Challenges of the State Sovereignty in Regional Comprehensive Economic Partnership

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Abstract. State sovereignty is a world law thought that is absolute, indivisible, and inalienable. Therefore, international cooperation altogether forms ought to apply this primary thought. Conversely, international agreements within the Regional Comprehensive Economic Partnership (RCEP) framework appear to override this. The RCEP is far and away the most significant trade agreement in the world. Once the RCEP is approved, every country enclosed during this agreement should formalize it as a part of their national laws. Therefore, this study looks at juridically the impact of the RCEP on Indonesian sovereignty, particularly in some legal policies which will be taken relating to its implementation in the future. Additionally, this analysis examines the steps and techniques will|which will|that may} be taken by the country to require blessings also as opportunities and so can face challenges in implementing this RCEP.

Keywords: Sovereignty · RCEP · International Economic Law · International Law

1 Introduction

Preferential Trade Agreements (PTAs) are preferential agreements based on one country to another. PTA is increasingly becoming the cornerstone of a global system of commercialism. The emergence of increasingly diverse and, therefore, a wider scope of agreement content is gradually building back the design of global trade, especially the commercialism environment of developing countries. Combining this convention as a challenge to the system of 3-way commercialism, especially in global organizations. Narlikar sees this as an impact based on the lack of participation of developing countries in various institutions such as inexperienced space rendezvous and pressure from developed countries.

The challenge for the global organizational system of commercialism is due to signs of the degradation of the Equality Principle, especially the Favorite Country Principle which has been continuously applied to various conventions. This degradation occurs because of the specific treatment for countries that are members of the PTA. Rural areas

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can give specific treatment to a different country, and generally antagonistic countries can treat the same thing as a country that provides specific treatment.

PTA relations using the rules of the nations are indeed relatively troublesome. The definition of the rules of the nations themselves has not yet been properly described, plus it uses the interrelationships using the international political sector. International trade law itself is generally claimed to be a series of laws that regulate business interactions which are non-public rules involving completely different countries.

Some experts define international trade law by separating each word and defining it as regulating the behavior of the parties involved in exchanging goods, services, and technology between countries.

There are many trade agreements in the form of CEPAs that Indonesia has started to implement. However, Indonesia – Japan CEPA (IJCEPA) is the first bilateral trade agreement for Indonesia. The trade partnership between Indonesia and Japan under the IJEPA was signed on August 20, 2007 by President Susilo Bambang Yudhoyono and Prime Minister of Japan Shinzo Abe, and came into effect on July 1, 2008.

The next negotiation with the CEPA nomenclature carried out by Indonesia is the Indonesia – Chile CEPA. The IC-CEPA negotiations began in 2006. After that, 6 rounds of IC-CEPA negotiations were held alternately in Indonesia and Chile. Negotiations were intensified in 2017 and finally agreed upon, then signed in December 2017. After the ratification process, the IC-CEPA officially entered into force for Indonesia and Chile since August 2019.

In addition to several negotiations that have been signed and entered into force, there are still several CEPAs that are in the process of completion and ratification (conclude and ratification). Indonesia - EFTA Comprehensive Economic Partnership Agreement (IE-CEPA) is an association consisting of Switzerland, Norway, Liechtenstein, and Iceland. The Indonesia-CEPA negotiations began in July 2010 and since then nine rounds of negotiations have been held. Negotiations had stalled in 2014, but they were finally able to be negotiated again in 2016 and completed in 2018. Indonesia and EFTA signed the agreement in December 2018.

With this IE-CEPA, Indonesia can get increased access to export goods to EFTA countries. Indonesia's leading export products that received this preference include gold, footwear, coffee, toys, textiles, furniture, electrical equipment, bicycles, and tires. EFTA countries are also committed to eliminating tariffs on goods imported from Indonesia. Switzerland is committed to eliminating tariffs which cover 99.65% of total Swiss imports from Indonesia. Meanwhile, Norway is committed to eliminating tariffs which cover 99.75% of Norway's total imports from Indonesia. This agreement covers, among others: trade in goods, trade in services, investment, movement of human resources, intellectual property rights, ROO, competition policy, energy and mineral resources, government procurement, customs procedures, improvement of the business environment, and other cooperation.

Indonesia also sees several countries in Africa that have potential trade markets. Indonesia - Mozambique Preferential Trade Agreement (IM-PTA) is one of them. Mozambique is a country located in the southeastern part of the African continent with a population of 27 million. The largest seaport in Mozambique, Maputo Port, is one of the largest ports on the southern African continent. This port serves as a transit point

for goods to neighboring countries such as South Africa, Zimbabwe, Botswana and Eswatini.

The establishment of the IM-PTA cooperation began in March 2019. Then, the IM-PTA agreement was successfully agreed and signed in August 2019. Under this agreement, Indonesia and Mozambique will each reduce import duty rates for around 200 products. With the IM-PTA, Indonesian exporters can take advantage of the potential of the African market. Mozambik berpotensi menjadi pusat ekspor ke kawasan Afrika bagian selatan. Selain itu, perjanjian perdagangan yang baru saja ditandatangani dan sedang diratifikasi adalah Indonesia-Korea Comprehensive Economic Partnership Agreement (IC-CEPA).

Salah satu bentuk PTA yang merupakan puncak prestasi pemerintah Indonesia dan mitra dagangnya adalah Regional Comprehensive Economic Partnership (RCEP). RCEP diluncurkan oleh Indonesia pada tahun 2011 untuk mengintegrasikan ASEAN + 1 Free Trade Area (ASEAN + 1 FTA). RCEP memiliki fungsi menggabungkan perjanjian perdagangan bebas ASEAN plus satu ini, sehingga setidaknya mengurangi efek pengalihan perdagangan antara negara plus satu seperti China, Korea Selatan dan Jepang, dan menciptakan perdagangan dengan menggabungkan insentif tarif ke level terendah.

There are some concerns that this agreement could endanger the sovereignty of Indonesia. Therefore, this article will examine whether the RCEP could scrape Indonesian sovereignty, or it could be an opportunity for Indonesia to project its sovereignty to the world.

2 Research Method

This research is a normative legal research (legal research), because in this research it will examine and analyze regulations related to International Law, International Economic Law, and International Trade Law, as long as it concerns Preferential Trade Agreements and Regional Comprehensive Economic Partnership and its impact to Indonesian sovereignty.

3 Results and Discussion

3.1 State Sovereignty

In some literature, you can find terminology about sovereignty that comes from several languages, namely *daulah* (Arabic), *sovereignty* (English, which before and will be the author's reference in every sovereignty terminology), *souvereiniteit* (French), *supremus* (Latin), and *sovranita* (Italian) which all mean "supreme power". Supreme power can mean the power to be able to determine policies from the initial stage to the final stage without any intervention from any party.

In the political science that developed in Indonesia, the term *sovereignty* is closely related to the terminology of the state. As stated by B.N. Marbun, sovereignty is the right of the state to exercise full power over its independence status without any interference from other parties in its internal and external problems. The most prominent modern

political development at the international level is also the concept of the state, and the fundamental characteristic of an authority in it is sovereignty. Ernst Kantorowicz discusses clearly in his book the evolution of politics in a formative form, namely sovereignty, which is the hallmark of modern politics. Some international jurists also doubt that the existence of a stable and essential idea of sovereignty really exists. Several terms such as "suspended animation", "sovereignty in abeyance", "suspended statehood", "suspended sovereignty", and so on, are used by various experts when discussing sovereignty in legal and political contexts. The terminology is used in several cases that developed in the history of modern international relations. This is enough to illustrate how the concept and theory of sovereignty is a scourge that is quite difficult for the international community.

This concept of sovereignty across laws and politics often leads to the question of which concept has more authority. In several studies by legal experts, this concept is called popular sovereignty. Basically, popular sovereignty is sovereignty that is embodied in the legitimacy of a country determined by the will or approval of its people. It is the source of all the political power of an entity. This agreement is political, but is included in a legal product as a consent both for themselves and for the outside world. This agreement is the closest embodiment of the social contract theory proposed by Thomas Hobbes, Jean Jacques Rosseau and John Locke.

Sovereignty can have different meanings in the trajectory of different concepts such as people, culture, historical developmental periods, practice, specialization, professional competence, and so on. With this difference, there are several classifications of the use of sovereignty terminology that have developed, which were proposed by Nagan and Hammer, namely:

> Sovereignty as personalized monarch; Sovereignty as a symbol for absolute, unlimited control or power; Sovereignty as a symbol of political legitimacy; Sovereignty as a symbol of political authority; Sovereignty as a symbol of self-determined, national independence; Sovereignty as a symbol of governance and constitutional order; Sovereignty as a criterion of jurisprudential validation of all law; Sovereignty as a symbol of the juridical personality of sovereign equality Sovereignty as a symbol of recognition; Sovereignty as a formal unit of legal system; Sovereignty as a symbol of powers, immunities, or privileges; Sovereignty as a symbol of jurisdictional competence to make and / or apply law; Sovereignty as a symbol of basic governance competencies (constitutive process).

Almost all uses of sovereignty according to Nagan and Hammer have a direction as a symbol of the independence of the authority of an entity to be able to control other entities under it. The authority of this entity must obtain a supreme power for the sake of asserting the existence of sovereignty.

The key element that is perhaps most closely related to the absolute nature of sovereignty is the exclusivity of jurisdiction to which an entity belongs. The degree of policy regarding the absolute nature of the sovereignty of an entity is very likely to be different and even conflict with other entities that have the right to determine its sovereignty. As stated by Max Weber, researched by Kenneth Newton, that sovereignty is the monopoly of a community that claims to have the authority to commit violence

in a particular jurisdiction. Therefore other groups claiming the same rights should be debated about their sovereign position. Whether they are proven not to have the right legitimacy, or are contradicted, then it is proven that they have no sovereignty at all to do so.

In international law, state sovereignty is generally associated with the most essential qualifications to determine a state's membership in the international community. The state is still the main subject and the heart of any discussion on the rule of international law. This is still true on the trajectory of history to this day. The search for absolute degrees, jurisdictional exclusivity, and equality of rights and powers for each state, leads us to the conception of a sovereign state. This can mean a country whose subject or resident voluntarily has compliance with, and is not a subject of another state or entity. In addition, the state has a firm position in relations with other countries, and manifests itself in both internal and external relations.

The essence of the state is sovereignty, which is the principle that each state only follows orders from within its own country and is not responsible to the larger international community unless it has agreed to do so. The agreement to be responsible to the international community naturally gave birth to the opposite concept of sovereignty itself, or at least the concept changed and diminished. This Restrictive Interpretation Doctrine is the result of indications that the international community is changing and is always moving forward. They are equipped with cross-cutting issues of international law. For example, the regulation of human rights in international economic law, the regulation of humanitarian intervention in countries that are at war, further underlies the interdependence between countries in the realm of international law.

Until now, globalization is believed to be one of the causes of interdependence between countries. Globalization in the end gives rise to symptoms of interdependence between countries, although they are bound by international law. They have to go through a process of change that results in the centering of some interests between countries.

3.2 Preferential Trade Agreement

Preferential trade agreements are gradually concluded each year. Since 1948, more than 400 PTAs have been notified to the WTO.

The WTO itself adopts the principle of equality which consists of two main principles: national treatment and the treatment of the most preferred country. To support this principle, the Parties shall not treat domestic market participants better than foreign market participants or discriminate against foreign market participants of different origin. National treatment refers to the relationship between the controlled country and the relevant trading partners, in which the major powers discriminate against completely different trading partners as stipulated in Article 1 of the General Agreement on Tariffs and Trade. In other words, if a positive trade scenario relating to merchandise, services or property rights protection is assigned to 1 trading partner, then that scenario must be provided at the same time to all or different WTO members.

However, although these principles are the basic operational guidelines of WTO law, WTO rules allow exceptions to the most important Favored Nation principle. This exception is contained in many WTO rules. First, Article I:2 of the General Agreement on Tariffs and Trade:

"The provisions of paragraph one of this text do not require the elimination of any preference with respect to major duties or expenses which do not exceed the amount specified in paragraph four of this text and which fall within the following descriptions:

(a) Preference of goods only between 2 or many regions listed in Appendix A, subject to the conditions set out therein; (b) Preference is either only between 2 or many territories which, on a national holiday, 1939, are connected by mutual sovereignty or protective or sovereign relations and which are listed in Annexes B, C and D, subject to the conditions set forth therein; (c) The preference is favorable solely between the United States and the Republic of Cuba; (d) Good preference solely between the neighboring countries listed in Annexes E and F."

The exception to the Favored Nation principle derived from this text is for countries listed in Annex A to Annex F of the 1947 General Agreement on Tariffs and Trade.

Second, an understanding of the interpretation of Articles 24 and 24 of the General Agreement on Tariffs and Trade, and Article 24 of the General Agreement on Tariffs and Trade 1994. These articles recognize the existence of customs unions and trade areas in the world. This recognition implicitly negates the application of the maximum power principle. The nature of this rule is highly discriminatory or non-reciprocal. Exceptions to the principle of the main countries as regulated in this article are only permitted by the Customs Union to other parties which are not reciprocal. In its development, the existence of this regulation is usually opposed to the legislative position established by the General Agreement on Tariffs and Trade of Member States 1947–1979.

Third, the choice of 28 Gregorian calendar months 1979 (L/4903), or so-called legislation, on dual discriminatory and preferential treatment, reciprocity, and wider participation of developing countries. The law was the result of a Tokyo-wide debate about the 1979 trilateral trade negotiations. Created as a legal framework, it is widely recognized as an important rule of special treatment for developing and least developed countries. The reduction of the principle of nationality preference can be seen in the Presidential Regulation, especially in the first paragraph which reads:

> "Despite the provisions of Article 1 of the Agreement as a whole, the acquirer may provide developing countries with different and far more favorable treatment, which is not equivalent to the different treatment of the acquirer."

Under this paragraph, States Parties are given the opportunity to give developing countries completely different special treatment without having to impose it on different States, and do not justify their position on various general customs and trade systems agreements or outside them (GATT 1994). The relationship between this regulation and Article 24 of the General Convention on Tariffs and Trade 1947, mentioned above, is unclear. The fact that world trade is now based on the 'professional status quo' shows that these rules are not keeping up. However, the existence of this law provides an opportunity for developing countries and some developed countries to enter into discriminatory trade agreements. These agreements are usually made with developed countries, so this is especially true for countries that are ready to be empowered to provide information.

Fourth, Article 5 of the General Agreement on Exchange Services (GATS). One of the deviations from the Great Nationality Principle is also included in this rule. This can be seen in the first paragraph below.

"This Agreement will be entered into or signed by the Partner of the Associate in its Membership, as in the Agreement Partner, to liberalize the exchange services between the parties to the agreement or between the parties to the Agreement. This does not prevent you from doing so.

(a) cover a substantial area; and (b) within the meaning of article 17, any discrimination between or between parties in the areas covered by sub-paragraph (a) by: (i) eliminating existing discriminatory measures; and/or (ii) Articles 11, 12, 14 and 14 bis Prohibit recent or repeated discriminatory acts, either within the date of entry into force of the Convention or within a reasonable period of time, except as permitted by. Under this rule, each party to an Associate Degree Agreement must enter into an Associate Degree Agreement or enter into an Associate Degree Agreement involving the cooperation of the parties to facilitate transactions between the parties. This cooperation also includes flexibility for developing countries, as provided for in paragraph 3.

(a) Where a developing country is party to an agreement on the degree of relevance of the types proposed in paragraph 1, flexibility will be permitted with respect to the conditions set forth in paragraph 1. Depending on the amount of development in the participating countries as a whole and in each each sector and sub-sector. (b) Notwithstanding a half dozen paragraphs, if admission to an associate degree of the type proposed in paragraph 1 concerns only developing countries, the explicit preference is that the person conferring that associate degree shall also be granted to any legal entity. it owns or controls. Degree deal.

This rule provides a legal framework for special treatment for developing countries through the flexibility contained in paragraph 3(b). Developing countries are given higher treatment considering their level of development in terms of individual sectors and subsectors.

3.3 The Regional Comprehensive Economic Partnership and Its Impact on State Sovereignty

The RCEP negotiations include nine Steering Groups (WGs), Commodity Exchanges, Exchange Services, Investments, Economic and Technical Cooperation, Property, Competition, Dispute Resolution, E-Commerce, SMEs, and Product Acquisition. First, RCEP has five operating sub-groups (SWGs) on the underlying commodity exchanges. These are the Rules of Origin Sub-Working Group (SWG-ROO) and Customs Procedures and Trade Facilities Sub-Working Group (SWG-CPTF)., Sub-Clusters of Work on Standards, Conformity Assessment Procedures and Technical Law (SWG-STRACAP), Sub-Clusters of Plants for Sanitation and Plant Protection Measures (SWG-SPS) and SWG-TR. RCEP owns a pair of SWGs instead of subordinate WG trading services, specifically SWG-Financial and SWG-Telecom.

The unit area included in the RCEP interval has the following 20 conditions:

1. Initial Provisions and General Definitions.
2. interchange merchandise.
3. Rules of Origin furthermore as Annex on Product Specific Rules.
4. Customs Procedures and Trade Facilitation.
5. hygienical and Phytosanitary Measures.

6. Standards, Technical laws, and Conformity Assessment.
7. Trade Remedies.
8. interchange Services furthermore as Annexes on cash, Telecommunication and skilful Services.
9. Movement on Natural Persons.
10. Investments.
11. Intellectual Property.
12. Electronic Commerce.
13. Competitions.
14. very little and Medium Enterprises.
15. Economic and Technical Cooperation.
16. Government acquisition.
17. General Provisions and Exceptions.
18. Institutional Provisions.
19. Dispute Settlement.
20. Final Provisions.

The most important rules for countries regarding market access in this provision include the exchange of goods, financial investments, the exchange of additional services such as telecommunications services and skills, and the temporary leasing of individuals and investments. These provisions create advantages as well as challenges for the state.

One of the views that raised the existence of supreme power to explain the integrity of a sovereignty was the thought of "irreducible core, the non-negotiable given of any sovereign order" advance by Neil Walker. The construct is that the plan of sovereignty that has complete and unchanging power. Supported this concept, Neil Walker examines that sovereignty ought to be viewed as a type of dialogue concerning the claims of the existence and character of the supreme ordering power of the govt. That is especially controversial.

Supreme ordering power primarily exists to keep up the identity and standing of a political entity, offer continuous resources for that entity, and become the vehicle for that entity for its legal regulation. {this construct this idea} could be a ancient concept that was simple till the twentieth century with absolute components and unlimited freedom in its internal elaboration. However within the finish, countries within the world within the twentieth century began to understand the requirement for cooperation so as to attain the event of common goals. so all members of the international community should together take under consideration the valid objectives of alternative members once travail their sovereignty.

In this case, the state will not act unilaterally from the alternative state. The reason for this is the proliferation of aspects of family life that are compatible with cross-border activities. However, there is another side of the landscape that is developing independently of the leather world. This tendency directly challenges conventional conceptions of sovereignty as supreme power and freedom.

In this regard, Aira Aprilianti's analysis from the National Policy Research Center concludes that Indonesia can benefit from the achievement of an FTA in which RCEP

member countries cooperate with non-RCEP countries. Role in the supply chain. Furthermore, RCEP can also contribute to the ASEAN Comprehensive Recovery Framework, which can facilitate the expansion of intra-ASEAN trade with East Asian countries by prioritizing supply chain characteristics in the "new normal" era. This shows that RCEP contradicts the Supreme Order Power theory, but is related to the degree of interconnectedness between the nations of the world.

RCEP faces several obstacles when dealing with Indonesian law. Especially, the contract method mandated by Law Number 24 of 2020 concerning International Contracts. The tactic itself requires DPR approval. To understand this agreement, the RCEP document must first be translated into Indonesian. Consists of 14,367 pages of positive terms that do not contain Indonesian vocabulary. Furthermore, the government should relieve Indonesian trade representatives from possible challenges arising from RCEP in several trade sectors related to telecommunications and knowledge, apparel/textiles, footwear and automobiles.

4 Conclusion

To realize the advantages of RCEP, the Indonesian government must do many things. Policy reforms and changes area unit required to boost the benefit of Doing index (EODB Index). The Indonesian government ought to additionally pay additional attention to the service sector, creating it a "lubricant" for producing and different industries, and by imposing restrictions on its circulation however underneath RCEP and different international trade agreements. Such offensive actions may be achieved by focusing additional on SMEs and start-ups, by providing funding and different varieties of business help.

Indonesia will use RCEP as AN umbrella for several bilateral agreements with Southeast Asian countries and different players. RCEP ought to additional strengthen Republic of Indonesia-ASEAN intra-ASEAN trade relations on that Indonesia depends therefore heavily. Indonesia's achievements in RCEP can inaugurate a brand new era of trade through discriminatory and regional trade agreements.

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Bibliography

1. E.M. Clarke, E.A. Emerson, Design and synthesis of synchronization skeletons using branching time temporal logic, in: D. Kozen (Eds.), Workshop on Logics of Programs, Lecture Notes in Computer Science, vol. 131, Springer, Berlin, Heidelberg, 1981, pp. 52–71. https://doi.org/10.1007/BFb0025774

2. J.P.Chauffou, J.C.Maur, ed., Preferential Trade Agreement Policies For Development : A Handbook, The World Bank, 2011
3. L. Henkin, 1995, International Law : Politics and Values.Martinus Nijhoff Publishers, 1995.
4. R. Bernhardt, ed., Encyclopedia of Public International Law, Instalment 8, Elsevier, 1981.
5. A. Narlikar, A, Fairness in International Trade Negotiation : Developing Countries in the GATT and WTO, Wiley-Blackwell, 2006.
6. M. Sanson, Essential International Trade Law, Cavendish, 2002.
7. M. Schaefer, M., Ensuring that Regional Trade Agreements Complement the WTOSystem: US Unilateralism a Supplementto WTO Initiatives?, Journal of International Economic Law 10–2007, 585–603, 2007, https://digitalcommons.unl.edu/lawfacpub/56
8. Aprilianti, R. (2020). Will RCEP be beneficial for Indonesia?.https://www.researchgate.net/publication/341803498
9. Taguchi, H., & Lee, H. L. ASEAN-Plus-One Free Trade Agreements and Their Trade Effects. Munich Personal RePEc Archive Paper No. 72503, https://mpra.ub.uni-muenchen.de/72503/
10. Chongkittavorn, K., 2020, RCEP the Key to East Asia's Recovery. R https://www.eria.org/news-and-views/rcep-the-key-to-east-asias-recovery/Chazawi, diakses pada 15 Februari 2022.
11. Schmitthoff, C. (1966). Progressive Development of the Law of International Trade: Report of the Secretary General of the United Nations 1966. R https://www.jus.uio.no/lm/un.sg.report.itl.development.1966/doc.html