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Effectiveness and Justice of the World Trade Organization Adjudicatory Dispute Settlement System: Indonesia Experiences as Developing Country

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Abstract:

Even though the WTO DSB decision is legally binding and must be performed, in some cases DSB WTO decisions that Indonesia won in disputes against developed countries have not been yet complied with and performed. As the result, adjudicatory dispute settlement system under the WTO become less effective and caused injustice for Indonesia as a developing country. This study aimed to overcome those problems of ineffectiveness and injustice in the WTO adjudicatory dispute settlement. From this study, it could be concluded that the absence of sufficient enforcement measures in implementing the DSB WTO decision caused the implementation of the decision depend on the power of the winning party to force the losing party. It is advantageous to developed countries and therefore disadvantageous to developing countries, and also hampers the enforcement of the WTO law. In order to overcome these problems, the WTO should establish independent and credible adjudicatory dispute settlement system, and there should be effective sanctions against non compliance with the decision.

Key Words: WTO DSB, adjudicatory, effectiveness, justice, developing country

1. Introduction:

The Agreement on Establishing the World Trade Organization (WTO Agreement) that was entry into force since 1 January 1995 constitutes important multilateral trade agreements. The WTO Agreement was the result of the General Agreement on Tariff and Trade 1947 (GATT 1947) Uruguay Round negotiation (1986-1994), enclosed with 4 annexes, comprises Agreements on Trade of Goods, Agreement on Trade of Services, Agreement on Trade of Intellectual Property Rights (IPR), Agreement on Dispute Settlement, Agreement on Trade Policy Review Mechanism and four Plurilateral Trade Agreements.
Isabel Feichtner stated that: "Trade liberalization has come to be seen as the predominant objective of the WTO."[1]

[1] Isabel Feichtner (2012), The Law and Politics of WTO Waivers, Stability and Flexibility in Public International Law, New York, Cambridge University Press, 21.

The regulations of international trade under the WTO Agreement basically are based on the principles of trade liberalization (free trade). According to Peter Van den Bossche six groups of basic rules and principles of the WTO law can be distinguished: "1). the principles of non-discrimination; 2). the rules of market access, including rules of transparency; 3). the rule of unfair trade; 4). the rules on conflicts between trade liberalization and other societal values and interest; 5). the rule on special and differential treatment for developing countries; 6). and a number of key institutional and procedural rules relating to decision-making and dispute settlement".[2]

Jackson et all state that the disputes settlement mechanism become central elements of the WTO/GATT.[3] The WTO dispute settlement system is regulated under the Understanding on Rules and Procedures Governing the Settlement of Dispute or oftenly known as Dispute Settlement

Understanding (DSU). To handle WTO disputes settlement, the Dispute Settlement Body (WTO DSB) was formed, having two subsidiaries organs, namely Panels and The Appellate Body.

DSU basically is an development and elaboration of the rules of the dispute settlement system that was regulated under Article XX and Article XXIII of the GATT 1947. Through WTO agreement, the mechanism of GATT 1947 Dispute Settlement was improved and developed. The improvement of the mechanism of GATT 1947 Dispute Settlement through WTO agreements hopefully can create credible, effective mechanism of WTO law enforcement and able to guarantee justice in the relation of international trade based on the WTO principles.

It is different with the GATT 1947 dispute setllements mechanism that oftenly said as diplomatic dispute resolution, the mechanism of dispute settlement of the WTO DSB is a adjudicatory dispute settlement system. Lowenfeld stated: "Over the forty years of GATT dispute settlement, there has been an ebb and flow between the diplomatic and adjudicatory models. It seems clear that the adjudicatory model prevailed in the Uruguay Round".[4] The WTO Annual Report issued recently Points out that: "The WTO dispute settlements system is lauded as one of the most active and fastest adjudicative systems in the world."[5]

WTO DSB disputes settlement system applies the principle of"automation", namely automation of the process of dispute settlement and the legally binding of decision. The procedure of disputes settlement automatically shall be done sequently by the parties in the dispute based on the DSU. The decision ("rulings and recommendations") made by WTO DSB automatically is legally binding to the parties in the dispute and must be performed by the losing party in a certain period of time.[6]

Eventhough the decision of WTO DSB is legally binding and shall be performed, but in some cases, decisions of WTO DSB were not obeyed and were not performed. This happened toward decision of WTO

[2] Peter Van den Bossche (2005), The Law and Policy of the World Trade Organization, Cambridge University Press, 39.
[3] John H. Jackson, et.all (1995), Legal Problems of International Economic Relations, St. Paul, MNN, West Publishing Co, 340.
[4] Lowenfeld, in M. Sornarajah (1996), WTO Dispute Settlement Mechanism : An ASEAN Perspective, , in Chia Siow Yue and Joseph L.H. Tan (editors), ASEAN in the WTO, Singapore, Institute of Southeast Asian Studies, Published by ASEAN Secretariat, 117.
[5] See Habib Kazz (2015), Reshaping the wto Dispute settlement system : challenges and opportunities for Developing Countries in the doha Round negotiations, European Scientific Journal, November edition, vol. 11, No.31, 199.
[6] Article 21 paragraph (3) DSU determine : "At a DSB meeting held within 30 days after the date of adoption of the panel or Appelate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB".

DSB in dispute between Indonesia and South Korea and dispute between Indonesia and the United States of America (USA), in where Indonesia won in those disputes.[7] Actually, based on the DSU, South Korea and the USA have obligation to pay attention to the economic interest of Indonesia as a developing country member of the WTO.[8] The refusal to perform WTO DSB decisions in those cases caused to these following problems : *1)*. How is the effectiveness of WTO adjudicatory dispute settlement system ? *2)*. Does the WTO adjudicatory dispute settlement be able to fullfill the justice principle, specifically justice for developing country member of the WTO as Indonesia ?

2. The Compliance With WTO DSB Decisions in Disputes Involving Indonesia:

By the end of 2016, Indonesia has involved in at least 23 cases of WTO dispute settlements, as complainants and as respondents. From those cases, there were seven cases which had been finished (settled), three of them were finished by the compliance with the WTO DSB decisions, meanwhile two of them were finished based on agreement between the parties, two other cases were withdrawed and one more case was ended by WTO DSB decision non compliance.

Indonesia views the WTO DSB decision as a decision made by international court, so that Indonesia has obligation based on law to obey and perform the WTO DSB decision. This was proved by the Indonesia's compliance with WTO DSB desicion in the dispute on Indonesia policy of National Car Project (National Car). In that case, in 1996 Indonesia was complained to the WTO DSB by Japan, The European Union and the USA concerning with the National Car policy, and then by WTO Panel Indonesia was stated had violated the principle of *Most-Favoured-Nation* of Article I of the GATT 1994. Indonesia performed very well the WTO DSB decision in the National Car case, because Indonesia regarded the decision as a decision of international court which was legally binding. The Indonesia's compliance with the DSB WTO decision in the National Car case also was caused by the pressure of the International Monetary Fund (IMF), which included the compliance as one of the requirements for granting money allowance that was proposed by Indonesia.[9] The including of national car project termination in the requirements in giving loan to Indonesia by the IMF could not be separated from the economical interests of the European Union, the USA and Japan which have big quote in the IMF voting.

When Indonesia was lost in the WTO dispute settlement, Indonesia complied with and performed the WTO DSB decision, and the fact in verse happened when Indonesia won in WTO settlement against developed countries, South Korea and the USA. To the WTO DSB decisions, which Indonesia become the winning

[7] Republic of Indonesia is a developing country , meanwhile the United State of America and South Korea are developed countries based on the criteria made by the World Bank in the year of 2014. Sources : http://data.worldbank.org/about/country-classifications/country-and-lending-groups, May 2014.

[8] As Peter Van den Bossche stated that: "WTO law includes many provisions granting a degree of special and differential treatment to developing-countries Members. These provisions attempt to take the special needs of developing countries into account. In many areas, they provide for fewer obligations or differing rules for developing countries as well as for technical assistance. op. cit., 43. See alsoWD. Verwey (1997), the Preferential Status of Developing Countries in International Trade Law after the Uruquay Round, article for a stadium generale, Faculty of Law Gadjah Mada State University Indonesia, pp. 6 - 13.

[9] See Letter of Intent between the Republic of Indonesia and the IMF, 1998.

party, South Korea and the USA in separated cases, did not comply with and performed the decisions based on good faith principle.

Non compliance with the DSB WTO decision in dispute between Indonesia (as complainant) vs South Korea (as respondent) happened in the case of the imposition of anti dumping customs duties by South Korea on certain paper products imported from Indonesia. In this case, Indonesia complained South Korea concerning with the imposition of anti dumping customs duties on certain Indonesia paper products, which were exported to South Korea, in which the imposition of anti dumping customs duties on certain paper products was assumed arbitrary. South Korea imposed anti dumping custom duties for the amount of 2,8-8,22 percent on 16 types of paper products which were produced by four Indonesian companies since 9 May 2003.

In June 4th, 2004, Indonesia asked South Korea to do a consultation for settling the Korean anti dumping policy dispute. The consultation was failed to settle the dispute, so then Indonesia asked WTO DSB to form a Panel. In 28 October 2005, Indonesia won the dispute against South Korea in WTO Panel forum, in which a part of Indonesian claims was granted. Then, in October 2007 the WTO DSB also stated that South Korea was at fault in determining the imposition of anti dumping customs duties on certain paper products imported from Indonesia. The WTO DSB concluded that South Korea did not consistent in counting the imposition of anti dumping customs duties. According to WTO Panel report, South Korea was stated at fault for refusing to give opportunity to Indonesian company, the ”PT Sinar Mas Groups”, responding damages evaluation that were claimed by South Korea companies. South Korea did not comply with and did not perform the WTO DSB decision. Responding the South Korea non-compliance, the expert staff of Trade Ministry of Republic Indonesia, Halida Miljani, stated that Indonesia has a right to retaliate South Korea.[10] But some parties worried about, if Indonesia retaliate South Korea, it will not effective and Indonesia can suffer of more economic losses, specifically if then South Korea did the same thing. For Indonesia, South Korea is an important exsport destination country of Indonesian products.[11] This practice shows that retaliation as one of enforcement measures of the WTO DSB decision was not effective if it was done by developing country against developed country. Robert E. Hudec stated: “The only enforcement sanction provided by the WTO dispute settlement procedure is trade retaliation…And trade retaliation by smaller developing countries, it is argued, simply does not inflict any significant harm on larger industrial countries.

In the end, the argument concludes, retaliation will harm the developing country imposing it far more than it will harm the industrial country it is supposed to punish”.[12]

The Indonesia-Korea anti dumping case was ended without obeying toward the DSB WTO desicion or ended with ”non compliance”. So that, economic damages which were suffered by Indonesian government and some Indonesian companies during the implementation of the anti dumping measures by South Korea never being compensated. This practice shows, the WTO

[10] See Tempo Newspaper, Jakarta, Indonesia, 4 October 2007.

[11] According to Angga Hadian Putra, The Head of International Trade Affair, Directorate General Multilateral International Cooperation, Ministry of Trade of the Republic Indonesia, actually Indonesia had already made “mutually agreement” with South Korea, but with various economics interest consideration and also due to political consideration, Indonesia did not retaliate Korea (Interview with the writer, done on March 2016).

[12] Robert E. Hudec (2002), The Adequacy of WTO Dispute Settlement Remedies, A Developing Country Perspective, in the Hoekman, Bernard, et. all., editors, Development, Trade and the WTO, Washington, DC, published by the World Bank, p. 81.

dispute settlement system is advantageous to developed countries and on the other hand disadvantageous to developing countries. Don Moon stated:"This study of the WTO Dispute Settlement Mechanism demonstrates that (1) the procedural/ substantive dispute outcomes of the WTO are not significantly affected by power disparity between disputants (thus, enhancing the principles of "equality before the law"and "protecting the weak"), but that (2) the strict substantive provisions and the newly included provisions of the WTO agreements are advantageous to developed countries and disadvantageous to developing countries (thus, increased inequality in the content of the law)."[13]

Other WTO DSB decision in dispute settlement involving Indonesia that was not well performed is decision in the dispute between Indonesia and the USA concerning cigarette product. In that case Indonesia made a complaint against the USA before the WTO DSB concerning with the prohibition of selling imported cigarette product in the USA market. The cigarette case began in 2009 when the President of the USA, Barack Obama, enacted the Family Smoking Prevention and Tobacco Control Act, implied on prohibition of importing cigarette, but did not prohibit production and selling mint cigarete produced in the USA as like product. Started from that time, Indonesia could not exported anymore cigarette to the USA, eventhough potential selling could reach US $ 200 millions. Consequently, somes Indonesian Cigarette companies suffered of economic losses. Concerning with that case Tania Voon stated: "In this dispute, Indonesia challenged section 907(a)(I)(A) of the U.S. Federal Food, Drug and Cosmetic Act, which prohibits cigarettes and their component parts from containing as a constituent or additive a flavor, herb, or spice that is a characterizing flavor of the product or its smoke, excluding tobacco and menthol.[14]

Indonesia asked to do consultation with the USA for settling the dispute. Due to the consultation was failed, so Indonesia asked WTO DSB to form a Panel. Panel report in 2012, stated that the USA violated articles 2.1, 2.12 and 2.9.2 of the *Technical Barriers to Trade* (TBT) agreement and violated Article III of the GATT 1994 on national treatment principle. The Panel report was proposed by the USA to the investigation of WTO Appellate Body.

In 14 April 2012 a report made by WTO Apeallate Body strengthened the Panel decision which won Indonesia in the dispute settlement. WTO Appellate Body report mentioned that the USA regulation prohibit production and selling cigarette which has typical taste, such as strawberry, graphes, orange, coffe, vanilla and chocholate but does not prohibit selling mint ciggarette produced in the USA, was a violation of the WTO Law. The USA was given periode of time until 24 July 2013 to perform and comply with the WTO DSB desicion. Actually the USA only conducted a campaign against consuming mint cigarette, but does not prohibit its production and distribution, meanwhile imported cigarette product still being prohibited.

Indonesia claimed that the USA does not perform well the decision of the WTO DSB in the cigarette case. According to Indonesia, the measures which was taken by the USA to implement the WTO DSB decision had not been sufficient. For the violation to the WTO Law and failure of the USA in implementing the WTO DSB decision, Indonesia brought the case back to the WTO DSB for getting justice and fairly solution.

[13] Don Moon (2006), Equality and Inequality in the WTO Dispute Settlement (DS) System: Analysis of the GATT/WTO Dispute Data, International Interactions, London, Roudledge, p. 201.
[14] Tania Voon (2013), Flexibilities in WTO Law to Support Tobacco Control Regulation, American Journal of Law & Medicine, 39 (2013): 199-217, American Society of Law, Medicine & Ethics Boston University School of Law, p. 202.

Finally, the dispute was ended by an agreement signed by those two countries on 3rd October 2014[15]. Eventhough the dispute already ended, the agreement does not omit the fact that the USA already violate WTO agreements and does not comply with the WTO DSB decision in that case. So, this case shows that the adjudicative dispute settlement system is not effective in enforcing the WTO law.

3. Overcoming the problems of In eeffectiveness and Injustice:

Non compliance with DSB WTO decisions in some cases involving Indonesia shows the existence of weakness of the WTO adjudicatory dispute settlement system.[16] Concerning with this, Ernst-Ulrich Petersmann stated: "Both ad hoc arbitrators and WTO panellists often perceive themselves as 'agents' of the disputing parties mandated, inter alia, to 'give them adequate opportunity to develop a mutually satisfactory solution' (Article 11DSU). In view of their limited mandates, and in contrast to members of 'courts of justice', ad hoc arbitrators and WTO panellists do not wear traditional 'robes of justice' and may not perceive themselves as judges."[17] The WTO adjudicatory dispute settlement system was still strongly influenced by the political dispute settlement mechanism which more basic in efforting to achive settlement based on agreement among the parties, not merely based on law. The WTO judiciary dispute settlement process has not represented a real adjudicatory dispute settlement model. Other weakness of the WTO adjudicatory dispute settlement system is the implementation of the decision of WTO DSB was mostly based on the willing of the losing party to perform the decision in accordance with their commitment as WTO member. The WTO does not provide sufficient enforcement measures in implementing the WTO DSB decision. The only enforcement measures in implementing the WTO DSB decision based on the DSU is "trade retaliation", which mostly ineffective if it was done by developing countries against developed countries. Forcing action in the implementation of WTO DSB decision is more based on the ability of the winning party to do "*measures of self help*". Consequently, the economical and political powers of the winning party to force the losing party to perform the decision become the dominant factors in the implementation of WTO DSB decision.

The lack of enforcement measures in the implementation of the WTO DSB decision, will allow refusing and disobeying towards the DSB WTO decision, so it caused the legally binding of WTO DSB decision was low. This can lead to the interpretation that the legally binding of the WTO DSB decision is similar with the norm of international soft law[18], because there is no sanction against the non-compliance with the decision. On the other hand, some writers said that the WTO DSB is a decision made by an international court or tribunal, so it has a binding force between the parties in the dispute. Andre D Mitchell stated that: "The reasoning and decisions of WTO Tribunals (that is, 'judicial decisions' within the meaning of Article 38 (1)

[15] See Memory of Understanding between the Government of the United States of America and the Government of Indonesia, 3 October 2014, which among other thing state that Indonesia and the USA has reached mutually, agreed solution concerning the settlement of dispute Number WT/DS/406.

[16] Non compliance with WTO DSB decisions also happened in the settlement of dispute Number DS70 between Canada (respondent) against Brazil (complainant) and the settlement of dispute Number DS207 between Chili (respondent) against Argentina (complainant).

[17] Ernst-Ulrich Petersmann (2009), Administration of Justice in the World Trade Organization: Did the WTO Appellate Body Commit 'Grave Injustice'? The Law and Practice of International Courts and Tribunals, p. 335.

[18] Many legal scholars use a simple binary binding/nonbinding divide to distinguish hard from soft law, hard law is legally binding and other other hand soft law is not legally binding". See Gregory C. Shaffer and Mark A. Pollack (2010), Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International , University of Minnesota Law School Legal Studies Research Paper Series Research Paper No. 09-23 , p. 712.

(d) of the International Court of Justice Statute)".[19] Consequently, the WTO DSB decisions must be interpreted as norm of international hard law and there should be sanctions against the non compliance.

Due to the lack of enforcement measures in obeying decision, Judith H. Bello said that WTO rules did not stated a legal obligation to comply with WTO DSB decision.[20] If this view was followed, the enforcement of the WTO law will be disturbed and finally, it will hamper the realization of international trade based on the WTO principles. More consequently, the effectiveness[21] of the WTO adjudicatory dispute settlement system will decrease and it will result injustice, especially to the developing countries and LDCs members of the WTO.

Injustice in the WTO adjudicatory dispute settlement system will hamper the implementation of the justice principle in international relations based on international law and also is not in accordance with the United Nations (UN) Charter. The purposes of the establishment of the UN as stated in the Preambule of the UN Charter are : 1). to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and 2). to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and 3). to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and 4). to promote social progress and better standards of life in larger freedom. Justice is one of the basic principles of international relation based on international law post the Second World War era.

For implementing justice principle in international trade, the effectiveness of the WTO should be enhanced. But, what is effectiveness of law itself? Anthony Allot stated: "Effectiveness of a law, as I see it, is measured by the degree of compliance;..."[22] The effectiveness of WTO adjudicatory dispute settlement system in this article is meant as the level of complience with Panel and Appelate Body Report, which was already adopted by the WTO DSB in the form of rulings and recommendations. Since enforcement measures of the implementation of WTO DSB decisions mostly depend on the power of the winning party, so the WTO adjudicatory dispute settlement system will become effective if the winning party has enough power to force the losing party to perform the desicion. In verse, if the winning party have no sufficient economic and political power to force the losing party which has obligation to implement the decision of WTO DSB, the WTO adjudicatory dispute settlement system will not effective. Uneffectiveness of the WTO adjudicatory dispute settlement system already being showed in two cases involved Indonesia, so in some cases the effectiveness of WTO adjudicatory dispute settlement system become uncertain.

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[19] Andrew D. Mitchell (2008), Legal Principles in WTO Disputes, New York, Cambridge University Press, p. 34.

[20] Judith H. Bello (1996), The WTO Dispute Settlement Understanding: Less is more, in American Journa of International Law,. Vol. 90 No. 3, p. 198. Judith H. Bello were critized by John H. Jackson who states that the decision which made by DSB WTO (Panel report) create obligation based on international law toward WTO members which obligate to do the decision, see John H. Jackson (2004), International Status of WTO Dispute Settlement Reports : Obligation to comply or Option to "Buy Out" ? , American Journal of International Law, Vol. 98 No. 1, January, p. 109.

[21] Law effectiveness covers various factors (for examples law formulation and enforcement) which finally come to obey the law. If law determine certain behavior pattern, so each person should behave in accordance to the determined pattern, See Bernard L. Tanya et all (2010), Teory of Law, p. 115. According to Hans Kelsen the effectiveness of law constitute condisio sine qua non (Hans Kelsen in Theo Huijbers (1988), Phlosophy of Law, Across the History , Yogyakarta, Indonesia, Kanisius Publisher, p. 58.

[22] Anthony Allott (1981), The Effectiveness of Laws, Valparaiso University Law Review, Vol. 15, Number 2, Winter , pp. 234 -235.

Those uncertainty of effectiveness of the WTO adjudicatory dispute settlement system was worried can caused the credibility of the WTO dispute settlement system decrease. This will cause members of the WTO are easy to violate and ignore the WTO agreements. This situation was worried will cause the countries member of the WTO will prefer to choose unilaterally unfair action in settling dispute against other countries such as in GATT 1947. According to the writers, for increasing the effectiveness of WTO adjudicatory dispute settlement system, the WTO should create sufficient enforcement measures in the implementation of WTO DSB decision, for examples by establishing financial sanctions, collective trade retaliation, prohibition to do a complain by non compliance member.

In some cases, the weakness and uncertain effectiveness of the WTO adjudicatory dispute settlement has caused some developing countries members of the WTO suffered of injustice in the implementation of the WTO law. According to Plato, Gustav Radburg and W.A.M. Luypen, law must guarantee justice, because justice is the ultimate goal of every law.[23] Justice in the law enforcement of WTO is needed in order to fulfill the justice principles and fairness based on the WTO agreement.[24] In law enforcement, there are three elements that must be considered, namely law enforcement, utility and justice.[25]

There are many theories of justice.[26] According to the writers, John Rawl theory of justice and theory of justice based on The Five Basic Principles of State of Indonesia (the "Pancasila"), should be implemented to regulate international trade based on the WTO agreement. This is caused by the existence of various degrees in economic development of WTO members, that is developed countries, the group of developing countries and the group of least developed countries (LDCs).

John Rawls formulates justice principles as follows: 1). each person must have the same right based on the widest freedom, as widest freedom for all people, 2). Unequal economics and social must be regulated well so a). It is hoped to give advantages to all people and b). All position is opened for all people.[27] Justice theory of John Rawls should be implemented in implementation of the WTO Law, including WTO dispute settlement, because John Rawls who focused on equality and freedom principles, but it is possible to differentiate in justice concept being offered. John Rawls open opportunities for the limits above freedom and equality, since those can give benefits to all people. The limitation towards freedom and equality concept of John Rawls can be interpreted as well as distinguished economics treatment based on economics power which is owned by every member of the WTO. According Rawls those differences can be done as long as it gives benefits to all people, and must be well regulated. Rawls also focused on the importance of giving special treatment and protection to those who have low ability. So, Rawls gives place and respect the right of each people, including poor people, to enjoy prosperous life.

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[23] HM Agus Santoso (2012), Law, Moral and Justice, a certain Law Phylosophy Study, Jakarta, Indonesia, Predanamedia Group Publishers, p. 5.

[24] About the relationship between theory of justice and international trade see also Frank J. Garcia and Lindita Ciko (2011), Theory of Justice and International Economic Law, Boston College Law School Paper, p. 6.

[25] Sudikno Mertokusumo (1993), Chapters about Law Finding, Citra Aditya Bhakti Publishers, p. 1.

[26] The WTO need to implement a proper theory of justice for the perpose of fairly implementing of the WTO Agreement. Concerning the relation between theory of justice and the international economic relation (included international trade relation) J. Garcia dan Lindita Ciko state: "Theories of justice can also suggest alternative models and specific reforms to make international economic law more fair (and therefore more legitimate). It is part of the mandate of international institutions such as the WTO, the World Bank and the IMF that they pursue goals of global justice, Frank J. Garcia and Lindita Ciko (2011), loc. cit.

[27] The first statement of the two principles of justice reads as follows. First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all, John Rawls (2005), A Theory of Justice, The Belknap Press of Harvard, Massachusetts, London, England, University press Cambridge, p. 60.

According to the writers, John Rawls justice concept is in line with the justice concept of "Pancasila", the five basic principles of State of the Republic of Indonesia. The second principle stated: "Culturized and Justice Humanity". Then the fifth principles, stated: "Social justice for all Indonesian people". In the book entitled "the views of President Soeharto about Pancasila" was stated that principally culturized and justice humanity principle want to treat all of humans being in accordance to their dignity as God creation, by respecting each other, including respecting other country. Indonesian courtesy do not want the existence of rudeness for human from other human, including rudeness in all forms by other country.[28] Then, about "social justice for all Indonesian people", was stated that principally "it was wanted the existence of wider spread prosperity among the citizens; not static but dynamic and increase. Social justice also meant protecting the weak people, but the weakness must work in accordance to their field and their ability. The given protection for the weak people is aimed to prevent the strong party (people) to do exploitation over the weak party (people) and to guarantee justice to all.

John Rawls' jjustice concept and Pancasila justice concept require togetherness in prosperity, equality and respect to all people and there is no exploitation by one people over another people in any form, including economical exploitation. Even focusing on equality principle, but there is also different treatment which is profitable for weak people. Those Justice principles actually constitute an aspiration that want to be realized by international society through WTO agreement. WTO basic principle is freedom and non discrimination. But, WTO also regulated special and different treatments among the members, especially based on economics ability, namely the existence of special rights and different treatments for the benefits of the developing countries and Least Developed Countries (LDCs) of WTO members. The aim of giving special rights and differential treatments are in order to all WTO members can enjoy the benefits and justice in international trade. Special rights and differential treatments for the benefits of developing countries and LDCs based on WTO agreement should be implemented and enforced well through WTO settlement dipuste mechanism.

For enhancing the effectiveness of the WTO adjudicatory dispute settlement system and giving justice to developing countries members of the WTO, the WTO adjudicatory dispute settlement system should be improved. The WTO should build a credible, effective and fair adjudicatory dispute settlement system, by creating an independent, impartial court or tribunal. For implementing the decision of the WTO Court or Tribunal there should be institutional sanctions(such as financial sanctions, collective embargo[29], prohibition to make complaint before the DSB against the non compliance, etc). The WTO also should create more binding and implementative regulations on special and differential treatments for the benefits of developing countries and LDCs in the WTO dispute settlement. There should be aids for the developing countries and LDCs member of the WTO when they are involved in disputes against developed countries members, such as aids in law and technical expertise, financial aid and aid in the implementation of the decision.

4. Conclusion and Recommendation:

The WTO judiciary dispute settlement has not represented a real adjudicatory mechanism, because it still contains political dispute settlement elements and there are no sufficient enforcement measures in the implementation of WTO DSB decision. It can be said that the WTO adjudicatory dispute settlement still tend to be a quasi adjudicatory dispute settlement system. This characteristic caused the effectiveness of the

[28] Krissantono (1976), editor, President Soeharto's Opinion about Pancasila,Jakarta, Indonesia, CSIS Publishers, pp. 39-40.
[29] See also M.S. Korotana (2009), "Collective Retaliation and the WTO Dispute Setllement System", the Estey Centre Journal of International Law and Policy, Vol. 10 Number 1, p. 196.

WTO adjudicatory dispute settlement system is being uncertain and in some cases caused injustice for developing countries when they were involved in WTO disputes against developed countries.

A credible, effective and fair WTO adjudicatory dispute settlement system should be established for the enforcement of the WTO law and to recover any right based on the WTO agreements which is impaired or nullified by the violation of the WTO agreements. WTO should provide sufficient institutional measures of compliance with the WTO DSB decision. Collective trade embargo, financial sanctions, prohibition to make a complaint by non-compliance members, etc, can be used as sanctions against the non-compliance with the WTO DSB decision. In order to give justice to all of WTO members, those WTO adjudicatory dispute settlement system also must accommodate the interest of developing country and LDC members of the WTO, especially when they are involved in a dispute against developed country members, by establishing binding and implementative special and differential treatments rules in the WTO judicial dispute settlement regulation.

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