

Factors Driving New Zealand to Sue Indonesia in the WTO

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ABSTRACT

The increasingly intense international trade relationship advancing and developing rapidly in the global economy does not close the possibility of causing tensions that lead to trade disputes involving more than one country. This research focuses on what prompted New Zealand to sue Indonesia in the WTO, an organization involving countries in the world. In this organization, various measures toward resolving disputes occur by following existing procedures by making a complaint against the new policies issued by one of the parties, namely Indonesia, which turns out to have a loss effect on the party concerned, namely New Zealand. Due to this imbalance, there exist several stages of dispute resolution. This research focuses on the relationship between New Zealand and Indonesia before the dispute to the resolution and explaining how the lawsuit occurs.

Keywords: *International trade, National interest, Global governance.*

1. INTRODUCTION

Indonesia and New Zealand have cooperative relations in various fields, including international trade, where Indonesia was the ninth largest market for New Zealand in 2013. In addition, both are also members of the World Trade Organization (WTO). By joining the WTO, they have been involved in free trade relations between the countries in it. Moreover, the problems or conflicts in the WTO will also be accommodated and even resolved within the organization. However, in 2013/2014, Indonesia and New Zealand experienced a conflict regarding international trade.

According to the WTO report, New Zealand, with the support of the United States, protested against Indonesia's policies regarding restrictions on imports of horticultural products (Winardi, 2013). The government explained that the restriction on horticultural imports was due to the congested process of goods traffic and inadequate support for facilities and Human Resources (HR) in dealing with issues of food safety protection. However, it is still not accepted by other exporting countries. Hence, in its development, New Zealand and the United States have taken further action by asking the WTO to abort the horticultural import restriction policies issued by Indonesia (ABC (Radio Australia), t.thn.).

International trade is a transaction of goods and services between economic subjects from one country to another. In this case, the economic subjects also vary, such as residents consisting of ordinary citizens, export companies, import companies, industrial companies, state companies, and government departments or individuals (Murdani, 2018). International trade has expansive and various meanings by various sources and opinions of several figures. One of which

is the theory of international trade. According to Huala Adolf, it is an exchange process based on the will of each country concerned agreed upon by both parties.

International trade consists of bilateral, regional, and multilateral trade. Bilateral trade is carried out by two countries, while regional trade is performed by a country in a specific region such as ASEAN and the European Union. Multilateral trade is conducted between countries without being limited by specific regions. Likewise with international trade (Seputar Pengetahuan, t.thn.).

International trade can benefit the countries concerned besides facilitating access to buying and selling involving two or more countries at once. This international trade will undoubtedly add to the role of cooperation in international relations. Through international trade negotiations, trade liberalization can be more easily carried out because it has two advantages. First, mutually beneficial negotiations will support the achievement of freer trade. Second, negotiated agreements will help the government avoid a destructive trade war (Sjamsul, et al., 2004).

Therefore, an international trade organization called the World Trade Organization (WTO) was formed, containing international regulations regarding trade to provide security and certainty to traders (Murdani, 2018). The existence of the WTO as an international organization in the trade sector makes it has a crucial role, especially in international trade traffic lanes. In addition, this organization is the goal of the interaction process, which in general, is to allow each country to meet the domestic needs (Trebilcock & Howse, 1995). On the other hand, this organization is expected to become a negotiating forum for each member country for their respective economic interests. In another role, the WTO is a

forum for resolving disputes between its members based on the law.

As a member of the WTO, Indonesia as a developing country must always compete against economic globalization, especially in the horticultural sector, which is one of the mainstay sectors for Indonesia as an agrarian country. To survive in the WTO trade liberalization sector, Indonesia has carried out several protections for its horticultural sector, which is clear that this principle contradicts the promises agreed upon by Indonesia and the WTO.

The WTO, an international trade organization, sometimes encounters obstacles in its success regarding trade routes. Disputes of international trade traffic can arise when a country establishes a particular trade policy, which may conflict with its previously agreed commitments in the WTO or adopts a policy. Accordingly, it will harm other parties, for example, disputes between New Zealand and Indonesia, where New Zealand considered that Indonesia had hampered free trade through the application of quotas, minimum prices, import periods, and import licenses for horticultural products, animals, and animal products.

Horticulture is the study of the cultivation of vegetables, fruits, and ornamental plants. Meanwhile, according to Law No. 13 of 2010 concerning horticulture, horticulture is all matters relating to fruits, vegetables, ornamental plants, medicinal plants, and floriculture, which include mushrooms, mosses, and aquatic plants, which also function as vegetables, vegetable medicinal ingredients, and aesthetic materials (Pambudi, 2012).

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It is essential to understand the conflict between New Zealand and Indonesia, examine the factors causing this conflict, find a bright spot for the inconvenience in this trade, and explore how the settlement was taken according to WTO procedures.

Several studies have discussed the process of resolving trade disputes between New Zealand and Indonesia. Valencia Gracia Tilaar (2019) analyzed the legal aspects of disputes over horticultural products, animals, and animal products between Indonesia and New Zealand. Enis Sukmawati (2018) focused more on the provisions on imports of horticultural products, animals, and animal products between New Zealand and Indonesia. Meanwhile, this research is different because

it discusses trade disputes from New Zealand's perspective and why it sued Indonesia in the WTO forum.

The description above raises a question of what factors encouraged New Zealand to sue Indonesia in the WTO?

2. FRAMEWORK OF THINKING

The authors utilized the theory of national interest to explain the lawsuit made by New Zealand against Indonesia regarding horticultural products, animals, and animal products. Before discussing in more detail what national interest is, it is necessary to know that cooperation between countries is one of the efforts in achieving a state interest, where the interests of this country are the goals and ambitions in various fields, be it economic, military and culture. It is the basis for a country in conducting international relations. National interest refers to the ability of a state to protect and defend its physical, political, and cultural identity from interference from other states (Morgenthau, 1978).

This national interest was first coined by Hans J Morgenthau where he believes that this national interest is a tool used to pursue power with which a state can control other states. This national interest is closely related to the power of a country as a goal and an instrument (Bainus & Rachman, 2018).

Apart from Hans J Morgenthau, there are several other opinions. One of them is Nuechterlein, describing national interests into four categories of "Basic Nation Interests". First, "Defense Interests" refer to the protection of a country and its citizens against threats of physical violence from other countries and or threats from outside that can disrupt the system of government. Second, "Economic Interests" are the increase in the economic welfare of a country concerning other countries. Third, "World Order Interests" can be defined as the maintenance of the international system, both political and economic, to create a safe condition; thus, a country will feel safe, and its citizens can carry out activities safely outside the country's borders. Finally, "Ideological Interests" mean protecting and maintaining a set of values owned by the community in a country and are believed to be comprehensive. According to Nuechterlein, the order of the four interests can change following the needs of the state to determine its priorities on the condition that the state can defend its territory and citizens (Nuechterlein, 1976).

In the case of national interests, each country has its own and different goals. In various fields, cooperation will be established to achieve these international interests. In realizing national interests, several forms of strategies are carried out by a country, for example, through international trade. International trade is a form of transaction between economic subjects from one country to another in the form of goods and services. In this case, the economic subjects vary, such as ordinary citizens, export companies, import companies, industrial companies, state companies, government departments, and individuals (Murdani, 2018). International trade has expansive and various meanings by

various sources and opinions of several points, including the international trade theory. Huala Adolf defined international trade as an exchange process based on the will of each country concerned agreed upon by both parties.

International trade has the following characteristics:

- a. Its trading area covers the whole world.
- b. The payment instrument used is the currency of a foreign country.
- c. The quality of the goods traded follows international standards.
- d. Transactions can be used even without a face-to-face meeting.
- e. The applicable law is international law.
- f. Importing goods is usually subject to taxes, customs, and others.

International trade offers several advantages, including:

- a. Obtaining goods that cannot be produced domestically
- b. There is a specialization to increase the efficiency of the use of production factors.
- c. Expanding the existing industrial markets in the country
- d. Using modern technology and increasing productivity

This international trade also consists of various forms: bilateral trade, regional trade, and multilateral trade. Bilateral trade refers to an international trade carried out by two countries, while regional trade is conducted by a country in a specific region such as ASEAN and the European Union. On the other hand, multilateral trade is performed between countries without being limited by specific regions, as well as international trade (Seputar Pengetahuan, t.thn.). In addition, several reasons underlie why countries are involved in international trade. David Ricardo developed the theory of comparative advantage to explain international trade based on differences in technological capabilities between countries (Ricardo, 1951), that international trade always brings profits. Eli Heckscher and Bertil Ohlin believe that international trade can occur due to differences in the wealth of production factors owned by countries (Heckscher, 1991). In this way, international trade is created, involving countries globally, and becomes one of the ways of cooperation between countries. An organization in charge of international trade was also established, with members consisting of several countries. Besides, the organization also handles various cases and issues occurring between the countries concerned.

In addition to the national interest strategy, a concept is also one of the views that makes the stages and strategies in achieving national interests—Global governance. Global governance, according to Dirk Messner, is a political order that developed as a response to globalization, or more

precisely, an institutional mechanism or means for the cooperation of various consequences of globalization. It involves economic developments experiencing problems between countries, thereby making globalization the primary benchmark to keep up with current developments.

Global governance begins with the rapid current global economic issues, playing an applicative role in a fair trade framework, as a concept that describes a parallel network of authorities outside of non-state actors. Then, this new concept of trade appears when the trade practices carried out so far have created an inadequate condition. This condition is related to inequalities between developed and developing countries that cause conflicts and disputes. Due to various interactions developed within the trade framework, it will be necessary to have a global order not centered on only one central point. This central point is then associated with the role of government or the state as one of the things prioritized. This role is no longer relevant to current global conditions. Therefore, market capacity also becomes an alternative way to carry out a function that has authority, and of course, it is the basis of the global concept.

3. DOMESTIC POLITICS OF NEW ZEALAND

The New Zealand Government system is a constitutional monarchy with a parliamentary democracy. Queen Elizabeth II is the head of New Zealand, given the title Queen of New Zealand. The queen is represented by a governor-general appointed by the queen or on the advice of the prime minister. The governor-general has the prerogative of the crown (such as leading to cases of injustice and promoting governance). This concept gives rise to global interaction between components in a network framework (Sukma Sushanti & Sushanti, 2017). This case involves the development of the modern world, which has created various international organizations with their respective goals and duties in the interests of a country. Hence, disputes between members of the organization will carry out settlements to neutralize the situation. Basically, the relationship between states and international organizations is closely related. Thus, it makes a forum for enhancing the development of the country.

This study explains how the New Zealand Government seeks to achieve its national interests. In this international trade, New Zealand tries to protect its interests through its demands to the WTO for policies issued by Indonesia, which make it feel disadvantaged and have considered violated the policies in the WTO. Through international trade, especially in this case, New Zealand and Indonesia are two interrelated countries in various ways. One of which is New Zealand, which has become Indonesia's customer partner in buying and selling horticultural products, animals, and animal products. It has been going on for quite a long time with the same main goal of seeking profit for each country concerned.

4. ANALYSIS AND DISCUSSION

Council of Ministers (Cabinet), ambassadors, and other critical public officials are constitutional powers limiting the powers of the queen and governor-general. The New Zealand Parliament holds power and consists of the sovereign (represented by the governor-general) and the House of Representatives. Parliament also once included an upper house, a legislative council, until this council was abolished in 1950. Based on the Bill of Rights 1689, the highest position of parliament is the sovereign in England and has been ratified as law in New Zealand. The Cabinet, made up of ministers and headed by the prime minister, is the highest policy-making body in government and is responsible for determining significant government actions.

New Zealand is a developed country where the rate of economic growth rivals that of Southern Europe. Exports are the mainstay of New Zealand's economy, so the impact of the world economy will significantly affect its economy. Besides its good economy, its agriculture has also become a source of income. New Zealand is highly dependent on international trade as its income. Therefore, New Zealand, famous for its animal horticultural and animal products, can improve its economy. Hence, when the beef export process declined sharply due to policies or actions taken by Indonesia, it has had an enormous impact on its market, especially in the sector of horticulture, animal, and animal products. It has been previously stated that Indonesia is one of New Zealand's largest markets. The import restrictions have various impacts on the New Zealand economy and trade, even more than that.

The New Zealand Government, especially in the free trade economic sector, underlined it. Thus, with the support of the United States Ministry, New Zealand filed a lawsuit against Indonesia. The losses found would also impact farmers, which would undoubtedly result in restrictions on the production and hamper the livelihoods of other small communities (farmers or ranchers).

4.1 Cooperation between Indonesia and New Zealand in the WTO

The WTO is an international trade organization consisting of several countries in the world. Each country that joins must follow the rules in the WTO. The WTO helps facilitate free trade between member countries and becomes a forum for dispute resolution if there is a problem between its member countries.

An international dispute is a problem that arises when a party's attempt to impose its will by using force is challenged or resisted by the party being forced to do so. This dispute is a clash between two or more countries on the will that cannot accept the coercion. Meanwhile, the governance system in the WTO is an indispensable tool in international trade issues between its members since the emergence of problems

regarding implementing decisions on disputes based on the previous GATT system (Kartadjoemena, 1996). Dispute resolution in the WTO has developed and become an adjudication procedure. Its development makes a dispute resolution system based on two standard structural systems, including formal procedures that must be met and every decision that must be performed. This dispute resolution system was developed as a form to accommodate the national interests of each member country in the context of realizing the interests of the international community.

The latest development of the dispute resolution system in the GATT is the acceptance of the WTO, which gave birth to a dispute resolution system more comprehensive and legislative, and has provided more protection to developing countries since January 1, 1995. Dispute resolution in the WTO is more based on the rule-base approach than the power-base approach, where the last principle is more visible in the GATT system. Thus, each member country can feel comfortable with its presence in the WTO membership. For the first time in developing a multilateral system, countries have succeeded in creating a unified dispute resolution system that covers all areas of the WTO agreement. Then, with this unified system, there will no longer be a separate dispute resolution system regulated by each area of the agreement.

In principle, the dispute resolution system developed in the WTO is a development of the dispute development system that existed previously in the GATT system contained in articles XXII and XXIII of the GATT Agreement. In the trade dispute between the two parties, New Zealand and the WTO, New Zealand sued Indonesia for the 18 actions or policies it implemented, including:

Action on horticultural products:

- a. Restrictions of the application window and validation period
- b. The term imports are periodic and fixed.
- c. 80% realization of needs
- d. Harvest period requirements
- e. Storage holdings and capacity requirements
- f. Use, sale, and distribution terms for horticultural products
- g. Price reference for chili and
- h. Shallot for consumption
- i. Six months harvest requirements
- j. Import licensing regime for horticultural products as a whole

Action on animals and animal products:

- a. Ban on imports of certain animals and animal products, except in an emergency
- b. Application windows limit and expiry

- c. Periodic and fixed import terms
- d. 80% realization of needs
- e. Use, sale, and distribution of imported beef and offal
- f. Domestic purchase requirements for beef
- g. Beef price reference
- h. Import licensing regime for animals and animal products
- i. Sufficient domestic production to meet domestic demand

Some of these actions were later considered by New Zealand as detrimental actions and violated the previous provisions, and strengthened its claim in the WTO.

The DSB, an institution within the WTO, has the primary duties under Article 3 of the DSU, including:

- a. Clarifying the provisions in the WTO by interpreting it based on customary international law
- b. The addition or reduction of rights and obligations stipulated in the WTO provisions are not justified with the dispute resolution results.
- c. Must provide a positive solution accepted by the parties to the dispute and is consistent with the substance of the agreement in the WTO
- d. Providing certainty in the withdrawal of violators' state actions not in accordance with the provisions of the agreement

There are several stages or steps in the procedural law of dispute resolution in the DSB, such as:

a. Consultation

This stage is the initial action of the provisions of the WTO dispute resolution. This consultation is a form of request submitted by WTO member countries. The first objective of this consultation is to provide the parties with an initial understanding of the factual conditions and legal basis proposed in a more in-depth and precise manner, while the second objective is to provide an effort not to proceed with the dispute at a later stage. Based on Article 5 of the DSU, the result of this stage is the creation of opportunities to involve a peaceful dispute resolution mechanism using the methods of good offices, mediation, conciliation, and arbitration.

b. Panel Forming

This stage is a follow-up step from the first stage (consultation), which did not produce results. The panel has the task of objectively assessing the subject matter raised, the facts, their application, and compliance with reasonable WTO treaty rules. Moreover, the panel also has the function of assisting the DSB based on responsibilities following the covered agreement, conducting an objective assessment of the

subject matter, including an objective assessment of the facts of the case submitted and observing conformity and relevance to the covered agreement, and making a finding that will assist the DSB in making recommendations or implementing the rules required by the covered agreement.

c. Appellate Body

This appellate body has the duty to enforce and amend the legal findings and conclusions previously made by the panel. The members of this appellate body consist of seven people formed by the DSB. These seven people should check the appeal of the panel. Three members are encouraged to share ideas with four others before finalizing a decision. The appellate body's report must be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the appellate body's report is not adopted by the DSB within 30 days for circulation to members, and there will be views on the report by the members.

Indonesia and New Zealand conducted a consultation stage in 2014 through the delegation of New Zealand and the Indonesian Chairperson of the Dispute Settlement Body, who negotiated matters regarding the chaotic restrictions on horticultural imports. Unfortunately, it turns out that, at that stage, no bright spot was found. After failing at that stage, the WTO finally formed a panel consisting of its member countries to approve or reject Indonesia's trade policies. In this regard, New Zealand proposed several trial panels to discuss the possibility of Indonesia drawing import limits. The first hearing on the complaint was held on April 22, 2015, but the WTO panel did not grant the request of the United States and New Zealand. Then, the United States and New Zealand filed a lawsuit again on November 20, 2015, to the WTO. It is a follow-up to the 2013 lawsuit. The status of the lawsuit is currently recorded in the WTO session with numbers 477 and 478, which finally issued a decision and stated that the actions taken by Indonesia were wrong. Hence, it had to change its provisions following the WTO agreement.

4.2 Bilateral Relations between Indonesia and New Zealand from Time to Time

Indonesia has established various types of cooperation with several countries. It even has established bilateral cooperation with 162 countries and a particular theory in Non-Self Governing Territory. In other words, Indonesia has established friendly relations with other nations, such as those in the Southwest Pacific region, especially New Zealand (Kementrian Luar Negeri Republik Indonesia, 2019).

Indonesia is a country in Southeast Asia that consists of several main islands and thousands of small islands. It also has abundant and diverse natural resources, with the fourth-largest global population, making it rich in human resources. Most of the Indonesian people make a living as farmers. Agriculture is the primary sector in the Indonesian economy because it is famous for its fertile soil and natural resources. In short, agriculture is the central sector that accounts for almost half of the economy. Therefore, it is necessary to

develop the agricultural sector to compete in the domestic and foreign markets (Portal Nasional RI, 2013).

Indonesia is one of the largest Muslim countries globally and ranks fourth with the largest population in the world. It makes Indonesia one of the priorities in the cooperative relationship from New Zealand. Indonesia and New Zealand have collaborated in various fields, such as Energy, Disaster Risk Management, Agriculture, and Human Resource Development. In 2017, Indonesia sent one of its agricultural products, namely Salak fruit from Gunung Kidul, to New Zealand (Universitas Muhammadiyah Yogyakarta, 2017).

Indonesia is taking various steps to achieve its agricultural development, increase its knowledge in agriculture, and widen its market. One way to do it is to collaborate with countries successful in agricultural development and are the world's largest exporters, such as New Zealand. Hence, the two countries have agreed to strengthen their bilateral cooperation in the agricultural sector. Accordingly, they formed a Working Group on Agricultural Cooperation (WGAC) held regularly every year in the two countries in turn.

New Zealand is a small country that belongs to a quiet country, the same size as the United Kingdom or Japan, with a population of around four million people. However, this country is also a developed country with an economic growth rate that, in some respects, rivals that of Southern Europe. In the Human Development Index, New Zealand is ranked third, indicating one of the best countries. The central mainstay in New Zealand's economy is its exports, which will significantly impact the world economy and the domestic economic condition.

According to the WTO, New Zealand is one of the five largest exporting countries globally. It also implements a competitive open economy and has a solid industrial and service sector, primarily to support agriculture, livestock, and forestry. Its production is intended for domestic needs and export commodities in support of foreign trade activities and the provision of jobs. The agricultural, livestock, forestry, mining, and fishery sectors play an essential role in economic activity.

Even though it has implemented an open economy and good agricultural conditions with its technology, the small population and narrow market make New Zealand's agricultural products less able to improve its economy if it does not cooperate. Therefore, New Zealand assumes that the large market is in the Asian region. It can be a rival if it cooperates with those in the Pacific region, with almost the same agricultural products. Likewise, New Zealand requires products from Indonesian agriculture. New Zealand believes that Indonesian agriculture has begun to have a strong relationship with its cattle breeding sector. Indonesia and New Zealand have cooperated since 1958 by establishing diplomatic relations. As a diplomatic country, they have strong relations beginning with cooperation in education at the end of the 1950s, namely the implementation of English

language education for English teachers under the Colombo Plan framework. New Zealand has also sent financial aid, goods, and military personnel to handle the tsunami disaster in Aceh and North Sumatera and participated in the January 2005 tsunami response summit in Jakarta.

In addition, Indonesia and New Zealand have established bilateral relations in politics. Both of which have a routine bilateral consultation mechanism within the Joint Ministerial Commission (JMC) forum. This JMC meeting discussed cooperation between the two countries in various matters expected to strengthen their relations, both in the government and society. The first JMC meeting was held in Jakarta in 2007, while the second JMC was held on August 8-10, 2009, in Wellington. The last JMC was held in June 2019 on the sidelines of the Pacific Exposition. Before the JMC, the two countries had a trade forum called the Joint Commission on Economic and Trade Relations, at the high-ranking official level formed in 1996.

In addition to politics, Indonesia and New Zealand have cooperative relations in economic, trade, and investment, where bilateral economic relations and cooperation between the two are based on cooperation such as:

- a. A trade agreement was signed on September 19, 1978, in Wellington.
- b. The double taxation avoidance agreement was signed on March 25, 1987, in Wellington.
- c. The first session of the joint commission was held in February 1998 in Jakarta.
- d. The Air link agreement was signed on May 27, 1998, in Wellington.
- e. New Zealand's economic and political interests in Indonesia include applying taxes for the two countries and customs duties by the Indonesian Government.

Indonesia and New Zealand have a cooperative relationship in socio-cultural and tourism. The education cooperation has occurred since the signing of "Arrangement Between the Ministry of National Education of the Republic of Indonesia and the Ministry of Education of New Zealand on Educational Cooperation" in June 2011. Concerning culture, Indonesia has begun to introduce its culture to New Zealand; for example, Gamelan—part of Indonesian traditional musical instruments, which is relatively well known among the New Zealand people. Even the introduction of this musical instrument has been going on for a long time since 1974. In New Zealand, there are now several Gamelan groups promoting Indonesian culture to New Zealand (Kementrian Luar Negeri Republik Indonesia, 2018).

Apart from these fields, Indonesia and New Zealand also cooperate in geothermal energy, benefiting both countries. Indonesia believes that this collaboration can help save on fuel consumption. As for New Zealand, it gets new students from Indonesia studying at one of its universities. In this case,

Indonesia sends human resources to the Post Graduate Certificate in Geothermal Energy Program, a short one-semester program in Geothermal Resources and Their Use where Indonesian human resources will be used in New Zealand in geothermal utilization in the country concerned (Indri & Harto, 2015).

Indonesia and New Zealand, which have cooperated and agreed on various cooperation agreements, are based on various considerations. When viewed from the fourth largest population globally, Indonesia is a large market with prosperous natural resources, which creates opportunities for New Zealand to expand its market and investment.

Indonesia and New Zealand have long-established cooperative relations, including free trade in horticultural products, animals, and animal products. They contribute to the trade in animal products in the livestock sector, of which the sub-sector is agriculture. It is a dairy farm, and in this field, both strengthen their relations in free trade. Dairy farming contributes to agricultural development that can benefit the country, including saving foreign exchange, adding jobs, and increasing the income of small farmers.

The cooperation between Indonesia and New Zealand was agreed upon and signed by a cooperation agreement (MoU) between the Indonesian and the New Zealand Governments in 2012. Under this agreement, the New Zealand Government will increase Indonesia's human resources (HR), the quality, and quantity of Indonesian dairy farms by providing training, scholarships, consultations, construction of milk processing plants, and even dairy-cow management successfully implemented in the country. To obtain mutual benefits, the two countries must complement each other through Indonesia, with an enormous value of natural resources. The availability of adequate labor combined with significant capital and technology in New Zealand is advantageous in advancing bilateral relations between New Zealand and Indonesia. The agriculture and animal husbandry industry occupies the most vital position in the cycle of their bilateral relations. The products produced by this sector reached around Rp. 6.5 trillion in 2011 (Kuraisin, 2006).

Bilateral relations between Indonesia and New Zealand have been going on for a very long time. Their diplomatic relations were first opened on June 28, 1995. Of course, it does not always run smoothly and has ups and downs (Embassy of The Republic of Indonesia, 2009). For New Zealand, the free trade agreement will undoubtedly provide an opportunity to increase its export volume, especially in crucial products such as agriculture, meat, and dairy products. Meanwhile, Indonesia has the opportunity to redeem unexploited non-traditional markets, especially in non-oil and gas products, clothing, and furniture (Embassy of The Republic of Indonesia, 2009).

The cooperation between these two countries is still ongoing. The holding of cooperation in agriculture can maintain their relationship because it will be discussed and reviewed regularly in meetings in the WGAC forum. The

WGAC, held every year, proves that their cooperation goes well.

4.3 The Emergence of a Lawsuit Filed by New Zealand against Indonesia

With a relatively good initial situation providing various opportunities to achieve their national interests, the two countries finally experienced several problems regarding their cooperative relationship in the trade sector in the horticultural products, animals, and animal product sectors. Their relationship has started to become unstable because Indonesia has issued policies. Indonesia has experienced various things regarding free trade. It found itself in the middle of a loss and did not find a point where it felt the benefits of the free trade process.

Concerning the export-import of products between the two countries, Indonesia has experienced an imbalance where it wants to increase the output level from beef exports in the livestock sector, covering horticultural products, animals, and animal products. Hence, Indonesia issued policies regarding the volume of imports based on quotas. The issuance of new policies or rules regarding trade in horticultural commodities, animals, and animal products set by Indonesia violates the existing agreements in GATT and creates trade barriers. These rules are import restrictions by stipulating that imports are only carried out if domestic production is insufficient to meet market demand, restrictions on importers with pre-determined conditions, and restrictions on the distribution of imported products in a particular market in Indonesia (Yekti, 2017). Data from the New Zealand Meat Industry Association stated that Indonesia limited the import quota for beef and its derivatives in 2011 as part of its meat self-sufficiency program. It led to a decline in exports of New Zealand beef and offal to Indonesia.

In contrast, the export value in 2012 of 10,206 tons of beef to Indonesia reached \$48.8 million. In 2010, New Zealand beef exports to Indonesia were 48,823 tons worth \$185 million. At that time, the Indonesian beef market was ranked the second largest for New Zealand. A relaxation of import quotas at the end of 2013 made export flows to Indonesia recover at 19,258 tons worth \$79 million in 2014. Hence, Indonesia became the number six market in New Zealand.

Nevertheless, Indonesia tightened the restrictions again, and in January 2015, New Zealand beef exports to Indonesia slumped to just 28 tons, from 2,669 tons in January last year. The Executive Chairman of the New Zealand Meat Industry Association, Tim Ritchie, vehemently insisted that "rational discussions" with Indonesia were not working. "It looks like our government and the US will fight for it and use the WTO dispute process to encourage 'rationality' for Indonesia," he said.

The import restrictions imposed by Indonesia in 2011 had a massive impact on New Zealand as a producer of these horticultural commodities, animals, and animal products. Indonesia deliberately carried out this step to meet the needs

of cattle. However, it resulted in a total swelling of cattle in New Zealand and forced it to increase the price of beef. Indonesia had time to ease the rules, but it is still detrimental to New Zealand, and the increase contradicts the previous rules. Meat Industry Association Economic and Trade Manager, Philip Houlding, explained that Indonesia's import regulations might change, but it still makes New Zealand's livestock industry nervous. The reason is that this limitation will be closely related to the application of standard prices. Meanwhile, the highly convoluted bureaucracy made it difficult to expand in Indonesia. Under the WTO trade rules, all the parties concerned agree on a solution following the provisions of the WTO. If it violates WTO trade rules or does not follow the agreement, New Zealand has the right to sue Indonesia and ask a special team to investigate Indonesia's trade policies. In its complaint to the WTO, New Zealand and the United States complained about trade restrictions and unfair conditions on its imports. In addition, Indonesia is also considered not firm and detailed in explaining the prohibition process (Deil, 2014). After the lawsuit issued by New Zealand together with the United States against Indonesia, Indonesia was found guilty of violating the application of non-tariff trade barriers that have harmed other countries.

Concerning horticultural products, the regulation of non-automatic import licensing in Indonesia involves at least the following three elements:

- a. Appointment of importers by the Ministry of Trade as Importer Producers (PI) or Registered Importers (RI) for horticultural products
- b. Horticultural Product Import Recommendation (RIPH) from the Ministry of Agriculture, and
- c. Import approval from the Ministry of Commerce.

Indonesia has adopted measures to limit internal sales offering the sale and purchase, distribution, or use of imported horticulture, animals, and animal products. It is conducted in a manner appropriate to treatment less favorable than that given to similar domestic products. For example, Indonesia's regulations limit the internal sales of imported horticultural products to distributors and the sale of imported meat to be used only in the industry and hotel, restaurant, and catering sectors. Indonesia does not apply the same restrictions as domestic products. It contradicts the WTO's principle of national treatment (Yekti, 2017).

In 2013, Indonesia implemented Law No. 19 on the protection and empowerment of farmers (Farmers Law). Article 30 of the law states that everyone is prohibited from importing agricultural commodities when the availability of domestic agricultural commodities is sufficient for consumption and government food reserves. Moreover, this law also provides for criminal penalties of up to two years in prison for violators. In this case, the same rules have been applied to animal commodities as well as animal products. Through article 36B (1), Amendment to the Animal Law gives the government the authority to prohibit the import of

cattle and offal without including a recommendation from the Ministry of Agriculture. The import was then banned because Indonesia stated that it could meet the demand for these commodities from domestic production. To import horticultural product commodities, animals, and animal products, the importer must obtain a permit and prior approval from a government agency following existing regulations (Yekti, 2017).

As a result of this violation of the rules imposed by Indonesia, New Zealand suffered a loss because it is a beef producer, while Indonesia is its primary market. Therefore, New Zealand also submitted a request for a consultation with Indonesia to the WTO. The first lawsuit was carried out in 2013, but the complaint was not continued to the consultation stage because Indonesia changed several steps so that a new application had to be made. As it failed to proceed with the lawsuit, on May 8, 2014, New Zealand filed a lawsuit against Indonesia with the support of the United States for two cases to the WTO, namely related to:

- a. Import restrictions, namely the application of quota-based volumes, and
- b. The complexity of the bureaucracy in Indonesia has caused the export of cattle and their horticultural products to decline drastically.

In this case, the WTO has several principles, which are also the rules that member countries must obey. The rules in the WTO can also be seen from the three main principles of:

- a. Most Favored Nations means not allowing WTO member countries to give more preferential or different treatment to other member countries. For this reason, the treatment given by a member country in trade must be the same as for other member countries.
- b. National Treatment means that a member country is not allowed to provide different treatment between products from other member countries with the same or similar products produced domestically.
- c. Transparency refers to any or all domestic rules related to trade in member countries that can be accessed and evaluated by the WTO and other member countries to continue running according to free trade principles. It guarantees that there will be no more obstacles in free trade, both tariff and non-tariff barriers caused by a policy or rule from member countries.

Indonesia's policies disputed by the claimant state include the Regulation of the Minister of Agriculture No. 86 of 2013 concerning Recommendations for the Import of Horticultural Products, Regulation of the Minister of Trade No. 16 of 2013 concerning Provisions for the Import of Horticultural Products, and Regulation of the Minister of Trade No. 46 of 2013 concerning Provisions for Import and Export of Animals and Animal Products, of which the purpose is to provide

welfare to the people of Indonesia. These policies violate one of the WTO provisions, namely the principle of National Treatment requiring equal treatment between imported products from other countries and domestic products, especially agricultural products.

To ensure the elimination of tariff and non-tariff barriers, the WTO has established detailed rules in the articles of the General Agreement on Tariffs and Trade (GATT) to regulate trade in services, Trade-Related to Investment Measures (TRIMs) to regulate capital flows, and Trade-Related to Intellectual Property Rights (TRIPs) to regulate the protection of intellectual property rights in free trade. In this case, member countries are obliged to follow the applicable provisions because it is considered a violation if not complying with these provisions. Countries that violate existing rules will impact other related countries and cause losses. In this case, the country experiencing losses has the right to sue and file a lawsuit for violating the existing rules to the Dispute Settlement Body (DSB), which serves as a body for resolving disputes or problems between WTO member countries. This body is under the auspices of the WTO and has various procedures and steps or stages in solving problems (Yekti, 2017).

With the process of regulating the import of horticultural products, the Indonesian Government has issued a regulation through the Minister of Trade Number 60 of 2012 concerning Amendments to Provisions for the Import of Horticultural Products, officially enacted on September 8, 2012. These two regulations were then issued in the spirit of securing food and industrial raw materials and improving the standards of agricultural products, especially for horticultural products, to increase Indonesia's competitiveness against international trade. The regulation of the Minister of Trade number 60 of 2012 requires that imports of horticultural products, both fresh horticulture for consumption purposes, horticultural products for industrial raw materials, and processed horticultural products, can only be obtained if they have received a letter of Recommendation for Imported Horticultural Products (RIPH) issued by the Minister of Agriculture. In addition to regulating RIPH requirements, the Minister of Trade Regulation of the Ministry of Trade No. 60 of 2012 also regulates that importers permitted to import horticultural products into Indonesian territory are those who have obtained permits, both Producer Importers (IP) and Registered Importers (IT) of horticultural products. Imports can only be carried out if they have obtained approval for imports from the Ministry of Trade (Apriliani, 2016).

In this case, New Zealand was not the only one that suffered losses. Several other relevant countries also experienced the impact of Indonesia's implementation of these policies, including the United States. The United States intervened in the problems between Indonesia and New Zealand in disputes over horticultural products, animals, and animal products. The representative from the United States, Michael Froman, stated that Indonesia's horticultural import regulations implemented since 2012 are contrary to

Indonesia's previous commitments in the WTO. The policies demanded by the WTO most likely stem from various regulations related to agriculture in Indonesia protested several times by the United States Government and several other countries. These regulations include Law No.13/2014 on horticulture, Law No.18/2009 on animal husbandry and animal health, Law No. 18/2012 on food, Law No. 19/2013 on the protection and empowerment of farmers, and Law No. 7/2014 on trade. Previously, the two countries, namely the United States and Indonesia, had held several consultation meetings to explain the above agricultural trade policies. Meanwhile, Indonesia is the eighth largest market for US agricultural products. According to the United States trade representative, the trade rules implemented by Indonesia have put pressure on United States agricultural exports to Indonesia since 2012 (Gosta, 2015). The issuance of these new regulations has caused the United States to feel disturbed because its imports cannot move freely into Indonesia. It made the United States intervene and support New Zealand's action on Indonesia's policies, contributing to losses for the United States. Thus, they could file a lawsuit against Indonesia in the WTO until the WTO handled it in the DSB.

Regarding the lawsuit made by the United States and New Zealand, which the WTO has granted, Indonesia must change or replace the international trade provisions related to horticultural products, animals, and animal products. After carrying out various processes such as notifications and bilateral negotiations between New Zealand and Indonesia and the United States and Indonesia, since 2012, the two countries have brought this dispute to the table of the Dispute Panel Assembly session with case numbers DS477 and DS478 Decision of the WTO Panel Assembly announced on December 22, 2016, agreed with the lawsuit filed by New Zealand and the United States. The import licensing procedures for horticulture, animals, and animal products are restrictive, impact international trade, and are inconsistent with WTO provisions, particularly in Articles III and XI:1 of the GATT 1994 and Article 4.2 Agreement on Agriculture and Import Licensing Procedures (Oktaviano, 2017). In the end, the WTO gave Indonesia a time limit until January 2017 in agreeing on the decision results to accept it or even want to file an appeal. Unfortunately, as a defendant country, Indonesia tried to provide accurate evidence to the WTO that its import regulation did not reduce the volume of imports of horticultural products, animals, and animal products from New Zealand and the United States. Indonesia has never refused an application for the import of animals and animal products as long as the requirements meet the provisions of the Minister of Trade Regulation No. 46/2003 and the Minister of Trade Regulation No. 5/2016 concerning the provisions on the export and import of animals and animal products. Moreover, Indonesia has never rejected recommendations for importing animals and animal products as long as the requirements have been determined and follow those stipulated in the Minister of Agriculture No. 139/2014 and No. 58/2015 concerning income.

In filing this claim against Indonesia by New Zealand and the United States, on December 22, 2016, the panel report began to be circulated to members. These two disputes involve the 18 steps that Indonesia has imposed on imports of horticultural products, animals, and animal products. Most of these actions (17) relate to Indonesia's import licensing regime for horticultural products, animals, and animal products. However, the co-plaintiffs challenged Indonesia to condition imports of its products on the adequacy of domestic production to meet domestic demand. On February 17, 2017, Indonesia submitted an appeal to the DSB, but it was unsuccessful because the Appeals Body was unable to fulfill Indonesia's wishes for several reasons, namely the procedures involved in it did not meet the provisions in force therein. In this case, if Indonesia experiences defeat or is found guilty, there will be an impact for its farmers, which will experience an increasingly difficult situation because imported products such as vegetables, meat, milk, cheese, and others enter freely into the country. Suppose the recommendation for imported horticultural products, animals, and animal products has not been given. In that case, it is because the importers cannot complete the pre-determined requirements within the stipulated time frame or cannot fulfill the requirements promptly. Indonesia also utilizes a fair trade argument that it is still limping in implementing agricultural development, food security, and food security as a developing country. Therefore, it would be unfair when Indonesia still has to be demanded to serve the interests of developed countries rigidly (Oktaviano, 2017).

5. CONCLUSIONS

As explained in the previous chapter, Indonesia and New Zealand initially had good cooperative relations starting from 1958, which began with diplomatic relations in various other fields, such as international trade. However, this relationship does not always run smoothly and leads to various conflicts. Among others is that Indonesia implemented new policies on export-import in the trade sector of horticultural products, animals, and animal products to New Zealand, which has long been a customer since 2013. Indonesia occupies the ninth-largest position for New Zealand. Unfortunately, since 2011, Indonesia has implemented various rules regarding trade in horticultural commodities, animals, and animal products, considered obstacles to free trade. Besides, Indonesia implemented a quota-based volume increase policy for its partner, New Zealand, which impacted New Zealand and caused it to suffer losses. The reasons for New Zealand to sue Indonesia include:

Import restrictions—the application of quota-based import volumes

The complexity of the bureaucracy in Indonesia has caused the export of cattle and its horticultural products to decline drastically.

Finally, with the help of encouragement from the United States, the filing of a lawsuit against New Zealand, which

suffered various losses, was granted by the WTO. In this case, the WTO agreed and accepted the lawsuit because policies issued by Indonesia have violated the rules in the previous WTO.

The lawsuit was officially filed on May 8, 2014, to the WTO by New Zealand with the assistance of the United States on two matters, namely those related to import restrictions and the complexity of the bureaucracy in Indonesia, which has caused exports of cattle and horticultural products to decline drastically. The conflict was finally brought to the WTO and resolved by the Dispute Settlement Body (DSB), which ultimately resulted in a guilty statement to Indonesia for violating the policies previously in the WTO. After receiving this result, Indonesia strives to defend its wishes by submitting an appeal to the DSB. However, until now, Indonesia has been trying to find a middle way. As a result, Indonesia must inevitably follow the applicable rules and immediately change its policies which must be in accordance with the existing agreements under the auspices of the WTO, agreed upon by other WTO members. It is one of the struggles of a country to achieve its national interests in the international trade sector.

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