

# AFTA-CHINA COOPERATION AGREEMENT TO CREATE A FREE TRADE AREA BETWEEN ASEAN COUNTRIES AND CHINA

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### Abstract

This research aims to find out how the AFTA-CHINA Cooperation Agreement is to Realize a Free Trade Area between ASEAN Countries and China. The research method used is normative legal research, namely looking at the norms and rules that apply in the multilateral trading system which are beneficial for developing countries. As for the conclusion of this description, namely the Legal Study Regarding ACFTA. protect domestic industry (local products in the country itself) and the policy must be in accordance with the principles of transparency, honesty and stipulated in one rule, namely law. International competition, including the AFTA-China regional trade trend, is fine, and this trend must be used as a business opportunity to improve the Indonesian economy, especially North Sumatra, so the Indonesian government should provide policies in accordance with the principles of justice for the public interest, then for business actors. (economic activity actors) should also not act fraudulently in trading and continue to comply with regulations in accordance with applicable regulations.

**Keywords:** AFTA-CHINA Cooperation Agreement, WTO International Law and Regional Trade Policy.

### INTRODUCTION

In its ideal form, the concept of free trade or trade liberalization is a situation where companies and individuals are free to sell goods or services beyond the borders of their country. With free trade, there are no longer any obstacles created by a country in carrying out trade transactions with other countries. Countries in the world or those that are directly involved in free trade have the right to sell products, goods or services to other countries without having to be burdened by tax restrictions or import duties.

Based on the formation of World Trade *Organization* (WTO), Indonesia ratify the GATT/WTO with the Law No. 7 of 1994, Erman Rajagukguk (2011). and has provided the concept of free trade globalization, especially to member countries formed in the WTO, whereThe basic concept of free trade is the elimination of barriers on the scale of international trade. In its implementation, a concept like this forms globalization, Eko Prilianto Sudradjat (2015) whose meaning is universal and covers all very broad fields. If viewed from the economic and trade aspects, globalization has occurred in Indonesia when spice trade transactions began, then the forced cultivation system in Java, to the

growth and development of plantations in the Dutch East Indies, and At that time, globalization with the system was born violence created by colonialism. Different from the current globalization system economics and trade are carried out with One way of peace is through international negotiations and agreements gave birth to free trade rules as well focused on developing an open free market (transparency system).

World trade liberalization encourages the level of integration and economic growth of countries in the world. Economic integration will open the widest possible trade access between one country and another. Economic integration aims to open trade access as widely as possible between one country and another. Competition between market players will cause prices to decrease for similar goods and services, thereby improving quality and increasing choice for consumers in integrated areas. The tendency to increase the process of regional economic and financial integration in various parts of the world is basically based on the basic concept that the benefits obtained will be greater than the risks that will be faced (Oktaviani et al. 2014).

The benefits of trade liberalization include increasing efficiency. This increase in efficiency is carried out through several channels. First, through increasing productivity due to the more efficient allocation of resources both within an industry and between industries. Second, through increased competition. Liberalization has the potential to increase competition between domestic and foreign producers, so that inefficient domestic producers will leave the industry and the industry as a whole will become more efficient. However, these profits can be a threat to the national economy. This depends on the readiness of the domestic industry and the competitiveness of domestic products (Astiyah et al, 2015).

A free trade agreement is a pact signed by two or more countries to eliminate trade barriers between them. The World Trade Organization (WTO) noted that from 1958-1994 there were more than 250 FTAs (Free Trade Agreements) throughout the world. Indonesia is one of the countries that is quite active in carrying out free trade agreements - both bilateral between countries and those included in the ASEAN scheme. In recent years, Indonesia has been involved in a number of free trade agreements, some of which are the ASEAN Free Trade Area (AFTA), the ASEAN-Australia-New Zealand FTA (AANZFTA), the ASEAN South Korea FTA, and the Indonesia Japan Partnership Agreement (IJEPA). Apart from that, there are still several agreements which are currently still in the negotiation stage, for example the ASEAN-EU FTA, ASEAN-USA FTA, ASEAN-India FTA and Indonesia-EFTA (Switzerland, Liechtenstein, Norway and Iceland). Indonesia's involvement in various free trade agreements was motivated by fear of the impact of "trade diversion". However, it should be noted that "trade diversion" only applies to two or more countries that have the same product with the same market objective.

This application gives rise to a legal system that regulates relationships in a dual way. On the one hand, it regulates cooperative relations between member countries, while on the other hand, it provides opportunities for each member country to develop its national legal system. The development of the legal systems of these countries must of course adapt or follow the provisions of these regional organizations. National law experiences

development and renewal in various states and international communities. Development and renewal, including the development of society in a developing country, is spearheaded by the government. It is clear that law can play a role in this renewal process. This is caused by all government actions aimed at developing society in the desired direction, which will take the form of laws, regulations and other provisions, Mochtar Kusumaatmadja (2012).

Law brings development and renewal, because of the implementation of development based on legal rules, including in establishing relations between countries, both regional and international, such as within the framework of AFTA, AFEC and GATT/WTO within the framework of international trade. In order to enter the era of globalization in the 21st century, Indonesia is facing a pattern free trade within the framework of AFTA and APEC, then the reliability of the legal system Indonesian national will be tested. Plus free trade within the WTO framework, of course Indonesia must be ready with its legal system to be able to accommodate developments that occur as a result of the implementation of international agreements within the AFTA framework because these international agreements have been accepted as national law. International agreements can become national law either through parliamentary approval or through signature alone.

Legal politics built into the Community's international agreements The ASEAN economy is based on free trade as an extension of the system international capitalism has been formulated in good international agreements bilateral or multilateral. The World Trade Organization (WTO) is an interesting phenomenon in Indonesia international law, Hata (2018). There are some observers who state that WTO law is a form of international law that has very strong coercive power, which is demonstrated, among other things, by a much more effective mechanism for resolving disputes between member countries than GATT 1947 ever had.

These special provisions for developing countries are also provided in the issue dispute resolution which is the greatest achievement of the WTO Agreement indispute resolution mechanism. As part of the international trade system which is largely managed through the WTO, steps should be taken, especially by developing countries, to prepare themselves to compete and be actively involved in the WTO. In reality, global economic competition will require increased competitive ability in the world of international trade, so that each country must also be prepared to become more involved with each other, including facing each other in a case if a dispute occurs, either as the party being sued or as the plaintiff. Therefore, both technical and substantive mastery of the dispute resolution mechanisms in the WTO is a necessity (Chan Kar Keung, 2006).

Establishment of AFTA. In this case AFTA's orientation is on reducing tariffs and non-tariffs in the atmosphere of trade and investment flows to ASEAN member countries. This needs to be responded to by member countries facing tariffs and increased investment in their countries, Abdul Hamid Adnan (2015). Basically, the formation of AFTA is based on internal and external factors. Internal factors are determined by ASEAN's willingness to establish AFTA which is followed by ASEAN economic structure actions from agriculture to industry. Meanwhile, the external factor is the emergence of protective economic

regionalism in other parts of the world, as a result of the slow pace of the Uruguay round. Therefore, AFTA participating countries must prepare provisions for its implementation. Thus, the existence of AFTA has an impact on the Indonesian National Legal System, because Indonesia must implement the agreement in accordance with its agreement. For this reason, it needs to be discussed from a legal perspective, especially regarding the AFTA agreement for the development of the Indonesian legal system today.

## **LITERATURE REVIEW**

### **International Legal Policy**

According to Hyde, (2016) international law is a collection of laws which mostly consist of principles and regulations that must be obeyed by countries. For this reason, international law must be obeyed when countries interact with each other. Apart from that, international law includes international organizations and certain legal regulations relating to individuals and non-state legal subjects. Melansi Diktum Law Journal Volume 14, Number 1 July 2016: 67 – 75, International law according to Mochtar Kusumaatmadja is: the entire rules and principles that regulate relations or issues that cross national boundaries between countries and countries. with other non-state legal subjects or with each other's non-state legal subjects.

### **WTO Regional Trade**

The existence of the World Trade Organization (WTO) as an international organization, has an important role in international trade traffic, especially in increasing economic development and reducing poverty. More specifically, the existence of this organization must ensure that all needs and benefits are met from increasing welfare opportunities in the context of the multilateral trading system, especially for developing countries where the majority of WTO member countries are in this category. The hope is that every country will benefit from the existence of legislation international gang. As for who became The aim of this interaction process in general is so that each country has the opportunity to meet domestic needs for its country (Michael J. Trebilcock and Robert Howse, 1995).

### **Approach Method**

The research methods are: used is by type of research normative law, namely looking at norms as well as the rules that apply in the multilateral trading system which are beneficial for developing countries. The data collection method was carried out using a literature study with priority on secondary data, namely primary legal material in the form of all agreements contained in the WTO Agreement, secondary legal material in the form of writings and expert opinions. The data analysis method used in this research is analytical descriptive, namely carrying out in-depth analysis in order to answer the main problems raised.

## DISCUSSION

### International Legal Rules for Trade Within the Framework of the WTO Agreement

International legal rules regarding the liberalization of trade in the services sector through the framework of the WTO agreement, produced in the Uruguay Round negotiations, are outlined in the General Agreement on Trade in Services (GATS), which is the main framework or Framework Agreement. This main document includes the rules of the game that apply generally to all sectors in the services sector. In GATS as a Framework Agreement, there are basic principles which are the basis for the rules of the game in international trade in the services sector. This general agreement is very necessary as a framework that systematically determines the scope of generally regulated activities, HS Kartadjoemena (2016). Then, to implement the results of the agreement in the form of steps to implement liberalization, it is necessary to have a Schedule of Commitments (SOC) made by each participating country, which explicitly states the commitment of the participating countries to the services sector. The SOC, which is an integral part of the agreement, explicitly states the sectors that are open and the types of transactions that may be carried out by Foreign Service Providers or foreign service suppliers.

Kartadjoemena explained the process of filling out the Schedule of Commitments that in formulating the SOC, the first stage is to list the sectors where participating countries are willing to make commitments. Each participating country is obliged to confirm the sectors that will be opened or have been opened to foreign parties. The principle that applies in the SOC filling technique is the positive list principle, Hadi Soesastro (2014). Thus, in sectors where the country concerned is not willing to open within the framework of the agreement, these sectors are not included in the list that will be liberalized at that stage. In other words, the designation of sectors that will be opened applies the positive list principle. This agreement specifically seeks to increase the efficiency and competitive level of ASEAN members as service providers, in particular eliminating trade restrictions in services between ASEAN members, and liberalizing trade in services by expanding the level and scope of liberalization beyond that which exists in GATS (General Agreement Trade in Service ) with the aim of a free trade area in the services sector.

### The existence of AFTA for the legal development of ASEAN countries

Currently, countries including Indonesia are collaborating with other countries within the AFTA framework. This collaboration is needed to meet needs and strengthen the country's economic structure in facing the era of globalization which member countries, including Indonesia, inevitably have to carry out. Basically there are three international agreements that influence the development of Indonesian economic law. The first is the rules of the World Trade Organization (WTO), the second is the rules of the game in the Asia Pacific Economic Cooperation (APEC), and the third is the rules of the game contained in the ASEAN Free Trade Area (AFTA). With regard to the WTO, whose territory covers the entire world and has been in effect since January 1 1995. APEC covers countries in the Asia and Pacific region, effective in 2010 for advanced industrial countries and in 2020 for developing countries. AFTA for regional areas and the



Southeast Asia region is planned to come into effect in 2003. However, AFTA has not been implemented well in Indonesia, in fact it was implemented effectively at the end of 2015.

Indonesia's involvement in the WTO was marked by the final ratification of the results of the Uruguay Round through Law No. 7 of 1994. This agreement is basically a comprehensive commitment which includes an agreement to strengthen the world economy which is characterized by the existence of trade ties, foreign capital planning, job reserves and services. In connection with this matter, it was agreed to prepare facilities that were considered conducive, including, namely:

1. A stronger and clearer legal framework for carrying out international trade, including effective and reliable dispute resolution mechanisms.
2. Globally reducing 40% of tariffs and agreeing to wider market openings for goods, increasing reliability and certainty in the form of expanding the scope of tariff commitments.
3. Multilateral regulatory framework for trade in services and for the protection of intellectual property rights (IPR) related to trade as well as re-addressing multilateral trade provisions for agriculture, textiles and apparel.

### **Protective Government Policy Domestic Industry After the AFTA-China Agreement**

To protect domestic industry Regarding the negative impact of the implementation of AFTA-China regional trade, there needs to be policies, especially policies implemented by the government, for example anti-dumping, safeguard measures, subsidies, training, providing capital loans to small and medium businesses. Regarding the regulation of regional free trade agreements in international free trade (WTO) provisions, it is permitted and justified based on the provisions of Article 24 of GATT. There are several factors that come into play challenges and opportunities for the government Indonesia related to implementation AFTA-China trade is increasing opening of the Indonesian market (products domestically) to compete in the market internationally, especially in the Chinese market.

#### **1. Determining Policy Direction and Priorities**

Policy direction is structuring a comprehensive and integrated national legal system that respects religious norms, customary law and customs as well as renewing Dutch colonial legacy legislation with discriminatory national laws, including categories of injustice and incompatibility with demands for reform through the legislative program. Next is the development of statutory regulations which supports internal economic activities facing the era of globalization of free trade without harming national interests. Policy priorities focus on the main targets to achieve and the most important steps taken by the government in taking a decision decision as a policy.

So in determining policy (policy) is to use certain considerations that are considered to better guarantee the implementation of a business, the ideals of the desired situation. So in the sense of wisdom, the emphasis is focused on there is a consideration process to

guarantee the implementation of a business, the achievement of the expected goals, thereby producing something evidence of policies in the public interest with the aim of changing a situation for the better.

To determine the success of acceleration development after the implementation of free trade, especially in the AFTA-China regional agreement, one of the policy directions and priorities that will be implemented is economic recovery and increasing people's welfare (welfare of the people). Give directions to everyone regions to seriously and systematically carry out economic recovery in order to improve the welfare of the people.

## **2. Role and Authority of Government In Taking Policy**

In the context of societal dynamics However, we still have sufficient role scope, depending on how to actualize this potential to the maximum so that we can give birth strategic roles. In the era of competition In this very competitive international environment, we need to anticipate this phenomenon, so that the issue of the quality of Human Resources becomes very substantial and strategic to act out because of the terminology, the globalization of international competition, the quality of Human Resources and competitiveness and competence are very interesting discussions.

For Indonesian people, especially The people of North Sumatra Province need to reposition the role of political movements to the emphasis of strengthening the quality of Human Resources. So in this case the role of the government is highly expected in order to realize healthy international trade, including trade AFTA-China region, and no less the importance of regional autonomy. This means that in this provision the regional government (North Sumatra), apart from facing internal burdens locally and nationally, within the framework of national strategic management must deal with government tasks both on a national and international scale, which in strategic geo-political terms definitely involve the region., the people and related agencies to support policy realization Indonesian government in general, North Sumatra government policy specifically. This means that by connecting the region and the global there is a bond, namely treaties and agreements has been approved by the government, in particular government of North Sumatra. Because the existence of this agreement is a source of law that binds the cooperation that will be implemented.

## **3. Policy Steps Government Protects Domestic Industry**

AFTA-China is one of them the form of economic liberalization cooperation that has been carried out by Indonesia in the last 10 years, at the beginning of January 2010, when the implementation of the Asean China Free Trade Agreement began, seems to have become a war of quality, price and quantity. a service of goods and services and industry China's global market, because the prices of goods produced in China are relatively cheap and are in demand by Indonesian consumers. This is inseparable from the quality of goods produced by China, for example, seen from the negative impacts The implementation of AFTA-China regional trade on the Indonesian economy includes: First, the invasion of foreign products, especially from China could result in the destruction of domestic economic sectors (local products), even before 2009. Indonesia has gone

through a process deindustrialization (industry decline). Based on data from the Indonesian Chamber of Commerce and Industry (KADIN), the role of the processing industry has decreased from 28.1% in 2004 to 27.9% in 2008, and projected for the next five years of planting capital in the processing industry sector experienced a decline of US\$ 5 billion, most of it triggered by the closure of business centers strategic Small and Medium Industries (IKM). The number of SMEs registered with the Ministry of Industry in 2008 reached 16,806 with a capital scale of IDR 1 billion to IDR 5 billion. So 85% of them will experience it difficulties in facing competition with products originating from China.

Second, the domestic market is flooded by foreign products with very competitive quality and prices will encourage domestic entrepreneurs to switch businesses from producers in various economic sectors to importers or traders only, example prices Chinese textiles and textile products are between 15% and 25% cheaper, while a difference of just 5% will overwhelm the domestic industry (local products), let alone more. from 5%. In this case, of course, for entrepreneurs In order to survive, the local government must be pragmatic in changing its direction. Third, the character of the internal economy the country will become increasingly less independent and weak, meaning everything depends on foreign provisions (foreign products) even small products and very simple products and products that are easy to make in the country only like needles, herbs must be imported.

#### **4. Legal Basis for Trade Regulation Regional**

Regional trade arrangements (Regional Trading Arrangements) where a group of countries agrees to eliminate or reduce barriers to imports from fellow members and has taken place in several regional countries in the world, such as the European Union with its single market, ASEAN with its AFTA and others GATT. In Article 24 of GATT it is explained that recognizing the existence of close integration in the economic sector through freer trade, namely recognizing regional groupings as an exception and general rule of the MFN general principles clause, Huala Adolf and A Chandrawulan (2015) provided that the criteria are met - certain criteria strictly. The GATT provisions are intended to regulate regional areas facilitate trade between the countries concerned, without creating obstacles to trade with the outside world. Exceptions and rules This MFN clause is stipulated in The GATT article itself and some others are stipulated in the GATT conference decisions through a waiver and this principle is based on article XXV, the exception referred to is, Hatta (2016). :

- a) Advantages gained due to distance traffic (frontier traffic advantage), may not be imposed on GATT members,
- b) Preferential treatment in regions certain existing ones such as economic cooperation within the British Commonwealth French Union (France and other countries former colonial countries), may continue

#### **5. Regional Trade Concept AFTA-China.**

The legal basis for the ACFTA agreement is Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the



People's Republic of China, signed by the President of the Republic of Indonesia (Megawati) on November 4 2002 in Phnom Penh, Cambodia, and hasratified by the President of the Republic of Indonesia through Decree of the President of the Republic of Indonesia Number 48 of 2004 concerning Ratification of the Framework Agreement on Comprehensive Economic Cooperation Between the Association of Southeast Asian Nations and the People's Republic of China. Ratify this ACFTA agreement the law is valid, where in article 11 paragraph3 UUDNRI 1945 states that further provisions regarding international agreements are regulated by law. In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia then law number24 of 2000 concerning International Agreements. Furthermore, in article 11 of Law no. 24 in 2000 it was stated that the agreementinternational matters whose material does not include material as intended in Article 10 shall be carried out by Presidential Decree. So in the context of article 11 this is strictly speaking and ensure that the agreement is ratified International ACFTA which is included in the trade category is carried out through a Presidential Decree, so that ratification of ACFTA is legally valid.

## CONCLUSION

Based on the results of the research and discussion in the previous chapter, it can be concluded as follows:

1. As for the conclusion of the descriptionnamely, that government policy is an action proposed by the government to take the Administrator's decision, "Legal Review Regarding ACFTA." protect domestic industry (local products in the country itself) and the policy must be in accordance with the principles of transparency, honesty and stipulated in one rule, namely law.
2. International competition is a trendAFTA-China regional trade, that is fine, and this trend must be used as a business opportunity to improve the Indonesian economy, especially North Sumatra, so the Indonesian government should provide policies according to the principles justice in the public interest, thenFor business actors (economic activity actors) it is also best not to cheat trade and continue to comply with regulations in accordance with the provisionsapplies. The most important thing is that this research should be sustainable, so that researchers can research how investment in Indonesia compares before and after the implementation of AFTA-China in Indonesia.

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