

Legal Construction of Trade Security Measures (*Safeguards*) against Industrial Import Protection in Indonesia

Amostian¹, Yusriadi², Ana Silviana³

¹ Doctoral Program in Law, Faculty of Law, Diponegoro University, Semarang

^{2,3} Lecturer in Doctoral Law Program, Faculty of Law, Diponegoro University, Semarang
Jl. Prof. Soedarto, SH., Tembalang, Semarang
amostian@students.undip.ac.id.

ABSTRACT

The purpose of this study is to analyze: 1) What are the Rules of International and National Trade Law? 2) How does international trade impact domestic industry? 3) What are the Trade Safeguards against the protection of Industrial Imports in Indonesia? The research method used is normative juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) *The World Trade Organization* is the only world trade organization that has a function, namely to regulate and facilitate international trade, so that there are several agreements and regulations in it, in order to create a harmonization of law. The organization was founded in 1995 which is a continuation of GATT. This organization is independent of the UN specialized agency, so this body exists independently. The organizational structure of the WTO itself follows the structure of its predecessor, the 1947 GATT. 2) The development of international trade in the context of economic globalization supported by the application of the principles of trade liberalization or free trade produces a significant influence on the laws applicable to each participating country. 3) Provisions regarding *safeguard measures* in Indonesia have several applicable legal rules, among others, in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Presidential Decree of the Republic of Indonesia Number 84 of 2002 concerning Security Measures for Domestic Industry from Due to the Surge in Imports, Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 84 / MPP / Kep / 2/2003 concerning Procedures and Requirements for Investigation Request on Safeguarding the Domestic Industry from the Aftermath of Import Surge and most recently Government Regulation of the Republic of Indonesia Number 34 of 2011 concerning Anti-Dumping Measures, Reward Measures and Trade Safety Measures

Keywords: *Construction, Law, Measures, Safeguards, Trade, Safeguards, Protection, Imports, Industry, Indonesia*

INTRODUCTION

Background

International trade in short is trade carried out by residents of a country with other residents on the basis of mutual agreement. According to Rafiqul Islam the limits of international trade as, "*...a wide ranging, transnational, commercial exchange of goods and services between individual business persons, trading bodies and States*".¹ There are also factors supporting the occurrence of international trade such as for saving production costs, because if a country does not have sufficient knowledge and technology to design, make or produce its own will definitely require a lot of money, therefore many other countries prefer to import certain products. In addition, it can also increase profits that have an impact on state finances, such as exporting goods. Indonesia can also establish diplomatic relations with other countries through international trade. International trade also often experiences various problems, generally in terms of protection of local traders. Therefore, a country is expected to make a regulation. Harmonization of national regulations with WTO rules is very important in order to facilitate trade and not become a *trade barrier*.²

The set of international law governing trade relations between countries is contained in the GATT (General Agreement on Tariffs and Trade) document signed by countries in 1947, and entered into force in 1948. From time to time, the provisions of the GATT were refined through various negotiations, most recently through the Uruguay Round negotiations which succeeded in establishing a world trade organization called the World Trade Organization (WTO).³ This body will further implement and supervise the rules of international trade that have been pioneered by GATT since 1947. Trade that crosses a country's borders has an important role to play if the world economy is expected to return to a faster growth path. One field that is currently quite developed is free trade, including free trade between countries in the

¹ Rafiqul Islam, International Trade Law, (NSW: LBC, 1999), p. 1

² Hambali, Compulsory Implementation of Halal Certification for Foreign Products According to the Agreement on Technical Barriers to Trade Agreement, Legal Conscience Journal of Legal Sciences, Vol.2 No.2 December 2019. p.48

world, where the principle of free trade is recognized as the best and fair solution for the running of the world economy.³

The World Trade Organization is the only world trade organization that has a function, namely to regulate and facilitate international trade, so there are several agreements and regulations in it, in order to create a harmonization of law. The organization was founded in 1995 which is a continuation of GATT. This organization is independent of the UN specialized agency, so this body exists independently. The organizational structure of the WTO itself follows the structure of its predecessor, the 1947 GATT. GATT's highest body, the *Contracting Parties*, in the WTO was changed to the *Ministerial Conference*. This body meets once every two years, and all policies related to multilateral trade are carried out through this body.

Indonesia itself has ratified the General Agreement of Traffic of Trade through Law Number 7 of 1994 concerning the Ratification of the Agreement on Establishing the World Trade Organization. By ratifying it, Indonesia is bound by WTO provisions. The WTO has several basic principles that are the basis of the multilateral trading system. These basic principles underlie WTO agreements.⁴

Minister of Trade Regulation No. 37/M-Dag/Per/9/2008 specifies that what is meant by safeguard measures is action taken by the government to recover serious losses or prevent the threat of serious losses to domestic industries as a result of a surge in imports of similar goods or goods that are directly rivals to the results of domestic industries with the aim that domestic industries that experience serious losses or threats of serious losses can make structural adjustments.⁵

Serious losses and the threat of serious losses suffered by domestic industries on yarn commodities (other than sewing thread) from synthetic and artificial staple fibers caused by this surge in imports are things that have been regulated in the

³ Syahmin AK, International Commercial Law in the Framework of Analytical Studies, (Jakarta: Raja Grafindo Persada, 2006), p. 12

⁴ Christophorus Barutu, Antidumping, Subsidy, and Safeguard Provisions in GATT and WTO, Ct,1., PT. Citra Aditya Bakti, Jakarta, 2007, p.14

⁵ Muhammad Taufiq, The Safeguard Measures Against The Import Of Wheat Flour In Accordance With The Gatt/Wto Principles In Indonesia, Journal Of Restorative Justice Vol. 5 No. 1, May 2021, 54

implementation of security in Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing The World Trade Organization (Agreement on the Establishment of the World Trade Organization). This huge surge in imports is considered to have caused serious losses and the threat of serious losses to the Textile and Textile Products Industry in Indonesia. General rules regarding domestic industry security measures due to import surge have been regulated in Law No. 7 of 2014 concerning Trade, Presidential Decree of the Republic of Indonesia No. 84 of 2002 and Government Regulation of the Republic of Indonesia No. 34 of 2011 concerning Antidumping Measures, Reward Measures, and Trade Security Measures. This research will also discuss the criteria for serious loss clauses and the threat of serious losses in the regulation of safeguards both in the international context, namely agreements and agreements that have been made by the WTO and applicable regulations in Indonesia both through ratification of international agreements and Indonesia's own domestic policy. This is because Indonesia as an ASEAN member state must certainly comply with international regulations agreed through agreements and agreements, but based on the exceptions from these agreements and agreements Indonesia still has to protect its domestic industries so as not to have an impact on the existence of local trade.⁶

Problem Statement

1. What are the Rules of International and National Trade Law?
2. How does international trade impact domestic industry?
3. What are the *Trade Safeguards* against the protection of Industrial Imports in Indonesia?

Theoretical Framework

1. Protection Theory

According to Muchsin, legal protection can be preventive and repressive.

Preventive protection is protection provided by the government with the aim of

⁶ Instien A.D. Yuliana, Juridical Review of Safeguards Measures for Yarn Products from Synthetic and Artificial Staple Fibers Related to Import Surge, Visio Justisia Law Journal Volume 1, Number 1, July 2021, 35.

preventing violations before they occur. This preventive protection is contained in laws and regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation. While repressive legal protection as a form of final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if there has been a dispute or a violation has been committed.⁷

According to Nurmadjito, legal protection arrangements for consumers are carried out by:⁸

1. Creating a consumer protection system that contains access and information and guarantees legal certainty;
2. Protect the interests of consumers in particular and the interests of business actors;
3. Improve the quality of goods and services;
4. Provide legal protection to consumers from deceptive and misleading business practices;
5. Combining the implementation, development, and regulation of legal protection for consumers with the field of protection in other fields.

Research Methodology

This research is included in the type of doctrinal research, where the approach method used is normative juridical. The study method used in this study is normative legal *research*, which is a study conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.⁹

⁷ Muchsin, *Op.Cit.*, p. 20

⁸ Nurmadjito, Readiness of Laws and Regulations in Facing the Globalization Era, p. 7, as quoted by Lindu Aji Saputro, "Analysis of Legal Protection from Attempts to Falsify Halal Certification and Labeling as a Form of Product Halal Legitimacy in Indonesia", Surakarta: Faculty of Law, Sebelas Maret University, Surakarta, 2012, p. 30.

⁹ Soerjono Soekanto, *Introduction to Legal Research*, Jakarta: University of Indonesia Press, 1983, p.51.

RESEARCH RESULTS

Rules of International Trade Law

The World Trade Organization is the only world trade organization that has a function, namely to regulate and facilitate international trade, so there are several agreements and regulations in it, in order to create a harmonization of law. The organization was founded in 1995 which is a continuation of GATT. This organization is independent of the UN specialized agency, so this body exists independently. The organizational structure of the WTO itself follows the structure of its predecessor, the 1947 GATT. GATT's highest body, the *Contracting Parties*, in the WTO was changed to the *Ministerial Conference*. This body meets once every two years, and all policies related to multilateral trade are carried out through this body.¹⁰

Next there is the *General Council*. This body functions as a supervisor and implementation of functions and assists in the day-to-day work of the Ministerial Conference. Below are also 3 other councils listed in Annex 1, namely, *Council for Services*; *Council for Goods*; and TRIPS Council. In addition, the General Council has two other functions. First, as a *Dispute Settlement Body*. The second function, as a trade policy review body of GATT (*Trade Policy Review Body*) member countries.¹¹

WTO as an international trade organization regulates 5 (five) principles that must be held by all members including the principle of non-discrimination, the principle of reciprocity, the principle of quantitative barriers, the principle of fair trade, the principle of binding tariffs, so that each WTO member country must be able to comply with the amount of tariffs agreed by countries in accordance with the arrangements recorded in WTO regulations. *Free Trade* or *trade openness* has a common goal between countries in order to be able to create the world economy to continue to develop together by reducing obstacles in the form of tariffs and non-tariffs for the

¹⁰ Bagus Wyasa Putra, Aspects of Private International Law in Bandung International Business Transactions: PT. Refika Aditama, 2000, pp. 3-4, and see H.S. Kartadjoemena, Substance of GATT/WTO Agreement and Dispute Settlement Mechanism, system, Institution, Procedure, Implementation, and Interests of Developing Countries. University of Indonesia- Press. 2000l, pp. 1-2

¹¹ M. Setiawan, Emvalomatis G., Lansing A. O., Structure, Conduct, and Performance: Eviedence From Indonesian Food and Beverages Industry. Springer-Verlag Berlin Heidelberg, 2013.

benefit of each country in conducting trade transactions so that it is commonly referred to as trade policy or commercial policy) to achieve economic prosperity.¹²

Trade openness or free trade can optimize total world output and benefit the countries involved, but in practice countries still impose restrictions or restrictions on international trade. Different economic and political policies in each country create complexities of international trade, including through the policy of imposing tariffs and non-tariff barriers such as standardization and prohibition and restriction of imported products. The imposition of tariffs aims to protect domestic industries, increase government revenue, correct the impact of trade imbalances, and overcome trade distortions. The¹³ WTO has three separate efforts to respond to the interests of developing countries, namely WTO agreements containing developing country-specific provisions, the *Committee on Trade and Development* handles and discusses the interests of developing countries in the WTO, the WTO Secretariat provides technical assistance (generally in various types of training) to developing countries. The free trade system shows the importance of protecting national interests with the framework of protecting national business actors, such as the protection of industrial infant and how to determine the direction of national economic development through responsive national legal instruments both internally and externally.¹⁴

Indonesia itself has ratified the *General Agreement of Traffic of Trade* (GATT) through Law Number 7 of 1994 concerning the Ratification of the Agreement on Establishing the World Trade Organization. By ratifying it, Indonesia is bound by WTO provisions. The WTO has several basic principles that are the basis of the multilateral trading system. These basic principles underlie WTO agreements. The basic principles are:¹⁵

1. Equal treatment for all members (Most Favoured Nations Treatment-MFN);

¹² Nanang Suhendra, Imposition of Import Duties on Temporary Trade Security Measures (Bmtps) on Imports of Fabric Products in 2019 as a result of an Increase in Textile Import Volume, Dharmasisya Journal of the Master of Law Program, Faculty of Law, University of Indonesia Volume 1 Number 2 (June 2021) 927-944

¹³ Hata, International trade in the GATT and WTO systems-Legal and Non-Legal Aspects, First Printing, PT Refika Aditama, Bandung, September 2006, p. 130

¹⁴ Luhur Sanitya Pambudi & Fifiana Wisnaeni, The Effect of the Policy of Imposing Security Measures Import Duties on the Import of Fabric Products, Journal of Law Magnum Opus Volume 5 Number 2,

¹⁵ Christophorus Barutu, Antidumping, Subsidy, and Safeguard Provisions in GATT and WTO, Ct,1., PT. Citra Aditya Bakti, Jakarta, 2007, p.14

2. Tariff Increase (Tariff Binding);
3. National Treatment;
4. Protection is only through tariffs;
5. Special and different treatment for developing countries (S&D).

The WTO also has a lot of international agreements related to international trade issues that have been born since the establishment of the WTO including agreements on special aspects of trade in goods such as:¹⁶

- a. *Agreement on Agriculture* ;
- b. *Agreement on the Application of Sanitary and Phytosanitary Measures* , hereinafter referred to as SPS Agreement;
- c. *Agreement on Technical Barriers to Trade* hereinafter referred to as TBT Agreement;
- d. *Agreement of Implementation of Article VI of the General Agreement on Trafficts and Trade 1994* hereinafter referred to as Anti-Dumping Agreement;
- e. *Agreement on Subsidies and Countervailing Measures* ;
- f. *Agreement on Safeguards*;
- g. *General Agreement on Trade in Service* (Agreement on trade in services, hereinafter referred to as GATTs)

These agreements are usually the legal basis when there is an international trade dispute between countries. For example, regarding the establishment of *safeguards* which sometimes becomes a problem among countries because some requirements are quite numerous and strict. *Safeguards* itself has a meaning where it is an emergency right of a government to limit imports if there is an increase in imports that cause serious *injury* or *threat of serious injury* to a country's domestic industry.¹⁷

The *safeguards* are intended to avoid a situation where WTO members face a dilemma between allowing their home market to be severely disrupted by imported goods or withdrawing from the deal. If the second option is chosen by many countries, it means that the agreement becomes ineffective or reduces the level of the

¹⁶ Peter van den Bossche et al, Introduction to WTO Law, Yayasan Obor Indonesia, Jakarta, 2010, p. 4

¹⁷ Richard Samuel, FX Joko Priyono, Darminto Hartono, 2017, "Vietnam's Lawsuit Against Indonesia Regarding Safeguards of Non-Alloy Iron or Steel Rolled Products", Diponogoro Law Journal, Vol.2, No.2, 2017, p.1

liberalization process. That is why GAAT 1994 has special conditions in emergency measures stipulated in Article XIX GATT 1994 (*Emergency Action on Imports of Particular Products*) is applied conditions conditions for how these safeguards can be implemented.¹⁸

The Agreement on Safeguard actually has regulations on the application of safeguard measures in accordance with Article XIX of GATT 1994, this can be seen in Article 1 General Provision which reads, "*The Agreement establishes rules for the application of safeguard measusres which shall be understood to mean those measures provided for in Article XIX of GATT 1994.*"¹² Article 2:1 also includes more detailed requirements than the provisions of GATT 1994, namely, "*A member may apply a safeguard measure to a product only if that member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.*"¹⁹

Within the framework of the WTO, *the Safeguards* mechanism is regulated in Article XIX (*Emergency Action on Imports of Particular Products*) and further elaborated in *The Agreement on Safeguards (SG Agreement)*. As with Anti-Dumping and Anti-Subsidy, the implementation of the Safeguards mechanism must also meet the following requirements.

1. A surge in imports, both in absolute and relative terms.
2. The surge in imports is the result of unexpected developments and is the result of fulfilling obligations under WTO agreements.
3. Serious losses or threats of serious losses to domestic industries that produce similar or directly competitive goods.
4. Causality relationship that shows that the loss or threat of loss is really caused by a surge in imports

¹⁸ Indonesian Trade Security Committee (KKPI), Industrial Protection Through World Trade Organization Safeguards Agreement, Brochure, p.2

¹⁹ World Trade Organization, https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm#art3

Safeguards *can* only be taken after an investigation by a competent authority based on pre-existing procedures. Although in some ways there are similarities with the Anti Dumping and Anti Subsidy mechanisms, *the Safeguards* mechanism differs in several other respects. First, this mechanism does not require fraudulent business practices from foreign competitors as in Anti-Dumping and Anti-Subsidy. Second, Safeguards action can be taken quickly, in the event of a critical circumstance. This is unlike Anti-Dumping and Anti-Subsidy which can only be applied after in a preliminary investigation the interested parties are given the opportunity to respond and present evidence. Third, *Safeguards can* be carried out in addition to the imposition of additional import duties also through restrictions on import quantities, while Anti-Dumping and Anti-Subsidy measures can only be carried out through additional import duties. Fourth, *the Safeguards* act requires compensation to foreign competitors affected by the action. If not, then the foreign competitor is given the authority to suspend concessions or other obligations, such as retaliation, as commensurate.²⁰

Impact of International Trade on Domestic Industry

The term free trade describes the conditions of exchange of goods and services between countries that take place without any export-import barriers, or if there are barriers, then the number, type, and level are very minimal. In economics, 2 (two) types of barriers are known in free trade, namely tariff and non-tariff.²¹ Minimization to the removal of barriers in international trade have various impacts on the domestic economy, namely being able to access goods that are not produced in their own country, benefit from specialization, expand markets and increase profits, transfer of modern technology.

The development of international trade in the context of economic globalization is supported by the application of the principle of trade liberalization or free trade (*free*

²⁰ Nandang Sutrisno, Strengthening the Legal System of Trade Remedies, Protecting Domestic Industries, JOURNAL OF LAW NO. 2 VOL. 14 APRIL 2007, 238.

²¹ Elly Erawaty, Economic Globalization and Trade: An Introduction (Bandung: PT Citra Aditya Bakti, 2003), 4.

trade) resulting in a significant influence on the laws applicable to each participating country. The participation of countries in the world in international trade activities is accompanied by adjustments in their respective legal frameworks because the holding of international trade will have an impact on the legal instruments of their respective countries. In the trade liberalization system, the government of a country will usually make a series of macroeconomic policies as 1 (one) package, ranging from tax reform, reduction/elimination of import tariffs, to renewal of foreign investment policy.²²

Trade Safeguards against *the* protection of Industrial Imports in Indonesia

As a country whose industrial growth rate is still in its development period, Indonesia still carries out a high enough protection policy against imported goods to protect domestic industries. Differences in customs policies reflect differences in the competitiveness of commodities produced by each country. Similarly, the level of production efficiency of more developed AEC member countries is generally higher than Indonesia, so that these countries are able to apply very low import duties that have a positive impact on their trade. Meanwhile, Indonesia has not dared to implement a low tariff policy. This is certainly done to protect and maintain domestic production by imposing a high enough entry fee, both to compete with import production and impose quotas for certain goods.²³

Provisions on 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 stipulated in the form of Presidential Decree Number 84 of 2002 concerning measures to safeguard domestic industries from the effects of import surges that have been agreed internationally whose contents are as described above. Domestic industries that experience serious losses or threats of serious losses caused by a surge in imports of similar or directly competitive goods can apply for an investigation of *safeguard* measures to the Indonesian Trade Security Committee (KPPI). The parties who can apply are manufacturers, producer associations, workers'

²² Ibid

²³ Ade Pratiwi Susanty, Legal Protection for the Continuity of Micro, Small and Medium Enterprises for the Implementation of the ASEAN Economic Community, Journal of Law Respublica, Vol. 16, No. 2 of 2017, 326

organizations, importers, importers' associations, user industries, exporters, exporters' associations, governments, individuals, or related legal entities. The institutions authorized to handle safeguard measures are the Indonesian Trade Security Committee (KPPI) and the Trade Security Directorate (DPP).²⁴

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

1. Applicant identification
2. Full description of the examined items
3. Complete description of similar or directly competing goods
4. Name of exporter and country of exporting and or country of origin of goods
5. Disadvantaged domestic industries
6. Information about serious losses and/or threats of serious harm
7. Information on import data of goods investigated.²⁵

Government Regulation of the Republic of Indonesia Number 34 of 2011 concerning Anti-Dumping Measures, Reward Measures and Trade Safety Measures. Article 1 paragraph (1) explains that trade security measures are measures taken by the government to recover serious losses or prevent the threat of serious losses suffered by domestic industries as a result of a surge in the number of imported goods either in absolute or relative to similar goods or goods that are directly competitive. There are also procedures for implementing safeguards in Indonesia, such as:

- a. Domestic industries/or other parties in the country may submit a written request regarding the KPPI investigation to implement Trade Security Measures;
- b. The application is completed with several documents in accordance with the provisions in Article 72 paragraph (2);

²⁴ Erwin, et al, Community Participation in Safeguard Measures for Domestic Industry, PERSPECTIVE Volume 23 Number 3 of 2018 September Edition, 192

²⁵ Muhammad Sood, 2012, International Trade Law, Rajawali Pers : Jakarta, p.224.

- c. Then the investigation can also be based on the KPPI initiative if the KPPI has sufficient preliminary evidence of serious losses suffered by the domestic industry as a result of the surge in the number of imported goods;
- d. During the investigation period KPPI may recommend to the Minister to impose temporary Security Measures;

One example of a safeguard case was in the Philippines and Indonesia in 2002. The beginning of this case was when the Philippine cement producers association proposed the application of safeguards to Indonesia because it was considered that the surge in imported cement from Indonesia had caused losses to the local cement industry. From the available data, finally the Philippine government imposed a cash bond on cement from Indonesia as much as 20.6 pesos / sack. The implementation of this cash bond is the first step for the Philippines before implementing a safeguard mechanism on cement commodities. After the public hearing of the Philippine Tariff Commission and the Indonesian side from January 28, 2002 to February 1, 2002, the Philippine Tariff Commission stated that there was no injury to the local Philippine cement industry, from the Philippine Tariff Commission statement, the Philippine Government should stop levying cash bonds on cement from Indonesia and return it.²⁶

Provisions regarding *safeguard measures* in Indonesia have several applicable legal rules, among others, in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Presidential Decree of the Republic of Indonesia Number 84 of 2002 concerning Security Measures for Domestic Industry from Due to a Surge in Imports, Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 84 / MPP / Kep / 2/2003 concerning Procedures and Application Requirements for Investigation into the Security of Domestic Industries from the Aftermath of Import Surge and most recently Government Regulation of the Republic of Indonesia Number 34 of 2011 concerning Anti-Dumping Measures, Reward Measures and Trade Safety Measures.²⁷

²⁶ Nada Amira, The Application of Safeguards in the Importation of Certain Iron or Steel Products by the Government of Indonesia is reviewed from the Agreement of Safeguard, Journal of Law and Justice Volume 8, Number 1 March 2021, 152.

²⁷ Saadudin Ibrahim and Pranoto K. Aspects of Protection in Industry and Trade, Jaya Prasada, Jakarta, p. 15

The explanation related to the law governing the protection of industrial imports in Indonesia, first, Presidential Decree of the Republic of Indonesia No. 84 of 2002 concerning Security Measures for Domestic Industry from the Effects of Import Surge which was further strengthened by Government Regulation Number 34 of 2011. One consideration of this Presidential Decree (Keppres) is to prevent serious losses and / or threats of serious losses through national laws and regulations that regulate security measures with the aim of protecting domestic industries. This Presidential Decree also regulates the provisions and procedures for safeguards for all domestic industries that experience serious losses and / or threats due to a surge in imports either relatively or absolutely entering Indonesian territory.

This Presidential Decree is very important as the spearhead of the implementation of safeguards by accommodating investigation arrangements (Chapter III, Article 3 – Article 8) which contains provisions for the mechanism for submitting applications for investigations into import spikes as a basis for investigations by committees and to provide legal certainty. The Presidential Decree discusses security measures that can be taken by Indonesia in the face of losses or threats of losses to domestic industries. These security measures are divided into 2 (two), namely temporary security measures (Article 9, Article 10, Article 11) and permanent security measures (Article 20, Article 21, Article 22, Article 23, Article 24, Article 25, and Article 26).

Second, Law No. 10 of 1995 concerning Customs which originally only regulated the issue of Anti-Dumping Import Duties and Compensation Import Duties (Subsidies), then Law No. 10 of 1995 concerning Customs, expanded trade security measures by including two new provisions, namely Security Measures Import Duties and Retaliatory Import Duties in addition to the provisions of Anti-Dumping Import Duties and Reciprocal Import Duties. Basically, one of the considerations for the creation of this Customs Law is to further ensure legal certainty, fairness, transparency and accountability of public services, to support efforts to improve and develop the national economy related to global trade, to support the smooth flow of goods and increase the effectiveness of supervision of the traffic of goods entering or leaving the

Indonesian customs area and the traffic of certain goods within the Indonesian customs area, and to optimize the prevention and enforcement of smuggling.

Third, Minister of Trade Regulation No.37/M-Dag/Per/9/2008 concerning *Certificate Of Origin* for Imported Goods Subject to *Safeguards*. Trade safeguards are a trade policy instrument that is almost similar to anti-dumping and anti-subsidy policies. According to the Regulation of the Minister of Trade No. 37/M-Dag/Per/9/2008, explains that safeguards are actions taken by the government to recover serious losses and/or prevent the threat of serious losses from domestic industries as a result of a surge in imports of similar goods or goods that are directly rivals to the results of domestic industries with the aim that domestic industries that experience serious losses and/or threats of serious losses can make structural adjustments.

Fourth, Minister of Finance Regulation Number 58/PMK.011/2011 concerning the Imposition of Import Duties on Security Measures on the Import of Products in the Form of *Woven Fabrics Of Cotton, Bleached And Unbleached*. In this regulation of the Minister of Finance, it is determined that for the import of products in the form of *woven fabrics of cotton, bleached and unbleached*, a Security Measure Import Duty is charged. Article 1 paragraph (2) stipulates the amount of import duties on various types of woven fabrics or cotton and the tariff posts that follow. This Ministerial Regulation is imposed for 3 years with additional provisions for general import duties (Most Favored Nation). However, there are exceptions to the 107 countries contained in the annex to this Ministerial Regulation.

Fifth, Regulation of the Minister of Finance of the Republic of Indonesia Number 55/PMK.04/2015 concerning Procedures for Collecting and Returning Import Duties in the Framework of Anti-dumping Measures, Reward Measures, and Trade Security Measures. This Ministerial Regulation is a further provision of Law Number 10 of 1995 concerning Customs as amended by Law Number 17 of 2006 and Government Regulation Number 34 of 2011 concerning Anti-dumping Measures, Trade Security Measures, and Trade Security Measures. In this Ministerial Regulation, it is clearly regulated about procedures, calculation of fees, forms of payment, returns and

research on import duties in the framework of antidumping measures, compensation measures, and trade security measures.

Sixth, Law No. 7 of 2014 concerning Trade. The application of trade security measures (safeguard) in Law No. 7 of 2014 concerning Trade is regulated in Chapter 9: Trade Protection and Security, in article 69, in this article it is explained that, in the event of a surge in the number of imported goods that causes domestic producers of similar goods or goods that directly compete with imported ones to suffer serious losses or threats of serious losses, The government is obliged to take trade safeguards to eliminate or mitigate serious losses or the threat of such serious losses. These trade security measures are in the form of import duties, security measures and/or quotas. Import duties, trade security measures and quotas are set by the minister who administers government affairs in the financial sector based on proposals that have been decided by the minister. This is also contained in Article 67 paragraph 3 (e) which states that: "*the imposition of trade security measures to overcome the surge in imports*".²⁸

CONCLUSION

The results showed that;

- a. *The World Trade Organization* is the only world trade organization that has a function, namely to regulate and facilitate international trade, so there are several agreements and regulations in it, in order to create a harmonization of law. The organization was founded in 1995 which is a continuation of GATT. This organization is independent of the UN specialized agency, so this body exists independently. The organizational structure of the WTO itself follows the structure of its predecessor, the 1947 GATT.
- b. The development of international trade in the context of economic globalization is supported by the application of the principle of trade liberalization or free

²⁸ Agus Setiawan, Legal Protection of the Domestic Textile Industry and Textile Products through Safeguard Measures in Indonesia Its relevance to MEA 2015, Mercatoria Vol. 10 No. 1/June 2017, 27-28.

trade (*free trade*) resulting in a significant influence on the laws applicable to each participating country.

- c. Provisions regarding *safeguard measures* in Indonesia have several applicable legal rules, among others, in Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, Presidential Decree of the Republic of Indonesia Number 84 of 2002 concerning Security Measures for Domestic Industry from Due to a Surge in Imports, Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 84 / MPP / Kep / 2/2003 concerning Procedures and Requirements for Investigation Request on Safeguarding the Domestic Industry from the Aftermath of Import Surge and most recently Government Regulation of the Republic of Indonesia Number 34 of 2011 concerning Anti-Dumping Measures, Reward Measures and Trade Safety Measures

BIBLIOGRAPHY

- Ade Pratiwi Susanty, Legal Protection for the Continuity of Micro, Small and Medium Enterprises for the Implementation of the ASEAN Economic Community, *Respublica Law Journal*, Vol. 16, No. 2 of 2017.
- Agus Setiawan, Legal Protection of the Domestic Textile Industry and Textile Products through Safeguard Measures in Indonesia Its relevance to MEA 2015, *Mercatoria* Vol. 10 No. 1/June 2017.
- Bagus Wyasa Putra, Aspects of Private International Law in Bandung International Business Transactions: PT. Refika Aditama, 2000, pp. 3-4, and see H.S. Kartadjoemena, Substance of GATT/WTO Agreement and Dispute Settlement Mechanism, system, Institution, Procedure, Implementation, and Interests of Developing Countries. University of Indonesia- Press. 2000.
- Binstien A.D. Yuliana, Juridical Review of Safeguards Measures for Yarn Products from Synthetic and Artificial Staple Fibers Related to Import Surge, *Visio Justisia Law Journal* Volume 1, Number 1, July 2021,
- Christophorus Barutu, Antidumping, Subsidy, and Safeguard Provisions in GATT and WTO, Ct,1., PT. Citra Aditya Bakti, Jakarta, 2007.
- Elly Erawaty, Economic Globalization and Trade: An Introduction (Bandung: PT Citra Aditya Bakti, 2003).
- Erwin, et al, Community Participation in Safeguard Measures for Domestic Industry, *PERSPECTIVE* Volume 23 Number 3 of 2018 September Edition.
- Hambali, Compulsory Implementation of Halal Certification for Foreign Products According to the Agreement on Technical Barriers to Trade Agreement, *Legal Conscience Journal of Legal Sciences*, Vol.2 No.2 December 2019.
- Hata, International trade in the GATT and WTO systems-Legal and Non-Legal Aspects, First Printing, PT Refika Aditama, Bandung, September 2006.

Indonesian Trade Security Committee (KKPI), Industrial Protection through World Trade Organization Safeguards Agreement, brochure.

Luhur Sanitya Pambudi & Fifiana Wisnaeni, The Effect of the Policy of Imposing Import Duties on Security Measures on the Import of Fabric Products, Journal of Law Magnum Opus Volume 5 Number 2.

M. Setiawan, Emvalomatis G., Lansing A. O., Structure, Conduct, and Performance: Evidence From Indonesian Food and Beverages Industry. Springer-Verlag Berlin Heidelberg, 2013.

Muhammad Sood, 2012, International Trade Law, Rajawali Press : Jakarta.

Muhammad Taufiq, The Safeguard Measures Against The Import Of Wheat Flour In Accordance With The Gatt/Wto Principles In Indonesia, Journal Of Restorative Justice Vol. 5 No. 1, May 2021.

Nada Amira, The Application of Safeguards in the Importation of Certain Iron or Steel Products by the Government of Indonesia is reviewed from the Agreement of Safeguard, Journal of Law and Justice Volume 8, Number 1 March 2021.

Nanang Suhendra, Imposition of Import Duties on Temporary Trade Security Measures (Bmtps) on Imports of Fabric Products in 2019 as a result of an Increase in Textile Import Volume, Dharmasisya Journal of the Master of Law Program, Faculty of Law, University of Indonesia Volume 1 Number 2 (June 2021) .

Nandang Sutrisno, Strengthening the Legal System of Trade Remedies, Protecting Domestic Industries, JOURNAL OF LAW NO. 2 VOL. 14 APRIL 2007.

Nurmadjito, Readiness of Laws and Regulations in Facing the Globalization Era, p. 7, as quoted by Lindu Aji Saputro, "Analysis of Legal Protection from Attempts to Falsify Halal Certification and Labeling as a Form of Product Halal Legitimacy in Indonesia", Surakarta: Faculty of Law, Sebelas Maret University, Surakarta, 2012.

Peter van den Bossche et al, Introduction to WTO Law, Yayasan Obor Indonesia, Jakarta, 2010

Rafiqul Islam, International Trade Law, (NSW: LBC, 1999).

Richard Samuel, FX Joko Priyono, Darminto Hartono, 2017, "Vietnam's Lawsuit to Indonesia Related to Safeguards of Non-Alloy Iron or Steel Rolled Products", Diponogoro Law Journal, Vol.2, No.2, 2017

Saadudin Ibrahim and Pranoto K. Aspects of Protection in Industry and Trade, Jaya Prasada, Jakarta.

Soerjono Soekanto, Introduction to *Legal Research*, Jakarta: University of Indonesia Press, 1983.

Syahmin AK, International Commercial Law in the Framework of Analytical Studies, (Jakarta: Raja Grafindo Persada, 2006).

World Trade Organization, https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm#art3