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WTO in History: a Ticking Bomb*

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Abstract

The World Trade Organization, named for the multilateral trade institution, was struggling with various critical issues both in the past, and for the future. This research would explain how the history pace could have given some unanswered questions through looking back at the previous multilateral trade institution and given an underlined notes for some practical solutions. WTO is the highest accomplishment for the trade sector, yet. But unfortunately, the commitment of sticking through the principles were often weakening years by years, not in a quick move, but specifically, in the end, we would know that it becomes stagnant and no longer provides all the needs. Regional Trade Agreements (RTAs) were the best choice, yet, looking at Article XXIV GATT, it would help much more.

Keywords: GATT; Trade Institution; World Trade Organization

Abstrak

World Trade Organization, merupakan organisasi perdagangan internasional, yang kini, berada di tengah gejolak dengan berbagai isu yang berdampak pada iklim perdagangan dunia. Tulisan ini membahas mengenai bagaimana permasalahan yang terjadi pada tubuh World Trade Organization sekarang ini terjawab dengan melihat perkembangan organisasi itu sendiri dari tiap kurun waktu. World Trade Organization adalah pencapaian tertinggi yang dibangun pada bidang perdagangan dunia. Namun, komitmen untuk tetap berpegang teguh pada aturan-aturannya seakan menjadi semakin melemah dari tahun ke tahun. Hal ini tidak terjadi secara simultan, namun, kita dapat melihat bahwa organisasi ini cenderung bergerak di tempat dan tidak lagi mengakomodir negara-negara anggotanya. Perjanjian Perdagangan Regional merupakan solusi yang terbaik, untuk saat ini, merujuk pula pada Pasal XXIV GATT, tampaknya, ragam kesepakatan ini akan memberi jalan keluar.

Kata Kunci: GATT; Organisasi Perdagangan; World Trade Organization

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A. INTRODUCTION

W. Friedmann in his work explains that in society, there are three fundamental elements that could stimulate the effectiveness of law enforcement, namely by paying attention to legal substance, legal structure, and legal culture. Literature on the legal system, is stirring onto the structure or legal policy, often found in every aspect of the law, but it is indeed quite difficult to dig any literature on legal culture. Here, too, merely the difficulty is driving us onto lack of insight of the laws that live in society yet, it shades every policy formulation that we desire to design.

Law is a critical of any social phenomenon which often develops dynamically. Learning how culture evolves in a society in order to formulate certain policies that are considered appropriate and efficient are needed. The study of this lecture is named by studying the living law.² Therefore, the law that exists in the midst of society and argues that it tends to be more considered to continue to exist and even strive to become a positivistic law by presenting more effectiveness because it formerly exists and is obeyed, when compared to laws that suddenly exist and change the existing structure and habits of society. By following the study of legal anthropology and legal sociology in formulating policies, the effectiveness of policies will be higher in rate. It is likely, we cannot deny that law has a role as a social agent and reconstructs society by regulating certain things that have not previously been regulated, so the law is presenting as a tool of social engineering³ or known as Roscoe Pound's Big Bang Theory hitherto.

Law scholars, both in academia and in the field of practitioners, had two main tasks so that the legal system continues to function according to its purposes. Firstly, by accommodating the needs of the society by implementing empirical studies which sincerely are needed to take serious note of the conditions in certain societies within certain areas in order to formulate appropriate policies and indeed had their own urgency to be formed. Secondly, providing direction from legal aspects to the society, if the current situation is in an unbalanced and unsafe circumstances, then the law provides certain signs to be enforced and obeyed by the society⁴ in hope for a safer condition in upcoming future.

Legal culture is included as the source of law. Pre-arranged regulations that already exist and are obediently obeyed by the society are more effective in enforcement. The further pace might be to make them legitimate in the eyes of positive law. By this way, the law that is formed is certainly needed, does not require certain coercive measures practically in its enforcement and legally valid. On the other hand, we also cannot disclaim that when we observe at a society, we merely do not look at the people who live in it, but also look at the economic, political and cultural aspects as a reflection

² Munir Fuady, *Aliran Hukum Kritis: Paradigma Ketidakberdayaan Hukum*, (Bandung: Citra Aditya Bakti, 2003), pg. 40.

³ Lili Rosjidi, *Filsafat Hukum: Apakah Hukum Itu?* (Bandung: CV. Remadja Karya, 1985), pg. 29.

⁴ Lawrence M. Friedmann, *Is There a Modern Legal Culture?* Ratio Juris, Volume 7 No. 2, July 1994, pg. 118.

of the society.⁵ However, society is a legal subject that has different thoughts, desires, and habits from one to another. In short, legal culture is a variable that dominates the effect in the formation of law. All social activities would probably grant impact to the law, although not directly, and in some cases would be in slight pieces, but it sure does enrich our law by now.

In observing the culture that lives within the society, it is required to perceive at the historical framework in each period of the development of any subject that we intend to research to. This article will examine the historical development of the World Trade Organization from each time period. The World Trade Organization as a multilateral organization is engaged in the supervision of trade and economic policies of its member countries. The goal to be achieved by the existence of this institution is the achievement of non-discrimination and to strengthen relations between countries in the world after the world war two and the cold war which made the situation tense between countries.⁶ The discretion regarding the establishment of this institution incised views of pros and cons in each period of time, even the development of this institution is not far from diplomatic relations between countries which also echo the creation of bilateral and regional agreements. This article will discuss the historical development of the World Trade Organization with the title “WTO: a Ticking Bomb”

B. METHODS

The type of research used in this research is normative legal research using a statutory and historical approach. The type of research used in this research is library research, in other words, the research was conducted through a literature review and obtained from primary, secondary and tertiary sources. The statutory approach is aimed at understanding legal issues by examining all regulations, both those originating from written and unwritten positive law, which of course intersect with the legal issues being studied.⁷ The historical approach is aimed to look back all the phase to track on how the law was constructed.⁸

C. RESULTS AND DISCUSSION

1. Development of the World Trade Organization (WTO) Multilateral Organizational Framework

After the world war two ended, the United States and the allies met on July 1, 1944 in Bretton Woods, New Hampshire, to re-organize the world economic system. Developing countries and least developed countries in general are countries that have a

⁵ Moshe Hirsh, *the Sociology of International Law: Invitation to Study International Rules in Their Social Context*, 55 U. Toronto L.J. 891, pg. 893.

⁶ John Jackson, *the World Trading System and Policy of International Economic Relations*, (USA: the MIT, 1991), pg. 135.

⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenadamedia Group, 2005), pg. 142.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Prenadamedia Group, 2005), pg. 166.

significant impact due to the existence of the world war two, therefore, the Bretton Woods meeting aims to attract the leaders of countries to participate in creating an international trading system cooperatively and determined, to maintain the peace. This meeting was attended by representatives from 44 countries and produced results in planning for the establishment of three international institutions that would later be responsible for evolving the economic climate of countries which affected by the world war two. These institutions include the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD) or known as the World Bank and the International Trade Organization (ITO).⁹ The International Monetary Fund (IMF) has a function to maintain the stability of exchange rates and the monetary system in the world, the International Bank for Reconstruction and Development is tasked with assisting the economies of developing and least developed countries through capital lending, and lastly, the International Trade Organization functions as a trade policy supervisor for countries with vision of reducing tariffs barrier between countries. The latter institution did not exist at that period of time, and successfully was established in 1994 under the name World Trade Organization in the Uruguay Round of the GATT.¹⁰ However, back then, the rules regarding international trade, GATT 1944 are still mutually agreed upon and enforced in the absence of an institution that overshadows them.

The idea to establish those international institutions above was put forward by the US Secretary of the Treasury, Henry Morgenthau, the US Secretary of the Treasury's Economic Adviser, Harry Dexter White and the British Economist, John Maynard Keynes. They submitted a proposal containing their intention for a post-war world economic arrangement draft based on consensual and mutually beneficial decision-making for the parties, concerned on and creating a more cooperative atmosphere in matters relating to trade and the world economy.¹¹ In addition, they noticed that international institutions are needed to re-stabilize all the impacts of the world war two, especially in paying a lot of attention to the economic development of countries.

As we could see from the history of the world of multilateral trade, the establishment of an institutional forum that is engaged in embodying the reduction of barriers to entry between countries is not the first one created through this World Trade Organization institution, England, as a country that applies the Laissez Faire theory in its economic development and market of its country, i.e., the Government itself giving full rights to the market to determine the direction of the economy or as it called market liberalization.

England, was the first country to provide an example of a trade partnership between countries. England believed that to achieve a higher civilization and glory, further

⁹ Peter Van den Bossche dan Werner Zdouc, *the Law and Policy of the World Trade Organization*, (New York: Cambridge University Press, 2013), pg. 154.

¹⁰ Garba Umaru Kwagyang, dkk, *Bretton Woods Institutions: Their Evolution and Impacts on the Field of International Economic Law*, Journal of Law, Policy and Globalization, Vol. 35, 2015, pg. 50.

¹¹ Kurt Schuler dan Gabrielle Canning, *Just Before Bretton Woods: the Atlantic City Conference*, (New York: Center for Financial Stability, 2019), pg. 1.

industrial and commercial developments were required, and this could only be achieved by walking side by side with other countries, which comes within some notes, taking a calculate measures is also a priority. At that time, England got teamed up with Italy, Hansard, Belgium and the Netherlands in order to reduce barriers to trade between participating countries, provide mutual benefits and provide access to technology transfer and transparency in trade policies between participating countries.¹² This spirit may have been brought by representatives from the England, namely John Maynard Keynes regarding the proposal that was put forward that the urgency of establishing a multilateral trading institution not only brings prosperity to developed countries, but also invites developing and least developed countries to participate in evolving their own countries. Besides, this whole institutional framework of international trading system could only work, if the participating countries go merrier.

Looking beyond at the political aims of submitting a proposal regarding the establishment of an international institution whose central point is to change the pace of the world economy, this could be presumed too, that there will be a change in the direction of the world's economic performer which was formerly in the hands of England.¹³ This game changing was surprisingly predictable, the newest player would eventually lead the game because the long-lasting winner was about the time to end his glory. The monetary arrangement and exchange rate system that is planned to be used in the International Monetary Fund's system is to use the dollar as the exchange rate, by replacing gold which at that time, even long before the world war one, was used as a valid exchange rate and no other than the world monetary stabilization tool. Surely, there is no written rule that in the period 1870-1914 the world economy was in the hands of England, however, in fact and of course, admitted by many countries, the world's financial system was bound and centralized in London, and it was because England hold the world's monetary exchange rate. This kind of power gave England such a complete control over the world's monetary arrangements and it is known too, as the golden age for the first international economic integration in history. This also given impact to, England was well-known in that period, as mentioned previously not only having a dominant role in the financial system structure on a global scale, but also having the power to make and decide policies in world trade and economy sector.

With that being state, England has an absolute power, both in the sector of regional expansion, as well as the world economic system. The standard that based with gold as the world exchange rates are was well developed in European countries back then, one of the major issue was because they viewed gold as a valuable substance with its stability, when compared with other metals or silver.¹⁴ In 1871, Germany began to

¹² Ha-Joon Chang, *Kicking away the Ladder*, (London: Anthem Press, 2002), pg. 4.

¹³ Thammarak Moenjajak, *Central Banking: Theory and Practice in Sustaining Monetary and Financial Stability*, (Singapore: John Wiley & Sons Singapore, 2014), pg. 7.

¹⁴ Samuel Knafo, *the Gold Standard and the Origins of the Modern International Monetary System*, Cahiers de Recherche – CEIM, 03-31, Chercheur, Universite York, pg, 15.

recognize gold as the standard of exchange rate and was followed by the United States in 1873, then France in 1878 and followed by other European countries.¹⁵

The central point of the economy during the golden era was in London, at the Bank of England to be exact, which at that time had the same function as the IMF and the World Bank today, the Bank of England was function to maintain exchange rate and world monetary stability as well as providing capital loans in the short term or a long one. With those authority, it was not a surprise if we found England all settled for a long period as a top tier in world economy rankings.¹⁶ There were no difficulties at that time, because England also applied an open economic system. The problem came when England experienced a deficit and its power was weakened by the world war one and at the same time the United States appeared as a competitor in fighting over the top tier ranking tittle in the world. Moreover, the economic situation after the world war one became worse, remedying the gold system as an exchange rate was not an easy matter either in the midst of inflationary conditions in many countries around the globe. However, England, at that time, was still adamant about restoring the situation to how it was before world war one occurred, where England held full control over the world economy, but the plan was including the gold system, in the midst of its breakdown, England still intended to extend the use of gold as an exchange rate. This could be seen in the outcomes of the Genoa Conference in 1922. England also asked the United States to be his ally, helping him to cooperate in rebuilding the gold system as a guardian of world monetary stability, however, this system only lasted for one year.

England and the gold exchange rate system were breaking down because England had to bear the convertibility of gold in the Bank of England was up to £200 million gold and it was estimated that the restoration of the new world economic system would be recovered after the 1950s. However, the United States saw this scene as an opportunity that he could not missed. He took into account all the debts of England, France, Italy and Russia which amounted to 10 billion dollars. Due to the debt they had and the impossibility of the debtor countries in paying back their debts, the United States, France and England 's representatives had a meeting called Tripartite Agreement agenda to obtain the results which was included the stabilization of the world currency exchange rate system. Then, in the world war two, the United States, the one and only strongest successor candidate, that we all commonly knew from the beginning, he had the intention of holding power over the world economy, stole the starting line by holding the Bretton Woods Conference in 1944, he came as the winner of the world war two and also considered as superpower country in the world.¹⁷

¹⁵ Isaac O.C. Igwe, *History of the International Economy: the Bretton Woods System and Its Impact on the Economic Development of Developing Countries*, Athens Journal of Law, Volume 4, Issue 2, pg. 106.

¹⁶ John Dutton, *the Bank of England and the Rules of the Game under the International Gold Standard: New Evidence*, in *a Representative on the Classical Gold Standard*, Michael D. Bordo dan Anna J. Schwartz, (Chicago: University of Chicago Press, 1984), pg. 173.

¹⁷ Isaac O.C. Igwe, *History of the International Economy: the Bretton Woods System and Its Impact on the Economic Development of Developing Countries*, Athens Journal of Law, Volume 4, Issue 2, pg. 111.

In July 1944, the Bretton Woods meeting was held which came in resulted a plan to form three international organizations. These three organizations were the International Monetary Fund (IMF) which is tasked with maintaining monetary stability and exchange rates, the International Bank for Reconstruction and Development (now known as the World Bank) which has a function to encourage the economy of developing countries, least developed countries and those who's affected by the world war two, and lastly, there was the International Trade Organization (ITO), as an organization that oversees the implementation of cross-border trade.¹⁸

Seen through the history records that the thought of the urgency for international organizations in the trade sector was marked by the United States as a superpower winning the world war two, which invited its allies to negotiate the master plan to establish a multilateral agreement in order to reduce tariffs for trade in goods.¹⁹ A preparatory committee was formed in February 1946 and their first meeting was held in October 1946 in London with the main topic of establishing a trade institution, proposed by the United States.

The International Trade Organization (ITO) was cancelled at that time, because practically, the United States congress refused to approve and sign the contents of the Havana Charter. The United States Congress views that the contents of the Havana Charter are contrary to the trade policies implemented in the United States at that time. It is confusing though, but political condition was kind of rough back then at the United States. Eventually, President Truman (the United States' President at that time) decided to no longer fighting for the establishment of International Trade Organization.²⁰ Although the proposal regarding the establishment of an international trade organization was rejected by the congress of the United States, however, the rules containing trade policies, the General Agreement on Tariffs and Trade (GATT) were still approved and enforced until, in 1994, the Uruguay Round as the eighth round of the GATT, resulted the Marrakesh Agreement which gave birth to an international trade institution named the World Trade Organization, regulates rules on trade in services, i.e the General Agreement on Trade in Services, regulation on textile commodities and agricultural products, regulation on intellectual property rights i.e the Agreement on Trade-Related Aspects of Intellectual Property Rights, as well as a comprehensive settlement body within the body World Trade Organization, i.e, Dispute Settlement Body.²¹

¹⁸ Stuart Robinson, *the Spirit of Geneva and Globalization: Economic, Financial and ethical Dimensions*, Refugee Survey Quarterly, Vol. 26, Issue 4, 2007, DOI: 10.1093/rsq/hdi0266, pg. 73.

¹⁹ Tristam Pascal Moeliono, dkk, *Hukum Internasional, Hukum Nasional, dan Indonesia*, (Bandung: UNPAR PRESS, 2018), pg. 296.

²⁰ Peter Van den Bossche dan Werner Zdouc, *the Law and Policy of the World Trade Organization*, (New York: Cambridge University Press, 2013), pg. 154.

²¹ Muhammad Sood, *Hukum Perdagangan Internasional*. (Depok: Raja Grafindo Persada, 2019), pg. 29

2. The position of the WTO as a political instrument in the international economy

The pure goal of evolving the economies of countries in the world as stated in the tasks of each institution above will only be achieved if the participating countries understood that in order to create new economic order, including; (1) expand market access, (2) erase the discrimination among others, (3) reducing tariffs, requires the cooperation and commitment of each participating countries.²² The desired will of cooperation in Bretton Woods is to participate in maintaining the stability of the exchange rate and minimizing barriers to trade between participating countries. Therefore, it takes a great desire for participating countries to reconstruct their domestic rules regarding the economic and financial sectors that intertwined or even have impacts on the world economy.

In fact, the initial commitments were not consistently maintained by participating countries due to several factors. The first factor is that neither technical assistance nor financial assistance is always available to countries in need, these countries, i.e. developing countries and least developed countries, are automatically bound and dependent on assistance provided by the aforementioned organizations as soon as they signed debt agreements with those organizations. Second, looking at the historical pace of development of an organization, it is rare to find an organization that is always strong in defending the principles of its establishment and the legal system that its designed in advance, they are gradually weakening in strength or no longer sticking to the rules that have been made. Third, the rules regulated in the GATT generally will not be applied properly if they do not go hand in hand with the IMF.²³ Both of these organizations have an important role in regulating the wheels of the world economy.

The solution for the commitment to be carried out consistently is to focus on regulations and/or strengthen the role of international institutions and negotiations between countries. The first solution is often delivered by economists. They think that this method will be easily implemented because it is stated in the formulation of the domestic rules of each country, however, on the bad side, this method will seem more rigid and countries will not have the power to bargain. This method will also describe more clearly the position of developed countries which have a dominant role in the regulation of world economy and trade, while developing and least developed countries do not have any power to be bargained²⁴, thus, it is difficult to apply this method. Even if there is some kind of way of making it possible to be applied, developed countries as countries that held the power, must be able to formulate policies that are approved, obeyed and most importantly, wise enough, to be followed and obeyed by all countries in the world. Despite all the complexities and ideally it is not easy to be implemented, but this method if followed by all countries will be more effective in its implementation,

²² Preamble of the Agreement Establishing the World Trade Organization (Marrakesh Agreement).

²³ Kathryn M.E. Dominguez, *the Role of International Organizations in the Bretton Woods System*, National Bureau of Economic Research, University of Chicago Press, Volume ISBN 0-226-06587-1, January 1993, pg. 358.

²⁴ Amrita Narlikar, *International Trade and Developing Countries: Bargaining Coalitions in the GATT & WTO*, (New York: Taylor & Francis Group, 2003), pg. 11.

for the sake of restructuring an economic new order, a more conducive and well-planned international arrangement, although it does not rule out the existence of an oligarchic system in developed countries and stifling the pace of developed, developing and least developed countries.

The second solution, is by utilizing the role of international institutions as intermediary institutions and negotiating media for each country, is a solution that comes from politicians. Politicians think that the latter method will be more effective and flexible in reality, because the needs of each country will be well accommodated by meeting and expressing opinions, however, the drawback of this method is that the aspirations of many countries must be come in many and compromise many²⁵, the fact that participating countries of the WTO was noted covered 164 countries²⁶, and those numbers could not be easily become one. It is putting so many efforts and perhaps will be a complex way. The negotiation method too, could lead to the creation of an international organization that provides a forum for its participating countries to express the aspirations and desires of each member will be more ideally implemented. And this method, historically has happened during the Middle Ages when Europe formed regional organizations with the aim of resurrecting western countries in the world or when England accommodated colonial countries in trade unions in order to accommodate more flexible trade rules and reduce barriers to entry between England and the colonies. Even so, England was eventually recognized that free trade would only benefit fellow countries of the same level.²⁷ As an illustration, developed countries cooperating with developed countries will also create an ideal free trade climate, however, developed countries with developing countries or even least developed countries, the biggest possibility is that a 'weak' country will only become a market expansion of the developed countries because developing and/or least developed could not catch up, they simply did not have enough power towards the developed countries. This may have received great attention from the founders of the World Trade Organization and in previous negotiations, therefore, there is a mechanism for waivers and even certain exceptions for developing and least developed countries in the rules of the World Trade Organization. In addition, the spirit built by the World Trade Organization is translated into a general principle, i.e the principle of non-discrimination consisting of the Most Favoured Nation principle and the National Treatment principle.

Article I.1 GATT 1947 regulates Most Favoured Nation principle as one of the principles in the World Trade Organization where a participating country may not give special treatment to one participating country if other participating countries do not get the same facilities. For example, if Indonesia stipulates no tariffs for imports of wagyu beef from the United States, then this policy must also be felt by member countries other

²⁵ Deborah Elms, *How Bargaining Alters Outcomes: Bilateral Trade Negotiations and Bargaining Strategies*, Institute of Defence and Strategic Studies Singapore, June 2005, pg. 3.

²⁶ WTO, *Members and Observers*, September 24, 2021, retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

²⁷ Kathryn M.E. Dominguez, *the Role of International Organizations in the Bretton Woods System*, National Bureau of Economic Research, University of Chicago Press, Volume ISBN 0-226-06587-1, January 1993, pg. 365.

than the United States.²⁸ The second principle, as regulated in Article III.1, III.2, and III.4 GATT 1947, i.e National Treatment, is the principle that stipulates that every foreign products must be treated the same as like products in the domestic market. For example, it is not allowed to distinguish shelves in supermarkets between products from abroad and products made in the country.²⁹ Looking at the meaning, these two principles require the elimination of market discrimination. Of course, non-discrimination needs to be enforced considering that this could help encourage the pace of trade liberalization, prevent opportunistic activities from countries that implement trade protection policies, even prevent the oppression of developed countries against developing and/or least developed countries and ease tensions between countries, especially the tension after the world war two.

As Friedrich Carl von Savigny said that understanding the law is by looking at historical developments from time to time, not just looking at the results of judicial decisions or the formulation of regulations governing certain matters. The volkgeist theory that was developed by Von Savigny rejects the understanding of legal positivism which views law as opposed to morals, on the contrary, he views that in order to understand the law it is necessary to look at habits, morals and things that develop in the midst of society. Looking at the law is to look at the national spirit of the people in it.³⁰ The researcher uses it to examine the development of the World Trade Organization institution from one period to another. From the first time the idea of forming a trade organization forum was first applied by the British in expanding their market access, then the idea of forming an international trade organization was raised again through the Bretton Woods meeting which gave birth to the Havana Charter, but this idea was rejected because it was not in same boat with United States' domestic rules at the time. Here politics plays an important role, when the majority countries refuse to agree to the Havana Charter with the idea of the International Trade Organization, other countries also have the same reluctance. Furthermore, the establishment of the World Trade Organization as the first multilateral trade organization was through the Marrakesh Agreement which was held in the Uruguay Round in 1994.³¹

It can be seen that, the pure ideals brought by the General Agreement on Tariffs and Trade (GATT) regarding the abolition of trade protection policies between countries and minimizing tariffs on cross-border goods will be effective if the majority of countries in the world are GATT member countries. which means they will automatically comply with the provisions contained in the Marrakesh Agreement and its annexes. And, these countries have a dependence on the IMF or the World Bank as a 'donor' injection of funds for their country's economy. Marx's theory of economic system where only the capitalist

²⁸ Peter Van den Bossche dan Werner Zdouc, *the Law and Policy of the World Trade Organization*, (New York: Cambridge University Press, 2013), pg. 531.

²⁹ Peter Van den Bossche dan Werner Zdouc, *the Law and Policy of the World Trade Organization*, (New York: Cambridge University Press, 2013), pg. 576.

³⁰ Luis Kutner, *Legal Philosophers: Savigny: German Lawgiver*, Marquette Law Review, Volume 55, Issue 2, Spring 1972, pg. 286.

³¹ Tristam Pascal Moelino, dkk, *Hukum Internasional, Hukum Nasional & Indonesia*, (Bandung: UNPAR Press, 2018), pg. 297.

could mostly enjoy all³², did not fit into this one, things like this could not be said as the neo-capitalism system in the new era, because, the opportunist is come in each country to accommodate their needs. Developed countries want more open market access that is more liberal, on the other hand, developing countries and least developed countries besides on wanting wider market access, they need an injection of capital loan to build a better economic system for their country.

Now, the newest system was enriched with Regional Trade Agreements (RTAs). This system is known making some breakthrough to the developed countries, developing countries and the least developed ones. The use of RTAs in many countries given affect to differences in tariffs for each country, depends on what RTA they obeyed to.³³ This system was a challenge for the customs officers. For example, if country A bound with RTA with country B, and they both are WTO members then we have three different kind of tariffs. One, the tariffs among country A and B that stated it their RTA. Two, the tariffs among country A, B and the WTO members. And three, the tariffs among country A, B and the non-WTO members. This situation not only happened in tariffs, but other regulations too, often conflicting, creating a spaghetti bowl's theory.³⁴ Not to forget the fact that recently, one country could bound to more than one RTA. Then, it ought to come in mind that the characteristic of the RTAs is discriminating others. "Regional" in RTAs defined that this agreement could only works in certain areas, groupings into blocs categorized in regional would cause neo-protectionism trade policy. If only, there are more rules regarding RTAs in GATT.

D. CONCLUSION

1. The history framework of our international trade institution, the World Trade Organization concluded that there is no stagnant system. As the gold standard collided, and the crown of monetary system was replaced with dollar. Once, the countries were all applying the protectionism policy in order to protect their own country, was replaced to with non-discriminatory principles in World Trade Organization, i.e. Most Favored Principle and National Treatment Principle. But, as the season changed, the discriminatory system is once again being used in the name of liberating the trade and making the tariffs go beyond 0.
2. World Tarde Organization as a political institution could no longer held power over states policies regarding their trade system. With Regional Trade Agreements (RTAs) all blown up, countries are given with chances to make exemptions from the Most Favored Principle and National Treatment Principle. And by that, Researcher referred to Article XXIV GATT, the only main rule towards RTAs. As RTAs became

³² Moshe Hirsch, *the Sociology of International Law: Invitation to Study International Rules in Their Social Context*, 55, University of Toronto Law Journal, 2005, pg. 907.

³³ Jayant Menon, *Dealing with the Proliferation of Trade Agreements*, Discussion Paper No. 60, APEC Study Center, Columbia University, July 2008, presented to a Conference on International Rules on trade and Investment, held in January 2008, in Bangkok, pg. 2.

³⁴ Maria Panezi, *the WTO and the Spaghetti Bowl of Free Trade Agreements*, CIGI, Policy Brief No. 87, September 2016, pg. 2.

the best way to liberate, it is too, form noisy, apparently it causing the spaghetti bowl's theory in the world trading system. World Trade Organization may regulate any rules regarding to RTAs in the upcoming round.

REFERENCES

Books

- Dutton, John. (1984). *the Bank of England and the Rules of the Game under the International Gold Standard: New Evidence, in a Representative on the Classical Gold Standard*, Michael D. Bordo dan Anna J. Schwartz. Chicago: University of Chicago Press.
- Fuady, Munir. (2003). *Aliran Hukum Kritis: Paradigma Ketidakberdayaan Hukum*. Bandung: Citra Aditya Bakti.
- Chang, Ha-Joon. (2002). *Kicking away the Ladder*. London: Anthem Press.
- Jackson, John. (1991). *the World Trading System and Policy of International Economic Relations*. USA: the MIT.
- Marzuki, Peter Mahmud. (2005). *Penelitian Hukum*. Jakarta: Prenadamedia Group.
- Moeliono, Tristam Pascal, dkk. (2018) *Hukum Internasional, Hukum Nasional, dan Indonesia*. Bandung: UNPAR PRESS.
- Moenjak, Thammarak. (2014). *Central Banking: Theory and Practice in Sustaining Monetary and Financial Stability*. Singapore: John Wiley & Sons Singapore.
- Narlikar, Amrita. (2003). *International Trade and Developing Countries: Bargaining Coalitions in the GATT & WTO*. New York: Taylor & Francis Group.
- Rosjidi, Lili. (1985). *Filsafat Hukum: Apakah Hukum Itu?* Bandung: CV. Remadja Karya.
- Schuler, Kurt dan Gabrielle Canning. (2019). *Just Before Bretton Woods: the Atlantic City Conference*. New York: Center for Financial Stability.
- Sood, Muhammad. (2019). *Hukum Perdagangan Internasional*. Depok: Raja Grafindo Persada.
- Van den Bossche, Peter dan Werner Zdouc. (2013). *the Law and Policy of the World Trade Organization*. New York: Cambridge University Press.

Journal article

- Dominguez, Kathryn M.E. (1993). *the Role of International Organizations in the Bretton Woods System*, National Bureau of Economic Research, University of Chicago Press, Volume ISBN 0-226-06587-1.
- Elms, Deborah. (2005) *How Bargaining Alters Outcomes: Bilateral Trade Negotiations and Bargaining Strategies*, Working Paper, Institute of Defence and Strategic Studies Singapore.

- Friedmann, Lawrence M. (1994). *Is There a Modern Legal Culture?* Ratio Juris, Volume 7 No. 2.
- Hirsh, Moshe. *the Sociology of International Law: Invitation to Study International Rules in Their Social Context*, 55 U. Toronto L.J. 891
- Igwe, Isaac O.C. *History of the International Economy: the Bretton Woods System and Its Impact on the Economic Development of Developing Countries*, Athens Journal of Law, Volume 4, Issue 2.
- Knafo, Samuel. *the Gold Standard and the Origins of the Modern International Monetary System*, Cahiers de Recherche – CEIM, 03-31, Chercheur, Universite York.
- Kutner, Luis. (1972). *Legal Philosophers: Savigny: German Lawgiver*, Marquette Law Review, Volume 55, Issue 2.
- Kwagyang, Garba Umaru, dkk. (2015). *Bretton Woods Institutions: Their Evolution and Impacts on the Field of International Economic Law*, Journal of Law, Policy and Globalization, Vol. 35.
- Menon, Jayant. (2008). *Dealing with the Proliferation of Trade Agreements*, Discussion Paper No. 60, APEC Study Center, Columbia University, presented to a Conference on International Rules on trade and Investment, held in January 2008, in Bangkok.
- Moshe Hirsch, *the Sociology of International Law: Invitation to Study International Rules in Their Social Context*, 55, University of Toronto Law Journal, 2005, pg. 907.
- Panezi, Maria. (2016). *the WTO and the Spaghetti Bowl of Free Trade Agreements*, CIGI, Policy Brief No. 87.
- Robinson, Stuart. (2007). *the Spirit of Geneva and Globalization: Economic, Financial and ethical Dimensions*, Refugee Survey Quarterly, Vol. 26, Issue 4.

Website

- WTO. (2016). *Members and Observers*. September 24, 2021, retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

