



Research Article

Analysis of Indonesia's Loss against the United States of America in the Horticultural Trade Dispute at the World Trade Organization

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Abstract.

This paper examined the World Trade Organization (WTO) trade dispute settlement between Indonesia and the United States of America on the horticultural issue in 2018 . The WTO aims to encourage free trade mechanisms by eliminating trade barriers, providing a negotiation forum for international trade disputes, and as a mediator to international negotiation forums on trade dispute settlement. The USA reported Indonesia to the Dispute Settlement Body (DSB) of the WTO because Indonesia was considered to have implemented a number of policies on imports of agricultural products that created trade barriers to the USA's products. This research will explain the causes of Indonesia's loss in the dispute by using Susan Strange's concept of structural power. This research used qualitative methods and obtained data sources through primary and secondary data sources. Primary data was obtained directly through field study by interviewing related parties in the Ministry of Agriculture and the Ministry of Trade of The Republic of Indonesia. Secondary data was collected by conducting literature reviews of journals, books, news, and other sources. It showed that Indonesia was defeated in the dispute because it violated the quantitative restrictions rules in article XI. I GATT 1994. The USA used its knowledge structural power, such as the existence of scientific studies and research, to strengthen its case. Indonesia could not match the knowledge structure that the USA had. This was seen in Indonesia's weaknesses in a legal capacity and inability to show facts based on research and scientific studies regarding Indonesia's actions.

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1. Introduction

The WTO as an international trade organization has a number of rules related to international trade, including regulating trade in the agricultural sector as stated in the Agreement on Agriculture (AoA) which aims to reform trade policies in agriculture so as to create a fair and market-oriented agricultural trade system and contain commitments . commitment to reducing subsidies such as domestic subsidies, and export subsidies

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and increasing market access through the creation of strong and effective regulations and disciplines (1).

Indonesia itself officially joined the WTO on November 2, 1994, marked by the issuance of Law no. 7 of 1994 concerning the ratification (ratification) of Indonesia's national trade policies and rules must be consistent with WTO provisions. Every WTO member country has an obligation to harmonize its trade rules and policies, including Indonesia so that they are consistent and in accordance with WTO provisions (2).

The consequences of continuing trade liberalization are that the domestic markets of various countries, one of which is Indonesia, are flooded with foreign products, especially imported horticultural products. In an effort to defend horticultural products from the flood of Indonesian foreign products, the Indonesian government then issued regulations to protect farmers, and provide facilities and incentives for horticulture businesses, as well as regarding restrictions on imported fruit (1). Among other things, the Indonesian Chamber of Commerce and Industry (KADIN) suspended 13 imported horticultural products temporarily and took effect in January 2013. The Indonesian government's decision was based on considerations of the domestic harvest period. However, a number of these regulations are considered to be contrary to WTO liberalization and the agreements that have been agreed upon by the WTO members (3).

Although Indonesia made these restrictions to protect domestic products and farmers, some of these government laws and regulations were deemed inconsistent with the WTO regulations. In January 2013, the United States was the country that requested consultations with Indonesia through the WTO forum regarding certain actions that Indonesia has implemented on imports of horticultural products, animals, and animal products (4). At least 18 Indonesian policies related to the import of horticultural and livestock products, including limiting import ports, setting import times, reference prices, and import licenses. At the consultation stage of DS477 and DS478, several WTO members also questioned the law and a number of articles were not in line with the WTO, including Law no. 18 of 2012 concerning food and Law no. 19 of 2013 concerning the protection and empowerment of farmers. A number of ministerial regulations were also questioned, including Permendag (the Trade Minister Regulations) No. 46 of 2013 concerning the Import and Export of Animals, the Agriculture Minister Regulation No. 139 of 2014 concerning the import of carcass and meat, and the Agriculture Minister Regulation No. 86 of 2013 concerning the Recommendation for the Import of Horticultural Products, which indirectly contains import restrictions or protections that violate the WTO rules (5).



Several of Indonesia's policies and laws are considered not in line with the WTO, therefore the United States and New Zealand reported Indonesia to the Dispute Settlement Body (DSB) of the WTO. Both countries said Indonesia had illegally imposed quantitative restrictions on difficult trade such as restrictions on imports of horticultural and animal products and violated previously agreed WTO rules. This has made some difficulties for both countries to export fruits, vegetables, beef, and poultry to the Indonesian market. In the end, the WTO determined that Indonesia could not legally impose restrictions on imported goods (6). From the reports made by the United States to DSB, the WTO gave a decision that the United States won in the trade dispute and declared Indonesia's lost, in December 2016 (7).

Horticultural products are important commodities for Indonesia. Therefore, the Indonesian government is trying to protect local products while protecting national security and health. However, the United States felt that the Indonesian rules were hampering its trade, and reported Indonesia to the WTO. The results of the WTO DSB decision on the Indonesia-United States trade dispute in the horticultural sector in 2016, became the background for this research. This paper aims to further examine the causes of Indonesia's horticultural trade conflict with the United State of America, the settlement steps at the WTO, and what are the factors that caused Indonesia's lost in a horticultural trade dispute with the United States regarding horticultural products.

2. Method

This research used the qualitative descriptive method, and the source of data in this research used primary and secondary data sources. The data will analyze in various stages such as data collection, compiling, analyzing, interpreting, and making conclusions (8). The source of data in this research uses primary data which is obtained directly through interviews with related parties in the Ministry of Agriculture of The Republic of Indonesia, and the Ministry of Trade of The Republic of Indonesia, and secondary data is obtained indirectly through journals, books, news, and other internet sources. The level analysis of this research is two levels of analysis which are the nation-state level dan the international organization level. This research will explain the causes of Indonesia's loss in the dispute by using the structural power concept of Susan Strange. According to Susan Strange, structural power is the power to shape and determine the structure of the global political economy in which states, political institutions, economists, and experts or scientists work as they should in creating the structural power of a country. One of the very special structural power is knowledge, besides security, finance, and production. According to Strange, knowledge is power, an actor, whether an individual, group, or state, who is able to develop or acquire



knowledge so as to deny access to other actors to gain knowledge. So that only actors who have knowledge become the dominant power or superpower (9).

2. Results and Discussion

2.1. Dispute Settlement Body and Dispute Resolution at the WTO

DSB (Dispute Settlement Body) is the body that has the most important role in the dispute resolution process in the WTO. DSB itself is responsible for implementing the rules and procedures for the Dispute Settlement Understanding which regulates the dispute resolution mechanism, which has the authority to form panels, ratify panel reports and appeals body reports, oversee the implementation of panel decisions or recommendations, and give authority to a country, to carry out retaliation (countermeasures) if the losing party disobeys the decision (10).

The main body in dispute resolution within the WTO is basically the WTO organization itself. However, in its implementation, The Understanding stipulates three main bodies for dispute resolution in the WTO: the DSB, the settlement body, the Appellate Body, and the Arbitration. Meanwhile, dispute resolution procedures in the WTO consist of 1. Consultation, 2. Good Service, Conciliation, and Mediation, 3. Panels, 4. Appeals, 5. Implementation of decisions and recommendations (11).

Consultation is the first step used by countries in WTO dispute resolution. Member countries accused of violating the WTO which is considered detrimental to their countries request the consultation. The main purpose of the consultation is to provide an initial understanding of the parties regarding the factual conditions and the legal basis that will be submitted in more depth. The next goal is to try not to continue the dispute at the next stage. At this stage, a peaceful dispute resolution mechanism can be used through the Good Office, Conciliation, Mediation, and Arbitration, which is carried out voluntarily on the condition that the parties agree to take this step.

Formation of the Panel, the complaining state will take the next step, namely the formation of a panel if at the consultation stage it fails to resolve the dispute. The main task of the panel is to conduct an objective assessment of the main issues in dispute, including an objective assessment of the facts, implementation, and conformity with provisions relevant to the WTO. An appeal is made if one of the parties is dissatisfied with the panel's decision. The final stage of dispute resolution through the DSB is the monitoring and implementation of the recommendations made by the panel and the appeals body. However, prior to monitoring and implementation, the DSB will adopt the



panel report, within 60 days of its circulation. This supervision is useful for ascertaining whether reports or recommendations from panels or appeals are implemented or not by the parties (12).

2.2. The Stages of Dispute Settlement between Indonesia and the United States of America Trade Dispute in the Horticultural Sector at the WTO.

Relating the dispute cases report, on January 10, 2013, the United States communicated by sending a delegation from the United States to the Indonesian delegation and representatives from the WTO DSB, then on January 14, 2013, the United States requested consultations with Indonesia regarding the import of horticultural products, animals and animal products. According to the United States, Indonesia has implemented trade barriers with the existence of non-automatic import regulations, in which Indonesia's own import regulations must go through several stages that are at least three stages, or multistep: 1. Appointment of importers by the Ministry of Trade as Importer Producers (PI) or Registered Importers (IT) for horticultural products; 2. Horticultural Product Import Recommendation (RIPH) from the Ministry of Agriculture; and 3. Import Approval from the Ministry of Trade (13). In the DS455 report, Indonesia's policies have been deemed to carry out trade restrictions that have an impact on imports and are inconsistent with WTO regulations. In the DS455 report, in the consultation stage, Indonesia stated that it would correct its mistakes. By trying to change a number of laws and ministerial regulations to comply with the WTO provisions. However, the United States was not satisfied with the changes made by Indonesia, then returned to report Indonesia on DS465 which then New Zealand also reported on DS466. On September 9, 2013, the two countries again requested consultations with Indonesia regarding the import of animal horticultural products and animal products. In the DS465 report, Indonesia again said that it would change the regulations and policies that were deemed contradictory and inconsistent with the WTO, and reporting in this case also ended at the consultation stage. The status of the two reports is neither continued nor discontinued. The fact is that these two changes were not enough to satisfy the United States and New Zealand. The two countries finally reported Indonesia again with case numbers DS477 the United States and DS478 New Zealand. The consultation between the two countries with the Indonesian side was carried out in May 2014 because the changes made by Indonesia were considered not optimal (14).



After consultations on DS477 and DS478 were carried out and no agreement was reached on the next stage, namely the formation of a panel in 2015, as one of the efforts to resolve the dispute. The panel is tasked with discussing disputes, assessing facts, and deciding on the outcome of dispute resolution. According to the US, Indonesian rules that violate the WTO rules are quota restrictions including import restrictions by stipulating rules that imports are only carried out if domestic production is not sufficient to meet market demand, restrictions on importers with certain conditions, and restrictions on the distribution of imported products in certain markets, in Indonesia. The next consultations on DS477 and DS478 were carried out and no agreement was reached on the next stage, namely the formation of a panel in 2015, as one of the efforts to resolve the dispute. The panel is tasked with discussing disputes, assessing facts, and deciding on the outcome of dispute resolution. According to the US, Indonesian rules that violate the WTO rules are quota restrictions including import restrictions by stipulating rules that imports are only carried out if domestic production is not sufficient to meet market demand, restrictions on importers with certain conditions, and restrictions on the distribution of imported products in certain markets. in Indonesia (14).

Indonesian rules that violate the WTO rules are restriction quotas including import restrictions by stipulating rules that imports are only carried out if domestic production is not sufficient to meet market demand, restrictions on importers with certain conditions, and restrictions on the distribution of imported products on the market. only in Indonesia. Indonesia's regulations and policies are considered to have hampered international trade which is contrary to the WTO (15).

New Zealand and the United States asked the Director General to convene a panel on 28 September 2015. Then on October 8, 2015, the Director General formed a panel. On December 22, 2016, the report on the results of the panel's investigation and discussion was submitted to WTO members, and based on the panel's decision, Indonesia was declared to have violated Article XI. I of the 1994 GATT regarding quotas or number restrictions, so that the United States and New Zealand were declared victorious. At the panel stage of this case, there were two-panel hearings, the first trial was held on February 1-2 2016, and the second trial was only completed on April 13-14 2016, In the Panel session, in general, Indonesia was of the opinion that the accusations from the United States and New Zealand were not true because Indonesia does not apply non-automatic licensing as long as the permit is complete it will be allowed. Indonesia also believes that it does not apply quotas and only uses tariffs according to the WTO. Regarding the National Treatment of products inside and outside Indonesia



treating the same, we will only protect morals as in WTO article 20 A. Including halal products and maintaining human health, because imported products must be hygienic, and go through the main port, and implement the customs law to carry out orderly administration. The existing rules are not to hinder imports but to carry out orderly customs administration (14).

In addition to the United States and New Zealand as the plaintiffs, in DS477 and DS478 there are also 14 countries as third parties, which feel they have an interest in the case. The 14 countries are: Argentina, Australia, Brazil, Canada, China, Japan, South Korea, European Union, Norway, Taiwan, Paraguay, India, Singapore, and Thailand (16).

2.3. The Causes of Indonesia's Lost to the United States in the Horticultural Trade Dispute at the WTO World Trade Organization

In the trade dispute at the WTO, Indonesia was reported by the United States and New Zealand regarding three agreements consisting of several articles, namely: First, the GATT Agreement (General Agreement on Tariff and Trade), related to article 3.4 (principle of National Treatment), XI. 1 Quantitative Restriction (prohibiting the application of import quotas or the existence of quantitative restrictions/import restrictions). Second, licensing Agreement of import (ILA), article 3.2 related to Non-Automatic Licensing, and article 4.2 Agreement and Agriculture, related to market access. This is because Indonesian regulations are considered inconsistent with the GATT agreements and agreements. However, the result of the panel itself only decided on one thing, namely quantitative restriction in article XI.I, the WTO panel court has the authority not to decide on other violations as long as it has decided on one that is considered effective for resolving disputes, and in this case, the panel only decided that Indonesia violated GATT article X1. 1 regarding Quantitative Restriction, so legally Indonesia did not violate article 3.4 of the GATT, article 3.2 of the ILA, and article 4.2 of the Agreement and Agriculture, because it was not decided by the panel that it was wrong or right, but Indonesia was only decided to have violated the quota and prohibition of imports other than tariffs (14).

In addition to violating the WTO rules in article XI.I of the GATT 1994, which relates to quantitative restrictions on international trade. The knowledge structure possessed by the United States was also the reason that caused Indonesia to lose in the Indonesia-US trade dispute in the horticulture sector at the WTO in 2013 - 2016. The knowledge structure is a strength or power possessed by actors, whether individuals, groups, or countries, capable of developing or acquiring knowledge so as to create and negate



choices for other actors (20). The knowledge structure of the United States will be explained as follows:

First, the interests of developed countries such as the United States, which are more dominant in international law as well as in international agreements that are bound by economic issues, accommodate more of the principles adopted by developed countries. Even business actors from developed countries get a lot of protection from international agreements negotiated between developed and developing countries. In an effort to protect their economic interests, developed countries want international law not to be changed or tampered with. Developed countries will maintain what is already in the agreement. Meanwhile, developing countries often require fundamental changes in international law so that they reflect the values adopted by the wider world community. In addition, the United States as one of the founding countries of the WTO is certainly one of the countries that establish the principles and rules that exist in the WTO, even a strong country like the United States as a country that supports trade liberalism and free markets in the WTO (17).

Second, each country in the WTO actually carries out protection in order to protect domestic products and industries in different ways, but it must be on terms and conditions that are considered in accordance with WTO rules. The main requirement is that all types of certain protection policies, which can be considered as impeding international trade by a country, must use scientific studies, and must be continuous between protection policies and scientific studies, as well as supported by data and evidence. This is difficult for developing countries to do because developing countries tend to still have various limitations and shortcomings, especially in the fields of technology and science. While developed countries carry out rules or implement protection policies, they will be accompanied by scientific evidence and appropriate legal language. For example, in this case, the Indonesian government prohibits importers from importing apples that have been harvested more than six months ago, with the aim of protecting the safety and health of citizens. However, America denies and claims that apples from America are safe because they have technology that can suppress the temperature so that the apples will remain fresh and safe for consumption even though they have been harvested more than six months ago (14). Based on this, Indonesia has no reason and sufficient evidence to prove that its actions are to protect national security and health.

In any another example, a country such as Mexico has temporarily suspended imports of shrimp products from Indonesia because the Indonesian panels vannamai shrimp were said to have been infected by the Infectious Myonecrosis Virus (IMNV). The virus is a dangerous shrimp disease according to The World Organization for Animal Health.



So that Indonesia's export destination countries not only require quality standards on imported products but also health standards to be able to enter their markets. Previously, Indonesian shrimp imports were one of the leading export products, where in 2015 the export value of Indonesian shrimp products to Mexico was US\$ 245 thousand. However, it is feared that this incident will cause a negative domino effect on other major Indonesian shrimp export destinations such as the United States and Japan (18).

Indonesia's exports to the United States itself experienced many obstacles, mainly as a result of policies made by the United States. The following are some of Indonesia's imported commodities that are difficult to enter the United States market, namely fishery products, seaweed, and biodiesel. Based on data from the Indonesian Tuna Association (ASTUIN), in the first half of 2017, there were 29 fishery products from Indonesia that experienced rejection when they entered the United States. This refusal is due to the fact that Indonesian fishery products do not meet the requirements. The United States government has deliberately tightened the requirements for fishery products that enter its territory. The United States Food and Drug Administration (US-FDA), stated that 59% of fishery products from Indonesia were rejected because they were filthy or rotten. While 27% are suspected to contain salmonella bacteria that can cause digestive diseases and 14% are suspected to contain histamine which has the potential to cause allergies for those who consume it. The biggest rejection was experienced by tuna and shrimp products, which are the leading fish products in the United States. Secretary General of ASTUIN, Sugandhi said that in 2016 there were 79 cases of rejection of Indonesian fishery products exports to the United States from Indonesia and in 2015 there were 64 cases. He also explained that there were efforts from the United States to limit fishery exports from Indonesia because the parameters used for the rotten category set by the United States were not clear and only tested using sensors. Hendra also said that the United States government should be more transparent regarding the testing process carried out because the rejection case had an impact on other consumers' views of Indonesian fishery products (19).

The United States government has even tightened the import of fish into its country from the six member countries of the Coral Triangle Initiative (CTI) or the coral reef triangle, by requiring that they have a catch documentation system and Catch Documentation Traceability (CDT). Michael Obbey from NOAA's Office of International Affairs and Seafood Inspection (IASI) explained that these requirements aim to maintain marine biodiversity in fish-producing countries, including Indonesia. In his statement, Obbey said that the import system required by the United States must be followed by an electronic application of fish catches, which can detect the process of catching fish until



they are packaged and sold to the United States. From the effort to tighten imports, the United States requires all exporting countries to improve the quality quality of exports while at the same time documenting electronically and requiring fish-exporting countries to comply with these regulations, if their fish are to be accepted in the United States market.

Large and developed countries often claim that food security and quality are good, and safety standards are good. As happened around April 2018 melons from Australia contain deadly bacteria, while Indonesian horticultural products have never contained deadly bacteria. The United States also claims to have great post-harvest technology, and that fruit that has been harvested for more than 6 months will still be safe, it should be with Indonesian rules that it doesn't matter to them because of this. But they actually protested, when our country was trying to protect public morals and public health. Considering as a developing country, Indonesia's legal power regarding international trade was weak, this was proven by the lack of lawyers who are experts in the field of international trade and the WTO. Even on the government side, there were no lawyers and experts in international trade and the WTO. In the dispute case, the government was accompanied by only two private lawyers (14). Indonesia as a developing country is still in an effort to strengthen its country, by trying to change the face of international law, which requires skilled designers and negotiators. The expertise and shrewdness of the negotiators and designers cannot be met with skill and shrewdness as well. In this case, Indonesian law is not sufficient.

As stated by Ade Maman Suherman (20) said that Indonesia needs reliable lawyers in international law. He also explained that there are not many people who are experts in the field of Indonesian law who are qualified in the field (international arbitration). And there are also systemic obstacles that can be seen between developing countries and developed countries. Financially, legal fees, and so on are still a big obstacle for Indonesia. For example, dispute resolution in the WTO requires very large costs if you want to hire international consultants. It can even suck up a percentage of the Indonesian state budget. To deal with developed countries with strong economic conditions, the Indonesian government has difficulty especially in the field of human resources, regarding self-confidence and the provision or ability to negotiate. Because in negotiations, not only knowledge is needed but skills also have an effect. These conditions also affect Indonesia's position in the WTO, AFTA negotiations, and others (21).

Indonesia as a developing country tries to protect local products by implementing import policy policies, such as regulation of the import period or period applied by

the Indonesian government. This does not include import restrictions, because the volume of imports from the United States has not decreased as explained in the trial process conducted by the Indonesian government. The government has tried to present evidence that Indonesia's import regulation does not reduce the volume of imports of horticulture, animals, and animal products from the United States. However, in this case, Indonesia is still said to have violated WTO rules. The following is a table of processed data on Indonesian horticultural imports from the United States, as reported from the website of the Directorate General of Processing and Marketing of Agricultural Products, in the agricultural database all imported commodities per month throughout the year are listed. The following are the results of data on horticultural imports from the United States which are obtained every year.

TABLE 1: Imports of Indonesian Horticultural products from the United States.

No	Year	Volume (Kg)	Amout (US\$)
1.	2012	112,436,881	144,715,065
2.	2013	96,562,914	161,654,343
3.	2014	100,903,531	185,298,084
4.	2015	84, 317,314	157,189,908
5.	2016	105,196,598	192,596.852

Source: Directorate General of Processing and Marketing of Agricultural Products, 2017

From the table above, it can be seen that imports of US horticultural products to Indonesia do not always fall, because the volume does go up and down every year. However, the value of US\$ continues to increase every year and only decreases in 2015. It also cannot be justified that the United States considers the value of its imports to decrease every year due to import licensing applied by Indonesia. Conflicts of interest in international trade have become a strategic issue between developed and developing countries. This is triggered by differences of opinion or views. Developing countries tend to take steps or policies that hinder the entry of imported goods and services from foreign business actors, while developed countries want no obstacles made by countries, including developing countries. The market is important in this case because goods from developed countries must be sold, and developing countries are potential markets (17).

The explanation above shows that Indonesia's position as a developing country in international trade is not balanced. In the WTO system, one of the countries that benefits, especially a strong country like the United States which has the power of a knowledge structure, is on the other hand developing countries have various obstacles. So that in this case, the competition between developed countries and developing countries



is not balanced, international trade should be able to provide benefits to the parties, especially developing countries.

Furthermore, because of the weak human resources and technology owned by developing countries such as Indonesia, it will be very difficult to show evidence data and scientific studies that what is being done is only to protect horticultural and domestic agricultural products, which are mostly still traditional, and protect citizens' morals and consumer safety. In this case, Indonesia was declared lost to the United States.

Although the Indonesian government is disappointed with the results of the WTO's decisions and rules. Indonesia's position and efforts have been to seek the best formulation for the benefit of the people, and the changes suggested by the WTO to harmonize its rules with WTO rules in the form of changes to ministerial regulations are being processed. On the other hand, America and New Zealand themselves are also doing the same thing, namely efforts to protect their trade. Indonesian exports to America and New Zealand are also very difficult and have many obstacles, including administrative matters (22).

As a country that is bound by an international trade regime, both the government and the parties involved in the trade must understand more deeply the rules, provisions, and principles of the WTO. Because international agreements and agreements will have an impact on all Indonesian people. Furthermore, in an effort to improve the quality of human resources in the field of international trade law which includes knowledge, skills, negotiating quality, and others, universities throughout Indonesia must be prepared the government, by providing facilities, and encouraging students to improve their negotiating skills, as well as the ability to compete both nationally and internationally as a means of preparing and improving competent human resources in their fields in the future, as well as in the fields of technology and scientific research the government needs to prepare and support by improving the quality of education.

3. Conclusion

From the explanation above, it is concluded as follows, that Indonesia was declared a loss because of the result of the WTO decision which stated that 18 Indonesian regulations related to imports violated Article XI.I of the GATT which is a violation of the principle of eliminating quantitative barriers where the article regulates quantitative restrictions or restrictions. which cannot be applied. The existence of Indonesia's quantitative restrictions in the form of restrictions on import quotas on import licenses. Furthermore, the knowledge structure factor is owned by the United States which in



this case the knowledge structure factor is a very important factor to be observed. This knowledge structure, such as the dominant role of developed countries such as the United States in international organizations including the WTO, in achieving their interests. Furthermore, there is the ability to research and scientific studies that are used as evidence and justification for any protection measures and import restrictions by the United States. Meanwhile, on the other hand, Indonesia's inability to balance the knowledge structure of the United States can be seen from Indonesia's legal power (lawyers) regarding international trade which is still weak. The quality of resources and capabilities possessed by Indonesia is not sufficient in the field of research and technology. Therefore, Indonesia has difficulty showing data and scientific studies in the dispute. These things caused Indonesia's loss in this dispute case.

Conflict of interest

This manuscript proceeded accordingly as a contribution of objective thought. The authors whose names appear above have no affiliations with or interest in any organization or entity having any financial interest or non-financial interest in the subject matter or materials discussed in this manuscript.

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