

ANTI-DUMPING REGULATIONS IN INTERNATIONAL TRADE LAW AND ITS APPLICATION IN INDONESIA

Etty Uyun¹, Sri Devi Zebua², Riza Firdaus³, Henry Aspan⁴

^{1,2,3,4}Master of Program, Faculty of Social Sciences Universitas Pembangunan Panca Budi, Medan
Corresponding Email: henryaspan00@gmail.com

ABSTRACT

Dumping is a trade practice carried out by exporters by selling goods abroad at prices that are cheaper than domestic prices and has resulted in many cases of predatory pricing carried out by other countries in Indonesia which have resulted in economic losses. Anti-dumping regulations are very necessary to protect the industry. domestically against practices that could harm domestic industries that produce similar goods. Applications that Indonesia can take to overcome dumping practices must first carry out an investigation by KADI to obtain evidence regarding imported products with indications of dumping which will harm the domestic industry. Based on this evidence, the government through KADI can impose anti-dumping import duties on importers. In this article we will discuss how anti-dumping is implemented in international trade in Indonesia. The research method used is the normative legal research method.

Keywords: Anti-Dumping Regulations, International Trade, Implementation in Indonesia

A. INTRODUCTION

The development of international economic trade in business activities is still characterized by unhealthy business behavior. Business actors tend to develop incentives in order to gain dominant power in the market and gain the freedom to control prices. The definition of dumping in the perspective of international trade law is a form of unfair business competition between international prices carried out by business entities, business actors or exporting countries, which sell their goods at lower prices in foreign markets than in their own domestic market, with the aim of get as much profit from export products as possible. Developments in the field of trade are one of the impacts of developments over time, one of which is trade between countries or international trade. This progress in trade will enable domestic markets to develop their products, namely through sales abroad at competitive prices. In connection with this matter, trade activities between countries are very important, so there is a need for regulations that regulate the rights and obligations of all parties carrying out international trade, namely by establishing a General Agreement on Tariff and Trade (GATT) which has been agreed to by the countries in 1947. Refinement of GATT which is in line with current developments from various periods. The last period carried out was the Uruguay Round, forming an international organization in the field of trade in 1986-1994. With the ratification of the WTO organization on January 1 1995, this organization provides protection for parties carrying out international trade transactions.

International trade is part of all economic activities or business activities that will experience significant progress in the near future. Attention in the business world to international business activities has also increased, this event can be seen through developments in the flow of services, capital and labor between countries. International business activities can occur through import-export relationships, investment in service trade, licenses and franchises, intellectual property rights, and technology transfer. This event of course has an impact on other economic activities, one of which is banking, insurance, taxation and so on. In encouraging business activities between countries, a legal instrument is needed in the form of regulations, both national and international, one of which is international trade law. The World Trade Organization (WTO) is an international organization that regulates international trade. Formed in 1995, the WTO operates based on a

series of agreements negotiated and agreed upon by a large number of countries in the world and ratified through parliament. The purpose of the WTO agreements is to assist producers of goods and services, exporters and importers in carrying out their activities.

The more freedom and openness of market mechanisms has resulted in a lot of unhealthy competition in trade between countries which can usually trigger cases or disputes between countries, one of which is the act of dumping which is defined as an act of unfair competition by exporting similar goods at a lower than fair value in the domestic market of the exporting country. Solving this problem requires efforts to protect domestic industry by implementing anti-dumping regulations, both internationally and nationally. The application of anti-dumping rules in the Indonesian legal system is very essential, because Indonesia is a very strategic country as a market for imported products, this incident is one of the factors in the number of imported products on the Indonesian market which are sold by dumping. So in international trade the practice of dumping is an unfair trade practice, because for the importing country this activity can cause losses to domestic industries that produce similar goods.

B. FORMULATION OF THE PROBLEM

1. How is anti-dumping done in international trade?
2. How does the domestic industry implement imported products that are indicated as dumping?

C. Research methods

The research method used is the normative legal research method. The results of the research are that the Anti-Dumping Regulations, apart from referring to international provisions (Agreement on Implementation of Article VI GATT and Agreement on Subsidies and Countervailing Duties), also refer to national laws and regulations, namely the Law. No. 10 of 1995 concerning Customs.

D. Discussion

1. Overview of the Indonesian Anti-Dumping Committee

The Indonesian Anti-Dumping Committee (KADI) is a non-structural government institution/organization which in carrying out its duties is independent, based on the Decree of the Minister of Industry and Trade Number 428/MPP/Kep/10/2000, the chairman of the Indonesian Anti-Dumping Committee (KADI) is held by echelon 1 officials: chairman, deputy chairman, and members and secretary of the Indonesian Anti-Dumping Committee are appointed and dismissed by the Minister of Industry and Trade. In carrying out his duties, the Chair of the Anti-Dumping Committee (KADI) is accountable for the implementation of his duties to the Minister of Industry and Trade. (Articles 9 and 10 Decree of the Minister of Industry and Trade Number 427/MPP/Kep/10/2000). Thus, the Indonesian Anti-Dumping Committee (KADI) in carrying out its duties is under the coordination of the Ministry of Industry and Trade. The role of the Indonesian Anti-Dumping Commission (KADI) includes:

- a. If conditions permit, use legal consultants (lawyers) who are experts in the field of anti-dumping.
- b. With the issuance of Government Regulation Number 34 of 1996 concerning Anti-Dumping Import Duties and Compensatory Import Duties, and the establishment of the Indonesian Anti-Dumping Commission, the Government can carry out studies on dumping activities, as planned by the provisions of GATT (Article IV).

In this case, a law enforcement medium with anti-dumping provisions and a separate institution is needed, namely the Indonesian Anti-Dumping Commission

(KADI). This institution has a general objective, namely to participate in an active role in achieving mutually beneficial and fair world trade rules. However, there is a specific aim, namely the protection of all Indonesian producers against imports of goods that are dumped or subsidized originating from the exporting country, namely unfair trade practices, if these imports can cause losses to the importing country's domestic industry. In accordance with these objectives, the Indonesian Anti Dumping Commission has main duties and functions.

KADI's main tasks include:

- a. Collect, research and process evidence in an informed manner regarding allegations of dumping of goods or goods containing subsidies.
- b. Proposing the imposition of compensation import duties on the Minister of Industry and Trade.
- c. Investigate allegations of dumping of products or goods containing subsidies which cause losses to the domestic industry for similar goods.
- d. Make a report regarding the implementation of tasks to be submitted to the Minister of Industry and Trade.
- e. Carry out other tasks determined by the Minister of Industry and Trade

In carrying out its duties and functions, KADI has the authority, among others:

- a. Propose to the Minister of Industry and Trade the implementation of temporary measures
- b. Prepare ongoing explanations of an administrative and technical nature regarding relevant policies regarding subsidies or dumping.
- c. Carry out inquiries, inspections or investigations on stakeholders and other parties related to subsidies or dumping.
- d. Review the application of compensation import duties or anti-dumping import duties.
- e. Provide recommendations to the Minister of Industry and Trade regarding the results of the assessment of the offer of adjustment measures.
- f. Providing proposals to the Minister of Industry and Trade to continue or revoke the application of compensation import duties or anti-dumping duties.
- g. Issue decisions related to overcoming subsidence or dumping.

The organizational structure of KADI (Indonesian Anti-Dumping Committee) can be explained, namely the Secretary, Deputy Chairperson, Chairperson and members of KADI are dismissed and appointed Minister of Industry and Trade. Thus, in carrying out its duties, KADI is responsible to the Minister of Industry and Trade.

2. Anti-Dumping Arrangements in International Trade

The term dumping in the context of international trade law is a form of international price discrimination carried out by a company or exporting country, which sells its goods at a lower price in foreign markets than in its own domestic market, with the aim of making a profit on the export product. Anti-dumping practices are one of the important issues in carrying out international trade to create fair trade. This matter has been regulated in the Anti-Dumping Agreement (Anti-Dumping Agreement or Agreement on the Implementation of Article VI of GATT 1994). Binded tariffs and their application equally to all trading partners of WTO members are the main key to the smooth flow of trade in goods. Judging from this, the practice of dumping is very detrimental to a country that is an importer and brings down the country's economy. It cannot be denied that this practice of dumping has occurred a lot in international trade. Goods that are referred to as dumped goods are sold abroad below the price of the goods produced in the country. domestic.

A product/goods entered by dumping can be said to be "dumped goods", this has been regulated in Government Regulation Number 34 of 1994 concerning Anti-Dumping Import Duties and Compensatory Import Duties in Article 1 paragraph (1), which reads "dumped goods are imported goods with an Export Price level that is lower than the Normal Value in the exporting country".

The determination of dumping is regulated in Chapter I, which states that "a product is considered dumped if in trade between countries, the product is sold below normal value" including:

- a. If there is no price in the importing country that can be compared in the exporting country, then the normal price is the ex factory price which comes from calculating the price of similar products in that country which are exported to third countries.
- b. The price of a similar product (like product) in the domestic market of the exporting country. In this case, the comparative price must be made based on the calculation of the ex factory price (price outside the factory) from domestic sales with the calculation of the ex factory price from export sales.
- c. Production costs in the country of origin plus administration costs, marketing costs and normal profits are to use definition number 1 a, however, if domestic sales in the exporting country are very small or domestic prices are not relevant, such as this product is sold by a state company in the country Those who believe in non-market economy can use definition 1 b or 1".

Determination of Losses in Article VI GATT 1994 is based on positive evidence and involves objective tests, including:

- a. The volume of imported products at dumping prices and the consequences on domestic market prices for similar products and,
- b. The impact of these imports on domestic business actors who produce similar goods.

The causal link to the dumping practice carried out resulted in injury (loss). There is a practice of dumping for imports through evidence to look for factors that cause losses. The causal link between industrial losses in the importing country and import dumping must be based on testing all evidence that there are indications of dumping. Examining the effect of imported products on dumping prices in the domestic sector of the importing country can include an assessment of all economic factors, for example: decreased use of investment development capacity, market share, productivity, output, profits, actual and potential sales; ability to invest and develop capital, labor supply, growth, wages, negative influence on potential and actual cash flow, aspects that influence domestic prices; and the size of the dumping difference.

To determine anti-dumping import duties, it is regulated in Article 19 (1) of the Customs Law No. 10 of 1995 which states that "Anti-dumping import duties imposed on imported goods are as high as the difference between the normal value and the export price of the goods" . Anti-dumping Import Duty (BMAD) is in addition to the Import Duty levied based on Article 12 paragraph (1), namely "additional duty to the import tariff (import duty) based on a maximum tariff of 40% (forty percent) of the customs value". Regarding dumping practices, the WTO also allows its members to impose sanctions in the form of imposing Anti-Dumping Import Duties (BMAD) or anti-dumping duties on company goods where there are strong indications that dumping has occurred. The imposition of BMAD is intended to cover losses to domestic industry which should already be done. Article 9 of the WTO ADA regulates the imposition of BMAD. This article explains the procedures for determining the amount of BMAD and the body authorized to determine the amount of BMAD. Expropriation to restore prices

or stop exports at dumped prices can be carried out only after the investigating party has made a preliminary determination of the existence of dumping, losses and their causes.

3. Application to Domestic Industry of Imported Products with Dumping Indications

One of the countries that always participates in every international trade activity is Indonesia, where there are often accusations of being the party carrying out dumping from countries that import Indonesian products. Meanwhile, Indonesia can also be on the side of accusing dumping of imported products in order to protect domestic industry from dumping practices. Currently, quite a few imported goods from one country enter Indonesia and are sold at unusual prices. If this happens continuously, it could result in losses or hamper the growth of domestic industry. The current set of laws as a reference for accusing and defending dumping practices and being subject to import duties is still in the form of PP, namely PP Number 34 of 1996 which is a policy rule based on Law Number 10 of 1995 concerning "Customs which was subsequently amended by Law No. 17 of 2006". To prevent dumping practices, national legal policies that have been drafted are guided by GATT-WTO policies and should be in the form of laws. It should be noted that the existence of a set of national laws to prevent dumping problems is indeed very weak, namely as an instrument to protect domestic products from dumping practices originating from other countries and as a legal instrument to face accusations of dumping from foreign countries. In accordance with Sukarmi's opinion in this article, "it is not explained further what happens if normal prices are not obtained because there may be domestic producers who specialize in similar products which can only meet foreign markets or for export consumption, are there other price guidelines that can be determined? used as a substitute for the normal price."

Next, Article 1 point 11 states that the meaning of "loss is as follows:

- a. Disadvantages of domestic industries producing similar goods:
- b. Threat of losses to domestic industries that produce similar goods
- c. The development of domestic industry is hampered."

There is no further explanation regarding these three things, their implementation can have various meanings in the business realm. Among other things, as a form of intended loss, when is the import of similar goods considered a risk for domestic industry which has the impact of hampering the development of domestic industry and so on. Based on whether or not there is an explanation regarding the definitions of "loss" and "normal price" in Government Regulations. Number 34 of 1996, based on the opinion of Paul B. Stephan in Sukarmi, "care is needed in the application and interpretation of the anti-dumping provisions in the GATT-WTO into national regulations. With the existence of the Anti-dumping Law, the government can take action against imported goods that are sold cheaper than their country of origin, or a third country or cheaper than the calculation of production and transportation costs plus normal profits which is detrimental to domestic producers."

As a result of the lack of legal instruments regarding anti-dumping as described above, this creates obstacles, namely in efforts to legally protect Indonesian export products from accusations of dumping abroad, or in efforts to legal protection for domestic goods based on domestic dumping practices. Through the issuance of Government Regulation Number 34 of 1996 concerning compensatory import duties, anti-dumping import duties, and the formation of KADI, the Indonesian government can impose anti-dumping import duties on imported products that are proven to be marketed using dumping prices. A number of things contained in Government Regulation Number 34 of 1996 include: In accordance with article 2 PP no. 34 of 1996, "with complaints from domestic producers of imported goods, KADI will then carry out further

investigations". In accordance with the evidence submitted and the investigation carried out, KADI gives a decision to accept or reject and begins to investigate. Next in article 9 PP No. 34 of 1996 states "an investigation into an item suspected of being dumped by KADI can be carried out at any value or without a request from the domestic producer".

For domestic industry, anti-dumping policy regulations as stated above are certainly very necessary. So that domestic business actors can use the mechanisms stated in Government Regulation Number 34 of 1996 if they feel disadvantaged or threatened because they import goods using dumping prices. In accordance with this policy, when accusing dumping, you must have strong evidence and comply with the requirements set by the WTO. In order to be able to impose anti-dumping import duties in accordance with the requirements, namely: there is a price for the same product being sold cheaper than the domestic price in the country of origin, the price is detrimental, and there is a causal link between the losses that arise and the dumping price. The anti-dumping policies that a number of countries have, have a very legitimate role in the free trade system, but not so if they are misused as a means of protectionism. The absence of sanctions for complaints that are not followed by proof of dumping is very detrimental to exporters, especially if they have spent quite a lot of money in disclosing that the product was not dumped.

E. Closing

1. Regulations regarding Anti-Dumping are also guided by international policies (Agreement on Implementation of Article VI GATT and Agreement on Subsidies and Countervailing Duties), and national legal policies, namely Law Number 10 of 1995 concerning Customs. An anti-dumping policy is really needed to provide protection for domestic industries from practices that could be detrimental to domestic industries that produce similar products.
2. To implement regulations that can be implemented in Indonesia to prevent dumping practices, KADI will first conduct an investigation to obtain evidence of imported products with indications of dumping which could cause losses to the domestic industry. Based on this evidence, the government, through KADI, can impose anti-dumping import duties on importers. Or on the contrary, in dealing with dumping accusations, a number of things that can be done are understanding in depth the anti-dumping provisions in the country of the accuser, carrying out good cooperation with investigators from the importing country who are looking for facts in the field, coordinating within the relevant product association and obtaining various information from the relevant agencies, and always use legal consultants (lawyers) who are experts in the field of anti-dumping

REFERENCE

- Agreement on Implementation of Article VI of General Agreement on Tariff and Trade. (1994)
- Febrina, Rezmia. "Dampak Kegiatan Jual Rugi (Predatory Pricing) Yang Dilakukan Pelaku Usaha Dalam Perspektif Persaingan Usaha." *Jurnal Selat* 4, no. 2 (2017)
- Serlita Aprita & Rio Adhitya. (2020). *Hukum Dagang Internasional*. Depok: RajaGrafindo Persada.
- Nita Anggreini. (2017). Negara Berkembang, Perlindungan Produk Dalam Negeri Dalam Kontekshukum Perdagangan Internasional world Trade Organization (WTO). *Al Ahkam*, 13 (1), DOI: <http://dx.doi.org/10.37035/ajh.v13i1.1749>
- Sukarmi. (2002). *Regulasi Antidumping di Bawah Bayang-Bayang Pasar Bebas*, Sinar. Jakarta: Grafika.
- Lusy K.F.R. Gerungan. (2014). *Kajian Yuridis Kebijakan Antidumping Dalam Perdagangan Internasional*. *Lex Administratum*. II (3),
- Sukarmi. (2002). *Regulasi Antidumping di Bawah Bayang-Bayang Pasar Bebas*, Sinar. Jakarta: Grafika.
- Natabaya, H.A.S. (1996). *Penelitian Hukum tentang Aspek hukum Anti dumping dan Implikasinya bagi Indonesia*, BPHN, Departemen Kehakiman RI.
- Muhajir La Djanudin. (2013). *Mekanisme Penyelesaian Sengketa Dumping Antar Negara*. *Lex Administratum*, I (2),
- Sunarti Ambarita. (2018). *Peranan Komite Anti Dumping Indonesia (Kadi) Dalam Pelaksanaan Tindakan Anti Dumping Berdasarkan Peraturan Pemerintah Nomor 34 Tahun 2011*
- Christophorus Barutu, (2012). *Dumping dalam Perdagangan Internasional dan Mekanisme Penyelesaian Sengketa Dumping Melalui World Trade Organization*. *Indonesian Journal of International Law*. 4 (2), 374. DOI: <http://ijil.ui.ac.id/index.php/home/article/view/143>
- Undang-Undang No. 7 Tahun 1994 Tentang Agreement on Establishing The World Trade Organization/WTO (Pengesahan Persetujuan Pembentukan Organisasi Perdagangan Dunia)
- Undang-Undang No. 10 Tahun 1995 Tentang Kepabeanan
- Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan