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Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

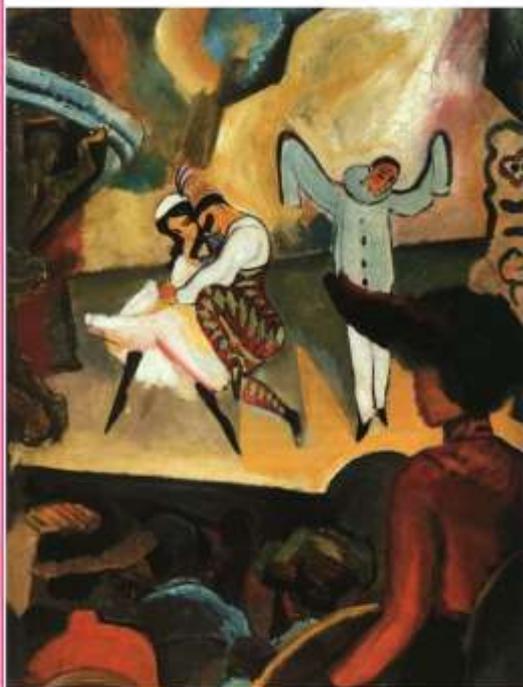
Año 35, mayo 2019 N°

89

Revista de Ciencias Humanas y Sociales

ISSN 1012-1637 ISSN-e 2677-6525

Depósito Legal pp 1024022U45



Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
Maracaibo - Venezuela

Business law and its effects on commercial transactions

Evita Isretno Israhadi

Faculty of Law, Universitas Borobudur, Jakarta, Indonesia

evita_isretno@borobudur.ac.id

Abstract

This study surveyed the Indonesian business law, import and joint venture licensing regulations and found out how the law has implemented sweeping regulations imposing non-automatic import licensing procedures. The study adopted a qualitative method approach employing the inductive method of collecting data. As a result, the Indonesian business law even violated the WTO agreement by introducing arbitrary regulations sanctioning imports in a few cases. In conclusion, the government must also try to accelerate regulatory reforms, particularly in services sectors where market restrictions have been shown to negatively affect trade in manufactured goods.

Keywords: Business Law, WTO Agreement, License.

El derecho mercantil y sus efectos en las transacciones comerciales

Resumen

Este estudio examinó las leyes de Indonesia, las regulaciones de licencias de importación y de empresas conjuntas y descubrió cómo la ley ha implementado amplias normas que imponen procedimientos de licencias de importación no automáticos. El estudio adoptó un enfoque de método cualitativo que emplea el método inductivo de recolección de datos. Como resultado, la ley de negocios de Indonesia incluso violó el acuerdo de la OMC al introducir regulaciones arbitrarias que sancionan las importaciones en algunos casos. En conclusión, el gobierno también debe tratar de acelerar las reformas regulatorias, particularmente en los sectores de servicios donde se ha demostrado que las restricciones del mercado afectan negativamente el comercio de productos manufacturados.

Palabras clave: Derecho mercantil, Acuerdo de la OMC, Licencia.

1. INTRODUCTION

Indonesia has extensive preferential trade relationships with other countries. Under the ASEAN Free Trade Agreement (FTA), duties on imports from ASEAN countries generally range from zero percent to 5 percent, except for products specified on exclusion lists. Indonesia also provides preferential market access to Australia, China, Japan, Korea, India, Pakistan, Japan and New Zealand under regional ASEAN agreements and bilateral trade agreements. Indonesia is

currently negotiating bilateral agreements with Iran, India, Australia, New Zealand, South Korea, and the European Free Trade Association. In addition, Indonesia is studying potential FTAs with Chile, Turkey, Tunisia, Mexico, South Africa, and Egypt. Indonesia is also participating in negotiations for the Regional Comprehensive Economic Partnership, which includes the ten ASEAN members and six additional countries (Australia, China, India, Japan, Korea, and New Zealand).

In recent years, Indonesia has enacted numerous regulations on commercial transactions including imports that have increased the burden for U.S. exporters (Agbim and Eluka, 2018; Udanoh and Zouria, 2018; Bugu and Yucheng, 2018). There are numerous restrictions caused by import licensing procedures and permit requirements, product labeling requirements, pre-shipment inspection requirements, local content and domestic manufacturing requirements, and quantitative import restrictions. Besides, there are numerous other measures that have been adopted or are being considered in the context of draft legislation, including a new food law and a new trade law. Keeping in view the constraints that such commercial transactions might have to face, in 2016, the Indonesian government issued several economic packages in order to deregulate and simplify bureaucracy in several sectors, including food, energy, entertainment, tourism, retail and housing for the poor (Isimoya, 2014; Azam et al., 2016).

Indonesia has a GDP per capita of \$3,370 (\$11,100 at PPP) that exceeds many of its ASEAN neighbors such the Philippines and Vietnam, and with 255 million people. Indonesia's economy comprises

nearly half of ASEAN economic output. Indonesia has also earned a reputation of a democratic nation with a difference, a nation that has provided autonomy to its regional provinces. Indonesia is located on one of the world's major trade routes and is the largest archipelago with extensive natural resource wealth. According to Euro monitor International, Indonesian population comprises the world's fourth largest middle class with 17.3 million households as of 2014, estimated to expand to 20 million by 2030. The number of affluent consumers (those spending over \$165 USD or 2 million IDR) in 2013 exceeded 74 million which would likely to double by 2020. This study has surveyed the Indonesian firms involved in the trade relations with neighboring countries, mainly for imports.

The main objective of this study was to identify how the Indonesian law with its various regulatory laws and import restrictions has made an adverse impact on commercial transactions, particularly imports. The theoretical framework of this study required to examine the impact of such procedures like import restrictions and increased tariffs on commercial transactions. The survey approach was used to first collect data related to the variables of the study and identify such regulations that affected the import and foreign investment. Data were taken from various sources including regulations issued by the Ministry of Agriculture (MOA) and Ministry of Trade (MOT).

2. METHODOLOGY

The study adopted a qualitative method approach employing the inductive method of collecting data. The conceptual framework was designed by keeping in view the current business laws and the regulatory and legal changes that had put restrictions on commercial transactions in Indonesia (Wye & Lim, 2014).

2.1. Sampling and population

The purpose of this study was to collect evidence about the impact of regulatory practices and the Indonesian legal system on a commercial transaction, including imports. Hence, the target population comprised traders, SME owners, Export-import firms, foreign investors and government officials who were responsible to implement the laws and regulations. After the initial round up, 21 sources were identified that were engaged in commercial transactions and the Export-import business. The number of respondents from these sources was 112 who agreed to fill up the questionnaire and participated in discussions and interviews (Remache & Ibrahim, 2018).

2.2. Tools and instrumentation

Two questionnaires were constructed with items related to EXIM policies and contemporary legal regulations. The respondents were required to identify such regulations that were affecting the

commercial transactions in general, and imports, in particular. The data collected was analyzed with an inductive approach and content analysis methods. The constructs helped the researcher arrive at a few findings.

3. FINDINGS

3.1. Tariff and Import Licensing

This study asked the respondents about the stringent legal procedures including tariff and import licensing. They were asked whether the domestic laws caused unpredictability in the market. For instance, whether high bound tariff rates, combined with unexpected changes in applied rates, was creating uncertainty for foreign companies seeking to enter the Indonesian market. Currently, Indonesia has a simple average bound tariff rate of 37 percent across products, which is much higher than its average applied tariff. Bound tariff rates (as determined by Indonesia's WTO obligations) on most Indonesian imports stand at 40 percent, although bound tariff levels exceed 40 percent or remain unbound on automobiles, iron, steel, and some chemical products. In the agricultural sector, tariffs on more than 1,300 products have bindings at or above 40 percent (Okafor & Shaibu, 2016).

Evidence revealed that, in accordance with the WTO Agreement on Agriculture, though Indonesia had agreed to eliminate non-tariff barriers on agricultural products and replaced them with ordinary

tariffs many tariffs at or above 40 percent still remained (Wheeler & Mody, 2002).

Besides, tariffs, this study revealed how exporters to Indonesia are forced to comply with high, numerous and overlapping import licensing requirements that further has impeded access to Indonesia's market. The process for import can be broken into three phases. One, finding the buyer in Indonesia and settling terms of the trade; two, finding an importer/distributor with importing license; three, checking the Indonesian list of HS Codes as some products may need a certain registration from related institutions; and finally enter into a clear agreement with the partner (Importer/ Distributor) to complete the required supporting documents. Once the importer completes the registration formalities and the payment has been made of the fee, the Customs Declaration Form (PIB) needs to be submitted along with its supporting documents to the Customs Office, in order to obtain the Customs Clearance Approval (Ahmed et al., 2018; Ali & Haseeb, 2019; Haseeb et al., 2018; Haseeb., 2019; Suryanto et al., 2018).

The respondents mentioned that the Indonesian government had implemented a sweeping regulation in 2007 imposing non-automatic import licensing procedures on a broad range of products, including electronics, household appliances, textiles and footwear, toys, and food and beverage products. The measure, known as Decree 56, was extended most recently through Ministry of Trade Regulation (MOT) 83/M-DAG/PER/12/2012, which remains in effect until December 31, 2015. However, Decree 56 only worsened the situation. The scope of licensing restrictions was expanded to several additional products,

including cosmetics. The amended decree also retained a requirement for pre-shipment verification by designated companies and imposed a fresh restriction that limits the entry of imports to designated ports and airports. According to most respondents, this constituted a sort of disorientation from import transactions and firms started looking for a substitute strategy (Xinqi, Wenzhong and Wenchao, 2018).

However, a very large section of the respondents disagreed to an import substitution strategy and instead opted for deregulation as a solution, highlighting that market forces were usually more successful than detailed economic interventions by governments. According to them, the economic policy in the fast-growing nations of East Asia has been less interventionist, and very much more open to international competition, than economic policy in other parts of the world. East Asia's success was a powerful influence on Indonesia's decision to pursue deregulation in general and trade liberalization in particular. These findings are in line with the study carried out on OIC member countries which also shared the concern about trade linkages in the ASEAN region (Abidin et al., 2017).

3.2. Restrictive Import Licensing

The study also examined the MOT Regulation 82/2012, as amended by Regulations 38/2013, 68/2015, 41/2016, and MOT Regulation 108/2012, in effect since January 2013, and ended with a few findings. For instance, the newly amended regulations imposed a

burdensome import licensing requirement for cell phones, handheld computers, and tablets. Under the new law (Regulation 82/2012), importers of cell phones, handheld computers, and tablets were not permitted to sell directly to retailers or consumers, and they required at least three distributors to qualify for an MOT importer license. MOT Regulation 41/2016 also required 4G device importers to provide evidence of contributions to the development of the domestic device industry or cooperation with domestic manufacturing, design, or research firms.

It was also revealed that in horticulture, Indonesian importers were required to obtain an Import Recommendation of Horticultural Products (RIPH) from MOA; and an Import Approval (SPI) from MOT. The RIPH specified the product name, its HS code, country of origin, manufacturing location (for industrial materials), and entry point. After securing a RIPH, an importer must obtain an SPI from MOT before importing horticultural products. An SPI specifies the total quantity of a horticultural product (by tariff classification) that an importer may import during the period for which the SPI is valid. Once obtained, importers cannot amend existing SPIs or apply for additional ones outside the application window. The Ministry of Agriculture has discretion on whether to issue a RIPH and make decisions based on an evaluation of multiple considerations. Indonesia has thus imposed restrictions on imports and shipments of most of the horticultural products (Yang et al., 2019).

It has also been reported that the Indonesian Ministry refused licenses to importers who requested quantities above a certain

threshold mentioned in the license. The new import regulations restricted the import of poultry and poultry products, for instance, beyond the permitted quantity. Indonesia in practice did not issue import permits covering these products. The licensing regimes for horticultural products and animals and animal products have had significant trade-restrictive effects on imports. To take another example, Indonesia has an import market for US potato products but due to the new import licensing scheme, the exports of US frozen potato to Indonesia reduced to half in 2016, which was unlike the neighboring Malaysia that had no restrictive import licensing requirements and US shipments of similar potato products to Malaysia exceeded the targets (Indriastuti, 2019).

3.3. Impact of Economic Deregulation

Another finding of this study related to the impact of the government's economic deregulation package on imports issued on 9th September 2015, by the Ministry of Trade (MOT). This new regulation removed the restrictions under the previous regulation imposed on holders of General Importer Identification Numbers (API-U) to import goods which are covered under only one section of the HS Code. Unfortunately, it also removed the provision under the previous regulation which allowed holders of Producer Importer Identification Numbers (API-P) to import certain industrial/finished goods, including those to be traded, by obtaining a Producer Importer license.

Other than these two fundamental changes, the new regulation followed the provisions in the previous regulation. The new regulation was enacted by the MOT on 28th September 2015 and was set out in Minister of Trade Regulation No. 70/MDAG/PER/9/2015 on Importer Identification Number (Regulation 70). Regulation 70 came into force on 1st January 2016 and revoked Minister of Trade Regulation No. 27/M-DAG/PER/5/2012 on the Provisions of Importer Identification Number as amended several times, lastly by Minister of Trade Regulation No. 84/MDAG/PER/12/2012 (Previous Regulation) (Soo et al., 2019).

3.3.1. Major Changes and Their Implications

The study found out a few changes that have significantly affected the commercial transaction, particularly in imports to Indonesia. These changes are listed as below:

1. API-U Holders Ability to Import Goods Under Several Sections of the HS Code

Similar with the Previous Regulation, when API-Us were issued to companies that imported goods to be traded, the Regulation 70 would be issued but now API-U holders could only import goods under one section of the HS Code. If an API-U holder wanted to import goods in several sections of the HS Code, a special relationship had to exist between the API-U holder and its overseas supplier. Under Regulation 70, the restriction to import goods in only one section of the HS Code has been lifted. As such, when Regulation 70 becomes

effective, API-U holders can import goods under several sections of the HS Code, and a special relationship should no longer be required.

2. Prohibition for API-P Holders to Import Industrial/Finished Goods

Earlier API-Ps were issued to companies for importing goods for the importers' own use as capital goods, raw materials or support materials, and/or to support production (not to be traded). The Previous Regulation also provided an exemption which allowed API-P holders to import industrial/finished goods under certain criteria (i.e., test market products and complementary products) to be traded subject to obtaining a Producer Importer (PI) license from the MOT. However, Regulation 70 now removed this exemption, which meant that API-P holders could no longer import industrial/finished goods to be traded. Regulation 70 further stipulated that all PI licenses that have been issued based on the Previous Regulation would remain valid until they expired. And it further stated that once Regulation 70 came into force and PI licenses expired, all API-P holders could only import goods for their own use as capital goods, raw materials or support materials, and/or to support production, but those goods could not be traded or transferred to other parties.

Thus the MOT limited the issuance and renewal of PI licenses. API-P holders were badly affected by the new regulation as it concerned their ability to import industrial/finished goods to be traded. The new regulations were primarily done to enhance investment in Indonesia, but it would stop the importing of the finished goods. There are a few other provisions of Regulation 70 that were found out to be

affecting the import regulations. For instance, these API-Ps were issued to companies that imported goods for the importer's own use as capital goods, raw materials or support materials, and/or to support production. Under the new regulations, these goods now could not be traded or transferred to other parties unless they were imported under an import duty exemption facility and have been used for own use for at least 2 years after the date of the Import Declaration Form.

4. CONCLUSION

Preliminary OECD work indicates that Indonesia is increasingly relying on regional value chains, with its intra-ASEAN sourcing now representing 15% of all foreign value added used to produce exports (more than it sources from Korea and Japan combined), highlighting the importance of completing the ASEAN Economic Community. But Indonesia should also continue its process of multilateral liberalization in order to access the most competitive intermediate products and technologies. OECD analysis shows that if Indonesia were to fully implement measures in the WTO Trade Facilitation Agreement, it could reduce its trading costs by as much as 15%. This would be possible if tariffs and import licensing procedures are not made very stringent, as found in this study.

The study suggests prioritizing trade facilitation measures that have the greatest potential to increase bilateral trade flows and lower trade costs, such as simplifying trade documents, enhancing border

process automation, and publishing trade information online. The government must also try to accelerate regulatory reforms, particularly in services sectors where market restrictions have been shown to negatively affect trade in manufactured goods. Efforts must be taken to minimize regulations and smoothen the procedural formalities.

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Revista de Ciencias Humanas y Sociales

Año 35, N° 89, (2019)

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.

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