

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 caused by sudden and unforeseen overflows of imports and to protect its domestic industries from unfair practices, the World Trade Organization requires members to enforce trade remedy measures against imports, such as anti-dumping, anti-subsidy and anti-security measures. Safeguard itself is one of the trading instruments that are widely applied by members of World Trade Organization. In fact, according to the World Trade Organization report, after India, Indonesia is the second most active country using safeguard instruments. Through case study methods, especially anti-dumping cases between PT. Krakatau Steel against hot-rolled coil/plate (HRC/P) alloy imports from China this research is conducted to determine the implementation of World Trade Organization 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. A trade and tariff agreement (General Agreement on Tariff and Trade / GATT) is established by countries engaged in international trade activities. GATT then grew into an international trade body, best known now as the World Trade Organization (WTO) [2].

The WTO agreement seeks to establish a world trade framework that governs trade matters in order to make it more competitive in an open, equitable and safe way. The principles of non-discrimination, accountability, consistency and predictability of trade rules, the use of tariffs as instruments of security and the avoidance of unfair competition are in line with the principles adhered to by the WTO. Linked to the predictability theory for 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.

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.

By ratifying Law No. 7 of 1994 on the Ratification of the Agreement Creating the World Trade Organization, Indonesia joins the World Trade Organization as a member of the World Trade Organization, both externally and internally. Indonesia must comply with all commitments in the WTO forum with external implications. The internal implication is that, in compliance with the outcome of the WTO Agreement, Indonesia must harmonize national laws and regulations, which means that, in the sense of legal harmonization, Indonesia must always care about national interests, but not infringe any indications of WTO provisions. Indonesia is also expected to comply with all the standards negotiated in international trade agreements, including the alteration of both legal instruments and trade sector growth policies [5].

Globalization, in the form of foreign trade, has a positive and negative effect on many countries. It can increase investment, which has an effect on the country's increase in export numbers. However, if the domestic industry is not prepared to compete, it may treat the domestic industry when similar imported goods are entering the domestic market. To prevent this from occurring, the WTO has adopted rules relating to protection measures, one of which is the WTO Agreement on Safeguard, which is a protective instrument for domestic industries which have seriously injured or threatened to suffer serious injury caused by an increase in the level of disability. It is an exception to the quantitative easing theory. The purpose of this study is to investigate in-depth and comprehensive PT cases. Krakatau Steel against China's imports of hot-rolled coil/plate (HRC/P) alloy.

2. Literature review

2.1 Safeguards definition

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

“According to Regulation No 37 / M-Dag / Per/9/2008 of the Minister of Trade, the provisions of the Safeguards Regulation are steps taken by the Government to recover serious losses or to prevent the threat of serious losses to the domestic industry as a result of an increase in imports of similar goods or goods which compete directly with domestic industrial products with a view to ensuring that domestic industries experience serious losses [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, “a) This action was taken by the government; b) There is serious loss or threat of serious loss; c) The action is aimed at protecting or restoring the domestic industry; d) There are similar items; d) There are goods that are directly competitive; and e) Goods that are directly competitive are domestically produced goods which are similar goods or substitute for investigated goods [7].”

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 relating to the approval of safeguard measures are laid down in Article XIX of the GATT 1994 (Article XIX of the GATT 1994) The Safeguard Agreement states that the Safeguard Agreement applies provisions relating to the implementation of safety measures which must be treated as measures laid down in Article XIX of the GATT 1994 Agreement. 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, “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 and 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). 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].

2. Methods

This study uses normative legal analysis with secondary knowledge in the form of legal materials, both primary and secondary legal materials, as the data source. The case approach, the legislative approach, and the conceptual approach are the styles of regulatory approaches used. The study of the collected legal materials was carried out using descriptive, logical and argumentative approaches.

3 Result and Discussion

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.

The provisions relating to safeguard measures in Indonesia are laid down in Law No. 7 of 1994 concerning the ratification of the World Trade Organization Agreement; further provisions are laid down in the form of Presidential Decree No. 84 of 2002 relating to domestic industrial safeguard measures relating to the effects of an increase in imports, mutually agreed upon. International content as previously mentioned.

In Indonesia, the authority to carry out an investigation is the Indonesian Trade Safeguard Committee (hereinafter abbreviated as KPPI), and an investigation by KPPI can be carried out if a request is made as long as KPPI has proof of a rise, before the safeguard is carried out, in order to prove that there is a serious loss and/or danger of a serious loss.

“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 suffering serious losses or threats of serious losses caused by an increase in imports of similar or directly competitive products may apply to the Indonesian Trade Safeguard Committee (KPPI) for an investigation of safeguard measures. 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; d) information about serious loss and/or threat of serious loss; and e) information on investigated goods import data.”

Furthermore, according to Regulation No 37/M-Dag/Per/9/2008 of the Minister of Trade, 'Safeguard steps are steps taken by the Government to fix serious losses and/or to avoid serious losses in the domestic industry caused by an increase in imports of similar goods or supplementary goods from the domestic industry, the aim is to make the domestic industry capable of causing structural losses that are serious.

Article 70(2) of Regulation No 34/2011 of the Government of the Republic of Indonesia on Anti-Dumping Measures, Compulsory Measures and Trade Safeguard Measures (PP 34/2011), where safeguards may be implemented in the form of import duties or quotas, also provides for the form of safeguards in Indonesian regulations. The definition of the import duty of the safeguard measure itself is found in Article 1 Number 25 PP 34/2011, which reads as follows: 'Safeguard Measure Duty is a State duty to recover losses or to avoid serious threat of serious losses suffered by the domestic industry as a result of an increase in the number of imported products or related goods [13].”

The safeguard measures adopted should not exceed 4 years on the basis of Article 7 of the Agreement on Safeguard, but these acts 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.

Where the form of safeguard chosen is import duty, it shall be determined by the Minister of Finance, whereas if it is a quota, it shall be determined by the Minister of Industry and Trade. Where an import duty safeguard measure is levied, the maximum amount of the import duty safeguard measure is the amount required to recover serious losses or to avoid the danger of serious losses to the domestic industry [14].

Domestic industries experiencing serious losses or threats of serious losses due to an increase in imports of similar goods may apply to the Indonesian Trade Safeguard Committee (KPPI) an application for an investigation into safeguard measures. 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 enforce such safeguard steps, the Member States of the WTO must be able to assess whether imports into their territory increase and trigger or endanger or cause harm to domestic industries which manufacture similar goods or products which are directly competitive with imports. WTO member countries must be non-discriminatory when enforcing this safeguard. The argument is that security measures are applied to a commodity that is manufactured irrespective of the source of the commodity [16].

4. Conclusion

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).

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