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LEGAL CERTAINTY IN INTERNATIONAL TRADE AND FAIRNESS FOR BUSINESS ACTORS REGARDING TAX RATES IMPORTS OF FOREIGN PRODUCTS IN INDONESIA BASED ON THE WORLD TRADE ORGANIZATION (WTO)

Abstrak

The role of law is very large in international trade relations regulated by the WTO. The WTO is responsible for regulating international trade by providing a regulatory framework including taxes and dispute resolution between its member countries. Imports are a form of international trade carried out by the Indonesian government to meet domestic needs. Goods entering Indonesia are subject to taxes aimed at protecting domestic industries, controlling imports so as not to harm the country's economy, and accommodating justice in terms of tax imposition on business actors. One of the main principles in international trade law is the principle of justice and legal certainty: International trade law must be fair and provide legal certainty for all parties involved in trade transactions. The purpose of this study is the form of regulation in determining import tax rates for foreign products in Indonesia for business actors based on WTO provisions. The theories used are the theory of legal certainty (by Gustav) and the theory of justice (John Rawls). By using the juridical normative research method, it is known that the form of regulation in determining the import tax rate of foreign products in Indonesia for business actors is based on WTO provisions, namely Article 12 to Article 17A and Article 12 paragraph 1 of Law Number 10 of 1995, which states that "Imported goods are subject to import duty based on a maximum tariff of 40% (forty percent) of the customs value for calculating import duty". The application of the provisions of import duty of forty percent refers to Law Number 7 of 1994 concerning Ratification of the Agreement on the Establishment of the World Trade Organization, as explained in the Explanation of Law Number 10 of 1995 Article 12 paragraph 1. The legal basis for the application of tariffs is accommodated through Law No. 10 of 1995 concerning Customs, Law No. 17 of 2006 concerning Amendments to the Basis for the Establishment and Implementation of Tariffs on Export and Import of Goods based on Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning Excise and Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.oII/2011, concerning the Determination of the Goods Clarification System and the Imposition of Import Duty Tariffs on Export and Import of Goods.

A. Background

International Trade Law is an important branch of international law that governs the rules and regulations that direct and oversee trade between countries around the world.[1]. International trade law is a set of rules and regulations that govern trade interactions between countries around the world.

The purpose of international trade is to facilitate cross-border commerce and ensure that international business transactions occur fairly, efficiently, and in accordance with the interests of all parties involved. This is a crucial foundation in the dynamics of the modern global economy, especially as each country seeks to gain competitive advantage through the cross-border exchange of goods and services. This activity not only drives economic growth but also influences national policy structures, which must adapt to global regulations[2] and connecting countries through the exchange of goods and services[3].

The ratification of the Protocol to Amend the Marrakesh Agreement through Law No. 17 of 2017 affirms Indonesia's commitment to strengthening harmony between international and national law. Furthermore, Law No. 7 of 2014 concerning Trade provides a clear legal basis for the implementation of foreign trade and international trade cooperation. This regulatory framework strengthens Indonesia's position in facing global dynamics and prepares a national trade system that is more responsive to international economic developments.[4]

International trade activities in the import sector can help a country obtain goods or services not available domestically. Imports are trade activities that bring goods from other countries into the country. This activity can be carried out by companies, individuals, or even countries. Imports are not only crucial for economic growth but also play a significant role in state revenue through

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[1] Wiwik Sri Widiarty, *Buku Ajar, Hukum Perdagangan internasional*, (Yogyakara, Publika Global Media, 2023), hlm. 9

[2] Poni Sukaesih Kurniati Suryanto, Suryanto, "Analisis Perdagangan Internasional Indonesia dan Faktor-Faktor Yang Memengaruhinya," Intermestic: Journal of International Studies 7, no. 1 2022, hlm. 104.

[3] Sabaruddin, "Dampak Perdagangan Internasional Indonesia terhadap Kesejahteraan Masyarakat: Aplikasi Structural Path Analysis". Buletin Ekonomi Moneter dan Perbankan, 17(4), 2015. hlm. 433.

[4] Putri & Ibrahim dkk, "Peranan Perdagangan Internasional Terhadap Perekonomian Indonesia," Jurnal Minfo Polgan 12, no. 2 2023, hlm. 2427

international trade taxes. Taxes, including import duties on imported goods, are an important source of revenue for the government.

International trade taxes serve as an instrument to increase state revenue, protect domestic industries, regulate the flow of goods, and maintain a trade balance.[5] The government is reviewing 900 imported consumer goods that will be subject to import income tax (PPh). This is being done to improve the current account deficit (CAD) and thus stabilize the rupiah. This step could invite retaliation from the countries of origin of the imported products, if any international trade regulations (World Trade Organization/WTO) are violated. Article 22 import income tax (PPh) rates have actually been set for 900 commodities. This list of consumer goods is contained in Minister of Finance Regulation Number 34 of 2017. The regulation stipulates that import tax or import PPh rates are imposed at different levels for each commodity, ranging from 2.5 percent to 10 percent based on the selling price. However, not all goods are subject to the increase in import PPh.[6]

In line with the coercive nature of taxes, their collection must be based on solid legal principles, particularly those of justice, legal certainty, and utility. One of the fundamental principles underpinning Indonesia's tax system is the Principle of Legality, which implies that all tax collection can only be carried out in accordance with statutory provisions.

The law plays a significant role in international trade relations regulated by the WTO, leading it to be called "the most important change in the jurisprudence of the global economy in the second half of the 20th century."[7] The WTO is responsible for regulating international trade by providing a regulatory framework and dispute resolution mechanisms between its member countries. The trade principles of the WTO are similar to those of the GATT, namely non-discrimination, most-favored-nation treatment, and national treatment in the areas

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[5] Unggul, S., & Prakasa, W, "Perdagangan Internasional dan Ham: Relasinya dengan Sustainable Development". Satria Unggul Wicaksana Prakasa, 9(1), 2018, hlm. 36.

[6] Kumparan Bisnis, Kemendag: Kenaikan Pajak Impor 900 Komoditas Tak Langgar Aturan WTO, https://kumparan.com/kumparanbisnis/kemendag-kenaikan-pajak-impor-900-komoditas-tak-langgar-aturan-wto-1535683125010285147 di unduh dari 12 Juni 2026

[7] James Cameron and Kevin R.Gray, *Principles of International Law in the WTO Dispute Settlement Body*, dalam International and Comparative Law Quarterly, Vol. 50, April 2001, hlm. 5.

of taxation and domestic regulations. This means that foreign companies operating in a country must be treated equally and fairly as domestic companies.[8] John Rawls conceptualized justice as fairness, embodying the principle that free and rational individuals who desire to advance their interests must ensure that the law provides a sense of certainty, justice, and benefit to society.

Gustav Radbruch, in his theory, stated that legal certainty is an absolute requirement for a good legal system. However, in practice, the provisions of laws and regulations in Indonesia often create uncertainty. Consequently, when implemented in practice, these regulations create confusion because they contain norms that do not create legal certainty. From the perspective of constitutional law and administrative law, taxes are viewed not merely as a source of state revenue (budgetary function) but also as a regulatory tool (regular function) used by the government to direct people's economic behavior, control inflation, encourage investment, and protect domestic industry.[9] Therefore, the design and implementation of tax policies have broad implications not only for state finances, but also for social justice, legal certainty, and public trust in business actors. Based on the background above, the problem in this research can be formulated as: what is the form of regulation in determining the import tax rates for foreign products in Indonesia for business actors based on WTO provisions?

C. Literature Review

1. Theory of Legal Certainty (Gustav)

Legal certainty is one of the aims of law, Gustav Radbruch explains in his combined ethical and utility theory that the legal concept is that law aims for justice, benefit and certainty.[10]. Gustav Radbruch said that the highest justice is conscience. People who obey the law too simply often end up harming justice[11]. According to

[8] Lepi T. Tarmidi, "WTO dan Indonesia", Jurnal Ekonomi dan Pembangunan Indonesia, Vol. 2, No. 2, Januari Lepi, 2002
[9] Barus & Santoso, Barus LB and Santoso D, "The Legal Certainty of Tax Amnesty: A Lesson Learned from Indonesia" 2 Journal of Tax Law and Policy, 2023, hlm. 109
[10] H. Chaerudin, *Filsafat Suatu Ikhtisar*, (Cianjur, FH UNSUR, 1999), hlm. 19
[11] Jeremies Lemek, *Mencari Keadilan Pandangan Kritis Terhadap Penegakkan Hukum di Indonesia*, (Yogyakarta: Galang Press, 2007), hlm. 25.

Gustav Radbruch, there are four fundamental things related to the meaning of legal certainty, namely: first, the law must be positive, meaning it is legislation; second: the law must be based on facts, not judges' judgments; third: the facts that form the basis of the law must be clearly formulated; fourth: positive law must not change frequently).

The implementation of rules creates legal certainty, according to Gustav Radbruch, the law must contain three essential values, namely:[12]

a. The principle of legal certainty (rechtmatigheid). This principle is examined from a juridical perspective.
b. The principle of legal justice (gerectigheit). This principle is examined from a philosophical perspective, where justice is equal rights for all before the courts.
c. The principle of legal utility (zwechmatigheid or doelmatigheid or utility).

Legal certainty is a product of law, or more specifically, legislation. Gustav Radbruch argues that legal certainty is a product of law, or more specifically, legislation.[13] Legal certainty is the certainty of a law. However, legal certainty does not create justice because the definite value in a law mandates certain things, while the interests of individuals/citizens are never certain. For example, laws between citizens are made in a general manner (i.e., providing general regulations), even though the reasons are not always appropriate, given the diversity of human affairs, which are highly uncertain, whereas laws must establish certainty.

The imperfection of the law in practice is partially accommodated because judges, when applying the law in real-life situations, in interpreting regulations, can use free interpretations to eliminate or reduce injustice. However, efforts to reduce legal certainty are not always feasible. Thus, the law is forced to sacrifice justice to the benefit of efficacy: it is forced to compromise. In fact, there are a large number of legal regulations that do not achieve justice at all, but are based solely on the benefit of efficacy.

One of the main principles of international trade law is the principle of justice and legal certainty: International trade law must be fair and provide legal certainty

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[12]Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, (Jakarta: Kencana, 2008), hlm. 158
[13] *Ibid*, hlm 20

for all parties involved in trade transactions. This aligns with Gustav Radbruch's view of legal certainty: law is a positive force capable of regulating the interests of every individual in society and must always be obeyed, even if the law is deemed unjust. Legal certainty is a state of certainty, a provision, or a stipulation.

2. Theory of Justice (John Rawls)

John Rawls, an American philosopher who is considered one of the leading political philosophers of the 20th century, stated that justice is the first virtue of social institutions, as is truth in a system of thought[14] John Rawls put forward the idea in his book, A Theory of Justice, that the theory of justice is a method for studying and producing justice. Rawls's theory is based on two principles: equal rights and economic equality. He argued that equal rights must be regulated at the lexical level, meaning that the difference principle will operate if no basic rights are revoked (there are no violations of human rights). Furthermore, economic equality is an implication of equal rights, meaning that economic equality will be achieved if no violations of human rights occur[15] In conclusion, these two principles of John Rawls are interconnected in establishing justice.

Rawls's principle of justice emphasizes the fulfillment of basic rights so that the principle of inequality can be implemented. In other words, economic inequality is valid if it does not violate basic human rights. This aligns with international trade law, which must ensure continuity and fairness between parties. In this regard, the WTO, as an international authority in the field of international trade, is expected to uphold the rule of law in the global community. This aligns with John Rawls's conception of justice as fairness, which embodies the principle that free and rational individuals who desire to advance their interests are expected to receive equal status when entering the community they desire. This is a fundamental requirement for them to enter the community they desire[16].

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[14] Rawls John, *A Theory of Justice, Revised Edition*, (Oxford, OUP, 1999), hlm. 3.

[15] John Rawls, *A Theory Of Justice*, Revised Edition (Massachusetts: Harvard University, 1996), hlm. 71, Lihat juga Andra Ata Ujan, *Keadilan dan Demokrasi; Telaah Teori Keadilan John Rawls* (Yogyakarta:Kanisius, 2001), hlm. 19.

[16] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2000), hlm. 163

D. Research methods

The research used in this study is normative law (normative juridical). Normative legal research, or doctrinal legal research, or dogmatic legal research, or legislative research, which is referred to in Anglo-American literature as legal research, is internal research within the legal discipline[17].

Normative legal research is usually "only" a documentary study, using legal sources in the form of laws and regulations, court decisions/rules, contracts/agreements/contracts, legal theories, and scholarly opinions. Another name for normative legal research is doctrinal legal research, also referred to as library research or documentary study[18], It is called doctrinal legal research because this research is conducted or aimed only at written regulations or legal materials. It is also called library research or document study because this research is mostly conducted on secondary data found in libraries[19].

The legal materials in this research include:

1. Article 5 paragraph (1), Article 11, and Article 20 of the 1945 Constitution of the Republic of Indonesia;
2. Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization
3. Law Number 17 of 2017 concerning the Protocol to Amend the Marrakesh Agreement
4. Law Number 24 of 2000 concerning International Agreements
5. Law Number 7 of 2014 concerning Trade
6. Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs

This research examines and analyzes secondary data related to international trade, import tax rates for foreign products in Indonesia, the World Trade Organization (WTO), and fairness for business actors. This research uses several

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17 Ronny Hanitijo Soemitro, *Metode Penelitian Hukum, Metodologi Penelitian Ilmu Sosial, (Dengan Orientasi Penelitian Bidang Hukum,* (Semarang: Universitas Diponegoro, 1999), hlm. 15.

18 Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, (Jakarta: Sinar Grafika, 1996), hlm. 13

19 Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum*, (Yogyakarta, Publika Global Media, 2024). hlm. 27

approaches, including the Statutory approach and the Conceptual approach[20] and historical approach. The object of study of normative legal research is focused on the legal norm system, including legal rules or regulations related to the structure of a legal event system[21].

E. Discussion

1. International Trade Law

The formation of the World Trade Organization (WTO) in 1995 was a key point in the consolidation of international trade rules, particularly through instruments such as the General Agreement on Tariffs and Trade (GATT) which emphasized liberalization, non-discrimination, and transparency[22]. The international trade system established through the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO) has been based on the principles of liberalization, non-discrimination, and maintaining mutually agreed-upon tariffs by member countries. Schmitthoff defined international trade law as "the body of rules governing private commercial relations involving various countries," stating that the rules within the GATT framework are the primary foundation of trade relations between countries.

International trade is essentially the process of exchanging goods or services between countries with the aim of achieving mutual benefit or profit from trade.[23] In the multilateral framework, the WTO is present as the only international institution that specifically regulates trade between countries, with the main function of managing the agreements resulting from the Uruguay Round, supervising trade practices, providing a forum for settlement, and providing technical support to developing countries.[24] The WTO is a pioneer in

[20] *Ibid,* hlm.93-95

[21] *Ibid*, hlm. 35

[22] Muhammad Rafi Darajati, "Ketaatan Negara Terhadap Hukum Perdagangan. Internasional", Refleksi Hukum 5 No. 1 2020, hlm. 15

[23] Aprita & Adhitya, *Hukum Perdagangan Internasional,*. (Depok: Rajawali Pers, 2020), hlm. 42

[24] Widiatedja, *Indonesia's Export Ban On Nickel Ore: Does It Violate The World Trade Organization (WTO) Rules*?. Journal World Trade: 2021), hlm. 55

the liberalization of world trade, namely a trading system in which goods can be imported and exported without tariffs, quotas or other constraints.[25]

The steps in the import process are as follows:

1. Registration and Licensing. The first step is to register as an official importer by obtaining an Import Identification Number (API). Additionally, you need to register with the Indonesia National Single Window (INSW) to access online customs services.
2. Goods Import Notification (PIB). Complete the PIB form, detailing the goods to be imported, such as the type, value, and quantity. This form is submitted to the customs office to notify the proposed import.
3. Calculation and Payment of Customs Duties and Import Taxes. After submitting the PIB, the Directorate General of Customs and Excise will calculate the import duties and taxes you must pay based on the type and value of the goods. Payment is made through a designated bank.
4. Goods Inspection. After payment, the goods will be inspected. This inspection can include document verification or a physical inspection, depending on the type of goods and the importer's status.
5. Goods Release. After all procedures are completed and payment is made, the goods will be released from the port and ready to be shipped to their destination.

Indonesia's membership in the WTO requires the country to align various aspects of trade regulations with multilaterally agreed principles. This situation has led to significant changes in the approach to trade law and policy, both in terms of simplifying procedures, complying with international standards, and a commitment to fair competition in the global market.

International trade law originates from various sources, one of which is the World Trade Organization (WTO), an organization that plays a crucial role in the formation and enforcement of international trade law. Several articles in

[25] Rastuti & Khoirudin dkk, Politik Hukum Indonesia Dalam Menghadapi Retaliasi Perang Dagang China Terhadap Amerika Serikat Berdasarkan *Prinsip Proteksionisme: Indonesia's Legal Policy In Responding To China's Trade War Retaliation Against The United States Based On The Principle Of. Litigasi*, 26(1), 2025, hlm. 26

WTO documents expressly state provisions recognized in international law. For example, Article VIII of the Marrakech Agreement Establishing the World Trade Organization states that the WTO has legal personality and enjoys privileges and immunities in carrying out its functions. These privileges and immunities are similar to those guaranteed in the Convention on the Privileges and Immunities of Specialized Agencies, approved by the UN General Assembly on November 21, 1947.

The implementation of international trade in both goods and services (trade in goods and services) in international trade is a dynamic regulation in the context of the GATT/WTO. The General Agreement on Tariffs and Trade / World Trade Organization (GATT/WTO) is the regulation of the implementation of international trade for all GATT/WTO members. The regulation is through the Uruguay Round agreement process (Uruguay Round) which was held in Marrakesh (Morocco) on April 15, 1994.[26]

The presence of GATT/WTO has experienced a long journey, namely since 1940 and began to be formulated in 1947 through the 1947 GATT negotiations.14 Therefore, there are several important points related to the presence of GATT/WTO itself, namely[27]: (a) As a manifestation of an international agreement that provides and determines regulations through a drafting process and has been agreed upon by each participating country; (b) As an international institution to formally implement all applicable regulations of the GATT followed by the agreement to establish the World Trade Organization; and (c) Regarding the dispute settlement process (Dispute Settlement Mechanism), it has become a mechanism through procedures and a more formal institutional form.

The important principles contained in the GATT/WTO include:[28] (a) Minimum Standard Principle; (b) Standard of identical treatment; (c) Standard

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[26] Rasheed Khalid, dkk., *The World Trade Organization and Developing Countries*, (Austria, The OPEC Fund for International Development, 1999), hlm.1.

[27] Suardi dan Mallawa, "Pengaturan World Trade Organization dalam Hukum Internasional serta Konflik Kepentingan Antara Negara Maju dan Negara Berkembang", Jurnal Inspirasi, No.XI, (Januari 2012), hlm. 3

[28] Hata, *Perdagangan Internasional dalam Sistem GATT dan WTO: Aspek Hukum dan Non*

of national treatment; (d) Most-favored-nation treatment; (e) Standard of the open door; (f) Standard of preferential treatment; (g) Standard of equitable treatments. Some important principles within the WTO that relate to the Trade Facilitation Agreement include the following: First, the Most-Favored Nations principle requires that a trade policy must be implemented on a non-discriminatory basis.[29] Based on this principle, all member countries are bound to give other countries equal treatment in the implementation of import and export policies and other costs. This principle requires that equal treatment for each country must be carried out immediately and unconditionally[30]. Then this principle also requires that a first country (importer) provide international trade facilities or conveniences to a second country (exporter).[31] Therefore, these facilities should be provided to other exporting countries. Therefore, a country that provides benefits to one country must be able to provide similar benefits to other countries.

Normatively, this principle is regulated in Article 1 (1) of the GATT, which essentially provides an understanding that any advantage, favor, privilege, or immunity from a WTO member country for a product granted to another country must be implemented immediately and unconditionally. This provision actually applies to the same product (like product), whether sourced from or provided to every WTO member country[32]. As for[33]: (a) import duties and other duties imposed on the export-import mechanism in making payments; (b) the mechanism for imposing import duties and other types of duties; (c) the overall regulation of exports or imports; and (d) the imposition of domestic taxes that can have an impact on the sales process and on the use of imported

Hukum, (Bandung, Refika Aditama, 2006), hlm.53.

29 Dony Yursa Pebrianto, "Implikasi Prinsip Most Favoured Nation terhadap Pengaturan Tarif Impor di Indonesia", Wajah Hukum, Vol.2, No.1 (2018), hlm. 30.

30 Article 1 The General Agreement on Tariffs and Trade, Geneva July 1994, hlm.2.

31 Dony Yursa Pebrianto, *op.cit,* hlm.32

32 The General Agreement on Tariffs and Trade, Geneva July 1994, hlm.2

33 John H. Jacksson, *World Trade and the Law of GATT: A Legal Anlysis of the General Agreement on Tariffs and Trade*, (Indianapolis, The Boobs-Merill Company, 1969), hlm. 256.

products. Second, the principle of National Treaty is regulated in Article III of the GATT, which states[34]:

> "*The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production*".

Based on the formulation of this article, it can be seen that this principle requires that a country's products imported into a country should be treated as equally as possible to domestic products.[35]. Then, this principle also prohibits differential treatment between foreign goods and domestic goods, which means that when an imported good has entered the domestic market of a member country, the imported good must be treated the same as domestic goods.[36]. Besides that, the principle of National Treatment is essentially also a limited implementation of the principle of Equality of Opportunity[37]. These two principles are related in the context of minimizing all obstacles or obstacles in international trade. This condition is a manifestation of the agreement of each WTO member country to have a guarantee that all obstacles to international trade cannot be eliminated by the implementation of discriminatory regulations. Third, the principle of Non-Discriminatory Administration of Quantitative Restrictions requires the prohibition of quantitative restrictions or limitations on export or import activities in any form, such as setting quotas, using licenses, and monitoring payments for imported and exported products.[38] It was agreed that the basis of the trade facilitation agreement is Articles V, VIII, and X of the General Agreement on Tariffs and Trade (GATT) 1994. These articles provide

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[34] *Ibid*, hlm. 256.

[35] Huala Adolf, *Hukum Perdagangan Internasional*, (Jakarta, PT. RajaGrafindo Persada, 2017), hlm.111

[36] Suardi dan Mallawa, "Pengaturan World Trade Organization dalam Hukum Internasional serta Konflik Kepentingan Antara Negara Maju dan Negara Berkembang", Jurnal Inspirasi, No.XIIII, Januari 2012, hlm.. 7.

[37] Amrita, dkk., *The Oxford of the World Trade Organization*, (Oxford, Oxford University Press, 2012), hlm. 682

[38] Huala Adolf, op.cit., hlm.113.

rules that have existed since 1947, including: (1) Article V, Freedom of Transit; (2) Article VIII, Fees and Formalities Connected with Importation and Exportation; and (3) Article X, Publication and Administration of Trade Regulations.

The existence of trade facilitation agreements has actually become national policy. This can be seen through several policies such as reducing costs and improving port facilities, simplifying procedures and permits, implementing a National Single Window, and increasing transparency. The discussion on trade facilitation is essentially about simplifying customs rules and minimizing inefficiencies that are a source of delays and lag times in trade between countries.

Documentation requirements often lack transparency and are often duplicated in many locations[39]. This problem is exacerbated by the lack of cooperation between traders and authorized distributors. This situation is understandable, given that in recent years, efficiency can be improved through integrated global supply chains that can increase added value. Furthermore, regarding the Indonesian Trade Facilitation Agreement itself, Government Regulation No. 17 of 2017 concerning the Ratification of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Protocol Amending the Marrakesh Agreement Concerning the Establishment of the World Trade Organization) is also being implemented. The presence of this government regulation serves as a foundation and commitment for Indonesia to realize and implement international provisions related to the Trade Facilitation Agreement in international trade. Article 26 of the Vienna Convention on the Law of Treaties (VCLT 1969) states that[40] : "*Every treaty in force is binding upon the parties to it and must be performed by them in good faith*". This means that every international agreement ratified by a country is

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[39] Hariyadi, *Kesiapan Fasilitasi Perdagangan dan Upaya Merebut Peluang Rezim Perdagangan Bebas Kawasan dan Global, dalam Achmad Suryana, Fasilitasi Perdagangan Kesiapan Indonesia Menghadapi Persaingan Global*, (Jakarta, Pusat Penelitian Badan Keahlian DPR RI dan PT Balai Pustaka 2016), hlm. 8.

[40] Rumusan Artikel 26 Vienna Convention on the Law of Treaties 1969, United Nations, Treaty Series, Vol.1155, 2005, hlm. 11.

binding and must be implemented in good faith. Thus, Indonesia's commitment to ratifying the Trade Facilitation Agreement demonstrates its commitment to implementing its provisions..

2. Import Tax Rates for Foreign Products

A tariff is a tax imposed on goods imported by a political power into another territory. This tax specifically applies to goods imported from one political power to another, or the tax rate imposed on those goods. Article 23A of the 1945 Constitution of the Republic of Indonesia stipulates that "taxes and other compulsory levies for state purposes shall be regulated by law." This norm is not merely a technical provision, but a constitutional guarantee of citizens' rights against potential state arbitrariness in tax collection.

Import duties, also known as tariffs, are a type of tax imposed on imported goods.[41] Meanwhile, according to Law No. 17 of 2006 concerning amendments to Law No. 10 of 1995 concerning Customs, Article 1 point 15 defines state levies based on this Law which are imposed on imported goods. Meanwhile, the legal basis underlying the existence of import duties is Article 12 paragraph (1) of Law No. 10 of 1995 concerning Customs and taking into account Law No. 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization (Agreement on the Establishment of the World Trade Organization). Meanwhile, in Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995, this article has not been changed at all. This means that in implementing import duties, the legal basis is Law No. 10 of 1995 concerning Customs, Article 12 paragraph (1) and not Law No. 17 of 2006 concerning Amendments to Law No. 10 of 1995 concerning Customs. Exceptions and changes to tariff rates are subject to other provisions, including articles and paragraphs other than Article 12 paragraph (1) and

[41] Paul R. Krugman dan Maurice Obstfeld, *Ekonomi internasional teori dan kebijakan diterjemahkan Dr. Faisal Basri, International Economics Cet. I*; (Jakarta:PT Indeks, 2004), hlm. 233

decisions and regulations from the Ministry of Finance, which oversees the Directorate General of Customs and Excise.

In the Indonesian legal system, taxes occupy a strategic position as one of the state's primary instruments in carrying out its functions of governance, development, and the redistribution of welfare. Classically, taxes are understood as mandatory, compulsory contributions paid by citizens to the state based on law, without direct compensation, and used to finance general expenditures.[42]

According to Law No. 28 of 2007 concerning General Provisions and Tax Procedures, tax is a mandatory contribution to the state owed by individuals or bodies which is mandatory based on the law, without receiving direct compensation and is used for state needs for the greatest prosperity of the people.[43] These import activities generate taxes, which are the main source of state revenue. Poerwadarminta[44], argues that imports mean the entry of goods from a foreign country.

Taxes or obligations arising from import activities include import duties, Value Added Tax (VAT), Luxury Goods Sales Tax (PPnBM), and Income Tax Article 22 (PPh 22). Data obtained from the official website of the Ministry of Finance, accessed on March 25, 2018, shows that the customs sector contributes 27% of state revenue. This demonstrates the crucial role of customs in state revenue, thus necessitating oversight.

The complexity of tax regulations, differing interpretations between taxpayers and fiscal authorities, and the dynamics of the global economy often trigger legal disputes in the tax sector. This is particularly evident in the context of taxes on import and export activities, which fall within the scope of customs law. Import tax disputes concern not only the fiscal interests of the state but also

[42] Adrian Sutedi, Hukum Pajak. Sinar Grafika. Jakarta., 2022
[43] Sony dan Isnianto, *Panduan Praktis Perpajakan*. (Yogyakarta: Andi Offser, 2009), hlm. 1
[44] Poerwadarminta, *Kamus Umum Bahasa Indonesia*, (Jakarta, PN Balai Pustaka, 2007), hlm.

legal certainty for businesses, the competitiveness of national industries, and compliance with international trade standards.[45]

Legal certainty requires that every taxpayer must be able to clearly and precisely understand the type of tax imposed, the subject and object of taxation, the basis for imposition, the rate, and the collection procedures. This principle is accommodated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP), as last amended by Law Number 7 of 2021 concerning Harmonization of Tax Regulations. Article 2 paragraph (1) and Article 23 paragraph (2) of the KUP Law emphasize that tax collection must be carried out based on the law and its implementing regulations. Therefore, any administrative action by the tax authorities that does not have a clear legal basis has the potential to violate the principle of legality and can be legally annulled.

3. Form of Regulation in Determining Import Tax Rates for Foreign Products in Indonesia for Business Actors Based on WTO Provisions

Provisions specifically governing tariffs are set out in Articles 12 through 17A. Article 12, paragraph 1 of Law Number 10 of 1995, states that "Imported goods shall be subject to import duty based on a maximum tariff of 40% (forty percent) of the customs value for the purpose of calculating import duty." The application of the forty percent import duty provision refers to Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization, as explained in Article 12, paragraph 1 of the Explanation of Law Number 10 of 1995.

The legal basis for the application of tariffs is accommodated through Law Number 10 of 1995 concerning Customs, Law Number 10 of 1995 concerning Customs, and Law Number 10 of 1995 concerning Customs. 17 of 2006 concerning Changes to the Basis for the Establishment and Implementation of Tariffs on Export Import of Goods based on Law Number 39 of 2007 concerning Amendments to Law Number 11 of 1995 concerning

[45] Wibowo A, *Hukum Dagang Internasional,* 2025

Excise and Regulation of the Minister of Finance of the Republic of Indonesia Number 213/PMK.oII/2011, concerning the determination of the goods clarification system and the imposition of import duty tariffs on export import of goods.

There are various types of tariff determination, including export duties, which are taxes/duties imposed on goods transported to another country (outside the customs area). Transit duties are taxes/duties imposed on goods passing through a country's borders with their final destination in another country. Import duties are taxes/duties imposed on goods entering a country (toll area).

The enactment of Law of the Republic of Indonesia Number 17 of 2017 concerning Ratification of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Protocol Amending the Marrakesh Agreement Concerning the Establishment of the World Trade Organization) serves as a basis for Indonesia's proper implementation of the provisions related to the Trade Facilitation Agreement. This is evident in Article 2 of the 1969 Vienna Convention on the Law of Treaties, which states:[46]

> *""treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;"*

Based on the formulation of the article above, the elements and requirements of every international agreement are: 1) an international agreement; 2) made between countries; 3) made in written form; 4) governed by international law that creates international obligations; and 5) has a nomenclature in the agreement. Therefore, the presence of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, which includes the Agreement on Trade Facilitation in the Annex, is an international agreement according to the Vienna Convention on

[46] Artikel 2 Vienna Convention on the Law of Treaties 1969, dimuat dalam United Nations, Treaty Series, Vol.1155, p.331, 2005, p.3.

the Law of Treaties. This relates to the elements and requirements of international agreements contained in the agreement. These elements include: 1) International Agreement, that there is a protocol Amending the WTO with the Annex Agreement on Trade Facilitation; 2) Concluded between states, that this agreement is made by WTO members in the form of countries; 3) In written form, in the form of a protocol with the Annex in the form of an agreement; 4) Governed by international law, regulated by the Marrakesh Agreement in the form of a WTO body; and 5) Whatever its particular designation, it is made under the name Protocol and Agreement.

Import duty is a levy or charge on imported goods collected by the Directorate General of Customs and Excise (DJBC) of the Ministry of Finance of the Republic of Indonesia. The regulations regarding import duty on imported goods are stipulated in Law Number 17 of 2006 concerning Amendments to Law Number 10/1995 concerning Customs. This Compulsory Import Duty or BMI is intended to protect domestic industries from similar goods. The following are the types of import duty on imported goods based on Chapter IV of the Customs Law:

1. Safeguard Import Duty (BMTP), also known as safeguard duty, is an import duty imposed on imported goods, especially those that are already largely imported. BMPT is implemented to protect domestic industries from similar goods that suffer serious losses.
2. Anti-Dumping Import Duty (BMAD), an anti-dumping import duty, or BMAD, is imposed on imported goods determined to be dumped. Dumped goods are goods priced lower than similar goods domestically. BMAD is implemented to protect domestic industries from losing competitiveness.
3. Countervailing Import Duty (BMP). This type of countervailing import duty, or BMP, is an import duty imposed on imported goods originating from countries that treat Indonesian exports discriminatorily.

4. Countervailing Import Duty (BMI). This type of countervailing import duty, or BMI, is imposed on imported goods that are found to be subsidized by the government of the exporting country.

Import tax, or PDRI, is calculated excluding import duties and excise taxes. Import tax, or PDRI, consists of several types of taxes, namely: Value Added Tax (VAT); Income Tax Article 22 (PPh 22 Import); and Luxury Goods Sales Tax (PPnBM). PDRI, or import tax, is calculated based on the imported value of the goods. The import value is the value of the goods in international commercial terms CIF (Cost, Insurance, and Freight).

The following are several types of import taxes

1. Import Duty (BM) This is the main tariff applied to imported products. The tariff varies depending on the type of product. For example, raw materials such as fabric may be subject to a low tariff, while finished products such as clothing and cars may be subject to a tariff of up to 30% or even more.
2. Import Value Added Tax (VAT). Like domestic products, imported products are also subject to VAT of 11%. This tax is calculated based on the value of the goods plus the import duty. This means that the higher the value of the imported goods, the higher the VAT that must be paid.
3. Import Sales Tax on Luxury Goods (PPnBM). Luxury goods such as sports cars, gold jewelry, and expensive watches are subject to additional tax. The rate depends on the type of goods and their level of luxury.
4. Income Tax (PPh) Article 22. This tax is applied to imported goods and the rate varies depending on the type of goods and the importer's tax status.

Import tax rates are not always the same for every item. Here are some factors that influence the tariff rate:

1. Type of Goods. Staple goods are usually subject to lower import duties, while luxury goods or locally produced goods are subject to higher tariffs.
2. Country of Origin of Goods. Indonesia has trade agreements with several countries. Goods from these countries are often subject to lower or even duty-free tariffs.
3. Anti-Dumping Policy. If imported goods are sold at very low prices

(dumping) to damage the domestic market, the government can impose additional tariffs to protect local industries.

International trade law exists to create a fair and structured framework for countries involved in international trade, ensuring that such trade takes place efficiently, based on principles such as fair treatment and protection against discrimination.[47] Furthermore, this law plays a crucial role in helping resolve disputes that may arise between countries, either through negotiation or international arbitration, so that these conflicts can be resolved peacefully. Thus, international trade law serves as a crucial foundation for the formation of a complex and interconnected global trade system, and plays a central role in regulating economic relations between countries in the modern era[48].

According to Gustav Radbruch, justice and legal certainty are integral components of law. He argued that justice and legal certainty must be considered and maintained for the sake of a nation's security and order. Ultimately, positive law must always be obeyed. This is based on the theory of legal certainty and the values it seeks to achieve, namely justice and happiness.

Legal certainty means that it does not give rise to doubt (multiple interpretations) and is logical in the sense that it forms a system of norms with other norms, thus preventing conflict or normative conflict. Normative conflicts arising from regulatory uncertainty can take the form of norm contestation, norm reduction, or normative distortion. Mainstream thinking assumes that legal certainty is a state in which human behavior, whether individual, group, or organization, is bound and within the boundaries outlined by legal rules. Therefore, legal certainty is the certainty of legal rules, not the certainty of actions toward or actions in accordance with legal rules. The phrase "legal certainty" fails to truly describe the certainty of behavior toward the law.

F. Conclusion and Suggestions

[47] Wiwik Sri Widiarty, *op.cit,* 2024, hlm. 9
[48] Wiwik Sri Widiarty, *op.cit,* 2024, hlm. 10

Based on the discussion above, it can be concluded that the form of regulation in determining the import tax rate of foreign products in Indonesia for business actors is based on WTO provisions, namely Article 12 to Article 17A. In Article 12 paragraph 1 of Law Number 10 of 1995, it is stated that "Imported goods are subject to import duty based on a maximum tariff of 40% (forty percent) of the customs value for calculating import duty". The application of the provisions of import duty of forty percent refers to Law Number 7 of 1994 concerning Ratification of the Agreement on the Establishment of the World Trade Organization, as explained in the Explanation of Law Number 10 of 1995 Article 12 paragraph 1. The legal basis for the application of tariffs is accommodated through Law No. 10 of 1995 concerning Customs, Law No. Law No. 17 of 2006 concerning Amendments to the Basis for the Establishment and Implementation of Tariffs on Exports and Imports of Goods, based on Law No. 39 of 2007 concerning Amendments to Law No. 11 of 1995 concerning Excise and Regulation of the Minister of Finance of the Republic of Indonesia No. 213/PMK.0II/2011, concerning the Establishment of a Goods Clarification System and the Imposition of Import Duty Tariffs on Exports and Imports of Goods.

Taxes are a key source of state revenue, essential for meeting the government's economic and budgetary needs. International trade taxes and import duties on imported goods are important sources of government revenue, serving to increase state revenue, protect domestic industries, regulate the flow of goods, and maintain a trade balance.

a. Importing businesses should better understand import tax rates for foreign products based on the following:
b. Businesses are advised to be more proactive in understanding and understanding each tax regulation to increase their awareness and compliance with their tax obligations.
c. Tax authorities are advised to increase tax outreach and education, particularly regarding tax sanctions, for taxpayers.

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