



NATIONAL ARRANGEMENTS ON FREE TRADE BETWEEN INDONESIA AND CHINA

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Abstract: Free Trade is a model of buying and selling relations in international law. Free trade means trade that does not discriminate against importing and exporting goods. The implementation of free trade in the ASEAN-China Free Trade Area (ACFTA) in Indonesia is regulated by the provisions stipulated in the Framework Agreement on Comprehensive Economic Cooperation Between the Association of South East Asian Nations and the People's Republic of China, as ratified, forming laws and regulations relating to ACFTA. The issues raised are the government's policy to regulate free trade between Indonesia and China and the legal protection for MSMEs in Indonesia with free trade between Indonesia and China. The implementation of free trade in the ASEAN-China Free Trade Area (ACFTA) in Indonesia is carried out based on Decree of the President of the Republic of Indonesia Number 48 of 2004, the Business Competition Law, Government Regulation Number 44 of 2021, and Regulation of the Minister of Trade Number 7 of 2021 and legal protection for MSMEs in Indonesia with free trade between Indonesia and China is carried out through policies implementing anti-dumping, implementing Safeguards, and implementing imbalanced import duties.

Keywords: ACFTA; ASEAN-China *Free Trade Area*; *Free trade*; *Micro small and Medium Enterprises*

I. INTRODUCTION

The impact of domestic political institutions on trade policy has long been debated among social experts. Although this debate has led to a lengthy discussion, more research must address the relationship between the type of political regime and commercial policy. Most studies of the political economy of trade policy that

examine institutional factors tend to focus only on policy variations among democracies and avoid comparing democracies with other regimes. In addition, many analyses of trade barriers, especially those conducted by economists, ignore the impact of domestic political institutions. Given the recent interest in the effects of regime types on various aspects of foreign policy.¹

However, it should be underlined that there is a distinction between "international policy" or "foreign policy" that deals with border barriers, such as tariffs or taxes, and "domestic policy" that deals with everything outside national borders, such as competition and antitrust regulations, corporate governance, product standards, worker safety, regulation and supervision of financial institutions, environmental protection, tax regulation and other national issues.²

There are many different claims about how political institutions influence trade policy. Rodrik, Milner, and Kubota argue that any political regime change will likely encourage trade reforms. Historically, sharp trade policy changes have almost always been preceded (or accompanied) by changes in political regimes. Not all political transformations result in trade reforms, but drastic changes in trade policy are usually the result of such transformations.³

Such policies also occur in the ASEAN (*Association of Southeast Asian Nations*) region by forming ACFTA. ACFTA (ASEAN-China Free Trade Area) is a trade agreement between ASEAN and China. Not long after, trade cooperation in the Free Trade Area scheme between China and ASEAN began. The ACFTA aims to free the trade area by reducing trade barriers, both tariff and non-tariff, to 0%. In addition, ACFTA will open access to service markets and encourage investment expected to improve the economy and welfare of countries that join. In 1991, China joined the ASEAN Ministerial Meeting (AMM) as one of ASEAN's dialogue partners, which marked the beginning of trade cooperation in the Free Trade Area scheme between ASEAN and China.⁴

¹ Edward D. Mansfield, Helen V. Milner, dan B. Peter Rosendorff, 2000. *Free to trade: Democracies, autocracies, and international trade*, American political science review 94, no. 2, p. 3.

² Scott L. Baier dan Jeffrey H. Bergstrand, 2007. *Do free trade agreements actually increase members' international trade?*, Journal of international Economics 71, no. 1, p. 7.

³ Helen V. Milner dan Keiko Kubota, 2005. *Why the move to free trade? Democracy and trade policy in the developing countries*, International organization 59, no. 1, p. 3-4.

⁴ Sinta Julina, 2022. *ACFTA (ASEAN -CHINA Free Trade Area): Menguntungkan Atau Merugikan Indonesia? Ditinjau Dari Perspektif Neoliberalisme*. Jurnal Alternatif - Jurnal Ilmu Hubungan Internasional 13, no. 2, p. 4.

As one of the countries in the ASEAN region, Indonesia has established trade relations with ASEAN countries through the ASEAN Free Trade Area (AFTA). AFTA allows ASEAN countries to conduct free trade with export and import goods without being subject to customs duties, with tariffs down to 0–5%, removal of quantitative restrictions, and removal of additional non-tariff barriers.⁵ Of course, Indonesia also cooperates with China or China as ACFTA's trading partner by creating a free trade area by removing or reducing trade barriers, both tariff and non-tariff, and improving the welfare of the ASEAN community and China.⁶ However, the most important thing with the presence of ACFTA is that countries that are members of ACFTA, especially Indonesia internally, need to accommodate policies in regulating free trade.

Based on the description of this background, the author feels the need for research that will further discuss government policies in regulating free trade that occurs between Indonesia and China and legal protection that can be provided by the government to MSME business actors as local products so as not to be less competitive with products from China. Departing from this, the author conducted a study entitled "National Arrangements on Free Trade Between Indonesia and China". For research to be prepared in a directed manner, a problem is formulated as follows: What is the government's policy to regulate free trade between Indonesia and China? What is the legal protection for MSMEs in Indonesia with free trade between Indonesia and China?

The author applies normative law-type research focusing more on literature law research. Researchers implement legal research that is descriptive. This type of research contains systematic analysis and data presentation, making it easier to understand and conclude the data. Descriptive research aims to provide systematic, accurate, factual paintings, drawings, or descriptions of the properties, facts, and relationships to the phenomenon under study.

The approach method in the author's research uses a statutory approach (*statute approach*) juxtaposed with factual conditions in the community. The author collects data sourced from primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method is carried out by literature study, namely

⁵ Dies Nurhayati, 2017. *The impact of ASEAN free trade on the Indonesian economy*. JPEKBM (Journal of Economics, Entrepreneurship, Business and Management Education) 1, no. 1, p. 42.

⁶ Sobar Sukmana and Tuti Susilawati, 2022. *ASEAN and China Agreement on the Establishment of the Asean-China Free Trade Area Asean-China Free Trade Area (ACFTA) (Review of Article 2 paragraph 1 (a) of the 1986 Vienna Convention)*, . PALAR (Pakuan Law review) 8, no. 1, p. 185–86.

by examining, reading, and criticizing several library materials such as laws and regulations, secondary legal materials such as books, and information from the internet related to the problem under study. The research was conducted at the Faculty of Law, Lambung Mangkurat University, using a group discussion method to discuss factual issues and select problems and solutions in groups.

The method used in research data analysis uses descriptive analysis techniques, namely by describing the problems studied in the field precisely and in detail so that they can answer the issues studied for further conclusions. The data and problems obtained are combined with existing literature data and analyzed and then described descriptively, namely explaining and explaining the data from the research results to conclude and then answer the problem.

II. DISCUSSION

Government Policy to Regulate Free Trade Between Indonesia and China

a. Indonesian MSMEs that Tend to Be Less Competitive with Imported Products

MSMEs (Micro, Small, and Medium Enterprises) are very important in advancing the country's economy. Besides reducing unemployment by opening jobs, MSMEs also encourage the pace of economic growth. So, it would be perfect if the Indonesian people were happy to use MSME products from Indonesia to grow their economy. In addition, Chinese products are familiar to the people of Indonesia. Before ACFTA officially came into force, the Indonesian market was heavily flooded with Chinese-made products. Chinese products are diverse, ranging from the food business sector, handicrafts, technology, equipment, etc. Although the government strives for more MSME products than imported products, in several sectors in 2022, Chinese products still dominate, such as data from BPS where 62% of vegetables from China are more in demand in the market compared to vegetable products from Indonesia itself,⁷ and other examples that occurred in 2022 based on data from BPS noted that the value of non-oil and gas products from China entering Indonesian territory in February 2022 reached US\$ 4.63 billion.⁸ In addition, for the last example, the value

⁷ Central Bureau of Statistics. 2022. *Vegetables by Country of Origin 2010-2022*. <https://www.bps.go.id/statictable/2019/02/14/2009/impor-sayuran-menurut-negara-asal-utama-2010-2022.html>. Reported on November 17, 2023, at 20:20 WITA.

⁸ Indonesia Data. January 2023. *Indonesia Imports the Most Non-Oil and Gas from China in 2022*. <https://dataindonesia.id/industri-perdagangan/detail/indonesia-paling-banyak-impor-nonmigas-dari-china-pada-2022>. Retrieved November 17, 2023, at 20:25 WITA.

of ceramic imports from China to Indonesia reached 77.45% of Indonesia's total imports in 2022.⁹

This fact shows the dominance of imported products from China in the Indonesian market. Many people consider that the quality of Chinese products is better than that of local products, in addition to the cheaper price. Although the government always promotes jargon of being proud to wear Indonesian products and assures citizens that local products are more competitive with foreign products, Indonesian people still need help to accept the invitation and prefer products from abroad. Therefore, in addition to government efforts, MSME actors must prioritize the quality provided for consumers rather than the benefits that must be obtained. In addition, support from the community as consumers is also critical because with public trust in products from the country made by MSMEs, slowly but surely, local products from MSMEs will be able to compete with products from abroad.

b. Government Roles and Policies

One of the existing regional trade agreements is *the Asen Free Trade Area (AFTA)* initiated by the *Association of Southeast Asian Nations (ASEAN)*. AFTA was implemented in 1995 to benefit ASEAN countries in trade. One of the agreements included in AFTA is a free market agreement between ASEAN and China, a free trade area between 10 countries that are members of ASEAN and China. In 2004, precisely on June 15, Indonesia bound itself. It joined ACFTA, by ratifying the *Framework Agreement on Comprehensive Economic Co-operation Between The Association of Association of South East and The People's Republic of China (Asean-China)* through Presidential Decree Number 48 of 2004 which means Indonesia must open the domestic market widely to ASEAN countries and China. This agreement became known as ACFTA (*ASEAN China Fre Trade Agreement*). This agreement gave birth to a more accessible and cheaper policy of imported products from ASEAN and China to enter Indonesia due to tariff reductions.

c. Policy Implementation

According to Nugroho's research, ASEAN-China free trade must remain. Therefore, fundamental, rapid policies are needed to turn threats into opportunities. Some of these policies are as follows: First, the government must continue renegotiating goods and services to delay liberalization or exemption from import duties. This renegotiation was carried out both with ASEAN member states and with China itself.

⁹ Data Indonesia. Agustus 2023. *China Dominasi Impor Keramik Indonesia pada 2022*. <https://dataindonesia.id/industri-perdagangan/detail/china-dominasi-impor-keramik-indonesia-pada-2022>. Diakses pada 17 November 2023, pukul 20.27 WITA.

At present, this action has been taken, but it needs to be improved. Second, Indonesia's trade attaches in ASEAN countries, and China should try harder to help Indonesian business people trade with business people in ASEAN countries and China. Currently, the trade attaché appears to serve only as a diplomatic consultant. Third, the impact of ASEAN and China's free trade must be protected by maintaining the diversification of Indonesia's export markets. The export market to Middle Eastern countries is one of the markets that has yet to be explored much. Fourth, the government must continue socializing ASEAN and China free trade. For example, free trade rules that must not be violated, sanctions for violators, a system for filing a lawsuit if they feel aggrieved by trading partners, and others. The government has yet to do these things, and it faces various free trade blocs, thus making it tricky for Indonesian entrepreneurs.¹⁰

Liberally, policies must also be viewed from the perspective of space or time so that the substance of the policy is better understood. Whatever happens in ACFTA, Indonesia remains part of the world and Southeast Asia. Therefore, ASEAN and China's free trade policy is intended to enhance economic cooperation among ASEAN countries globally and harness the potential possessed by member countries. As a result, this will result in more significant benefits for all ASEAN member states implementing its policies.¹¹ However, the Indonesian government continues to enforce policies related to free trade through the Business Competition Law, Government Regulation Number 44 of 2021, Minister of Trade Regulation Number 7 of 2021, and Presidential Decree Number 48 of 2004.

The shortcomings of the current policy are the creation of economic disparities between strong and weak economic groups, the exploitation of economically weak communities by economically weak parties, and the formation of monopolies, which are detrimental to society. The economy became unstable. With negligence from the government, Indonesia can be flooded with products from China, as happened in 2012. The Ministry of Industry that took office then believed that the ACFTA trade agreement would eventually be the culprit of the flood of imported products, especially those from China, due to a lack of understanding of the trade agreement. Therefore, a thorough understanding is needed from the government so that the ACFTA trade agreement helps the country's economy, especially those felt by local

¹⁰ Nugroho Sbm, 2016. *Pro-Kontra Perdagangan Bebas Asean-China (ACFTA)*. Jurnal Media Ekonomi dan Manajemen 24, no. 2. hlm. 35–36.

¹¹ Restu Rahmawati, 2015. *Menakar Kebijakan Perdagangan Bebas Asean-China (Acfta)*. Jurnal Polinter: Kajian Politik Dan Hubungan Internasional 1, no. 1, hlm. 17, <https://doi.org/10.52447/polinter.v1i1.66>.

MSME business actors as the most affected party because they are less competitive with Chinese products. Although the adverse effects of ACFTA trade are not only felt by MSMEs, in this case, the government must continue to protect MSMEs through other policies.

d. Legal Protection of MSMEs in Indonesia with Free Trade between Indonesia and China

Micro, small, and medium enterprises (MSMEs) have a definition in the form of form of people's economic activities whose scale is classified as evil and is included in the criteria of net worth or annual sales proceeds and ownership as stated in the law.¹² Along with economic development, there is urgent cooperation at the international level, which requires the government to protect MSMEs so as not to be affected by international trade. Unfortunately, detailed and detailed policies related to MSMEs cannot be regulated by the government, specifically the Civil Code has been issued. During the implementation of MSMEs, technical and theoretical arrangements often need to be improved. This is the background of the issuance of the MSME Law to regulate what has not been controlled by the Civil Code.¹³

Every country can realize economic development through establishing trade relations with other countries, known as international relations. International trade relations have existed for a long time, starting when the country was known with a modern meaning. The state strives for control (supervision) and independence over the international economy, urging the state to cooperate with other countries in trade. The state realizes that building the economy can only happen through trade.¹⁴

Approving the *ASEAN-China Free Trade* (ACFTA) agreement is a form of establishing international trade relations in Indonesia. ACFTA is an example of free trade, and its cooperation consists of countries in one region or region. The establishment of ACFTA aims to increase economic cooperation in the ASEAN region with its partner countries, China. There is a view from ASEAN that establishing an agreement with China to cooperate through free trade will make ASEAN experience economic improvements due to the benefits of trade activities carried out. It is also strengthened by enacting special tariffs as a manifestation of the ACFTA barrier-free

¹² Hamdani, 2020. *Getting to Know Micro, Small and Medium Enterprises (MSMEs) Closer*, Sidoarjo : Uwais Inspirasi Indonesia, p. 1.

¹³ Aulia Rachman Amirtin, 2010. *Perlindungan Hukum Terhadap UMKM Dari Perbuatan Pelanggaran Hak Atas Merek, "Skripsi"* Medan: Universitas Sumatera Utara, hlm. 29.

¹⁴ Huala Adolf, 2005. *Hukum Perdagangan Internasional*, Jakarta: Raja Grafindo Persada, hlm. 19.

principle, which impacts the more accessible trade activities between countries, such as imports or exports. Indonesia is included. Indonesia also implemented the ACFTA agreement aimed at ASEAN members. The agreed cooperation related to free trade is considered to improve trade relations with China through the principles stipulated in ACFTA. China was chosen as a free trade partner to establish trade cooperation for member countries from ASEAN. The election of China was motivated by its firm economic strength as a developed country. China is also included among the countries that indirectly control the world economy. Indonesia uses this as a solid reason to continue participating in cooperation between ASEAN member countries and China through ACFTA.

Cooperation with China that occurred after the ACFTA agreement is seen positively as a way to expand overseas markets for its members. The existence of ACFTA partnering with China from a layman's point of view will undoubtedly bring several benefits to each country that implements it. However, the negative impact cannot be separated from this cooperation, namely the emergence of potential threats to the domestic market. Whether or not the danger is real depends on the readiness of the local market to compete with Chinese products.

The Indonesian government has a new problem in the form of a severe impact experienced by MSMEs with the implementation of ACFTA. Legal protection intended for MSMEs is essential to realize, which also helps the implementation of ACFTA. The form of solution held as legal protection is:

1) Antidumping Enforcement

The definition is in the form of prevention, regulation, and elimination of international trade activities whose purpose is to extract profits from a country (importer) by applying prices lower than the price to produce in the exporting country. Antidumping is a form of legal protection from the government when dumping of products imported from China is found. Antidumping is realized by making all products proven to be dumping subject to antidumping import duties. Implementing this policy is very helpful in protecting MSMEs because implementing the antidumping system will stabilize selling prices for domestic or imported products. That way, price competition will occur healthily.

2) Enforcement of *Safeguards*

An attitude taken by the government of a country that carries out imports to prevent or repair severe losses to local industries due to soaring imports for one particular type of goods or products that compete directly is called a *safeguard* (trade security). The system applied to *safeguards* is not the same

as anti-subsidy or antidumping policies; this system leads to guarding against a surge in imported products. One of the efforts that can be used to protect MSMEs as part of the domestic industry is to run a *Safeguard* system. One of the losses of MSMEs is due to the similarity of imported goods with MSME goods.

3) Enforcement of Reward Import Duties

The definition is in addition to import duties imposed on imported goods, where it is known that the exporting country provides subsidies for those products. Duty on Rewards is also known as anti-subsidy. The destruction of MSMEs has the potential to occur due to the implementation of ACFTA and the provision of subsidies by China to its exported products, which makes the selling price even cheaper in importing countries than exporters. This situation damages the economic system of importing countries because it results in many local products that cannot compete in price. Therefore, this policy must be implemented as legal protection for MSMEs so that there is no deterioration in MSME products due to the implementation of the ACFTA agreement.

These 3 (three) actions are some of the activities the government can carry out to provide legal protection to local Indonesian MSMEs due to free trade between Indonesia and China. Jam requires cooperation from all communities to build trust in local products by not *underestimating* or underestimating locally-made products. This fact is often found in people's daily lives, and some residents consider products made from abroad always better than those produced by local MSMEs.

3. CONCLUSION

ASEAN and China's free trade policy is intended to enhance economic cooperation among ASEAN countries at the global level and to harness the potential possessed by member countries. Implementing the ASEAN-China Free Trade Area (ACFTA) as a form of free trade has been regulated in Indonesia by the policies listed in the Framework Agreement on Comprehensive Economic Cooperation Between the Association of South East Asian Nations and the People's Republic of China. Indonesia has ratified it through Presidential Decree of the Republic of Indonesia Number 48 of 2004 dated June 15, 2004. In addition, these regulations are closely related to the Business Competition Law, Government Regulation Number 44 of 2021, and Minister of Trade Regulation Number 7 of 2021. Although there have been policies related to free trade, there are still areas for improvement in existing policies, including economic disparities between those belonging to weak economies and strong economies; strong economic parties that exploit economically

weak communities; and the formation of monopolies, which make society lose. The economy became unstable.

The Civil Code still needs to be improved to regulate MSMEs specifically. During the implementation of MSMEs, arrangements often need to be made more technically and theoretically, which is then behind the issuance of the MSME Law to regulate what has not been controlled by the Civil Code. The inclusion of Indonesia in the ASEAN-China Free Trade (ACFTA) agreement aims to expand foreign markets further by cooperating with China. Still, the negative impact of the ACFTA agreement has the potential to pose a threat to the local market in each member country, so that in its implementation important legal protection is provided to MSMEs, Including:

- a. Implementing anti-dumping is very helpful in protecting MSMEs because it will stabilize selling prices for domestic or imported products. That way, price competition will occur healthily.
- b. Implementing Safeguard prevents a surge in the quantity of imported products that flood the local industry.
- c. Implementation of tariff duties or anti-subsidies for imported products.

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