

Nickel Ore Export Restriction Policy: Implementation of Sanction Decisions of the World Trade Organization

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Abstract

Indonesia's policy of restricting raw nickel exports has prompted the European Union to sue it at the World Trade Organization. The European Union won the lawsuit, prompting the Indonesian side to appeal. Indonesia believes that the policy of limiting nickel exports can increase economic income, but it is not yet known who will win Indonesia's appeal at the World Trade Organization, so it is possible that Indonesia will lose. Facing the results of the Indonesian side's appeal against the European Union's lawsuit at the World Trade Organization, it is necessary to know how to implement the World Trade Organization's decision so far. This is an important background for the Indonesian side to maintain the policy of restricting nickel ore exports.

Keywords: *WTO, Indonesia, restrictions, nickel exports.*

1. INTRODUCTION

The World Trade Organization (WTO) is a refinement of the General Agreement on Tariffs and Trade (GATT), which was initially only a contractual agreement where international trade relations between countries were only carried out bilaterally and there were no multilateral trade relations. The aim of establishing the WTO is to increase the authority of GATT as an international institution in an effort to implement a more open international trade system with fairer and more transparent multilateral rules (Prasudhi, 2007). Another aim of establishing the WTO is to increase living standards, achieve full employment (no unemployment), real income growth and effective demand, and increase production and trade in goods and services (Bossche, 2008).

Indonesia, as a WTO member country, is marked by ratifying its legal product, namely Law Number 7 of 1984 concerning the Agreement on Establishing the World Trade Organization. Ratification of the legal product of an agreement to become a member of the WTO has consequences both externally and internally. The external consequence is that Indonesia must comply with all agreements in the WTO forum. Meanwhile, as an internal consequence, Indonesia must harmonize national laws and regulations in accordance with the results of the WTO agreement. Ratification contains the meaning of agreement to be bound by an agreement; the entry into force of the agreement and the statement regarding the agreement may or may not coincide (Sefriani, 2010).

The agreement between the two parties is bound by several principles that must be adhered to by parties joining the WTO membership, where each WTO member is obliged to comply with the provisions that have been agreed upon in international trade. The

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implementation of these conditions is called the principles contained in GATT, namely the Most Favored Nation (MFN) principle, the National Treatment principle, the principle of the Prohibition of Quantitative Restrictions (Restrictions), the principle of protection through tariffs, and the principle of reciprocity.

Regulation of the Minister of Energy and Mineral Resources Number 11 of 2019 (Permen ESDM 11/2019) concerning the Second Amendment to Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 decided to stop the export of low-grade nickel. This made the European Union an importer of nickel from The Indonesian state does not agree. The European Union filed a lawsuit with the WTO regarding the ban on Indonesian nickel ore exports and accused Indonesia of designing the nickel export restrictions to benefit its own industry. Apart from that, the European Union also believes that refining smelters in Indonesia will produce seven times more carbon dioxide, so the steel produced has the potential to cause high pollution (Yuneka, 2022). Indonesia's domination of the nickel ore export trade policy that was heard at the WTO shows that there is disagreement in all sectors of Indonesia's national policy formulation regarding the nickel ore export trade that has been determined by the WTO (Hidayati, 2014).

The WTO rejected Indonesia's defense of imposing a ban on nickel exports. The WTO has issued a decision that Indonesia has lost the lawsuit from the European Union regarding the ban on nickel exports. The losing decision was stated in the final report of the WTO panel dated October 17, 2022, and documented on November 30, 2022. The panel concluded that the ban on Indonesian nickel ore exports was not in accordance with Article XI:1 GATT 1994, which states that every WTO member country is prohibited from imposing restrictions other than tariffs, taxes, and other duties, and not other restrictions including quotas and permits for imports or sales for export (Hidranto, 2023).

Even though Indonesia has lost at the WTO, the Indonesian government remains committed to downstreaming mining materials in its homeland to obtain multiple added values (Sekretariat, 2022). This is proven to be in accordance with the speech delivered by the President of the Republic of Indonesia, Joko Widodo, who explained that before downstream mining results from nickel raw materials, Indonesia's export value was only USD 2.1 billion, or IDR 30 trillion per year, while after the policy of downstreaming Indonesian nickel raw material mining products began in 2020, the added value of exports jumped to USD 33.8 billion, or the equivalent of IDR 510 trillion (Kumpanan, 2023).

Indonesia's policy of restricting nickel ore exports can create added value and increase the resilience of the Indonesian economy (Kementerian, 2020). This large increase in export value is the result of Indonesian nickel ore being exported in the form of raw nickel ore, which is purified first to obtain the final result so that it has high economic value (Andryanto, 2023). Indonesia's downstream nickel policy is the result of restrictions on exports of raw nickel ore, which has caused the European Union to protest and sue Indonesia to the WTO.

Indonesia's defeat at the WTO did not make Indonesia give up on its policy of restricting nickel ore exports. The Indonesian side made an appeal for its defeat (Nugraheny & Setuningsih, 2023). The problem is, if Indonesia's appeal to the WTO is still defeated, what will be the effectiveness of sanctions for re-implementing WTO decisions? This can be a consideration for the Indonesian side regarding the actions that the Indonesian Party will face if Indonesia loses its appeal at the WTO.

The implementation of World Trade Organization decisions that occur in a country in research has been found to depend on the country that will implement them, but in this research it is limited to the implementation of one country between developed and developing countries. The researcher acknowledges the limitations in the research which cannot guarantee with certainty will implement the decision of the world trade

organization against the European Union if it succeeds in opposing Indonesia in its policy of restricting nickel ore exports.

2. RESEARCH METHODS

The research method used is a type of legal research, with the data collection method carried out by literature study with priority on secondary data, namely primary legal material in the form of all agreements contained in the WTO Agreement, secondary legal material in the form of writings and opinions of experts. The data analysis method used in this research is descriptive analytical, namely carrying out in-depth analysis in order to answer the main problems raised.

3. RESULT & DISCUSSION

3.1. Indonesian Nickel Ore Export Prohibition Policy

Nickel has many functions and uses that can support human life today. Its structure is hard, easy to shape, and ductile, and it is also a good conductor of heat and electricity, making nickel widely used as the main ingredient in metal alloys. Usually, a combination of nickel, iron, and chromium will produce steel that is rust-resistant and very hard (Nickelinstitute, 2023).

Indonesia's geographical location is in a zone with a tropical and subtropical climate, making Indonesia rich in the presence of modern laterite nickel deposits. So, the potential for nickel reserves is quite large in Indonesia. Indonesia plays an important role by being in first place as the country with the largest nickel production, namely 800,000 metric tons, and the Philippines as the country in second place with a total production amount that is still far from being compared to Indonesia's nickel production. So it is not surprising that many countries depend on nickel production supplies from Indonesia. Indonesia holds 37.2% of total nickel exports in the world, or approximately USD 1.7 billion. From 2015 to 2019, nickel products experienced quite high growth. This industry managed to grow by 61% over the last 5 years. This product is mostly used as a component in making stainless steel, coins, magnetic iron, and others (Portal, 2020).

Apart from being the country with the largest nickel reserves in the world, Indonesia's nickel ore is of the nickel laterite type, which has the highest average quality in the world. This quality means that Indonesian nickel ore can be processed into high-quality stainless steel (Ahda, 2021). Currently, Indonesia is encouraging downstream efforts in the mineral industry. The downstreaming of industry in the mineral mining sector has been stated and mandated in Law No. 4 of 2009. One of the minerals currently undergoing a downstream program is nickel. For nickel commodities, value-added income from the downstream program is estimated to reach around USD 9 billion (Putri, 2023).

Regulations regarding restrictions on exports of Indonesian nickel ore are contained in Minister of Energy and Mineral Resources Regulation No. 11 of 2019, which regulates restrictions on exports of raw minerals. In this regulation, it is explained that nickel with a content below 1.7%, which was previously allowed to be exported, is no longer allowed to be exported starting January 1, 2020. The policy issued by Indonesia sparked protests from European Union countries, which are highly dependent on nickel supplies.

The European Union (EU) is a region that has quite a high dependence on global nickel supplies. The EU uses around 700,000 metric tons of nickel per year. Most of its use is for stainless steel materials. Stainless steel production in the European Union is more than 177 million metric tons, which is around 11% of all stainless steel produced in the world. Apart from China, the European Union is one of the largest producers and exporters of stainless steel, with total net exports of 1.8 million tons. Germany is the country with the

largest contribution to steel production in the EU, namely 25.1%, followed by Italy, which contributes 14.8%, and France, which contributes 9.2%. Throughout 2019, the EU was able to export 20.5 million metric tons of steel throughout the world (EuropeanCommissions, 2020). With this much-processed nickel product, various industries in the EU are very dependent on the availability of nickel supplies. Even though the region has its own nickel mines, with large industrial needs, the availability of nickel in the EU region is not able to meet the industrial needs.

At the end of 2019 and the beginning of 2020, global nickel production decreased by 7.4%. According to preliminary data released by the US Geological Survey (USGS), global mining nickel production at the beginning of 2019 was 2,500 kt, then fell to 2,195 kt at the beginning of 2020 (Birch, 2020). Most global stainless steel producers purchase nickel for their stainless steel production based on prices determined by the London Metal Exchange (LME). The LME is the trading center for the world metals industry. The metal prices contained in the LME are used as a reference for metals trading around the world (LondonMetalExchange, 2020). When the Indonesian government announced that it would implement a policy banning nickel exports in 2019, the price of nickel on the market soared. From June 7 to September 2, 2019, the price of nickel jumped from \$11,575 to \$18,620, an increase of 61% in a period of 3 months, before finally settling at a price of almost \$14,000 at the end of 2019 (LondonMetalExchange, 2022). Of course, the scarcity and high price of nickel made the EU panic. fog to meet the nickel supply for the industry.

As a component that plays an important role in making stainless steel, of course the market price of nickel will greatly influence the selling price of stainless steel around the world. Currently, the stainless steel industry in the EU is at its lowest level and is experiencing a deficit in its trade balance of around 600 metric tons (EuropeanCommissions, 2021), distortions in international trade, and a pandemic that has disrupted supply chains and impacted the downstream sector (EuropeanCommissions, 2021). According to data from the Central Statistics Agency (BPS), throughout 2022, Indonesia will export 777.4 thousand tons of nickel, which is an increase of 367% compared to the previous year (year-on-year/yoy). The total value of Indonesia's nickel exports in 2022 also jumped 369% (yoy) to USD 5.97 billion. These figures are the highest records in the last decade, namely the period from around 2013 to 2022 (Ahdiat, 2023).

3.2. The European Union's lawsuit against Indonesia at the WTO

The World Trade Organization (WTO) is in fact a continuation and development of the General Agreement on Tariffs and Trade (GATT), which has the main objective of creating healthy competition in the field of international trade for its members. Meanwhile, philosophically, the aim of the WTO is to improve living standards and incomes, guarantee the creation of jobs, increase production and trade, and optimize the use of world resources. The WTO, which is a continuation of GATT, basically has the same principles and objectives for creating order in international trade.

The aim of the WTO is to assist producers of goods and services, exporters, and importers in carrying out their activities. In principle, the objectives of the WTO are not much different from the objectives of GATT 1947, its predecessor. After the formation of the WTO, the objectives of GATT 1947 were also included in the preamble (consideration) of the WTO agreement. So, Van den Bossche said that the ultimate goal of the WTO is as follows: improve living standards, achieve full employment (no unemployment), grow real income and effective demand and pay for the production and trade of goods and services (Cristhophorus, 2015) .

The main function of the WTO is as a forum for its members to conduct trade negotiations and administer all negotiation results and international trade regulations. Apart from that, the functions of the WTO include: regulating agreements between

countries in trade; encouraging the flow of trade between countries by reducing and eliminating various obstacles that can disrupt the smooth flow of trade in goods and services; facilitating negotiations by providing a more permanent negotiation forum for resolving disputes; considering that trade relations often give rise to conflicts of interest; resolving trade disputes as a forum for trade negotiations; monitoring a country's trade policies; and providing assistance to developing countries.

Looking at the functions of the WTO above, one of them is as an organization that resolves trade disputes, which is why the European Union countries filed a lawsuit to stop nickel ore exports to European countries. As mentioned above, in 1995, the WTO was established, and Indonesia ratified it through Law No. 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization, which ratified Indonesia as a member country of the WTO. With the existence of international trade and Indonesia's joining the WTO, it opens the way for Indonesia to establish international trade relations with other countries, especially with fellow WTO member countries, which encourages the establishment of international trade cooperative relations between countries.

In line with the progress of international trade relations, international trade disputes arise that cannot be avoided, one of which is the trade dispute between Indonesia and the European Union, which began in 2018 when the majority of the European Parliament decided to approve the plan to ban the use of palm oil as the main raw material. biodiesel in 2021, with a decision to increase energy efficiency to 35% by 2030 (Christiningrum, 2018).

The European Union, as the largest biofuel-producing country, established a policy in 2009 regarding the production and promotion of renewable energy, namely the Renewable Energy Directive (RED). The Delegated Regulation Supplementing Directive of the EU Renewable Energy Directive II, or RED II, states that there is a plan to end the use of palm oil as a biofuel in the European Union, which will be implemented in its entirety by 2030, and a reduction in the use of palm oil in the European Union will begin in 2024.

The implementation of the cessation of the use of palm oil in the European Union is based on the belief that palm oil is the main factor in environmental destruction. Indonesia, as one of the largest palm oil producing countries in the world at 58%, or 44,500 MT as of June 2021 (UnitedStateDepartmentofAgriculture, 2021), objects to the European Union's policy to stop exporting and importing palm oil from Indonesia to European Union countries, which is supported by policies that limit market access for palm oil and biofuels made from palm oil, thereby having a negative impact on Indonesian palm oil products in the European Union market (BBCNewsIndonesia, 2019).

As a retaliation or act of retaliation for discrimination against Indonesian palm oil products in the European Union, the Indonesian government, through the Ministry of Energy and Mineral Resources, issued a ban on nickel ore exports, which took effect as of January 1, 2020. This was decided as Indonesia's effort to protect nickel ore reserves aimed at meeting material needs. smelter raw materials are located in Indonesia and this policy cannot be postponed any longer by Indonesia because mineral wealth, especially nickel, can run out and cannot be renewed (Izzaty & Suhartono, 2019) and the European Union is suing Indonesia at the WTO regarding the ban on nickel ore exports, ignoring the policies it issued to maintain environment and rejecting Indonesian palm oil products which are considered to damage the environment, and the European Union ignoring that the mining industry causes environmental damage worse than that caused by, and the European Union suing Indonesia to the WTO regarding the ban on nickel ore exports, ignoring the policies it issued to caring for the environment and rejecting Indonesian palm oil products which are considered to damage the environment, and the European Union ignores that the mining industry causes more severe environmental damage than that caused by the palm oil industry. Because the European Union is the world's leading

stainless steel producer and also the leader in the global electric car industry, which requires nickel as a raw material, the European Union is very dependent on Indonesia's abundant nickel.

This act of retaliation is also called retaliation, which is an act of retaliation in the field of trade between countries within the WTO framework carried out by a country as a result of not reaching an agreement in the dispute resolution process. Nickel ore exports are one of the export commodities that are currently booming due to the high demand for electric vehicles powered by nickel-based batteries. This high demand for nickel has prompted the Indonesian government to issue regulations regarding restrictions and prohibitions on the export of raw materials, including nickel ore, in order to increase the added value of nickel ore and other raw materials.

The ban and restrictions on nickel ore exports were responded to by the European Union with a lawsuit filed against Indonesia at the WTO Dispute Settlement Body (DSB), because Indonesia was deemed to have violated the provisions of Article XI:1 GATT 1994, Article X:1 GATT 1994, and Article 3.1(b) ASCM and is also detrimental to the European Union's stainless steel industry. Article XI:1 GATT 1994 states that there are no prohibitions or restrictions other than duties, taxes, or other fees, whether imposed through quotas, import or export licenses, or other measures. In GATT/WTO cases or disputes, this article is often involved because, in general, countries' various policies often take non-tariff measures. It must be acknowledged that, in protecting domestic producers, non-tariff measures are very effective in achieving targets. Apart from not being transparent, direct non-tariff measures can kill competition.

This is different from the tariff system, which does not conflict with market mechanisms and is always transparent. Article X:1 GATT 1994, which regulates transparency in applicable trade regulations and the equal application of these regulations without discrimination, Article 3.1(b) ASCM (Agreement on Subsidies and Countervailing Measures): Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) contingent subsidies, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; (b) contingent subsidies, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Subsidies as stipulated in Article 3.1 of the SCM are per se illegal; that is, they are completely prohibited without requiring the reporting country to prove that there is an impact of economic loss experienced by their country due to a subsidized imported product from another country.

3.3. Sanctions in WTO Dispute Settlement

In this case, the WTO was formed to create a climate of healthy competition in the field of international trade for its member countries. With the formation of the WTO, this organization is the only international organization that regulates international trade and contains the principles and provisions regarding international trade agreed upon by the WTO member countries.

One of the international trade provisions mutually agreed upon by WTO members is that the WTO is agreed to be a forum or institution for resolving international trade disputes for its member countries based on international trade rules. Article 3 paragraph (3) of the Agreement Establishing the World Trade Organization states that the WTO will regulate understanding regarding rules and procedures for dispute resolution. The Disputes Settlement Body (DSB) is an international trade dispute resolution body under the WTO that is guided by the dispute resolution system regulated in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

DSU was formed as an international trade dispute resolution system that covers all WTO agreements and emphasizes that there is no dispute resolution system regulated by each

agreement in the WTO, so DSU is a form of agreement from member countries to present a dispute resolution system that can provide fair decisions and guarantee legal certainty. After the dispute resolution process reaches the final stage, one of the possibilities in the DSB decision is to determine that one of the parties to the dispute is deemed to have violated GATT/WTO rules.

If the results of actions deemed to be infringing and detrimental to the party suing are not carried out, the injured party is given the right to retaliate in a form that must be agreed upon by the DSB. It states that in overseeing the implementation of recommendations or rulings, special attention must be given to issues that affect the interests of developing countries. It goes on to say that if a case is submitted by a developing country, the DSB will consider what further action to take by taking into account not only the scope of the trade substance involved but also the broad impact on the developing country's economy.

The DSB is the only dispute resolution body in the WTO that resolves disputes using a judicial (adjudicatory) mechanism, the same as international courts in general. Procedures and decisions from international dispute resolution institutions that are judicial (adjudicatory) are generally binding on the parties to the dispute. For this reason, in resolving international trade disputes through the WTO, the jurisdiction of the DSB is also binding and coercive for WTO members who are litigating, so it must be implemented by the parties to the dispute.

The provisions of Article 3:7 of the DSU stipulate that when the parties to a dispute do not obtain a mutually agreed-upon solution, the aim of dispute resolution is to secure or guarantee the withdrawal or cancellation of related actions that are proven to be inconsistent with the provisions of one of the agreements covered by the WTO. When the Panel or Appellate Body concludes that an action is not in line with the provisions of the WTO, the Panel or Appellate Body will recommend that the member concerned adjust its action to be in line with WTO provisions.

The provisions in the WTO are the result of agreements between member countries in the form of international agreements. Therefore, from agreements to agreements under the WTO, a legal consequence arises that the provisions in the WTO are binding and must be obeyed by all member countries. These provisions contain an obligation for each WTO member country to refrain from taking actions that are not in line with the WTO. Thus, it can be understood that reports, decisions, and recommendations from the Panel or Appellate Body provide an obligation for parties declared to have violated WTO provisions to stop actions that are inconsistent with the provisions of the WTO.

In this case, the DSU also emphasizes that every member who does not implement the decisions and recommendations of the Panel or Appellate Body is required to provide compensation to the reporting country, or perhaps the country will receive retaliatory countermeasures. The provisions of Article 21:6 of the DSU reflect that the DSB's decision or recommendation is binding. If the parties who are charged with the obligation to do or not do something fail or do not carry it out, then the other party has the right to ask the DSB to suspend concessions or other obligations towards the other party (Article 22:1 DSU) (Fairuz et al, 2021). However, some economic experts and various literature on the international trade system see that the WTO dispute resolution system implemented by the DSB through panel institutions and the Appeals Body is considered a system of sanctions known as "encourage punishment".

In connection with the issue of sanctions, Donald McRae is of the view that although punishment or sanctions are part of dispute resolution through the WTO, their role is very small, is not the main objective of the WTO dispute resolution system, and is also not something that the international dispute resolution system can implement. other. For this reason, it is necessary to pay further attention to the main purpose of penalties or sanctions in dispute resolution through the WTO. There is no basis to suggest that

punishment or sanctions are the main objective of the dispute resolution system in the WTO (Hidayati, 2014).

Article 3:2 of the DSU does explain the objectives of the dispute settlement system but does not specifically explain that punishment is the main objective of WTO dispute resolution. Article 3:2 of the DSU states that “the WTO dispute settlement system is a central element in providing security and predictability to the multilateral trading system. WTO Members recognize that the dispute settlement system serves to safeguard Members' rights and obligations under the agreements they cover and to clarify existing provisions of those agreements in accordance with customary rules of interpretation of public international law. DSB recommendations and decisions cannot increase or reduce the rights and obligations stipulated in the covered agreements (Bartels, 2001).”

Settlement of disputes at the WTO, if understood, has different objectives. The WTO dispute settlement system contains rules that decide whether actions carried out by its members violate the provisions of the WTO or not. If the actions of a WTO member are not in line with existing provisions, then the member must adjust their actions to be in accordance with existing provisions in the WTO so that violations can be overcome. From this, it can be seen that the dispute resolution system in the WTO shows a process that is more directed towards domestic or civil litigation than for the purposes of criminal law enforcement, which seeks to find perpetrators and impose sanctions against them.

Apart from this, the existence of sanctions in the dispute resolution system through the WTO is a reality that must be accepted. If members do not comply and violate the provisions in the WTO, then there is the possibility of seeking compensation or permission for retaliation. This is where the law applies. However, the main focus and aim of the WTO dispute resolution system is to try to provide a number of forms of restructuring the compliance attitude of WTO member countries towards WTO provisions so that their actions are in accordance with or in line with existing provisions and are not only focused on providing punishment or sanctions for perpetrators of violations. If a country that violates WTO provisions does not comply with the panel's decision by not adjusting its actions to be in line with or back in line with WTO rules, then retaliation measures can be used.

3.4. Realization in Understanding the Rules and Procedures Governing the Settlement of Disputes (DSU)

Retaliation actions are efforts to resolve international trade disputes within the WTO domain as compensation or redress, implemented in the form of concessions or market access. Acts of retaliation are carried out by a country as a result of not reaching an agreement in the process of resolving international trade disputes (Puspita, 2017).

Based on Article 22:3 DSU, retaliation is divided into three types, which can be described as follows: **Pararell Retaliation** The claimant country must carry out retaliation against the violating country in the same trade sector in the event of a violation. This type of retaliation is not limited to increasing tariffs for similar commodities but can also take the form of asking for compensation in the form of an amount of money equivalent to the nominal amount of the loss. **Cross-sector Retaliation** If retaliation measures in the same sector in this case prove to be ineffective, then the claimant country can take retaliation action against the violating country in a different sector under the same agreement. **Cross-agreement Retaliation** If the situation is considered serious enough and retaliation measures from different sectors are deemed ineffective, then the claimant country in this case can take retaliation action against the violating country in a different trade agreement.

The exercise of the right to retaliation is basically related to the compliance of member countries with recommendations from the panel or appellate body. For the WTO, the option that exists if this happens is that the country found guilty must immediately hold

negotiations with the country that is suing to determine compensation that can be mutually agreed upon. If within 20 days a compensation agreement is not reached, the plaintiff can ask DSB for permission to apply limited trade sanctions (suspending concessions or obligations) against the other party.

It is hoped that retaliation action, as a way to restore rights for violations of WTO provisions, can be an effort to ensure the withdrawal of actions from violating countries that are not in line with the provisions contained in the WTO. In practice, this retaliation action is difficult to implement and does not achieve its objective as an effort to restore rights, considering that there are differences in economic capabilities between WTO members.

This retaliation is difficult to implement if an economically weak country has a trade dispute with an economically strong country, as in the case of Korea's anti-duties on imports of certain paper from Indonesia. In this case, the countries involved were Indonesia and South Korea, which occurred because of dumping accusations made by South Korea against Indonesia. The DSB panel's decision assessed that South Korea had made a mistake in proving the existence of dumping practices carried out by Indonesia and imposed several sanctions on South Korea (Sidiqah, 2019). The consideration made by the panel in giving its decision was to recommend that South Korea should improve the provisions it made to return them to the provisions stated in the WTO agreement.

Indonesia's attitude is to accept the decision, while South Korea's attitude is to refuse to implement the panel's decision. South Korea's attitude will certainly cause huge losses for Indonesia for an uncertain period of time until South Korea readjusts its provisions in accordance with the WTO agreement. Retaliation action can indeed be taken by Indonesia in this case based on Article 22 DSU. However, in accordance with the views expressed by the Minister of Trade, Indonesia should not carelessly make statements about carrying out retaliation because it is feared that it will reduce Indonesia's dignity in the international trade arena if Indonesia is unable to carry out retaliation actions.

Therefore, Indonesia did not take retaliatory action against South Korea. In the case of Korea-Anti-Dumping Duties on Imports of Certain Paper from Indonesia, it can be seen that retaliation actions carried out by developing countries against developed countries can create obstacles to international trade and the risk of losses for developing countries, while on the other hand, these retaliation actions are not too influential on developed countries. This happens in the developed country of the United States. The United States does not implement WTO decisions. The United States violated international trade rules when it implemented steel and aluminum tariffs under former President Donald Trump. Tariffs of 25% on global steel imports and 10% on global aluminum, which Trump imposed on national security grounds, violate basic WTO rules.

Retaliation will not be effective if developing countries apply retaliation to developed countries because it will not have a deterrent effect. For this reason, in making a decision to take retaliation action, countries, especially developing countries, must be as wise as possible in taking retaliation steps by considering the profits and possible risks of trade losses incurred. This is due to the dependence of developing countries on trading partners from developed countries.

According to economic observers regarding the retaliation action, this action is contrary to the idea of free trade that the WTO wants to create because suspending concessions can result in increased trade barriers. Of course, from this, it can be understood that retaliation has a very close relationship with the economic strength of a country, so the WTO should address the obstacles to implementing retaliation efforts. For example, by making a special agreement to regulate the mechanism for implementing retaliation so that its implementation in practice in the field can run effectively. The WTO is an impressive dispute resolution system, but it requires improvements through critical thinking to resolve existing obstacles (Dawey, 2009).

4. CONCLUSION

Witness compensation and retaliation are sanctions decided by the DSB panel against WTO member countries that violate the provisions regulated by the WTO. South Korea, which had a dispute with Indonesia regarding dumping practices, saw the DSB panel's decision recommend that South Korea should carry out retaliation. However, in reality, the Indonesian side did not use this opportunity on the grounds that South Korea is a developed country, which could create obstacles to international trade and the risk of losses for developing countries. Non-implementation of WTO decisions also occurs in developed countries such as the United States, which means that WTO decisions will be effective if the loser is a developing country and will not be effective if the loser is a developed country. The policy of banning nickel ore exports implemented by Indonesia is currently in dispute with the European Union, which is appealing to the WTO. The European Union, which is an association of developed countries, can provide an illustration that if Indonesia, as a developing country, loses its appeal at the WTO, it is certain that the reinstatement sanctions applied will be effective for Indonesia. Continuing to maintain the Indonesian policy towards nickel ore exports will risk national losses and obstacles in international trade.

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