Analysis of the Binding Power of a Trade Agreement between Countries that Impact on Reducing a Country's Immunity

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ABSTRACT

In its development, international relations between states and international organizations can no longer be regulated based on international customs in line with the increasing complexity of problems faced by states and international law subjects. All activities in relations between nations and between countries are essentially diplomatic relations, which in essence are efforts to maintain relations between countries. The principle of immunity is a basic principle in international law which emphasizes that a sovereign state cannot prosecute the behavior of a foreign state.

Keywords- International Agreement, Immunity Principle

INTRODUCTION

Modern states cannot be separated from international relations. There are various kinds of motivations for countries to get involved in international relations. To meet their various needs, countries must connect with other countries or international organizations. In its development, international relations between states and international organizations can no longer be regulated based on international customs as the problems faced by states and subjects of international law become increasingly complex. In fact, nowadays it has become a necessity for subjects of international law to express their relationships in an international agreement. In the concept of international trade, one very important source of law is the provisions of the GATT/General Agreement on Tarriff and Trade (General Agreement on Tariffs and Trade) which in its course gave birth to the WTO/World Trade Organization (World Trade Organization). GATT was formed through an agreement between 23 countries in October 1947. The birth of the WTO in 1994 made GATT an annex to the WTO so that automatically WTO member countries were also bound by the provisions of the WTO and were therefore referred to as GATT/WTO members. Apart from tariffs and trade, GATT is also a general rule for provisions relating to Agreements on Services (GATS), Capital Investments (TRIMs) and agreements on Intellectual Property Rights (TRIPS).[1]

In principle, the World Trade Organization (WTO) is a means of encouraging orderly and fair free trade in this world. In carrying out its duties, to encourage the creation of free trade, the World Trade Organization (WTO) applies several principles pillars of the World Trade Organization (WTO). With trade liberalization rolled out through WTO rules, it inevitably encourages member countries to follow WTO rules. Trade liberalization initiated through WTO rules leads WTO member countries to open their markets to other member countries. There are almost no more barriers to market entry for WTO member countries, the setting of tariffs as a means of protecting foreign products from entering the domestic market is slowly being abandoned, so that countries that are WTO members inevitably, either directly or indirectly, adhere to it. market economy, namely the decentralization of decisions given to business actors regarding the amount and how to process production so that business actors are given free space to make decisions regarding their business activities.[2]

[1] Huala Adolf, Hukum Perdagangan Internasional, Raja Grafindo Persada, 2005, hlm 97
[2] Jur Udin silalahi dkk, Analisis dan Evaluasi Hukum Tentang Perlindungan Industri Dalam Negeri (UU Nomor 5 Tahun 1984 tentang Perindustrian), Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM RI, Jakarta, 2011, hlm 1

Basically, developed countries are the ones who 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 industry, 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 a free trade system. The method that is often used, among others, is by requesting a reduction in import duties on products and services from developed countries in developing countries.[3]

RESEARCH METHODS

The research method used in this paper is the normative juridical method, which aims to analyze the binding power of a trade agreement between countries which has an impact on reducing a country's immunity. This approach involves reviewing applicable laws and regulations, court decisions, and related legal literature to understand the legal principles underlying trade agreements. The data collected will be analyzed qualitatively, with a focus on analyzing the binding power of a trade agreement between countries which has an impact on reducing a country's immunity, in order to obtain a comprehensive understanding of the validity of legal arguments in trade agreements.

DISCUSSION

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Industrial countries without barriers mean it will be easier to sell their goods and services to developing countries. Therefore, at the same time, globalization will give birth to the grouping of societies and countries into new classes based on economic capabilities, including in Indonesia. Therefore, in entering this era of free trade, Indonesia must have solid preparations to face the impacts that arise on the Indonesian economy and/or trade in all aspects, including legal aspects, especially law. economics as a legal institution that contains policies to direct economic activity in a certain direction.[4]

The policy of implementing free trade in Indonesia will indeed create its own dilemma. On the one hand, domestic national products are still not ready, but the international market has demanded these conditions. This condition is further exacerbated by the lack of a sense of nationalism and love for the country. This low feeling of patriotism and nationalism will have an impact on awareness of using national products, because basically the free trade era is a competition between national products and foreign products. Some national products even have to be went out of business because they were unable to compete with foreign products. Foreign products will slowly become kings while national products will become slaves. For countries that are ready to face it, free trade can be a problem advantage because the product can get new markets without national boundaries, but this is not the case for countries that are not yet ready. In plain view, the implementation of free trade could cause a burden on the domestic industrial sector. Currently, we can easily find foreign products in various shopping centers. From fruit, electronic goods, food to textiles, even batik has been imported from China. The invasion of imported textile products from China into the domestic market seems increasingly unstoppable, especially since the enactment of the China-ASEAN Free Trade Area (ACFTA) free trade agreement. Even imported textile products from China are increasingly diverse. They also supply batik, which is a characteristic of authentic Indonesian national products, in large quantities and at low prices. National products that cannot compete with foreign products will slowly disappear on the market. The rationale for implementing trade globalization is based on the concept of Adam Smith's thinking,[5] namely trading through specialization (comparative advantage), developed by David Ricardo,[6] that a country will still gain profits (gain from trade) if it concentrates activities with relatively lower costs than other alternative activities in that country, even though its partner countries have absolute adventage in all fields. On the other

[3] Mamnum Laida, Dampak Liberalisasi Perdagangan bagi Pelaku Bisnis Indonesia, http://www.baubaupos.com/page.php?kat=10&id_berita=1104, diakses tanggal 2 Maret 2024)
[4] Bismar Nasutin, Hukum kegiatan Ekonomi, Books Terrace & Library, Bandung, 2009, hlm 3
[5] Adam Smith,The Wealth of Nations, Harvard University Press, Ed. Edward, Boston, 1989, p.121.
[6] David Ricardo, Principles of Political Economy and Taxation 1817, Harvard University Press, Boston, 1987, p. 101

hand, to meet internal needs for other products, the country concerned can import. Supportive views The globalization of trade was recognized by Paul Smeul, winner of the Nobel Prize in economics, that the theory of comparative advantage is "...the most beautiful idea in economics.[7]

A country has an interest in being present in international relations. This is very essential in making it easier for the country to meet the various needs of its country, so that it can carry out its duties in fulfilling justice and welfare for its citizens optimally, through relations and cooperation with other countries. This gives rise to a tradition for a country to present its representatives in other countries. All activities in international and inter-state relations are essentially diplomatic relations which are essentially efforts to maintain relations between countries.[8] In carrying out their duties, state representatives are protected by the principle of immunity. The principle of immunity is a basic principle in international law which confirms that a sovereign state cannot judge the behavior of a foreign state.[9] Based on the case of Pinochet vs Bartle & Ors, Lord Browne Wilkinson emphasized that in international law the scope of the principle of immunity is: personal immunity from heads of state, ambassadors and diplomatic representatives of foreign countries, which means that they cannot be tried or prosecuted for actions related or not to matters carried out for the benefit of the state Immunity provides ratione personae. [10] This means that every head of state, ambassador or state representative (hereinafter referred to as a Foreign Country Representative, abbreviated to PNA) has personal immunity from the jurisdiction of a foreign country. The exception to this principle is Article 31, paragraph (1) of the Vienna Convention of Diplomatic Relations, 1961, which excludes the application of this immunity principle to several civil actions such as:

legal action regarding ownership of fixed assets, inheritance, and professional and commercial actions outside of diplomatic duties.

At the beginning of the twentieth century, many countries still implemented absolute immunity, but since the 1950s non-communist countries that use the civil law tradition in Europe have shifted to applying the principle of more limited immunity),[11] found in court decisions.[12] By implementing limited immunity, foreign countries will have immunity in exercising public capacities (acta jure imperii) and cannot apply this immunity in exercising civil capacities (acta jure gestionis),[13] which is applied in the field of civil and commercial activities.[14] All disputes between equal and sovereign legal subjects cannot be tried by foreign courts, unless this occurs due to a waiver of rights based on an agreement. This is what is then expressed in Article 31 paragraph (1) of the Vienna Convention of Diplomatic Relations, 1961.

Currently, the application of the principle of limited immunity is very clearly seen in the United Nations Convention on Jurisdictional Immunities of States and Their Property (hereinafter referred to as the UN Convention on Jurisdictional Immunities). In the convention it is emphasized that this Convention is not reduce the privileges and immunities enjoyed by a State under international law in connection with the exercise of the functions of:

1. diplomatic missions, consular posts, special missions, missions to international organizations or delegations as organs of international organizations or international conferences; and people who

[7] Robert Gilpin, The Political Economy of Internasional Relations (Princeton University Press, 1987), hlm.172-4
[8] Kementerian Luar Negeri Republik Indonesia, Kedutaan/Konsulat, 2 Maret, 2023. Diakses dari: https://kemlu.go.id/portal/id/kedutaan.
[9] Paschal Oguno, The Concept of State Immunity under International Law: An Overview. International Journal of Law ISSN: 2455-2194, RJIF 5.12, Volume 2; Issue 5; September 2016; Page No. 10-24
[10] All E.R. 97, R., ex parte Pinochet v Bartle and ors, Appeal, [1999] UKHL 17, [2000] 1 AC 147, [1999] 2 All ER 97, [1999] 2 WLR 827, (1999) 38(3) ILM 581, (2002) 119 ILR 135, ILDC 1736 (UK 1999), 24th March 1999, United Kingdom; House of Lords [HL].
[11] Joseph Dellapenna, The Law of State Immunity, The American Journal of International Law · July 2005.
[12] Gamel Moursi Badr, State Immunity: An Analytic and Prognostic View, 65 I.L.R. 39 (1984) 113. Ia menunjukkan peralihan prinsip imunitas absolut ke imunitas terbatas melalui Judgment of Jan. 17, 1973 (Spain c. S.A. de l'Hotel George V) (Cass. Civ. Ire),) di dalam Journal Du Droit International 170 (1986)
[13] L. Fisler Damrosch et al., International Law (4th edn, 2004), hlm. 1198.
[14] Paschal Oguno, id

connect with them;

2. Head of state and his position;

3. Aircraft or celestial bodies owned or operated by a State.

In this situation, determining the standard of protection that must be applied must be analyzed using International Law, International Private Law and International Labor Law.

In International Law there is the principle of par in parem non habet iurisdictionem which can be used to determine whether the court where the PNA is located has the authority to decide the case, and whether the law of that court (lex fori) can be applied to resolve the case;

1. In the HPI there is the principle of forum convenience which is used to determine which court has the most authority to resolve cases, and the principle of lex loci laboris, which can be used to determine the applicable law to determine the legal standards of protection that must be provided to local employees;

2. In International Labor Law there is the ILO's Declaration of Fundamental Rights and Principles at Work, which guarantees that protection for workers must not be worse than the protection issued by the eight ILO core conventions.[15]

CONCLUSION

In its development, international relations between states and international organizations can no longer be regulated based on international customs as the problems faced by states and subjects of international law become increasingly complex. In fact, nowadays it has become a necessity for subjects of international law to express their relationships in an international agreement. This is very essential in making it easier for the country to meet the various needs of its country, so that it can carry out its duties in fulfilling justice and welfare for its citizens optimally, through relations and cooperation with other countries. This gives rise to a tradition for a country to present its representatives in other countries. All activities in international and inter-state relations are essentially diplomatic relations which are essentially efforts to maintain relations between countries. The principle of immunity is a basic principle in international law which confirms that a sovereign state cannot judge the behavior of a foreign state. Based on the case of Pinochet vs. Bartle & Ors, Lord Browne Wilkinson emphasized that in international law the scope of this principle of immunity is: personal immunity of heads of state, ambassadors and diplomatic representatives from foreign countries, which means that they cannot be tried or prosecuted for their actions. actions related or not to matters carried out for the benefit of the state. Immunity provides ratione personae. This means that every head of state, ambassador or state representative (hereinafter referred to as a Foreign Country Representative, abbreviated to PNA) has personal immunity from the jurisdiction of a foreign country.

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