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The Future of International Free Trade Regulation Post US Withdrawal From Trans-Pasific Partnership

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THE FUTURE OF INTERNATIONAL FREE TRADE REGULATION POST UNITED STATES WITHDRAWAL FROM TRANS-PACIFIC PARTNERSHIP

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Abstract

The Trans-Pacific Partnership (TPP) is a pact between 12 states bordering the Pacific Ocean, which are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, the United States (US) and Vietnam. The aim of the partnership is to integrate a sole market and boosting economic growth collectively. The agreement includes the trade barrier slashing, investment dispute settlement mechanism, environmental protection, intellectual property, and other impactful provisions toward the free trade enforcement between the states. On January 2017, Trump officially voiced US withdrawal from the agreement. Trump expressed the unfairness of the agreement toward US as TPP will negatively impact American economic and workers. The withdrawal has left the remaining members of the agreement with different perspectives toward its existence. Some states, namely Japan, Singapore, and Canada, expressed their pessimistic view on US withdrawal as TPP has, therefore, lost its essence. On the other hands, some states, like Vietnam and New Zealand, remains on their stance in the continuation of the TPP with or without the membership of the known as superpower country. The withdrawal is a new perspective under international law as this is probably US's first protectionism act as a champ of free trade of the world. This leads to a bigger question on international perspective on the destiny of the world trade liberalization after this agreement. This paper aims to analyze the continuation of TPP without the US existence in legal perspective and the future of regulation on international trade with a more "protectionism" US as the world's free trade leader.

Keywords: *Trans-Pacific Partnership, TPP, Withdrawal, Trade, United States*

Abstrak

Kemitraan Trans-Pasifik (TPP) adalah sebuah perjanjian antara dua belas negara bagian yang berbatasan dengan Samudera Pasifik, yaitu: Australia, Brunei Darussalam, Kanada, Chile, Jepang, Malaysia, Meksiko, Selandia Baru, Peru, Amerika Serikat, dan Vietnam. Tujuan dari kemitraan ini adalah untuk mengintegrasikan pasar tunggal dan meningkatkan pertumbuhan ekonomi secara kolektif. Kesepakatan

tersebut mencakup pemutusan penghalang perdagangan, mekanisme penyelesaian sengketa investasi, perlindungan lingkungan, kekayaan intelektual, dan ketentuan lain yang berdampak terhadap penyelenggaraan perdagangan bebas antara negara-negara anggota. Pada bulan Januari 2017, Presiden Trump secara resmi menyuarakan penarikan diri Amerika Serikat dari kesepakatan tersebut. Trump mengungkapkan ketidakadilan perjanjian tersebut terhadap Amerika Serikat karena TPP akan berdampak negatif terhadap ekonomi dan pekerja Amerika Serikat. Penarikan tersebut telah membuat negara anggota perjanjian tersebut memiliki perspektif yang berbeda terhadap keberadaannya. Beberapa negara anggota, yaitu Jepang, Singapura, dan Kanada, mengungkapkan pandangan pesimis mereka terhadap penarikan diri Amerika Serikat karena TPP telah kehilangan hakikatnya. Di sisi lain, beberapa negara bagian, seperti Vietnam dan Selandia Baru, tetap berpihak pada kelanjutan TPP dengan atau tanpa keanggotaan negara yang dikenal sebagai negara adidaya tersebut. Penarikan diri adalah perspektif baru di bawah hukum internasional karena ini mungkin proteksionisme Amerika Serikat yang pertama bertindak sebagai juara perdagangan bebas dunia. Hal ini mengarah pada pertanyaan yang lebih besar mengenai perspektif internasional mengenai bagaimanakah takdir liberalisasi perdagangan dunia setelah kesepakatan ini. Makalah ini bertujuan untuk menganalisis kelanjutan TPP tanpa eksistensi Amerika Serikat dalam perspektif hukum dan masa depan peraturan mengenai perdagangan internasional dengan lebih melihat pada "proteksionisme" AS sebagai pemimpin perdagangan bebas dunia.

Kata kunci: Kemitraan Trans-Pasifik, TPP, Penarikan diri, Perdagangan, Amerika Serikat

Introduction

The market liberalization seems to be rising in an escalating pace between states all around the world. Canada and the European Union have signed an FTA and Canada has been talking to China about the possibility of one. Australia is negotiating FTAs with India and Indonesia. Japan is talking to the United Kingdom about negotiating a post-Brexit FTA. Mexico, the number one export market for American corn, has been talking to Brazil and Argentina about buying corn from them instead. Then there's the big Kahuna, the Regional Comprehensive Economic

Partnership, or RCEP, a 16-country Asian trade agreement stretching from India to Japan and including China. These are just a few of the agreements being negotiated or discussed.¹

Free trade is relatively beneficial, despite the possible drawbacks in the progress. While normally the US reacted positively to any free trade initiative, President Trump took counter decision by signing out from the Trans-Pacific Partnership, terminating Obama's legacy. This, then, leads to a

¹<https://www.forbes.com/sites/johnbrinkley/2017/05/03/governments-worldwide-pursue-free-trade-agreements-with-one-exception-the-usa/#63249e3d6aef>

debate between those states saying that the agreement is not practicable without US remain as a party and those suggesting that US withdrawal would not end up to the agreement's termination. Regardless, the Trans-Pacific Partnership remains in progress currently with the leadership of China. However, US controversial step has altered the international view toward US after the "protectionism" act taken.

This measure is a new precedent under international law, and probably would have changed the structure of future free-trade agreements. This would be one of the primary subject of the research, along with the current regulation available on international trade with US still maintain its liberalization concept and the future possibility when US has evidently more protective in contributing to the world of free market.

Research Method

Legal research is a scientific activity based on method, systematic, and specific way of thinking that aim to learn one or more legal deviation and analyze it. In this research paper, we are using the following method:

1. Research type

In Indonesian legal research, there two generally recognized methods, normative and empiric.² In conducting this research, we are utilizing normative legal research. Peter Mahmud Marzuki defines normative legal research is a process to specify legal regulations, legal principles, or legal doctrines to answer the legal issue.³

2. Data type and source

a. Data type

The used data are secondary data. Secondary data are data acquired from literature materials

b. Data sources

1) Primary Legal Materials

Including the binding legal instrument, including acts, international treaty and customary international law.

2) Secondary Legal Materials

Secondary materials are the materials that discuss the law and offer pointers to relevant primary legal materials and non-

²Mardalis, *Metode Penelitian Suatu Pendekatan Proposal*, (Jakarta: Bumi Aksara, 2009), hal.55.

³Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta: Pustaka Belajar, 2010), hal.34.

binding. Secondary legal materials are those materials which are about the law, and it's also can offer analysis and critique of the law. Secondary legal materials include:

- (a). Books, journals and commentaries which discuss the law;
 - (b). Reference tools which help find the law (dictionaries, encyclopedias, guides and directories).
- 3) Non-Legal Materials

The materials used in this research, using non-legal materials that aims to gain understanding or enrich the viewpoint of the object under study. Such non-legal materials include the Black's Law Dictionary and Indonesia Dictionary

3. Data collection technique

In collecting the data needed in this research, the author uses the way library studies and interviews from the sources if it necessary.

4. Data processing techniques

A series of actions or steps performed on data to verify, organize, transform, integrate, and extract data of written legal materials in an appropriate output form for subsequent use. In this case the processing of materials carried out by means of, selecting secondary data or legal materials, then do the classification according to the classification of legal materials and compile data of the research results systematically, of course it is done logically, it means there is a relationship and the relationship between legal materials one with other legal materials to get a general description of the results of research.⁴⁾

5. Data analysis technique

Data analysis technique in this research is prescriptive and descriptive. The author will provide an explanation of the research conducted, then will provide arguments related to the results of research that has been done. In doing a legal research, there are several approaches used in legal research. Such approaches comprise a statute approach, case approach, historical approach, comparative approach, and

⁴*Ibid.*, hal.181.

conceptual approach.⁵⁾ In conducting the analysis, the author uses the statute approach. Statute approach is the approach made by understanding the hierarchy, and the principles in the legislation.⁶⁾

Trans-Pacific Partnership

A. History

Historically, Trans-Pacific Agreement started in the conference table of Trans-Pacific Strategic Economic Partnership Agreement among New Zealand, Chile, Singapore and Brunei in 2005. This agreement was, then, enforced in 2006. In 2008, With the US playing important role, the discussion was broadly widened, involving not only those countries, but also Australia, Canada, Japan, Malaysia, Mexico, Peru, the United States, and Vietnam. Obama promoted this agreement to promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in the signatories' countries; and promote transparency, good governance, and

enhanced labor and environmental protections.⁷⁾

B. Definition

The Trans-Pacific Partnership (TPP) was a secretive, multinational trade agreement that threatened to extend restrictive intellectual property (IP) laws across the globe and rewrite international rules on its enforcement.⁸⁾ It would create a free-trade zone among 12 nations around the Pacific, making it the world's largest. The countries within its scope account for 40 per cent of the world's economic output.⁹⁾

TPP countries collectively represent one of the largest U.S. trading partners, with \$178 billion in U.S. services exports and a surplus of \$80 billion dollars in 2014. They account for 25% of all U.S. services exports and 34% of the U.S. services trade surplus. It is estimated that TPP will increase U.S. services exports by \$149 billion, which in turn will support 850,000 U.S. jobs.¹⁰⁾

⁷⁾"Summary of the Trans-Pacific Partnership Agreement". USTR. 4 October 2015. Retrieved 16 October 2015.

⁸⁾<https://www.eff.org/issues/tpp>

⁹⁾<https://www.theglobeandmail.com/report-on-business/international-business/what-is-tpp-understanding-the-new-pacific-tradedeal/article26648948/>

¹⁰⁾<https://servicescoalition.org/negotiations/the-trans-pacific-partnership-tpp>

⁵⁾Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, Cetakan ke-8, (Jakarta: Kencana Prenada Media Group, 2013), hal. 133.

⁶⁾Peter Mahmud Marzuki, *Op.Cit.*, hal. 137.

C. Aims of the TPP

According to the Obama Administration, the agreement aimed to promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in the signatories' countries; and promote transparency, good governance, and enhanced labor and environmental protections. The TPP contains measures to lower both non-tariff and tariff barriers to trade, and establish an investor-state dispute settlement (ISDS) mechanism.

Basically, TPP is a giant free trade deal between the U.S., Canada, and 10 countries in the Asia-Pacific region that's been under negotiation for nearly a decade now (it began as an agreement between Singapore, Chile, New Zealand and Brunei before the U.S. took the lead in 2009). It's expected to eliminate tariffs on goods and services, tear down a host of non-tariff barriers and harmonize all sorts of regulations.¹¹⁾

¹¹https://www.washingtonpost.com/news/world/wp/2013/12/11/everything-you-need-to-know-about-the-trans-pacific-partnership/?utm_term=.45529dbf0de1

The main goal of the TPP is to incorporate all negotiating participants under one free trade agreement which eliminates tariffs and non-tariff barriers to goods, services, and agriculture. Perhaps most significantly, the TPP would be the first free trade agreement (FTA) with an e-commerce chapter, creating a precedent for future trade negotiations, including the Trade in Services Agreement (TiSA) and the Transatlantic Trade and Investment Partnership (TTIP).¹²⁾

D. Potential Benefit of TPP

The TPP boosts exports and economic growth. This should create more jobs and prosperity for the 12 countries involved. It increases exports by \$305 billion per year by 2025. U.S. exports would increase by \$123.5 billion. It would benefit the machinery, auto, plastics and agriculture industries.

It increases exports by removing 18,000 tariffs placed on U.S. exports to the other countries. The United States has already withdrawn 80 percent of these tariffs on imports. The TPP evens the playing field.

The agreement adds \$223 billion a year to incomes of workers in all the

¹²<https://servicescoalition.org/negotiations/the-trans-pacific-partnership-tpp>

countries, with \$77 billion going to U.S. workers. All countries agreed to cut down on wildlife trafficking. That helps elephants, rhinoceroses and marine species the most. It prevents environmental abuses, such as unsustainable logging and fishing. Countries that don't comply will face trade penalties.¹³⁾

Five defining features make the Trans-Pacific Partnership a landmark 21st-century agreement, setting a new standard for global trade while taking up next-generation issues. These features include:

1. Comprehensive market access.

The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment, so as to create new opportunities and benefits for our businesses, workers, and consumers.

2. Regional approach to commitments.

The TPP facilitates the development of production and supply chains, and seamless trade, enhancing

efficiency and supporting our goal of creating and supporting jobs, raising living standards, enhancing conservation efforts, and facilitating cross-border integration, as well as opening domestic markets.

3. Addressing new trade challenges.

The TPP promotes innovation, productivity, and competitiveness by addressing new issues, including the development of the digital economy, and the role of state-owned enterprises in the global economy.

4. Inclusive trade.

The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade. It includes commitments to help small- and medium-sized businesses understand the Agreement, take advantage of its opportunities, and bring their unique challenges to the attention of the TPP governments. It also includes specific commitments on development and trade capacity building, to ensure that all Parties are able to meet the commitments in the

¹³<https://www.thebalance.com/what-is-the-trans-pacific-partnership-3305581>

Agreement and take full advantage of its benefits.

5. **Overall member country impact.**

Model simulations suggest that the TPP will raise member country GDP by an average of 1.1 percent by 2030, with a range of 0.4-10 percent (Figures 1C, 1D). The benefits are likely to materialize slowly but should accelerate toward the end of the projection period. The slow start results from the gradual implementation of the agreement and the lag required for benefits to materialize. The benefits of the TPP mostly derive from reductions in non-tariff-based measures (e.g., streamlining of administrative procedures) and regulatory measures that benefit services.

6. **Individual member country impact**

The largest gains in GDP are expected in smaller, more open member economies, such as Malaysia and Vietnam (8 percent and 10 percent by 2030, respectively). Exporters in these countries would benefit from lower tariff and non-tariff barriers in large export markets, while other firms stand

to gain from stronger positions in regional supply chains through deeper integration. Consumers are likely to enjoy lower prices and greater variety of products and services. For NAFTA countries, all of which are TPP members, the TPP's benefits will be more modest—on the order of 0.6 percent of GDP. This reflects already low existing barriers to their trade (which is mostly among NAFTA members). For Mexico, benefits are further reduced as tariff cuts give other TPP members greater access to U.S. market.

7. **Non-member impact**

Although TPP export markets are important to many non-members, the agreement may have a limited impact on their economies: only the Republic of Korea, Thailand, and some other Asian countries are expected to see GDP declines exceeding 0.3 percent by 2030. Some sectors will be impacted more strongly, especially those where non-member countries have a strong comparative advantage. Exporters of apparel, textiles, and footwear, for example, could face greater competition from Malaysia and Vietnam in TPP markets. But almost half of TPP trade is

already among members, and the TPP's focus on streamlining procedures and harmonizing standards and regulations may also benefit non-members.¹⁴

E. TPP Agreement Regulation

As a complex agreement, TPP covers regulations in numerous aspects.

1. National Treatment
2. Rules of Origin
3. Textiles and Apparel
4. Customs Administration and Trade Facilitation
5. Trade Remedies
6. Sanitary and Phytosanitary Measures
7. Technical Barriers to Trade
8. Investment
9. Cross Border Trade in Services
10. Financial Services
11. Temporary Entry for Business Persons
12. Telecommunications
13. Electronic Commerce
14. Government Procurement
15. Competition
16. State-owned Enterprises
17. Intellectual Property
18. Labour

19. Environment
20. Cooperation and Capacity Building
21. Dispute Settlement.

Analysis

1. Legal Effect of the Withdrawal

Any form of agreement should be entered into force after the official signatory and on the agreed date in the agreement. Trump withdrawal was not after the agreement but instead during the discussion to find similarity among parties of the agreement. This, then, leaves Trump withdrawal to be without any legal effect.

2. US has turned out to be more in the favor of "protectionism"

US was known to be the leader of free trade. Yet, it seems that over the last years, US has slowly taken off the image by taking more "protectionism" act, making the free trade to be less feasible to be realized. It was quite clear that protectionism act was taken as the excuse of US withdrawal. Trump believes that US will not be benefited from the agreement.

¹⁴<http://pubdocs.worldbank.org/en/287761451945044333/Global-Economic-Prospect-2016-January-2016-Highlights-Trans-Pacific-Partnership.pdf>

3. Shift of World Free Trade Leader

Many economists believe that the economic trend has somehow in favor of the east during the past years. TPP was initially started by the US under Obama administration. The withdrawal of Trump, regardless the reasons, have caused controversy among the other members. They are discussing on whether the TPP should still be continued without one of its most important party, the USA. Some, like Japan and Chile, are thinking that TPP without the US is no longer essential, while some, like Germany and New Zealand, see the possibility of still continuing the partnership without US.

In the confusion, the current superpower of east, China, replaces the US to lead the partnership plan. Some research suggest that US withdrawal would not be positively responded and could result in the reduced of US effect in the Asia specifically. US was in a fierce economic battle with China, and with the current condition, it seems that China will now have the upper hand if the TPP could be realized.

4. The Future of Free Trade Regulation

In the journey of liberalization, US has always been initiating the rules and normally would be hugely impact the regulation. With the US effect reduced after the withdrawal, so would its effect on the regulation. Most regulations now would probably will not be controlled by US, but the one who is in charge as the leader of free trade leader, China.

With its current huge economic growth and effect, China would be regulating the future free trade plan and could eventually realize the world free trade.

Conclusion

The US Presidential elections on 1 November 2016 and the subsequent US Electoral College vote resulted in a stunning and somewhat surprising result – electing Donald Trump to the Presidency. As he had declared throughout his campaign, President-elect Trump quickly confirmed that one of his first actions after inauguration would be to withdraw from the TPPA. On January 23, 2017, the first working day after his inauguration, President Trump issued his first Executive Order to give formal effect to the withdrawal. Trump withdrawal was not after the

agreement but instead during the discussion to find similarity among parties of the agreement. This, then, leaves Trump withdrawal to be without any legal effect. It was quite clear that protectionism act was taken as the excuse of US withdrawal. Trump believes that US will not be benefited from the agreement.

This event could lead to the displacement of the US position as world free trade leader. TPP was initially started by the US under Obama administration. The withdrawal of Trump, regardless the reasons, have caused controversy among the other members. In the confusion, the current superpower of east, China, replaces the US to lead the partnership plan. Some research suggests that US withdrawal would not be positively responded and could result in the reduced of US effect in the Asia specifically. US was in a fierce economic battle with China, and with the current condition, it seems that China will now have the upper hand if the TPP could be realized. In the journey of liberalization, US has always been initiating the rules and normally would be hugely impact the regulation. With the US effect reduced after the withdrawal, so would its effect on the

regulation. Most regulations now would probably will not be controlled by US, but the one who is in charge as the leader of free trade leader, China. With its current huge economic growth and effect, China would be regulating the future free trade plan and could eventually realize the world free trade.

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