

Maqasid Shariah perspective on Indonesia's winning strategy of paper dumping lawsuit on WTO

Chalimatus Sa'diyah¹

*Magister Hukum Jurusan Ekonomi Islam, Universitas
Indonesia, Universitas Indonesia, Indonesia¹*

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Abstract

In the last eight years, Indonesia has extensive forests as paper raw materials and has experienced three accusations of paper dumping practices in foreign trade or exports. The allegation of dumping practices addressed to Indonesia was submitted to the WTO as the institution that oversees all trade issues between countries in the form of filing a case or trade lawsuit. Three lawsuits from Pakistan, South Korea, and Australia over allegations of paper dumping practices at the WTO have been won by Indonesia. From an Islamic law perspective, dumping itself is prohibited if it aims to harm other countries. This article aims to provide an overview of Indonesia's paper dumping practice allegations from the perspective of Islamic law, with an explanatory and narrative approach.

Keywords: Dumping; WTO; Islamic law perspective

¹ umiaisyahdamanhuri@gmail.com

Introduction

Two driving factors drive economic globalization: First, the technology that makes globalization possible; second, trade and investment liberalization. The globalization of the economy has formed a current that encourages free trade (free trade). This cross-border trade has great potential to improve a country's economy; with this trade, we can get a shared opportunity to improve our welfare together with other countries. To make this possible, an international trade organization was formed. Therefore, in 1994 through the Uruguay Round, an international agreement (Marakesh Agreement) was agreed to establish a World Trade Agreement (WTO) (Muhammad, 2005). The entry of Indonesia as a member of world trade through the ratification of Law Number 7 of 1994 concerning the Ratification of the Agreement on Establishing the World Trade Organization has brought both external and internal consequences. In external influences, Indonesia must comply with all the results of agreements in the WTO forum. In internal matters, Indonesia must harmonize national laws and regulations to the results of the WTO agreement. The WTO specifically only regulates two types of trade practices which include unfair trade, namely dumping and subsidies.

As a consequence of being actively involved in world free trade and as a member of the WTO, Indonesia is faced with the fact that there are demands related to its participation, including in the case of a lawsuit to the WTO that Indonesia is dumping other countries. In the records of the WTO lawsuit, Indonesia has more than three times faced accusations of dumping, especially regarding paper imports in destination countries. However, there are three accusations of paper dumping, namely DS 312 between Indonesia - South Korea in 2007, DS 470 between Indonesia - Pakistan in 2013, and DS 529 between Indonesia - Australia in 2019, which on three occasions faced the paper dumping lawsuit, Indonesia won, thanks to the proper strategy carried out by the Indonesian side and the cooperation of all relevant parties, namely, the ministry of trade, the ministry of foreign affairs and the trade actors themselves.

Paper dumping between Indonesia and South Korea

The paper dumping case that South Korea accused Indonesia of began in 2002 when there was an anti-dumping petition from the Korean Trade Commission (KTC) against Indonesian paper products. At least four Indonesian paper-producing companies have received this petition: PT. Indah Kiat Pulp & Paper Tbk., PT. Pindo Deli Pulp & Mills, PT. Tjiwi Kimia Tbk and April Pine Paper Trading Pte Ltd, which includes 16 products, belong to the uncoated paper and paper boards used for writing, printing, or another explicit purpose, carbon paper, self copy paper, and other copying (Hata, 2006). As a member of the WTO, Indonesia takes advantage of the mechanism provided when dealing with disputes with other countries, namely through the Dispute Settlement Body (DSB) at the WTO, starting with the consultation stage. During the consultation stage with Indonesia, Indonesia has found many violations committed by South Korea. Some of Indonesia's findings that Korea violated the obligations regulated by the WTO were in the following cases:

1. South Korea's investigative initiative on allegations of Indonesia's paper dumping practice is insufficient in fulfilling the elements of proof of dumping, losses, and causal relationships, which are the main requirements in dumping practices.
2. South Korea can't say anything about the basis for the alleged dumping practice
3. South Korea's way of keeping information confidential in investigations
4. South Korea submitted an investigation request to the company without obtaining approval and without notifying the Indonesian Government of the investigation request
5. South Korea refuses to provide sales information from several companies without explaining why
6. South Korea determines the initial limits: the level of liking of a product, the value of the development owned, the availability of sufficient information, refusal of access to information, and allowing exporters to express their views.
7. South Korea determines the final limitations such as the level of liking of a product, individual dumping margins, the value of owned products, treating one company and another as a single economic unit, the impact of import dumping on the industry, and product prices on the domestic market and failure to evaluate Relevant economic factors and indices and resistance to access to information

Indonesia's firmness in conveying essential points regarding South Korea's investigative actions against accusations of dumping practices led the WTO DSB panel to agree and, in the end, gave a decision in favor of Indonesia. The WTO DSB Panel said that South Korea's KTC was inconsistent with several articles of the anti-dumping agreement by not applying the precautionary principle in the use of information. South Korea's KTC was also proven incompatible with the provisions of the anti-dumping agreement in terms of refusing to allow Indonesian paper producers to explain the factors of loss experienced. With this decision, Indonesia is said to have won the case and has not been proven to have carried out paper dumping practices against South Korea.

Paper dumping between Indonesia and Pakistan

The second case charged against Indonesia is paper dumping between Indonesia and Pakistan. The beginning of this accusation of dumping was when in 2010, the local paper company Pakistan Packages Limited submitted a petition to the National Tariff Committee (NTC) of Pakistan to investigate the existence of dumping practices by Indonesia. The investigation was carried out and resulted in Indonesia having to experience the imposition of anti-dumping import duty from Pakistan of 34.04%. However, the study was stopped in 2011 for several reasons, one of which was that the company submitted as a witness did not suffer any losses. The dumping accusation against Indonesia was invalid.

The investigation's termination is good news for Indonesia because the barriers to paper exports to Pakistan are gone. Pakistan's NTC resumed the investigation shortly after conveying the termination of the study. Seeing the protracted condition of the allegation of paper dumping, the Indonesian government finally took the initiative to complain to the WTO on this case at the consultation stage. Indonesia filed an

objection against the dumping accusation because the process was too long and exceeded the investigation time limit set by the WTO, which is a maximum of 18 months, another reason that Pakistan was inconsistent with several articles in the WTO anti-dumping agreement. In addition, allegations that have not been proven have resulted in losses on the Indonesian export side. Indonesia asks that its investigation be increased by establishing a panel so that the research is more focused and clear (Salinding, 2016).

Indonesia's challenge for the WTO to form a panel for a higher investigation prompted Pakistan to reorganize diplomatic steps with Indonesia due to Pakistan's unfavorable domestic political conditions. Hence, it is better to import paper from Indonesia. As a result, Pakistan decided to stop the investigation process (termination) because it wanted to have good bilateral relations with Indonesia, considering that Pakistan needed paper products from Indonesia. Indonesia agreed to this and, together with Pakistan, decided to stop the investigation process in 2014. Indonesia's second success this time is good cooperation between the Ministry of Trade and diplomatic efforts from the Ministry of Foreign Affairs.

Paper Dumping between Indonesia - Australia

The third case of alleged paper dumping is between Indonesia and Australia. Initially, in 2017, Australia imposed a vast import duty on three Indonesian paper exporters, namely 33%. After the three companies sold the paper in Australia, the Australian paper industry suffered losses (injury) in decreased sales volume and profits, price pressures, reduced market share, workforce, capacity, and investment (Hoetami, 2020). As a result of this Australian action, Indonesia suffered many losses in export trade. High import duties caused the value of Indonesia's exports to decline drastically, and domestic paper production was abundant.

In the same year, Indonesia finally took the initiative to request a consultation with the WTO by complaining about Australia's anti-dumping actions that harmed Indonesia by imposing high import duties. Indonesia also asked the WTO to investigate the dumping allegations directed by Australia against Indonesia. It was not long before other countries submitted requests for Australia to be involved in the consultations. These countries are China, the USA, and European Union. The talk between Indonesia and Australia was followed by forming a panel to discuss the disputed case.

In the panel session, Indonesia stated firmly that Australia's accusations of dumping were unfounded; the formulation of the sentence used by Australia, namely: "particular market situation," was an interpretation that was not in line with the articles stipulated in the anti-dumping agreement. Indonesia also said that Australia could not compare domestic prices with exporter prices and other facts claimed by Indonesia in proving the accusation of dumping. Based on the findings of these facts, the DSB panel recommends that Australia comply with all provisions of the anti-dumping agreement. Through a series of diplomatic stages, finally, in 2020, Australia agreed to comply with the DSB panel recommendations; this Victory Again by Indonesia is a very resounding success considering the many countries involved in the panel and acting as third parties participating in every stage of the investigation.

Dumping in Islamic Law Perspective

Indonesia's Strategy in International Trade Dispute Resolution at the WTO

In dealing with every conflict, dispute, or problem faced by a country, a dispute resolution strategy is an important step that must be carefully planned so that it can be carried out/appropriately executed, including, in this case, international trade disputes. According to John A. Bryne, strategy is a fundamental pattern of planned and targeted resource deployment and organizational interactions with markets, competitors, and environmental factors (Hasan, 2010). Another understanding strategy is the overall approach related to the idea, planning, and execution of an activity within a specific time. In a good strategy, the coordination of the work team has the theme of identifying the supporting factors by the principles of rational implementation of ideas, efficiency in funding, and having tactics to achieve goals effectively (Tjiptono, 2000). It can be concluded that strategy is a unified idea, a method of approach that considers competitor factors so that it can be appropriately executed. An accurate strategy is needed to deal with other countries' accusations, especially in international trade disputes. It is hoped that the accuracy in implementing the strategy for resolving international trade disputes will bring victory to Indonesia.

In explaining the three paper dumping cases faced by Indonesia above, Indonesia carried out a strategy in two forms. First, Indonesia carried out a proof strategy by collecting evidence of events that denied that Indonesia did not do paper dumping, rereading, and researching the articles in the Dumping Agreement—specifically regarding the alleged things. Second, Indonesia carries out a diplomatic strategy through the Indonesian embassies in the three countries that are accused of paper dumping, looking for the root cause of the dumping accusations originating from other factors, such as political factors, the real needs of paper trading in importing countries and domestic social factors. Through diplomacy, a personal approach is also carried out between embassies to map problems. As a result, there are many facts outside the case's core behind the accusations of dumping; This is like what happened in Pakistan that Pakistan's domestic conditions are indeed the reason for accusing Indonesia of dumping, namely the condition of the need for paper compared to the ability to produce which is not balanced, the raw paper material is the forest which is not abundant like in Indonesia, as well as domestic political conditions. Pakistan is not conducive, affecting the paper trade (2016). In the evidentiary stage at the WTO, Indonesia did not hesitate to be firm, assertive, and lead, for example, in terms of requesting that the step of proving the accusation of dumping practice be increased from the consultation stage to the degree of forming a panel but was rejected by Pakistan. Hence, o Pakistan prefers not to proceed with the dumping accusation case against Indonesia.

Likewise, when facing Korea with the same accusation, Indonesia took the first initiative to submit consultations to the WTO because it did not accept being subject to high import duties. Usually, the importing country introduced first to the WTO accusations of fraud or losses experienced in international trade.

From the perspective of Islamic law, it is known as the Clean Diplomacy Strategy. Clean diplomacy refers to the implementation of ideal diplomacy, consistently accountable to the people and based on the Qur'an and Hadith. Pure diplomacy also prioritizes the public interest and benefits all parties involved or *rahmatan Lil Alamin*. The Prophet Muhammad SAW repeatedly exemplified this Clean Diplomacy, including at the time of the diplomacy of the Badr wars, the laying of the Black Stone, and the Medina Charter. The Messenger of Allah always considered the common interest, even if it was the interest of the Quran, which contradicted Islam's teachings (Dian, 2017). This clean diplomacy method is in line with the Maqashid Sharia Theory. In the context of diplomacy carried out by Indonesia against the three countries accused of dumping practices, Indonesia has implemented this Clean Diplomacy, even including the demands of international diplomacy, namely fulfilling the principles of accountability, transparency, and fairness for oneself (Indonesia) and fair for other parties (the three countries and country affiliates) in the case of alleged dumping at the WTO.

Indonesian Public Policy Strategy in International Trade Dispute Resolution

Policies are defined as actions taken by stakeholders to save the greater interest. According to Carl J Federick, as quoted by Leo Agustino: "Defining policy as a series of actions/activities proposed by a person, group or Government in a certain environment where there are obstacles (difficulties - difficulties) and opportunities for the implementation of the proposed policy to achieve the objectives. Certain (Agustino, 2008). Meanwhile, James E Anderson, as quoted by Islamic, revealed that policy is "a purposive course of action followed by an actor or set of actors in dealing with problems or matter of concern." group of actors to solve a particular problem (Irfan, 2009). Public policy is also intended to build legal order in a broad sense for the public as a necessary basis for achieving the desired progress goals (Nugroho, 2005).

Public policies taken by the Government must genuinely protect the nation's interests. All countries face relatively the same problems; the difference is how the Government responds to these problems; this response is known as public policy. The ability of policy-making actors to develop, define, and implement superior public policies will determine the advantages of a country both now and in the future. Thomas R. Dye, quoted by Riant Nugroho, defines public policy as everything the Government does and doesn't do, why they do it, and the results that make a life together different. Young and Quinn, quoted

by Edi Suharto (2012), put forward several critical concepts contained in public policy, namely:

1. Public policies are actions that are created and implemented by government bodies that have the legal, political and financial authority to do so.
2. Public policy seeks to respond to problems or concrete needs in society.
3. Public policy is not a single decision but consists of several choices of actions or strategies made to achieve specific goals for the benefit of the people.
4. Public policy is generally a collective action to solve social problems, a decision to do or not to do something.
5. Public policy contains a statement or justification for the steps or plans formulated by a government agency or several representatives of government institutions.

Based on the explanation of the public policy theory above, in principle, Indonesia's strategic steps in dealing with accusations of dumping from other countries are to protect the Indonesian domestic public; in this case, the actors associated with paper exports, such as businessmen, farmers and the public at large. Generally.

Conclusions

Based on the explanation of the things mentioned above, it can be concluded that Indonesia has repeatedly faced accusations of paper dumping at the WTO. On three occasions facing dumping charges, namely DS 312 between Indonesia - South Korea in 2007, DS 470 between Indonesia - Pakistan in 2013, and DS 529 between Indonesia - Australia in 2019, Indonesia won the case. It was not proven to have dumped paper against the three countries.

The practice of dumping has two sides, namely detrimental and beneficial. It is damaging if it results in similar domestic products being unable to compete because the price of imported products is much lower than domestic products. There are massive layoffs (PHK) because domestic companies have to save on operational costs to compete with cheaper imported goods. What is even worse is the closure of domestic companies due to the continued decline in production, and the goods are not available. According to Islamic jurisprudence, dumping or *siyasa al ighraq* is prohibited if it causes harm or harms other parties, such as the practice of permanent dumping and predatory dumping. However, if it brings benefits to all parties, such as the practice of sporadic dumping, then it is permissible.

To win the case of dumping accusations, Indonesia applies two kinds of strategies in proof and diplomacy, resulting from the cooperation between the Ministry of Trade and the Ministry of Foreign Affairs. The relationship between *maqashid syariah* and Indonesia's strategy in dealing with the three accusations

of paper dumping can be seen in the Indonesian government's strategy to respond to lawsuits at the WTO, which is always in the corridor of taking action to prioritize the benefit (interest) that is greater than the harm. The intended use here is the interests of Indonesian paper producers, who are subject to very high export-import duties due to this dumping accusation.

In carrying out its diplomatic strategy, Indonesia carries out clean diplomacy, namely, diplomacy that refers to the implementation of ideal diplomacy, consistently accountable to the people and based on the Qur'an and Hadith. Pure diplomacy also prioritizes the public interest and benefits all parties involved or Rahmatan Lil Alamin. It aligns with the Maqashid Sharia Theory, namely taking actions by prioritizing use and avoiding harm. Besides that, Indonesia's strategy in winning the allegation of the paper dumping case at the WTO is also based on actions based on public policies that protect the interests of the Indonesian nation.

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