

## DISPUTE SETTLEMENT OF ANTI-DUMPING LEGAL ASPECT IN INDONESIA BASED ON GATT/WTO PROVISIONS (ALLEGATIONS CASE STUDY OF DUMPING WOOD FREE COPY PAPER BETWEEN SOUTH KOREA AND INDONESIA)

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<p><b>Keywords:</b> WTO, Dispute, Resolution, Anti-Dumping.</p> <p><b>DOI:</b> 10.25041/lajil.v2i2.2034</p>	<p>The increase of trading activities in economic globalization requires a strong international financial and trade system to distribute capital in the implementation of world trade. From the considerable problems in the globalization of trade, the international community has begun to draft several regulations that can be agreed together. Therefore, there is a need for rules and regulations in international trade relations, in this case, an agreement realizing the role of GATT/WTO as an international trade organization that determines and assists in resolving trade disputes between countries. Legal issues will be discussed in this paper is, 1) How is the implementation of GATT / WTO about anti-dumping law; 2) How is the implementation of anti-dumping law in Indonesia; 3) What is the legal aspect of dispute resolution of the case study in the alleged Dumping Wood Free Copy Paper case between South Korea and Indonesia. In this paper, the research method is normative legal research that accommodates regulations, decisions and general principles of (international-trade) law.</p> <p>The results discussed in this paper are the role of GATT/WTO in dealing with anti-dumping in Indonesia regulation and implementation of anti-dumping in its legal territorial area, and South Korea's anti-dumping case study on Indonesia. Conclusions from this paper include, Indonesia must better to protect a regulation regarding anti-dumping measures by enforcing strong laws and other anti-dumping regulations. It is a legal urgency as an export-import activity because in the implementation of international trade defence is not enough if a Government Decree regulates anti-dumping actions. Still, it must continue to update the rules of the WTO's provisions which always develop.</p>

## A. Introduction

International trade integrated to free trade without territorial borders, without tariff and non-tariff barriers will improve the welfare of the world community.<sup>1</sup> Salvatore stated that trade could be an engine for economic growth.<sup>2</sup> Market access and market dominance of the state is one of the benefits that will become a trend for business people in the era of free trade.<sup>3</sup> According to Syahyu (2014), the tendency of international trade patterns that lead to free trade impacts competition on market access.<sup>4</sup> International trade law is a rapid field of line law with the current globalization.<sup>5</sup> A stable financial system or international market is a necessity in the era of globalization.<sup>6</sup> Regarding economic growth is the tendency to made trade relations patterns directly between every country, whether bilateral, regional or multilateral, conditions which reinforce the importance of international treaties.<sup>7</sup>

Advances in telecommunications and information technology are to support globalization and free trade. It expanded the space for the flow of trade transactions.<sup>8</sup> In free trade era has several obstacles in a trade process, one of which is deception in trading, breach of contract (default), losses and injustice trading does not fulfil the supposed quota (unfair). Result of the violations in the world of trade, the countries also think about the rules which can be agreed together between every country, so there is a need for provisions and rules governing world trade. To run well international trade, smoothly and mutually beneficial, the international community has established an international legal instrument in the field of international trade.<sup>9</sup> Then a General Agreement on Tariffs and Trade (GATT) was formed, which was agreed by every country in 1947, which includes an international legal rule concerning the implementation of international trade in every country.<sup>10</sup> GATT was completed through various rounds of negotiations which had been carried out eight times until 1986.<sup>11</sup> The last round of negotiations was the Uruguay Round (1986-1994) which resulted in the establishment of the World Trade Organization (WTO) on January 1, 1995. Then the WTO as an international organization was implementing and overseeing the rules of world trade.<sup>12</sup>

<sup>1</sup> Atih Rohaeti Dariah, "PERDAGANGAN BEBAS : IDEALISME DAN REALITAS", *MIMBAR: Jurnal Sosial dan Pembangunan* 21, no. 1 (2005): 115-126, 115, DOI: 10.29313/mimbar.v21i1.167.

<sup>2</sup> Jimmy Hasoloan, "PERANAN PERDAGANGAN INTERNASIONAL DALAM PRODUKTIFITAS DAN PEREKONOMIAN", *Edunomic, Jurnal Ilmiah Pend. Ekonomi* 1, no. 2 (2013): 102-112, 102.

<sup>3</sup> Gatoet S. Hardono, Handewi P.S. Rachman, dan Sri H. Suhartini, "LIBERALISASI PERDAGANGAN: SISI TEORI, DAMPAK EMPIRIS DAN PERSPEKTIF KETAHANAN PANGAN", *Forum Penelitian Agro Ekonomi* 22, no. 2 (2004): 75-88, 80, DOI: 10.21082/fae.v22n2.2004.75-88.

<sup>4</sup> Yulianto Syahyu, *Hukum Anti Dumping di Indonesia, Analisis dan Panduan Praktis* (Jakarta, Ghalia Indonesia, 2014), 8.

<sup>5</sup> A. Kumedi Ja'far, "PENGARUH GLOBALISASI TERHADAP PEMBANGUNAN HUKUM EKONOMI DI INDONESIA", *ASAS* 2, no. 2 (2010): 15-27, 17.

<sup>6</sup> Rafiqul Islam, *International Trade Law* (NSW: LBC, 1999), 1.

<sup>7</sup> Huala Adolf, *Hukum Perdagangan Internasional: Prinsip-prinsip dan Konsepsi Dasar*, (Bandung: Rajawali Pers, 2004), 2.

<sup>8</sup> Veris Septiansyah, "PERLINDUNGAN HUKUM TERHADAP KONSUMEN DALAM PERDAGANGAN BARANG DAN BISNIS INVESTASI MELALUI TRANSAKSI ELEKTRONIK (E-COMMERCE)", *Jurnal Nestor Magister Hukum* 4, no. 4 (2017): 1-12, 6.

<sup>9</sup> Revy S. M. Korah, "PRINSIP-PRINSIP EKSIISTENSI GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) DAN WORLD TRADE ORGANIZATION (WTO) DALAM ERA PASAR BEBAS", *Jurnal Hukum Unsrat* 22, no. 7 (2016): 44-52, 44.

<sup>10</sup> Prawitra Thalib, "IMPLIKASI PRINSIP MOST FAVOURED NATION DALAM UPAYA PENGHAPUSAN HAMBATAN PEDAGANGAN INTERNASIONAL", *Yuridika* 27, no. 1 (2012): 35-46, 38, DOI: 10.20473/ydk.v27i1.286.

<sup>11</sup> Nopirin, "AKUNTAN PUBLIK DALAM ERA PERDAGANGAN BEBAS", *Jurnal Ekonomi dan Bisnis Indonesia* 12, no. 2 (1997): 1-12, 3.

<sup>12</sup> Syahmin AK, *Hukum Dagang Internasional (dalam Kerangka Studi Analitis)* (Jakarta, Raja Grafindo Persada, 2007), 12.

The World Trade Organization (WTO) has the aim of encouraging free trade so that together they compete openly, orderly and fairly.<sup>13</sup> It is stated in the principles underlying the GATT-WTO is the principle of non-discrimination or the principle of Most Favored Nations in the form of treatment of goods sold on world markets.<sup>14</sup> According to Wil D. Verwey that principle is rooted in the philosophy of western liberalism known as the trinity, namely freedom (equality), equality, and the principle of reciprocity (reciprocity),<sup>15</sup> these three principles are the pillars of the 1974 GATT legal norms. In carrying out its authority and functions, GATT/WTO plays a role in overseeing trade activities, one of which is dumping. Dumping occurs when imported products are sold at a lower price than the prevailing market price.<sup>16</sup> Dumping is a type of price discrimination which is not always to blame. The WTO does not prohibit dumping, or in other words, dumping is not something that is prohibited.<sup>17</sup> However, if it is proven to be detrimental to the economy of another country, then it can be blamed, and an extra tariff called the Antidumping Duty or Anti Dumping Import Duty (BMAD)<sup>18</sup> the goods concerned to compensate for the difference between normal prices and dumping prices. However, it should be noted. Several conditions must be met before BMAD can be imposed on dumped products.<sup>19</sup>

Anti-dumping in Indonesia is regulated in the GATT Anti Dumping Code (1994) which is officially Agreement on Implementation of Article VI of GATT 1994.<sup>20</sup> One of the articles of GATT (1994) known as Article VI GATT is specifically regulated Anti-dumping under the title Agreement on Implementation of Article VI of the GATT 1994 which contains 18 articles in 3 Chapters including two annexes therein. Indonesia itself, by referring to Article 18 Paragraph 4 of the Antidumping Code (1994), has tried to take several positive steps towards Indonesian Trade Law by issuing Law No.10 of 1995 concerning Customs which was later revised to Law No. 17 of 2006.<sup>21</sup> Specifically, this regulation has adopted the provisions of Antidumping in the purposes of Chapters IV Articles 18 to 20 with the title Antidumping Import Duty and Import Duty.

Furthermore, to strengthen the law, Government Regulation No. 34 of 1996 concerning Antidumping Import Duty, Republic of Indonesia Government Regulation No. 34 of 2011 concerning Antidumping Actions, Rewards Actions, Trade Security Measures.<sup>22</sup> Meanwhile,

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<sup>13</sup> Jamilus, "ANALISIS FUNGSI DAN MANFAAT WTO BAGI NEGARA BERKEMBANG (KHUSUSNYA INDONESIA)", *JIKH* 11, no. 2 (2017): 205-225, 206, DOI: 10.30641/kebijakan.2017.V11.205-225.

<sup>14</sup> FX Joko Priyono, "PRINSIP MOST FAVOURED NATIONS DAN PENGECUALIANNYA DALAM WORLD TRADE ORGANIZATIONS (WTO)", *MMH* 42, no. 4 (2013): 593-600, 593, DOI: 10.14710/mmh.42.4.2013.593-600.

<sup>15</sup> Sukarmi, *Regulasi Anti Dumping di Bawah Bayang-bayang Pasar Bebas* (Jakarta, Sinar Grafika, 2002), 103.

<sup>16</sup> Meliyani Sidiqah, "RETALIASI INDONESIA ATAS TUDUHAN DUMPING TERHADAP KOREA SELATAN", *Jurnal Wawasan Yuridika* 3, no. 1 (2019): 78-99, 80, DOI: 10.25072/jwy.v3i1.207.

<sup>17</sup> Nita Anggraeni, "DUMPING DALAM PERSPEKTIF HUKUM DAGANG INTERNASIONAL DAN HUKUM ISLAM", *Mazahib* 14, no. 2 (2015): 159-168, 163, DOI: 10.21093/mj.v14i2.344.

<sup>18</sup> Antidumping duty is called Anti Dumping Import Duty (BMAD) by Government Regulation Number 34 of 1996 concerning Anti Dumping Import Duty and Import Duty.

<sup>19</sup> Government Regulation No. 34/1996 uses the term "dumping goods" for dumped goods (*dumped products*).

<sup>20</sup> Yulianto Syahyu, "HUKUM ANTIDUMPING DI INDONESIA DARI PERSPEKTIF KETAHANAN INDUSTRI DALAM NEGERI", *Jurnal Keamanan Nasional* 5, no. 1 (2019): 47-64, 51, DOI: 10.31599/jkn.v5i1.420.

<sup>21</sup> Azmi Syahputra, "PERTANGGUNG JAWABAN PIDANA TERHADAP TINDAK PIDANA PENYELUDUPAN", *Jurnal Ilmu Hukum Fakultas Hukum Riau* 4, no. 1 (2013): 1-21, 3, DOI: 10.31289/mercatoria.v8i1.641.

<sup>22</sup> Dharamjit Kaur, "KEBIJAKAN PEMERINTAH INDONESIA DALAM PENERAPAN BEA MASUK ANTIDUMPING TERHADAP PRODUK IMPOR TEKSTIL DARI NEGARA INDIA DITINJAU BERDASARKAN UNDANG UNDANG NOMOR 7 TAHUN 1994 TENTANG PENGESAHAN AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION", *JOM Fakultas Hukum* 1, no. 2 (2014): 1-15, 4.

Article 1 Number 6 of the Law concerning Prohibition of Monopolistic Practices and Unfair Business Competition, namely Law Number 5 of 1999.<sup>23</sup> Unfair competition or unfair trade practice is the competition between business actors in carrying out production and or marketing activities of goods and/or services conducted dishonestly or illegally or hampering business competition.<sup>24</sup> One action is often referred as unfair trade practice in the international business world is dumping. In GATT's perspective the general form of unfair trade practice in question is a dumping problem.<sup>25</sup> Business competition is not uncommon for unfair competition, both in determining tariffs and non-tariff. An example is in the form of prices, price discrimination known as dumping. Dumping is a form of non-tariff trade barriers.

Responding to anti-dumping cases from examples of dumping cases that occurred in Indonesia, which is a member of the WTO, also included developing countries, among others, among South Korea accusing Indonesia of dumping woodfree copy paper to South Korea. Indonesia suffers a substantial loss, which the South Korean Government imposed Antidumping Import Duty (BMAD) of 2.8 per cent, but the Indonesian Government won a dispute against South Korea at the World Trade Organization (WTO) forum. Indonesia is suing the South Korean government, where South Korea has violated the terms of the WTO agreement on Antidumping in imposing anti-dumping measures on Indonesian paper products.<sup>26</sup> The GATT perspective in the general form of the unfair trade practice in question is a dumping problem.<sup>27</sup> This is because dumping extensive losses to producers, namely the narrowing of the market share of producers, in this case, the host country. Dumping also hurts micro-businesses in importing countries, especially for importing countries which are still included in developing country qualifications.<sup>28</sup>

Based on the background, the authors are interested in conducting a study of "Dispute Settlement of Anti-dumping Legal Aspect in Indonesia Based on GATT/WTO Provisions (Allegations Case Study of Dumping Wood Free Copy Paper between South Korea and Indonesia)". The problems examined as legal issues in this paper are 1) how is the application of GATT / WTO anti-dumping law; 2) how is the application of anti-dumping law in Indonesia; 3) What is the legal aspect of dispute resolution of the case study of the Dumping Wood Free Copy Paper case between South Korea and Indonesia. This study uses normative case studies (normative law research) or library law research<sup>29</sup> in the form of legal behaviour results, for example, discussing positive law that applies at this time. The main problem is the law applied as a concept of norms or rules that apply in society and become a reference for everyone's behaviour. This type of research is a descriptive study that aims to describe in

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<sup>23</sup> Ni Wayan Anggita Darmayoni, I Gede Yusa, "MERGER TERKAIT DENGAN INDIKASI PENGUSAHAAN PANGSA PASAR MENURUT UNDANG-UNDANG NOMOR 5 TAHUN 1999 TENTANG LARANGAN PRAKTEK MONOPOLI DAN PERSAINGAN USAHA TIDAK SEHAT", *Kertha Semaya* 5, no. 1 (2017): 1-5, 3.

<sup>24</sup> Christin Octa Tiara, "INDIKASI PERSAINGAN USAHA TIDAK SEHAT DALAM ASPEK TATA NIAGA PERDAGANGAN SAPI IMPOR", *Masalah-Masalah Hukum* 46, no. 4 (2017): 343-348, 344, DOI: 10.14710/mmh.46.4.2017.343-348.

<sup>25</sup> Ida Bagus Wyasa Putra, *Aspek-aspek Hukum Perdata Internasional Dalam Transaksi Bisnis Internasional* (Bandung: Refika Aditama, 2008), 11

<sup>26</sup> <https://bisnis.tempo.co/read/68752/indonesia-menangkan-sengketa-melawan-korea-di-wto>, Accessed on May 9, 2019.

<sup>27</sup> Ida Bagus Wyasa Putra, *Aspek-aspek Hukum Perdata Internasional Dalam Transaksi Bisnis Internasional* (Bandung: Refika Aditama, 2008), 11.

<sup>28</sup> <http://agrimedia.mb.ipb.ac.id/uploads/doc/2010-07-06>, Accessed on November 14, 2018.

<sup>29</sup> Desia Rakhma Banjarani et al., "PERLINDUNGAN TERHADAP WARTAWAN PERANG DI DAERAH KONFLIK BERSEJATA MENURUT HUKUM INTERNASIONAL (STUDI KASUS DAERAH KONFLIK IRAK DAN SURIAH) PROTECTION OF WAR REPORTERS IN ARMED CONFLICT AREAS BASED ON INTERNATIONAL LAW (CASE STUDY OF THE IRAQ AND SYRIA CONFLICT)," *Cepalo* 3, no. 1 (2019): 11-18, 14, DOI: 10.25041/cepalo.v3no1.1789.

detail, clearly and systematically the Dispute Settlement of Anti-dumping Legal Aspect in Indonesia Based on GATT/WTO Provisions (Allegations Case Study of Dumping Wood Free Copy Paper between South Korea and Indonesia).

## B. Discussion

### 1. Role of the General Agreement on Tariffs and Trade (GATT) / WTO in the Application of Antidumping Laws

The things contained in the GATT give every member state the obligation to protect themselves in every activity, and the policies for international trade.<sup>30</sup> Legal regulations in GATT also prioritize the principle of fair business competition. To deal with the practices of subsidies on exports and dumping that harm the domestic industry, a legal regulation was made to provide legal certainty that applies to the participant countries in the General Agreement on Tariffs and Trade (GATT) to eliminate unhealthy trade practices, in order to realize the trade situation international fair. Provisions regarding anti-dumping are regulated since the GATT was agreed in 1947.

The rules regarding anti-dumping are regulated in Article VI of the GATT, which is then expected to be implemented in the national legal system of each member incorporated in the General Agreement on Tariffs and Trade GATT. The implementation of the anti-dumping provisions is contained in the Agreement on Implementation of Article VI of GATT 1994, which was formulated through the Uruguay Round and known as the 1994 Antidumping Code. The provisions of Article VI of the GATT are as follows:

“The contracting parties recognize that dumping, by which products of one country are introduced into one commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry anti-dumping”

Important points are submitted by the General Agreement on Tariffs and Trade (GATT) prohibiting an Anti Dumping act, namely the practice of dumping carried out by every country that applies the principle of economic less than the fair value which is considered to cause material harm to the industry importer country. The intended action includes:<sup>31</sup>

- a. Dumping is used as an economic principle. It is Less Than Fair Value;
- b. Prevent losses actions for Importing State;
- c. The existence of a Causal Link between the price and the losses of dumping.

These three elements conditions must be met to be able for the anti-dumping beam. Related to the implementation the rule of GATT, member countries in the framework of anti-dumping policies in their respective countries, they are regulated in the 1994 Agreement on Implementation of Article VI of GATT or what is referred to as the 1994 Anti Dumping Code. Anti Dumping Code aims to provide legal certainty, and concrete limitations regarding Anti Dumping Import Duties, so overprotective measures in the use of anti-dumping instruments are not used as a protective device (self-protective) which is only beneficial for industries in the country.

The anti-dumping action itself applies as stipulated in GATT 1994, namely when there is low sales in the domestic market or the absence of similar products in the local market in an exporting country due to certain market conditions. The difference in dumping will be agreed by comparison with the comparative tariff of the type of production when exported to each third country. The same kind of product referred in article II agreement on implementation of

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<sup>30</sup> *Ibid*, 65.

<sup>31</sup> Suci Hartati, “ANTI-DUMPING DALAM KONSEP HUKUM DI INDONESIA”, *Cermin* 47, (2010): 1-10, 3.

Article VI of the GATT 1994 is the same product in all aspects with other products even though it does not resemble all aspects but which has close characteristics to the product under consideration. The determination of loss in article VI of the GATT 1994 is based on any positive evidence that involves an objective test of:<sup>32</sup>

- a. Value or amount of imported dumping tariff products and their impact on the applicable tariffs in the domestic market for similar products;
- b. Import impacts for domestic producers are to produce imported products of similar origin from each country are simultaneously subject to anti-dumping investigations. The government who has the authority to investigate, they have cumulatively plan which affect these imports; and
- c. The difference in import dumping from each country is more than de minimis as regulated in paragraph (8) of Article 5 of the Agreement on Implementation of Article VI of the GATT 1994;

The initial and follow-up investigation according to article 5 of the Agreement on Implementation of Article VI of the GATT 1994 is an investigation to determine the effect of every dumping allegation that begins with the application of the domestic industry. In special circumstances, an authorized official may make the decision to start an investigation without receiving a written request in the country to begin an investigation. If you have sufficient evidence about dumping, losses and causality, as set out in paragraph (2), it is justified to start an investigation.<sup>33</sup> According to Article 6 of the Agreement on Implementation of Article VI of the GATT 1994, each party who has an interest in conducting anti-dumping investigations will be notified of the information. It is needed by authority and also allowed to submit any explicit evidence that deemed important to a study. In Article 7 of the Agreement on Implementation of Article VI of the GATT 1994, temporary measures can be taken if:

- a. An investigation has been carried out in accordance with the provisions of article 5 of the Agreement on Implementation of Article VI of the GATT 1994, namely the act of public notification that has been given to interested parties, so they have sufficient time to submit information and provide comments;
- b. The initial stipulation of dumping regarding the cause and the effect of losses in the domestic industry has been determined; The parties who have the authority to consider an action, it is needed to prevent losses arising during the investigation stage.<sup>34</sup>

The cases of anti-dumping import duties decisions are meet the requirements by the result of decisions that have been considered by the competent authorities. Application of the results decision applies to all members, and it is expected to be sufficient and eliminate losses to the domestic industry. Anti-dumping duties will always apply only as long as is needed to deal with dumping that can cause losses.<sup>35</sup> The application of anti-dumping import duty aims to stop domestic industry losses which are considered as an act that should have been taken if it has been determined related to the imposition of anti-dumping import duties with billing records must not be discriminatory. Retribution must be made to all related parties in importing dumping, which causes losses, and it is recommended to use the lowest margin dumping.<sup>36</sup>

The amount of anti-dumping import duty cannot exceed the difference between the dumping tariff and the normal price (dumping margin). The normal value in question is the actual rate paid or will be paid for similar goods in the exporting country's domestic market

<sup>32</sup> AK Syahmin, *Hukum Dagang Internasional*, cet 1 (Depok: Raja Grafindo Persada, 2006), 309.

<sup>33</sup> *Ibid.*, 311.

<sup>34</sup> *Ibid.*, 312

<sup>35</sup> *Ibid.*, 313

<sup>36</sup> Christophorus Barutu, *Ketentuan Antidumping, Subsidi, Dan Tindakan Pengamanan (Safe Guard) Dalam GATT dan WTO*, cet 1 (Bandung: Citra Aditya Bakti, 2007), 51.

for consumption purposes. Exports of the company's goods may be subject to anti-dumping import duties in importing countries with a maximum value of margin dumping, which is the difference between the normal tariff in the domestic market and the export tariff for the next five years and can be extended for another five years. Article 9 of the General Agreement on Tariffs and Trade (GATT)/WTO regulates the imposition of anti-dumping import duties. This article explains the procedures for determining anti-dumping import duties, which include the authority for determining the number of anti-dumping import duties. The provisional measures and anti-dumping import duties will only apply to products after the decision is made by Paragraph 1 Article 7 and Paragraph 1 Article 9 of the General Agreement on Tariffs and Trade (GATT) / WTO and come into force with exceptions as provided in Article 10.<sup>37</sup> There are several other important provisions relating to the imposition of anti-dumping import duties, namely:

- a. Anti-dumping duties are only valid for against or balancing the dumping itself.<sup>38</sup>
- b. The involved parties have the right to ask the competent authorities in the country that have imposed anti-dumping import duties to examine whether such anti-dumping import duties still need to be applied to balance dumping. If the anti-dumping import duty is no longer needed, it must be revoked immediately.<sup>39</sup>
- c. To support the rights of the parties involved in the review of the imposition of anti-dumping import duties, each member country of the General Agreement on Tariffs and Trade (GATT) / WTO must have a tribunal that can conduct a judicial review of the policy regarding the imposition of anti-dumping import duties.<sup>40</sup>

When considering the application of anti-dumping import duties, development countries must give special consideration. Development countries are expected to be able to give consideration on the possibilities of using a better solution before applying anti-dumping duties which are feared to harm the main interests of developing countries.<sup>41</sup>

## 2. Application of Antidumping Law in Indonesia

Indonesia's dependence on international trade as a driving force for the national economy is quite large.<sup>42</sup> As a member country of the General Agreement on Tariffs and Trade (GATT) / WTO, Indonesia has ratified the Agreement Establishing the WTO with Law Number 7 of 1994 (State Gazette of 1994 Number 57, Supplement to State Gazette Number 3564) concerning the Application of Agreement Establishing The World Trade Organization (Agreement on the Establishment of the World Trade Organization). By ratifying the Agreement Establishing the WTO, Indonesia as a whole has also ratified the Antidumping Code (1994) which is part of the Multilateral Trade Agreement. Indonesia's participation in the General Agreement on Tariffs and Trade (GATT) / WTO provides consequences for Indonesia to adjust the outcome of the agreement. It is adjusted to the conditions and situation of Indonesia, but until now, Indonesia does not have anti-dumping provisions in the form of a law. Indonesia only inserts anti-dumping provisions in Law Number 10 of 1995 (Statute Book of the Republic of Indonesia Number 75 of 1995, Supplement to Statute Book of the Republic of Indonesia Number 3612) Regarding Customs which has been amended to Law Number 17

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<sup>37</sup> *Ibid.*

<sup>38</sup> Article 11 (1) *Antidumping Code 1994*. See Jackson JH, *et al*, *Document Supplement to Legal Problems of International Economic Relations* (ST. Paul, Minn: West Publishing Co, 1995), 190

<sup>39</sup> Article 11(2) *Antidumping Code 1994. Ibid.*

<sup>40</sup> Article 13 *Antidumping Code 1994. Ibid.*, 192.

<sup>41</sup> Article 15 *Antidumping Code 1994. Ibid.*, 193.

<sup>42</sup> Suci Safitriani, "PERDAGANGAN INTERNASIONAL DAN FOREIGN DIRECT INVESTMENT DI INDONESIA", *Buletin Ilmiah Litbang Perdagangan*, 8, no. 1 (2014): 93-116, 94, DOI: 10.30908/bilp.v8i1.89.

of 2006 (Statute Book of the Republic of Indonesia 2006 Number 93) Concerning Changes to Law Number 10 of 1995 Concerning Customs.

Indonesia further regulation is regulated by Government Regulation Number 34 of 1996 concerning Anti-Dumping Import Duty of Amendment. It has been amended to Government Regulation Number 34 of 2011 concerning Antidumping Actions, Rewards Actions and Trade Security Measures. Then the implementing regulations were issued in the form of Minister of Industry and Trade decisions. The Government Regulation is a form of the consistency Indonesian government in implementing dumping provisions as a member of the General Agreement on Tariffs and Trade (GATT) / WTO. But overall, Government Regulation Number 34 the Year 2011 Regarding Anti-dumping Actions, Reward Actions and Trade Safeguard Measures, unfortunately, does not regulate the substance in detail but rather regulates its procedures.

Anti-dumping in Indonesia is regulated in Government Regulation No. 34 of 1996 concerning Antidumping Import Duty. According to this regulation, dumping is goods which imported with an export price level lower than the normal value in the exporting country.<sup>43</sup> In contrast, the normal value is the price actually paid or will be paid for similar goods in an exporting country.<sup>44</sup> The definition of dumping, according to the Government Regulation, is different from the definition in Article VI of the General Agreement on Tariffs and Trade (GATT) / WTO. Dumping, according to this Government Regulation only covers the sale of goods in importing countries are less than the normal price in the exporting country. Meanwhile, according to Article VI of the General Agreement on Tariffs and Trade (GATT) / WTO, dumping also includes sale goods in importing countries is less than normal prices in third countries or sale in importing countries is less than the cost of producing goods concerned in the origin country. It is added to the transaction costs and profits.

However, there is no requirement for a member country to follow the dumping definition according to the provisions in the General Agreement on Tariffs and Trade (GATT) / WTO. For the scope of free trade in the limited Government Regulation, is more profitable. It is because Government Regulation will release imported goods in the prices are below the fair price at the third countries and/or below production costs. But what needs to be considered is this position is beneficial or detrimental to the producer's interests in the State of Indonesia. Therefore, it still needs to be reviewed. The term "material injury" according to Article VI of the General Agreement on Tariffs and Trade (GATT) / WTO rules is not used in the Government Regulation. This regulation uses the term "loss" which includes:<sup>45</sup>

- a. Losses of Domestic Industry with producing similar Goods;
- b. The threat of Domestic Industry loss with produces Similar Goods; or
- c. The development of the Similar Goods Industry in the country is hampered.

Domestic Industry can be defined as a whole of domestic producers of similar goods whose production represents the majority (more than 50%) of the total production of the goods concerned ".<sup>46</sup> However, the definition of Domestic Industry, in the word of "loss" in Government Regulation has not yet reached the "material injury" standard according to the Antidumping Code 1994. According to this Code, to determine "material injury" there must be strong evidence that shows the value of dumping imported goods has increased significantly, and the dumping goods have significantly reduced the prices of similar goods, and it must be proven that the dumping goods have decrease sales, profits, output, market share, productivity, investment by domestic producers. In addition, there must be a causal link

<sup>43</sup> Article 1 (1) Government Regulation No. 34/1996.

<sup>44</sup> Article 1 (3) Government Regulation No.34/1996.

<sup>45</sup> Article 1 (11) Government Regulation No. 34/1996.

<sup>46</sup> Article 1 (8) Government Regulation No. 34/1996.



between dumping goods and injuries. It means that dumping goods must contribute to the loss. The intended loss is not only caused by other factors and so on.<sup>47</sup>

By not using the condition of “material injury” and by only using the condition of “losses”, it means that Government Regulation provides relief about the conditions that must be met before the imposition of anti-dumping import duties can be done. For example, this Government Regulation does not include causal link requirements.<sup>48</sup> Disclosure of causal links between dumping and injuries that occur is not easy to do. Government Regulation No. 34 of 1996 concerning Antidumping Import Duty is the purpose of avoiding this difficulty by not referring to the problem of causal relations between dumping actions and losses.

However, in practice, the causal link requirement has been used by the Government before imposing Antidumping Import Duty. For example, the application for imposing Anti Dumping Import Duty for synthetic fibre products from Korea and Taiwan was rejected by the Government because no causal link was found between dumping and injury experienced by producers of similar goods in Indonesia. The government also did not accept the Anti Dumping petition for coated writing and printing paper products from Korea and Finland because there was no causal relationship between dumping goods and injuries suffered by domestic producers for similar goods.<sup>49</sup>

### **3. Legal Aspects of Indonesian Anti-dumping Dispute Resolution (Case Study of South Korea’s Allegations to Indonesia Dumping Woodfree Copy Paper and Antidumping Cases of Imported Wheat from Turkey by the Indonesian Wheat Flour Producers Association) According to WTO Provisions**

At the time of ratification of Law No. 7 of 1994 concerning the Agreement on Establishing the World Trade Organization (WTO) then Indonesia has been officially integrated into an international trade system and every country complies with WTO legal regulations. Therefore, the state has an impact on a new era known as the economic globalization in which a country is in a national state even to other countries. In international trade, economic globalization brings the impact of the loss of national boundaries in the meaning of conventional trade which is changed by a legal system that guarantees trade processes based on equity, fairness and reciprocity. Therefore, to protect the trading system, it still adheres to the existing rules (on the track) as the presence of the Dispute Settlement Body (DSB) as a supervisor in the dispute resolution process in the GATT. After legally being a member of the World Trade Organization (WTO), business actors in a WTO country is ready to compete fairly and partner with other countries’ producers which should be accompanied by full awareness of the risk of collisions in the trade of each country. It means the involved country is ready to require if there is a trade dispute involving each country, both as a plaintiff or defendant.

#### **a. Cases of Dumping Allegations Between South Korea and Indonesia**

Indonesian companies that get dumping suspicion are PT. Indah Kiat Pulp Tbk, PT. Pindo Deli, PT. Tjiwi Kimia Tbk, and April Fine Paper Trading Ltd. For anti-dumping allegations have been filed by several companies to the Korea Trade Commission (KTC), the organization then applied BMAD to 16 types of paper products produced at the four

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<sup>47</sup> Indeed the standard provisions in the 1994 Antidumping Code are high because it is made more based on existing practice in the United States, although the standard is lower than the standard conditions for the use of safeguards according to Article XIX GATT. Richard O. Cunningham, “SOVEREIGNTY REVISITED: SETTLEMENT OF INTERNATIONAL TRADE DISPUTES – CHALLENGES TO SOVEREIGNTY – A US PERSPECTIVE” *Can.-U.S. L. J.*, 103, no. 24 (1998): 103-119, 112.

<sup>48</sup> Even in practice, KADI uses it.

<sup>49</sup> <http://www.investorindonesia.com/baru/displaynews.php?id=1101783561>, Accessed on November 30, 2019.

Indonesian paper companies on May 9, 2003. Whereas in resolving that case, Indonesia requested to ask for WTO Dispute Settlement Body (DSB) help with the aim to South Korea's anti-dumping procedures be reviewed because they were deemed not to accordance with several articles points related to the agreement. In article 6 and other articles were ignored, and Indonesia also requested the Panel related to article 19 of Understanding on Rules and Procedures of the Governing the Settlement of Disputes (DSU) to ask South Korea to act in accordance with the General Agreement on Tariffs and Trade (GATT) agreement and cancel the anti-dumping policy on paper imports which was put in place by the minister of finance and economy on November 7, 2003.

In this case, as a legal aspect is an emergence of the World Trade Organization (WTO) agreement denial, article specifically on trade agreements and tariff provisions as stated in the General Agreement on Tariffs and Trade (GATT). The legal provisions can be seen by the existence of retaliation by the Indonesian government, because South Korea is considered to have committed fraud or defaults, by not doing the results of the Panel's decision. On the other hand, the Dispute Settlement Body (DSB) determined that this paper dumping case was won by the State of Indonesia, where retaliation was allowed in the World Trade Organization (WTO).

The Secretary of the Directorate General of International Trade Cooperation, which is a subdivision of the Ministry of Trade, stated in the Panel of Dispute Settlement Body (DSB) decision in November 2005 that South Korea was obliged to carry out the calculation of margin dumping on paper commodities from Indonesia. Therefore, South Korea was given time to carry out the maximum of eight months after the issuance of the decision or ended in July 2006. The Dispute Settlement Body (DSB) considered that South Korea had made a mistake in an effort to prove the practice of paper dumping from Indonesia. South Korea has to recalculate the dumping margins according to the results of the panel, so that Indonesia's paper exports to South Korea are less than two per cent or deminimistic so they cannot be subject to Anti Dumping Import Duty.

The decision of the permanent panel is the highest panel in the World Trade Organization (WTO), if the decision of the Permanent Panel has also not been followed by South Korea, Indonesia can retaliate efforts, namely by retaliating for losses suffered by Indonesia. In retaliation, Indonesia can apply import duties on certain products from South Korea with the same loss value during the application of Anti-Dumping Import Duty (BMAD). Korean Trade Commission (KTC) is a South Korean dumping authority for imposing Anti-Dumping Import Duty (BMAD) 2.8 - 8.22% for four paper companies. PT Tjiwi Kimia Paper Factory, PT Pindo Deli Pulp & Paper Mills, PT Indah Kiat Pulp & Paper, and PT April Fine since November 7 2003.

In the accusation, the Korean Trade Commission (KTC) has set margins of paper dumping from Indonesia to reach 47.7 per cent. The paper products applied in Antidumping Import Duty are plain paper copier and undercoated wood free printing paper.

In this matter, Indonesia has efforts to approach according to procedures to South Korea. On October 26, 2006, Indonesia also sent a letter of consultation submission. Then, the consultation was held on November 15, 2006, but no avail. South Korea still has yet recalculated, and the South Korean meeting is considered to slow time. South Korea's actions are very detrimental to the paper industry in Indonesia. Paper exports to South Korea experienced a loss deficit of up to 50 per cent from the US \$ 120 million. The impact of the loss will be prolonged because the Panel also takes a long time, at the fastest three months and a maximum of six months. Indonesia ultimately won the South Korean-Indonesian dumping case.

### C. Conclusions

In implementing anti-dumping law, Indonesia is through national legal sovereignty. It begins with the enactment of PP No. 34 of 2006 concerning Antidumping Import Duty. The anti-dumping solution uses the WTO provisions in connection with research on the Dumping Indonesia case with another country. The author take attention in South Korea (dumping paper), it can be concluded in the first case that the practice of dumping paper in Indonesia has made efforts to approach procedures according to South Korea, but South Korea has not recalculated, and South Korea is stalling in completing the case process. This action is very detrimental to the Indonesian paper industry. Paper exports to South Korea fell by 50 per cent from the US \$ 120 million, and in the end, the Korean-Indonesian dumping case was won by Indonesia.

### Recommendation

Indonesia advised making a strong shield related to anti-dumping measures with all Anti-dumping regulations. It is not enough if anti-dumping is only regulated by a Government Decree or even government regulations, it is important because as a defence procedure for international trade, besides to continuously optimize the provisions of the rules international trade in Indonesia with the provisions of the WTO. Indonesia also must continue their efforts to voice the interests of the state and nation in international forums, because as one of the country's economic drivers, the trade sector needs special attention from the Government. In anticipation of the increasing reason of regulations issued by export destination countries for Indonesian products such as health protection, consumer protection, or environmental preservation, but solely to conduct trade protection, the government must be more protective in protecting domestic products by strengthening import duties on goods import.

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