

## **Mercantilism Regime toward Dumping Policy on Paper Industry between Indonesia and South Korea**

**Rudi Wibowo<sup>1</sup>, Ratnawati<sup>2</sup>**

<sup>1,2</sup> International Relations Department Political Science UPN "Veteran" Yogyakarta, Indonesia

### **Abstract**

This thesis discusses Indonesia's efforts in dealing with allegations of dumping Indonesian paper products from the South Korean government. The lengthy process of negotiations and negotiations between the two countries is an obstacle in the process of settling trade disputes that occur. In this matter, Indonesia and South Korea conduct negotiations to resolve the problem of imposition of Anti-Dumping Import Duty (BMAD) for Indonesian paper products under the supervision of the authorized body of the WTO, namely the Disputes Settlement Body (DSB). The negotiations proposed by Indonesia as the claimant country to South Korea are a form of trade dispute settlement through a diplomatic mechanism. Through diplomatic steps, trade problems that occur between the two countries can be resolved concretely and peacefully. However, after the trial was running and the DSB had issued its results by winning Indonesia, both the Korea Trade Commission (KTC) and the South Korean government were reluctant to apply the results of the DSB panel session decisions. Therefore, Indonesia is trying to uphold the results of the DSB WTO panel decision through diplomacy. First, diplomacy is carried out by involving state actors directly, namely the Indonesian government. Both diplomatic efforts were carried out by Indonesian business actors in a cooperative manner at the time the KTC investigation was conducted. Indonesia is trying to uphold the results of the DSB WTO panel decision through diplomacy. First, diplomacy is carried out by involving state actors directly, namely the Indonesian government. Both diplomatic efforts were carried out by Indonesian business actors in a cooperative manner at the time the KTC investigation was conducted. Indonesia is trying to uphold the results of the DSB WTO panel decision through diplomacy. First, diplomacy is carried out by involving state actors directly, namely the Indonesian government. Both diplomatic efforts were carried out by Indonesian business actors in a cooperative manner at the time the KTC investigation was conducted. This thesis aims to describe the efforts and steps to resolve the allegation of dumping on Indonesian paper products by the South Korean government through KTC. Explain the chronology of the problem of accusations of dumping Indonesian paper products and the determination of dumping losses by the WTO. Then analyze how the efforts to resolve the problems made by the government and Indonesian businessmen in trying to implement the results of the WTO DSB panel session decisions through diplomacy.

**Keywords:** WTO, Dumping, Paper, Indonesia-South Korea



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### **INTRODUCTION**

The facts described above are interesting to discuss, considering that KTC has imposed BMAD on Indonesian companies while no action has been taken by the accused companies from Indonesia. Based on this, it is interesting to know what efforts Indonesia has made in fighting for its interests in dealing with allegations of dumping paper from South Korea in 2018.

On June 4, 2004, the Indonesian government met with the South Korean government to conduct consultations on dispute resolution over the imposition of anti-dumping measures. Subsequently, on September, 27, 2004, the WTO's Disputes Settlement Body formed a Panel. Participating parties include the United States, Europe, Japan, China and Canada. (Widyanto, 2007).

Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Law is tasked with creating legal

certainty because it aims to create order in society. Law without the value of legal certainty will lose its meaning because it can no longer be used as a behavior guide for everyone. South Korea in this case did not implement the decision. In fact, KTC has submitted a Report on Implementation of the WTO Compliance Panel Decision. In its report, KTC concluded that there was no solid basis for changing the decision of the BMAD for certain paper products from Indonesia.

## LITERATURE REVIEW

Diplomacy is said to also include operational techniques to achieve national interests beyond the boundaries of jurisdiction. The increasing interdependence between countries has led to an increasing number of international meetings and international conferences being held to date.

Diplomacy and foreign policy are often likened to two sides of a coin that cannot be separated. It is said so because foreign policy is the main content contained in the implementation mechanism of foreign policy owned by a country, while diplomacy is the process of implementing foreign policy. Therefore, both diplomacy and foreign policy are interrelated and support each other.

Diplomacy continues to develop along with the interdependence of a country with other countries. In diplomatic activities, one of the processes that is often carried out is by using negotiations in addition to other forms of diplomatic activities, such as meetings, visits, and agreements. Therefore, negotiation is one of the techniques in diplomacy to resolve differences peacefully and advance the national interests of a country.

Sir Ernest Satow in his book, *Guide to Diplomacy Practice* provides a characterization related to good diplomacy procedures. Sir Ernest Satow said that diplomacy is "the application of intelligence and tact to conduct of official relations between the governments of independent states". (Widyanto, 2017).

Thus, it can be said that diplomacy is a combination of the science and art of negotiation or a method for conveying messages through negotiations in order to achieve the goals and interests of the state in the fields of politics, economy, trade, social, culture, defense, military, and various other interests within the framework of International Relations.

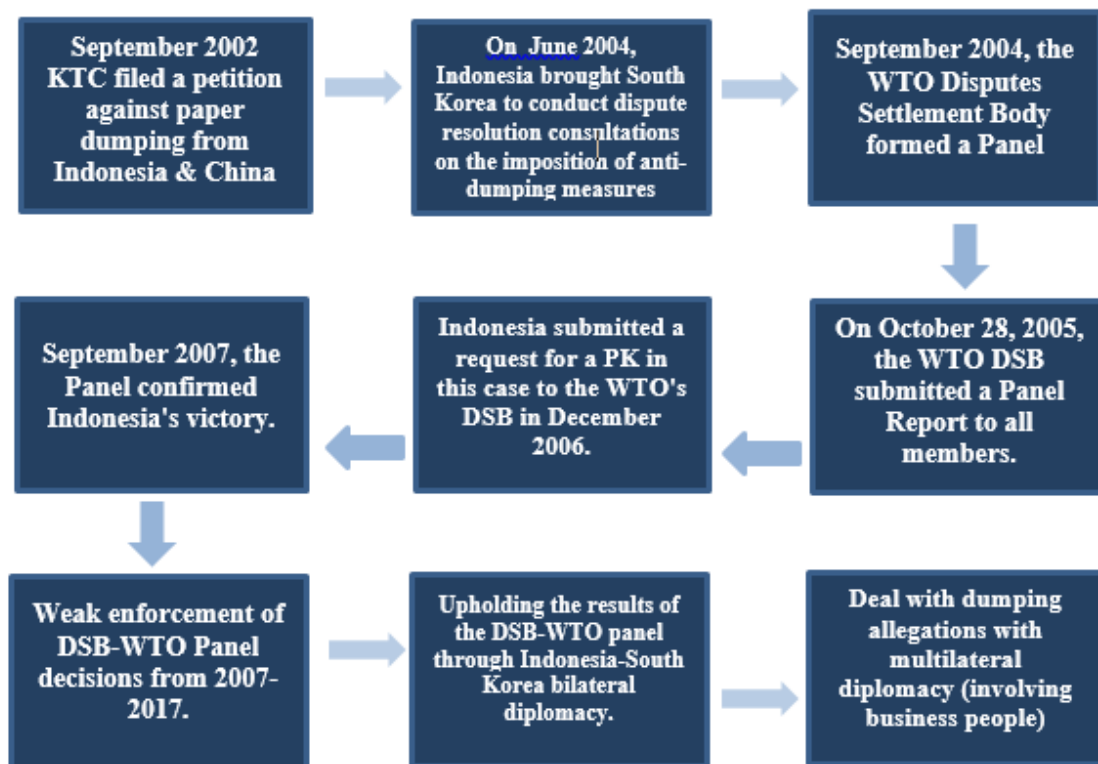
In this study, the South Korean government took a policy to impose anti-dumping import duties where dumping is considered as one form or way of the government in protecting its domestic industry. By imposing a fairly high BMAD, the South Korean government protects its domestic industry because the price of goods in this case is paper from Indonesia, which is higher and therefore the domestic industry can compete with Indonesian commodity products. The South Korean government also accused Indonesia of dumping because it felt that the Indonesian Paper Industry sector had made the South Korean Paper Industry suffer losses. The tolerance for margin dumping that can be done is less than 2% of the export price (Ministry of Finance, 2020).

In this case, Indonesia has made diplomatic efforts with the South Korean government. In this case, the government is taking lobbying and diplomatic actions to the South Korean government through the Ministry of Trade, one of which is by taking steps the Indonesian government has registered itself as an interested party and submitted a written rebuttal to South Korea at the time the panel session was held. Then the government also provided assistance to Indonesian companies that were investigated by KTC for being involved in product dumping while conducting on-the-spot verification. Then, the government also submitted a verbal statement at the hearing held by the KTC. The Indonesian government's final step is to enforce the law resulting from the DSB-WTO Panel to the South Korean Ambassador.

Next is through diplomacy carried out by non-state actors, namely business people. Business people are also trying to carry out diplomacy and lobbying during the investigation process. Business actors are facilitated and assisted by the Indonesian government, in which case the government is asked to act as a witness and be asked for information and fulfill the completeness of the data in the form of completing a questionnaire given by KTC related to the financial statements of paper sales. However, in this case PT Paper Factory Tjiwi Kimia did not send a sales report with the reason: that the volume of exports to the South Korean market was too low to justify the investigation into Tjiwi Kimia which in the end made Paper Products from Indonesia subject to BMAD.

Chart 1.1

### Mechanism Flow of Indonesia's Efforts in Handling Allegations of Paper Dumping from South Korea in 2018



Source: Data processed from Ministry of Trade

## RESEARCH METHOD

The research method used in this research is descriptive qualitative. The data collected in the form of secondary data either through journals or Research Library Data Sources. This method does require the ability to logically relate various social phenomena. So the qualitative approach is based on non-quantitative data; both in the form of statements, news sources from respondents, as well as documents from relevant ministries and other business actors.

The first step of the research is to collect data in the form of document analysis and literature study. The next step is data analysis from secondary data sources using the Content Analysis Method or Content List. The last step is checking the validity of the data with the

Triangulation Method and induction to get conclusions from various relevant data. Meanwhile, FGDs were used to obtain additional data as well as from expert sources on related issues.

## RESULT AND DISCUSSION

### A. Chronology of Events of The Alleged Dumping of Indonesian Paper Products by South Korea

This section will also describe the determination of dumping and losses in the GATT-WTO as well as the stages of investigation and application of anti-dumping duties. The GATT provides general criteria regarding prohibited dumping, contained in Article VI paragraph (1) of the GATT 1947. The time span of the research taken is in the range of 2016-2018. The purpose of presenting the material in this chapter is to find out the chronology of how the South Korean government started the shady dumping of Indonesian paper products.

#### A.1 Dynamics of Trade Relations between Indonesia and South Korea

Furthermore, the visit of ROK President Lee Myungbak on 6-8 March 2009 also resulted in a number of cooperation agreements in the form of a Memorandum of Understanding (MOU) in the fields of education, research and technology, and forestry; and a Letter of Intent (LOI) in the defense sector. Since the enactment of the Joint Declaration, investment and trade between the two countries has continued to increase from year to year. To further enhance the pillars of economic cooperation, trade and investment, the two countries agreed to form the Indonesia-Korea Joint Task Force on Economic Cooperation (JTF-EC), which has been holding an annual meeting since 2007 (Afriyanti & Yosita, 2018).

#### A.2 Chronology of Allegations of Dumping of Indonesian Paper Products by South Korea

In the allegation of dumping issued by South Korea against products from Indonesia, the chronology will be presented first before the accusation of the dumping attempt took place. It starts with action South Korea filed an antidumping petition against Indonesian paper products to the Korean Trade Commission (KTC).

The company that was charged with dumping was PT. Indah Kiat Pulp & Paper Tbk, PT. Pindo Deli Pulp & Mills, PT. Tjiwi Kimia Tbk Paper Mill and April Pine Paper Trading Pte Ltd. In May 2003 South Korea imposed an anti-dumping BM (import duty) on Indonesian paper products, but in November 2003 they lowered an anti-dumping BM on Indonesian paper products to South Korea. precisely on May 9, 2003 KTC regarding temporary Anti-Dumping Duties (BMAD) with the amount for PT Paper Factory Tjiwi Kimia Tbk of 51.61 percent, PT Pindo Deli 11.65 percent, PT Indah Kiat 0.52 percent, April Pine and others by 2.80 percent (Heriyanti, 2018).

Then on November 7, 2003, KPC reduced the BMAD for PT Kertas Tjiwi Kimia Tbk, PT Pindo Deli and PT Indah Kiat by 8.22 percent each, and for April Pine and others by 2.8 percent. In July 2004, Indonesia and South Korea held bilateral consultations but did not reach an agreement. 27 September 2004, the WTO's Disputes Settlement Body formed a Panel. Participating parties include the United States, Europe, Japan, China and Canada. 1-2 February 2005, held The first panel session on March 30, 2005, the second panel session on October 28, 2005, Panel Report (Widyanto, 2007).

The dispute that has reached the level of appeal considers that South Korea has made a mistake in proving the existence of dumping practices carried out by Indonesia and imposed several sanctions for South Korea. Based on the results of the panel report, the WTO DSB adopted the panel report 10, but South Korea did not want to implement the DSB decision. Weak enforcement of the DSB decision gave South Korea more latitude to refuse to implement the DSB

decision, while Indonesia, which should have received "payment" for South Korea's actions, was left alone.

Basically, every WTO member country in determining anti-dumping policies is guided by the provisions of Article 6 of the GATT 1947 which outlines the criteria for dumping. The WTO regulates dumping issues through Article VI of GATT 1947 which is implemented in the Agreement on Implementation of Article VI of GATT 1994 (Antidumping Code 1994) (Yustiawan, 2018).

- 1) Dumping carried out by a country at a below normal price or less than fair value; The dumping margin is less than 2 percent of the landed export price.
- 2) There is material loss or there is a threat of material loss caused by the imported goods to producers of similar goods in the domestic market of the importing country; and
- 3) There is a causal link between the existence of dumping goods and the loss.

Determination of the existence of losses, what is meant is losses that can cause material losses or create obstacles for the domestic industry of the importing country good for the established industry (*to an established industry*) as well as creating obstacles to the establishment of domestic industries (*the establishment of domestic industry*, this is regulated in Article VI paragraph (1) of the GATT 1947. In determining the occurrence of losses, it must be based on positive evidence and the existence of objective testing as stipulated in Article 3 of the Anti-Dumping Code 1994.

Based on the provisions of the Anti-Dumping Agreement, dumping practices can be threatened with countermeasures/sanctions. GATT in the dumping framework considers that the export of goods accompanied by dumping and proven to cause harm to businesses/industries of similar goods in the importing country is a dishonest trading practice (*unfair trade practices*). Against such action, GATT allows an aggrieved country to take anti-dumping action in the form of imposition of *anti-dumping duties* the amount of the loss suffered (Yustiawan, 2018). This can be seen in the provisions of Article 6 of the GATT 1947 which allows GATT participating countries to apply anti-dumping sanctions against countries that do dumping. However, the application of anti-dumping sanctions is still not easy because it must be proven by material losses (*injury material*).

Material loss requirements are applied to prevent fraudulent trade and provide safeguards to protect the industry and its domestic market. Without material loss, the importing country may not take anti-dumping measures and compensation obligations. Thus, in the application of sanctions, it must be proven by the presence or absence of losses, because without evidence of losses, the imposition of anti-dumping import duties cannot be applied (Rusli, 2010). Please note that WTO law does not prohibit dumping, but WTO member countries are allowed to take measures to protect their domestic industries from the adverse effects caused by dumping.

To determine if a domestic industry suffers material losses, Article 3.1 of the Anti-Dumping Agreement provides that members must investigate the volume of imports of imported goods suspected of dumping and the effect of the alleged dumping of imported goods on the domestic market price of similar goods. Members should investigate the impact of these imports on domestic industry. They have to examine many factors and consider them in the final decision. Thus, the determination of the threat of material loss is based on reality and not just allegations, allegations, or possibilities.

Article 3.5 The Anti-Dumping Agreement stipulates the requirements for proving a causal relationship between the import of goods suspected of dumping and the losses suffered by the domestic industry. Thus, if the loss is caused by factors that may not be caused by the import of goods suspected of being dumped, it may not be borne by him. In addition, the Anti-Dumping

Agreement also stipulates quite detailed regulations that must be obeyed by the authorities of a member country conducting investigations in conducting anti-dumping investigations, including the initiation of investigations as regulated in Article 5, the investigation process regulated in Article 6 (Rusli, 2010).

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