact of retaliation on relations between Indonesia and the European Union?
2.2. Research benefits
The benefit of this research is to provide an overview of the conditions between Indonesian and European trade disputes related to CPO commodities and provide an understanding of how the dispute resolution mechanism is also expected to stimulate the thinking of the Indonesian people to understand this issue further because indirectly this dispute threatens the Indonesian economy and leads to the welfare of the Indonesian people.

3. Results and discussions
This research has several arguments that become a reference, namely:

3.1. Fare theory
If the offending country is found guilty, the plaintiff has the right to request the restoration of his rights from the Dispute Settlement Body (DSB), that retaliation is an ultimum remedium or last resort. Retaliation is usually done on the same thing, if there is a fares dispute then the form of retaliation is also in the form of fares, and if the dispute is about non-tariff policies, then the form of retaliation is also non-tariff [6]. The study of tariff theory is confronted with the theory of free trade in the economic literature, which confronts two camps. The first camp said that free trade is the best policy because the welfare of each country will increase, retaliation may be effective for large countries, but not for small countries. The effect from retaliation may not be felt very strongly in developed countries, but the effect will also be bad for the economy of small countries [7].

3.2. Externality
In several case studies of retaliation, it was found that retaliation could have an impact on welfare losses (welfare loss) for the parties to the consequences of Trade Diversion. An example is in the case of EC Hormones and EC Bananas, the retaliation mechanism adversely affects the needs of exports and imports even for small companies that have no interest in the case.[7]

3.3. Equivalence
Retaliation must be equivalent, meaning that the retaliation carried out must be equivalent to the losses incurred and not in accordance with the WTO. This can also be a consideration for the arbitrator if the defendant has objections to the retaliation of his opponent if the case is brought into the realm of arbitration [7].

3.4. Inherent injustice
Conceptually, retaliation can be said as restoring the right to what feels violated, retaliation in the WTO only targets non-compliance with a reasonable period, when the panel decides to blame the regime in this case the defendant. Based on the DSU, the retaliation mechanism should be carried out by the same object as much as possible, but the state that feels disadvantaged may retaliate to different products, such as a cross retaliation mechanism. This method of restoration of rights philosophically violates corrective justice. Corrective justice seeks to recover the same loss suffered by the victim.

3.5. Marginalization of developed and developing countries
Retaliation only works for developed countries, this threat will not be effective enough for small countries, meaning that if developing countries retaliate, it is not impossible to be eliminated by themselves because they cannot resolve disputes by WTO [7].

4. Discussion
The European Union is the largest market share for palm oil (CPO) commodity exports for Indonesia. Its position is number two after India as the first market in the export of palm oil commodities from Indonesia. Of course it is understood how Indonesia reacted when the European Union first announced that it was stopping the import of palm oil commodities, Indonesia considered that the European Union
had discriminated non-tariffs on Indonesian products, Indonesia considers this as a trade dispute arising from the application of the SDGs or Sustainable Development Goals. Basically, the WTO has given choices in dispute resolution. Procedures for resolving trade disputes in the WTO are regulated in articles XXII and XXIII GATT 1994 and Understanding on Rules and Procedures for Governing the Settlement of Disputes (DSU). (Article XXII and XXIII GATT 1994 and Article 4 of DCU, there are 4 choices for dispute resolution such as:

4.1. Consultation and mediation
Although many WTO Procedures are similar to litigation, disputing member states are still expected to negotiate and resolve their own problems before the panel is formed. This is because the DSU has set up some rules and procedures under article 4, whereby members must engage in consultations in order to attempt to resolve their differences amicably [15]. Therefore, the first step taken is consultation between governments involved in a case. Even if the case goes to the next case, consultation and mediation are still possible.

4.2. DSB and panel
Dispute resolution is the responsibility of the Dispute Settlement Body (DSB) which is the incarnation of the General Council (General Council/GC). The functions assigned to the General council also concern dispute settlement and trade policy review. Respectively, The General Council, the DSB and the TPRB (the Trade Policy Review) are in fact the same body, but each body have their own chairperson and rules of procedure. Therefore, it seems like the DSB and the TPRB are the alter ego of the General Council [16]. DSB is the only body that has the authority to form a Panel composed of experts who are tasked with examining cases.

The DSB may also accept or reject Panel decisions or decisions on appeal. DSB monitors the implementation of decisions and recommendations and has the power to authorize retaliation if a country does not comply with a decision. The panel is formed by the DSB at the request of one of the parties to the dispute and usually by the plaintiff. The panel team will assist the DSB to analyze, assess and interpret the GATT-WTO agreement and make recommendations within 6 months and within 60 days the DSB will ratify the report [7].

4.3. Appeal
Each party to the dispute can appeal the panel's decision. Sometimes both parties appeal. Appeals must be based on certain regulations such as legal interpretation of a provision/article in a WTO agreement. An appeal was made to examine the arguments put forward by the previous Panel. Each appeal was examined by three of the seven permanent members of the Appellate Body (AB) established by the DSB and came from WTO members representing the wider community. Members of AB have a term of service of 4 (four) years.

They must come from individuals who have a reputation in the field of law and international trade, and who are free from the interests of any country. Decisions at the appellate level can delay, amend or reverse the findings and legal decisions of the panel. Usually an appeal takes no more than 60 days, and the maximum limit is 90 days. DSB must accept or reject the appeal report within a period of not more than 30 days where rejection is only possible through consensus which means there is no decision if there is an objection from a country [7].

Regarding settlement of Disputes after DSB recommendations or decisions, if the panel and appeal conclude that the action taken by the defendant is contrary to the agreement (GATT-WTO), the panel recommendations and appeals will request that the losing countries immediately adjust their trade policies with WTO provisions. The panel report and the new appellate body have permanent legal force (legally binding) and final [17] after being approved in the DSB trial. The purpose of the WTO dispute resolution system is that all WTO members adhere to the commitments that have been signed and ratified. In the DSU-WTO it is regulated that if recommendations and decisions have permanent legal force (legally binding) not carried out in accordance with a predetermined period of time the defendant
country (the losing country) will be asked to provide compensation (compensation) or subject to "retaliation". Usually compensation/retaliation is applied in the form of concessions or market access. Even though a case has been decided, more things need to be done before trade sanctions are applied. In this stage, what is important is that the defendant must align his policy with the recommendations or decisions of the DSB. As soon as the DSB has ratified the panel or appeal report, the losing country must make a report on the implementation of the DSB decision and, if necessary, with the assistance of the jury (arbitrator) as a supervisor. The DSU also regulates cross retaliation if the losing party does not implement the DSB decision that has ratified the appellate body’s decision [7].

4.4. Principles in the WTO

Since its establishment 20 years ago as an international trade organization among 164 countries until 2017, the ups and downs of the WTO in rolling out a number of meetings at the ministerial level shows how starving this multilateral institution is. However, there are some obstacles in the WTO, one of which is the decision making that adheres to a single undertaking or a decision making model in which all countries must agree, if there is only one country that disagrees, then a decision cannot be taken [8], some of these principles clearly illustrate how ideal this organization is.

In the WTO there are two main principles, namely Most Favored Nation (MFN) and National Treatment (NT). These two principles become the main principles in the International trade system in the WTO. It is because those two principles constitute the two pillars of the non-discrimination principle that is widely seen as the foundation of the GATT/WTO multilateral trading regime [18].

Most Favored Nation (MFN) or commonly referred to as the principle of non-discrimination is one of the basic principles of the WTO, in this principle also one of the lives of the GATT where the provisions in the MFN can only be changed if approved by all countries. Today Most Favored Nation principle in WTO agreements extends beyond its original application to trade in goods, but also to the areas of trade in services and trade-related to the aspects of intellectual property rights [19].

In principle there are two models in the MFN namely:

- Unconditional MFN. This is an unconditional MFN model, meaning that if country A must not be discriminatory against country B then all things done by country A and country C must also be enjoyed by country B.
- Conditional MFN. This is a conditional MFN capital, meaning that if country A does things that benefit country C, country A must also offer it to country B on condition that country B meets the conditions of the treaty specifically asking country B to do the same for state C treatment of country A [9].

Basically, the principle of MFN is to oblige all WTO members not to discriminate between products originating from other WTO member countries related to national tariffs and regulations. Member states are not bound to give special treatment to non-member countries and are subject to bilateral agreements. However, if non-member countries receive benefits, the benefits must also be given to WTO member countries. So that WTO members get the same rights [9].

While National Treatment (NT) is a principle contained in Article III of the GATT. According to this principle, if products from a country imported into a country must be treated the same as domestic products. This principle applies very broadly. This principle also applies to all types of taxes and other levies, in addition to the laws, which affect the sale, transportation or use of products on the domestic market. It deals with internal taxes that WTO Members will not apply higher standards than those imposed on pesticide products between imported goods and domestic goods "such as", or among them imported goods and "products that are directly competitive or can be replaced" [10].

There is a tendency for importing countries to try to use discriminatory applications. Tax regulations and domestic regulations to protect national production, often as a result of protectionist pressure from domestic producers. This distorts the condition of competition between imported goods
and leads to economic prosperity. In addition, regarding tariff concessions, Article II GATT recognizes that tariffs have been used as a tool for the protection of domestic industries. As a result, it sets course for the achievement of liberalization through gradual reduction. Even if the tariff reduction is carried out as a result of trade negotiations, if domestic taxes and regulations must be applied discriminatory protect simultaneously [10]. When highlighting the two principles above, it can be concluded that the WTO has constructed an idealist value since the organization was founded.

4.5. Political role of the ASEAN region

Regional politics has become a public discussion in every country, especially the ASEAN region, especially ASEAN countries that are allegedly having an emotional bond, and self-composed of various developing countries, so that the discussion on inter-regional solidarity continues to be a serious conversation, as envisioned in the early establishment of ASEAN, main desire to encourage countries in the Southeast Asian region to make cooperative efforts in the economic and welfare fields. At least, there are three main objectives that ASEAN wanted to achieve at first, namely promoting economic, social and cultural development in Southeast Asia through cooperation programs: maintaining regional political and economic stability, and as a forum for resolution of intra-regional differences [11].

Especially about CPO commodity exports, in ASEAN there are two countries as the main players of CPO commodities, Indonesia is ranked first in the world as a producer of CPO, followed by one region, namely Malaysia, Malaysia itself ranked second after Indonesia about the number of CPO commodity exports. Indonesia and Malaysia have the same market share, namely the European Union, related to this dispute the European Union also provides the same treatment for CPO commodities from Malaysia.

Jakarta and Kuala Lumpur already have a mechanism for palm oil cooperation on the instrument Council of Palm Oil Producer Countries (CPOPC). President Jokowi also invited Thailand to join the CPOPC. Trade cooperation in the countries of Indonesia, Malaysia, and Thailand Groeth Triangle (IMT-GT) has a great potential reaching 416 billion US dollars or 18.3 percent of total trade around Southeast Asia (ASEAN) is 6.9% [5].

In the ASEAN framework, Indonesia has succeeded in promoting the problem of palm oil in the EU. The issue of palm oil has become an issue in ASEAN regional diplomacy. In a statement from the Chair of the ASEAN Summit on April 29, 2017, the issue of Palm oil has become a serious concern for ASEAN member countries. Indonesia's commitment has also been captured by the Malaysian prime minister that the issue of palm oil is a major issue for ASEAN. In this case President Joko Widodo and Prime Minister Mahatir Muhammad have conveyed a joint letter to the EU and expressed deep disappointment over the EU's plan to ban the use of palm oil fuel for biofuels. The statement of the two heads of state is a response from economic diplomacy that will continue to the policies of the European Commission and even to the EU [5].

In the international trade arena, economic diplomacy is aimed at championing the export of palm-derived derivative products at the World Trade Organization (WTO) at a high stage, namely the WTO Appellate Body (AB) forum, which focuses on one-unit because it has important significance especially for the methodology of determining the normal value for export prices and domestic prices for producers or exporters who have affiliations abroad.

Especially ASEAN, in its development, the dynamics of regional cooperation cannot be separated from the great influence of globalization, especially economic globalization. Therefore, various attempts were made by ASEAN to "prepare" themselves in the face of globalization (economy), which is getting stronger day by day. The ASEAN Declaration contained in Bali Concord II reflects how the regional cooperation responds to economic globalization [11].

Various efforts to integrate the regional economy through the ASEAN Free Trade Area (AFTA) which hope to strengthen ASEAN's position in integrating itself into global trade. Nevertheless, the progress made by ASEAN in liberalizing the region and creating economically integrated regions is less convincing. One factor is the absence of concrete steps aimed at sustaining AFTA.
Its position in the direction of increasingly competitive globalization. Regional cooperation such as ASEAN should be able to provide the benefits of member countries to strengthen their capacity in the economy and politics, which ultimately can serve the interests of member countries. Meanwhile, differences in the inter-regional ASEAN also contribute to the lack of integration of this region in sustaining ASEAN as a force worthy of consideration in the global political economy [11]. Unfortunately, these differences cannot be resolved immediately. As a result, ASEAN experienced difficulties in its efforts to seek unanimity when it had to deal with large powers outside of itself.

ASEAN pioneering countries which should have an important role in encouraging regional integration also have many intersections of interests, which in many cases are difficult to find consensus [11].

4.6. Review of retaliation

Of the many dispute resolution mechanisms, Indonesia chose to file a lawsuit against the WTO and also launch a retaliation action against the European Union. Retaliation in international trade is not a taboo subject, although practice is rarely used in resolving disputes. Before further discussion, it is necessary to understand what retaliation is.

Literally, retaliation means a retaliatory attack, if it is associated with an International Trade Attempt case, then retaliation is interpreted as an act of retaliation in the field of trade between countries within the framework of the WTO carried out by a State as a result of not reaching an agreement in the dispute resolution process.

Definition contained in WTO Provisions, retaliation is done as a last resort when in a dispute resolution, efforts to fulfill the concession cannot be achieved within a predetermined time period. In practice at the WTO, instrument retaliation is rarely done by member countries. This is because there are many reasons for not doing retaliation among WTO members. One reason that might be accepted is the high political overtones in implementing the retaliation of one-member state to other member countries. mean retaliation means an action carried out by a country where exports from that country are affected by an increase in import tariffs and other trade barriers carried out by the government of another country [7].

GATT allows countries that feel disadvantaged to take limited acts of retaliation against other countries that are the cause of trade losses, but this is done after consultation with other member countries, or countries that suffer the same fate as a result of the actions of such a country. This WTO retaliation mechanism applies the sanction instrument by giving the claimant country the right to violate its concession to the offending country in the WTO agreement.

Retaliation is included in the fourth phase of dispute resolution, which is the implementation phase. When a dispute has been decided by the WTO Panel and Appellate Body, then the offending country is instructed to correct or amend its violations of the WTO principles.

The claimant country has the right to request the establishment of a compliance panel to assess whether the offending country has fulfilled the Panel and Appellate Body's decision. If the Compliance Panel decides that the offending country has not changed its trading practices in accordance with the decision, the claimant country has the right to request the right of retaliation from the Arbitration Panel [7].

Based on Article 22 of the DSU which describes retaliation, simply retaliation can be divided into 3 types [12], that is:

- **Parallel Retaliation.** The claimant country must retaliate to the offending country in the same trade sector where the violation occurred.
- **Cross-sector Retaliation.** Claiming countries can retaliate to offending countries in different sectors under the same agreement, if retaliation in the same sector proves ineffective.
- **Cross-Agreement Retaliation.** If the situation is considered to be serious enough and retaliation of different sectors is considered ineffective, then claimant countries can retaliate to offending countries in different trade agreements.
However, in reality sanctions or retaliation are also rarely used by developing countries because their implementation sometimes burdens developing countries. For this in some cases cross retaliation is more widely used as a solution that allows for the retaliation of different trade agreements.

For example, a violating country that does not comply with the rules in the GATT can be sanctioned by the claimant country through an agreement in TRIPS. This is because developing countries do not have the power in GATT and TRIPS is considered a very important aspect of trade for developed countries that have many licenses and patents. In this regard, many parties consider this cross retaliation to be an instrument that has the potential to be used by developing countries in resolving trade disputes at the WTO.

The trade dispute that first applied the cross-retaliation model was the dispute between the European Union and Ecuador. Basically the banana import dispute is a trade dispute that lasted nearly 20 years and involved many Latin American countries (Ecuador, Panama, Guatemala, Colombia, Costa Rica, Nicaragua, Venezuela, etc.), European Union countries, as well as the United States.

This dispute began in 1993 with the formation of COMB (Common Organization of the Market for Bananas) which is considered to violate the WTO MFN principles by giving preferential tariff quotas to ACP countries (Africa, the Caribbean, and the Pacific) which are French and British colonies. Before the formation of the WTO in 1995, several Latin American countries have filed claims with the European Union (formerly known as the European Community) through GATT. The unsatisfactory results of the dispute made other Latin American countries again sue the European Union through the WTO after 1995, including Ecuador [13].

In international trade, retaliation is known to have adverse effects, although retaliation is not prohibited as an antithesis of the WTO's goal, namely Trade Liberalization, which as much as possible provides freedom, although in some cases the use of retaliation is always related to fare.

Limited human resources such as great lawyers who understand dispute resolution at the WTO or hire reliable economists to calculate losses are also not cheap and easy. If developing countries get authorization from DSB to carry out retaliation, they might be very difficult in executing it, there are many factors why developing countries are difficult to execute, which are:

- Developing countries worry that they will lose the trade war against developed countries.
- Developing countries are worried that in the future they will not get assistance from developed countries, which can be either material or non-material.
- Developing countries are worried that they will not get access to affordable markets when they sell products.
- Developing countries hope that they can get special privileges in debt acquisition and ease of interest.
- Legal costs are also a factor in maintaining market access.

The effect will occur on society, because of the budget, retaliation of developing countries will add to social costs because the community must pay more. In addition, the nature of developed countries that tend to be sensitive can also be a new weapon in reversing the retaliation of developing countries. Developed countries tend not to like being bothered with their interests. Because developed countries almost control several vital sectors in the economy of developing countries. In other words retaliation can get an appropriate response if the defendant's country also gives a positive reaction, but if the defendant's country feels pressured, it is not impossible that the defendant's country will retaliate against vital products that could threaten the plaintiff's country.

4.7. Retaliation mechanism based on Dispute Settlement Understanding (DSU)
Although retaliation is not a taboo in resolving disputes contained in the WTO, retaliation is not a simple paradigm that is easily used when a dispute occurs, to achieve a retaliation mechanism, in several articles in the DSU set several stages to achieve retaliation after getting a decision from the panel.
In article 12 paragraph 10, it is stated that in relation to the panel process, this provision explains that disputes relating to matters relating to members belonging to developing countries, the panel can provide the time deemed necessary for developing countries to prepare and explain what they are considering. In article 12 paragraph 11, it is stated that in relation to the panel report, this provision explains that in the case of one or more parties coming from developing countries, the panel report must clearly state that actions have been taken which are considered relevant with regard to the provisions of the WTO regarding special and differential treatment and favorable actions that arise in relation to the application of WTO dispute resolution procedures.

Retaliation itself is specifically regulated in article 21 paragraph 7-8 Dispute Settlement understanding (DSU) Regulations that if the results of actions that are considered to be in violation and detrimental to the claimant are not carried out, then the injured party is given the right to retaliate in a form that must be agreed by the DSB. DSU will consider what further action will be taken by taking into account not only the scope of the related trade substance but also the broad impact on developing economies.

Based on the 1947 GATT, members belonging to developing countries, were given the opportunity five times to use good services from the Director General based on the above decision. Second, if the consultation conducted by the Director General cannot produce a decision within two months, the Director General will, at the request of one of the parties, submit the results achieved during the above process to the DSB. The DSB will then immediately appoint a panel in the consultation process with or without the agreement of the parties. Third, the next panel must take actions deemed necessary in connection with the conditions and various considerations relating to the application of the disputed matters, along with the consequences they have on trade and economic growth that may affect other members. Finally, the panel must submit its report to the DSB within 60 days of the dispute.

DSU explains that if the panel considers that the time provided for 60 days is inadequate to make a report, then based on the agreement of the party making the claim, it can be extended. With regard to this extended period of time, there is a difference between the regulations contained in the above decision and the procedures based on articles 4, 5, 6 and 12 and the suitability of the existing regulations and procedures in accordance with the aforementioned decision, in subsequent trips becoming effective.

As we all know, that is one of the advantages of the WTO dispute resolution system compared to the previous GATT, as stated above is that GATT does not have a unified dispute resolution procedure, but rather separate rules. On one side there is a conciliation system and general dispute resolution based on articles XXII and XXIII, on the other hand there are special dispute resolution procedures as contained in various documents produced in the Tokyo Round of 1979 negotiations. Whereas the WTO dispute settlement system is summarized in its entirety in Dispute Settlement Understanding unless specifically agreed in a covered agreement.

Next, it is said that the importance of dispute resolution is identified as a further goal of the dispute resolution system. This system is in the form of the application of the existing dispute resolution method, namely GATT. However, the purpose of dispute resolution is never articulated in the GATT. Article XXII (Consultation) and Article XXIII (Elimination) of the GATT only contain the process and not one item explains the purpose.

According to Hudec, quoted in Donald McRae, retaliation is considered an ultimum remedium. If the sanctions imposed on the guilty party are unsuccessful, DSU will ultimately submit to the winner of the case to retaliate by suspending trade concessions to the guilty party.

In the case of Korea - Anti Dumping Duties on Imports of Certain Paper from Indonesia (DS312) where Indonesia as the complainant won by DSB, is one proof that the efforts of retaliation pursued by Indonesia as a developing country do not have a forced power against Korea which is actually classified as a developed country. In this case, the implementation of retaliation is more emphasized on how Indonesia is able to impose its will on the implementation of the retaliation to Korea.
This proves that retaliation is still very closely related to the economic position of a country. So as such, it is hoped that the WTO as a world trade organization will be able to respond to this with the existence of a mechanism for implementing retaliation which is regulated in a special agreement that can guarantee its implementation. Enhancing the Role of the WTO Secretariat in Assisting the Settlement of Disputes Facing Between Developed and Developing Countries is equally important so that there is no distance between developed and developing countries.

In addition, the existence of dispute resolution mechanisms that have been regulated in the DSU, according to the author is not reliable enough without the role played by the WTO Secretariat. WTO dispute resolution system that has developed into a formal institution with increasingly detailed procedures also requires a permanent implementing apparatus to ensure the smooth operation of the dispute resolution system.

The importance of the role of this secretariat in the context of the effectiveness of the DSB’s role in resolving disputes that occur and can be beneficial for the parties, especially developing countries, also said by those who have been asked to become panelists. Its existence is becoming increasingly important for parties from countries that have little representation in Geneva. In general, the WTO Secretariat is tasked with assisting all WTO members in handling disputes when there is a request.

In addition, the role of the Director General of the WTO in providing good offices in the case is not optimal. Although in the end, Indonesia implemented all the DSB recommendations produced by asking for extra time because at that time Indonesia was experiencing an economic crisis so it was feared that implementing the DSB recommendations would disrupt economic stability at that time.

Therefore, based on experience there should be more detailed arrangements regarding assistance tasks carried out by the WTO Secretariat, especially in disputes that confront developed and developing countries. In addition, the role of the Director General in providing good offices as stated in article 3 of the DSU becomes mandatory and its implementation is not requested by the parties to the dispute, especially in this case developing countries as respondent parties.

The role of DSB can be seen in the following matters in article 25 of DSU:

a. Pre-panel process: in this period DSB plays a role in the continuation of the existing dispute process between the parties by positioning themselves as mediators and will provide assistance to those who seek to resolve disputes, they face either through consultation or mediation and sometimes through arbitration

b. The panel and appellate body process: in this period, the DSB will assist the parties to the dispute in the process of making the panel, determine the matters deemed necessary and decide whether to adopt a panel report or appellate body

c. Decision implementation: in this period, the DSB is responsible for ensuring the implementation of each recommendation or decision adopted by the DSB and has the power to authorize WTO members who will carry out trade sanctions.

The function and important role that is owned by the WTO in the context of upholding the implementation of each decision produced. Without any element of law enforcement on each decision produced, the dispute resolution mechanism becomes blunt. This is what happened in the case of Korea - Anti Dumping Duties on Imports of Certain Paper from Indonesia, where in this case, DSB recommendations cannot be imposed on Korea as the losing party. DSB in this case does not seem to have the authority to force the implementation of the decision. So finally, Indonesia must make retaliation efforts as the final step due to not implementing the DSB recommendations.

Based on the foregoing, it can be said that DSB has a very decisive role in the implementation of the WTO dispute resolution mechanism and is a benchmark for the success of the WTO itself. Therefore, joint special efforts are needed that involve all member countries in re-effective the functions and important roles of the DSB so that this body has the authority before all WTO member countries, especially related to the implementation of each decision made by the DSB.
So as such, the WTO dispute resolution forum really puts the parties in an equal condition, regardless of the strength of the Economic Analysis of each country and whoever has the right to be a party to the forum based on state sovereignty above all.[14].

4.8. Impact of retaliation for Indonesia

Based on the description above, it has been explained how retaliation works in international trade, there are several reasons why Indonesian retaliation can be good and can have a bad impact, at least there are 2 points that need to be considered:

- If Indonesia can cross retaliate with the right object, then retaliation of the European Union can succeed and force the European Union to rethink to boycott Indonesian CPO commodities
- If Indonesia is wrong in taking the object of retaliation from the European Union, then it is likely that Indonesia will have difficulty accessing trade or making the diplomatic situation between Indonesia and the European Union stretch.

The retaliation step taken by the Indonesian government towards the European Union needs to be understood as a form of defense of the country's dignity, in addition to fighting arbitrary non-tariff policies from the European Union to Indonesia's palm oil, retaliation is also a form of proof that Indonesia also has the power to retaliate.

The European Union needs to understand what is happening in Indonesia and not arbitrarily eliminate oil palm from the market. Of course, an agreement between the two needs further dialogue. The European Union which seeks to disqualify palm oil commodities certainly needs to look at the process carried out by palm oil producing countries in the coming years when trying to fix the current shortages in the palm oil industry.[14]

When the Indonesian government vigorously launches a retaliation action on the implementation of the European Union without also campaigning for improvements that are attempted to improve the palm oil industry, it will risk having a negative impact on Indonesia in the eyes of the international world. Of course, this statement needs to be reviewed further, because Indonesia under the leadership of Joko Widodo has ratified the Paris Climate Agreement in 2016 with various supporting reason. The shadow of the loss of the market could have occurred when the international community considered Indonesia's lack of commitment to the environment, even though they have done ratification, let alone the Indonesian government also threatens the international world that Indonesia is not impossible to get out of the Paris Agreement to protect the smooth domestic palm oil industry, the contents of the Paris Climate Agreement which indicates that the country which has ratified it has a commitment to implement it. International sanctions can also come, maybe not only harm the oil palm market, but sanctions can also be detrimental to other sectors [3]

5. Conclusions

The decision to retaliate is appropriate because the government requires legal steps at the WTO. Besides that, from the judicial aspect, Indonesia, which has a position as a developing country, received special attention in the WTO panel.

The possible impact on Indonesia if it is successful in retaliation is, if it succeeds in suppressing the European Union and getting support from the ASEAN region and several CPO-producing countries in the world, the hope that Indonesian CPO will still be accepted by the European Union is still very open, because even though in terms of economic factors Indonesia is inferior to the European Union but from an empirical point of view Indonesia still has enough strength to face the European Union.

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