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History of Raw Material Export Restriction by European Powers: Revisiting Colonial Past

Bani Adam[1*] & Haniff Ahamat[1]
[1] *Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Malaysia*
Email: baniadamb4n1@gmail.com, haniff@ukm.edu.my.

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Corresponding Author: baniadamb4n1@gmail.com

Abstract: *Acquiring control and monopoly over raw materials and natural resources was key to political, military and territorial expansions of European Powers in Asia, America and Africa. After World War 2, trade of goods become major concern under international trade regime which international legal order has clear rules against export restrictions on raw materials including on natural resources agreed under GATT 1947 Agreement. This paper inquires into the historical foundations of control and monopoly over raw materials and minerals, the legal rules that governed such conduct of States. This paper finds that control and monopoly were bread and butter to European colonisation of America, Asia and Africa, which flourished at the height of the mercantilist era. However, after the advent of the General Agreement on Tariffs and Trade (GATT), restrictions on exports are now restricted. The doctrine of intertemporal law describes what happens to the legality of an act when there is a change to an event and law. As established by Judge Huber on Island of Palmas case, there is difference between the creation of a right under the law and the continuation of that right transcending the past, the present and the future. This article is written regarding on historical approach which data sources originate from book of historians, such as Adam Smith and D.K. Fieldhouse. Some journals of relevant experts could be referred to find pathway of the raw materials controlled by the West power during colonialization era. The historical approach of this article Historical approach to research can shed light on how legal aspects of conduct that became subject of legal rules unraveled in response to historical event. As more developing countries are restricting exports of raw minerals including rare earth, there may now be associated with the rise of neo-mercantilism.*

Keywords: *Mercantilism; Colonialism; History of International Law; Natural Resource Policy.*

1. INTRODUCTION

The history of colonialism shows that acquiring control and monopoly over raw materials and natural resources was key to political, military and territorial expansions of European Powers in Asia, America and Africa. This is part of the 3Gs i.e. "Gold", "Glory" and "Gospel" which were cited as among the reasons for European colonialism. Reconquest Hispania lands from Andalusia Caliphates led resurgence the Christian expansion to conquest holy land in 1096 with religion zeal, thirst for territorial conquest, and economic orientation as the first step of European overseas expansion during the early century.

The Christian kingdom established crusader knight templar guarded castle fortresses in Syria, Lebanon, Palestine, and Cyprus.[1] Meanwhile, Italia hold commercial control over middle east and along with Black Seas resulting profit and capital formation in the European territory. At the same time, the Hispanic kingdom began expansion through millitary campaign chasing throughout Muslim homeland (Moors) across Gibraltar Straits, seizure their properties, and destroy Muslim power to extend Christianity. It developed into imperialism which desire to acquire privilege, preferences, and plunder on raw materials. It also forced seizure of other territory, enslavement of local people, nasionalism, racism, and militarism.[2]

Monopoly over raw materials and natural resources was ordinarily taken in the context of those colonial expansions but it rarely brings us to the discourse on its normative value in international law. This is because international law jurists embraced positivist attitude to the law so as to justify the conduct of European Powers in bringing civilisation to the "Barbarians", hence there was the abandonment of natural law in the philosophical discourse on international law at the that time. However, after the World War 2, the trade of goods emerges as major concern under international trade regime regulated under General Agreement on Tariff and Trade 1947, which the international legal order has clear rules against export restrictions including on raw materials and natural resources whereas the main target now appears to be developing countries. Their riches were removed by the European Powers who now stand against the monopoly and control over such goods.

Therefore, there is a need to inquire into the historical foundations of control and monopoly over raw materials and minerals, the legal rules that governed such conduct of States. This paper will first elaborate the history of raw material export restrictions in and by Europe. The reason for mention of both "in" and "by" is because the European control and monopoly of raw material exports occurred on and beyond the powers' territories. This paper will then embark on an analysis of mercantilism as the prevailing ideology during parts of the colonial era that influenced the rush by European Powers to acquire control over territories producing raw materials and minerals, and their acts thereafter. This paper covers both the "rise and fall" of mercantilism, leading towards the move by those Powers to decolonise and the norms that emerged after decolonisation, which reflected in the start of the disciplining of export restrictions. This paper will then conclude by looking at the possibility of making relevant the history of the European conduct to the discourse on illegality of contemporary export restrictions, particularly by developing countries.

2. METHOD

This article would be written regarding historical approach which is primary sources originate from book of historians. Adam Smith and D. K. Fieldhouse constitute such primary sources which is criticizing of think for export restrictions on raw materials

[1] Melanie McAlister, "A Cultural History of The War Without End," *Journal of American History* 89, no. 2 (2002): 439–455, https://doi.org/http://dx.doi.org/10.2307/3092165.

[2] Robert J. Rhee, "Terrorism Risk in a Post 9/11 Economy, The Convergence of Capital Markets, Insurance, and Government Action," *Arizona State Law Journal* 37, no. 1 (2005): 435–534.

during western colonization to the east world.[3] In addition, another historian books also include as the materials scoping within history of export restrictions existed in the past few centuries.[4] Historical approach emphasizes on description of emerging and falling application of trade restrictions of raw materials affecting development of globalization.[5]

3. RESULTS AND DISCUSSION

3.1 Emergence of Political Mercantilism by Europe

Mercantilism emerged with rise of population demography in Europe in seventeenth century period. It was supposed as wealth which may support national strength. High number population has pivotal value in term of battling to the war, remain at home, working at colonies, or employed in public works. Then, other advantages could be enjoyed for state interest, which affect employment availability influencing consumption and employers. Poor population did not hinder to rich the nation as it could employed the poor in processing raw materials into finish products. At the same time, poor people existence may assist placement of workforce in decay port to complete export involving every class society.[6]

Meanwhile, vagrant should be transported to colonies land which work to export raw materials to improve quality of domestic population. For this term, industrialization era required high number of people to increase trade, support workers for various fields in colonies. People migration may affect competition which brighten for industry. However, this related with practice conducted by the Dutch welcome all people originate from all nations to compete for resources in small land.

From seventeenth century, mercantilism developed as philosophy of international competition which resulted not only in attempting utilization of social resources and traditional resources, but also as resources to increase wealth of nation. Gold and silver become indicator to measures the wealth with producing manufacturing. It emerges firstly in the sixteenth century which involve private entrepreneur in monopolizing mercantile project with government support, whereas it changes to direct government involvements. It constitutes reason for European empire expansion in early modern Europe.[7] Even, mercantilism proliferated as ideology which then inspired development of liberalism, socialism, and capitalism which cause international conflict running high. State was very important to achieve mercantilism objective as it held powerful in controlling wealth, population, money, and commerce.

3.2 History of Raw Material Export Restrictions in and by Europe

The enforcement of the export restriction policy reached its peak when it was adopted by the British Government on occupied territories outside continental Europe in the 17th

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3 Pertti Alasuutari, Leonard Bickman, Julia Brannen, *The History of Social Research Methods*, (USA: SAGE Publications Inc., 2008): 26-41. DOI: 10.4135/9781446212165.

4 Samuel P. Hay, "Review: Historical Social Research: Concept, Method, and Technique," *The Journal of Interdisciplinary History* 4, no. 3 (Winter, 1974): 475-482. https://doi.org/10.2307/202489.

5 John A Hall and Joseph M Bryant, *Historical Methods in the Social Sciences*, (Los Angeles: SAGE Publications Ltd, 2005).

6 Antony, Cindy Lie, and Joen Shanylla, "Exploring the Roots of Political Dynasties from the Perspective of the Democratic System: Legal and Political Reform as a Balance in Election Contestation," *Kemudi :Jurnal Ilmu Pemerintahan* 8, no. 2 (2024): 96–113.

7 Council of Europe, *European Convention on the Suppression of Terrorism*, 1st ed. (Netherlands: Stasboug, 1977).

century. The policy was found in the actions of the British Government which set measures to restrict the exports of tobacco in the colonies in the United States that it controlled which at that time was a major commodity in the world market (Pecquet, 2003). This action was closely related to the desire of the British to control the market price of the product through a policy called the Restriction of Mercantilism.

Yet before that, the practice of mercantilism was pursued earlier by the Spanish and Portuguese after the conquest of the American Continent (the New World) in the 1400s or 16th century. At that time Spain adopted an economic system of controlling trade on metallic minerals and agricultural produce that must be shipped back to Spain. At the same time, economic growth in Europe made the gold metal the currency of payment in various economic activities. This means that countries with large gold reserves would be able to dominate the economy in the region. Meanwhile, Spain controlled other metal trading sources, such as silver, copper, and tin. This control was held by establishing a system of control that included land management, labor, mineral mining, and mineral trade. The establishment of the system led to the migration of the Spaniards to the colonies in Latin America which at the same time placed a Spanish subject as a controller to the system. In addition, the system regulated on the obligation of sale of mining products in terms of limiting it only to a Spanish Government agency, known as the Casa de Contratation, as the holder of a metal trading license as well as the exporter of downstream metal products to the colonies.[8]

On the other hand, the Portuguese were among Spain's rivals in dominating trade in the South American region. This began with the signing of the Treaty of Tordesillas in 1494 which divided the control of the colonies outside Continental Europe between Spain and Portugal. Unfortunately, the Portuguese only controlled Brazilian territory under the treaty, while Spain was recognized as a ruler in Latin America. Nevertheless, the Portuguese domination of Brazil in turn held the practice of mercantilism over minerals that had just begun in the 1600s that focused on controlling the gold trade in Brazil. This control was held after the discovery of gold and diamond reserve sources in Minas Gerais, Brazil. This discovery increased the source of income of the Portuguese Government as well as it became a supplier of gold in the European market. This was because Portugal obligated the export of gold to its territory which was accompanied by the obligation to pay customs duties upon shipment. At the same time, the Portuguese and British signed an Anglo-Portuguese trade agreement which provided for reciprocity of trade between the two States. In this regard, Portugal exported gold and other goods to the British with exemptions given with regards to customs inspection, while the Portuguese imported textile products, wheat, and other food item. However, little was known about the practice of mercantilism in Brazil enforced by Portugal.[9]

At the peak of its development, mercantilism became the thrust of a system of trade regulation that emerged since the 17th century that included economic and trade policy covering also aspects of agricultural products. During that time, mercantilism was the act of controlling the trade resources of spices and other agricultural commodities. This act of domination was carried out by the British and the Dutch against the commodity trade

8 Ana Peres, "World Trade Organization : Challenges and Opportunities," *House of Commons Library* 2, no. 9942 (2024): 5–49.

9 Rakhmat Syarip, "Defending Foreign Policy at Home: Indonesia and the ASEAN-Based Free Trade Agreements," *Journal of Current Southeast Asian Affairs* 39, no. 3 (2020): 335–472, https://doi.org/https://doi.org/10.1177/1868103420935556.

with respect to making the system encompassing domination over lands of the spices and the passage through trade routes. In practice, mercantilism was carried out by state-owned companies as well as trade policy regulators in conquered territories.[10]

With the gazetting of the Navigation Act 1651, the British declared its authority over the tobacco trade in the North American Continent as one of the most valuable commodities in Europe at the time. Subsequently, the British also asserted its dominant power over trade in Asia and Africa through the Navigation Act 1660. Both of such acts contained an order that all raw commodities whether tobacco, sugar, cotton, and other basic raw materials must be shipped through British ports as the main gateway to Europe.

According to Holland J Rose, the policy of restricting the export of such raw materials was practiced in a monopoly and monopsony manner. The Dictionary of Black's Law describes a monopoly as the act of controlling prices and disposing of business competition over certain commodities or goods.[11] Whereas monopsony is defined in the same dictionary is the act of directing the market into a situation where there is only a single buyer on a particular commodity or goods.[12] The move was done with the intention of making the British the sole producer and distributor of plantation raw materials such as sugar and tobacco. On the other hand, all plantation products entering and leaving British territory are obliged to pay export and import taxes even if originating from the colonies. This was by virtue of an Act of Parliament passed in 1673 relating to enumerated articles or regulations governing the number of commodities subject to import tax upon entering British territory and its colonies, such as tobacco, sugar, rice, timber, and other agricultural products. This enumerated article relates to the Navigation Act 1651 on British trade routes in Asia to Europe.

In controlling the trade in plantation products, the British adopted the rent-seeking strategy introduced by King James I. The rent-seeking strategy was a way for the British to control land in the colonies through agreements with local or indigenous rulers and to authorize other parties with the obligation to sell to the British. This strategy was practiced with a two-way approach. First, the British Government set commodity prices more expensive than in the world market despite the increase in the quantities of commodity harvests or production. This approach required farmers to sell commodities only to the British. Second, farmers were allowed to cultivate the commodity within the specified land area restrictions. The British distributed fertilizer and pesticide subsidies to attain maximised production and harvests. Both approaches are meant to control and limit the distribution of plantation commodities in the world market.[13]

However, Adam Smith introduces free trade concept through his writing on wealth of nations describing a country's imposition of high duty against importation of corn could take advantages for growers of that commodity. Adam Smith added that this constituted monopoly of home-market which encouraged particular industry to take benefit from it. It also brought greater employment share for labour and society. He discussed the pivotal role of labour to increase production. Specialization of labor support of work completion

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10 Daniele (Danny) Ciracò, "Forget the Mechanics and Bring in the Gardeners: An Exploration of Mediation in Intellectual Property Disputes," *University of Baltimore Intelectual Property Law Journal* 9, no. 81 (2000): 27.

11 H Henry, *Black's Law Dictionary* (St.Paul, Minn: West Publishing Co., 1968).

12 D.B Neufeldt, V & Guralnik, *Webster's New World College Dictionary*, 3rd ed (New York: Macmillac, 1997).

13 Alberto Abadie and Javier Gardeazabal, "Terrorism and TheWorld Economy," *European Economic Review* 52, no. 1 (2008): 1–27, https://doi.org/10.1016/j.euroecorev.2007.08.005.

faster which means labor division is required in producing manufactor products with cheap price. The collaboration result in higly efficient in advanced economic system. Contributing to developed country's great wealth. Thus, poorest society have gain access to variety products which could be uaffordable without specialisation division.

Nonetheless, He reveals that high demand of labor should be balanced with capital availability to support specialization of trade. In this term, capital is divided into two capitals which one allocate for future production and latter for consumption capital. Butle describes the term capital raised by the book is referred to cash revenue in hand, work in progress, and moveable asset. Furthermore, Adam Smith express money as capital is only considered as a tool of exchange. However, money can pose real wealth from intrinsic value in what money can purchase a product. This is related with value of money measured from gold and silver as instrument of commerce and value. In this case, the gold and silver could be credited as wealth issued by banks for customers which is more efficient.

Under mercantile system, money covering gold and silver hold wealth value which originate from colonies in large quantities and avoid leaving from the country. Control measures are taken to hold the metals from domestic territory. In contrast, domestic trade does not become problem as state wealth does not come or left the country. Both metals are supposed posing more durable than other some commodities. Thus, full control of gold and silver trade may hold the wealth value for nations.

At the same time, the British enforced import restrictions on agricultural products from the Baltic region in the 19th century. Restrictive measures were enforced through the introduction and implementation of an agricultural produce act called the Corn Laws 1815. The act was meant to protect the interests of local farmers affected by wheat imports from Eastern Europe with the imposition of high import duties. However, the amendments to the Corn Laws or also known as the Repeal of Corn Laws were needed to address the high demand for wheat in Britain in the wake of the Industrial Revolution and the French Revolution. During this time, the British Government made amendments to the Corn Laws by reducing import duties and opening the British market to foreign trade. This opening was to cause the British market to be an open free market for wheat goods from abroad.

3.3 The Mercantilist Era

The mastery over a particular product with the intent to be the sole exporter has long been in effect since the western colonial period as stated above. The colonization of the Asian continent had created a politics of monopoly and monopsony of certain commodities. This 16th-century politics of trade resulted in a politics of control over the sources and traffic of land and sea trade, called mercantilism.

Mercantilism had produced an act that was always practiced by the Spanish, Portuguese, British, and Dutch colonists. Spain and the Portuguese adopted a way of dominating and prohibiting the inhabitants of the colonies from doing business with other countries. Meanwhile, the British and Dutch created a trading system by establishing commodity trading companies, owning carriers and opening commodity collection centers in Africa, Asia and America. The trading company acted in accordance with the enforcement of the Navigation Acts which meant as if the British exercised sovereignty over the waters it passed. Meanwhile, the Dutch adopted a different method, namely to take control of a commodity-producing territory and establish a company that carried out the duties of a representative of the Dutch Government to enter into trade agreements with the rulers of the colonies.

According to Kirsten Borgsmidt, the adoption of a monopoly policy, associated with mercantilism, could be carried out in three ways, namely: the monopoly of transport, the monopoly of trade, and the monopoly of production (Borgsmidt, 1985). She elaborated further all the three ways concerned. First, the transport monopoly was enforced by the British through the Navigation Act 1651 (Cromwell's Navigation Act 1651) which required that all non-British goods that would carry out import activities were subject to the mandatory conditions of using British-made ships, owned by British companies, under the command of captains of British origin, and the ship's personnel were largely British subjects. Second, the setting of the Enactment of Charles II 1660 and the Monopoly of Supply Act 1663. The Enactment 1660 stipulates that certain commodities can only be imported into Britain, while the Supply Monopoly Act 1663 ordered that all European goods to be exported to the territory of the colonies were obliged to adopt British flag ships. Third, the British forbade the residents of the colonies to produce the manufactured products and commodities unless they were compulsory to be exported to Britain.

Thomas B. Nachbar described mercantilism in the West means controlling the price of raw goods and then determining the price according to the cost of production of goods at the place of manufacture. He added that efforts to maintain mercantilism should be the formulation of business laws and regulations that impact profits for local manufacturers (Nachbar, Monopoly, Mercantilism, and the Politics of Regulation, 2005). In addition, it was designated for collection of bullion and shipping protection policies through encourage strong navies. This is part of the politics of nationalism emphasized on the division of economic activities and national income that affected balance *of* trade.

In this regard, the British adopted monopolizing conduct on the trade of tin minerals in Malaya. It was adopted while the Britain succeeded establishment of its empire alongside of coastal territory of Burma. Furthermore, opening of Suez Canal connecting steamship route from Europe to the East and extension telegraph from India to Singapore made easier shippers to reach the route as well. Moreover, the British monopoly on minerals dated back to the extension of its political influence to Malaya in 1874. At that time, the British declared that the State of Perak, Selangor, Pahang and Negeri Sembilan came under the British auspices of British Malaya.[14] This move led to the British being able to intervene in various administrative policies. The occupation of Malaya peninsula took into consideration amount of trade increase of the Strait Settlements with Southeast Asia. Thus, security measures needed to be carried out to protect Britain interest. In the context of mining, this declaration empowered the British to protect the interests of its trade routes with China while protecting the existing China-owned tin mining activities. In the middle of the 19th century, the British established the tin industry due to the increasing demand for tin in the global market. The demand for tin was needed to meet the tin plate manufacturing industry in Britain at once to meet the market demands of the food and oil packaging industry in the United States, Australia, and Western Europe. Such a situation caused the British to monopolise tin trade in the global market.[15]

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[14] Chesney, M; Reshetar, G and Karaman, "The Impact of Terrorism on Financial Markets :An Empirical Study," *Journal of Banking & Finance* 35, no. 2 (2011): 253–67.

[15] Miwa Yamada, "A Perspective On Comparative Study of Dispute Settlement Institutions and Sicio Economic Development," in *Proceedings of the Roundtable Meeting, Law, Development and Socio-Economic Changes in Asia II*, 2010, 19–20.

The politics of mercantilism also prevailed in some countries in Europe such as France and the Netherlands. This politics not only focused on the desire to dominate the production and distribution system of commodity goods, but it is also used as a source of tax revenue on the import of commodities from the colonies. In addition, the development of technology in the 17th century as a result of the Industrial Revolution had boosted British business activities, especially international trade. This made the reserves of cheap raw materials that must be met in order to be able to compete with products from other European Continent countries.

Mercantilism, however, is based not only on the principles of nationalism. As Henryk Szlajfer quoted Heckescher's opinion that it was based on a strong desire to enlarge the country's territory for economic growth. Similarly, Adam Smith said the British domination of trade over the colonies and the diversity of other economic activities was a form of nationalism felt as a result of the development of industrial technology. However, the enforcement of the Corn Laws Repeal in 1846 opened the British market to agricultural goods freely from outside the British territories only. An example of mercantilism in the era of globalization is Japan. Japan rebuilt the country's economy after the defeat of World War II by focusing on increasing its comparative advantage in producing technological and capital-oriented goods such as engines, and electronic components. In fact, Japan's technological advances have brought reliance on South Korea. Thus, in order to show dominance over the electronics market, Japan prohibits the export of electronic components to South Korea. The same was practiced by Germany, whereby the construction of the re-manufacturing industry became the mainstay of the recovery and economic development of the country after the devastation of World War II. In this regard, Germany managed to build a vehicle engine technology capable of being shared with Soviet Union and France.

Although globalisation has remained in place for decades to date, mercantilism continues to remain practiced by many countries, especially the developing countries. This action gave rise to a new form of cooperation called regionalism, but the principle of nationalism is still the policy of choice for nations' economic development. This is because many developing countries only serve as exporters of raw materials to developed industrial countries at cheap prices, while developed countries sell manufactured goods at higher prices. Thus, the diverse political forms of mercantilism have been modified into a form of neo-mercantilism, which will be further discussed below.

3.4 The History of European Mercantilism in South East Asia

The politics of world mercantilism was closely related to the history of the expansion of Western trade regions in the Indian Ocean region, the Southeast Asian region, China, Korea, and Japan. After the voyage of Vasco da Gama to the *Cape of Good Hope* in South Africa in 1498, many Western European countries followed suit in search of sources of spices and other agricultural products. This effort was successfully undertaken by the British by acquiring territories in Indian in 1590 and a decade later established a trading monopoly company called the East India Company (EIC). The goal of the establishment of this company was to dominate the entire trade in the waterways between *the* Cape of Good Hope and India. The monopoly power of the EIC was the granting of the exclusive rights of the monopoly by Queen Elizabeth I which included the power of the right to grant trade licences and the freedom from the obligation to pay taxes to the British Government. With such power, the EIC was able to acquire additional facilities on investor capital to increase the number of its fleet of commercial vessels.

However, the sources of spice supply that Western Europeans were interested in, were abundant in parts of the region of Southeast Asia especially in Indonesia which was then called the East Indies. EIC sent its trading fleet at the beginning of mid-1620s which brought a lot of profit for the EIC. However, the Dutch had earlier arrived in the Southeast Asian region in 1602. The Dutch government established a monopoly company named *Verenigde Oostindische Compagnie* (VOC). The company had a similar goal with EIC, which was to dominate Asian trade. Due to this, the competition to colonise the source territories of the spices took place between the two powerful companies.

To win the competition, the VOC made various monopoly agreements with local rulers including the right to control land and establish a fort-building system. The agreement made the British side withdraw slowly from carrying out trade activities in the East Indies (the Indonesian part) after the war between the two in 1617-1619 which ended with the agreement that the EIC was only allowed to control one third of spice trades in the Moluccas. In fact, the tragedy in Ambon where there was torture and murder of a number of British and Japanese by the Dutch administration, which was called *the Amboyna Massacre* resulted in the Dutch domination of trade in the East Indies without competition.

The killing of the crowd in Ambon was based on the alleged attempt to assassinate the Dutch Governor-General in Ambon and take over Dutch controlled Fort Victoria. Although the Dutch were unable to prove their accusations, this torture and murder had brought a bad impression to the bilateral relationships between the British and the Dutch, thus starting an anti-Dutch sentiment among the British. On the other hand, the Dutch had succeeded in monopolizing trade, while the British experienced an economic downturn.

As an effort to tip the balance against the Dutch, the British set the rules of navigation in the Navigation Act 1651. The Act enshrined British power over the cruise route of the spice trade to Europe. The Act requires all commercial goods in Asia to adopt British-owned ships or British-made products and participating crews. The Act imposed seizure and confiscation of ships and goods therein. The enforcement of this act threatens the dominance of the Netherlands on European trade. This competitive effort could not avoid the clash between the Dutch and the British from 1654 to 1670.

Trade and sea power competition in Asia continued to culminate. This was marked by many Dutch ships being seized following the strengthening of the 1651 Shipping Deed. Countermeasures were also imposed by the Dutch for British ships when entering the waters of the East Indies archipelago. In the end, the Dutch succeeded in expelling the EIC and became the sole ruler in the East Indies.

3.5 The End of the Mercantilist Era

In time, the era of mercantilism had a decline in influence after the repeal of the Corn Laws of England 1847. An era of global trade restriction had transformed into an era of free trade to meet the ever-increasing domestic demand, especially agricultural products as described above. In the next era, the diversification of economic activities also came to a new height with as much investment as possible in the country to boost a country's economy faster (Schonhardt-Bailey, 1991). In other words, this era can be said to be a new era of mercantilism or called neo-mercantilism. Neo-mercantilism focused on the role of the government as the main driving force of the country's economic development.

In the meantime, *neo-mercantilism* has similarities in relation to its relevance to the priority of meeting interests' demand within the country. However, the principle began to be applied by *the new emerging country*, which opened up trade and investment ties in regional agreement mechanisms. Huntington identified the five main components of the policy of *neomercantilism*, namely; (1) focus more on the interests of the producers of goods than on the interests of consumers; (2) improvement of the capabilities of the value-added and high-tech manufacturing industry sector for the needs of the country and only then for export needs; (3) expansion of a wider coverage of market access to increase the circulation of goods in the overseas market share; (4) the adoption of import restrictions and reducing reliance on direct foreign investment; and (5) remain to record export trade surpluses to ensure a continued increase in the number of world currency exchange reserves (Wigell, 2015). In terms of the prosperity of the people, neo-mercantilism can be known taking into account, that is; (1) efforts to reduce the cost burden of social problems; (2) increase productivity; (3) increased consumption of local goods; (4) There is a balance between workload and prosperity.

Margaret Kent and Robert Feinschreiber argue neo-mercantilism requires collaboration between the private sector and the government in developing and strengthening the country's economy (Kent & Feinschreiber, 2013). Kent and Feinschreiber argue that the neo-mercantilism measures that the government can hold are the provision of incentives, subsidies, and various other economic stimulus. His opinion is based on the opinion of Dani Rodrik who said that the alliance between the government and the private sector is a good collaboration to achieve social prosperity as opposed to the practice of open market which requires a separation between the government and the world of effort. In this matter, China can be taken as an example to the policy of neo-mercantilism. China practices neo-mercantilism with nationalistism enforcement strategies, patriotism, mastery of technology, accumulation of gold and foreign currency reserves in abundance, exporting more manufacturing products, government subsidies, and enforcement of trade restrictions.

At the same time, neomercantilism has been practiced in other countries such as Brazil. In fact, Brazil managed to dominate the South American Continent market. According to Gomes Saraiva, Brazil's success was achieved in an integrated economic system to be able to compete in overseas markets, strengthen trade consulting positions internationally, as well as the development of the most advanced industries in regional areas (Wigell, 2015). In other words, the neomercantilism practiced by Brazil leverages the country's entire economic potential which includes mineral resources, finance, and infrastructure to become part of the chain of suppliers of a world's goods (global value chain).

3.6 The Beginning of the Restriction on Export Restrictions

In the twentieth century, the concept of colonial trade has changed into a trading system that respects the principle of sovereignty of a State territory. This attitude of respect for the principle of sovereignty emerged as the colonial territories began to achieve independence. Currently, international trade is held through bilateral agreements between Developed Countries and new Countries that later become Developing Countries, such as economic support agreements to new countries. The bilateral agreement is expected to have a balanced advantage in the context of trade. This action led to a change in the new system of international relations at the New International Economic Order (NIEO), in which international groups recognized the right of a country to determine the direction of use of wealth owned by a country after World War II. In the meantime, the world trading system has shifted to a bilateral trading system that provides benefits for both sides.

The nationalism of the new countries has had an impact on the international trade relations agreement which has finally returned to the current situation. Trade relations currently focus on the national interest (Bunting, 1996). Although this principle has been set aside through the establishment of the World Trade Organization (WTO) as a multilateral cooperation, it has re-emerged since China has become a new economic power next to the United States which underlines the emerging spirit of regionalism in Asia. Multilateral and regional cooperation is felt to affect the economies of developing countries, resulting in economic wealth gaps in commodity exporting countries whose economic prosperity and wealth are still below global standards. On the other hand, the economies of developed countries continue to grow with manufactured products as the main export. The spirit of nationalism in the colonial era, produced a *protectionist* police that characterized the primacy for building the country's economy. Sapna Kumar quoted Eric Helleiner's opinion as saying that *nationalism* is solely practiced in the form of trade protectionist police in the state (*trade protectionist*) to achieve progress and strengthen the identity of the nation (Kumar, 2019).

However, *protectionist* measures have begun earlier in the Developed Countries compared to the Developing Countries, each of which practices them in different ways. An example of the principle of *nationalism* that gives the impression of the partition of world trade (*globalization*) is the strengthening of the power of the Smoot-Hawley Tariff Act 1930 (*The Smoot-Hawley Tariff Act 1930*) which aims to impose high import excise taxes on various types of goods. Recently, the United States has also begun the move by taking a case to the World Trade Dispute Resolution Agency (DSB) relating to the ban on the export of raw materials and the nadir of the earth or known *as rare earth* worn by China.

In addition, the reason for the principle of nationalism to restrict global trade is due to the occurrence of current account deficit (Current Account Deficit) which is reflected through more import activities than exports. Meanwhile, the manufacturing orientation of manufactured industrial goods requires domestic commodity reserves at cheaper prices. This is focused on the desire to take advantage of the export of manufactured and manufactured products. Thus, the balance of payments, the ability and willingness of countries to compete in the development of knowledge and technology is the basis of thinking about global trade restrictions in the international market.

Currently, the principle of mercantilism of the spice trade has changed to a new form in the modern industrial era, that is, the restriction on the export of minerals. In general, the restriction on the export of minerals is a government policy in a country to curb the circulation of mineral materials abroad which can affect the needs of the country. The policy received various interpretations in the legislation of various countries as this question is closely related to the country's sovereignty over mineral resources throughout the country's territory. Meanwhile, international treaties do not specifically stipulate the definition of export restrictions.

Based on the World Tariff and Trade Agreement (GATT 1994), Article XI on the prohibition of quantity restrictions and Article XX on general exemptions directly applies to the prohibition of export and import sanctions. While there are other things that are more technical in nature such as subsidies (*SCM Agreement*), both matters are fundamental to the prohibition of trade restrictions. However, there are additional protocols for new countries to join the WTO post-1994, such as an additional agreement (*Accession Protocol*) or known as *WTO-Plus Obligations* for China when the country became a member of the WTO in 2001.

In fact, the *WTO-Plus Obligations* case is a dispute between the United States, the European Union, Mexico, in the case of a ban on the export of raw materials and so in the case of a ban on the export of nadir earth (*rare earths*) (China - Measures Related To The Exportation of Various Raw Materials, 2011) with the United States, the European Union, and Japan (China - Measures Related To The Exportation of Rare Earths, Tangsten, and Molybdenum , 2014). In both cases, the issue raised was the enforcement of the domestic legislation on the export ban which received an assessment from the WTO Panel.

The imposition of export restrictions is also in place in Indonesia which is the focus of this study on mineral materials especially nickel ore and bauxite. The restriction is an order from the Indonesian Constitution (UUD 1945) which requires that all of Indonesia's earth and water resources must be allocated for the well-being and welfare of the people. In addition, as an affirmation of the constitutional order, the government has enforced Law No. 3 of 2020 on amendments to Act No. 4 of 2009 on Minerals and Coal.

3.7 International Recognition on Export Restrictions

Imposition of export restriction become commonly applied since completion the Second World War. The Africa and Asian indigenous people declare independent from the western colonization. This phase come into new era of decolonization in which those country desire to build its own nations without outside intervention. Decolonisation during post World War II appears new nationalism spirit in most Asian countries which endowed mineral resources. Newly independent country desire to eliminate colonial influence through forcedly nationalisation of foreign asset to build and control its economy independently. For instance, this measure is applied by Indonesia government in early staging of sovereignty recognition by the Dutch.

The decolonization constitutes application of self-determination by a nation to free from foreign rules (Mushkat, The Process of Decolonization International Legal Aspects, 1972). Moreover, it has connection with human rights principle stipulating that all people have freedom and equality. Post establishment of the United Nations considered colonialism as action against human rights protected under the UN Charter (Pahuja, 2016). Specifically, the self-determination pose guarantee which stipulated under Article 1 of ICCPR and ICESCR.

Internationally, self-determination could cover rights to control over natural resources existed within the state territory. The rights are adopted by the UN General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources (RPSNR) on 14 December 1962. The RPSNR recognizes the rights of the host state to nationalise and expropriate the property of foreign country with appropriate compensation (Gouch, 2013). Article 1 of the Resolution 1803 provides that the right of peoples and nations to permanent sovereignty over their wealth natural and resources must be exercised in the interest of their national development and of the well-being of the people of State concerned.

Thus, the adoption of The Resolution 1803 (XVII) may be considered as international legal basis for developing countries to impose restriction on trade purposing for taking development and prosperity of its people. It brings situation for developing country to receive institutional support foremost after long suffering resources exploitation during colonial regime. It also recognizes and grant legitimacy for developing world to prioritize its social welfare through moral support by international law.

4. CONCLUSION

The world has changed since the 20th century onwards. The law including international law changes just as events engulfing individuals and States so that export restriction and monopoly of raw materials and minerals which is legally regulated and not easily permitted on the members of the international community among Nation States, both in the First and Third Worlds, was indeed a widespread practice during the colonial era. In terms of moral arguments, the past act is worse than the current one. This is because colonial powers siphoned raw materials and minerals from foreign lands back to Europe but the current attempted monopoly over those resources by developing countries like Indonesia only occurs within their territorial limits. This is despite the fact that the effect of the monopoly can be felt abroad.

In international law which regulates relations between States, the doctrine of intertemporal law describes what happens to the legality of an act when there is a change to an event and law. Such legality must be evaluated in the light of the law in force at that time, but the change in the applicable law at that time must also be taken into account, so that the right or title acquired by a State shall survive the change in the law in question. However, the manifestation of such right has to embrace the dynamism of the law and give effect to any new conditions put forward by the new law if there is any. As established by Judge Huber on *Island of Palmas* case, there is difference between the creation of a right under the law and the continuation of that right transcending the past, the present and the future.

Nothing much can happen in the changing of the illegality of an act especially when there is specific or later law (particularly treaty) outlawing something used to be permissible by custom. Hence the systemic "permissibility" of export monopoly of raw materials by colonial powers does not neutralise the illegality of export ban of raw minerals in the current international legal order (particularly post-UN and post-Bretton Woods) because there is treaty prohibiting such conduct.

However, historical legal analysis can provide some useful insights. Historical approach to research looks at past facts objectively to know why and how present rules were formed. It is difficult to draw the line between the past and present of the relevant topic of particular legal discussion because "the present state of any topic" will still be "encrusted" by the "legacy of all" that stays over a long period of time. For example, the war crimes tribunals of Rwanda and Yugoslavia and the permanent Court for international crimes have been defined as partial continuation of the Nuremberg Legacy (Salter & Mason, 2007). There is however different application for the rule regulating export restriction particularly for raw materials. This is because that rule is contained in detailed treaty provisions (namely the GATT) and has been subject to complex institutional arrangement (the WTO). Moreover, despite being challenged, the WTO is a self-contained treaty system (Matsushita, Schoenbaum, Mavroidis, & Hahn, 2015) (Pauwelyn, 2001), which means the sources of law for us to know whether a particular conduct is prohibited or permitted, should only be the treaty provisions (in the context of WTO, the term is known as "Covered Agreements").

Second, there is limited role for unwritten rules (known as customary international law) whereby those rules allow the "time travel" of law or its impact on facts, events or institutions from colonial to post-colonial eras. This is in contrast with international crimes where treaty rules that create the permanent institution in question do not overturn the

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general unwritten rules that existed prior to the establishment of the institution, hence the legacy of the old law remains intact. But historical research can explain certain factors that have a bearing on the creation, development and change of legal rules. And this can be done by the history pointing to how certain legal aspects of conduct that became a subject of legal rules unraveled in response to "a series of specific historical events and processes, and then became refined through a succession of measures within international law and domestic law…"

History can help in the critique of the status quo, advancing alternative perspectives including by the losers rather than the winners, or "alternative trajectories that might have produced a very different present". The allusion to such alternative perspectives is side by side with the considerable degree of ambiguities surrounding the regulation export restriction under the GATT, which relates to the preoccupation of negotiating States at the time of the drafting of GATT (participated mainly by developed countries) was not to reduce exports restrictions but import restrictions particularly tariffs. In particular, the legal position of export duties as though it is afforded similar treatment as import duties is highly contentious. However, historical approach will resurrect ideologies that supported restrictive and monopolistic conduct by colonial powers so that China's move in restricting exports of raw minerals including rare earth was associated with the rise of neo-mercantilism in the country.

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