

The Indonesian Antidumping Law from Perspective of Lawrence M. Friedman's Concept

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ABSTRACT

Dumping is a kind of unfair competition through price discrimination in which selling price of imported goods is lower than normal price of goods in its origin country. Industrial countries make a legal convention called antidumping code (1994) as a counter attack toward the dumping practices. The objective of antidumping code is protecting of local industry from market destruction caused by dumping price. However, tight antidumping policy enforced by the destination country of exported goods has created a new entry barrier for commodity goods flow from developing country into international market.

Indonesia as a member of international community should follow prevail regulation of multilateral trade such as antidumping code (1994) as a part of the agreement on establishing the WTO which is ratified by the government together with people representative council through the released of law No. 7 of year 1994. Moreover, regulation of antidumping has been arranged by Law No.10 of year 1995 which has been amended by law No. 17 year 2006 about Custom in paragraph IV first part article 18 till 20 and government regulation No. 34 of year 1996 which has been replaced by government regulation No. 34 of year 2011 as implementation of conduct.

Keywords: *The Indonesian Antidumping Law*

INTRODUCTION

Economic development that increasingly leads to free markets is inevitable with the economic merges of all nations. This is one sign of the victory of the capitalists with their liberal state in the political arena and the world economy. For developing countries like Indonesia, it has created a dependency and integration of the national economy into the global economy. This is one reason that competition between economic actors in international trade is getting tougher, this competition seems to increasingly encourage fraudulent competition. Dumping¹ is competition in the form of price discrimination or selling below normal prices. Most developed countries protect against this dumping practice, by enforcing anti-dumping legal instruments, in

order to protect their domestic industries from market destruction because the sale of imported goods is below the right price. The strict legal provisions of antidumping in export destination countries have turned out to cause various problems, politically economic; this limits the access of developing countries to take part in international trade.

Indonesia as a developing country is inseparable from this economic trend, Indonesia's competing countries - both developed and developing countries - on the one hand are increasingly aggressively launching allegations of dumping practices to Indonesia to protect their domestic industries and on the other hand likely to practice dumping into Indonesia.

As a sovereign country and subject to International Law, the Indonesian nation has the right to receive fair treatment², both externally

¹ The practice of dumping is carried out by the exporting country by determining the price below or lower than the nominal value or the actual unit cost or can also be said to sell at a lower price in the importing country than in the producer country itself, see Ade Maman Suherman, "Aspek Hukum Dalam Ekonomi Global", Ghalia Indonesia, 2002, page 132.
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² In this case Mr. NE Algra says that justice is a problem for all of us and in a society every member is obliged to carry out justice, people should not be neutral if something goes wrong, see NE. Algra, "Mula Hukum", (Bandung, Bina Cipta, 1983), page 104.

in trade relations between Indonesia and other countries, as well as internally in the interests of employers as producers with the community as consumers. Bung Hatta in his writing said:

“With regard to the views of the interests of the state and the nation, Indonesia in every matter will determine its attitude and make the right decisions that can protect its interests in fulfilling the international agreements that will be accepted”.³

In terms of the dumping actions that Indonesia receives from other countries against Indonesia's mainstay products, such as textiles, plywood, chemicals and several other products, it is certainly a big problem for Indonesia's economic growth. Because those reliable products are the main source of foreign exchange from the non-oil and gas sector.

As explained above, the enforcement of antidumping law is an attempt to counter dumping practices carried out by foreign producers (importers) which can cause real losses to domestic industries. The birth of dumping practices as a consequence of the development of an increasingly complex world economy which has led to intense competition in international trade, both trade in goods and services.

Antidumping institutions are regulated in Article VI GATT which recommends that each member country implement the GATT provisions in each country's national legal system. As a follow up to the provisions, the last of the Uruguay round was produced Antidumping Code (1994) under the name Agreement on Implementation of Article VI of GATT 1994 which is a Multilateral Trade Agreement (MTA) where the legal instrument was signed together with the signing of the Agreement Establishing the World Trade Organization (WTO). Thus, the Antidumping Code in 1994 was an integral package of the Agreement Establishing the WTO, an institution that aimed, among other things, to advance world free trade among its member countries in accordance with the Multilateral Trade Agreement.

As a country that takes part in multilateral trade, Indonesia has ratified the Agreement Establishing the WTO with Law No. 7 of 1994 (State Gazette of 1994 Number 57, Additional State Gazette Number 3564). By ratifying this

Agreement Establishing The WTO, Indonesia has simultaneously ratified the Antidumping Code (1994) which is one of the Multilateral Trade Agreement.

Antidumping Code (1994) in Article 18A, obliges its member countries to take the necessary steps no later than before the WTO was officially established on January 1, 1995. To adjust the laws, regulations and administrative procedures relating to antidumping already exists in each of its member countries with the provisions listed in Antidumping Code (1994). As a consequence of the ratification of the Agreement on Establishing the WTO by Indonesia, Indonesia then made basic provisions regarding anti-dumping by inserting in Law No.10 of year 1995 which has been amended by law No. 17 year 2006 concerning Customs. Provisions regarding antidumping are listed in Chapter IV of the first part of articles 18 through article 20, while articles 21 to 23 regulate import duty. This provision is the basis for implementing regulations on anti-dumping Indonesia. Article 20 of Law No.10 of year 1995 which has been amended by law No. 17 year 2006 stipulates the imposition of Antidumping Import Duty while further regulation is regulated by Government Regulation Number 34 of year 2011 concerning Antidumping Import Duty and Import Duty. The implementing regulations are issued in the form of decisions of the Minister of Industry and Trade.

With the issuance and enactment of these regulations, it indicates that the attitude of the Indonesian government in its commitment to follow the era of free trade is undoubted, but it is necessary to examine several aspects including the legal aspects.

In this case the Indonesian nation must be prepared with all the consequences that arise up to the level of implementation of the legislation issued.

In reviewing the legal aspects of antidumping in the perspective of Indonesian positive law, the authors depart from Lawrence M. Friedman's concept of three elements of the legal system (Three Elements of Legal System). The three elements of the legal system are structure, substance, and Legal Culture.⁴

³ 3 Muhammad Hatta, “Dasar Politik Luar Negeri Republik Indonesia”, (Jakarta, Tintamas, 1953), page 21.

⁴ See Lawrence M. Friedman, American Law an Introduction, (New York – London, W.W. Norton & Company, 1998), page 18-20.

STRUCTURE OF ANTIDUMPING LEGAL DEVICES

The legal system has a structure, the legal system keeps changing but the parts of the system change at different speeds, and each part changes not as fast as certain other parts. According to Lawrence M. Friedman, the definition of structure is as follows:

"The structure of a system is its skeleton framework; it is the permanent shape, the institutional body of the system, the tough rigid bones that keep the process flowing within bounds"⁵

So, the structure is a frame or frame, a fixed part, a part that gives a kind of form and boundary to the whole. In Indonesia, for example, if we talk about the structure of the Indonesian legal system, including the structure of institutions, including institutions of enforcement law, also includes procedures and limits of authority to the subject of the law itself. Clearly, the structure is a kind of legal system incision - a kind of still photo that stops motion.⁶

If an antidumping legal instrument is seen as a legal system, the study of its structural elements, the authors will examine aspects of: anti-dumping legal institutions and anti-dumping and hierarchical investigation procedures and the scope of anti-dumping legislation. Next the author describes the following:

Institutions and Procedures for Antidumping Investigations

Indonesian Antidumping Committee

Komisi Antidumping Indonesia (KADI) as well as an administrative technical institution, can also be said as an antidumping law enforcement agency because in accordance with its duties it also conducts investigations into alleged dumping goods or goods containing subsidies.⁷

The Chairperson, Deputy Chairperson and members and Secretary of KADI are appointed and dismissed by the Minister of Industry and Trade. In carrying out its duties the Chair of

⁵ Ibid, page. 19.

⁶ Ibid, page 18, see Achmadi Ali, "Keterpurukan Hukum Indonesia (Penyebab dan Solusinya)", (Jakarta, Ghalia Indonesia, 2002), page 8.

⁷ The KADI task is set in "Keputusan Menteri Perindustrian dan Perdagangan" No. 427/MPP/Kep/10/2000, Article 2, see too Government Regulation No. 34 Tahun 1996, Article 7 ayat (1) which has been replaced by government regulation No. 34 of year 2011

KADI is responsible to the Minister of Industry and Trade.⁸

From the above provisions KADI works under the coordination / auspices of the Ministry of Industry and Trade. Previously the Chair of KADI was held by the Minister of Industry and Trade, but in 2000 through the Decree of the Minister of

Industry and Trade Number 428 / MPP / Kep / 10/2000, Chair of KADI is held by Echelon I officials. This is felt to be less efficient and effective for antidumping investigators in KADI because KADI is proposing the imposition of antidumping entry fees based on its findings and analysis to the Minister of Industry and Trade, in this case it takes a long time to be processed or decided by the Minister of Industry and Trade to be forwarded to the Minister of Finance or even on the basis of certain considerations not forwarded to the Minister of Finance to be determined as a decision.

Therefore, in addition to KADI as an investigating institution for alleged dumping practices, there are several government institutions that will follow up on KADI findings and analysis to determine anti-dumping import duties or reward fees. These institutions, among others, will be explained below.⁹

Minister of Industry and Trade

On the basis of the final results of the KADI investigation that prove the existence of dumping goods, the Minister of Industry and Trade decides the amount of certain value for the imposition of Antidumping Import Duty or Import Duty.¹⁰

Minister of Finance

Based on the Decree of the Minister of Industry and Trade, the Minister of Finance stipulates the amount of Antidumping Import Duty or Import Duty.¹¹ So that the understanding of the Decree

⁸ See Article 9 and 10 "Keputusan Menteri Perindustrian dan Perdagangan" No. 427/MPP/Kep/10/2000.

⁹ From the research that the author did on the antidumping case in 1996-2000 there were 2 cases that had been recommended to be subjected to BMAD "Bea Masuk AntiDumping" (Carbon Black and Ferro Manganese Silicon Manganese. However it had not been followed up, Research at the KADI Secretariat).

¹⁰ see government regulation No. 34 of year 1996, Article 26. which has been replaced by government regulation No. 34 of year 2011

¹¹ Ibid, Article 18, 19, 20 and 27.

of the Minister of Industry and Trade and the stipulation of the Minister of Finance creates confusion understanding. In this case what is the difference between **decisions** and **stipulations** issued by two different government institutions.

In practice, the Decree of the Minister of Industry and Trade is only in the form of recommendations submitted to the Minister of Finance. Then the Minister of Finance issues a decree on Antidumping Import Duty or Import Duty.

So the Minister of Finance is only deciding what has been recommended by the Minister of Industry and Trade. Hopefully this provision needs to be synchronized with practice in the field so as not to cause confusion in practice.

Director General of Customs and Excise

This institution has the authority to collect anti-dumping import duties and import duty - establish and return excess payments for temporary anti-dumping duties and stipulate and return excess antidumping import duties.¹²

In the case of collecting anti-dumping duties, the Director General of Customs and Excise is based on the decision of the Minister of Finance, but in the return of temporary antidumping import duties and antidumping import duties, the Director General of Customs and Excise can set himself based on the request of the dumping goods importer. This provision needs to be observed because in the imposition of antidumping import duties, customs are only carrying out collection, but in excess control the Director General of Customs can set itself, meaning the Director General of Customs has the completeness to assess the excess imposition of antidumping import duty or import duty, as well as how it is coordinated with the Minister of Industry and Trade and CEC while administrative technical institutions.

Tax Dispute Settlement Agency

This institution is tasked with examining and deciding appeals against the decision to determine anti-dumping customs duties by authorized officials.¹³

If we consider Article 97 of Law No.10 of year 1995 which has been amended by law No. 17 year 2006, before the establishment of the Tax Justice Agency, the Customs and Excise Consideration Agency is formed as an appealing

institution and its decision is not a State Administrative decision. Tax court decisions are final and permanent decisions.¹⁴

With the existence of several antidumping legal administration implementing institutions with the steps that must be followed in the process of investigating dumping practices to the establishment and collection of antidumping entrance fees, if we look at it, it is very ineffective, and inefficient with the four stages that must be passed in the determination of antidumping import duties (excluding Tax Justice if there is no appeal / dissatisfaction).

In practice, not all KADI findings and analysis proposed to the Minister of

Industry and Trade are followed up or require a long time to be forwarded to the Minister of Finance to be determined. In this case the law does not regulate it so that it can cause uncertainty, nor is there a necessity for the Minister of Industry and Trade to follow up on KADI's findings and proposals. In terms of coordination, KADI is appointed and dismissed and is responsible to the Minister of Industry and Trade. It can be said that KADI is under the Minister of Industry and Trade.

Even if the Minister of Industry and Trade follows up on KADI's findings and proposals regarding the existence of a dumping practice, the Minister of Industry and Trade will make a recommendation to the Minister of Finance regarding the proposed imposition of Antidumping Import Duty. Then the final is decided by the Minister of Finance and the execution of the decision is carried out by the Director General of Customs and Excise.

KADI is a technical administration institution that investigates alleged dumping practices by working professionally. Then the KADI findings were submitted to the Minister of Industry and Trade and continued to the Minister of Finance, these institutions were government agencies which in making decisions could not be separated from political considerations.

If we compare it with the antidumping arrangements in several countries as discussed in Chapter II sub B. such as in the United States, Europe and Australia that there is indeed involvement of government agencies, and it can be understood that the determination of

¹² Ibid, Article 29 and 30

¹³ Ibid, Article 35.

¹⁴ See Article 96 dan 97 "Undang-Undang No. 10 Tahun 1995".

Antidumping Import Duty includes public policies that have an impact international trade. But for Indonesia, how can the procedures and stages of the antidumping investigation process are simplified so that the implementation can be carried out effectively and efficiently.

In the opinion of the author, KADI should not be under the Ministry of Industry and Trade, because its members consist of several elements of the Ministry and related institutions, KADI can be an institution between departments, such as the tariff team under government agencies, so the writer prefers KADI to be in under the coordination of the Ministry of Finance, for the following reasons:

- Indeed, the antidumping policy concerns international trade traffic but the decision of the antidumping administrative institution is the stipulation of Antidumping Import Duty as a sanction for dumping practices whose implementation is collected and managed by the state Cq. Ministry of Finance Cq. Directorate General of Customs and Excise.
- Since the Directorate General of Customs and Excise collects antidumping duties, it is under the Ministry of Finance so that by placing KADI under the coordination of the Ministry of Finance it will be able to shorten the bureaucratic chain. Thus the implementation of antidumping legal and legal administration can be carried out effectively and efficiently.

If KADI is an independent institution, the decision and implementation of KADI's findings will continue to be carried out by the Minister of Finance Cq. Directorate General of Customs and Excise. The above thinking is based on the concept that the state's management and management of state finances is carried out, including the three powers of state financial management, namely authorization, ordinance and treasury power:¹⁵

- Authorization power is the power to take actions or decisions that can cause the country's wealth to decrease or increase.
- Ordinance power is the power to accept, examine, test the validity and issue warrants collecting and paying bills that burden the budget of state revenues and expenditures as a result of the actions of the authorizer. Tests

¹⁵ Tim Bepeka, "Keuangan Negara dan Badan Pemeriksa Keuangan", (Jakarta, "Sekretariat Jenderal Badan Pemeriksa Keuangan", 1998), page 25-26.

and research conducted by the or donator include the basis of their rights (Wet matigheids) and the legal basis of their bills (recht matigheids) and their objectives (doel matigheids)

- Treasury Authority is the power to receive, save or pay / issue money or goods and account for money or goods that are in its management.

In this case, KADI is in addition to members from the Ministry of Industry and Trade, the Ministry of Finance, the relevant Departments /

Institutions as regulated by Article 6 of Government Regulation No. 34 of year 2011, but it would also be better to involve professional elements and practitioners. Furthermore, the Minister of Industry and Trade and the Minister of Finance remain as the KADI Steering Team, as stipulated in article 5 of the Decree of the Minister of Industry and Trade No. 427 / MPP / Kep / 10/2000.

Hierarchy and Scope of Antidumping Legislation

The legal basis for antidumping in Indonesia is the Customs Law, namely Law No.10 of year 1995 which has been amended by law No. 17 year 2006, which is regulated in Chapter IV of the first part of article 18 through article 20. Whereas the second part of article 21 to article 23 regulates Import Duty. While the special regulations governing Antidumping Import Duty and Rewards Import Duty are regulated in Government Regulation Number 34 of year 2011. Then followed by Decrees of the Minister of Industry and Trade.

Considering the practice of dumping and subsidies is one of the phenomena in international trade where handling requires institutions and special handling, if the basis for Antidumping and Import Duty is not sufficiently regulated in the Customs Law, anti-dumping legal regulations and customs duties are regulated by separate laws in particular.

By placing an antidumping legal basis on customs law means that anti-dumping instruments are under the scope of customs. While the antidumping arrangement itself is regulated by Government Regulation Number 34 of year 2011, as the executor of Law No.10 of year 1995 which has been amended by law No. 17 year 2006 concerning Customs. In this case, it could be interpreted that antidumping policy is part of customs, or antidumping

becomes a sub-ordination of customs. Determination of antidumping policies is different from the scope of customs material even though the implementation (collection) is equally carried out by the Directorate General of Customs and Excise. But if the Customs Law is used as the legal basis for antidumping, it will cause confusion for business people in conducting international trade.

SUBSTANCE OF ANTIDUMPING LEGAL PROVISIONS

Another aspect of the legal system is the substance, according to Lawrence M. Friedman:¹⁶

"The substance is composed of substantive rules and rules about how institutions should have".

So what are meant by substance according to Friedman is the rules, norms and patterns of real human behavior in the system. The substance also means the products produced by people who are in the legal system, including the decisions they make, the new rules they compile. Substance also includes living law, and not only the rules in the Law or Law Books.¹⁷

As a starting point to discuss the substantive aspects of antidumping law, the author uses article 18 of Act No. 10 of 1995 as a reference:

"Antidumping import duties are imposed on imported goods in the event that the export price of the goods is lower than the normal value and the import of said goods causes losses to domestic industries producing goods similar to those goods, ..."¹⁸

From the above provisions, it can be seen that antidumping import duties will only be imposed if the criteria are successfully proven in the investigation. These criteria are:

- The existence of similar items exported to a country (like product)
- Export prices are below normal (dumping) prices
- Causing loss (injury)
- There is a causal relationship between selling export prices that are below the normal value and losses to domestic industries.

¹⁶ Lawrence M. Friedman, Op. Cit, (1998), Page. 19.

¹⁷ Ibid

¹⁸ This provision is the basis, which is used as indicators in determining the existence of dumping practices.

Ad. a. Presence of Similar Items (Like Product)

Government Regulation No. 34 of year 2011 in Article 1 number 9 determines when two items are said to be similar goods (like products) as follows:

"Similar goods are goods that are identical or identical in all respects to the intended imported goods or which have physical, technical or chemical characteristics resembling the said imported goods"

If studied, what is meant by "identical or equal in all respects" is that the two items are identical and there is no difference at all. This understanding makes understanding about similar items complicated. It should be necessary to interpret more about exactly and there is no difference at all. Whereas the sentence "have physical, technical or chemical characteristics" is not clear whether it must be interpreted cumulatively or alternatively. This means that whether two items can be said to be the same if both have the same physical characteristics even though technically or chemically do not resemble.

Ad. b. Export Prices Below Normal Prices (Dumping)

Based on the provisions of Article 18 of Law No.10 of year 1995 which has been amended by law No. 17 year 2006 technically juridically the meaning of dumping is "the sale of export prices below the normal value". Thus an item is said to be sold dumping if it is sold at an export price lower than the normal value.

The definition of dumping above shows that positive law views dumping as "sales below the normal value (cost)". Whereas if we look at the history of dumping development from the existing literature, dumping can also be seen as transnational price discrimination where prices are lower than national market prices. However there is no relation between price discrimination and sales below normal values, sales below normal values may occur with or without price discrimination and price discrimination may occur without selling below normal values.¹⁹ Both types of dumping practices have basic economic concepts each with reasons why companies practice such dumping.

Ad. c. Losses (Injury)

¹⁹ See, Gabrielle Marceau, Antidumping and Anti Trust Issues in free Trade Areas, Oxford, Clarendon Press, 1994, page. 11.

The definition of "loss" in antidumping terminology has juridical and economic dimensions. This can be seen in article 1 number 11 of Government Regulation Number 34 of year 2011, where there are three benchmarks that can be used as a measure in determining the loss for domestic industries that produce similar goods, namely:

- Material losses that have actually occurred (injury material) as a result of dumping goods.
- The threat of real losses that will be experienced by domestic industries that produce similar goods (threat of material injury). In this case, factually it has not harmed the domestic industry, but if no antidumping action is taken, it is likely that dumping will cause losses.

a. Blocking the development of domestic industries that produce similar goods (Material retardation) The limitation of "losses" regulated by the aforementioned provisions is very broad resulting in the understanding of such losses being biased. The extent of the definition of "loss" can result in legal anti-dumping instruments being used as instruments by employers (producers) to protect their business interests. According to Sudaryatmo, a Public Interest Lawyer YLKI/"Yayasan Lembaga Konsumen Indonesia (Indonesia Consumers Foundation) said that:

"So far there have been allegations that antidumping laws that should be used to counter unhealthy trade practices (dumping) have been used as a means to take refuge for employers so they can set prices above normal values with the aim of blocking the entry of imported products as competitors. This can cause harm to the community as consumers."²⁰

The original purpose of the anti-dumping legal instrument to protect domestic industries, should domestic industries that feel disadvantaged must be open and accommodating. In reality, most domestic industries (Indonesia) have not been open in pricing. This is difficult to penetrate because monopolistic practices are still rampant in this country, the many companies that control upstream-downstream production, so competitive trade competition is still a hope.

²⁰ Interview on December 18, 2002 at "Sekretariat Yayasan Lembaga Konsumen Indonesia (YLKI)", Jl. Pancoran Barat VII No. 1 Duren Tiga – Jakarta Selatan.

In the opinion of the author, the limitation of "losses" arising from dumping practices is quite limited to real losses (material injury) where domestic industries that produce similar goods have actually suffered losses as a result of dumping goods.

Ad. d. Domestic Industry (Domestic Industry)

In determining whether domestic industries materially suffer losses or threat of loss or are prevented from developing by importing dumping goods. Article 1 number 8 Government Regulation Number 34 of year 2011 provides the understanding of domestic industry as follows:

- Overall domestic producers of similar items, or
- Domestic producers of similar goods whose production represents a large portion (more than 50%) of the total production of the goods in question. In the Government Regulation it does not regulate how if it turns out that domestic producers have a related relationship with exporters or producers who export goods suspected of being dumping, can they be categorized as domestic industries? It would be unfair if producers who are related or have a special relationship with exporters or producers are included in the definition of domestic industry because they will certainly oppose the imposition of Antidumping Import Duty. So if their numbers are large, it can be ascertained that they will be able to derail anti-dumping investigations.

Overall, Government Regulation Number 34 of year 2011 which regulates Antidumping Import Duties and Import Duty does not regulate substantively in detail. The Government Regulation further regulates procedures. Whereas in Antidumping Code (1994) it is arranged in such detail even though there are points that need to be adapted to the conditions of Indonesia.

The above problem can be understood because antidumping in Indonesia is regulated by Government Regulations. To answer this problem, antidumping needs to be regulated by a separate law as the author has described in the previous "Structure" discussion. Even though Indonesia has ratified the WTO Agreement Establishing through Law Number 7 of 1994, where the Agreement on Implementation of Article VI (Antidumping Code 1994) is an attachment or part of the Agreement

Establishing the WTO, it does not mean that Indonesia does not need anti-dumping laws, because there are certain things that must be adapted to the conditions and interests of the Indonesian people without violating the principles that must be universally applicable.

CULTURE IN THE COMMUNITY FOR ANTIDUMPING LEGAL ENTRY

What are meant by legal culture is human attitudes towards law and the legal system - their beliefs, values, thoughts and hopes. As Lawrence M. Friedman's understanding of:

"The legal culture, their systems beliefs, values, ideas and expectation. Legal culture refers, then, to those parts of general culture customs, opinions, ways of doing and thinking that bend social forces to ward from the law and in particular ways."²¹

So thus, that part of the general culture concerns the legal system. This thought and opinion is more or less a determinant of the course of the legal process.

In other words, legal culture is a social thought and social force that determines how the law is used, avoided or misused. Without a legal culture the legal system itself will not be empowered.

The antidumping legal system in Indonesia when viewed from the cultural aspects prevailing in the community both in terms of the business community, administrators and society in general, based on the results of research the authors can be classified as follows:²² a. Business Community (Entrepreneurs)

The anti-dumping legal instruments are not yet in the community in the business world in Indonesia so they do not know much about anti-dumping legal instruments and their benefits for the protection of their businesses. Because of this ignorance, many of our entrepreneurs do not know what to do if the products they export are subject to antidumping import duties in destination countries, as has happened to shoe products from three Indonesian companies subject to antidumping import duties in Peru in April 2002, chronologically as the following: - Decree from Peru's Fiscal, Dumping and Subsidies Commission (Indecopi) number 017-2002 / CDS - Indonesian Library April 11, 2002, three Indonesian shoe and footwear

companies officially sanctioned Antidumping Import Duty between US \$ 1.27 - US \$ 5, 64 per pair by the Peruvian government. The three companies that were subject to sanctions, respectively PT. Prima Inreksa Industries, PT. Bosaeng Jaya, and PT. Nikemas Gemilang.

- In the letter, the commission stated that it had provided an opportunity to submit objections and answer the questionnaire when the investigation process began, but had never received a response from the three Indonesian companies. Even the commission invited all relevant parties to attend the hearing on October 25, 2001, it turned out that only local producers were present while importers, exporters and representatives of the Indonesian government did not fulfill the invitation.
- Secretary General of Aprisindo (Indonesian Footwear Association) Djimanto said the determination of the anti-dumping sanctions was baseless and unclear because since the announcement of the dumping investigation plan, the Peruvian government had never explained the period of investigation and the period of dumping practices experienced by the local industry.
- Since the dumping petition was issued, Aprisindo and the three companies have coordinated and evaluated with the Ministry of Industry and Trade, apparently the three companies did not export shoes to Peru because the petition was not responded to. The case above shows the lack of understanding of national employers including the Ministry of Industry and Trade as the technical department of antidumping laws and their implications. If it is true, the three companies have never exported their products to Peru, which does not mean the solution by not responding to dumping petitions from local producers. As a result, in the long run the imposition of sanctions made it difficult for Indonesian businessmen to expand their markets to Latin America. With the sanctions, practically the three companies could no longer expand their marketing to Peru because of the very high Antidumping Import Duty.

On the other hand, since the establishment of KADI in 1996 to date only 24 petitions have come from domestic companies regarding the practice of dumping from producers / importers.

²¹ Lawrence M. Friedman, Op. Cit, page. 20.

²² See Media Indonesia, 7th May 2002.

Of the total number of petitions in 7 cases granted (subject to BMAD), ²³10 cases of investigations were stopped because they did not meet the requirements, 4 cases were still in process, 3 cases were recommended subject to BMAD, but BMAD had not yet been charged. In this case the small number of complaints (petitions) that come in does not mean significant with the dumping practices carried out by producers / importers but because of the ignorance of some domestic entrepreneurs with the existence of antidumping legal instruments as instruments to protect their businesses.

From the two perspectives mentioned above (both Indonesian producers who are subject to antidumping sanctions and Indonesian producers who submitted dumping petitions) it can be seen that Indonesian entrepreneurs are not ready to use antidumping legal instruments as a means of protecting their businesses, this can be seen from their business behavior in calculating and addressing the norms and legal principles of antidumping in the practice of dumping. Therefore the frequency of antidumping legal socialization needs to be increased among national entrepreneurs.

Antidumping Law Administrator

Administrators as antidumping law enforcers if studied from the aspect of culture (culture) then are strongly influenced by the value system that applies in the community where they are. Antidumping law administrators in Indonesia are part of the bureaucracy so that the culture (including the work ethic) of the administrator is identical to the culture that lives, grows and develops in the life of the bureaucracy itself.

Aji Setiadi, an antidumping legal practitioner, revealed several obstacles and problems encountered in practice, especially when dealing with administrators, as stated:

"It is difficult to obtain information and data from KADI, including data that is non-confidential even though, compared to other WTO member countries such as the United States and Europe, antidumping petitions in Indonesia are less detailed, this shows the level of professionalism and technical expertise of our administrators"²⁴

²³ Documentation "Komite Antidumping Indonesia", 2002.

²⁴ Interview with Aji Setiadi at Law Office S&R Legal Consultants, at Ariobimo Sentral 4th floor, Jl.

Furthermore Aji Setiadi said:

"Antidumping law is a tool of international trade law that will be applied to other countries, so it needs to be adjusted in terms of expertise and administrative techniques with other more advanced countries. This requires a learning process, then depends on the ability and willingness of administrators such as KADI and related institutions "²⁵

From the behavior and perspective of the Antidumping Law Administrator, it is necessary to adjust the prevailing norms and values and the appropriateness principle for an administrator (public official).

General Public Culture

According to the author's observation, the application of antidumping laws to a product has never caused a direct reaction from the public, although eventually it will increase the price of the goods concerned at the consumer level. This can be understood because those directly affected by antidumping policies are entrepreneurs (producers) of similar goods or intermediate consumers (industrial users / downstream industries).

The results of the above observations are corroborated by data that until now the Indonesian Consumers Foundation (YLKI) has never received complaints from the public as consumers as a result of anti-dumping policies. This is in accordance with the framework of YLKI's mission to protect the interests of end consumers (the community), not intermediate consumers (industry / downstream).²⁶

From the facts above, it shows that the international law that is applicable to the people of Indonesia has not yet been socialized as a result of the ratification of several international agreements such as anti-law law. Even though international law will bind and influence the lives of the people of Indonesia.

As mentioned earlier, problems relating to law in developing countries such as Indonesia are a matter of uniformity, structure, tradition, the legal values adopted by the community and the problem of the society's unpreparedness to

HR. Rasuna Said Kav. X.2 No. 5 Jakarta, 19th Desember 2002.

²⁵ Ibid

²⁶ Interview with Sudaryatmo Public Interest Lawyer YLKI, tanggal 18th Desember 2002 in Sekretariat YLKI, Jl. Pancoran Barat VII No. 1, Duren Tiga – Jakarta Selatan.

accept changes and renewal of the legal system, this reflects a problem the culture and legal values adopted by the community concerned.

F.C Von Savigny said that human society in this world is divided into many peoples of the nation. Every society of the nation has a "Volkgeist" (national soul). So that the legal system of a nation will be in accordance with the pattern of the nation's culture, thus it is natural that the teachings outline that the law is not made but grows and develops with the community so that the law is part of a nation's culture.²⁷

With the globalization of world trade, if the Volkgeist paradigm of F.C. Von Savigny is not fully understood, understanding the teachings will experience a shift in meaning. But if seen from developing countries such as Indonesia whose interests are increasingly pushed by the current globalization of world trade, the concept of thinking F.C. Von Savigny needs to be reappointed as a frame of reference for legal experts, policy makers and regulators in this republic, as a rationale in issuing policies and regulations.

Departing from the aforementioned thinking, the Indonesian nation continues to take part in global trade and international relations without eliminating national identity and cultural values so that national interests will remain protected. This will certainly manifest if the Indonesian nation is strong and led by a government that has a high commitment to its people. But if on the contrary, the Indonesian people will be swept away and will become victims in the global economic arena, thus the key word is that the Indonesian nation must improve itself from all aspects of legal inclusion, so that it is strong in facing global trade competition.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The antidumping law that applies in Indonesia, if seen as a legal system, can be examined from the structural, substance and cultural aspects of the antidumping law:

- From a structural aspect, antidumping legal administration implementing agencies consist of several institutions with very ineffective and inefficient stages, where there are four stages that must be passed, starting from

KADI investigation, decision (recommendation) from the Minister of Industry and Trade, stipulation by the Minister of Finance and implementation of collection by the Director General of Customs and Excise. Besides the length of the bureaucratic chain that must be passed and all these institutions are government agencies that the author is concerned about in making decisions cannot be separated from political considerations. In addition to the foregoing, the legal basis for antidumping is regulated in the Customs Law, namely Law No.10 of year 1995 which has been amended by law No. 17 year 2006, while the provisions specifically regulating antidumping are regulated by Government Regulation No. 34 of year 2011. Unlike other countries which are regulated in the Act or Code whose level is the same as the law. Because it is regulated by Government Regulations, the antidumping provisions do not regulate substantively in detail but rather on procedural. By placing the legal basis of antidumping on the Customs Law it means that it can be interpreted as antidumping as part of customs, even though dumping practices and antidumping policies are separate phenomena in international trade law.

- From the aspect of substance, antidumping legal regulations determine the criteria for when dumping practices occur, namely the existence of similar goods exported to a country, export prices below normal prices and causing losses to domestic industries. From the provision dumping as a sale is below the normal price, even though dumping can also be seen as transnational price discrimination. The limits of losses regulated by antidumping laws are very broad, not only limited to real material losses but also losses that will occur, so that the understanding of these losses can be biased and can be utilized by interested parties to protect their business.
- From the aspect of legal culture, both in terms of the business community, administrators and the public, in general it can be said that the three components are not ready to face international trade law, especially antidumping law, this is because antidumping legal instruments have not been well socialized to the public, especially among business world. National entrepreneurs do not know much about antidumping legal

²⁷ See J.W. Harris, *Legal Philosophies*, London, Butterworths, 1980, hal. 219.

instruments and their benefits for the protection of their businesses, because of that ignorance, many of them do not know what to do if the products they export are subject to antidumping duties in the destination country. Besides that since its establishment in 1996, only 24 petitions that have entered KADI from the domestic industry against the practice of dumping were carried out by producers from exporting countries. So an average of 4 (four) complaints entered until the end of 2002. In terms of the administrator of dumping law, which is part of the bureaucracy so that the culture (work ethic) of the administrator is identical to the culture that lives, grows and develops in the life of the bureaucracy itself.

Recommendations

- Considering that anti-dumping law internationally has its own characteristics and is a separate attachment (Agreement on Implementation of Article VI, Antidumping Code 1994) of the Agreement Establishing the WTO ratified by Indonesia with Law Number 7 of 1994, it is necessary to regulate antidumping provisions with separate laws with regard to the substance regulated by Antidumping Code (1994) and still adjust to the conditions and interests of the nation as a whole.
- Antidumping legal socialization needs to be improved to entrepreneurs as domestic producers both in quantity and quality to protect their businesses to avoid unnecessary losses. Furthermore, the quality of human resources for administrators (KADI members) as antidumping legal administrators needs to be improved.
- For broader interests, antidumping legal provisions must be able to provide clear and detailed limits, when a dumping practice can be subject to antidumping import duties and the extent to which dumping practices can be tolerated for the benefit of the community as consumers.
- For domestic industries reporting on dumping products carried out by producers from exporting countries, the domestic industry should conduct an investigation and analysis, whether the company has been producing and trying efficiently, because this affects the price of the manufactured goods. Indonesian people who are still below the

poverty line with low purchasing power need cheap goods prices.

- The government as policy makers and regulators, especially in the field of anti-dumping law, must see two interests, in addition to protecting employers / domestic industries; they must also pay attention to the interests and capabilities of the community as consumers.

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