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TIME SUBMITTED

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PAPER ID

77980071

9 The WTO Trade Remedies (Safeguards) and its Implementation in Indonesia: Study Case of PT. Krakatau Steel vs China

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Abstract. In international trade law, as a measure to protect the domestic market from losses due to sudden and unexpected import overflows, to protect their domestic industries from unfair practices, the WTO permits members to impose trade remedies measures against imports such as anti-dumping, anti-subsidy, and safeguards. Safeguard itself is one of the trading instruments that are widely applied by members of WTO. In fact, according to the WTO report, after India, Indonesia is the second most active country using safeguard instruments. Through case study methods, especially anti-dumping cases seen PT. Krakatau Steel against hot-rolled coil/plate (HRC/P) alloy imports from China this research is conducted to determine the implementation of WTO trade remedies (safeguards) in Indonesia.

Keywords: Safeguards, Regulations, Domestic Industries Protection.

1 Introduction

Currently the world is undergoing a change, which is called globalization, one of which is in the economic aspect. fundamental changes in the world economy, and this process will take place more rapidly following changes in technology which are also increasingly sophisticated. This symptom of globalization occurs in financial, production, investment and trade activities which then affect the order of economic relations between the states.[1]

The nuance of globalization have been tainted by the efforts of the superpower countries who wish to maintain their dominance. In such circumstances, the success of a country in taking advantage of the opportunities that are wide open in the flow of globalization.

In order to maintain the functioning of the trading system, various signs or regulations are required that are obeyed by all parties or in other words, complete and adequate legal rules are required. The countries whose involved in international trade activities form a trade and tariff agreement (General Agreement on Tariff and Trade/GATT). Then GATT developed into an international trade organization which is now better known as the World Trade Organization (WTO). [2]

1.1 Background

The agreement within the framework of the WTO aims to create a world trade system that regulates trade matters to make it more competitive in an open, fair and healthy manner. In accordance with the principles adhered to by the WTO, namely non-discrimination principles, transparency, stability and predictability of trade regulations, Use of tariffs as instruments of protection and Elimination of unfair competition. Related to the principle of predictability of trade regulations.[3] In principle, the WTO means to encourage an orderly and fair free trade in this world. In carrying out its duties, to encourage the creation of it.

History proves that international trade plays a very decisive role in the world economy. WTO as an international trade organization is expected to be able to bridge all the interests of countries in the world in the trade sector through mutually agreed terms. The WTO is aimed at producing reciprocal and mutually beneficial conditions so that all countries can benefit from it.

Developed countries are the parties that benefit most from trade liberalization because developed countries have advantages in various things that developing countries do not have, such as economic stability, high technology, productive industries, and so on. It is very clear, that developing countries are the weak parties in this trade liberalization. Developed countries generally have expertise in implementing methods so that developing countries are bound by the free trade system. with a request for a reduction in import tariffs of import duty on products and services from developed countries in developing countries.

Industrial countries without barriers mean that it will be easier to sell their goods and services to developing countries. Therefore, at the same time, globalization will give birth to a grouping of people and countries into new classes based on economic capacity, including in Indonesia.[4] Therefore, in entering this era of free trade, Indonesia must have a solid preparation to face the effects that arise on the Indonesian economy and/or trade in all aspects, including legal aspects, especially economic law as a legal institution containing policies to direct on regulations that can protect domestic industries.

Indonesia joins as a member of the world trade organization through ratification of Law Number 7 of 1994 concerning Ratification of the Agreement on Establishing The World Trade Organization has consequences both externally and internally. External consequences, Indonesia must comply with all agreements in the WTO forum. The internal consequence is that Indonesia must harmonize national laws and regulations in accordance with the results of the WTO agreement, meaning that in carrying out legal harmonization, Indonesia must still think about national interests but not violate any signs of WTO provisions. Thus, Indonesia is bound to comply with all agreed principles in international trade agreements, including making changes to both legal instruments and development policies in the trade sector.[5]

The globalization brings positive and negative impacts for many countries in the framework of international trade traffic. It can increase investment which has an impact on increasing the exports number for the country. However, if the domestic industry not ready to compete, it can treat domestic industry when similar imported products flood the domestic market, To prevent this, rules related to security measures has created by WTO, one of it is

WTO agreement on Safeguard which is a protective instrument for domestic industries that have seriously injured or threatened with serious injury caused by a surge in imports. It is an exception to the principle of quantitative easing. The aim of this study is to examine in-depth, and detailed cases between PT. Krakatau Steel against hot-rolled coil/plate (HRC/P) alloy imports from China. It was conducted in order to find out the implementation of WTO trade remedies (safeguards) in Indonesia.

1.2 Methodology

This research uses normative legal research with the data source is secondary data in the form of legal materials, both primary and secondary legal materials. The types of regulatory approaches used are the cases approach, the statutory approach, and the conceptual approach. The analysis of the legal materials that have been obtained was carried out by means of descriptive, analytical and argumentative ways.

2 Literature review

2.1 Safeguards definition

Safeguard is a trade policy instrument that is almost similar to anti-dumping and anti-subsidy policies. All three of them are equally regulated in the WTO, and equally may be subject to additional import duty rates if they cause injury to the importing country.[5]

According to the Regulation of the Minister of Trade Number 37 / M-Dag / Per / 9/2008 that what is meant by Safeguards are actions taken by the government to recover serious losses or prevent the threat of serious losses to the domestic industry as a result of a surge in imports of similar goods or goods that directly compete with domestic industrial products with the aim that domestic industries experiencing serious losses or threats of serious losses can make structural adjustments.[6]

A trade remedies (safeguard) has several specific provisions that can determine whether an action can be said to be a security measure or not, The criteria are the legal requirements for the security measure, namely:

1. This action was taken by the government.
Something that the government has done to safeguard its local industry from serious losses or the threat of serious losses that occur due to the abundance of imported products entering Indonesia. In this case, the government has a role as a policy maker to act to safeguard the domestic industry, not the business actors directly involved in carrying out such security measures.
2. There is serious loss or threat of serious loss.
The meaning of serious losses here is the real losses suffered by the domestic industry. Meanwhile, what is meant by the threat of serious loss is the threat of serious losses that will be suffered by the domestic industry in the near future as a result of soaring imports from outside.
3. The action is aimed at protecting or restoring the domestic industry.[7]
4. There are similar items.

Similar goods are domestically produced goods that are identical or the same in all respects to the researched item or goods which have physical, technical or chemical characteristics similar to the investigated item.

5. There are goods that are directly competitive.

Goods that are directly competitive are domestically produced goods which are similar goods or substitute for investigated goods.

2.2 Safeguards regulations

The globalization of trade has both positive and negative impacts on countries in the world in international trade. The positive impact can increase investment which has an impact on increasing a country's export figures. The negative impact, increasingly affects the sustainability of the domestic industry when similar imported products flood the domestic market, if the domestic industry itself is not ready to compete.[8]

The general provisions for the approval of safeguard measures are regulated in Article XIX OF GATT 1994 (article XIX Of GATT 1994) The Agreement On Safeguard states that the safeguard agreement applies regulations for implementing security measures which must be interpreted as actions related in Article XIX GATT 1994. Implementation of safety measures (safeguard) is intended to protect domestic industrial products from a surge or flood of imported products that harm or threaten the loss of domestic industry.[9]

The requirements for implementing safeguards as described in Article XIX OF GATT 1994 are as follows:

- a. Members may request safeguard measures for a product imported into the territory in such a quantity, threatening domestic similar products, thus causing serious losses to domestic industries that produce similar products or direct products;
- b. Safeguard measures will be applied to imported products regardless of the source. [8]

Imposition of Security Measures is regulated in the Agreement on Safeguard, namely Article 5 (permanent security measures) and Article 6 (temporary security measures). Both articles allow each member country to implement safeguard measures to the extent necessary to prevent or correct serious losses in order to facilitate adjustment or compensation. These security measures may take the form of tariffs, quotas and a combination of tariffs and quotas.

The policy of implementing safeguards by importing countries is implemented through several stages, including conducting investigations and proving, determining the existence of a loss or threat of loss, and implementing security measures. With the implementation of the agreement in the field of safeguards, each country can implement safeguard measures for its domestic products if the domestic industry is unable to compete so that it experiences serious losses as a result of the flood of imported products. [10]

3 Discussion and result

3.1 Safeguards and its implementation in Krakatau steel vs China

The loss of PT Krakatau Steel for more than 3 consecutive years due to the surge in imported steel from China made PT Krakatau Steel, which is engaged in service products, suffered losses. According to data from the Central Statistics Agency (BPS), the import value of iron and steel in July 2018 reached 56.55 percent from the same period in the previous year. This means that 55 percent of Indonesia's iron and steel needs are iron and steel from abroad, especially from China, based on the financial report from PT Krakatau Steel in 2018, the debt reached US \$ 2.49 billion, up 10.45 percent compared to 2017 of US \$ 2.26 billion.

The short-term debt that must be paid by the company reached US \$ 1.59 billion, up 17.38 percent compared to 2017 valued at US \$ 1.36 billion. This amount is even higher than the long-term debt of US \$ 899.43 million. The financial burden recorded by PT Krakatau Steel in 2018 was US \$ 112.33 million or equivalent to Rp. 1.57 trillion (assuming an exchange rate of 14,000) grew more than double compared to 2011 which was only US \$ 40.62 million. As a result, PT Krakatau Steel had to suffer losses throughout 2018.

Provisions regarding safeguard measures in Indonesia are regulated in Law Number 7 of 1994 concerning the ratification of the agreement establishing the world trade organization, further regulations are stipulated in the form of Presidential Decree Number 84 of 2002 concerning domestic industrial safeguard measures from the impact of a surge in imports that have been mutually agreed upon. international content as described above.

Before the safeguard is carried out, an investigation is first carried out to prove that there is a serious loss and/or threat of serious loss, in Indonesia the authority to carry out an investigation is the Indonesian Trade Safeguard Committee (hereinafter abbreviated as KPPI), an investigation by KPPI can be carried out if there is a request as long as KPPI has evidence of evidence of an increase in import volume and serious losses and/or threat of serious losses incurred by domestic producers, as well as a causal relationship between the two.

The legal basis for investigating safeguard measures is the Agreement on Safeguard, WTO; Republic of Indonesia Government Regulation Number 34 of 2011 concerning Antidumping Measures, Compensation Measures, and Trade Safeguard Measures; Law Number 7 of 1994 concerning Ratification of the Agreement Establishing The World Trade Organization, Article 13 paragraph (1) point a; Law Number 10 of 1995 concerning Customs; and Presidential Decree No. 84/2002 concerning Safeguard Measures for Domestic Industries from the Impact of Surging Imports. KPPI was formed based on Presidential Decree No. 84 of 2002 concerning Actions to Safeguard the Domestic Industry from the Impact of Surging Imports.[11]

Domestic industries that experience serious losses or threat of serious losses caused by a surge in imports of similar or directly competitive goods can submit a request for an investigation of safeguard measures to the Indonesian Trade Safeguard Committee (KPPI). Parties that can submit such applications are producers, producers' associations, workers' organizations, importers, importers' associations, industrial users, exporters, exporters' associations, governments, individuals, or related legal entities. The institutions authorized to

handle safeguard measures are the Indonesian Trade Safeguard Committee (KPPI) and the Trade Security Directorate (DPP).[12]

Based on Presidential Decree of the Republic of Indonesia Number 84 of 2002 concerning Safeguard Measures for Domestic Industry from a surge in imports, Article 3 paragraph (2) states that in order to facilitate the investigation process, the application must complete the data at least containing the following:

- a. Applicant identification;
- b. complete description of the investigated item;
- c. complete description of similar goods or directly competitive goods;
- d. name of exporter and exporting country and or country of origin of the goods;
- e. the domestic industry is suffering;
- f. information about serious loss and / or threat of serious loss;
- g. information on investigated goods import data.

Furthermore, according to the Regulation of the Minister of Trade Number 37/M-Dag/Per/9/2008, that "Safeguard measures is action taking by government to solve serious losses and/or prevent serious losses of domestic industry caused by a surge in the import of similar goods or supplemented goods of domestic industry, the objective is to make domestic industry that get serious losses can make structural adjustment.

The form of safeguards in Indonesian regulations also can be found in Article 70 paragraph (2) of Regulation of the Government of Republic of Indonesia No. 34/2011 concerning Anti-Dumping Measures, Compulsory Measures, and Trade Safeguard Measure (PP 34/2011) where the safeguard can be imposed in the form of import duties or quotas. The meaning of the safeguard action import duty itself is contained in Article 1 Number 25 PP 34/2011 which reads: "Safeguard Measure Duty is the state levy to recover losses or prevent serious threat Serious Losses suffered by the Domestic Industry as a result of the surge in the number of imported goods or goods of Goods Similar". Meanwhile, the meaning of quotas is contained in Article 1 paragraph (12) which reads: "Quota is restrictions on the number of goods that can be imported by the government".[13]

Based on Article 7 of the Agreement on Safeguard, the safeguard actions implemented should not exceed 4 years, but these actions can be extended as long as they do not exceed 8 years. After passing 8 years, these safeguard actions should be gradually reduced. So that imported goods which at the time the safeguard measures are taken can enter slowly into Indonesia.

If the form of safeguard chosen is import duty, the Minister of Finance will determine it, whereas if it is a quota, it is determined by the Minister of Industry and Trade. If what is imposed is the safeguard action of import duty, the maximum amount of the safeguard action import duty is the amount needed to recover serious losses or prevent the threat of serious losses to the domestic industry.[14]

Domestic industries that experience serious losses or threat of serious losses due to a surge in imports of similar goods can submit a request for an investigation of safeguard measures to the Indonesian Trade Safeguard Committee (KPPI). The parties that can submit the application are producers, presidential associations, and the government.[15]

Article 2 The Agreement on Safeguard explains that in order to implement this safeguard action, WTO member countries must be able to determine that imported products into their territory increase and cause or threaten or cause harm to domestic industries that produce similar goods or products that are directly competitive with imported products. the. In implementing this safeguard, WTO member countries must non-discrimination. The point is that safeguard measures are applied to a product that is imported regardless of the source. [16]

3 Result

From the above discussion, it can be concluded that the legal protection of the domestic industry through safeguard measures has not been carried out by the Government of Indonesia properly and optimally, even though Indonesia has joined the WTO membership, and established the safeguard regulations. The increasing number of imported goods of the same kind that enter the country so that it can create a loss or threat of loss to the domestic industry. Importing companies are obliged to comply with the standard of import goods and quotas to be implemented. Meanwhile, for exporting companies, if they are subject to safeguards by the export destination country, they will immediately coordinate with the directorate of trade security, trade attaches/representatives of the Republic of Indonesia abroad, and other relevant agencies to defend. The role of the Government is very important in facing the globalization of trade. One of the roles and efforts of the Indonesian Government is to optimize the KPPI and DPP under the Indonesian Ministry of Trade. Domestic industries that experience serious losses or threat of serious losses due to a surge in imports of similar goods can submit a request for an investigation of safeguard measures to the Indonesian Trade Safeguard Committee (KPPI).

Acknowledgements. We would like to express our special thanks of gratitude to our colleague Prof. Maroni as well as Dean of Faculty of Law, University of Lampung who gave us the golden opportunity to take part in this International Seminary as a participant, which also helped us in doing this paper with his knowledge. Secondly we would also like to thank to our family for their understanding, within the limited time frame, finally we can finish this paper.

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