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TRADING RULES OR TRADING VALUES? AFTA–CHINA DISPUTE MECHANISMS UNDER POSITIVE LAW VS. ISLAMIC LAW & WHAT INDONESIA MUST DECIDE

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Abstract

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ABSTRACT

In principle, Indonesia likes it or not, willingly or unwillingly, now Indonesia has joined the ASEAN China Free Trade Agreement which of course has an international trade system as its outlet. This means that Indonesia and the countries involved in this agreement are free to conduct international relations, including international trade. The research method used in this study is the Normative juridical method which examines legal issues while providing a descriptive perception of what should be, using the statute approach and the conceptual approach. The purpose of this study is to examine the principles of resolving regional trade disputes between Afta and China from the perspective of positive law and Islamic law and their implications for Indonesia. As an innovation, the findings offered in this presentation are that there are principles for resolving regional trade disputes between Afta and China from the perspective of positive law and Islamic law and their implications for Indonesia, both in the provisions of the WTO, Afta China, and also the principles in the provisions of Islamic law, remain in line with the provisions applicable in the WTO.

A. INTRODUCTION

In responding to the era of free trade internationally, which will later be known as the era of globalization,[1] Law in regulating international economic and trade relations is very necessary to prevent international

1 Dewa Gede S Mangkau., Suatu Kajian Umum Tentang Penyelesaian Sengketa Internasional Termasuk di Dalam Tubuh Asean, *Jurnal Ilmiah Perspektif* XVII, No. 3 (2012): 151,

complications,[2] especially in the field of trade, including business activities, or if such complications/disputes are going to occur, or are occurring, then the law should be able to play a role in finding solutions to these disputes.[3] Where global business practices are increasingly open and there is a lot of competition,[4] which will cause disputes in trading activities.[5]

Disputes can arise when a country establishes a particular trade policy that is contrary to its commitments in the WTO or adopts a policy that then harms another country.[67] In addition to the country that is most harmed by the policy, a third country interested in the case can express its desire to become a third party and obtain certain rights during the dispute resolution process.[8]

In general, the cause of international trade disputes occurs because one of the countries/parties[9] that binds the agreement in a trade breaks its promise or one of the countries/parties that binds the agreement does not carry out or neglects its obligations as a member in accordance with the agreement.[1011]

Regulations that have been enacted and implemented should be able to provide benefits, justice, and legal certainty.[12] Indonesia as one of the ASEAN countries that agreed to establish AFTA,[13] then Indonesia also

2 J. B. Condliffe., *The Reconstruction of World Trade: A Survey of International Economic Relations, 1st Edition,* Routledge, London, 2023, page 10

3 P.Audrey Ruslijanto, etc., *Hukum Penyelesaian Sengketa Internasional*, (Malang: Penerbit UB Press, 2022): 5.

4 Abdurrahman Alfaqih., Prinsip Praktik Bisnis Dalam Islam Bagi Pelaku Usaha Muslim, *Jurnal JH Ius Quia Iustum* 24, Issue 3 (2017)

5 Dewi Fatmala Putri and Yuliani Yulian., Implikasi Etika Bisnis Dalam Perdagangan Internasional: Tinjauan Terhadap Kegiatan Ekspor Dan Impor, *Jurnal Ilmiah Manajemen, Bisnis Dan Kewirausahaan* 3, No. 2 (2023): 119-130.

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7 Bernard Hoekman., Trade Wars and the World Trade Organization: Causes, Consequences, and Change, *Asian Economic Policy Review* 15, Issue 1 (2020): 98-114

8 R. Vayrynen., To Settle or to Transform: Perspectives on the Resolution of National and International Conflicts. In: Raimo Väyrynen: A Pioneer in International Relations, Scholarship and Policy-Making. Pioneers in Arts, Humanities, Science, Engineering, Practice, *Springer* 28, (2022): 279–299

9 Viktoriia O. Holubieva., Classification of International Preferential and Regional Trade Agreements, *Journal of Advanced Research in Law and Economics (JARLE)* XI, Issue 49 (2020): 828-843

10 Tesalonika Ciquititta Martha Hombokau., Penyelesaian Sengketa Arbitrase Internasional Dalam Sengketa Kapal Marina Bay. *Jurnal Ilmu Hukum: Alethea* 8, No. 1 (2024): 53-68

11 Fabio Gaetano Santeramo and Emilia Lamonaca., Standards and regulatory cooperation in regional trade agreements: What the effects on trade?, *Applied Economic Perspectives and Policy* 44, Issue 4 (2022): 1682-1701

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13 Koichi Ishikawa, The ASEAN Economic Community and ASEAN economic integration, *Journal of Contemporary East Asia Studies* 10, No. 1 (2021): 24-41

participated in the free trade cooperation ACFTA (ASEAN China Free Trade Agreement),[14] in the agreement scheme in the Framework Agreement on Comprehensive Economic Cooperation Between The Association of South East Asian Nation and The People's Republic of China (Asean-China) signed by the President of the Republic of Indonesia[15] (Megawati) on November 4, 2002 in Phnom Penh, Cambodia, has also been ratified through Presidential Decree Number 48 of 2004, with Law No. 24 of 2000 concerning International Agreements. So formally, Indonesia must be able to exercise all its rights and obligations related to AFTA,[16] especially with ACFTA. For that, Indonesia must always adjust the forms of its economic regulations with AFTA and ACFTA which of course remain under the provisions of GATT/WTO.[17] The international market is present due to globalization in the economic sector and the creation of convenience in the import export sector.[18]

In Pattawee Sookhakich's research, he found that ACFTA is one of the largest trade agreements globally, but has a weak dispute resolution mechanism. The DSM (Dispute Settlement Mechanism) in ACFTA has minimal firm regulations, does not have a permanent settlement body, and lacks political commitment from member countries to make maximum use of the forum.[19] Another study by Liu Bing states that based on the characteristics of the China-ASEAN Free Trade Area（CAFTA）and the particularity of investment disputes, we should expand the scope of application subjects, improve the selection procedure of the arbitral tribunal, set up Permanent establishment, improve the review and correction procedures and the retaliation system. Through these measures, optimize the investment dispute resolution rules of the CAFTA in order to adapt to the significant development of the free trade area.[20]

The purpose of this study is to analyze the principles of dispute resolution within the Afta-China framework and to analyze the International Trade Dispute Settlement Procedures.

14 Rineke Sara and Yudi Hasnawan., Legal Politics of The Asean-China Free Trade Agreement (Acfta) in The Principles Of National Economic Prosperity, *IJEBSS* 2 No. 3 (2024): 1067-1074

15 Kazushi Shimizu., The ASEAN Economic Community and the RCEP in The World Economy, Journal of Contemporary East Asia Studies 10, No. 1 (2021): 1-23

16 Rakhmat Syarip., Defending Foreign Policy at Home: Indonesia and the ASEAN-Based Free Trade Agreements, *Journal of Current Southeast Asian Affairs* 39, No. 3 (2020): 405-427

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20 Zhao Weiwei and Nur Khalidah Dahlan., Evaluation of Dispute Resolution Mechanism of China ASEAN Free Trade Area, *Pakistan Journal of Life and Social Sciences* 23, No. 1, (2025): 2492-2504

B. RESEARCH METHODS

The research conducted in this writing was normative juridical which examines legal issues while providing a descriptive perception of what should be,[21] using a statute approach and a conceptual approach, in accordance with the theme of resolving regional trade disputes which refers to legal principles, both in positive law and Islamic law, as well as the influence of international trade universally.

C. RESULTS AND DISCUSSION

1. Principles of Dispute Settlement in the Afta-China Framework

Disputes or disputes often occur in every relationship between legal subjects, both individuals and legal entities. With the inexorably intricate nature of individuals' lives, the extent of occurrences or debates becomes more extensive.[22] Dispute is also interpreted as conflict, in English it is called conflict and Dispute, which is a dispute or quarrel or disagreement.[2324] This dispute occurs between two or more people/parties about something.[25] The problem of disputes or conflicts often occurs in human life,[26] so it is difficult to imagine that there are people/parties who have never been involved in a conflict without knowing the time, place, and even feelings of anyone and any party.[27] While international disputes are disputes that occur in international relations, both bilateral relations. Regional and multilateral. For example, it can be seen in several forms of disputes/conflicts.[28]

In other words, conflict or dispute is the existence of a dispute or disagreement between the parties who will and are having a relationship or cooperation.[29] The form of conflict can be seen, whether a conflict of interest, law, social, etc. or a conflict especially in economic, business,

21 Tunggul Ansari Setia Negara., Normative Legal Research in Indonesia: Its Originis and Approaches, *Audito Comparative Law Journal* 4 No. 1 (2023): 1-9

22 Tiyas Vika Widyastuti, Achmad Irwan Hamzani, Eko Soponyono, Bambang Tri Bawono, Anis Mashdurohatun, Rico Septian Noor., Industrial Relations Dispute Resolution Model in Indonesia, *Jurnal Perkembangan Sistem Hukum Modern* 7, No. 3 (September 2024): 16-24

23 John W. Budd etc., Advancing Dispute Resolution by Understanding the Sources of Conflict: Toward an Integrated Framework. *ILR Review* 73, No. 2 (2019): 254-280

24 Khalid K. Naji etc., Methods for Modeling and Evaluating Construction Disputes: A Critical Review, *IEEE Access* 8, (2020): 45641-45652

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27 M. Natsir Asnawi., *Pembaruan Hukum Kontrak Di Indonesia: Prakontrak, Kontrak, Pascakontrak*, (Jakarta: Kencana, 2024): 37

28 Joni Emirzon., *Hukum Bisnis Indonesia,* (Jakarta: Proyek Peningkatan Penelitian Perguruan Tinggi Direktorat Jenderal Pendidikan Tinggi Departemen Pendidikan Nasional, 2002): 502

29 Ashadi L Diab etc., Accommodation of Local Wisdom in Conflict Resolution Of Indonesia's Urban Society, Cogent Social Sciences 8, No. 1 (2022)

and trade activities.[30] Disputes in business or trade activities can be seen before the agreement is agreed,[3132] for example, one party cannot carry out the agreement that has been agreed or cannot carry out its obligations.

Furthermore, the definition of dispute resolution is a settlement of a case carried out between one party and another party.[3334] The term regional is actually already listed in the category of international agreement or treaty terms with the concepts of bilateral, regional and multilateral.[35] However, it is better to explain the meaning literally. According to the legal dictionary, the meaning of bilateral.[36] is reciprocal, and is carried out by both parties. While an agreement is an act by which one or more people bind themselves to one or more other people. This means that if two people reach an agreement (consensus) about something, then they then enter into an agreement and the result of this agreement is that they are bound by the contents of the agreement.[37] This is called Pacta Sunt Servanda,[38] namely that an agreement is binding, obeyed, fulfilled, and gives rise to rights and obligations between the two parties, which have the substance of a treaty of contract.[39] In other words, an agreement made by only two countries is called a bilateral agreement.[4041] While a multilateral agreement is an

30 Nurzhan Maxatov etc., Conflict of Interests In Commercial And Civil Law, *Amazonia Investiga* 11, No. 60 (2022): 224-234

31 Agus Vijayantera, I. W., Kajian Hukum Perdata Terhadap Penggunaan Perjanjian Tidak Tertulis Dalam Kegiatan Bisnis. *Jurnal Komunikasi Hukum (JKH)* 6, No. 1 (2020): 115-125.

32 Khairin Ulyani Tarigan etc., Implikasi Hukum Regional Comprehensive Economic Partnership Terhadap Regulasi Perdagangan Internasional di Indonesia, *Locus Journal of Academic Literature Review* 2, No. 2 (2023): 117–125

33 Ni Made Trisna Dewi., Penyelesaian Sengketa Non Litigasi Dalam Penyelesaian Sengketa Perdata, *Jurnal Analisis Hukum* 5, No. 1 (2022): 81-89

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36 J.C.T. Simorangkir, Rudy T. Erwin, dan J.T. Prasetyo., *Kamus Hukum*, cetakan keenam, (Jakarta: Sinar Grafika, 2000): 20

37 Muhamad Ridel etc., Efektivitas Kontrak Sebagai Instrumen Perlindungan Hukum Bagi Penyedia Jasa Dan Pengguna Jasa, *Syntax Idea* 6, No. 10 (2024): 6608-6623

38 Muhammad Farhan Gayo and Heru Sugiyono., Penerapan Asas Pacta Sunt Servanda Dalam Perjanjian Sewa Menyewa Ruang Usaha, *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 8, No. 3 (2021): 245-254

39 Syadzwina Hindun Nabila etc., The Legal Dynamics of Pacta Sunt Servanda in Community Agreements, *Krtha Bhayangkara* 18, No. 3 (2024): 786-797

40 Vineet Bhagwat etc., A BIT Goes a Long Way: Bilateral Investment Treaties and Cross-Border Mergers, *Journal of Financial Economics* 140, Issue 2 (May 2021): 514-538

41 Kathrine Audrey Delila Quinones Tobing., Analisis Klausul Penyelesaian Sengketa di Bidang Penanaman Modal Asing Pada Perjanjian Investasi Bilateral antara negara Indonesia dengan

agreement made by parties with a very large number of countries. So in this writing, the object of research that will be analyzed only focuses on regional agreements or agreements

For actors in economic activities, businesses and transactions in regional scale trade, it is necessary to know in advance what the legal basis for the activities carried out is, of course bound by an agreement, which resolves disputes peacefully.[42][43] Because the agreement is one of the guidelines and sources for judges to measure a disputed law and as an important written evidence in court.[44] Another term is consensus, and has provisions for dispute resolution.

Regarding the principles of resolving trade disputes within the ACFTA framework,[45] it still refers to the provisions of the principles of resolving trade disputes in international trade law in general, where the principles of dispute resolution are:[46] The principle of agreement of the parties; In resolving trade disputes within the ACFTA framework, the principle of agreement is a fundamental principle and is the basis for whether or not the dispute resolution process is implemented. The principle of choosing dispute resolution methods; The provision of this principle is that the parties have full freedom to determine and choose the method or mechanism for how their dispute is resolved, The principle of freedom to choose law; Another important principle is the principle of the freedom of the disputing parties to determine for themselves what law is applied to resolve their dispute by the judicial body (arbitration) to the subject of the dispute, including choosing propriety and eligibility (ex aequo et bono). The principle of good faith; This principle of good faith can be said to be a fundamental and most central principle in dispute resolution, so that it is required and obligatory for the parties to have good faith in resolving their dispute, where this principle is reflected in two stages. First, this principle of good faith is required to prevent the emergence of disputes that can affect relations between countries. Second, this principle is required to exist when the parties resolve their disputes through dispute resolution methods known in international trade

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42 Jiangyu Wang., Dispute Settlement in the Belt and Road Initiative: Progress, Issues, and Future Research Agenda, *The Chinese Journal of Comparative Law* 8, Issue.1 (June 2020): 4-28

43 Edi Wahjuni etc., Implementation of Online Dispute Resolution Policy as an Alternative Choice for Resolution of Business Disputes, *International Journal of Advanced Multidisciplinary Research and Studies* 4, No. 5 (2024): 961-969

44 Hamzah Pai'pin etc., Analisis Yuridis Terhadap Putusan Hakim Yang Menyatakan Gugatan Penggugat Tidak Dapat Diterima, *Journal of Lex Generalis (JLG)* 3, No. 4 (2022): 617-633

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46 Emilia Onyema., Reimagining the Framework for Resolving Intra-African Commercial Disputes in the Context of the African Continental Free Trade Area Agreement, *World Trade Review* 19, No. 3 (2020): 446-468

law related to WTO provisions, of course negotiation, mediation, conciliation, and arbitration.

2. International Trade Dispute Settlement Procedures

The provisions of the procedures and dispute resolution processes within the Afta-China framework still refer to the dispute resolution system in WTO provisions and are regulated in the Understanding on Rules and Procedural Governing the Settlement of Dispute (DSU),[47] which consists of 4 (four) main steps in resolving regional trade disputes, including the following in the scheme below:

Main Steps in Resolving Regional Trade Disputes in the DSU the explanation of what are the objectives and categories as the main steps in resolving international trade disputes, including the regional scheme as follows; Establishment of The United Nations on Trade and Development (UNCTAD) UNCTAD was established in 1964 with the aim of providing participation of developing countries in policy making, of course taking into account the interests of developing countries. Ratification of The Charter of Economic Rights and Duties of States (THERDS) Historically, THERDS was established in 1974 by UN member countries, the contents of which were special treatment for developing countries, one of which was in the fields of trade, finance, and investment. Consultation, it is mandatory between the disputing parties to reach a settlement agreed upon by the parties. In order to achieve a good dispute resolution that can be agreed upon by the parties, it is necessary to consult first between the disputing members so that the final decision of the dispute is good, so that it is expected to avoid doubtful things from the final decision of the dispute.

Through Panel Hearings A panel is an ad hoc council formed with the aim of considering and deciding a particular dispute and is dissolved when the ad hoc council has completed its duties, this is stipulated in Article 6 of the DSU that the panel is formed by the DSB at the request of the plaintiff. After the panel is formed, the parties then determine the panel members. However, if agreement on the determination of the panel members is not reached within 22 days after its formation, the plaintiff may request the WTO Director-General to appoint the examiners. In general, the members of the ad hoc council consist of three qualified people, either from the government or non-government such as diplomats, academics, and lawyers. The provisions for panel members are not from citizens of the parties to the dispute (Article 8 of the DSU). The panel has a standard framework that refers to the plaintiff's request, and the request for the formation of the panel must carefully identifyz.

47 Rama Yanti and Hudi Yusuf., Analisis terhadap Implementasi Hukum Dagang Internasional dalam Perdagangan Indonesia Studi Kasus pada Perjanjian Perdagangan Bebas Asean-China, *Jurnal Pustaka Cendekia Hukum Dan Ilmu Sosial* 2 No. 1 (2024): 22–27

The novelty of this research is the strengthening of the perspective of legal regionalism in resolving international trade disputes, especially in AFTA-China trade. I try to offer more value than just a repetition of the WTO DSU procedure. This research emphasizes the reconstruction of dispute resolution principles that are more flexible and participatory, but remain normatively effective. Principles such as good faith, party autonomy, and freedom to choose law need to be reinterpreted not only as procedural norms, but as a form of "normative protection mechanism" for developing countries in the Southeast Asian region when dealing with major economic powers such as China.

D. CONCLUSION

The principles and procedures of dispute settlement within the AFTA-China framework, while formally aligned with WTO provisions, require deeper regional contextualization to be truly effective for Southeast Asian countries like Indonesia. By emphasizing legal regionalism, this research finds that the core principles of dispute resolution such as party autonomy, good faith, and freedom to choose applicable law must be reconstructed as normative protection tools rather than mere procedural formalities. This reinterpretation enables a more inclusive, flexible, and equitable model of trade dispute settlement that accounts for the legal, economic, and political asymmetries between ASEAN members and China. Thus, the study affirms its objective to offer an alternative, participatory approach to regional trade dispute settlement that enhances legal certainty while preserving the sovereignty and interests of developing nations.

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