SKRIPSI

TINJAUAN HUKUM INTERNASIONAL TERHADAP AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF INDONESIA FOR AN ECONOMIC PARTNERSHIP 2007

Disusun untuk Memenuhi Salah Satu Persyaratan dalam Memperoleh Gelar Sarjana Hukum pada Fakultas Hukum Universitas Indonesia

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ABSTRAK

Anita Komala, 050300031X, Tinjauan Hukum Internasional terhadap *Agreement between Japan and the Republic of Indonesia for an Economic Partnership* 2007, Skripsi, 150 halaman, Hukum tentang Hubungan Transnasional (Program Kekhususan VI), Depok: Fakultas Hukum Universitas Indonesia, Juni 2008.

Dalam rangka melindungi dan menjaga keharmonisan serta ketertiban dari berjalannya suatu kerja sama ekonomi internasional di bidang perdagangan, maka dibutuhkan suatu perangkat hukum yang jelas untuk mengatur kerja sama tersebut. Dengan adanya suatu perangkat hukum yang jelas, maka hubungan perdagangan internasional antara negara-negara diharapkan dapat berjalan dengan baik sehingga setiap pihak yang berkepentingan di dalamnya, yang dalam hal ini adalah negara, dapat saling menguntungkan dan diuntungkan. Dalam menghadapi kenyataan yang demikian, maka banyak negara terdorong untuk mengusahakan perlindungan terhadap kepentingan nasional mereka melalui berbagai cara. Salah satu cara yang mereka lakukan adalah dengan membuat salah satu perangkat hukum yang dapat melindungi dan menjaga kelancaran hubungan kerja sama ekonomi internasional di bidang perdagangan mereka, yang berupa perjanjian. Dalam lingkup kerja sama ekonomi internasional di bidang perdagangan yang bersifat bilateral, umumnya setiap negara yang saling menjalin hubungan kerja sama tersebut membuat suatu perjanjian kerja sama. Perjanjian kerja sama tersebut ditujukan untuk melindungi kepentingan nasional dari para pihak negara. Hal tersebut dilakukan pula oleh Indonesia dan Jepang. Pada 20 Agustus 2007, Indonesia bersama Jepang membuat kesepakatan untuk bekerja sama atau bermitra di bidang ekonomi, khususnya perdagangan, yang dituangkan ke dalam suatu perjanjian kemitraan bilateral ekonomi. Perjanjian tersebut dikenal dengan Perjanjian antara Jepang dan Republik Indonesia mengenai Kemitraan Ekonomi atau *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007*.

DAFTAR ISI

BAB I

PENDAHULUAN

A. LATAR BELAKANG

Kerja sama ekonomi internasional di bidang perdagangan terus berkembang dari waktu ke waktu hingga saat ini. Perkembangan tersebut pun tidak lepas dari adanya pengaruh tuntutan zaman. Dengan pengaruh ini, setiap negara di dunia mulai membuka pasarnya bagi negara-negara lain sehingga terjadi suatu hubungan perdagangan antarnegara yang tanpa batas. Dengan dibukanya pasar-pasar yang ada di seluruh negara di dunia, maka setiap pihak yang berasal dari negara-negara yang berbeda dapat masuk dan ikut serta berperan di dalam seluruh pasar negara di dunia. Hubungan perdagangan antarnegara yang demikian disebut sebagai hubungan perdagangan internasional.

Dalam rangka melindungi dan menjaga keharmonisan serta ketertiban dari berjalannya suatu kerja sama ekonomi internasional di bidang perdagangan, maka dibutuhkan suatu perangkat hukum yang jelas untuk mengatur kerja sama

tersebut. Dengan adanya perangkat hukum yang jelas, maka hubungan perdagangan internasional antara negara-negara diharapkan dapat berjalan dengan baik sehingga setiap pihak yang berkepentingan di dalamnya, yang dalam hal ini adalah negara, dapat saling menguntungkan dan diuntungkan.

Hubungan kerja sama ekonomi internasional di bidang perdagangan diantaranya dapat terjalin antara negara dengan negara, negara dengan pribadi hukum, dan pribadi hukum dengan pribadi hukum lainnya yang berkedudukan hukum di negara yang berbeda-beda. Hubungan-hubungan tadi satu dengan yang lainnya saling memberi pengaruh ke dalam dan ke luar, yakni baik kepada masing-masing pihak maupun kepada kondisi dunia dan hukum internasional. Oleh karena perkembangan yang terus-menerus terjadi dalam hubungan tersebut, maka lahir hubungan perdagangan bebas di antara subjek-subjek hukum internasional tadi. Hingga (dalam) beberapa tahun terakhir telah terbentuk beberapa wilayah perdagangan bebas di dunia, seperti wilayah perdagangan bebas di kawasan Eropa, Asia, dan Amerika. Oleh karena kondisi yang demikian, maka keadaan kurang kepastian dan ketatnya persaingan mungkin timbul[1].

Dalam menghadapi kenyataan yang demikian, maka banyak negara terdorong untuk mengusahakan perlindungan terhadap kepentingan nasional mereka melalui berbagai cara[2]. Salah satu cara yang mereka lakukan adalah dengan membuat salah satu perangkat hukum yang dapat melindungi dan menjaga kelancaran hubungan kerja sama ekonomi internasional di bidang perdagangan mereka.

Dalam lingkup kerja sama ekonomi internasional di bidang perdagangan yang bersifat bilateral atau antara dua pihak negara, umumnya setiap negara yang saling menjalin hubungan kerja sama tersebut membuat suatu perjanjian kerja sama. Perjanjian kerja sama tersebut ditujukan untuk melindungi kepentingan nasional dari para pihak negara pembentuk perjanjian tersebut. Disamping itu, perjanjian kerja sama tersebut juga dapat menjaga kelancaran dari keberlangsungannya kerja sama.

Pada 20 Agustus 2007[3], Republik Indonesia dengan Jepang membuat kesepakatan untuk bekerja sama atau bermitra

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[1]J. Soedrajad Djiwandono, *Perdagangan dan Pembangunan: Tantangan, Peluang dan Kebijaksanaan Perdagangan Luar Negeri Indonesia; Pengantar, Suhadi Mangkusuwondo* (Jakarta: LP3ES, 1992), hlm. 126.

[2]*Ibid*., hlm. 127.

[3]"Joint Statement at the Signing of the Agreement between Japan and Republic of Indonesia for an Economic Partnership," <http:// www.mofa.go.jp/ region/ asia-paci/ indonesia/ epa0708/ joint. html>, 05 Januari 2008.

di bidang ekonomi yang dituangkan ke dalam suatu perjanjian kemitraan bilateral ekonomi. Perjanjian kerja sama ekonomi tersebut dikenal dengan Perjanjian antara Jepang dan Republik Indonesia mengenai Kemitraan Ekonomi atau *Agreement between Japan and Republic of Indonesia for an Economic Partnership* [4].

Dengan adanya perjanjian tersebut diharapkan kerja sama ekonomi antara Republik Indonesia dan Jepang, khususnya di bidang perdagangan bebas bilateral, dapat berjalan baik dan lancar serta berkembang ke arah yang jauh lebih baik di masa yang akan datang dalam menghadapi globalisasi serta pasar dan perdangangan bebas baik di kawasan asia maupun di dunia. Tidak hanya itu saja, perjanjian ini juga diharapkan dapat saling menguntungkan kedua belah pihak.

Perjanjian ini merupakan perjanjian kemitraan bilateral ekonomi pertama yang dibuat oleh Republik Indonesia. Sebagai suatu perjanjian kerja sama atau kemitraan bilateral ekonomi pertama bagi Republik Indonesia, maka perjanjian ini menjadi sorotan bagi banyak pihak. Oleh karena itu, penelitian ilmiah ini dilakukan. Penelitian

[4] "Agreement between Japan and Republic of Indonesia for an Economic Partnership," <http:// www.mofa.go.jp/ region/ asia-paci/ indonesia/epa0708/agreement.pdf>, 05 Januari 2008.

ilmiah yang dituangkan dalam skripsi ini akan memberikan suatu pemaparan mengenai *Agreement between Japan and Republic of Indonesia for an Economic Partnership* sebagai suatu perjanjian perdagangan internasional antarnegara (bilateral) dari sudut pandang hukum internasional sehingga diharapkan dapat membantu banyak pihak untuk mengerti perjanjian tersebut. Dengan dasar pemikiran tadi, maka di dalam bab-bab selanjutnya akan dijelaskan beberapa hal untuk menjawab beberapa pertanyaan yang menjadi pokok permasalahan dalam penelitian ilmiah ini. Beberapa pokok permasalahan tersebut akan dijelaskan lebih lanjut dalam sub-bab di bawah ini.

B. POKOK PERMASALAHAN

Beberapa hal yang menjadi pokok permasalahan dalam pembahasan di skripsi ini adalah

1. Apakah *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007* itu?
2. Bagaimana status hukum dari *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007* di dalam hukum internasional dan hukum nasional Indonesia?

3. Bagaimana konsekuensi yuridis yang terjadi bagi Indonesia sebagai suatu negara dan bagi hukum nasional Indonesia setelah terbentuknya *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007*?

C. TUJUAN PENULISAN

Penulisan ini merupakan suatu penelitian ilmiah yang dibuat dengan tujuan umum dan tujuan khususnya. Tujuan umum dari penulisan ini adalah untuk memberikan gambaran teoretis dan praktis[5] dari *Agreement between Japan and Republic of Indonesia for an Economic Partnership 2007* dengan sudut pandang hukum internasional.

Sedangkan, tujuan khusus dari penulisan hukum ini adalah pemaparan terhadap beberapa pokok permasalahan yang diangkat untuk kemudian diteliti secara ilmiah dalam penulisan ini. Pemaparan-pemaparan tersebut akan:

1. memberikan penjelasan mengenai apa itu *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007*,

[5] Arif Budiman. "Tinjauan Hukum Internasional atas Stand-by Arrangement IMF dan Implementasinya," (Skripsi Sarjana Universitas Indonesia, Depok, 2005), hlm. 8.

2. memberikan penjelasan bagaimana status hukum dari *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007* di dalam hukum internasional dan hukum nasional Indonesia, dan
3. memberikan penjelasan bagaimana konsekuensi yuridis yang terjadi bagi Indonesia sebagai suatu negara dan bagi hukum nasional Indonesia setelah terbentuknya *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007*.

D. KERANGKA KONSEP

Di dalam penyusunan skripsi ini terdapat sejumlah konsep yang digunakan sebagai dasar penelitian. Sebagai bahan referensi dalam mempermudah pemahaman terhadap sejumlah konsep tersebut, maka di bawah ini dipaparkan mengenai batasan definisi atau pengertian dari beberapa konsep yang ada. Definisi dari beberapa konsep tersebut, yaitu

1. Perjanjian internasional adalah

   A treaty or other contract between different countries.[6]

[6]Bryan A Garner, *Black's Law Dictionary*, *eighth edition* (United States of America: West, 2004), hlm. 834.

2. Status hukum memiliki pengertian sebagai kedudukan[7] suatu hukum atau suatu produk hukum dalam hubungannya dengan hukum atau produk hukum lainnya.
3. Konsekuensi yuridis memiliki pengertian sebagai akibat (dari suatu perbuatan) dan persesuaian dengan yang dahulu[8] dalam lingkup yuridis atau hukum.

E. METODE PENELITIAN

Penelitian hukum yang dilakukan guna menyusunan skripsi ini merupakan jenis penelitian normatif. Metode penelitian yang digunakan adalah metode penelitian kepustakaan dengan melakukan studi dokumen dan menggunakan sumber data sekunder. Kemudian, data yang digunakan dalam penyusunan skripsi ini akan diolah serta dianalisis dengan cara analisis kualitatif.

Data yang digunakan dalam penelitian ini adalah data sekunder yang bersifat umum, yakni data yang berupa tulisan-tulisan baik data arsip, data resmi, maupun data lain yang telah dipublikasikan. Data sekunder ini berasal dari beberapa sumber yang terdiri dari:

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[7] Tim Penyusun Kamus, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2002), hlm. 1090.

[8] *Ibid.*, hlm. 588.

1. Sumber primer, yakni perjanjian-perjanjian internasional dan undang-undang[9].
2. Sumber sekunder, yakni bahan-bahan yang dapat memberikan informasi berkaitan dengan isi-isi dari bahan-bahan sumber primer serta implementasinya, contohnya rancangan undang-undang, artikel-artikel ilmiah, buku-buku, laporan-laporan penelitian, jurnal ilmiah, skripsi, tesis, disertasi, dan makalah pertemuan ilmiah[10].
3. Sumber tersier, yakni bahan-bahan yang dapat menunjang penulisan skripsi ini dari luar ilmu pengetahuan hukum atau bahan-bahan yang memberikan petunjuk terhadap sumber primer dan sumber sekunder, seperti ensiklopedia, buku pegangan, kamus, dan penerbitan pemerintah[11].

F. SISTEMATIKA PENULISAN

Sistematika penulisan skripsi ini terdiri dari lima bab. Berikut adalah penjelasan dari setiap bab yang terdapat dalam skripsi ini :

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[9]Budiman, *op. cit.*, hlm. 10.

[10] Sri Mamudji, *et al.*, *Metode Penelitian dan Penulisan Hukum* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), hlm. 31.

[11]Budiman, *op. cit.*

Bab I terbagi dalam enam sub-bab. Dalam sub-bab yang pertama diberikan gambaran mengenai latar belakang pengambilan judul skripsi. Dalam sub-bab kedua disebutkan tiga pokok permasalahan yang akan dijawab dalam skripsi ini. Dalam sub-bab ketiga dibahas mengenai tujuan umum dan tujuan khusus dari penulisan dan penelitian hukum ini. Dalam sub-bab keempat dijelaskan mengenai kerangka konsep yang digunakan dalam penulisan skripsi ini. Dalam sub-bab kelima akan dijelaskan mengenai metode penelitian yang digunakan untuk menyelesaikan penulisan skripsi ini. Kemudian, dalam sub-bab yang terakhir, yakni sub-bab yang keenam, dijelaskan mengenai sistematika penulisan dari skripsi ini.

Dalam Bab II dibahas lebih lanjut mengenai gambaran umum tentang ketentuan hukum internasional mengenai perdagangan internasional ke dalam tiga sub-bab, yang kemudian menjadi bagian dari landasan teori dari penelitian ini. Dalam sub-bab pertama akan dijelaskan mengenai perdagangan internasional dalam hukum internasional. Kemudian, dalam bab ini juga akan dijelaskan mengenai WTO sebagai organisasi internasional di bidang perdagangan. Lalu pada sub-bab yang terakhir akan dijelaskan mengenai

perjanjian internasional sebagai sumber hukum dalam perdagangan internasional.

Bab III dibagi ke dalam dua sub-bab. Kedua sub-bab ini menjelaskan mengenai gambaran umum mengenai kemitraan bilateral ekonomi Indonesia-Jepang. Dalam sub-bab pertamanya akan dipaparkan mengenai latar belakang pembentukan kemitraan bilateral ekonomi Indonesia-Jepang dan tujuan pembentukannya. Kemudian, dalam sub-bab berikutnya dipaparkan mengenai perjanjian yang mendasari kemitraan bilateral ekonomi antara Indonesia-Jepang.

Pada Bab IV dipaparkan mengenai posisi *Agreement between Japan and the Republic of Indonesia for an Economic Partnership Agreement 2007*. Bab ini dibagi menjadi dua sub-bab. Dalam sub-bab pertama akan diberikan gambaran dari status hukum perjanjian tersebut, baik dalam hukum internasional maupun hukum nasional Indonesia. Kemudian, di dalam sub-bab yang terakhir akan diberikan penjelasan mengenai konsekuensi yuridis setelah terbentuknya perjanjian tersebut, dengan bertitik tolak pada penjelasan yang telah diberikan pada bab dan sub-bab sebelumnya, bagi Indonesia sebagai negara dan bagi hukum nasional Indonesia.

Bab V merupakan bab terakhir dalam penulisan skripsi ini. Pada bab ini dipaparkan jawaban dari beberapa

pertanyaan yang menjadi pokok-pokok permasalahan dari penelitian ini sesuai dengan yang dijabarkan dalam Bab I. Jawaban tersebut dituangkan dalam bentuk suatu kesimpulan. Di dalam bab penutup ini, juga diberikan saran singkat yang diharapkan dapat berguna untuk menghadapi perkembangan yang mungkin terjadi dalam waktu ke depan.

BAB II

KETENTUAN HUKUM INTERNASIONAL MENGENAI PERDAGANGAN INTERNASIONAL

A. PERDAGANGAN INTERNASIONAL DALAM HUKUM INTERNASIONAL

A.1. Perkembangan Perdagangan Internasional

Perdagangan lintas batas negara sudah berlangsung sejak lahirnya zaman peradaban di daerah Mesopotamia dan di daerah sekitar Mediterania, yakni pada abad 3000 SM. Pada zaman tersebut kegiatan perdagangan antarbangsa yang dilakukan adalah kegiatan perdagangan logam, perdagangan kayu cedar, perdagangan kain, dan perdagangan hewan. Kegiatan perdagangan antarbangsa pun terus berkembang hingga kemudian dikenal suatu jalur perdagangan *Silk Road* yang menjadi jalur perdagangan utama di dunia pada abad 300 SM. Jalur ini menghubungkan sebelah timur China dengan sebelah barat daerah yang dikuasai oleh kekaisaran Romawi. *Silk Road* merupakan jalur yang digunakan oleh saudagar-saudagar Cina untuk berdagang dengan saudagar-saudagar dari

bangsa lainnya [12] . Di jalur tersebut barang-barang yang diperdagangkan, antara lain kain sutera, batu permata, wewangian, dan barang-barang mewah lainnya. Oleh karena kain sutera merupakan salah satu produk yang sangat banyak diperdagangkan di jalur tersebut, maka jalur tersebut dinamakan *Silk Road*. Namun, beberapa tahun kemudian jalur tersebut tidak lagi digunakan oleh banyak pihak terutama orang-orang Eropa karena berubahnya situasi politik perdagangan di dunia.[13]

Tidak berhenti pada masa tersebut, kegiatan perdagangan pun terus berkembang hingga lahir masa perdagangan di wilayah Afrika dan Asia. Masa ini berlangsung pada abad ke-15 SM dan 16 SM [14] . Kegiatan perdagangan pada masa itu dikuasai oleh bangsa Spanyol dan Portugis yang mencoba untuk mencari pasar baru di belahan dunia lain yang selama ini belum ditemukan oleh bangsa-bangsa lain. Usaha pencarian ini kemudian dilanjutkan dengan usaha membuka pasar baru dunia yang juga terbuka bagi bangsa-bangsa lain.

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[12] Jonathan Reuvid, ed., *The Strategic Guide to International Trade* (London: Kogan Page, 1997), para. xv.

[13] "World Trade," <http://www.pacificislandtravel.com/nature_gallery/worldtrade.html>, 13 Maret 2008.

[14] *Ibid*.

Pada masa itu mulai dikenal perdagangan rempah-rempah. Perdagangan rempah-rempah ini merupakan perdagangan yang sangat menjanjikan dan menguntungkan pada saat itu karena produk tersebut merupakan produk-produk yang sangat dibutuhkan oleh kaum bangsa Eropa. Oleh karena itu, kemudian lahir niat untuk menguasai wilayah-wilayah tersebut yang merupakan produsen dari produk alam yang menjadi komoditas utama dalam masa perdagangan saat itu. Kemudian, sekitar abad ke-16 dan ke-19[15] mulai lahir banyak bentuk kolonialisasi di wilayah Afrika dan Asia. Kolonialisasi tersebut kemudian tidak hanya dilakukan oleh bangsa Spanyol dan Portugis, tetapi juga oleh bangsa Prancis, Britania Raya, dan Belanda. Wilayah-wilayah kolonial tersebut merupakan perluasan wilayah kekuasaan dari kerajaan-kerajaan di beberapa negara monarki yang kuat dan maju di wilayah Eropa pada saat itu, yang hingga saat ini negara-negara tersebut pun tetap menjadi negara-negara yang kuat, maju, dan berkuasa di dunia.

Selama abad ke-18 dan ke-19 terjadi revolusi industri di wilayah Britania Raya yang kemudian menyebabkan perekonomian negara ini menjadi sangat berkembang dan maju. Perkembangan tersebut telah menjadikan Britania Raya

[15] *Ibid.*

sebagai salah satu negara yang memiliki kemampuan dagang terbesar di dunia. Masa revolusi industri ini terjadi karena adanya penemuan mesin uap oleh James Watt. Penemuan tersebut sangat membantu dan mempengaruhi dunia industri dalam kegiatan memproduksi barang. Perkembangan selanjutnya, kehadiran mesin uap sangat membantu proses produksi barang-barang industri sehingga semua kegiatan produksi dapat dilakukan dengan cepat, efektif, serta efisien. Disamping hal tersebut, pada masa itu tak hanya mesin uap saja yang ditemukan dan dikembangkan, tetapi juga dikembangkan kereta api dengan bahan bakar batu bara beserta jalurnya dan kapal api. Kehadiran kedua alat transportasi tersebut sangat membantu proses distribusi produk-produk yang pasarnya berada baik di dalam maupun di luar wilayah Britania Raya.[16]

Sejarah pun terus berjalan hingga wilayah-wilayah kolonialisasi di benua Asia dan Afrika berakhir dan melahirkan banyak negara baru yang merdeka dan lepas dari kolonialisasi tersebut. Pada pertengahan abad ke-20 [17] , kegiatan perdagangan dunia mulai berkembang dan bertambah yang awalnya hanya merupakan perdagangan produk-produk primer kemudian menjadi perdagangan produk-produk sekunder

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[16] *Ibid.*

[17] *Ibid.*

dan tersier di antara negara-negara industri. Pola perdagangan pun terus bergeser hingga saat ini. Pola pergeseran tersebut digambarkan dengan keadaan negara-negara maju yang mulai menanamkan investasi langsung di wilayah negara-negara berkembang. Dengan adanya pergeseran kegiatan perdagangan dunia ini, maka produk yang diperdagangkan dalam kegiatan perdagangan internasional pun bertambah. Dahulu produk yang diperdagangkan hanya berupa produk barang saja, namun kemudian saat ini bertambah dengan adanya produk jasa dan modal yang turut diperdagangkan[18].

Berdasarkan paparan singkat mengenai perkembangan perdagangan antarbangsa dan antarnegara sebelumnya, maka dapat disimpulkan bahwa perdagangan merupakan kegiatan perekonomian di dalam masyarakat dunia yang terus berkembang. Perkembangan yang tak pernah berhenti ini tak bisa lepas dari kenyataan bahwa perdagangan merupakan salah satu kegiatan perekonomian yang sudah lama dikenal masyarakat di dunia sebagai salah satu alat mata pencarian. Berawal dari kegiatan perdagangan yang hanya dilakukan

[18] Nono Anwar Makarim, "Aspek-aspek Hukum dalam Perdagangan dan Investasi Internasional Menghadapi Globalisasi," Makalah disampaikan pada Rapat Konsultasi Direktorat Jenderal Industri Kimia dengan Badan Indonesia Kompartemen Industri Kimia, Surabaya, 28-29 November 1995, hlm. 3.

dengan cara barter antara satu pribadi dengan pribadi lainnya hingga saat ini perdagangan sudah menjadi kegiatan yang dilakukan dengan cara yang jauh lebih canggih, yang dibantu oleh kemajuan teknologi [19], dan bahkan dilakukan dalam wilayah yang jauh lebih luas, yakni wilayah yang melintasi batas antarnegara dan antarbenua.

Di dalam kegiatan perdagangan internasional terdapat beberapa pelaku yang memegang peranan penting, diantaranya adalah negara, institusi seperti perusahaan baik perusahaan swasta maupun perusahaan negara, dan badan-badan swasta lainnya [20]. Negara sebagai pelaku kegiatan perdagangan internasional memiliki peran yang penting, yakni sebagai pelaku dagang yang melakukan kegiatan perdagangan di bidang barang, jasa, dan modal, serta sebagai pembuat dan pelaksana ketentuan-ketentuan hukum dan kebijakan-kebijakan yang dibuat dan ditujukan untuk mengatur jalannya perdagangan baik dalam lingkungan nasional maupun dalam lingkungan internasional.

Dalam perkembangannya, negara telah menjadi salah satu aktor penting dalam kegiatan perdagangan lintas batas

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[19] Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: PT Raja Grafindo Persada, 2006), hlm. 1.

[20] Melda Kamil Ariadno, *Hukum Internasional Hukum yang Hidup* (Jakarta: Penerbit Diadit Media, 2007), hlm. 85.

negara ini. Hal ini menggambarkan bahwa hubungan antarnegara tidak hanya terbatas pada hubungan di bidang politik saja, tetapi juga mencakup hubungan di bidang ekonomi. Hubungan ekonomi dalam bentuk kegiatan perdagangan yang dilakukan antarbangsa dan antarnegara ini kemudian dikenal dengan kegiatan perdagangan internasional atau hubungan perdagangan transnasional. Hubungan perdagangan antarnegara ini dilakukan antara pemerintah dengan pemerintah (g*overnment to government*), pemerintah dengan swasta (*government to non-governement*), dan swasta dengan swasta (*non-government to non-governement*).[21] Salah satu alasan yang menyebabkan negara melakukan kegiatan perdagangan internasional adalah perdagangan internasional merupakan salah satu cara yang dapat digunakan oleh negara untuk dapat menciptakan kondisi negara dan rakyat yang makmur[22].

Disamping hal tersebut, masih terdapat beberapa faktor pendorong dilakukannya kegiatan perdagangan internasional. Beberapa faktor tersebut adalah penyebaran sumber daya alam di seluruh wilayah negara di dunia, perbedaan faktor produksi manusia, perbedaan sistem ekonomi, serta

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[21]*Ibid*., hlm. 80.

[22]Adolf, *op. cit.*, hlm. 2.

pertimbangan suatu negara terhadap perbandingan keuntungan. Oleh karena penyebaran sumber daya alam yang tidak merata di seluruh wilayah negara di dunia, maka suatu negara belum tentu memiliki dan menguasai sumber daya alam yang sama dengan negara lainnya. Karena, sumber daya alam yang tersedia di dalam wilayah-wilayah negara di dunia sangat beragam. Adanya perbedaan faktor produksi manusia disebabkan oleh adanya perbedaan ciri-ciri dan karakter dari setiap manusia di dunia karena perbedaan kondisi dari negara dan masyarakat di tempat mereka tinggal. Adanya perbedaan sistem ekonomi disebabkan karena bentuk dan cara aktivitas ekonomi di negara-negara berbeda-beda satu dengan yang lainnya.[23]

Faktor berikutnya adalah adanya pertimbangan suatu negara terhadap perbandingan keuntungan yang akan diperolehnya dari suatu kegiatan perdagangan yang dilakukan [24] . Faktor ini salah satunya didasari oleh pemikiran kaum merkantilis, yang berpendirian bahwa perdagangan internasional termasuk dalam sistem kebijakan nasional yang menekankan bahwa pentingnya kegiatan ekspor yang sebesar-besarnya dan kegiatan impor yang sekecil-

[23]Ariadno, *op. cit.*, hlm. 82-85.

[24]*Ibid.*

kecilnya hingga diperoleh keuntungan dari selisih ekspor-impor tersebut yang kemudian menjadi keuntungan bagi negara[25].

Kondisi perekonomian setiap negara di dunia pun berbeda-beda. Kemampuan dan kondisi perekonomian yang demikian memberikan gambaran makmur atau tidaknya suatu bangsa dan negara kepada masyarakat internasional. Hal ini menjadi salah satu faktor lain yang juga mendorong negara-negara di dunia menciptakan hubungan kerja sama di bidang perekonomian, terutama dalam sektor kegiatan perdagangan internasional. Hubungan perdagangan internasional tersebut menandakan suatu bentuk perjuangan yang dilakukan negara-negara di dunia untuk memperoleh kemandirian dan kontrol terhadap perekonomian dunia[26].

Hubungan tersebut diharapkan dapat menciptakan kemakmuran dan pembangunan ekonomi yang lebih baik bagi bangsa dan rakyatnya. Hubungan ini terus berkembang hingga menyebabkan terbentuknya organisasi internasional di bidang perdagangan serta beberapa wilayah perdagangan bebas di dunia.

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[25]Adolf, *op. cit.*, hlm. 19.

[26]Rafiqul Islam, *International Trade Law* (NSW: LBC, 1999), hlm.1.

A.2. Hukum yang Mengatur Perdagangan Internasional

Dengan begitu berkembang dan kompleksnya kegiatan perdagangan internasional di dunia saat ini, maka kegiatan perdagangan internasional pun membutuhkan ketentuan hukum yang dapat melindungi pelaksanaannya. Oleh karena itu, di dalam hukum internasional dan lingkup masyarakat internasional lahir hukum perdagangan internasional. Hukum yang mengatur perdagangan internasional, yang kemudian dikenal dengan hukum perdagangan internasional, tidak dapat berdiri sendiri lepas dari keberadaan bidang-bidang hukum lain yang terdapat dalam lingkup hukum internasional.

Hukum perdagangan internasional memiliki tujuan yang sebenarnya tidak berbeda dengan tujuan dari GATT yang menjadi dasar berdirinya WTO. Tujuan-tujuan yang tertuang di dalam preambul GATT tersebut adalah untuk mencapai perdagangan internasional yang stabil dan menghindari kebijakan-kebijakan dan praktik-praktik perdagangan nasional yang akan merugikan negara lainnya; meningkatkan volume perdagangan dunia dengan menciptakan perdagangan yang menarik dan menguntungkan bagi pembangunan ekonomi semua negara; meningkatkan standar hidup umat manusia; meningkatkan lapangan kerja; mengembangkan sistem perdagangan multilateral, yang akan mengimplementasikan

kebijakan perdagangan terbuka dan adil yang bermanfaat bagi semua negara; dan meningkatkan pemanfaatan sumber-sumber kekayaan dunia dan meningkatkan produk serta transaksi jual beli barang.[27]

Hukum perdagangan internasional sudah ada dan berkembang sejak lama. Perkembangan hukum perdagangan internasional ini tidak dapat lepas dari adanya perkembangan hubungan-hubungan dagang antarnegara di dunia. Perkembangan hukum perdagangan internasional di dunia dapat dikelompokkan ke dalam tiga tahap perkembangan, yaitu tahap hukum perdagangan internasional dalam masa awal pertumbuhan, tahap hukum perdagangan internasional dicantumkan dalam hukum nasional, serta tahap lahirnya aturan-aturan hukum perdagangan internasional dan munculnya lembaga-lembaga internasional yang mengurus perdagangan internasional.[28]

Pada tahap pertama, hukum perdagangan internasional terbentuk dari praktik-praktik yang dilakukan oleh para pedagang. Hukum yang dibentuk oleh para pedagang ini kemudian dikenal dengan istilah *lex mercatoria* atau *law of merchant* [29] . *Lex mercatoria* tumbuh dan berkembang karena

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[27]*Ibid*., hlm. 2.

[28]*Ibid*., hlm. 2-3.

adanya empat faktor, yaitu aturan-aturan yang lahir dan timbul dari kebiasaan dalam berbagai pekan raya (*the law of fairs*); kebiasaan-kebiasaan dalam hukum laut; kebiasaan-kebiasaan yang timbul dari praktik penyelesaian sengketa-sengketa di bidang perdagangan; dan peran notaris (*public notary*) dalam memberi pelayanan jasa-jasa hukum dalam bidang perdagangan.[30]

Dalam tahap kedua, kesadaran akan pentingnya dan perlunya memberlakukan hukum perdagangan internasional dalam lingkup hukum nasional telah lahir. Hal ini terlihat ketika negara-negara di dunia mulai menuangkan pengaturan hukum mengenai perdagangan internasional ke dalam peraturan perundang-undangan mereka yang secara spesifik mengatur tentang perdagangan internasional. Aturan-aturan yang tertuang di dalam peraturan perundang-undangan tersebut bukan merupakan suatu ketentuan-ketentuan yang murni baru dibentuk[31]. Hal ini dikarenakan adanya usaha dari negara untuk mengadopsi *lex marcatoria* yang selama ini ada di

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[29] United Nations, *Progressive Development of the Law of International Trade: Report of the Secretary-General of the United Nations*, 1996, para. 20; Chia-Jui Cheng, ed., *Clive M. Schmitthoff's Select Essay on International Trade Law* (Doredrecht/Boston/London: Martinus Nijhoff & Graham & Trotman, 1988), hlm. 21.

[30] Schmitthoff, "The Unification of the Law of International Trade," JBL, 1986, hlm. 106.

[31] *Ibid*.

dalam masyarakat dan dikenal oleh masyarakat ke dalam aturan-aturan yang dituangkan dalam bentuk peraturan perundang-undangan.

Pada tahap terakhir, dalam dunia perdagangan internasional telah lahir aturan-aturan hukum perdagangan internasional yang berlaku secara multilateral. Selain itu, pada tahap ini juga sudah terbentuk lembaga internasional yang secara khusus mengurus hal-hal yang berkaitan dengan perdagangan internasional. Aturan-aturan hukum perdagangan internasional yang lahir sebagian besar dipengaruhi oleh semakin banyaknya perjanjian internasional yang ditandatangani baik secara bilateral, regional, maupun multilateral oleh negara-negara.[32]

Secara khusus, tahap ini lahir setelah berakhirnya Perang Dunia II, yang ditandai dengan disepakatinya dan ditandatanganinya salah satu perjanjian multilateral di bidang perdagangan internasional, yakni GATT oleh negara-negara di dunia. Dalam perkembangannya, negara-negara anggota GATT sepakat untuk membentuk suatu badan atau lembaga internasional di bidang perdagangan dunia, yang diberi nama WTO. Perkembangan ini sudah pasti memberi dampak yang besar dan luas terhadap bidang hukum

[32]Adolf, *op. cit.,* hlm. 26-28.

perdagangan internasional karena bidang pengaturan yang tercakup dalam WTO sangat kompleks.[33] Bidang-bidang yang diatur dalam WTO adalah ketentuan-ketentuan yang mengatur mengenai perdagangan barang, perdagangan jasa, hak kekayaan intelektual, serta proses penyelesaian sengketa yang mungkin saja terjadi di antara negara-negara anggota WTO.

Pada tahap yang terakhir ini, masih juga terdapat perkembangan lain, seperti telah disepakatinya pembentukan kawasan-kawasan ekonomi regional di suatu kawasan perdagangan bebas regional tertentu. Kawasan perdagangan regional yang terbentuk mula-mula adalah *European Single Market* yang dibentuk pada 1992. Terbentuknya kawasan pasar tunggal Eropa ini telah memberikan dampak yang sangat luas sehingga lahir beberapa kawasan regional lain yang membentuk kawasan pasar tunggal atau kawasan perdagangan bebas.[34] Beberapa kawasan regional lain yang kemudian terbentuk adalah kawasan perdagangan Amerika Utara (NAFTA) pada 1994 yang didasarkan pada perjanjian *the North American Free Trade Agreement*, kawasan perdagangan bebas Asia Tenggara atau ASEAN yang dikenal dengan AFTA, yang

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[33]*Ibid*., hlm. 27.

[34]*Ibid*., hlm. 28-29.

berlaku efektif pada 1 Januari 2003 [35] , dan kawasan perdagangan Amerika Latin (LAFTA) pada 1961[36].

Dengan melihat tahap-tahap perkembangan hukum perdagangan internasional di atas, maka dapat ditarik kesimpulan bahwa negara-negara tetap memiliki aturan-aturan hukum perdagangan internasional dalam hukum nasional mereka sendiri. Aturan-aturan hukum nasional di bidang perdagangan internasional ini menjadi salah satu sumber hukum yang cukup penting dalam hukum perdagangan internasional. Akan tetapi, berbagai aturan hukum nasional ini juga menyebabkan adanya keanekaragaman aturan-aturan hukum dalam perdagangan internasional karena setiap hukum nasional suatu negara yang mengatur mengenai perdagangan internasional berbeda-beda. Perbedaan ini kemudian dikhawatirkan mempengaruhi kelancaran dari transaksi perdagangan internasional itu sendiri.

Untuk mengatasi hal tersebut, maka negara-negara telah mengusahakan beberapa cara untuk meminimalisasi perbedaan-perbedaan yang ada. Usaha pertama yang dilakukan adalah

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[35]Adolf, *op. cit.,* hlm. 28.

[36] "Efek Ketentuan AFTA bagi Perekonomian Nasional Indonesia Dikaitkan dengan Sistem GATT/WTO," <http://www.journal.unair.ac.id/login/jurnal/filer/J.%20Penelit.Din.%20Sos.13%20Des%202000%20%5B02%5D.pdf>, 17 Januari 2008.

negara-negara sepakat untuk tidak menerapkan hukum nasionalnya; sebaliknya, mereka menerapkan hukum perdagangan internasional untuk mengatur hubungan-hubungan hukum perdagangan mereka. Usaha kedua yang dilakukan adalah dengan menyepakati salah satu hukum nasional dari satu negara tertentu untuk digunakan melalui prinsip *choice of law* yang dituangkan ke dalam suatu klausula dalam perjanjian perdagangan internasional. Usaha ketiga yang dapat ditempuh adalah dengan melakukan unifikasi dan harmonisasi aturan-aturan substansi hukum perdagangan internasional.[37]

Harmonisasi dan unifikasi hukum merupakan upaya-upaya atau proses-proses untuk menyeragamkan substansi pengaturan sistem-sistem hukum yang ada. Penyeragaman sistem-sistem yang dilakukan melalui harmonisasi dan unifikasi hukum ini mencakup pengintegrasian sistem-sistem hukum yang sudah ada dan berbeda-beda. Perbedaan antara harmonisasi hukum dan unifikasi hukum terletak pada proses penyeragamannya tersebut. Dalam unifikasi hukum, penyeragaman sistem hukum yang dilakukan mencakup penghapusan dan penggantian suatu sistem hukum dengan sistem hukum yang baru. Hal ini dapat dilihat pada pemberlakuan *the Agreement on Trade Related*

[37]Adolf, *op. cit.*, hlm. 30.

Aspects of Intellectual Property Rights (TRIPs) yang dilakukan oleh WTO. Sementara itu, harmonisasi hukum tidak melakukan penyeragaman sistem hukum sedalam proses penyeragaman yang dilakukan dalam unifikasi hukum. Tujuan utama dilakukannya harmonisasi hukum adalah hanya untuk mengupayakan terbentuknya suatu keseragaman atau titik temu dari prinsip-prinsip yang bersifat fundamental dari berbagai sistem hukum yang ada.[38]

Di dalam hukum yang mengatur perdagangan internasional dikenal adanya subjek hukum. Subjek hukum adalah pengemban hak dan kewajiban, yang terbagi menjadi pribadi kodrati dan pribadi hukum. Di dalam aktivitas perdagangan internasional terdapat beberapa pihak yang memegang peranan penting yang kemudian digolongkan sebagai subjek hukum di dalam hukum perdagangan internasional. Yang dimaksud dengan subjek hukum tersebut adalah para pelaku (*stakeholder*) dalam perdagangan internasional yang mampu mempertahankan hak dan kewajibannya di hadapan pengadilan dan para pelaku (*stakeholder*) yang mampu dan berwenang untuk memutuskan atuaran-aturan hukum di bidang hukum perdagangan internasional[39]. Berdasarkan pengertian tersebut, maka para

[38]*Ibid.*, hlm. 31.

pelaku dalam perdagangan internasional yang dapat digolongkan sebagai subjek hukum dalam hukum perdagangan internasional adalah negara dan organisasi internasional[40].

Dalam lingkup hukum internasional subjek hukum yang utama adalah negara. Begitu pula halnya dalam hukum perdagangan internasional, negara merupakan subjek hukum utama dan terpenting. Selain itu, negara juga dianggap sebagai subjek hukum yang sempurna. Ada beberapa dasar alasan yang menyebabkan negara dianggap sebagai subjek hukum yang sempurna.

a. Pertama, negara merupakan satu-satunya subjek hukum yang memiliki kedaulatan [41] atau kekuasaan yang tertinggi dalam bentuk pemerintahan yang berkuasa atas wilayah teritorinya. Dengan kekuasaan tertinggi yang dimiliki oleh negara, maka negara mempunyai kewenangan yang sangat besar untuk menentukan dan mengatur mengenai segala hal yang berkaitan dengan wilayahnya. Apabila hal ini dikaitkan dengan perdagangan internasional, maka negara mempunyai

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[39]*Ibid.*, hlm. 57.

[40] Dalam skripsi ini subjek hukum dalam hukum perdagangan internasional yang dibahas hanya terbatas pada subjek hukum yang termasuk dalam lingkup publik hukum internasional, yakni negara dan organisasi internasional.

[41]Hercules Booysen, *International Trade Law on Goods and Services* (Pretoria: Integral, 1999), hlm. 2.

kewenangan untuk mengatur bentuk kegiatan perdagangan dan produk yang akan diperdagangkan baik ke dalam dan ke luar wilayah tersebut. Dengan atribut kedaulatan yang dimiliki oleh negara ini, maka negara pun mempunyai kewenangan untuk membuat ketentuan hukum di bidang perdagangan internasional baik dalam lingkup nasional maupun internasional.

b. Kedua, negara juga berperan secara langsung maupun tidak langsung dalam pembentukan organisasi-organisasi internasional di dunia[42].
c. Ketiga, peran penting lain yang diemban oleh negara adalah negara dapat mengadakan atau membuat perjanjian-perjanjian internasional dengan negara-negara lain guna mengatur transaksi perdagangan yang ada di antara mereka.
d. Keempat, negara sebagai subjek hukum dalam perdagangan internasional juga berperan sebagai pelaku dagang, baik sebagai pedagang ataupun pembeli. Sebagai pelaku dalam perdagangan internasional, negara dapat berperan sebagai negara dalam bentuk pemerintah dan negara dalam bentuk perusahaan (dalam

[42]Hans Van Houtte, *The Law of International Trade* (London: Sweet and Maxwell, 1995), hlm. 31.

hal ini adalah perusahaan negara). Dengan statusnya ini, maka negara dapat melakukan kegiatan perdagangan atau transaksi dagang dengan negara-negara lain yang merupakan mitra dagangnya atau juga dengan instansi-instansi tertentu yang merupakan instansi-instansi non-pemerintah, yang berasal dari negara-negara lain.[43]

Negara menjadi pelaku dagang dalam perdagangan internasional tidak lepas dari usaha negara untuk memakmurkan bangsa dan juga untuk memajukan perekonomiannya. Dengan memiliki dan menguasai sumber-sumber daya alam yang terdapat di dalam wilayahnya, maka negara memiliki kekuasaan untuk mengelola dan mengolah sumber-sumber daya tersebut demi kepentingan nasional dan bangsanya. Hal tersebut dilakukan oleh negara sebagai salah satu langkah awal dalam mempersiapkan dirinya untuk melakukan kegiatan perdagangan di dunia. Hal ini dikarenakan hasil olahan sumber daya alam tadi pada tahap selanjutnya memang ditujukan untuk diperdagangkan.

Dalam praktiknya, negara tidak mengelola dan mengolah sendiri seluruh sumber daya alam yang ada di dalam wilayahnya karena banyaknya keterbatasan yang ada. Oleh

[43]Adolf, *op. cit.,* hlm. 59.

sebab itu, swasta diizinkan turut berperan untuk mengolah dan mengelola sumber daya alam tersebut. Dalam mengelola dan mengolah sumber daya alam, negara berperan untuk mengelola dan mengolah sumber daya alam yang menguasai hajat hidup orang banyak.

Sementara itu, swasta dapat berperan dengan batas-batas tertentu, yang telah ditetapkan oleh negara. Untuk mengelola sumber-sumber daya alam yang tersedia di dalam wilayahnya, suatu negara umumnya membentuk perusahaan-perusahaan negara yang bertugas mengolah sumber-sumber daya alam tersebut hingga menjadi barang-barang yang siap guna bagi masyarakat. Dalam hal ini negara melalui perusahaan-perusahaannya dapat memperdagangkan sumber-sumber daya alamnya, yang masih mentah dan produk-produk hasil jadi olahan dari sumber-sumber daya alam tersebut, kepada mitra-mitra dagangnya, baik yang berbentuk negara maupun yang bukan negara.

Selain itu, negara juga wajib memenuhi kebutuhan akan teknologi, pembangunan infrastruktur, penyediaan alat-alat transportasi udara, darat, dan laut, juga untuk penyediaan barang-barang serta jasa-jasa lain yang dibutuhkan bagi rakyatnya demi kemakmuran dan kesejahteraan rakyat. Untuk memenuhi hal-hal tadi, negara belum tentu dapat

mengusahakannya sendiri. Oleh karena itu, negara harus melakukan transaksi dagang dengan para pihak (pedagang), baik negara maupun swasta, yang menyediakan segala kebutuhan di atas.

Organisasi internasional juga merupakan salah satu subjek hukum yang ada dalam perdagangan internasional. Salah satunya adalah WTO, yang dibentuk oleh negara-negara dengan tujuan bersama. Dengan dibentuknya organisasi internasional ini diharapkan tujuan bersama di antara negara-negara anggota dalam organisasi tersebut dapat tercapai. Suatu organisasi internasional didirikan dengan suatu dasar hukum yang biasanya berbentuk perjanjian internasional yang di dalamnya dimuat tujuan, fungsi, dan struktur dari organisasi internasional tersebut. Dengan adanya perjanjian internasional tersebut, maka peran dari suatu organisasi internasional dapat diketahui.

Biasanya peran organisasi internasional dalam perdagangan internasional kurang begitu signifikan. Hal ini lebih disebabkan karena dalam kegiatan perdagangan internasional, suatu organisasi internasional bukan merupakan pelaku dagang. Walaupun dalam kenyataannya, suatu organisasi internasional mungkin melakukan kegiatan transaksi dagang dengan membeli kebutuhan-kebutuhan yang

digunakan untuk menjalankan kegiatan operasional dari organisasi tersebut, seperti membeli komputer, peralatan kantor atau administrasi, alat telekomunikasi, dan alat transportasi. Namun pada kenyataannya, organisasi internasional dalam hukum perdagangan internasional lebih berperan sebagai pembentuk ketetuan-ketentuan hukum yang berlaku secara internasional di bidang perdagangan yang kemudian akan mengikat para negara anggotanya. Dalam hal ini, organisasi internasional yang merupakan organisasi yang mengurus perdagangan internasional lebih banyak mengeluarkan peraturan-peraturan yang bersifat rekomendasi dan *guidelines* yang dapat mengikat negara-negara anggota dalam organisasi tersebut.[44]

B. WTO 'ORGANISASI INTERNASIONAL DI BIDANG PERDAGANGAN'

B.1. Sekilas mengenai WTO

WTO merupakan satu-satunya badan internasional yang secara khusus mengatur hal-hal perdagangan multilateral. Sistem perdagangan multilateral WTO diatur melalui suatu persetujuan yang berisi aturan-aturan dasar perdagangan internasional sebagai hasil perundingan yang telah

[44]*Ibid.*, hlm. 64.

ditandatangani dan diratifikasi oleh negara-negara anggota. Persetujuan tersebut merupakan perjanjian antara negara-negara anggota yang mengikat pemerintah-pemerintah dari negara-negara yang menandatangani persetujuan tersebut untuk mematuhinya dalam pelaksanaan kebijakan perdagangan mereka.[45]

Pembentukan WTO ini merupakan realisasi cita-cita lama negara-negara pada waktu merundingkan GATT pertama kali (1948), yakni hendak mendirikan suatu organisasi perdagangan internasional (yang dahulu dinamakan *International Trade Organisation* atau ITO). Pada awal pembentukannya, ITO direncanakan dibentuk sebagai badan atau organ khusus dari PBB, yang merupakan bagian dari sistem *Bretton Woods*[46]. Dalam sistem *Bretton Woods* juga dinegosiasikan pembentukan IMF dan IBRD[47]. Oleh karena itu, terbentuknya WTO tidak lepas dari sejarah lahirnya ITO[48].

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[45] Direktorat Perdagangan, Perindustrian, Investasi, dan HKI; Direktorat Jenderal Multilateral; Departemen Luar Negeri. *Sekilas WTO (World Trade Organization)*, Edisi IV (Jakarta: Direktorat Perdagangan, Perindustrian, Investasi dan Hak Kekayaan Intelektual Direktorat Jenderal Multilateral Departemen Luar Negeri, 2006), hlm. 1.

[46] *Ibid.*, hlm. 2.

[47] Marc Williams, *International Economic Organisations and the Third World* (Hertfordshire: Harvester Wheatsheaf, 1994), hlm. 142.

[48] Huala Adolf, *Hukum Ekonomi Internasional* (Jakarta: PT Raja Grafindo Persada, 2005), hlm. 115.

Dalam perkembangannya ITO tidak jadi terbentuk, namun WTO yang kemudian disepakati pembentukannya. WTO berhasil dibentuk dari putaran Uruguay GATT (1986-1994)[49]. Organisasi ini memiliki status sebagai organ khusus PBB, seperti IMF dan IBRD[50].

Struktur WTO dikepalai oleh suatu badan tertinggi yang disebut sebagai Konferensi Tingkat Menteri (*Ministrial Conference*), yang akan bersidang sedikitnya sekali dalam dua tahun. Badan ini terdiri atas para perwakilan dari semua negara anggota WTO, yakni para menteri. Badan tertinggi ini membuat semua keputusan mengenai kebijakan multilateral. Untuk pelaksanaan operasional hariannya, badan tertinggi ini dibantu oleh badan-badan kelengkapan utama WTO, yaitu Dewan Umum (*General Council*) yang terdiri atas semua angggota WTO dan bertugas memberikan laporan kegiatan-kegiatan yang dilakukan kepada *Ministrial Conference*. *General Council* memiliki dua fungsi lain, yaitu sebagai suatu Badan Penyelesaian Sengketa (*Dispute Settlement Body*) dan sebagai badan peninjau kebijakan perdaganan negara-negara anggota GATT (*Trade Policy Review*

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[49]Adolf, *op. cit.*, hlm. 36.

[50]Syahmin AK, SH, MH, *Hukum Dagang Internasional: dalam Kerangka Studi Analitis* (Jakarta: PT Raja Grafindo Persada, 2006), hlm. 51.

Body). Disamping hal tersebut, badan ini juga bertugas mengamati masalah-masalah perdagangan yang ada dalam tubuh WTO. Badan ini juga diberikan kewenangan untuk menetapkan tiga badan subsider dalam WTO, seperti *the Council for Trade in Goods*, *Council for Trade in Services*, dan *Council for TRIPs*.[51]

The council for Trade in Goods bertugas mengawasi pelaksanaan dari semua perjanjian-perjanjian mengenai perdagangan barang (Annex 1A Perjanjian WTO), meskipun untuk perjanjian-perjanjian tertentu umumnya WTO memiliki badan pengawas tersendiri[52]. Dua dewan lainnya memiliki tanggung jawab yang serupa dengan dewan yang pertama, namun mereka masing-masing bertanggung jawab atas perjanjian-perjanjian WTO lainnya yang terkait. Badan-badan tersebut pun dapat mendirikan badan-badan subsider lainnya ketika diperlukan.

Tiga badan lain yang didirikan oleh *Ministrial Conference* dan berkewajiban untuk melapor kepada *the General Council* adalah *the Committee on Trade and Development*, yakni badan yang bertanggung jawab untuk masalah-masalah yang terdapat di negara-negara yang sedang

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[51]*Ibid.*, hlm. 36-37.

[52]*Ibid.*

berkembang; *the Committee on Balance of Payments*, yakni badan yang bertanggung jawab untuk menyelenggarakan konsultasi di antara negara-negara anggota WTO dan negara-negara yang melaksanakan tindakan-tindakan restriktif perdagangan (Pasal XII dan XVII GATT), yakni tindakan-tindakan untuk menghadapi kesulitan-kesulitan neraca pembayaran; dan *the Committee on Budget, Finance and Administration*, yakni badan yang bergerak dalam mengatur masalah-masalah keuangan dan anggaran WTO.[53]

Disamping badan-badan tersebut, WTO membentuk pula badan-badan khusus yang bertugas untuk mengawasi pelaksanaan perjanjian-perjanjian plurilateral (yang sifatnya sukarela), yakni badan untuk perdagangan pesawat udara sipil, badan untuk pengadaan barang pemerintah (*government procurement*), badan untuk produk susu dan daging (*dairy products and bovine meat*), yang berkewajiban untuk melaporkan tugas-tugasnya kepada *General Council*.[54]

B.2. Persetujuan-Persetujuan WTO

Persetujuan-persetujuan yang dibuat di dalam lingkungan WTO adalah

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[53]*Ibid.*, hlm. 31-38.

[54]*Ibid.*, hlm. 38.

1. GATT 1994;
   a. *Agreement on Agriculture*;
   b. *Sanitary and Phytosanitary Measures*;
   c. *Textiles and Clothing*;
   d. *Technical Barriers on Trade*;
   e. *Trade-Related Investment Measures* (TRIMS);
   f. *Anti-dumping* (*Article VI of GATT 1994*);
   g. *Customs valuation* (*Article VII of GATT 1994*);
   h. *Preshipment Inspection*;
   i. *Rules of Origin*;
   j. *Import Licensing*;
   k. *Subsidies and Countervailing Measures*;
   l. *Safeguards*;
2. *General Agreement on Trade in Services* (GATS);
3. *Trade-Related Aspects of Intellectual Property Rights* (TRIPS); dan
4. *Dispute Settlement Understanding*.[55]

WTO juga mendorong upaya unifikasi hukum dan harmonisasi hukum, yang di dalamnya termasuk harmonisasi standar-standar teknis. Upaya harmonisasi ini telah diupayakan melalui GATT, yang pada 1979 GATT berhasil mengeluarkan *The GATT Code on Technical Standards* (*Standard*

[55] *Ibid.*

Code). Melalui aturan *standard code* ini, negara-negara anggota WTO didorong untuk mengharmonisasikan standar-standar produk domestiknya. Upaya ini ditempuh agar kebijakan negara-negara mengenai standar produk tidak menjadi penghalang bagi perdagangan dunia. Perjanjian-perjanjian WTO lain yang dapat digolongkan ke dalam perjanjian yang melakukan harmonisasi hukum adalah perjanjian-perjanjian yang berada di bawah *Plurilateral Agreement*[56] (Annex 4 Perjanjian WTO). Perjanjian-perjanjian yang termasuk dalam *Plurilateral Agreement* ini adalah *Agreement on Trade in Civil Aircraft* (Annex 4(a)); *Agreement on Government Procurement* (Annex 4 (b)); *International Dairy Agreement* (Annex 4 (c)); *International Bovine Meat Agreement* (Annex 4 (d)).[57] Untuk unifikasi hukum, WTO telah berhasil membentuk TRIPs.

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[56] *Plurilateral Agreement* atau perjanjian plurilateral merupakan perjanjian yang disepakati oleh beberapa negara anggota WTO saja. (Direktorat Perdagangan, Perindustrian, Investasi, dan HKI; Direktorat Jenderal Multilateral; Departemen Luar Negeri. *Sekilas WTO (World Trade Organization)*, Edisi IV (Jakarta: Direktorat Perdagangan, Perindustrian, Investasi dan Hak Kekayaan Intelektual Direktorat Jenderal Multilateral Departemen Luar Negeri, 2006), hlm. 2).

[57] *Ibid.*, hlm. 40.

C. PERJANJIAN INTERNASIONAL SEBAGAI SUMBER HUKUM DALAM PERDAGANGAN INTERNASIONAL

C.1. Pengertian Perjanjian Internasional

Sumber hukum dalam perdagangan internasional merupakan bagian yang penting untuk diketahui. Dengan mengetahuinya, maka dapat diketahui kemudian ketentuan-ketentuan yang bagaimana dan ketentuan-ketentuan apa saja yang mengatur serta mempengaruhi kegiatan perdagangan internasional. Pada praktiknya, hukum perdagangan internasional sangat berkaitan erat dengan hukum internasional. Keterkaitan ini menyebabkan sumber-sumber hukum dalam hukum internasional juga merupakan sumber-sumber hukum dalam perdagangan internasional.

Dalam hukum internasional yang merupakan sumber-sumber hukum adalah perjanjian internasional, kebiasaan internasional, prinsip hukum umum yang diakui oleh bangsa-bangsa beradab, serta putusan pengadilan dan ajaran para sarjana terkemuka (doktrin) sebagai sumber tambahan untuk menetapkan kaedah hukum[58]. Hal ini sesuai dengan ketentuan yang diatur dalam Pasal 38 Statuta Mahkamah Internasional[59].

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[58] Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional* (Bandung: PT Alumni, 2003), hlm. 114-115.

Keempat sumber hukum dalam hukum internasional tersebut dapat diadopsi menjadi sumber hukum dalam perdagangan internasional [60].

Selain keempat sumber hukum di atas, dalam perdagangan internasional ketentuan hukum nasional juga sangat memberi pengaruh. Oleh karena itu, ketentuan hukum nasional dari suatu negara juga menjadi bagian dari beberapa sumber hukum dalam perdagangan internasional. Disamping itu, kontrak di antara para pihak pedagang juga merupakan salah satu sumber hukum dalam kegiatan perdagangan internasional.[61]

Perjanjian internasional dapat dianggap sebagai sumber hukum internasional terpenting di dalam hukum internasional karena saat ini pada kenyataannya banyak persoalan hukum internasional yang diatur dan disepakati dalam perjanjian internasional [62] . Perjanjian internasional dalam hukum internasional juga dapat dikatakan sebagai sumber hukum utama[63].

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[59] Dr. Boer Mauna, Hukum Internasional: Pengertian dan Fungsi dalam Era Dinamika Global, Edisi II (Bandung: PT Alumni, 2005), hlm. 84.

[60]Adolf, *op. cit.*, hlm. 75.

[61]*Ibid*., hlm. 76.

[62]Kusumaatmadja, *op. cit*., hlm. 116.

[63]Mauna, *op. cit.*, hlm. 9.

Perjanjian internasioal merupakan perjanjian-perjanjian yang dibentuk oleh negara-negara, sebagai subjek hukum internasional. Oleh karena itu, para pihak dalam perjanjian internasional adalah negara-negara yang berdaulat, maka dengan pemikiran tersebut suatu perjanjian internasional juga merupakan sumber hukum di dalam hukum perdagangan internasional. Hal ini dikarenakan setiap kegiatan perdagangan internasional yang dilakukan saat ini didasarkan pada suatu kesepakatan yang dituangkan dalam perjanjian internasional.

Di dalam perjanjian internasional yang menjadi sumber hukum dalam perdagangan internasional diatur beberapa ketentuan yang menyangkut kegiatan perdagangan internasional di dunia. Beberapa perjanjian internasional yang mengatur perdagangan internasional telah membentuk suatu pengaturan perdagangan internasional yang sifatnya umum bagi para pihak dalam perjanjian tersebut. Disamping itu, ada juga beberapa perjanjian internasional yang memberikan kekuasaan tertentu di bidang perdagangan internasional kepada suatu organisasi internasional untuk mengurus bidang perdagangan. Di sisi lain terkadang perjanjian internasional juga berupaya mencari pengaturan

yang seragam dengan tujuan agar transaksi perdagangan dapat dipercepat.[64]

Perjanjian internasional atau yang juga dikenal dengan traktat (*treaty*) adalah suatu kontrak atau kesepakatan yang dibuat oleh negara-negara, sebagai para pihaknya. Berdasarkan Pasal 2 Konvensi Wina Tahun 1969, perjanjian internasional atau *treaty* didefinisikan sebagai suatu persetujuan yang dibuat antarnegara dalam bentuk tertulis dan diatur oleh hukum internasional baik dalam instrumen tunggal atau dua atau lebih instrumen yang berkaitan dan apapun nama yang diberikan pada perjanjian tersebut[65].

Kemudian menurut Pasal 1 ayat 3 Undang-undang No. 37 Tahun 1999 tentang Hubungan Luar Negeri, perjanjian internasional adalah perjanjian dalam bentuk dan sebutan apapun, yang diatur oleh hukum internasional dan dibuat secara tertulis oleh Pemerintah Republik Indonesia dengan satu atau lebih negara, organisasi internasional atau subjek hukum internasional lainnya, serta menimbulkan hak dan kewajiban pada Pemerintah Republik Indonesia yang

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[64]Adolf, *op. cit.*, hlm. 77.

[65]United Nations, *Vienna Convention on the Law of Treaties (1969)*, Vienna, 23 Mei 1969, Entered into force on 27 January 1980, Treaty Series, vol. 1155, p.331, Pasal 2.

bersifat hukum publik[66]. Sedangkan, menurut Undang-undang No. 24 Tahun 2004 tentang Perjanjian Internasional, perjanjian internasional adalah perjanjian, dalam bentuk dan nama tertentu, yang diatur dalam hukum internasional yang dibuat secara tertulis serta menimbulkan hak dan kewajiban di bidang publik[67].

C.2. Bentuk-bentuk Perjanjian Internasional

Perjanjian internasional dibagi ke dalam tiga bentuk perjanjian, yaitu perjanjian internasional yang bersifat bilateral, perjanjian internasional yang bersifat regional, dan perjanjian internasional yang bersifat multilateral. Suatu perjanjian internasional dapat dikatakan sebagai suatu perjanjian bilateral apabila perjanjian internasional tersebut dibentuk oleh dua pihak dan hanya mengikat kedua pihak pembuat perjanjian tersebut saja. Kemudian, perjanjian yang bersifat regional merupakan suatu perjanjian internasional yang dibentuk oleh beberapa pihak yang berada dalam suatu wilayah atau kawasan tertentu

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[66] Indonesia, *Undang-undang Hubungan Luar Negeri*, UU No. 37 Tahun 1999, Pasal 1 ayat 3.

[67] Indonesia, *Undang-undang Perjanjian Internasional*, UU No. 24 Tahun 2004, LN No. 185 Tahun 2000, Pasal 1 ayat 1.

sehingga kekuatan mengikat dari perjanjian regional ini hanya terbatas terhadap para pihak pembuatnya yang berada di dalam wilayah atau kawasan tertentu tersebut. Perjanjian internasional yang bersifat multilateral merupakan perjanjian internasional yang dibentuk oleh banyak pihak, lebih dari dua pihak. Suatu perjanjian multilateral dapat bersifat universal apabila perjanjian internasional tersebut berisi ketentuan-ketentuan yang menyangkut kepentingan seluruh negara di dunia[68].

Perjanjian bilateral dalam perdagangan internasional merupakan suatu perjanjian internasional yang mengatur beberapa ketentuan yang berkaitan dengan hubungan perdagangan di antara dua pihak negara pembuat perjanjian tersebut. Oleh karena itu, perjanjian perdagangan bilateral hanya mempunyai daya ikat bagi kedua negara yang menjadi pihak dalam perjanjian tersebut. Biasanya dalam suatu perjanjian perdagangan bilateral, dua negara sebagai para pihak perjanjian memberikan beberapa preferensi atau perlakuan khusus tertentu berkaitan dengan kegiatan ekspor-impor dari kedua belah pihak negara[69].

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[68]Mauna, *op. cit.*, hlm. 9.

[69]Adolf, *op. cit.*, hlm. 77-78.

Perjanjian regional sebagai suatu perjanjian internasional dalam perdagangan internasional merupakan suatu perjanjian internasional yang dibuat oleh beberapa negara yang berada dalam suatu kawasan tertentu untuk menyepakati hal-hal tertentu mengenai hubungan perdagangan di antara mereka. Dengan kata lain, perjanjian perdagangan regional merupakan kesepakatan-kesepakatan di bidang perdagangan internasional yang dibentuk oleh negara-negara yang tergolong atau berada dalam suatu regional tertentu. Beberapa contoh perjanjian regional di bidang perdagangan internasional yang ada saat ini, antara lain AFTA di kawasan Asia Tenggara, dan NAFTA di kawasan Amerika Utara, serta di kawasan Amerika Latin (yang beranggotakan Argentina, Brazil, Uruguay, Paraguay, dan Venezuela menjadi bagian dalam *Treaty of Asunción* (*Mercosur*)).

Suatu perjanjian merupakan suatu kesepakatan mengenai hal tertentu antara dua atau lebih pihak dan kesepakatan tersebut mengikat para pihak pembuat perjanjian. Dalam pengertian tersebut terkandung suatu prinsip hukum umum, yaitu *pacta sunt servanda*. Prinsip hukum umum ini pun berlaku dalam lingkup hukum internasional. Oleh karena itu, dalam perjanjian internasional juga dikandung prinsip hukum yang bersifat umum ini. Dengan demikian, perjanjian

internasional yang dibentuk oleh subjek hukum internasional akan memiliki daya ikat terhadap para pembuatnya, yang kemudian menimbulkan hak dan kewajiban bagi para pihaknya. Begitu pula hal ini berlaku terhadap perjanjian internasional yang mengatur mengenai perdagangan internasional.

Perjanjian perdagangan internasional pun hanya akan mengikat suatu negara apabila negara tersebut sepakat dan menandatangani serta meratifikasi perjanjian internasional tersebut. Dengan meratifikasi suatu perjanjian, maka suatu negara perlu membentuk suatu peraturan perundang-undangan di dalam hukum nasionalnya yang terkait dengan perjanjian internasional tersebut. Oleh karena itu, perjanjian internasional yang telah diratifikasi tersebut dapat menjadi bagian di dalam hukum nasional dari negara tersebut.

Tindakan meratifikasi suatu perjanjian internasional yang dilakukan oleh suatu negara menandakan bahwa negara tersebut menundukkan diri terhadap perjanjian internasional tersebut. Tindakan penundukan diri terhadap suatu perjanjian internasional yang dilakukan oleh suatu negara tidak hanya dilakukan melalui ratifikasi suatu perjanjian internasional. Masih terdapat cara lain untuk dapat menundukkan diri terhadap suatu perjanjian internasional,

yakni dengan cara penundukan diri secara diam-diam dengan cara mengadopsi muatan suatu perjanjian internasional ke dalam hukum nasionalnya[70].

Pada umumnya dalam suatu perjanjian internasional mengenai perdagangan internasional dikandung beberapa pokok hal, seperti liberalisasi perdagangan, integrasi ekonomi, harmonisasi hukum, unifikasi hukum, serta model hukum dan *legal guide*. Perjanjian yang memuat liberalisasi perdagangan dibentuk dengan tujuan untuk meliberalisasi perdagangan. Dengan adanya perjanjian ini, berbagai rintangan pengaturan atau kebijakan dalam suatu negara yang dianggap menghambat atau mengganggu kelancaran dari kegiatan perdagangan internasional diupayakan untuk ditanggalkan. Perjanjian yang berisi tentang integrasi ekonomi merupakan perjanjian yang mengatur tentang usaha untuk pencapaian kesatuan kepabeaan (*customs union*), suatu kawasan perdagangan bebas (*free trade zone*), atau bahkan suatu kesatuan ekonomi (*economic union*). Dengan adanya perjanjian ini, maka suatu organisasi internasional diberi kewenangan untuk mewujudkan tujuan integrasi ekonomi ini. Perjanjian internasional yang mengatur mengenai harmonisasi hukum adalah perjanjian internasional yang mengupayakan

[70]*Ibid*., hlm. 79.

penyeragaman atau menemukan suatu titik temu dari prinsip-prinsip yang bersifat fundamental dari seluruh sistem hukum yang ada di dunia. Perjanjian internasional yang mengatur mengenai unifikasi hukum adalah perjanjian yang berisi penyeragaman yang mencakup penghapusan dan penggatian suatu sistem hukum yang ada dengan suatu sistem hukum yang baru. Perjanjian internasional yang mengatur mengenai model hukum dan *legal guide* merupakan perjanjian internasional yang membuat suatu model hukum atau *legal guide* yang sifatnya tidak mengikat atas suatu bidang hukum tertentu.[71]

Di dalam suatu perjanjian perdagangan internasional diatur beberapa standar internasional, yang kemudian akan berlaku dalam perdagangan internasional. Dalam hal ini, yang dimaksud dengan beberapa standar internasional tersebut adalah norma-norma yang disyaratkan untuk ditentukan dalam perjanjian internasional. Norma-norma tersebut merupakan syarat penting di dalam tata ekonomi internasional serta syarat suatu negara untuk berpartisipasi dalam transaksi ekonomi internasional, yang salah satunya berupa akivitas perdagangan internasional. Beberapa syarat dasar tersebut adalah *minimum standard or*

[71]*Ibid*., hlm. 80-81.

equitable treatment, *most-favoured nation clause*, *equal treatment*, dan *preferential treatment*.[72]

Minimum standard atau *equitable treatment* adalah norma atau aturan dasar dalam perjanjian internasional yang harus ditaati oleh negara-negara untuk dapat turut serta dalam transaksi-transaksi perdagangan internasional. *Most-Favoured Nation Clause* adalah klausula dalam perjanjian internasional yang mensyaratkan perlakuan non-diskriminasi dari suatu negara terhadap negara lainnya, yang masing-masing terikat dalam suatu perjanjian internasional. Klausula ini memiliki peran yang penting karena dengan adanya klausula ini, maka negara akan memberikan derajat perlakuan sama (*equitable treatment*) terhadap negara mitra dagangnya dalam hubungan perdagangannya. Pada umumnya klausula MFN ini diikuti oleh dua hal, yaitu *reciprocal* (timbal balik), yang memiliki arti pemberlakuan prinsip *most-favoured nation* diberikan dan disyaratkan oleh masing-masing negara, dan *unconditional* (tidak bersyarat), artinya negara anggota lainnya dalam suatu perjanjian berhak atas perlakuan-perlakuan khusus yang diberikan kepada negara ketiga.[73]

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[72]*Ibid.*, hlm. 82.

Equal treatment (perlakuan sama) adalah klausula lain dalam perjanjian internasional yang juga disyaratkan harus ada dalam perjanjian perdagangan internasional. Menurut klausula ini, negara-negara peserta dalam suatu perjanjian diisyaratkan untuk memberikan perlakuan yang sama satu terhadap lainnya. *Preferential Treatment* merupakan prinsip pengecualian terhadap prinsip non-diskriminasi yang terkandung di dalam salah satu klausula perjanjian internasional. Prinsip ini biasanya diterapkan di antara negara-negara yang memiliki hubungan politis atau ekonomis. Berdasarkan prinsip ini, suatu negara dapat saja memberikan perlakuan khusus yang lebih menguntungkan (*preferential treatment*) kepada suatu negara daripada kepada negara lainnya. Biasanya perlakuan demikian diberikan kepada negara-negara yang sedang berkembang atau miskin. Perlakuan berbeda dan khusus biasanya juga diberikan kepada negara-negara yang memiliki keterikatan sejarah sebelumnya, contohnya negara-negara bekas jajahan atau bekas koloninya.[74]

Dengan demikian, perjanjian internasional yang berlaku dalam hukum internasional dapat diberlakukan dan dijadikan

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[73]*Ibid.*, hlm. 82-83.

[74]*Ibid.*, hlm. 82-85.

sumber hukum dalam perdagangan internasional. Suatu perjanjian internasional dapat digolongkan ke dalam perjanjian perdagangan internasional apabila perjanjian tersebut mengatur serta menetapkan beberapa ketentuan dan prinsip yang terkait dengan perdagangan internasional, yang kemudian dapat digolongkan ke dalam beberapa bentuk, yakni perjanjian bilateral, perjanjian regional, serta perjanjian multilateral.

BAB III

KEMITRAAN BILATERAL EKONOMI INDONESIA-JEPANG

A. LATAR BELAKANG

A.1. Pembentukan Kemitraan Bilateral Ekonomi Indonesia-Jepang

Dengan kondisi perekonomian yang maju dan didukung oleh industri-industrinya yang besar, maka Jepang digolongkan sebagai negara industri. Sebagai negara industri, Jepang merupakan negara yang paling miskin dalam kepemelikan atas sumber daya alam dibandingkan dengan negara-negara industri lainnya. Oleh karena itu, kebanyakan sumber daya industrinya harus diimpor dari luar negeri. Sumber daya industri yang dibutuhkan oleh Jepang, antara lain minyak mentah, besi tua atau besi bahan, biji besi, batu bara, antimon, merkuri, mangan, timah, tungsten, molibden, krom, nikel, kobalt, bauksit, serta mineral-mineral non-logam berupa brom, magnesit, batu fosfat, garam kalsium, dan nitrat. Disamping itu, Jepang juga mengimpor serat-serat alami, seperti katun, wool, flax, rami, dan

jute untuk kebutuhan industri tekstilnya.[75] Untuk memenuhi kebutuhan sumber daya industri-industri besarnya, sangat tepat bagi Jepang untuk aktif di dalam kegiatan perdagangan dunia. Melalui perdagangan dunia, Jepang dapat membeli sumber-sumber daya industri yang dibutuhkannya dari negara-negara lain yang kaya akan sumber daya tersebut.

Setelah Perang Dunia II, yakni pada akhir 1947, Jepang mulai membentuk suatu kebijakan politik dan ekonomi liberal yang berkelanjutan demi kemakmuran bangsa dan negaranya mengikuti ekonomi dunia yang sedang berkembang saat itu[76]. Dengan diterapkannya kebijakan tersebut, maka Jepang mulai ikut serta di dalam kegiatan perdagangan dunia secara aktif. Keikutsertaan Jepang tersebut dapat dikatakan agak terlambat dibandingkan dengan keikutsertaan negara-negara barat. Oleh karena itu, Jepang dapat dikatakan sebagai pendatang baru dalam arena perdagangan di dunia bila dibandingkan dengan negara-negara Eropa dan Amerika Serikat [77] . Walaupun demikian, perdagangan internasional

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[75] Lim Hua Sing, *Peranan Jepang di Asia [Japan's Role in Asia]*, diterjemahkan oleh Marcus Prihminto Widodo, Edisi III (Jakarta: PT Gramedia Pustaka Utama, 2001), hlm. 152.

[76] Alasdair Bowie *and* Danny Unger, *The Politics of Open Economies: Indonesia, Malaysia, the Philippines, and Thailand* (United Kingdom: University Press Cambridge, 1997), hlm. 28.

Jepang berkembang begitu pesat hingga memberi pengaruh yang besar dalam perekonomian dunia. Hal ini tak lepas dari peran pemerintah Jepang yang memberikan perhatian sangat besar terhadap kebijakan kegiatan perdagangan internasional negaranya. Hal ini menggambarkan bahwa perekonomian Jepang terutama didasarkan atas perdagangan [78] . Dari kebijakan pemerintah Jepang yang ada dapat diketahui bahwa peran ekonomi Jepang di dunia dapat dibagi menjadi tiga bagian, yakni perdagangan internasional, investasi asing langsung (FDI), dan bantuan pembangunan resmi (ODA)[79].

Dalam melakukan FDI, Jepang didorong oleh beberapa alasan serta tujuan, seperti untuk mendapatkan akses yang lebih baik terhadap sumber-sumber daya alam, khususnya di negara-negara yang sedang berkembang; untuk melindungi pasar-pasar bagi produk Jepang; untuk memanfaatkan sumber daya luar negeri serta buruh yang murah; untuk manghindari kondisi-kondisi yang kurang menguntungkan bagi perluasan untuk mendapatkan berbagai insentif institusional yang disediakan oleh negara-negara tuan rumah.[80]

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[77]Lim Hua Sing, *op. cit.*, hlm. 230.

[78]*Ibid*., hlm. 153.

[79] *Ibid*., hlm. 247. Dalam investasi asing langsung dan bantuan pembangunan resmi, Jepang juga berperan dalam memberikan transfer teknologi dan transfer pengetahuan manajerial.

Jepang melakukan investasi yang cukup besar di Asia. Beberapa faktor pendorong utamanya adalah ekspansi penjualan dan ekspansi basis produksi serta pasokan barang-barang manufakur jasa. FDI Jepang di Asia ditujukan untuk mengeksplorasi pasar-pasar internasional. Asia dianggap sebagai sebuah 'basis produksi alternatif' yang penting bagi Jepang. Dengan melakukan invetasi di Asia, maka Jepang mendapatkan keuntungan kedekatan geografis dan dapat mengeksplorasi pasar-pasar regional dan internasional.[81]

Dengan ketiga peran ekonomi yang dimilikinya, maka tidak dapat dipungkiri bahwa Jepang memainkan peran yang sangat penting di dalam proses perkembangan ekonomi Asia. Hal ini tak lepas dari kenyataan geografis bahwa Jepang merupakan bagian dari Asia. Disamping menjadi bagian dari Asia, Jepang sendiri menganggap Asia sebagai pasar yang penting dan basis produksi alternatif di samping negaranya. Perkembangan industri Jepang pun sangat tergantung pada pasokan beberapa sumber daya alam industri ASEAN.[82] Termasuk juga di dalamnya Indonesia.

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[80]*Ibid.,* hlm. 196.

[81]*Ibid.*, hlm. 224.

[82]*Ibid.,* hlm. 237.

Di antara Jepang dan Indonesia terjalin hubungan bilateral yang terpelihara dengan baik dan terus berkembang secara positif sejak 1958[83], baik yang dilakukan oleh kalangan pemerintah maupun lembaga-lembaga non-pemerintah serta kalangan bisnis[84]. Begitu halnya dalam hubungan kerja sama ekonomi. Hubungan dan kerja sama ekonomi Indonesia-Jepang selama ini senantiasa berjalan dengan baik dan didasarkan pada suatu kemitraan yang saling menguntungkan[85]. Indonesia merupakan mitra dagang yang paling penting bagi Jepang[86]. Disamping itu, Jepang juga merupakan negara sumber investasi yang penting bagi Indonesia[87]. Kemudian, Jepang juga merupakan salah satu negara donor terbesar bagi Indonesia dengan menyalurkan ODA-nya yang berupa bantuan pinjaman dan hibah melalui CGI[88]. Di antara negara-negara

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[83] "Japan-Indonesia Joint Statement "Strategic Partnership for Peaceful and Prosperous Future," <http://www.mofa.go.jp/region/asia-paci/indonesia/joint0611.htm>, 05 Januari 2008.

[84] "Hubungan Bilateral Indoensia-Jepang,"<http://www.deplu.go.id/?category_id=13 &country_id=&news_bil_id=289&bilateral= asiatimur>, 05 Januari 2008.

[85] *Ibid*.

[86] Lim Hua Sing, *op. cit*., hlm. 168.

[87] "SIAP (Strategic Investment Action Plan) Jurus Meningkatkan Investasi Jepang ke Indonesia," <http:// www.depperin.go.id/ ind/publikasi/MajalahGLOBAL/20071205.pdf>, 26 Januari 2008.

ASEAN, Indonesia merupakan negara yang mengekspor minyak secara signifikan ke Jepang sejak 1973[89] hingga saat ini. Oleh karena itu, Indonesia dapat dikatakan sebagai salah satu negara pengekspor minyak terbesar bagi Jepang[90]. Disamping mengimpor minyak, Jepang juga mengimpor gas alam dan gas alam cair dari Indonesia[91].

Hubungan kerja sama bilateral antara Jepang dan Indonesia yang telah terjalin dalam jangka waktu yang cukup lama telah melahirkan inisiatif di antara kedua negara untuk meningkatkan kerja sama mereka melalui *"Strategic Partnership for Peaceful and Prosperous Future"* yang telah disepakati oleh pemimpin kedua negara dalam *summit meeting* yang diadakan pada 28 November 2006. *Strategic partnership* tersebut menjadi dasar bagi kedua negara dalam menjalankan hubungan kerja sama bilateral yang bertujuan untuk menciptakan masa depan yang menjanjikan bagi wilayah regional, perdamaian global, serta kemakmuran bersama. Hal ini juga dijadikan alat untuk memperdalam dan memperluas

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[88] "Hubungan Bilateral Indoensia-Jepang,"<http://www.deplu.go.id/?category_id=13 &country_id=&news_bil_id=289&bilateral= asiatimur>, 05 Januari 2008.

[89]Alasdair Bowie, *op. cit.*, hlm. 34.

[90]Lim Hua Sing, *op. cit.*, hlm. 155.

[91] "Japan-Indonesia," <http://www.bilaterals.org/rubrique.php3?id_rubrique = 137# top>, 26 Januari 2008.

hubungan bilateral di antara kedua negara serta untuk mengembangkan kesempatan baru dalam memajukan kerja sama bilateral tersebut secara konkret di berbagai bidang.[92]

Disamping itu, timbul pemikiran di antara kedua negara untuk membentuk suatu kemitraan bilateral ekonomi mengingat hubungan kerja sama bilateral ekonomi di antara kedua negara telah terjalin dalam kurun waktu yang cukup lama dan sangat baik. Pemikiran tersebut kemudian dituangkan ke dalam suatu perjanjian yang diberi nama *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007*[93] atau yang disingkat JIEPA[94] serta juga dikenal dengan IJEPA[95]. JIEPA sendiri merupakan perluasan skema FTA antara Indonesia dan Jepang yang meliputi tiga hal pokok, yakni liberalisasi, fasilitasi, dan kerja sama di beberapa bidang. Liberalisasi yang dimaksud dalam hal

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[92] "Japan-Indonesia Joint Statement "Strategic Partnership for Peaceful and Prosperous Future," <http://www.mofa.go.jp/region/asia-paci/indonesia/joint0611.htm>, 05 Januari 2008.

[93] "Agreement between Japan and Republic of Indonesia for an Economic Partnership," <http:// www.mofa.go.jp/ region/ asia-paci/ indonesia/epa0708/agreement.pdf>, 05 Januari 2008.

[94] "Joint Statement at the Signing of the Agreement between Japan and the Republic of Indonesia for an Economic Partnership," <http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/joint.html>, 05 Januari 2008.

[95] "Indonesia-Japan Economic Partnership Agreement," <http://www.kadin-indonesia.or.id/id/berita_isi.php?news_id=213>, 05 Januari 2008.

ini adalah perdagangan barang dan jasa, *government procurement*, dan investasi.[96]

Rintisan kerja sama JIEPA dilakukan pada 2003 saat Presiden Megawati Soekarnoputri mengadakan kunjungan kenegaraan ke Jepang dalam pembicaraannya dengan Perdana Menteri Junichiro Koizumi mengenai pembentukan FTA antara Republik Indonesia dan Jepang. Kemudian, rintisan tersebut pun dilanjutkan oleh Presiden Bambang Susilo Yudhoyono saat bertemu Perdana Menteri Junichiro Koizumi dalam forum pertemuan puncak APEC pada November 2004 dengan mengingatkan perlu ditindaklanjuti pembahasan yang lebih rinci tentang JIEPA sehingga kerangka kerja sama tersebut pun dapat segera diimplementasikan.[97] Pada Juli 2005, Jepang dan Indonesia memulai negosiasi pembahasan JIEPA lebih lanjut[98].

Untuk menindaklanjuti pembahasan mengenai pembentukan IJEPA, maka pada 6 Januari 2005 Menteri Luar Negeri Jepang Nobutaka Machimura berkunjung ke Jakarta dan bertemu dengan

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[96] "IJEPA, Kesepakatan Kerjasama Ekonomi Indonesia-Jepang," <http://www.depperin.go.id/IND/Publikasi/MajalahGLOBAL/2006919.pdf>, 26 Januari 2008.

[97] *Ibid.*

[98] "Japan-Indonesia," <http://www.bilaterals.org/rubrique.php3?id_rubrique = 137# top>, 26 Januari 2008.

Wakil Presiden Jusuf Kalla. Dari pertemuan tersebut disepakati akan dibentuknya JSG (*Joint Study Group*) untuk membahas secara rinci pelaksanaan dari kerja sama JIEPA. Sebelumnya, *JSG meeting* telah diadakan sebanyak tiga kali, yakni pada 31 Januari 2005 di Jakarta, 04-05 Maret 2005 di Denpasar, dan pada Agustus 2005 di Tokyo.[99]

Pada pertemuan JSG pertama, 31 Januari 2005 di Jakarta, dibahas mengenai tujuan dari diadakannya JIEPA yang meliputi liberalisasi perdagangan, kerja sama industri dan perdagangan, peningkatan investasi Jepang di Indonesia, serta peningkatan daya saing industri Indonesia. Selain itu, didiskusikan juga mengenai kebijakan tarif untuk beberapa sektor perdagangan bagi masing-masing negara. Dari pertemuan tersebut diketahui bahwa sektor perdagangan yang sensitif bagi Jepang adalah pertanian, petrokimia, tekstil, dan alas kaki dari kulit. Sedangkan, sektor yang sensitif bagi Indonesia adalah otomotif dan suku cadangnya, baja serta sektor pertanian, kehutanan, perikanan, dan jasa.[100]

Pada pertemuan JSG kedua, 04-05 Maret 2005 di Depansar, Indonesia mengajukan kerja sama berupa *technical assistance*

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[99] "IJEPA, Kesepakatan Kerjasama Ekonomi Indonesia-Jepang," <http://www.depperin.go.id/IND/Publikasi/MajalahGLOBAL/2006919.pdf>, 26 Januari 2008.

[100] *Ibid.*

untuk berbagai bidang, seperti *clean production management*, konservasi energi, pengendalian kualitas dan perbaikan desain pada produk elektronik, tekstil, perkapalan, dan otomotif. Pada pertemuan JSG ketiga, Agustus 2005, kedua belah pihak mengemukakan usulan yang lebih konkret. Indonesia menyatakan harapannya terhadap penghapusan tarif produk-produk kimia organik, tas plastik, produk dari kaca, tekstil, dan sepatu. Sedangkan, Jepang menyatakan harapannya terhadap penghapusan tarif produk otomotif, elektronik, dan tekstil.[101]

Setelah ketiga pertemuan JSG berakhir, kerja sama JIEPA menjadi semakin konkret. Oleh karena itu, Presiden Susilo Bambang Yudhoyono dan Perdana Menteri Yunichiro Koizumi sepakat agar negosiasi JIEPA untuk dimulai. Negosiasi JIEPA berlangsung sebanyak enam putaran. Pada putaran pertamanya, yang berlangsung pada 29 Agustus-01 September 2005 di Jakarta, dibahas mengenai penurunan bea masuk bagi beberapa produk baik dari pihak Jepang maupun pihak Indonesia. Dalam kesempatan tersebut pihak Jepang mengemukakan keinginannya agar bisa memasarkan produk-produknya ke Indonesia terutama untuk produk baja, kendaraan bermotor dan suku cadangnya, serta produk-produk

[101]*Ibid*.

kimia. Pada putaran kedua, yang berlangsung pada 11-14 Oktober 2005 di Tokyo, dibahas mengenai masalah kerangka kerja sama dalam dua belas sektor, yang meliputi *trade in goods/industry*, *rules of origin*, jasa, investasi, pemerintahan, pengadaan barang pemerintah, kebijakan kompetisi, hak kekayaan intelektual, prosedur kepabeaan, *movement of natural persons*, *cooperation*, serta energi dan sumber daya alam. Kemudian, pada putaran ketiganya, yang berlangsung pada 09-12 Februari 2006 di Jakarta, Indonesia dan Jepang membahas lebih rinci lagi kesepakatan kerja sama JIEPA. [102] Pada puturan negosiasi yang keempat, yang berlangsung pada 18-24 April 2006 di Tokyo, diringkas negosiasi-negosiasi yang telah dilakukan di dalam ketiga putaran sebelumnya dan pihak Jepang mengajukan rancangan klausula pertama mengenai sumber daya alam mineral di dalam IJEPA. Negosiasi putaran kelima berlangsung di dalam bulan September 2006. Kemudian, negosiasi putaran keenam berlangsung pada Oktober 2006 yang berlangsung selama empat hari, yang di dalamnya dibahas rancangan IJEPA.[103] Setelah keenam putaran negosiasi berakhir, pada 22 Juni 2007 di

[102] *Ibid.*

[103] "Japan-Indonesia," <http://www.bilaterals.org/rubrique.php3?id_rubrique = 137# top>, 26 Januari 2008.

Tokyo, Jepang dan Indonesia menandatangani dokumen *record of discussion* sebagai rancangan akhir dari IJEPA[104]. Setelah itu, IJEPA mulai diimplementasikan pada November 2007 dan ditandatangani pada 20 Agustus 2007[105].

A.2. Tujuan Perjanjian Kemitraan Bilateral Ekonomi Indonesia-Jepang

Sejak 2006, dalam melaksanakan hubungan luar negerinya, Pemerintah Indonesia secara bertahap telah membuka peluang kerja sama di bidang perdagangan dan investasi. Politik luar negeri Indonesia dihadapkan pada beberapa permasalahan, salah satunya adalah kompleksitas konstelasi politik, ekonomi, keamanan, pertahanan, sosial, dan budaya. Oleh karena itu, yang menjadi tantangan bagi Pemerintah Indonesia adalah bagaimana menjaga stabilitas dalam negeri untuk tetap menjaga kepercayaan masyarakat internasional terhadap Pemerintah Indonesia, yang sekaligus merupakan upaya untuk mencapai prioritas pelaksanaan Rencana Pembangunan Jangka Panjang Nasional 2005-2025 untuk

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[104] "RI-Japan EPA final draft turned into legal document," <http://www.bilaterals.org/article.php3?id_article=8938>, 26 Januari 2008.

[105] "Implementation of RI-Japan EPA to begin in November," <http://www.bilaterals.org/article.php3?id_article=9243>, 26 Januari 2008.

mengkomunikasikan kepada publik internasional tentang Indonesia yang demokratis dengan masyarakat yang pluralistik serta upaya untuk pembangunan ekonomi yang progresif.[106]

Dengan dasar pemikiran tersebut, maka Pemerintah Indonesia memiliki beberapa sasaran pembangunan dan arah kebijakan pembangunan yang telah dicanangkan. Berkaitan dengan perekonomian Indonesia, yang menjadi sasaran pembangunan Indonesia adalah menguatnya hubungan kerja sama bilateral, regional, dan internasional serta meningkatnya peran dan pencapaian Indonesia sejahtera melalui kerja sama pembangunan ekonomi, promosi dagang dan investasi, serta kesempatan kerja dan alih teknologi. Kemudian, dalam arah kebijakan pembangunannya, Indonesia mencanangkan beberapa hal yang terkait dengan perekonomian, seperti peningkatan kerja sama dengan negara-negara kunci di kawasan dalam rangka peningkatan stabilitas dan kesejahteraan kawasan serta peningkatan intensifitas realisasi kerja sama dengan negara-negara mitra, termasuk upaya mencari berbagai

[106] "Bab 7 Pemantapan Politik Luar Negeri dan Peningkatan Kerja Sama Internasional,"<www.bappenas.go.id/.../ RKP%202008/Perpres/Buku2/&view=Bab%2007%20-%20Narasi.doc>, 19 Januari 2008

peluang pasar produk Indonesia, menarik investasi, dan kerja sama teknik.[107]

Dengan melihat sasaran dan arah kebijakan tersebut, maka langkah pembentukan IJEPA sangat sesuai untuk mendukung kedua hal tersebut. Adapun tujuan utama dibentuknya IJEPA adalah peningkatan perdagangan dan investasi Indonesia dan Jepang (pasar regional)[108]. Selain itu, IJEPA juga dibentuk untuk menandakan era baru di dalam hubungan kemitraan yang selama ini terjalin dan bagian awal dari *"Strategic Partnership for Peaceful and Prosperous Future"* di antara Indonesia dan Jepang[109]. IJEPA juga merupakan harapan babak baru hubungan perekonomian Jepang dan Indonesia[110].

Pembentukan IJEPA dilandaskan pada tujuan yang ingin dicapai baik oleh Jepang maupun Indonesia. Tujuan umum yang ingin dicapai dari dibentuknya IJEPA adalah meningkatkan

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[107] *Ibid.*

[108] Ratna S W dan Puteri R, "Keran Perdagangan Jepang-Indonesia Dilebarkan," *Kompas*, (25 Agustus 2007): 35.

[109] "Joint Statement at the Signing of the Agreement between Japan and the Republic of Indonesia for an Economic Partnership," <http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/joint.html>, 05 Januari 2008.

[110] Radi Negara, "50 Tahun Indonesia-Jepang: Momentum Peningkatan Sektor Ekonomi," *Media Indonesia*, (25 Januari 2008): 13.

perdagangan dan investasi Indonesia dan Jepang dalam pasar regional[111]. Tujuan utama dibentuknya IJEPA bagi Indonesia adalah untuk menarik dan melanggengkan investasi Jepang di Indonesia. Hal ini sangat penting bagi Indonesia karena selama sepuluh tahun sejak krisis moneter terjadi di Indonesia, perusahaan-perusahaan Jepang sebagai investor terbesar di Indonesia tidak melakukan investasi di Indonesia sehingga mengakibatkan ketinggalan terutama di bidang yang seharusnya Indonesia dapat memperoleh tempat lebih besar dalam jaringan produksi regional atau globalisasi proses produksi.[112]

Ada beberapa alasan yang mendasari Indonesia untuk menjalin kemitraan bilateral ekonomi dengan Jepang melalui pembentukan IJPEA. Beberapa alasan tersebut, seperti Jepang merupakan mitra dagang dan investor utama bagi Indonesia dan Indonesia adalah penerima bantuan terbesar dari ODA Jepang; Jepang merupakan pasar untuk produk ekspor Indonesia yang mewakili sebesar 20% dari keseluruhan produk ekspor Indonesia yang ada dan Jepang merupakan sumber impor terbesar kedua bagi Indonesia sebesar 13% dari keseluruhan

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[111] Ratna S W dan Puteri R. "Keran Perdagangan Jepang-Indonesia Dilebarkan," *Kompas*, (25 Agustus 2007): 35.

[112] Sri Hartati Samhadi, "Menggantungkan Harapan pada EPA," *Kompas*, (25 Agustus 2007): 33.

produk impor yang diterima oleh Indonesia; Indonesia memperoleh peluang untuk mengirim tenaga kerja semi terampilnya; IJEPA juga memberi kepastian akses pasar yang lebih preferensial dan luas dibandingkan dengan program seperti *Generalized System of Preferences* (GSP); dan IJEPA menempatkan Indonesia sejajar dengan negara-negara lain yang telah memiliki perjanjian serupa dengan Jepang, seperti Malaysia, Filipina, Singapura, dan Thailand di ASEAN[113].

Disamping hal-hal tadi, ada beberapa manfaat lain yang diharapkan dapat diterima oleh Indonesia melalui pembentukan IJEPA, yakni meningkatnya akses ke pasar Jepang, meningkatnya investasi Jepang di Indonesia, meningkatnya daya saing, meningkatnya daya beli masyarakat karena meningkatnya investasi, terbukanya lapangan kerja, berkembangnya industri pendukung, serta meningkatnya ekspor Indonesia ke Jepang. Dengan dibentuknya IJEPA, maka ada penghapusan sebagian besar hambatan tarif baik bagi Indonesia maupun Jepang. Oleh karena itu, hal ini

[113] "Indonesia-Japan Economic Partnership Agreement (IJ-EPA) Perjanjian Kemitraan Ekonomi Indonesia-Jepang," <http:// www. indonesianembassy.jp/perdagangan/manfaat_epa.pdf>, 21 April 2008.

memungkinkan bagi peningkatan ekspor Indonesia ke Jepang dan pemulihan kembali invetasi Jepang ke Indonesia.[114]

Baik Jepang maupun Indonesia memiliki kepentingan masing-masing berkaitan dengan dibentuknya IJEPA. Beberapa kepentingan yang dimiliki oleh Indonesia adalah dengan adanya IJEPA, maka Indonesia dapat meningkatkan investasi dari Jepang serta kapasitas daya saing Indonesia secara umum maupun di sektor-sektor tertentu, seperti peningkatan kapasitas, khususnya di area standardisasi produk dan pengujian juga kebersihan dan standar kesehatan untuk produk makanan dan minuman; pelatihan keterampilan dan teknologi di sektor manufaktur yang akan meningkatkan mutu produk Indonesia di pasar domestik dan internasional; program-program peningkatan kapasitas di bidang energi, industri, pertanian, promosi ekspor dan investasi, serta pengembangan usaha kecil menengah (UKM)[115]. Sebaliknya, Jepang juga memiliki beberapa kepentingan lain, seperti Indonesia merupakan negara terbesar di ASEAN dan secara ekonomi, politik dan geografis penting dan strategis.

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[114] Sri Hartati Samhadi, "Menggantungkan Harapan pada EPA," *Kompas*, (25 Agustus 2007): 33.

[115] "Indonesia-Japan Economic Partnership Agreement (IJ-EPA) Perjanjian Kemitraan Ekonomi Indonesia-Jepang," <http:// www. indonesianembassy.jp/perdagangan/manfaat_epa.pdf>, 21 April 2008.

Kemudian, Jepang ingin adanya transparansi dan kepastian hukum untuk kegiatan investasinya di Indonesia[116].

Pertimbangan yang dimiliki oleh Indonesia dari dibentuknya IJEPA adalah dengan ditandatanganinya IJEPA, maka Indonesia akan memperoleh beberapa manfaat. Beberapa manfaat tersebut dapat berupa manfaat baik di bidang perdagangan barang, perdagangan jasa, investasi, kerja sama di bidang peningkatan kapasitas (*cooperation in capacity building*), serta kerja sama di bidang akses pasar[117].

Manfaat di bidang perdagangan barang yang diterima oleh Indonesia dengan ditandatanganinya IJEPA adalah lahir kesepakatan liberalisasi pasar oleh Jepang yang mencakup lebih dari 90% barang yang diekspor Indonesia ke Jepang, termasuk produk industri dan agri-bisnis sehingga memberikan peluang yang setara kepada Indonesia di pasar Jepang dalam menghadapi negara pesaing tertentu yang sudah mengadakan perjanjian serupa dengan Jepang, seperti Thailand, Filipina, Malaysia, dan Meksiko; lahir peluang peningkatan pangsa pasar ekspor Indonesia ke pasar Jepang karena tarif bea masuknya dikurangi atau dihapuskan[118].

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[116]*Ibid.*

[117]*Ibid.*

Manfaat di sektor jasa yang diterima oleh Indonesia adalah adanya komitmen di bidang jasa tenaga kerja (*movement of natural persons*) yang diperoleh Indonesia dari Jepang sehingga memberikan peluang untuk pengiriman tenaga kerja terampil, seperti juru rawat, pekerja di sektor hotel dan pariwisata, dan pelaut; dan adanya penyediaan jasa yang lebih efisien untuk meningkatkan daya saing produk Indonesia. Manfaat di sektor investasi adalah Indonesia menjadi salah satu negara penting yang diperhitungkan bagi tujuan kegiatan investasi Jepang dan Indonesia dapat menunjukkan kepada dunia internasional kesungguhannya untuk memiliki salah satu kerangkan kepastian hukum baru dan penting di bidang investasi guna meningkatkan kepercayaan dan daya tarik bagi investor asing untuk berinvestasi di Indonesia sehingga dapat meningkatkan iklim usaha dan mendorong kepercayaan bisnis[119].

Manfaat lainnya adalah manfaat di bidang kerja sama peningkatan kapasitas (*cooperation in capacity building*) dan kerja sama di bidang akses pasar. Manfaat yang dapat diperoleh di bidang kerja sama peningkatan kapasitas adalah lahirnya kesepakatan untuk menghapuskan/mengurangi bea

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[118]*Ibid.*

[119]*Ibid.*

masuk serta kerja sama dalam rangka peningkatan kapasitas produsen penghasil produk industri pertanian, perikanan, dan kehutanan. Manfaat yang diperoleh Indonesia melalui kerja sama akses pasar adalah adanya kerja sama pembangunan pusat industri manufaktur, promosi ekspor, dan bantuan untuk UKM; kerja sama untuk menjamin ketersediaan sumber perikanan secara berkesinambungan (*sustained marine resources*) guna membantu Indonesia memelihara sumber bahari dalam jangka panjang; kerja sama pengembangan di sektor agri-bisnis, seperti pengembangan pusat makanan dan minuman serta pengembangan program-program yang diperuntukan bagi perkembangan para petani kecil dan nelayan.[120]

B. Perjanjian Kemitraan Ekonomi Bilateral Indonesia-Jepang

B.1. Perjanjian yang Mendasari

IJEPA sebagai suatu perjanjian kemitraan ekonomi merupakan suatu perluasan dari skema FTA antara Indonesia dan Jepang[121]. Dalam pembentukan IJEPA terdapat beberapa perjanjian internasional terkait lainnya yang menjadi dasar

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[120] *Ibid.*

[121] "IJEPA, Kesepakatan Kerjasama Ekonomi Indonesia-Jepang," <http://www.depperin.go.id/IND/Publikasi/MajalahGLOBAL/2006919.pdf>, 26 Januari 2008.

bagi pembentukannya. Beberapa perjanjian internasional tersebut adalah GATT 1994, GATS 1994, dan *the Framework for Comprehensive Economic Partnership between Japan and the ASEAN*[122].

GATT 1994 merupakan Annex 1A dari *the Marrakesh Agreement Establishing the World Trade Organization 1994*[123], yang dihasilkan pada Putaran Urugay[124]. GATT atau yang juga dikenal sebagai Persetujuan Umum Perdagangan dan Tarif merupakan suatu sistem perdagangan multilateral yang didasarkan pada persetujuan umum perdagangan dan tarif itu sendiri yang dirundingkan awalnya pada 1947 dan berhasil menciptakan prinsip-prinsip utama yang membatasi dan mengarahkan kebijakan-kebijakan perdagangan nasional serta menjadi dasar bagi perluasan kerja sama perdagangan multilateral. GATT 1994 juga merupakan kumpulan kewajiban anggota-anggota WTO yang terkait dengan perdagangan

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[122] Japan *and* Republic of Indonesia. *Agreement between Japan and the Republic of Indonesia for an Economic Partnership*. Jakarta, 20 Agustus 2007.

[123] *Ibid.*

[124] Direktorat Perdagangan, Perindustrian, Investasi, dan HKI d/h Direktorat Perdagangan dan Perindustrian Multilateral Direktorat Jenderal Multilateral Departemen Luar Negeri, Persetujuan Umum Perdagangan & Tarif (*General Agreement on Tariff and Trade/GATT*), Jakarta: Januari 2006), hlm. 2.

barang.[125] Tujuan utama GATT adalah membentuk suatu sistem perdagangan yang liberal dan terbuka di antara negara-negara anggotanya sehingga suatu perdagangan itu dapat dilakukan dengan jujur dan kompetisi yang seimbang.[126]

GATT 1994 terdiri dari empat unsur utama. Unsur utamanya adalah ketentuan-ketentuan mengenai persetujuan umum perdagangan tarif lama yang disepakati pada 1947 yang kemudian diperbaiki dan diamandemen dengan instrumen hukum yang disepakati pada 1994. Unsur kedua dalam GATT 1994 terdiri dari ketentuan instrumen hukum yang menetapkan persetujuan tarif sebelum 1994, ketentuan pada persetujuan aksesi suatu negara untuk menjadi penandatangan GATT, keputusan terhadap penundaan aplikasi berdasarkan Pasal XXV GATT, serta keputusan-keputusan lainnya yang diambil oleh para pihak GATT. Kemudian, unsur ketiga dalam GATT 1994 berupa enam kesepahaman yang dicapai dalam Putaran Uruguay. Kesepahaman tersebut menginterpretasikan sejumlah ketentuan pada pasal-pasal GATT. Keenam kesepahaman tersebut adalah kesepahaman mengenai interpretasi Pasal II (b) dari GATT

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[125] *Ibid.*, hlm. 1.

[126] Direktorat Pembangunan Ekonomi dan Lingkungan Hidup PBB, Departemen Luar Negeri Republik Indonesia, dan Lembaga Pengkajian Hukum Internasional Fakultas Hukum Universitas Indonesia didukung oleh United Nations Development Programme (UNDP), *Laporan Akhir Kajian Awal Implementasi dan Manfaat Perjanjian Internasional*, hlm. III-4.

1994, kesepahaman mengenai interpretasi Pasal XVII dari GATT 1994, kesepahaman mengenai ketentuan-ketentuan neraca pembayaran dari GATT 1994, kesepahaman mengenai interpretasi Pasal XXIV, kesepahaman mengenai pengecualian dari kewajiban, serta kesepahaman mengenai interpretasi Pasal XXVIII. Unsur terakhir di dalam GATT 1994 adalah Protokol Marrakesh yang memasukkan komitmen akses pasar dari setiap anggota WTO ke dalam GATT 1994.[127]

Di dalam GATT 1994 terdapat prinsip-prinsip utama yang penting. Prinsip-prinsip tersebut adalah ketentuan *most-favoured nation*, prinsip penurunan dan pengikatan (*binding*) tarif, ketentuan *national treatment*, dan larangan penggunaan tindakan protektif selain tarif [128], serta transparansi.[129]

Most-favoured nation atau non-diskriminasi, yang diatur dalam Pasal I GATT, merupakan suatu ketentuan yang menentukan bahwa setiap negara anggota GATT diminta

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[127] *Ibid.*

[128] Tariff means (1) a schedule or system of duties imposed by a government on imported or exported goods; (2) a duty imposed on imported or exported goods under such a system. (Bryan A Garner, *Black's Law Dictionary*, *eighth edition* (United States of America: West, 2004), hlm. 1495).

[129] Direktorat Perdagangan, Perindustrian, Investasi, dan HKI d/h Direktorat Perdagangan dan Perindustrian Multilateral Direktorat Jenderal Multilateral Departmen Luar Negeri, Persetujuan Umum Perdagangan & Tarif, *op. cit.*, hlm. 2.

memberikan perlakuan yang lebih menguntungkan kepada setiap anggota GATT lainnya. Perlakuan yang demikian harus diberikan segera dan tanpa syarat terhadap impor setiap negara anggota GATT. Oleh karena itu, seluruh anggota GATT berhak menerima perlakuan yang paling menguntungkan yang diberikan oleh anggota-anggota lainnya. Oleh karena itu, dapat dikatakan bahwa setiap anggota GATT berhak untuk tidak didiskriminasikan oleh anggota-anggota GATT lainnya. Ketentuan ini berlaku terhadap bea masuk dan dan biaya atau pungutan lain yang terkait dengan impor atau ekspor, pajak dan pungutan internal, serta terhadap seluruh peraturan perundang-undangan yang menerapkan pengenaan bea masuk dan pajak.[130]

Prinsip penurunan dan pengikatan tarif merupakan komitmen anggota GATT untuk menyatakan tingkat bea masuk impor, biaya, pungutan atau pembatasan maksimum yang akan diterapkan pada impor produk tertentu, yang merupakan hasil perundingan bilateral ketika suatu negara menyetujui permintaan negara lain untuk mengurangi bea masuk atas impor suatu produk tertentu. Penurunan dan pengikatan tarif ini kemudian dapat diberlakukan terhadap negara anggota-anggota GATT lainnya oleh karena implementasi dari prinsip

[130]*Ibid.,* hlm. 3.

most-favoured nation.[131] Oleh karena itu, prinsip *most-favoured nation* memungkinkan negara-negara anggota GATT untuk menurunkan atau mengikat tarif perdagangan barang secara non-diskriminasi terhadap negara-negara anggota GATT lainnya.

National treatment, yang diatur dalam Pasal III GATT, merupakan prinsip yang melengkapi prinsip *most-favoured nation*. Prinsip ini menekankan bahwa suatu produk impor yang memasuki perbatasan nasional suatu negara, yang telah dikenakan bea masuk, maka produk tersebut harus diperlakukan sama dengan produk domestik. Pajak-pajak internal atau pungutan lain yang dikenakan terhadap produk impor harus tidak lebih tinggi dari yang dikenakan terhadap produk domestik. Kemudian, ketentuan dan peraturan domestik yang mempengaruhi penjualan, pembelian, transportasi, distribusi, atau penggunaan produk impor harus memberikan perlakuan yang sama dengan produk-produk nasional.[132]

Di dalam GATT terdapat prinsip penggunaan hambatan tarif ketimbangan hambatan lain. Hambatan tarif, yang digunakan untuk melindungi produk domestik, dapat berupa bea masuk. Sedangkan, hambatan lain di samping hambatan

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[131]*Ibid.*, hlm. 3-4.

[132]*Ibid.*

non-tarif, seperti pembatasan ekspor yang diterapkan untuk mencegah atau mengembalikan kekurangan pasokan yang kritis, pembatasan yang diterapkan untuk melindungi neraca pembayaran, pengembangan industri perintis, tindakan pengamanan, perlindungan kesehatan, keamanan nasional, dan pembatasan impor produk-produk pertanian. Transparansi merupakan prinsip di dalam GATT yang dipertahankan keberadaannya agar setiap negara anggota GATT untuk melakukan transparansi terhadap kebijakan dan peraturan perdagangan yang dibentuk oleh negara-negara anggota GATT yang mempengaruhi perdagangan barang.[133]

GATT terdiri atas dua belas persetujuan yang meliputi pertanian, *sanitary* dan *phytosanitary*, badan pemantau tekstil, standar produk, tindakan investasi yang terkait dengan perdagangan, tindakan anti-dumping, penilaian pabeaan, pemerikasaan sebelum pengapalan, ketentuan asal barang, lisensi impor, subsidi dan tindakan imbalan, serta persetujuan tindakan pengamanan.[134]

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[133] *Ibid.*, hlm. 4-5.

[134] Direktorat Pembangunan Ekonomi dan Lingkungan Hidup PBB, Departemen Luar Negeri Republik Indonesia, dan Lembaga Pengkajian Hukum Internasional Fakultas Hukum Universitas Indonesia didukung oleh United Nations Development Programme (UNDP), *op.cit.*

GATS merupakan suatu persetujuan yang mengatur perdagangan internasional di bidang jasa. Dalam rangka pemenuhan kewajiban dan komitmen dalam persetujuan GATS, maka setiap anggota harus mengambil langkah yang dapat menjamin pelaksanaannya oleh pemerintah regional, daerah, dan lembaga-lembaga non-pemerintah dalam wilayahnya.[135]

Perdagangan jasa adalah pemasokan jasa yang dilakukan dari wilayah satu negara terhadap konsumen jasa dari negara lain; atau dari wilayah satu negara terhadap konsumen jasa dari negara lain; atau oleh pemasok jasa di satu negara melalui perusahaan atau badan komersial di wilayah negara lain; atau oleh pemasok jasa di satu negara melalui pemasok jasa individu di wilayah negara lain. Jasa dalam hal ini berarti semua jasa di segala sektor, kecuali jasa yang dipasok untuk kepentingan pemerintah, yang merupakan setiap jasa yang diberikan tidak secara komersial maupun dalam persaingan dengan satu atau lebih pemasok jasa.[136]

Kegiatan memberikan jasa dalam GATS dikategorikan dalam kelompok, sebagai berikut jasa yang dipasok dari suatu negara ke negara lain, yang disebut “pasok lintas batas” (*cross border supply*), misalnya hubungan telepon

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[135]*Ibid*., hlm. III-35.

[136]*Ibid.,* hlm. III-36.

internasional; konsumen atau suatu badan usaha yang menggunakan jasa di negara lain, yang disebut "konsumsi di luar negeri" (*consumption abroad*), misalnya pariwisata; perusahaan asing yang mendirikan cabang di luar negaranya yang disebut "kehadiran komersial" (*commercial presence*), misalnya bank asing yang membuka cabangnya di suatu negara; dan individu yang melakukan perjalanan ke luar negeri untuk memberikan jasanya yang disebut "kehadiran manusia secara nyata" (*presence of natural persons*). Prinsip-prinsip dasar di dalam ketentuan GATS adalah perlakuan *most-favoured nation*, *nation treatment*, transparansi, komitmen-komitmen spesifik, pengaturan yang objektif dan dapat dipertanggungjawabkan, pengakuan, pembayaran dan trasnfer internasional, liberalisasi progresif, jasa keuangan, perpindahan manusia, dan telekomunikasi.[137]

The Framework for Comprehensive Economic Partnership between Japan and the ASEAN atau yang disingkat dengan AJCEP [138] merupakan suatu perjanjian yang dibentuk oleh Jepang dengan ASEAN untuk mengatur mengenai barang dan jasa,

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[137]Direktorat Perdagangan, Perindustrian, Investasi, dan HKI, *op. cit.*, hlm. 30-32.

[138] "The Framework for Comprehensive Economic Partnership between Japan and the ASEAN," <http://www.mofa.go.jp/ policy/ economy/ fta/ asean/ agreement.pdf>, 21 April 2008.

memberi perlindungan terhadap investasi, serta mendukung kerja sama regional ekonomi di antara kedua belah pihak[139]. Perjanjian ini ditandatangani pada 8 Oktober 2003 di Bali[140].

Di dalam perjanjian ini terdapat enam elemen visi yang ingin dicapai oleh Jepang dan ASEAN. Keenam elemen visi tersebut adalah membentuk FTA di antara Jepang dan ASEAN secara keseluruhan yang mengubah cara kerja sama bilateral yang lama di antara Jepang dan masing-masing negara anggota ASEAN; mendorong pemerintah-pemerintah negara anggota ASEAN untuk mengubah kebijakan perdagangan, investasi, dan industri mereka dari kebijakan-kebijakan lama mereka yang mendasarkan pada pembatasan impor dan subsidi ekspor menjadi kebijakan-kebijakan yang dapat diberlakukan terhadap kompetisi pasar tunggal ASEAN; mendukung Jepang dalam membantu ASEAN untuk mengubah industri dan struktur korporasi yang mempengaruhi perdagangan dan FDI di antara kedua negara; mendukung ASEAN untuk membuat suatu program yang bersifat regional untuk membantu Kamboja, Laos, Myanmar, dan Vietnam yang merupakan negara-negara anggota ASEAN dengan standar hidup juga tingkat perkembangan

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[139] *Ibid.*

[140] Japan *and* Republic of Indonesia. *Agreement between Japan and the Republic of Indonesia for an Economic Partnership*. Jakarta 20 Agustus 2007.

industri yang rendah dibandingkan dengan negara-negara anggota ASEAN lainnya, serta mendukung Jepang untuk meningkatkan kerja sama teknis bilateral dengan keempat negara tersebut disamping mengurangi bantuan ODA-nya; mendukung dilaksanakannya program yang komprehensif untuk liberalisasi perdagangan dan investasi serta memfasilitasi dilaksankannya kerja sama ekonomi dan teknis di antara kedua pihak; dan mendukung perjanjian-perjanjian FTA bilateral atau sub-regional lainnya yang telah ada di antara Jepang dan ASEAN demi terbentuknya *East Asian Economic Community*.[141]

B.2. Muatan Perjanjian

Perjanjian ini mencakup sebelas bidang atau sebelas kelompok perundingan, yakni

1. *Trade in Goods*,
2. *Rules of Origin*,
3. *Customs Procedures*,
4. *Trade in Services*,
5. *Investment*,
6. *Movement of Natural Persons*,

[141] "The Joint Study Report ASEAN-Japan Comprehensive Economic Partnership Vision and Tasks Ahead," <http://www.ide-jetro.jp/Japanese/Lecture/Sympo/pdf/e_report_all.pdf>, 21 April 2008.

7. *Government Procurement*,

8. *Intellectual Property Rights*,

9. *Competition Policy*,

10. *Energy and Mineral Resources*, dan

11. *Cooperation*.[142]

Secara garis besar di dalam kesebelas bidang atau kelompok perundingan tersebut diadopsi beberapa prinsip hukum umum yang berlaku di dalam lingkup hukum perdagangan internasional, seperti *most-favoured nation*, *national treatment*, serta *transparency*.

National treatment adalah prinsip yang menentukan bahwa suatu produk dari satu negara yang diimpor ke negara lain harus diperlakukan sama seperti halnya produk dalam negeri dari negara penerima impor[143]. *Most-favoured nation* adalah suatu prinsip yang menyatakan bahwa kebijakan perdagangan harus dilaksanakan atas dasar non-diskriminatif dan suatu negara terikat untuk memberikan negara-negara lain perlakuan yang sama dalam pelaksanaan kebijakan impor

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[142] "Indonesia - Japan Economic Partnership Agreement (IJEPA)," <http://www.dkp.go.id/content.php?c=4147>, 05 Januari 2008.

[143] Huala Adolf, *Hukum Perdagangan Internasional* (Jakarta: PT Raja Grafindo Persada, 2006), hlm. 111.

dan ekspor serta menyangkut biaya-biaya lainnya[144]. Dan, *transparency* adalah prinsip yang mewajibkan negara-negara untuk bersikap terbuka atau transparan terhadap berbagai kebijakan perdagangannya sehingga memudahkan para pelaku usaha untuk melakukan kegiatan perdagangan[145].

Di dalam IJEPA, prinsip *national treatment* diadopsi di dalam klausula yang mengatur mengenai perdagangan barang, investasi, perdagangan jasa, dan hak kekayaan intelektual. Kemudian, prinsip *most-favoured nation* diadopsi di dalam ketentuan mengenai investasi, perdagangan jasa, hak kekayaan intelektual, dan persaingan usaha. Sementara itu, prinsip *transparency* diadopsi secara khusus di dalam perjanjian ini, yang diatur terperinci di dalam Pasal 3[146],

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[144] *Ibid*., hlm. 108.

[145] Direktorat Perdagangan, Perindustrian, Investasi, dan Hak Kekeayaan Intelektual, Direktorat Jenderal Multilateral, Departemen Luar Negeri RI, *Sekilas WTO* (*World Trade Organization*). Edidi ke-6. (Jakarta: Direktorat Perdagangan, Perindustrian, Investasi, dan Hak Kekayaan Intelektual, Direktorat Jenderal Multilateral, Departemen Luar Negeri RI, 2006), hlm. 4.

[146] "(1) Each Party shall make publicly available its law and regulations as well as international agreements to which the Party is a Party, with respect to any matter covered by this agreement. (2) Each Party shall make available to the public, the names and addresses of the competent authorities responsible for laws and regulations referred to in paragraph 1. (3) Each Party shall, upon the request by the other Party, within a reasonable period of time, provide information to the other Party with respect to matters referred to in paragraph 1. (4) When introducing or changing its laws and regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavor to take appropriate measures to enable interested persons to become acquainted with such introduction or

serta di dalam klausula-klausula lain yang mengatur bidang prosedur kepabeaan dan perdagangan jasa.

Keberadaan prinsip hukum umum dalam perdagangan internasional yang juga diadopsi di dalam IJEPA, seperti *most-favoured nation*, *national treatment*, dan *transparency* memiliki pengaruh terhadap pelaksanaan dari setiap ketentuan bidang yang mengadopsi prinsip tersebut.

Dengan diadopsinya prinsip *most-favoured nation* dalam beberapa klausula yang mengatur mengenai investasi, perdagangan jasa, hak kekayaan intelektual, dan persaingan usaha, maka kebijakan-kebijakan kedua negara yang terkait dengan ketiga hal tersebut harus dilaksanakan atas dasar non-diskriminatif dan saling memberikan perlakuan yang sama dalam pelaksanaan kebijakan-kebijakan yang terkait. Kemudian, prinsip *national treatment* yang juga diadopsi dalam ketentuan-ketentuan perdagangan barang, investasi, perdagangan jasa, dan hak kekayaan intelektual menyebabkan kegiatan perdagangan barang, investasi, perdagangan jasa, serta hak kekayaan intelektual yang dilakukan oleh salah satu negara, baik Indonesia maupun Jepang, ke dalam lingkungan domestik (nasional) masing-masing negara tersebut harus diperlakukan sama dengan kegiatan yang

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change." (Article 3, Agreement between Japan and the Republic of Indonesia for an Economic Partnership)

dilakukan oleh pelaku domestik, yang berasal dari masing-masing negara. Sementara itu, prinsip *transparency* yang diadopsi juga menyebabkan para pihak dalam IJEPA wajib untuk bersikap terbuka atau transparan terhadap berbagai kebijakan perdagangan yang dibentuk sehingga memudahkan para pelaku usaha, yang berasal baik dari Indonesia maupun Jepang, untuk melakukan kegiatan perdagangan internasional.

IJEPA dibentuk dengan delapan tujuan yang ingin dicapai oleh kedua negara pembentuknya. Kedelapan tujuan tersebut adalah

a. memfasilitasi, mendukung, dan meliberalisasi perdagangan barang dan jasa di antara kedua belah negara;
b. meningkatkan peluang-peluang investasi dan mendukung kegiatan investasi melalui pengetatan perlindungan bagi investasi dan kegiatan investasi di antara kedua negara;
c. menjamin perlindungan terhadap hak kekayaan intelektual melalui kerja sama di bidang tersebut;
d. meningkatkan transparansi terhadap *government procurement* dan mendukung kerja sama yang saling menguntungkan di dalamnya;
e. mendukung kondisi persaingan usaha yang sehat;

f. meningkatkan lingkungan bisnis yang lebih baik;
g. membangun kerangka kerja untuk meningkatkan kerja sama yang lebih erat di antara kedua negara; serta
h. menciptakan tata cara implementasi dan pelaksanaan perjanjian berkaitan dengan penyelesaian sengketa[147].

Perjanjian ini terdiri dari tiga belas materi pokok, yakni perdagangan barang, pengaturan mengenai asal barang, prosedur kepabeaan, investasi, perdagangan jasa, pergerakan pribadi hukum kodrati, sumber daya energi dan mineral, hak kekayaan intelektual, pengadaan barang dan jasa pemerintah, persaingan usaha, perbaikan lingkungan bisnis dan peningkatan kepercayaan bisnis, serta kerja sama. Ketiga belas materi pokok tersebut dituangkan ke dalam tiga belas bab klausula.

Di dalam salah satu klausula IJEPA ditentukan mengenai penyelesaian sengketa yang akan berlaku apabila terjadi sengketa di masa yang akan datang antara Indonesia-Jepang. Keberadaan klausula tersebut pada prinsipnya menentukan bahwa bila terjadi sengketa di antara kedua belah negara dalam mengimplementasikan perjanjian ini, maka kedua negara diharapkan menyelesaikan sengketa tersebut melalui cara

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[147] Japan *and* Republic of Indonesia. *Agreement between Japan and the Republic of Indonesia for an Economic Partnership*. Jakarta 20 Agustus 2007

damai. Namun, apabila hal ini sudah tidak mungkin dicapai, maka sengketa yang terjadi tersebut dapat diselesaikan melalui beberapa tahap proses penyelesaian sengketa, yakni *Consultations, Good Offices, Conciliations or Mediation*, dan *Arbitral Tribunals*.

Kemudian, perjanjian ini dilengkapi dengan dua belas peratutan tambahan (*Annex)*, yaitu:

a. *Annex 1 referred to in Chapter 2 Schedule in relation to Article 20*,
b. *Annex 2 referred to in Chapter 3 Product Specific Rules*,
c. *Annex 3 referred to in Chapter 3 Minimum Data Requirement for Certificate of Origin*,
d. *Annex 4 referred to in Chapter 5 Reservations for Measures referred to ini Subparagraph 1 (a) of Articles 64*,
e. *Annex 5 referred to in Chapter 5 Reservation for Measures referred to in Paragraph 3 of Article 64*,
f. *Annex 6 referred to in Chapter 5 Additional Provisions with respect to the Settlement of Investment Dispute referred to in Paragraph 21 of Article 81*,
g. Annex 7 referred to in Chapter 6 Financial Services,

h. Annex 8 referred to in Chapter 6 Schedules of Specific Commitments in relation to Article 81,
i. *Annex 9 referred to in Chapter 6 Lists of Most-Favoured-Nation Treatment Exemptions in relation to Article 82*,
j. *Annex 10 referred to in Chapter 7 Specific Commitment for the Movement of Natural Persons*,
k. *Annex 11 referred to in Chapter 8 List of Energy and Mineral Resources Goods*, dan
l. *Annex 12 referred to in Chapter 8 Additional Provisions with respect to the Promotion and Facilitation of Investment in the Energy and Mineral Resources Sector referred to in Paragraph 2 of Article 98*.

Perjanjian ini juga dilengkapi dengan *implementing agreement* atau perjanjian implementasi, yang diatur di dalam Pasal 13[148] perjanjian dasarnya[149], yakni IJEPA, dengan

[148] "The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to as "the Implementing Agreement")." (Article 13 JIEPA)

[149] *The Agreement between Japan and the Republic of Indonesia for an Economic Partnership* kemudian disebut juga sebagai *the Basic Agreement* atau perjanjian dasar. Hal ini ditentukan dalam *Preamble, Implementing Agreement between the Government of Japan and the Government of the Republic of Indonesia pursuant to Article 13 of the*

nama *Implementing Agreement between the Government of Japan and the Government of the Republic of Indonesia pursuant to Article 13 of the Agreement between Japan and the Republic of Indonesia for an Economic Partnership*. Perjanjian ini berisi ketentuan-ketentuan yang lebih terperinci dan ketentuan prosedural mengenai tata cara pelaksanaan implementasi atau penerapan dari IJEPA itu sendiri.

Beberapa materi pokok yang diatur di dalam perjanjian implementasi ini mengatur tata cara pelaksanaan implementasi dari prosedur kepabeaan, energi dan sumber daya mineral, hak kekayaan intelektual, persaingan usaha, perbaikan lingkungan bisnis dan peningkatan kepercayaan bisnis, serta kerja sama. Kerja sama antara Indonesia-Jepang yang diatur dalam IJEPA, yang bentuknya diatur lebih lanjut di dalam *the Implementing Agreement*, adalah kerja sama di bidang industri manufaktur, pertanian, kehutanan, perikanan, perdagangan, peningkatan investasi, pengembangan sumber daya manusia, pariwisata, informasi dan teknologi komunikasi, jasa keuangan, serta lingkungan.

Perjanjian implementasi ini diterapkan sesuai dengan penerapan IJEPA, sebagai perjanjian dasarnya, serta hukum dan peraturan yang berlaku baik di Indonesia maupun di

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Agreement between Japan and the Republic of Indonesia for an Economic Partnership.

Jepang. Perjanjian implementasi ini juga akan berlaku bersamaan dengan waktu berlakunya IJEPA. Kemudian, apabila terjadi sengketa di antara Indonesia dan Jepang terkait dengan pelaksanaan dari perjanjian implementasi ini, maka kedua negara dapat menyelesaikan sengketa tersebut secara *mutatis mutandis*[150] dengan ketentuan penyelesaian sengketa yang diatur di dalam perjanjian dasar.

IJEPA beserta dengan perjanjian implementasinya merupakan suatu perjanjian yang membentuk kawasan perdagangan bebas di antara Indonesia-Jepang di bidang perdagangan barang, membentuk integrasi ekonomi di antara Indonesia-Jepang di bidang perdagangan jasa, serta memenuhi salah satu visi yang terkandung di dalam pembentukan AJCEP, yakni mendukung terbentuknya perjanjian-perjanjian FTA bilateral atau sub-regional lain di antara Jepang dan ASEAN. Oleh karenanya, keberadaan IJEPA beserta dengan seluruh materinya memenuhi ketentuan Pasal XXIV GATT dan Pasal V GATS [151]. Selain itu, perjanjian ini juga melengkapi AJCEP, yang telah dibentuk di antara Jepang dan ASEAN.

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[150]Mutatis mutandis means all necessary changes having been made; with the necessary changes (Bryan A Garner, *Black's Law Dictionary*, *eighth edition* (United States of America: West, 2004), hlm. 1044.)

[151]"(1) This Agreement shall not prevent any of its Members from being party to or entering into an agreement liberalizing trade in

BAB IV

POSISI *AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF INDONESIA FOR AN ECONOMIC PARTNERSHIP 2007*

A. STATUS HUKUM

A.1. Hukum Internasional

IJEPA sebagai salah satu perjanjian yang dibuat oleh Indonesia perlu diketahui status hukumnya di dalam hukum internasional. Untuk mengetahui status hukum tersebut dapat dilihat dari sisi hukum internasional, hukum perjanjian internasional, serta hukum perdagangan internasional. Pada dasarnya ketiga hukum tersebut tidak dapat dipisahkan secara tegas karena baik hukum perjanjian internasional maupun hukum perdagangan internasional merupakan bagian dari hukum internasional. Namun, dalam penelitian ini ketiga hal tersebut sengaja dipisahkan guna dapat menggambarkan lebih jelas status hukum dari IJEPA di dalam lingkup hukum internasional.

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services between among the parties to such an agreement, provided that such an agreement...”(Article V “Economic Integration” GATS)

Pengertian atau definisi dari hukum internasionl itu sangat beragam. Beberapa pengertian atau definisi tersebut diungkapkan oleh beberapa ahli di dalam hukum internasional, antara lain

- hukum internasional dapat didefinisikan sebagai keseluruhan hukum yang sebagian besar terdiri dari prinsip-prinsip dan kaedah-kaedah perilaku yang terhadapnya negara-negara merasa terikat untuk menaati secara umum dalam hubungan mereka satu sama lain[152];
- hukum internasional dalam dunia praktik diartikan sebagai suatu sistem hukum yang mengatur hak-hak dan kewajiban-kewajiban dari negara-negara[153];
- hukum internasional ialah kaedah dan asas hukum yang mengatur hubungan atau persoalan yang melintasi batas negara (hubungan internasional)[154];
- hukum internasional diartikan sebagai himpunan dari peraturan-peraturan dan ketentuan-ketentuan yang mengikat serta mengatur hubungan antara negara-negara

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[152] J.G. Starke, *Pengantar Hukum Internasional [Introduction to International Law]*, diterjemahkan oleh Bambang Iriana Djajaatmadja (Jakarta: Sinar Grafika, 2003), hlm. 3.

[153] *Ibid.*, hlm. 4.

[154] Mochtar Kusumaatmadja, *op. cit.,* hlm. 1-2.

dan subjek-subjek hukum lainnya dalam kehidupan masyarakat internasional[155];

- hukum internasional mengacu pada aturan-aturan dan norma-norma yang mengatur sikap dari negara-negara, organisasi internasional, dan individu-individu lainnya dalam hubungan di antara ketiga tersebut[156];

Dari beberapa pengertian dan definisi tersebut, maka dapat disimpulkan bahwa hukum internasional merupakan suatu himpunan hukum yang di dalamnya terdapat prinsip-prinsip, kaedah dan norma, serta kebiasaan yang berlaku di dalam masyarakat internasional yang berlaku untuk mengatur hubungan hukum di antara subjek-subjek hukum internasional dalam mengemban hak dan kewajibannya.

Di dalam sumber hukum dapat ditemukan hal-hal yang menjelaskan mengenai suatu hukum dan dari mana hukum itu berasal. Di dalam hukum internasional terdapat beberapa sumber hukum seperti yang diatur dalam Pasal 38 Statuta Mahkamah Internasional.[157] Berdasarkan pasal tersebut yang dapat dijadikan sumber hukum dalam hukum internasional

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[155]Boer Mauna, *op. cit.,* hlm. 1.

[156]Rebecca M M Wallace, *International Law*, Second Edition (London: Sweet&Maxwell, 1992), hlm. 1.

[157]*Ibid.,* hlm. 7.

adalah perjanjian internasional, kebiasaan internasional, prinsip hukum umum, dan sumber hukum tambahan (keputusan pengadilan dan pendapat para sarjana terkemuka di dunia)[158].

Di dalam hukum internasional, perjanjian internasional didefinisikan sebagai suatu perjanjian yang diadakan antara anggota masyarakat bangsa-bangsa dengan tujuan melahirkan suatu akibat hukum tertentu[159]. Selain itu, perjanjian internasional juga dapat diartikan sebagai suatu perjanjian yang dibuat di antara negara-negara yang berisikan ketentuan hukum tertentu yang akan mengatur hubungan hukum yang terjalin di antara negara-negara tersebut yang dibuat dengan itikad baik di antara para pihak dan yang kemudian akan mengikat para pihak pembuatnya (*pacta sunt servanda*: Pasal 26, Konvensi Wina 1969)[160].

Perjanjian internasional dapat dianggap sebagai sumber hukum terpenting dalam hukum internasional. Perjanjian internasional merupakan salah satu alat untuk mencapai dan meningkatkan ketertiban umum dunia yang didasarkan pada kerja sama internasional yang tercakup di dalam perjanjian

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[158]Mochtar Kusumaatmadja, *op. cit.*, hlm. 114-115.

[159]*Ibid.*, hlm. 117.

[160]Steven Wheatley, *International Law* (London: Blackstone, 1996), hlm. 41.

internasional tersebut.[161] Perjanjian internasional pun mewakili metode yang paling nyata dan dapat dipercaya untuk menjelaskan apa yang telah disepakati di antara pihak-pihak negara pembentuk perjanjian tersebut[162].

Oleh karena perjanjian internasional dianggap sebagai sumber hukum terpenting di dalam hukum internasional, maka tidak salah apabila dikatakan bahwa perjanjian internasional merupakan sumber utama hukum internasional. Perjanjian internasional mempunyai berbagai macam bentuk. Oleh karena pada umumnya suatu perjanjian dibentuk oleh beberapa pihak, maka begitu pula yang terjadi pada pembentukan perjanjian internasional.

Perjanjian internasional dapat dibentuk oleh dua pihak atau lebih dari dua pihak. Oleh karena itu, suatu perjanjian internasional mungkin berbentuk bilateral dan multilateral. Perjanjian internasional disebut sebagai suatu perjanjian internasional yang berbentuk bilateral apabila perjanjian tersebut dibentuk oleh dua pihak negara. Kemudian, suatu perjanjian internasional disebut sebagai suatu perjanjian internasional yang bertentuk multilateral

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[161]P. Chandra, *International Law* (New Delhi: Vikas Publishing House, 1985), hlm. 7.

[162]Rebecca Wallace, *op. cit.*, hlm. 19.

ketika perjanjian internasional tersebut dibentuk oleh lebih dari dua pihak negara. Disamping itu, suatu perjanjian internasional juga dapat dikatakan sebagai suatu perjanjian regional ketika perjanjian tersebut dibentuk oleh pihak-pihak negara yang berada di dalam suatu kawasan atau regional khusus.[163]

Suatu perjanjian internasional dalam hukum internasional dapat dibedakan ke dalam dua grup, yakni pejanjian internasional yang dimasukkan ke dalam grup *law making treaties* (*traité-lois*[164]) dan grup *treaty contracts*[165] (*traité-contracts*[166]). Perbedaan tersebut dilihat dari pihak yang tidak turut serta pada perundingan yang melahirkan perjanjian tersebut atau pihak ketiga. Pihak ketiga umumnya tidak dapat turut serta dalam *treaty contract* yang diadakan antara para pihak yang mengadakan perjanjian itu semula. Perjanjian yang digolongkan ke dalam grup ini hanya mengatur persoalan yang semata-mata mengenai hal-hal yang berkaitan dengan para pihak pembuatnya. Sedangkan, perjanjian yang termasuk dalam grup *law-making treaty*

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[163]Boer Mauna, *op. cit.,* hlm. 9.

[164]Rebecca Wallace, *op. cit.,* hlm. 19.

[165]P Chandra, *op. cit.,* hlm. 7.

[166]Rebecca Wallace, *op. cit.*

merupakan perjanjian yang selalu terbuka bagi pihak lain yang tadinya tidak turut dalam pembentukan perjanjian tersebut karena apa yang diatur di dalam perjanjian internasional tersebut merupakan masalah yang menyangkut masyarakat internasional.[167] Dari pembendaan tersebut, maka dapat disimpulkan bahwa hanya perjanjian internasional yang digolongkan dalam *law making treaties* merupakan sumber hukum dalam hukum internasional[168] yang mengikat seluruh masyarakat internasional.

Hukum perjanjian internasional merupakan hukum mengenai perjanjian internasional yang didasarkan pada Konvensi Wina 1969 (*Vienna Convention on the Law of Treaties 1969*). Di dalam konvensi ini dapat ditemukan jawaban dari pertanyaan apa itu perjanjian internasional? Bagaimana suatu perjanjian internasional itu dibentuk? Dan, bagaimana suatu perjanjian internasional dapat diinterpretasikan?[169] Sebelum terbentuknya konvensi tersebut, pembentukan perjanjian-perjanjian internasional diatur oleh hukum kebiasaan internasional. Konvensi Wina 1969 tersebut

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[167]Mochtar Kusumaatmadja, *op. cit.,* hlm. 123.

[168]P Chandra, *op. cit.,* hlm. 7.

[169]Rebcca Wallace, *op. cit.,* hlm. 219.

dibentuk sebagai suatu kodifikasi dari hukum kebiasaan pembentukan perjanjian internasional.[170]

Pentingnya suatu perjanjian internasional sangat disadari oleh masyarakat internasional. Hal ini terlihat dari begitu meningkatnya pembentukan dan penggunaan dari perjanjian internasional guna mengatur hubungan di antara subjek-subjek hukum internasional dan guna memperluas hal-hal yang diatur di dalam hukum internasional.[171]

Suatu perjanjian dapat menjadi suatu perjanjian internasional harus memiliki karakter internasional, seperti *inter-state, inter-government, inter-ministerial,* atau *inter-administrative*. Suatu perjanjian internasional dapat dibentuk di antara negara dan subjek hukum internasional lainnya. Suatu perjanjian internasional yang dibentuk berdasarkan hukum internasional menandakan bahwa adanya unsur keinginan untuk menciptakan kewajiban di dalam hukum internasional.[172]

Dengan membentuk perjanjian internasional, tiap-tiap negara memiliki maksud dan tujuan, seperti menggariskan

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[170]Boer Mauna, *op. cit.,* hlm. 83.

[171]Rebecca Wallace, *op. cit.*

[172]Anthony Aust, *Modern Treaty Law and Practice* (London: Cambridge University Press, 199), hlm. 14.

dasar kerja sama mereka, mengatur berbagai kegiatan, menyelesaikan berbagai masalah demi kelangsungan mereka. Dalam dunia yang ditandai saling ketergantungan dewasa ini, tidak ada satu negara yang tidak mempunyai perjanjian dengan negara lain dan tidak ada satu negara yang tidak diatur oleh perjanjian dalam menjalankan peran sertanya di dunia internasional.[173]

Perjanjian internasional pada hakekatnya merupakan instrumen-instrumen yuridis, yang menampung kehendak dan persetujuan negara-negara atau subjek hukum internasional lainnya untuk mencapai suatu tujuan yang disepakati bersama. Persetujuan bersama, yang disepakati tadi dan dirumuskan di dalam perjanjian internasional, merupakan dasar hukum internasional untuk mengatur kegiatan negara-negara atau subjek hukum internasional lainnya di dunia. Pembentukan perjanjian internasional merupakan suatu perbuatan hukum, maka hal itu mengikat para pihak pembentuknya kepada perjanjian tersebut. Suatu perjanjian internasional memiliki ciri-ciri dibuat oleh subjek hukum internasional, pembuatannya diatur oleh hukum internasional, dan akibatnya mengikat subjek-subjek yang menjadi pihak dari perjanjian tersebut. Sebagai bagian dari subjek hukum internasioal,

[173]Boer Mauna, *op. cit.,* hlm. 82.

maka negara memiliki hak untuk membentuk perjanjian internasional.[174] Begitu pula bagi subjek-subjek hukum internasional lainnya juga memiliki hak untuk membentuk perjanjian internasional karena setiap subjek hukum merupakan pengemban hak dan kewajiban.

Pasal 2 Konvensi Wina 1969 menyebutkan bahwa

> "treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"[175]

Dari ketentuan tersebut, maka dapat disimpulkan bahwa pengertian mengenai perjanjian internasional itu dapat mencakup semua perjanjian internasional yang tertulis dan dibentuk oleh negara[176]. Sesuai dengan pengertian yang diberikan dalam Pasal 2 Konvesi Wina 1969, maka dapat diketahui juga dua unsur pokok yang terdapat di dalamnya, yakni adanya subjek hukum internasional dan hukum internasional. Adanya unsur subjek hukum internasional dalam hal ini ditandakan oleh adanya unsur negara di dalam

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[174] *Ibid.,* hlm. 82-83.

[175] Article 2, Vienna Convention on the Law of Treaties.

[176] T.O. Elias, *The Modern Law of Treaties* (New York: Oceana Publication, Inc., 1974), hlm. 13.

ketentuan tersebut. Negara merupakan subjek hukum internasional, *par excellence*, yang mempunyai kapasitas penuh untuk membuat perjanjian-perjanjian internasional, seperti yang ditentukan dalam Pasal 6 Konvensi Wina 1969[177]. Kemudian, adanya unsur hukum internasional ditandakan dengan diaturnya suatu perjanjian oleh hukum internasional. [178] Kemudian, suatu perjanjian internasional memiliki suatu prinsip fundamental yang diatur di dalam Pasal 26 Konvensi Wina 1969[179], yang dikenal dengan *pacta sunt servanda*[180].

Di dalam praktiknya telah lahir beberapa istilah-istilah atau nama-nama yang menandakan suatu perjanjian internasional, seperti

- *Treaty*

  Treaty dapat diartikan secara khusus dan secara umum. *Treaty* dalam arti khusus adalah *treaty* yang mencakup segala macam bentuk persetujuan internasional [181] .

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[177] "Every State possesses capacity to conclude treaties" (Article 6, Vienna Convention on the Law of Treaties 1969).

[178] Boer Mauna, *op. cit.,* hlm. 85-88.

[179] "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." (Article 26, Vienna Convention on the Law of Treaties 1969).

[180] I.M. Sinclair, *The Vienna Convention on the Law of Treaties* (Great Britain: Butler & Tanner Ltd. Frocne and London, 1973), hlm. 53.

[181] T.O. Elias, *op. cit.,* hlm. 14.

Sedangkan, *treaty* dalam arti khusus adalah *treaty* yang merupakan perjanjian yang paling penting dan sangat formal. Apabila didasarkan pada pengertian umumnya, maka *treaty* dalam bahasa Indonesia lebih dikenal dengan istilah perjanjian internasional. Dalam pengertian tersebut, perjanjian internasional mencakup seluruh perangkat hukum yang dibentuk oleh subjek hukum internasional dan memiliki kekuatan mengikat menurut hukum internasional. Sedangakan, *treaty* dalam arti khusus apabila dimasukan ke dalam terminologi bahasa Indonesia, maka *treaty* lebih dikenal dengan traktat.

- *Convention*

Convention juga memiliki pengertian dalam arti umum dan khusus. *Convention* dalam arti umum adalah perjanjian internasional secara umum yang dapat diartikan sama dengan *treaty*. Dalam arti khusus, yang dimaksud dengan *convention* adalah perjanjian-perjanjian multilateral yang bersifat *law-making*, yakni yang merumuskan kaedah-kaedah hukum bagi masyarakat internasional.

- *Agreement*

Agreement diartikan dalam pengertian umum dan pengertian khusus. Dalam pengertian umum, seperti yang digunakan dalam Konvensi Wina 1969, istilah *agreement* atau

international agreement digunakan bagi perangkat-perangkat hukum internasional yang memiliki kedudukan lebih rendah dari *treaty* dan *convention* serta yang tidak memenuhi definisi *treaty*. Dalam pengertian khusus, *agreement* merupakan persetujuan yang umumnya mengatur materi yang memiliki cakupan materi yang lebih kecil dibandingkan dengan cakupan materi yang diatur di dalam traktat atau konvensi. Terdapat kecenderungan bahwa istilah *agreement* digunakan pada perjanjian yang mengatur kerja sama bilateral dan secara terbatas pada perjanjian multilateral. Disamping itu, istilah ini juga umum digunakan pada perjanjian internasional yang mengatur kerja sama di bidang ekonomi, kebudayaan, teknis, dan ilmu pengetahuan. Kemudian, di bidang keuangan istilah ini umum digunakan pada perjanjian yang terkait dengan perihal pencegahan pajak berganda, perlindungan investasi atau penanaman modal asing, dan bantuan keuangan termasuk pinjaman luar negeri.

- *Charter*

Charter umumnya digunakan sebagai perangkat internasional di dalam pembentukan suatu organisasi internasional.

- *Prototcol*

Protocol merupakan perjanjian internasional yang materinya lebih sempit dibandingkan dengan *treaty* atau *convention*, seperti *protocol of siganature*, *optional protocol*, *protocol based on a framework treaty*, protokol untuk mengubah perjanjian internasional, serta protokol yang merupakan pelengkap perjanjian internasional sebelumnya.

- *Declaration*

Declaration merupakan suatu perjanjian internasional yang berisikan ketentuan-ketentuan umum yang pihak-pihak pembentuknya bersepakat untuk melakukan kebijakan-kebijakan tertentu di waktu depan.

- *Final Act*

Final Act merupakan dokumen yang berisi ringkasan laporan sidang dari suatu konferensi dan yang juga menyebutkan perjanjian-perjanjian atau konvensi-konvensi yang dihasilkan oleh konferensi, yang terkadang disertai anjuran-anjuran atau harapan yang dianggap perlu.

- *Agreed Minutes and Summary Records*

Agreed Minutes and Summary Records merupakan catatan mengenai hasil perundingan yang telah disepakati oleh pihak-pihak dalam perjanjian, yang selanjutnya dapat

digunakan sebagai rujukan dalam perundingan-perundingan selanjutnya.

- *Memorandum of Understanding*

Memorandum of Understanding merupakan perjanjian yang mengatur pelaksanaan teknis operasional suatu perjanjian pokok. Sepanjang materi yang diatur bersifat teknis, maka perjanjian internasional ini dapat berdiri sendiri sehingga tidak memerlukan perjanjian pokok.

- *Arrangement*

Arrangement adalah suatu perjanjian internasioal yang mengatur pelakasanaan teknis operasional suatu perjanjian pokok, yang umumnya digunakan untuk menjadi landasan hukum bagi pelaksanaan proyek-proyek jangka pendek.

- *Exchange of Notes*

Exchange of Notes merupakan perjanjian internasional bersifat umum yang memiliki banyak persamaan dengan perjanjian hukum perdata internasional. Perjanjian ini dilakukan dengan pertukaran dua dokumen yang ditandatangani oleh kedua pihak pada masing-masing dokumen. Dalam praktiknya, negara penerima mengulangi secara utuh isi surat yang diberikan oleh negara pengusul perjanjian dan kemudian menerima usulan

perjanjian tersebut. Umumnya nota yang ditukar berisi kesepakatan-kesepakatan yang telah dicapai dengan tanggal yang sama dan mulai berlaku pada tanggal tersebut, kecuali para pihak menentukan lain.

- *Process-Verbal*

Process-Verbal merupakan catatan pertukaran atau penyimpanan piagam pengesahan atau catatan kesepakatan hal-hal yang bersifat teknis administratif atau perubahan-perubahan kecil dalam suatu persetujuan internasional.

- *Modus Vivendi*

Modus Vivendi merupakan suatu perjanjian yang bersifat sementara dengan maksud akan diganti dengan pengaturan yang tetap dan terperinci. Yang umumnya dibuat secara tidak resmi dan tidak memerlukan pengesahan.[182]

Hukum perdagangan internasional memiliki banyak definisi, seperti

- hukum perdagangan internasional didefinisikan sebagai sekumpulan aturan yang mengatur hubungan-hubungan komersial yang sifatnya perdata yang dilakukan oleh bangsa-bangsa yang berbeda[183],

[182]Boer Mauna, *op. cit.,* hlm. 89-96.

- hukum perdagangan internasional merupakan pertukaran komersial transnasional barang dan jasa di antara individu-individu subjek bisnis, badan-badan perdagangan, dan negara-negara dalam batas yang sangat luas[184],
- hukum perdagangan internasional dapat didefinisikan sebagai peraturan yang mengatur sikap tindak pihak-pihak yang turut serta di dalam pertukaran barang, jasa, dan teknologi di antara bangsa-bangsa[185].
- hukum perdagangan internasional merupakan cabang khusus dari hukum internasional yang berisi aturan-aturan hukum internasional yang berlaku terhadap perdagangan barang, jasa, dan perlindungan hak atas kekayaan intelektual[186].

Namun, secara singkat hukum perdagangan internasional dapat diartikan sebagai hukum yang mengatur mengenai perdagangan internasional.

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[183] United Nations, *Progressive Development of the Law of International Trade: Report of the Secretary General of the United Nations 1966* (New York: United Nations, 1966), hlm. 1.

[184]Rafiqul Islam, *op. cit.,* hlm. 1.

[185]M. Sanson, *Essential International Trade Law* (Sydney: Cavendish, 2002), hlm. 3.

[186]Adolf, *op. cit.,* hlm. 10-11.

Salah satu sumber hukum di dalam hukum perdagangan internasional adalah perjanjian internasional. Suatu perjanjian internasional dapat digolongkan ke dalam perjanjian perdagangan internasional apabila perjanjian tersebut mengatur dan menetapkan beberapa ketentuan serta prinsip-prinsip yang kemudian dapat diberlakukan dalam perdagangan internasional.

Di dalam hukum perdagangan internasional, perjanjian internasional juga tetap merupakan sumber hukum yang terpenting. Suatu perjanjian perdagangan internasional mengikat berdasarkan kesepakatan para pihak yang membuatnya serta telah menandatanganinya juga meratifikasinya. Secara umum di dalam hukum perdagangan internasional perjanjian internasional dibagi ke dalam tiga bentuk, yakni perjanjian multilateral, perjanjian bilateral, perjanjian regional. Perjanjian multilateral adalah kesepakatan yang tertulis yang mengikat lebih dari dua pihak negara dan tunduk pada aturan hukum internasional. Perjanjian regional adalah kesepakatan-kesepakatan di bidang perdagangan internasional yang dibuat oleh negara-negara yang berada di dalam suatu regional tertentu. Kemudian, perjanjian bilateral merupakan

suatu perjanjian yang hanya mengikat dua subjek hukum internasional (negara atau organisasi internasional).[187]

Di dalam perjanjian internasional, yang menjadi sumber hukum dalam perdagangan internasional, diatur beberapa ketentuan menyangkut kegiatan perdagangan internasional di dunia. Beberapa perjanjian internasional yang mengatur perdagangan internasional tersebut telah membentuk suatu pengaturan perdagangan internasional yang sifatnya umum bagi para pihak dalam perjanjian. Disamping itu, ada juga beberapa perjanjian internasional yang memberikan kekuasaan tertentu di bidang perdagangan internasional kepada suatu organisasi internasional untuk mengurus kegiatan perdagangan. Di sisi lain terkadang perjanjian perdagangan internasional juga berupaya mencari pengaturan yang seragam dengan tujuan agar transaksi perdagangan dapat dipercepat.[188]

Pada umumnya dalam suatu perjanjian internasional mengenai perdagangan internasional dikandung beberapa pokok hal, seperti liberalisasi perdagangan, integrasi ekonomi, harmonisasi hukum, unifikasi hukum, serta model hukum dan *legal guide*. Perjanjian yang memuat liberalisasi

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[187]*Ibid.,* hlm. 76-78.

[188]*Ibid.*

perdagangan dibentuk dengan tujuan untuk meliberalisasi perdagangan. Dengan adanya perjanjian ini, berbagai rintangan pengaturan atau kebijakan dalam suatu negara yang dianggap menghambat atau mengganggu kelancaran dari kegiatan perdagangan internasional diupayakan untuk ditanggalkan. Perjanjian yang berisi tentang integrasi ekonomi merupakan perjanjian yang mengatur tentang usaha untuk mencapai kesatuan kepabeaan (*customs union*), suatu kawasan perdagangan bebas (*free trade zone*), atau bahkan suatu kesatuan ekonomi (*economic union*). Dengan adanya perjanjian ini, maka suatu organisasi internasional diberi kewenangan untuk mewujudkan tujuan integrasi ekonomi ini. Perjanjian internasional yang mengatur mengenai harmonisasi hukum adalah perjanjian internasional yang mengupayakan penyeragaman atau menemukan suatu titik temu dari prinsip-prinsip yang bersifat fundamental dari seluruh sistem hukum yang ada di dunia. Perjanjian internasional yang mengatur mengenai unifikasi hukum adalah perjanjian yang berisi penyeragaman yang mencakup penghapusan dan penggatian suatu sistem hukum yang ada dengan suatu sistem hukum yang baru. Perjanjian internasional yang mengatur mengenai model hukum dan *legal guide* merupakan perjanjian internasional yang

membuat suatu model hukum atau *legal guide* yang sifatnya tidak mengikat atas suatu bidang hukum tertentu.[189]

Hukum perdagangan internasional tidak dapat dilepaskan dari ketentuan yang ada di dalam WTO sebagai organisasi internasional di bidang perdagangan multilateral. Hal ini dikarenakan hukum perdagangan internasional sangat dipengaruhi oleh segala ketentuan yang dibentuk oleh WTO. WTO yang menggantikan dan melanjutkan pekerjaan dari GATT[190], sebagai suatu lembaga, tetap memberlakukan GATT, sebagai suatu perjanjian internasional, dalam menjalankan fungsinya.

Di dalam GATT terdapat pengaturan mengenai FTA. Pengertian FTA terdapat di dalam Pasal XXIV:6(8) GATT[191] yang menyatakan bahwa FTA merupakan suatu kelompok dari dua atau lebih wilayah pabean yang di dalamnya berlaku tarif bea masuk yang restriktif (kecuali, yang diperkenankan di dalam Pasal XI, XII, XIII, XV, dan XX) dihapuskan atas

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[189] *Ibid*., hlm. 80-81.

[190] "Efek Ketentuan AFTA bagi Perekonomian Nasional Indonesia Dikaitkan dengan Sistem GATT/WTO," <http:// 209. 85. 175. 104/ search?q=cache:W3Uhfr7dE0MJ:202.159.46.228/artikel/AFTA%2520BAGIPEREKONOMIAN%2520INDONESIA.pdf+Efek+ketentuan+AFTA+bagi+perekonomian+nasional+Indonesia+dikaitkan+dengan+sistem+GATT/&hl=id&ct=clnk&cd=2&gl=id>, 24 Juni 2008.

[191] "In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement." (Article XXIV:6(8) GATT 1994); World Trade Organization, "*The Legal Texts, The Results of the Uruguay Round of Multilateral Trade Negotiatios* (UK: Cambridge University Press, 2002), hlm. 28.

semua atau dari wilayah tersebut. Kehadiran FTA ini merupakan pengecualian dari prinsip-prinsip umum GATT, khususnya prinsip non-didkriminasi yang tertuang dalam prinsip MFN karena FTA memberikan preferensi khusus kepada negara-negara anggota yang ada di wilayah tersebut secara timbal balik. Namun, keberadaan FTA tetap diperbolehkan karena FTA merupakan suatu mekanisme menuju liberalisasi perdagangan yang merupakan tujuan GATT. Di sisi lain, FTA merupakan suatu bentuk awal dari integrasi perdagangan regional yang selanjutnya dapat berkembang menjadi bentuk kesatuan pabean (*custom union*), pasar bersama (*common market*), dan akhirnya dapat menjadi kesatuan ekonomi (*economic union*).[192]

Dari paparan yang menjelaskan mengenai perjanjian inernasional dari sudut pandang hukum internasional, maka status hukum dari IJEPA dapat ditentukan. Status hukum IJEPA dalam hukum internasional adalah suatu perjanjian bilateral dalam lingkup regional tertentu dan digolongkan ke dalam grup *treaty contract*. Oleh karena itu, IJEPA

[192] "Efek Ketentuan AFTA bagi Perekonomian Nasional Indonesia Dikaitkan dengan Sistem GATT/WTO," <http:// 209. 85. 175. 104/ search?q=cache:W3Uhfr7dE0MJ:202.159.46.228/artikel/AFTA%2520BAGIPEREKONOMIAN%2520INDONESIA.pdf+Efek+ketentuan+AFTA+bagi+perekonomian+nasional+Indonesia+dikaitkan+dengan+sistem+GATT/&hl=id&ct=clnk&cd=2&gl=id>, 24 Juni 2008.

memiliki status hukum sebagai suatu perjanjian internasional yang dibentuk di antara dua pihak negara, yakni Indonesia dan Jepang, yang hanya mengikat kedua negara tersebut di dalam kawasan atau regional perdagangan bebas kedua negara.

Dengan melihat nama dari perjanjian kemitraan bilateral Indonesia dan Jepang, yakni *Agreement between Japan and the Republic of Indonesia for an Economic Partnership*, maka IJEPA di dalam hukum perjanjian internasional memiliki status hukum sebagai suatu *treaty*, sesuai dengan ketentuan di dalam Pasal 2 (a) Konvensi Wina 1969, yang diberi nama atau istilah *agreement*, yang dibentuk oleh Indonesia dan Jepang sebagai para pihaknya sehingga dapat digolongkan sebagai suatu perjanjian bilateral, dan yang hanya mengikat bagi Indonesia dan Jepang.

Dari sudut hukum perdagangan internasional, *Agreement between Japan and the Republic of Indonesia for an Economic Partnership* dapat dikatakan sebagai suatu perjanjian bilateral dan perjanjian FTA. Disebutkan sebagai suatu perjanjian bilateral karena perjanjian ini dibentuk oleh dua negara, yakni Indonesia dan Jepang. Di dalam perjanjian internasional tersebut disebutkan sebagai suatu perjanjian

FTA karena ketentuan-ketentuan yang ada dalam perjanjian tersebut salah satunya bertujuan untuk mengurangi tarif perdagangan di antara kedua negara.

A.2. Hukum Nasional Indonesia

Suatu perjanjian internasional yang ditandatangani dan diratifikasi oleh suatu negara, maka perjanjian itu akan mengikat negara tersebut dan akan juga berlaku di dalam hukum nasionalnya. Dengan berlakunya perjanjian tersebut, maka dapat diketahui status hukum dari perjanjian internasional tersebut di dalam hukum nasional negara tersebut. Hal ini juga berlaku terhadap *Agreement between Japan and the Republic of Indonesia for an Economic Partnership*.

Untuk melihat status hukum suatu perjanjian internasional di dalam hukum nasional suatu negara perlu dilihat dari sudut hukum nasional itu sendiri, yakni bagaimana hukum nasional itu melihat suatu perjanjian internasional. Oleh karena itu, status hukum dari *Agreement between Japan and the Republic of Indonesia for an Economic Partnership* di dalam hukum nasional Indonesia dapat diketahui dengan melihat bagaimana hukum nasional Indonesia mengatur perjanjian internasional. Dalam penelitian ini

untuk mengetahui bagaimana hukum nasional Indonesia mengatur mengenai perjanjian internasional akan dilihat dari sudut pandang hukum tata negara, ilmu perundang-undangan, dan beberapa peraturan perundang-undangan terkait.

Hukum tata negara Indonesia memiliki sumber hukum baik dalam bentuk materiil[193] dan formil[194]. Salah satu sumber hukum di dalam hukum tata negara adalah traktat atau perjanjian. Traktat atau perjanjian yang termasuk dalam sumber hukum tata negara adalah traktat atau perjanjian yang menentukan segi hukum ketatanegaraan yang hidup bagi negara yang masing-masing terikat di dalamnya, sekalipun termasuk dalam bidang hukum internasional. Traktat atau perjanjian tersebut diadakan oleh dua negara atau lebih. Apabila suatu traktat diadakan oleh dua negara, maka disebut sebagai perjanjian bilateral. Sedangkan, perjanjian atau traktat yang diadakan oleh banyak negara, maka

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[193] Sumber hukum dalam arti materiil merupakan faktor-faktor yang yang turut menentukan isi dalam suatu hukum, seperti pedoman tentang keadilan yang harus ditaati, dan keadaan aktual di dalam lingkungan masyarakat, serta hal-hal yang nyata yang hidup di dalam masyarakat itu sendiri.

[194] Sumber hukum formil adalah sumber hukum yang tertulis, seperti undang-undang, traktat atau perjanjian internasional, serta putusan hakim.

perjanjian atau traktat tersebut disebut sebagai perjanjian multilateral.[195]

Dalam pembuatan suatu traktat dan perjanjian hingga traktat dan perjanjian tersebut mengikat kedua negara atau lebih dilakukan melalui beberapa tahap, yaitu perundingan mengenai hal-hal yang menyangkut kepentingan masing-masing negara (persiapan); persetujuan sementara terhadap substansi pokok hasil dari perundingan sebelumnya yang telah disepakati para pihak; pengesahan dan penandatanganan terhadap persetujuan sementara tersebut oleh Kepala Negara; dan pengumuman yang dilakukan melalui suatu upacara dengan saling menukarkan piagam perjanjian.[196]

Pada tahap pertama, Presiden sebagai Kepala Negara memegang kewenangan sepenuhnya. Oleh karena itu, dalam hubungan luar negeri Presiden dapat menentukan apa saja dan kapan saja perlu diadakannya perjanjian atau traktat dengan negara lain. Dewan Perwakilan Rakyat (DPR) tidak perlu ikut menentukan secara langsung. Walaupun demikian, DPR perlu mengetahui apakah suatu perjanjian atau traktat itu menguntungkan rakyat atau merugikan. Hal ini dikarenakan

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[195] Prof. Dr. Jimly Asshiddiqie, SH, *Pengantar Ilmu Hukum Tata Negara Jilid I* (Jakarta: Konstitusi Press, 2006), hlm. 230.

[196] *Ibid.*

perjanjian atau traktat dapat memiliki akibat langsung ataupun tidak langsung terhadap kehidupan rakyat ketika perjanjian atau traktat tersebut telah mengikat negara dan kemudian berlaku dalam hukum nasional.[197]

Di dalam ketentuan perundang-undangan di dalam hukum nasional Indonesia, mengenai pejanjian internasional atau traktat diatur di dalam Undang-undang Dasar 1945 (UUD 1945) setelah Amandemen Keempat dan Undang-undang No. 24 Tahun 2004 tentang Perjanjian Internasional (UU No. 24 Tahun 2004). Di dalam UUD 1945 setelah Amandemen Keempat ketentuan mengenai perjanjian internasional diatur dalam Pasal 11[198]. Kemudian, ketentuan mengenai pengesahan suatu perjanjian internasional di dalam UU No. 24 Tahun 2004 diatur dalam Pasal 9-12[199].

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[197] *Ibid.*, hlm. 231-232.

[198] "(1) Presiden dengan persetujuan Dewan Perwakilan Rakyat menyatakan perang, membuat perdamaian, dan perjanjian dengan negara lain. (2) Presiden dalam membuat perjanjian internasional lainnya yang menimbulkan akibat luas dan mendasar bagi kehidupan rakyat yang terkait dengan beban keuangan negara dan/atau mengharuskan perubahan atau pembentukan undang-undang harus dengan persetujuan Dewan Perwakilan Rakyat. (3) Ketentuan lebih lanjut tentang perjanjian internasional diatur dengan undang-undang." (Pasal 11 UUD 1945 setelah Amandemen Keempat)

[199] Pasal 9 (1) Pengesahan perjanjian internasional oleh Pemerintah Republik Indonesia dilakukan sepanjang dipersyaratkan oleh perjanjian internasional tersebut; (2) Pengesahan perjanjian internasional sebagaimana dimaksud dalam ayat (1) dilakukan dengan undang-undang atau keputusan presiden. Pasal 10 Pengesahan perjanjian internasional dilakukan dengan undang-undang apabila berkenaan dengan: a. masalah politik, perdamaian, pertahanan, dan keamanan negara; b. perubahan

Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007 yang telah ditandatangani pada 20 Agustus 2007 diratifikasi dengan Peraturan Presiden No. 36 Tahun 2008 (Perpres No. 36 Tahun 2008) dan mulai berlaku pada 01 Juli 2008. Dengan melihat bahwa IJEPA diratifikasi dengan Perpres No. 36 Tahun 2008, maka dapat ditarik kesimpulan bahwa perjanjian tersebut tidak masuk dalam kategori perjanjian internasional yang diatur dalam Pasal 10 UU No. 24 Tahun 2004. Oleh karenanya, cukup diratifikasi dengan Peraturan Presiden.

Peraturan Presiden merupakan salah satu bentuk perundang-undangan di Indonesia yang dibentuk oleh Presiden. Suatu Peraturan Presiden dapat merupakan suatu peraturan delegasi atau atribusi. Hal tersebut dapat disimpulkan

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wilayah atau penetapan batas wilayah negara Republik Indonesia; c. kedaulatan atau hak berdaulat negara; d. hak asasi manusia dan lingkungan hidup; e. pembentukan kaedah hukum baru; f. pinjaman dan/atau hibah luar negeri. Pasal 11 (1) Pengesahan perjanjian internasional yang materinya tidak termasuk materi sebagaimana dimaksud Pasal 10, dilakukan dengan keputusan presiden; (2) Pemerintah Republik Indonesia menyampaikan salinan setiap keputusan presiden yang mengesahkan suatu perjanjian internasional kepada Dewan Perwakilan Rakyat untuk dievaluasi. Pasal 12 (1) Dalam mengesahkan suatu perjanjian internasional, lembaga pemrakarsa yang terdiri atas lembaga negara dan lembaga pemerintah, baik departemen maupun non-departemen, menyiapkan salinan naskah perjanjian, terjemahan, rancangan undang-undang, atau rancangan keputusan presiden tentang pengesahan perjanjian internasional dimaksud serta dokumen-dokumen lain yang diperlukan; (2) Lembaga pemrakarsa, yang terdiri atas lembaga negara dan lembaga pemerintahan, baik departemen maupun non-departemen, mengkoordinasikan pembahasan rancangan dan/atau materi permasalahan dimaksud dalam ayat (1) yang pelaksanaannya dilakukan bersamaan dengan pihak-pihak terkait; (3) Prosedur pengajuan pengesahan perjanjian internasional dilakukan melalui Menteri untuk disampaikan kepada Presiden. (UU No. 24 Tahun 2004)

dengan melihat ketentuan yang diatur dalam Pasal 11 dan penjelasannya[200] Undang-undang No. 10 Tahun 2004 tentang Pembentukan Peraturan Perundang-undangan (UU No. 10 Tahun 2004). Dengan melihat ketentuan dalam pasal tersebut beserta penjelasannya, maka Peraturan Presiden yang bersifat atribusi dari Pasal 4 (1) UUD 1945[201] adalah peraturan presiden yang mandiri, yakni atribusi dari UUD 1945. Disamping itu, terdapat juga Peraturan Presiden yang merupakan suatu pengaturan lebih lanjut dari undang-undang dan peraturan pemerintah. Dalam hal ini, peraturan presiden memiliki sifat delegasi[202].

Suatu peraturan presiden memiliki beberapa fungsi, seperti menyelenggarakan pengaturan secara umum dalam rangka penyelenggaraan kekuasaan pemerintah, menyelenggarakan pegaturan lebih lanjut ketentuan dalam

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[200] "Materi muatan Peraturan Presiden berisi materi yang diperintahkan oleh undang-undang atau materi untuk melaksanakan Peraturan Pemerintah. Dalam Penjelasannya: Sesuai dengan kedudukan Presiden menurut Undang-undang Dasar Republik Indonesia Tahun 1945, Peraturan Presiden adalah peraturan yang dibuat oleh Presiden dalam menyelenggarakan pemerintah negara sebagai atribusi dari Pasal 4 ayat (1) Undang-undang Dasar Tahun 1945. Peraturan Presiden dibentuk untuk menyelenggarakan pengaturan lebih lanjut perintah undang-undang atau peraturan pemerintah baik secara tegas maupun tidak tegas diperintahkan pembentukannya" (Pasal 11 dan penjelasannya UU No. 10 Tahun 2004).

[201] Presiden Republik Indonesia memegang kekuasaan pemerintah menurut Undang-undang Dasar (Pasal 4 ayat (1) UUD 1945).

[202] Maria Farida Indrati S., *Ilmu Perundang-undangan Jenis, Fungsi, dan Materi Muatan Dikembangkan dari Perkuliahan Prof. Dr. A. Hamid S. Attamimi, SH* (Jakarta: Penerbit Kanisius, 2007), hlm. 249-250.

peraturan pemerintah yang tergas-tegas menyebutnya, dan menyelenggarakan pengaturan lebih lanjut ketentuan lain dalam peraturan pemerintah, meskipun tidak tegas-tegas menyebutnya. Dalam fungsi pertamanya, suatu peraturan presiden digambarkan memiliki suatu kewenangan atribusi dari UUD 1945 kepada Presiden, yang di dalam kekuasaan pemerintahan yang dimilikinya berfungsi mengatur dan memutus yang dapat dilaksanakan dengan membentuk suatu peraturan perundang-undangan melalui pembentukan suatu peraturan presiden, baik yang bersifat mengatur maupun menetapkan. Peraturan presiden dalam melaksanakan fungsi pertamanya ini menandakan suatu peraturan presiden yang mandiri, yakni peraturan presiden yang merupakan bagian dari perundang-undangan yang ada (undang-undang, peraturan pemerintah pengganti undang-undang/PERPU, peraturan pemerintah, dan peraturan presiden yang merupakan pengaturan delegasian). Dengan fungsinya yang kedua, suatu peraturan presiden dibentuk dengan tujuan untuk dirumuskan terhadap pengaturan yang lebih konkret terhadap suatu masalah. Kemudian, dengan fungsinya yang ketiga, peraturan presiden digambarkan memiliki fungsi delegasian dari peraturan pemerintah dan sekaligus undang-undang yang dilaksanakannya. Fungsi ini diadasarkan pada teori

stufentheorie yang menjelaskan bahwa suatu peraturan yang di bawah itu selalu berlaku, bersumber, dan bersandar pada peraturan yang lebih tinggi di atasnya. Hal ini menandakan bahwa peraturan presiden yang demeikian merupakan peraturan yang bersifat delegasian/limpahan yang kewenangannya terletak atau diatur dalam undang-undang dan peraturan pemerintah sehingga peraturan presiden tersebut hanya mengatur lebih lanjut saja, tidak membentuk suatu kebijakan baru.[203]

Dengan melihat bagaimana hukum tata negara, ilmu perundang-undangan, serta peraturan perundang-undangan yang berlaku di dalam hukum nasional Indonesia, maka IJEPA dapat disimpulkan sebagai salah satu sumber hukum di dalam hukum nasional Indonesia. Sumber hukum ini berupa traktat atau perjanjian internasional yang telah diratifikasi dengan peraturan presiden. Dalam hal ini, peraturan presiden menetapkan keberlakukan dari IJEPA melalui proses ratifikasi tersebut.

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[203]*Ibid.,* hlm. 223-225.

B. KONSEKUENSI YURIDIS

B.1. Indonesia sebagai Negara

Dampak dari pembentukan IJEPA bagi Indonesia sebagai suatu negara untuk saat ini masih sangat sulit untuk diteliti mengingat IJEPA yang masih baru saja dibentuk, ditandatangani, serta diratifikasi baik oleh Indonesia maupun Jepang. Oleh karenanya di dalam penelitian ini akan dijelaskan bagaimana konsekuensi dari pembentukan IJEPA. Konsekuensi tersebut memberikan gambaran akibat dari pembentukan IJEPA atau setelah adanya IJEPA dengan persesuaian terhadap keadaaan sebelum IJEPA dibentuk.

Sebagai bagian dari masyarakat internasional dan negara yang berdaulat, Indonesia merupakan subjek hukum internasional. Sebagai suatu subjek hukum internasional, Indonesia mengemban hak dan kewajiban. Dalam mengemban hak dan kewajibannya di dalam masyarakat internasional, Indonesia memiliki pedoman yang dicantumkan di dalam Pembukaan UUD 1945, yakni memajukan kesejahteraan umum dan ikut serta dalam melaksanakan ketertiban dunia berdasarkan keadilan sosial.

Salah satu cara yang dilakukan oleh Indonesia untuk memajukan kesejahteraan umum dilakukan dengan turut aktif di dalam kegiatan perdagangan dunia. Hal ini tidak bisa

lepas dari fakta bahwa salah satu manfaat yang dapat diperoleh dengan aktif di dalam perdagangan dunia adalah mendapatkan keuntungan dari pendapatan yang diperoleh dari perdagangan itu sendiri, yang kemudian dapat digunakan untuk meningkatkan kemakmuran dan kesejahteraan rakyat. Disamping itu, ikut sertanya dalam melaksanakan ketertiban dunia berdasarkan keadilan sosial dapat dilihat dari peran aktif Indonesia dalam pembentukan berbagai perjanjian internasional dan menjadi anggota dari berbagai oraganisasi internasional, yang salah satunya di bidang perdagangan internasional.

Dengan latar belakang demikian, maka Indonesia aktif di dalam kegiatan perdagangan internasional dengan menjadi anggota di dalam WTO, sebagai organisasi internasional di bidang perdagangan. Tidak hanya di tingkat internasional saja Indonesia aktif berperan, tetapi juga di tingkat regional yang digambarkan dengan peran sertanya di dalam AFTA.

Dengan menjadi anggota baik WTO dan ASEAN, maka Indonesia terikat dengan semua perjanjian internasional yang mengikat setiap anggota di dalam kedua oraganisasi tersebut. Beberapa perjanjian di dalam kedua organisasi tersebut yang telah mengikat Indonesia adalah GATT, GATS,

dan *The Framework for Comprehensive Economic Partnership between Japan and the ASEAN*. Ketiga perjanjian tersebut menjadi dasar bagi Indonesia untuk ikut di dalam *FTA Agreement*, yang salah satunya adalah IJEPA.

Indonesia menyepakati perjanjian bilateral kemitraan ekonomi dengan Jepang (IJEPA). Kesepakatan yang dilakukan Indonesia terhadap IJEPA dilandasi beberapa alasan. Pembentukan IJEPA sangat diharapkan dapat dijadikan jalan keluar bagi keterpurukan investasi Jepang di Indonesia, ketertinggalan Indonesia di Asia di bidang perekonomian, banyaknya pengangguran di Indonesia, dan daya saing yang cukup besar yang saat ini ada di sekitar Indonesia. Disamping itu, IJEPA juga merupakan salah satu harapan, peluang, dan tantangan bagi Indonesia untuk bisa mengatasi ketertinggalannya dari negara lain dalam memanfaatkan momentum glogalisasi proses produksi dan persaingan pasar global[204].

Penandatanganan IJEPA oleh Indonesia membawa suatu konsekuensi yuridis bagi Indonesia sebagai suatu negara yang berdaulat. Konsekuensi yuridis tersebut memberi gambaran akan akibat yuridis bagi Indonesia setelah

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[204]Sri Hartati Samhadi, "Menggantungkan Harapan pada EPA," *Kompas*, (25 Agustus 2007): 33.

ditandatanganinya IJEPA dengan persesuaian sebelum ditandatanganinya IJEPA. Dengan penandatanganan IJEPA, Indonesia sebagai suatu negara yang berdaulat menyatakan diri terikat dengan setiap ketentuan hukum yang ada di dalam IJEPA. Oleh karena itu, Indonesia menyatakan kesediannya untuk menundukkan kedaulatannya di bawah perjanjian tersebut sehingga dalam membuat kebijakan yang terkait dengan kemitraan ekonomi dengan Jepang, maka Indonesia perlu memperhatikan dan menyesuaikannya dengan segala ketentuan yang diatur di dalam IJEPA itu sendiri. Hal ini sangat berbeda dengan kondisi sebelumnya ketika Indonesia belum menyepakati perjanjian tersebut dengan Jepang karena Indonesia belum terikat dengan perjanjian tersebut sehingga Indonesia dalam membuat kebijakan tidak perlu memperhatikan hal-hal yang ditentukan dalam IJEPA.

B.2. Hukum Nasional Indonesia

Demikian halnya, dampak dari pembentukan IJEPA bagi hukum nasional Indonesia untuk saat ini masih sangat sulit untuk diteliti mengingat IJEPA yang masih baru saja dibentuk, ditandatangani, serta diratifikasi baik oleh Indonesia maupun Jepang. Oleh karenanya di dalam penelitian ini akan dijelaskan bagaimana konsekuensi dari pembentukan

IJEPA. Konsekuensi tersebut memberikan gambaran akibat dari pembentukan IJEPA atau setelah adanya IJEPA dengan persesuaian terhadap keadaaan sebelum IJEPA dibentuk.

IJEPA merupakan perjanjian perdagangan bebas atau *FTA Agreement* yang dibentuk di antara Jepang, sebagai negara maju, dan Indonesia, sebagai negara berkembang[205]. Setelah penandatanganannya pada 20 Agustus 2007 dan diratifikasi dengan Perpres No. 36 Tahun 2008 serta berlaku sejak 01 Juli 2008, maka IJEPA yang telah mengikat Indonesia, sebagai negara (subjek hukum internasional), kemudian mengikat hukum nasional Indonesia dalam penerapannya di lingkup hukum nasional Indonesia.

Di dalam IJEPA dikandung beberapa kesepakatan yang mengatur mengenai perdagangan barang, pengaturan mengenai asal barang, prosedur kepabeaan, investasi, perdagangan jasa, pergerakan pribadi hukum kodrati, sumber daya energi dan mineral, hak kekayaan intelektual, pengadaan barang dan jasa pemerintah, persaingan usaha, perbaikan lingkungan bisnis dan peningkatan kepercayaan bisnis, serta kerja sama. Ketiga belas hal tersebut merupakan pokok kemitraan yang dilakukan oleh Indonesia dan Jepang. Dengan adanya ketiga belas ketentuan tersebut, maka Indonesia memiliki koridor

[205] *Ibid.*

kesepakatan hukum yang membatasi Indonesia dalam menentukan dan menerapkannya di dalam hukum nasional Indonesia ketika ketiga belas hal tersebut dilakukan oleh Jepang di dalam wilayah Indonesia.

Seperti halnya penandatangan IJEPA membawa konsekuensi yuridis bagi Indonesia, begitu halnya IJEPA juga memberi konsekuensi yuridis terhadap hukum nasional Indonesia. Sebelum ditandatanganinya IJEPA, maka hubungan kemitraan Indonesia dengan Jepang terkait kepada ketiga belas hal di atas hanya diatur oleh ketentuan perjanjian internasional, yang umumnya berbentuk *convention* dan *agreement* terkait, yang telah Indonesia dan Jepang tanda tangani serta ketentuan peraturan perundang-undangan Indonesia. Baik perjanjian internasional maupun peraturan perundang-undangan tersebut berisikan ketentuan-ketentuan yang terkait dengan ketiga belas hal tadi.

Namun setelah penandatangan IJEPA, hal tersebut tidak demikian lagi adanya sebab keberadaan IJEPA memberikan akibat kepada hukum nasional Indonesia terkait dengan ketiga belas hal tadi. Akibat yang ditimbulkan tersebut adalah terbentuknya suatu koridor hukum yang spesifik atau khusus yang mengatur ketiga belas hal itu di dalam hubungan hukum Indonesia dan Jepang dalam praktiknya.

BAB V

PENUTUP

A. KESIMPULAN

Berdasarkan perumusan pokok-pokok permasalahan di dalam Bab I dan uraian analisis pada Bab II sampai dengan Bab IV, maka dapat ditarik beberapa kesimpulan bahwa

1. *Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007* atau IJEPA atau JIEPA merupakan perjanjian kemitraan bilateral ekonomi yang dibentuk antara Indonesia dan Jepang. Perjanjian ini ditandatangani pada 20 Agustus 2007. Perjanjian ini merupakan perjanjian kemitraan ekonomi (EPA) yang pertama bagi Indonesia. IJEPA sebagai suatu perjanjian kemitraan ekonomi merupakan perluasan dari skema *FTA Agreement* antara Indonesia dan Jepang. Oleh karena itu, dapat dikatakan bahwa IJEPA sebagai perjanjian kemitraan bilateral ekonomi juga merupakan perjanjian perdagangan bebas di antara Indonesia dan Jepang. IJEPA dibentuk dengan berdasarkan pada tiga perjanjian internasional, yakni GATT, GATS, dan *the Framework for*

Comprehensive Economic Partnership between Japan and the ASEAN. GATT dan GATS merupakan perjanjian multilateral yang dibentuk antara negara-negara yang mengatur mengenai perdagangan barang dan jasa. Kedua perjanjian tersebut dibentuk di bawah WTO. Kemudian, *the Framework for Comprehensive Economic Partnership between Japan and the ASEAN* merupakan perjanjian yang dibentuk antara Jepang dan ASEAN dengan tujuan untuk mengatur barang dan jasa, memberi perlindungan terhadap investasi, serta mendukung kerja sama ekonomi di antara ASEAN dan Jepang. Perjanjian ini dibentuk juga untuk mencapai terbentuknya FTA di antara Jepang dan ASEAN serta mendukung pembentukan perjanjian-perjanjian FTA bilateral atau sub-regional lain di antara Jepang dengan negara-negara anggota ASEAN, termasuk Indonesia, demi terbentuknya *East Asian Economic Community*. GATT dan GATS menjadi dasar di dalam pembentukan IJEPA karena kedua perjanjian tersebut mengatur mengenai ketentuan diperbolehkannya pembentukan suatu wilayah perdagangan bebas (FTA) di dunia antara dua atau lebih negara. Sedangkan, *the Framework for Comprehensive Economic Partnership between Japan and the ASEAN* dijadikan dasar dalam

pembentukan IJEPA karena perjanjian tersebut mengatur kemitraan di antara Jepang dan ASEAN, yang salah satu anggotanya adalah Indonesia. IJEPA berisikan lima belas bagian dengan dua belas ketentuan tambahan. Di dalam lima belas bagian tersebut diatur tiga belas ketentuan pokok yang mengatur mengenai perdagangan bebas, ketentuan mengenai asal barang, ketentuan tentang kepabeaan, investasi, perdagangan jasa, pergerakan subjek hukum pribadi kodrati, sumber daya energi dan mineral, hak kekayaan intelektual, pengadaan barang dan jasa pemerintah, persaingan usaha, perbaikan lingkungan bisnis dan peningkatan kepercayaan bisnis, serta kerja sama. Di dalam perjanjian tersebut juga terdapat ketentuan yang mengatur mengenai penyelesaian sengketa. Kemudian, perjanjian ini juga dilengkapi dengan *Implementing Agreement between the Government of Japan and the Government of the Republic of Indonesia*, sebagai perjanjian implementasi yang sesuai dengan ketentuan yang diatur dalam Pasal 13 IJEPA. Perjanjian implementasi tersebut merupakan pelengkap dari IJEPA, yang disebut sebagai *basic agreement* atau perjanjian dasarnya. Tujuan dibentuknya perjanjian implementasi

tersebut adalah memberikan rincian dan prosedur bagi penerapan dan pelaksanaan IJEPA. IJEPA dibentuk dengan delapan tujuan, sesuai dengan yang disepakati pada Pasal 1 dalam perjanjian tersebut, yakni untuk memfasilitasi, mendukung, dan meliberalisasi perdagangan barang serta jasa; meningkatkan peluang-peluang investasi dan mendukung kegiatan investasi melalui pengetatan perlindungan bagi investasi dan kegiatan investasi; menjamin perlindungan terhadap hak kekayaan intelektual; meningkatkan transparansi terhadap *government procurement* dan mendukung kerja sama yang saling menguntungkan di dalam *government procurement* tersebut; mendukung kondisi persaingan usaha yang sehat; meningkatkan lingkungan bisnis yang lebih baik; membangun kerangka kerja untuk meningkatkan kerja sama yang lebih erat di antara kedua negara; serta menciptakan tata cara implementasi dan pelaksanaan perjanjian dalam penyelesaian sengketa.

2. IJEPA sebagai suatu perjanjian kemitraan bilateral di bidang ekonomi memiliki status hukum, baik di dalam hukum internasional maupun hukum nasional Indonesia. Status hukum IJEPA di dalam hukum internasional dapat

diketahui dari sudut pandang hukum internasional, hukum perjanjian internasional, dan hukum perdagangan internasional. Dari ketiga sudut pandang hukum tersebut, maka di dalam hukum internasional IJEPA memiliki status hukum sebagai suatu perjanjian bilateral yang dibentuk oleh Indonesia dan Jepang, yang hanya mengikat kedua belah pihak tersebut sehingga digolongkan ke dalam grup "*treaty contract*", yang diberi nama atau istilah *agreement*, dan yang juga digolongkan sebagai perjanjian regional di bidang FTA bagi kedua negara. Untuk mengetahui status hukum IJEPA di dalam hukum nasional Indonesia dapat diketahui dengan melihat bagaimana hukum nasional Indonesia mengatur mengenai perjanjian internasional. Untuk mengetahui bagaimana hukum nasional Indonesia mengatur mengenai perjanjian internasional perlu dilihat dari sudut pandang hukum tata negara, ilmu perundang-undangan, dan beberapa peraturan perundang-undangan terkait. Salah satu sumber hukum di dalam hukum tata negara adalah traktat atau perjanjian, baik yang berbentuk bilateral maupun yang multilateral. Di dalam ketentuan perundang-undangan dalam hukum nasional Indonesia dan ilmu perundang-undangan, mengenai

pejanjian internasional atau traktat diatur di dalam Undang-undang Dasar 1945 (UUD 1945) setelah Amandemen Keempat dan Undang-undang No. 24 Tahun 2004 tentang Perjanjian Internasional (UU No. 24 Tahun 2004). IJEPA yang telah ditandatangani pada 20 Agustus 2007 diratifikasi dengan Peraturan Presiden No. 36 Tahun 2008 (Perpres No. 36 Tahun 2008) dan mulai berlaku pada 01 Juli 2008. Di dalam hukum nasional Indonesia, IJEPA memiliki status hukum sebagai salah satu sumber hukum di dalam hukum nasional Indonesia sendiri. Sumber hukum ini berupa traktat atau perjanjian internasional yang diratifikasi dengan peraturan presiden untuk menetapkan keberlakuan IJEPA itu sendiri.

3. Keberlakuan IJEPA memberikan konsekuensi yuridis baik bagi Indonesia sebagai negara maupun bagi hukum naional Indonesia. Penandatanganan IJEPA oleh Indonesia membawa suatu konsekuensi yuridis bagi Indonesia sebagai suatu negara yang berdaulat. Konsekuensi yuridis tersebut memberi gambaran akan akibat yuridis bagi Indonesia setelah ditandatanganinya IJEPA dengan persesuaian sebelum

ditandatanganinya IJEPA. Dengan penandatanganan IJEPA, Indonesia sebagai suatu negara yang berdaulat menyatakan diri terikat dengan setiap ketentuan hukum yang ada di dalam IJEPA. Oleh karena itu, Indonesia menyatakan kesediannya untuk menundukkan dirinya di bawah perjanjian tersebut sehingga dalam membuat kebijakan yang terkait dengan kemitraan ekonomi dengan Jepang, maka Indonesia perlu memperhatikan dan menyesuaikannya dengan segala ketentuan yang diatur di dalam IJEPA itu sendiri. Hal ini sangat berbeda dengan kondisi sebelumnya ketika Indonesia belum menyepakati perjanjian tersebut dengan Jepang karena Indonesia belum terikat dengan perjanjian tersebut sehingga Indonesia dalam membuat kebijakan tidak perlu memperhatikan hal-hal yang ditentukan dalam IJEPA. IJEPA juga memberi konsekuensi yuridis terhadap hukum nasional Indonesia. Sebelum ditandatanganinya IJEPA, maka hubungan kemitraan Indonesia dengan Jepang diatur oleh ketentuan perjanjian internasional, yang umumnya berbentuk *convention* dan *agreement*, yang telah Indonesia dan Jepang tanda tangani serta ketentuan peraturan perundang-undangan Indonesia. Namun setelah IJEPA disepakati, yang di dalamnya dikandung beberapa

kesepakatan yang mengatur mengenai perdagangan barang, pengaturan mengenai asal barang, prosedur kepabeaan, investasi, perdagangan jasa, pergerakan pribadi hukum kodrati, sumber daya energi dan mineral, hak kekayaan intelektual, pengadaan barang dan jasa pemerintah, persaingan usaha, perbaikan lingkungan bisnis dan peningkatan kepercayaan bisnis, serta kerja sama, maka IJEPA memberikan koridor atau batasan bagi Indonesia dalam menentukan dan menerapkan ketiga belas hal tersebut ke dalam hukum nasional Indonesia ketika ketiga belas hal tadi dilakukan oleh Jepang di dalam wilayah Indonesia. Hal ini dikarenakan keberadaan IJEPA memberikan akibat kepada hukum nasional Indonesia untuk terikat dengan ketentuan hukum yang ada di dalamnya. Oleh karena itu, akibat yang ditimbulkan adalah terbentuknya suatu koridor hukum yang spesifik yang mengatur ketiga belas hal itu di dalam hubungan hukum Indonesia dan Jepang sehingga dapat dikatakan bahwa Indonesia memberikan suatu perlakuan hukum yang khusus kepada Jepang terkait dengan ketiga belas hal tersebut.

B. SARAN

Agreement between Japan and the Republic of Indonesia for an Economic Partnership 2007, yang disingkat IJEPA atau JIEPA, merupakan perjanjian FTA pertama bagi Indonesia. Keberadaan perjanjian ini menandakan satu langkah maju yang dilakukan Indonesia dalam menghadapi pasar serta perdagangan bebas dan era globalisasi yang ada saat ini di dalam lingkungan internasional.

Hal ini baik adanya. Dengan langkah yang lebih maju ini, maka Indonesia semakin menunjukkan keseriusan dalam menjalankan perannya untuk ikut serta di dalam perdagangan internasional. Sebagai perjanjian FTA pertama bagi Indonesia, maka IJEPA dapat dijadikan satu acuan yang baik bagi Indonesia pada saat Indonesia akan membentuk perjanjian yang serupa di waktu mendatang.

Banyak harapan muncul setelah pembentukan, penandatanganan, serta ratifikasi IJEPA. Harapan utama yang dimiliki Indonesia adalah IJEPA dapat memberi dampak yang positif bagi perbaikan kondisi perekonomian Indonesia. Harapan tersebut dapat tercapai tidak lepas dari penerapan dan pelaksanaan perjanjian itu sendiri. Oleh karena itu, sangat diharapkan Pemerintah Indonesia dapat dengan bijak menerapkan dan melaksanakan perjanjian tersebut.

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IMPLEMENTING AGREEMENT
BETWEEN
THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
PURSUANT TO ARTICLE 13 OF THE AGREEMENT
BETWEEN JAPAN AND THE REPUBLIC OF INDONESIA
FOR AN ECONOMIC PARTNERSHIP

Preamble

The Government of Japan and the Government of the Republic of Indonesia (hereinafter referred to as “Indonesia”),

In accordance with Article 13 of the Agreement between Japan and the Republic of Indonesia for an Economic Partnership, signed at Jakarta on August 20, 2007 (hereinafter referred to as “the Basic Agreement”),

HAVE AGREED as follows:

Chapter 1
General Provisions

Article 1
Definitions

For the purposes of this Agreement:

(a) the term “Countries” means Japan and Indonesia and the term “Country” means either Japan or Indonesia; and

(b) the term “Parties” means the Government of Japan and the Government of Indonesia and the term “Party” means either the Government of Japan or the Government of Indonesia.

Chapter 2
Customs Procedures

Article 2
Mutual Assistance in Customs Matters

1. The Parties shall assist each other through their customs authorities to ensure proper application of the customs laws of the Countries, and to prevent, investigate and repress any violation or attempted violation of the customs laws of the Countries.

2. The Parties shall cooperate through their customs authorities, when necessary and appropriate, in the area of research, development, and testing of new customs procedures and new enforcement aids and techniques, and training activities of customs officers.

Article 3
Information and Communications Technology

1. The customs authorities of the Parties shall make cooperative efforts to promote the use of information and communications technology in their customs procedures.

2. The customs authorities of the Parties shall exchange information, including best practices, on the use of information and communications technology for the purpose of improving customs procedures.

Article 4
Risk Management

1. In order to facilitate customs clearance of goods traded between the Countries, the customs authorities of the Parties shall continue to use risk management.

2. The customs authorities of the Parties shall endeavor to promote the use of risk management and the improvement of risk management techniques in the Countries, *inter alia*, through seminars and courses.

3. The customs authorities of the Parties shall exchange information, including best practices, on risk management techniques and other enforcement techniques.

Article 5
Enforcement against Illicit Trafficking

1. The customs authorities of the Parties shall cooperate and exchange information in their enforcement against the trafficking of illicit drugs and other prohibited goods at their customs checkpoints.

2. The Parties shall endeavor to promote regional cooperation under the Customs Co-operation Council in fighting the trafficking of illicit drugs and other prohibited goods.

Article 6
Intellectual Property Rights

The customs authorities of the Parties shall cooperate and exchange information in their enforcement against the importation and exportation of goods suspected of infringing intellectual property rights.

Article 7
Exchange of Information

1. Each Party shall maintain the confidentiality of any information communicated to its customs authority in confidence by the customs authority of the other Party pursuant to this Chapter, unless the latter customs authority consents to the disclosure of such information.

2. The customs authority of each Party may limit the information it communicates to the customs authority of the other Party when the latter customs authority is unable to give the assurance requested by the former customs authority with respect to the maintenance of confidentiality or the limitations of purposes for which the information will be used.

3. If the customs authority of a Party that requests information would be unable to comply with a similar request in case such a request were made by the customs authority of the other Party, it shall draw attention to that fact in its request. Execution of such a request shall be at the discretion of the customs authority of the other Party.

4. Information provided from the customs authority of a Party to the customs authority of the other Party pursuant to this Chapter shall be used only for the discharge of functions of the latter customs authority under its Country’s customs laws.

5. Information obtained by the customs authority of a Party pursuant to this Chapter shall not be used by the Party in criminal proceedings carried out by a court or a judge.

6. In the event that information communicated by the customs authority of a Party to the customs authority of the other Party pursuant to this Chapter is needed for presentation to a court or a judge in criminal proceedings, that other Party shall submit a request for such information to the former Party through the diplomatic channel or other channels established in accordance with the laws and regulations of the Country of the former Party. The former Party will make its best efforts to respond promptly and favourably to meet any reasonable deadlines indicated by the other Party.

7. Notwithstanding any other provision of this Chapter, the customs authority of a Party shall not be required to communicate information to the customs authority of the other Party if such communication is prohibited by the laws and regulations of the Country of the former Party or if the former Party considers such communication incompatible with its important interests.

Article 8
Sub-Committee on Customs Procedures

Pursuant to Article 56 of the Basic Agreement, the Sub-Committee on Customs Procedures (hereinafter referred to in this Article as “the Sub-Committee”) shall comprise:

(a) an official from the Ministry of Finance of Japan and an official from the Directorate General of Customs and Excise of Indonesia, as co-chairs;

(b) for Japan, officials from the Ministry of Finance and the Ministry of Foreign Affairs, and other government officials with necessary expertise relevant to the issues to be discussed who may be included on an ad hoc basis; and

(c) for Indonesia, officials from the Directorate General of Customs and Excise, and other government officials with necessary expertise relevant to the issues to be discussed who may be included on an ad hoc basis.

Chapter 3
Energy and Mineral Resources

Article 9
Forms of Cooperation

Pursuant to subparagraph 3(b) of Article 104 of the Basic Agreement, the forms of cooperation may include:

(a) encouraging exchange of views and information on laws and regulations;

(b) encouraging and facilitating visits and exchanges of experts;

(c) encouraging joint studies, workshops and training; and

(d) promoting implementation of joint projects and programs.

Chapter 4
Intellectual Property

Article 10
Areas and Forms of Cooperation

Pursuant to paragraph 2 of Article 122 of the Basic Agreement:

(a) the areas of cooperation may include:

(i) intellectual property brokerage or licensing, intellectual property management, registration and exploitation, and patent mapping;

(ii) intellectual property protection in the digital environment;

(iii) intellectual property education and public awareness programs;

(iv) further modernization of administration of intellectual property protection system; and

(v) further improvement of enforcement of intellectual property rights; and

(b) the forms of cooperation may include:

(i) exchanging information and sharing experiences and skills;

(ii) undertaking training and exchange of experts;

(iii) holding consultations on activities relating to enforcement of intellectual property rights; and

(iv) other forms to be mutually agreed upon by the Parties.

Chapter 5
Competition

Article 11
Purpose and Definitions

1. The purpose of this Chapter is to provide for the details and procedures concerning the implementation of the cooperation set forth in Article 127 of the Basic Agreement.

2. For the purposes of this Chapter:

(a) the term “competition authority” means:

(i) for Japan, the Fair Trade Commission; and

(ii) for Indonesia, the Commission for the Supervision of Business Competition;

(b) the term “competition law” means:

(i) for Japan, the Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (Law No. 54, 1947) (hereinafter referred to in this Chapter as “the Antimonopoly Law”) and its implementing regulations as well as any amendments thereto; and

(ii) for Indonesia, the Law No. 5 of Year 1999 Concerning Prohibition of Monopolistic Practices and Unfair Business Competition (hereinafter referred to in this Chapter as “the Law No. 5”) and its implementing regulations as well as any amendments thereto; and

(c) the term “enforcement activities” means any investigation or proceeding conducted by a Party in relation to the application of the competition law of its Country, but shall not include:

(i) the review of business conduct or routine filings; and

(ii) research, studies or surveys with the objective of examining the general economic situation or general conditions in specific sectors.

Article 12
Notification

1. The competition authority of each Party shall notify, to the extent consistent with the laws and regulations of its Country, the competition authority of the other Party of the enforcement activities of its Party that it considers may affect the important interests of the other Party.

2. Notifications pursuant to paragraph 1 shall be given as promptly as possible when the competition authority of a Party becomes aware that the enforcement activities of its Party may affect the important interests of the other Party.

Article 13
Exchange of Information

The competition authority of each Party shall, as appropriate, provide the competition authority of the other Party with information that is relevant to the enforcement activities of the competition authority of the other Party to the extent consistent with the laws and regulations of its Country, subject to its available resources.

Article 14
Coordination of Enforcement Activities

1. The competition authorities of the Parties (hereinafter referred to in this Chapter as “the competition authorities”) shall, as appropriate, consider coordination of their enforcement activities with regard to matters that are related to each other.

2. Nothing in paragraph 1 shall be construed to affect the right of each Party to enforce the relevant laws and regulations of its Country and to implement its competition policy, and the right of the competition authority of each Party to limit or terminate, at any time, the coordination of enforcement activities and to pursue its enforcement activities independently.

Article 15
Technical Cooperation

1. The Parties agree that it is in their common interest for the competition authorities to work together in technical cooperation activities for capacity building related to strengthening of competition policy and implementation of competition law.

2. The forms of technical cooperation activities for capacity building referred to in paragraph 1 shall be:

(a) exchange of personnel of the competition authorities for training purposes;

(b) participation of personnel of the competition authorities as lecturers or consultants at training courses on strengthening of competition policy and implementation of competition law organized or sponsored by either or both competition authorities;

(c) assistance by the competition authority of a Party to advocacy and educational campaign of the competition authority of the other Party for the consumers, business sector and related agencies of its Country; and

(d) other forms to be mutually agreed upon by the competition authorities.

3. The technical cooperation activities under this Article shall be implemented within the available resources of the competition authority of each Party.

4. Other details of technical cooperation activities under this Article may be agreed between the competition authorities.

Article 16
Transparency

The competition authority of each Party shall:

(a) promptly inform the competition authority of the other Party of any amendment of the competition law of its Country and any adoption of new laws and regulations by its Country that address anti-competitive activities;

(b) provide, as appropriate, the competition authority of the other Party with copies of its publicly-released guidelines or policy statements issued in relation to the competition law of its Country; and

(c) provide, as appropriate, the competition authority of the other Party with copies of its annual reports and/or any other publication that are made generally available to the public.

Article 17
Consultations

The competition authorities shall consult with each other, upon request of either competition authority, on any matter which may arise in connection with this Chapter.

Article 18
Review

1. The Parties shall, as mutually agreed between the Parties, review the cooperation pursuant to this Chapter.

2. Upon such review, the Parties may consider enhancing the cooperation pursuant to this Chapter such as notification, exchange of information, coordination of enforcement activities and technical cooperation.

3. Any such enhancement of the cooperation shall be subject to the applicable laws and regulations of each Country and the available resources of each Party.

Article 19
Confidentiality of Information

1. Each Party shall, in accordance with the laws and regulations of its Country, maintain the confidentiality of any information provided to it in confidence by the other Party pursuant to this Chapter.

2. Each Party may limit the information it provides to the other Party when the other Party is unable to give the assurance requested by the former Party with respect to the maintenance of confidentiality or the limitations of purposes for which the information will be used.

3. Information, other than publicly available information, received by a Party or its competition authority pursuant to this Chapter:

(a) shall only be used by that Party or competition authority for the purpose of effective enforcement of the competition law of its Country, unless the other Party or its competition authority has approved otherwise;

(b) shall not be communicated by the former competition authority to other authorities or a third party, unless the competition authority of the other Party has approved otherwise;

(c) shall not be communicated by the former Party to a third party, unless the other Party has approved otherwise; and

(d) shall not be used in criminal proceedings carried out by a court or a judge of the Country of the former Party.

4. In the event that information provided by a Party to the other Party pursuant to this Chapter, except publicly available information, is needed for presentation in criminal proceedings carried out by a court or a judge of the Country of the other Party, the other Party shall submit a request for such information to the former Party through the diplomatic channel or other channels established in accordance with the laws and regulations of the Country of the former Party.

5. Notwithstanding subparagraph 3(b), the competition authority of a Party which receives information, other than publicly available information, pursuant to this Chapter may, unless otherwise notified by the competition authority of the other Party, communicate such information, for the purpose of enforcement of competition law, to relevant law enforcement authorities of the former Party, which may use the information under the conditions stipulated in subparagraph 3 (d) and paragraph 4.

6. Notwithstanding any other provision of this Chapter, neither Party is required to provide information to the other Party if such provision is prohibited by the laws and regulations of the Country of the former Party or would be incompatible with the important interests of the former Party. In particular:

(a) the Government of Japan shall not be required to provide “trade secrets of entrepreneurs” covered by the provisions of Article 39 of the Antimonopoly Law to the Government of Indonesia; and

(b) the Government of Indonesia shall not be required to provide “company secrets” covered by the provisions of Article 39(3) of the Law No. 5 to the Government of Japan.

Article 20
Communications

Unless otherwise provided for in this Chapter, communications under this Chapter may be directly carried out between the competition authorities. Notifications under Article 12, however, shall be confirmed in writing through the diplomatic channel. Such confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities.

Article 21
Miscellaneous

1. Detailed arrangements to implement this Chapter may be made between the competition authorities.

2. Nothing in this Chapter shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements.

3. Nothing in this Chapter shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

4. Nothing in this Chapter shall be construed to affect the rights and obligations of either Party under other international agreements or arrangements or under the laws of its Country.

Chapter 6
Improvement of Business Environment and Promotion of Business Confidence

Article 22
Liaison Office on Improvement of Business Environment

1. The functions of the Liaison Office on Improvement of Business Environment in each Country designated pursuant to Article 133 of the Basic Agreement, shall be:

(a) receiving complaints, inquiries and request for consultation from the enterprises of the other Country with regard to the laws, regulations and any other administrative measures of its Country which may adversely affect the business activities of the enterprises of the other Country;

(b) transmitting the complaints, inquiries and request for consultation referred to in subparagraph (a) to relevant authorities of its Country;

(c) seeking responses from the relevant authorities of its Country within a reasonable period of time, where appropriate, in writing with sufficient explanations, reasons and legal basis, if any;

(d) transmitting the responses from the relevant authorities of its Country to the enterprises of the other Country which submitted the complaints, inquiries or request for consultation;

(e) providing the enterprises of the other Country with necessary information and advice in collaboration with the relevant authorities of its Country; and

(f) reporting the findings to the Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence regarding the exercise of such functions as referred to in subparagraphs (a) through (e) in relation to the improvement of business environment.

2. Paragraph 1 shall not be construed as preventing or restricting any contacts made by the enterprises of a Country directly to relevant authorities of the other Country.

Chapter 7
Cooperation

Section 1
Cooperation in the Field of Manufacturing Industries

Article 23
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing the fundamental role of manufacturing industries in enhancing the dynamism and the competitiveness of the national economies of their respective Countries, shall cooperate in promoting the development of manufacturing industries of both Countries.

Article 24
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) strengthening of competitiveness of manufacturing industries including, *inter alia*, management, technology, research and development activities, and industrial standard;

(ii) human resource development related to manufacturing industries; and

(iii) improvement of manufacturing industry infrastructure; and

(b) the forms of cooperation under this Section may include:

(i) promoting joint researches;

(ii) encouraging and facilitating visits and exchanges of experts, and exchange of knowledge and technology;

(iii) promoting capacity building;

(iv) promoting the holding of seminars, dialogue and workshops; and

(v) other forms to be mutually agreed upon by the Parties.

Section 2
Cooperation in the Field of
Agriculture, Forestry and Fisheries

Article 25
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing the importance of food security, of multifunctionality of agriculture, of sustainable development of agriculture, forestry and fisheries, and of fostering the well-being of people in rural areas, shall cooperate in the field of agriculture, forestry and fisheries on the basis of mutual benefit.

Article 26
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) efficient and sustainable utilization of natural resources;

(ii) human resource development related to agriculture, forestry and fisheries;

(iii) development and promotion of technologies related to agriculture, forestry and fisheries;

(iv) improvement of market infrastructure, including the gathering and dissemination of market information related to agriculture and fisheries;

(v) improvement of productivity and quality in the field of agriculture, forestry and fisheries; and

(vi) fostering the well-being of people in rural areas; and

(b) the forms of cooperation under this Section may include:

(i) exchanging views and information;

(ii) encouraging exchanges of experts, knowledge and technology;

(iii) promoting the holding of seminars, joint studies, trainings and workshops; and

(iv) other forms to be mutually agreed upon by the Parties.

Section 3
Cooperation in the Field of Trade and Investment Promotion

Article 27
Basic Principles

1. Pursuant to Chapter 13 of the Basic Agreement and with a view to enhancing the complementarity of the enterprises of the Countries, the Parties shall cooperate in promoting trade and investment activities by enterprises of the Countries, recognizing that the joint efforts of the Parties to facilitate exchange and collaboration between enterprises will act as a catalyst to further promote trade and investment between the Countries.

2. The Parties shall encourage and facilitate the cooperation among the Japan External Trade Organization (JETRO) on the Japanese side and the National Agency for Export Development (NAFED) of the Ministry of Trade and/or the Indonesia Investment Coordinating Board (BKPM) on the Indonesian side, to be conducted pursuant to an arrangement among them. Such cooperation may be implemented in collaboration with relevant agencies and organizations, including those from the private sector.

Article 28
Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement, the forms of cooperation under this Section may include:

(a) exchanging and sharing information on trade, investment, business related laws and regulations and business environment of the Countries;

(b) exchanging experts and trainees in order to promote trade and investment;

(c) organizing missions, seminars and business meetings for further expansion of trade and investment;

(d) organizing or taking part in trade fairs; and

(e) other forms to be mutually agreed upon by the Parties.

Section 4
Cooperation in the Field of Human Resource Development

Article 29
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing that sustainable economic growth and prosperity largely depend on people's knowledge and skills, shall cooperate in the field of human resource development in order to raise the productivity and competitiveness of the industries of the Countries, including through encouraging the transfer of technology.

Article 30
Areas and Forms of Cooperation

Pursuant to Articles 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) development of human resources with advanced knowledge and skills; and

(ii) technical and vocational training; and

(b) the forms of cooperation under this Section may include:

(i) exchanging views and information;

(ii) encouraging and facilitating visits and exchanges of experts;

(iii) providing and promoting opportunities for internship and training;

(iv) encouraging and facilitating cooperation between entities of both Countries; and

(v) other forms to be mutually agreed upon by the Parties.

Section 5
Cooperation in the Field of Tourism

Article 31
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing that tourism will contribute to the enhancement of mutual understanding between peoples of both Countries and that tourism is an important industry for their respective economies, shall cooperate in the field of tourism in both Countries.

Article 32
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) promotion of tourism;

(ii) human resource development related to tourism; and

(iii) sustainable development of tourism; and

(b) the forms of cooperation under this Section may include:

(i) exchanging information and sharing experience;

(ii) encouraging and facilitating visits and exchanges of experts;

(iii) promoting the holding of seminars, dialogue and workshops; and

(iv) other forms to be mutually agreed upon by the Parties.

Section 6
Cooperation in the Field of
Information and Communications Technology

Article 33
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing the rapid development of information and communications technology (hereinafter referred to in this Section as “ICT”) and its important roles in fostering sustainable economic and social development, promoting sound business practices, and enabling partnership among the Parties, and the private sectors and other non-governmental entities of the Countries, shall cooperate in promoting and implementing activities towards the development of ICT infrastructure, ICT-related services, digital content and human resources in ICT sector in the Countries.

Article 34
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) next generation internet, broadband networks and ubiquitous networks;

(ii) use of ICT-related services;

(iii) electronic commerce, including facilitation of the procedures for accreditation of certification authorities for electronic signatures;

(iv) circulation of digital content over broadband networks;

(v) further development of network infrastructures, including tele center, in rural areas;

(vi) human resource development related to ICT;

(vii) collaboration on ICT research and development; and

(viii) disaster management using ICT, including tsunami warning systems; and

(b) the forms of cooperation under this Section may include:

(i) exchanging information on policy issues;

(ii) encouraging and facilitating visits and exchanges of experts, and exchange of knowledge and technology;

(iii) promoting the holding of seminars and workshops;

(iv) promoting cooperation between the private sectors of both Countries;

(v) promoting cooperation in international fora related to ICT; and

(vi) other forms to be mutually agreed upon by the Parties.

Section 7
Cooperation in the Field of Financial Services

Article 35
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing the importance of enhancing knowledge and skills and exchanging experiences, shall promote cooperation in the field of financial services.

Article 36
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) implementation of sound prudential policies, and enhancement of effective supervision of financial institutions of a Country operating in the other Country;

(ii) proper response to issues relating to globalization in financial services;

(iii) maintenance of an environment that does not stifle legitimate financial market innovations; and

(iv) supervision of global financial institutions to minimize systemic risks and to limit contagion effects in the event of crises; and

(b) the forms of cooperation under this Section may include:

(i) exchanging information, experiences and skills, including on activities relating to development of financial services;

(ii) promoting trainings; and

(iii) other forms to be mutually agreed upon by the Parties.

Article 37
Dialogues on Financial Services

1. The Parties shall conduct dialogues on matters relating to financial services in order to promote cooperation in the field of financial services, at such times and venues as may be agreed by the Parties.

2. For the purposes of paragraph 1, the issues to be discussed shall include:

(a) overall policy requirements to respond to the recent trends of uncertainties due to rapid expansion of cross-border financial transactions driven by technological advances in the financial sector;

(b) regulatory policies over the respective financial institutions of the Countries;

(c) supervision and inspection of financial institutions of a Country which are operating in the other Country;

(d) transparency in the laws and regulations of each Country and the application and enforcement thereof; and

(e) other issues relating to cooperation in the field of financial services.

3. The findings and the outcome of the dialogues under this Article may be reported, as necessary, to the Sub-Committee on Cooperation.

4. (a) The dialogues under this Article shall be participated in by the following:

(i) for Japan, officials from the Financial Services Agency and the Ministry of Foreign Affairs and, where appropriate, other government officials with the necessary expertise relevant to the issues to be discussed; and

(ii) for Indonesia, officials from Bank Indonesia and the Ministry of Finance and, where appropriate, other government officials with the necessary expertise relevant to the issues to be discussed.

(b) Representatives of relevant entities other than the Parties, with the necessary expertise relevant to the issues to be discussed, may be invited to the dialogues under this Article.

Section 8
Cooperation in the Field of Environment

Article 38
Basic Principles

Pursuant to Chapter 13 of the Basic Agreement, the Parties, recognizing the importance of strengthening capacity to protect the environment and promote sustainable development, and the critical role of bilateral and multilateral environmental agreements or arrangements, shall cooperate in the field of environment.

Article 39
Areas and Forms of Cooperation

Pursuant to Article 135 of the Basic Agreement:

(a) the areas of cooperation under this Section may include:

(i) conservation and improvement of the environment; and

(ii) promotion of sustainable development including measures to address climate change such as clean development mechanism; and

(b) the forms of cooperation under this Section may include:

(i) exchanging information on policies, laws, regulations and technology;

(ii) promoting the holding of seminars;

(iii) encouraging and facilitating visits and exchanges of experts;

(iv) encouraging and facilitating transfer of knowledge of environmentally sound technology; and

(v) other forms to be mutually agreed upon by the Parties.

Chapter 8
Final Provisions

Article 40
Implementation

This Agreement shall be implemented by the Parties in accordance with the Basic Agreement and the laws and regulations in force in their respective Countries, and within the available resources of each Party.

Article 41
Headings

The headings of the Chapters, Sections and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 42
Amendment

This Agreement may be amended by agreement between the Parties. The Parties shall, at the request of a Party, consult with each other as to whether to amend this Agreement.

Article 43
Entry into Force

This Agreement shall enter into force at the same time as the Basic Agreement and shall remain in force as long as the Basic Agreement remains in force.

Article 44
Dispute Settlement

Chapter 14 of the Basic Agreement shall apply *mutatis mutandis* with respect to the settlement of disputes between the Parties arising out of the interpretation and/or application of Chapter 2 and this Chapter.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Jakarta on this twentieth day of August in the year 2007 in duplicate in the English language.

For the Government of Japan:	For the Government of the Republic of Indonesia:
安倍晋三	S.B.Yudhoyono

AGREEMENT BETWEEN
JAPAN AND THE REPUBLIC OF INDONESIA
FOR AN ECONOMIC PARTNERSHIP

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Preamble

Japan and the Republic of Indonesia (hereinafter referred to as “Indonesia”),

Conscious of their longstanding friendship and strong political and economic ties that have developed through many years of fruitful and mutually beneficial cooperation between the Parties;

Believing that such bilateral relationship will be enhanced by forging mutually beneficial economic partnership through, *inter alia*, cooperation, trade and investment facilitation, and trade liberalization;

Reaffirming that the economic partnership will provide a useful framework for enhanced cooperation and serve the common interests of the Parties in various fields as agreed in this Agreement and lead to the improvement of economic efficiency and the development of trade, investment and human resources;

Recognizing that such partnership would create larger and new market, and enhance the competitiveness, attractiveness and vibrancy of their markets;

Acknowledging that a dynamic and rapidly changing global environment brought about by globalization and technological progress presents various economic and strategic challenges and opportunities to the Parties;

Recalling Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services in Annex 1A and Annex 1B, respectively, to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

Bearing in mind the Framework for Comprehensive Economic Partnership between Japan and the Association of Southeast Asian Nations (hereinafter referred to as “ASEAN”) signed in Bali, Indonesia on October 8, 2003;

Convinced that this Agreement would open a new era for the relationship between the Parties; and

Determined to establish a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

Chapter 1
General Provisions

Article 1
Objectives

The objectives of this Agreement are to:

(a) facilitate, promote and liberalize trade in goods and services between the Parties;

(b) increase investment opportunities and promote investment activities through strengthening protection for investments and investment activities in the Parties;

(c) ensure protection of intellectual property and promote cooperation in the field thereof;

(d) enhance transparency of government procurement regimes of the Parties, and promote cooperation for mutual benefits of the Parties in the field of government procurement;

(e) promote competition by addressing anti-competitive activities, and cooperate on the promotion of competition;

(f) improve business environment in the Parties;

(g) establish a framework to enhance closer cooperation in the fields agreed in this Agreement; and

(h) create effective procedures for the implementation and application of this Agreement and for the resolution of disputes.

Article 2
General Definitions

1. For the purposes of this Agreement:

(a) the term “Area” means:

(i) with respect to Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law and the laws and regulations of Japan; and

(ii) with respect to Indonesia, the land territories, territorial sea including sea-bed and subsoil thereof, archipelagic waters, internal waters, airspace over such territories, sea and waters, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982;

(b) the term “customs authority” means the authority that is responsible for the administration and enforcement of customs laws and regulations. In the case of Japan, the Ministry of Finance, and in the case of Indonesia, the Directorate General of Customs and Excise;

(c) the term “GATS” means the General Agreement on Trade in Services in Annex 1B to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994;

(d) the term “GATT 1994” means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994. For the purposes of this Agreement, references to articles in the GATT 1994 include the interpretative notes;

(e) the term “Harmonized System” or “HS” means the Harmonized Commodity Description and Coding System set out in the Annex to the International Convention on the Harmonized Commodity Description and Coding System, and adopted and implemented by the Parties in their respective laws;

(f) the term “Parties” means Japan and Indonesia and the term “Party” means either Japan or Indonesia; and

(g) the term “WTO Agreement” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, April 15, 1994.

2. Nothing in subparagraph 1(a) shall affect the rights and obligations of the Parties under international law, including those under the United Nations Convention on the Law of the Sea, done at Montego Bay, December 10, 1982.

Article 3
Transparency

1. Each Party shall make publicly available its laws and regulations as well as international agreements to which the Party is a party, with respect to any matter covered by this Agreement.

2. Each Party shall make available to the public, the names and addresses of the competent authorities responsible for laws and regulations referred to in paragraph 1.

3. Each Party shall, upon the request by the other Party, within a reasonable period of time, provide information to the other Party with respect to matters referred to in paragraph 1.

4. When introducing or changing its laws and regulations that significantly affect the implementation and operation of this Agreement, each Party shall endeavor to take appropriate measures to enable interested persons to become acquainted with such introduction or change.

Article 4
Public Comment Procedures

The Government of each Party shall, in accordance with the laws and regulations of the Party, endeavor to make public in advance regulations of general application that affect any matter covered by this Agreement and to provide a reasonable opportunity for comments by the public before adoption of such regulations.

Article 5
Administrative Procedures

1. Where administrative decisions which pertain to or affect the implementation and operation of this Agreement are taken by the competent authorities of the Government of a Party, the competent authorities shall, in accordance with the laws and regulations of the Party, endeavor to:

(a) inform the applicant of the decision within a reasonable period of time after the submission of the application considered complete under the laws and regulations of the Party, taking into account the established standard period of time referred to in paragraph 3; and

(b) provide, within a reasonable period of time, information concerning the status of the application, at the request of the applicant.

2. The competent authorities of the Government of a Party shall, in accordance with the laws and regulations of the Party, establish criteria for taking administrative decisions in response to submitted applications. The competent authorities shall endeavor to:

(a) make such criteria as specific as possible; and

(b) make such criteria publicly available except when it would extraordinarily raise administrative difficulties for the Government of the Party.

3. The competent authorities of the Government of a Party shall, in accordance with the laws and regulations of the Party, endeavor to:

(a) establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to submitted applications; and

(b) make publicly available such periods of time, if established.

4. The competent authorities of the Government of a Party shall, in accordance with the laws and regulations of the Party, prior to any final decision which imposes obligations on or restricts rights of a person, endeavor to provide that person with:

(a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and

(b) a reasonable opportunity to present facts and arguments in support of position of such person,

provided that time, nature of the measure and public interest permit.

Article 6
Review and Appeal

1. Each Party shall, in accordance with its laws and regulations, maintain judicial tribunals or procedures for the purpose of prompt review and, where warranted, correction of actions taken by its Government regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement of such actions.

2. Each Party shall ensure that the parties in any such tribunals or procedures are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record.

3. Each Party shall ensure, subject to appeal or further review as provided for in its laws and regulations, that such decision is implemented by the relevant authorities with respect to the action at issue which is taken by its Government.

Article 7
Administrative Guidance

1. For the purposes of this Article, the term “administrative guidance” means any guidance, recommendation or advice by a competent authority of the Government of a Party which requires a person to do or refrain from doing any act but does not create, impose limitations on or in any way affect rights and obligations of such person in order to pursue administrative objectives.

2. Where a competent authority of the Government of a Party renders administrative guidance with regard to any matter covered by this Agreement, such competent authority shall ensure that the administrative guidance does not exceed the scope of its competence and shall not require the person concerned to comply with the administrative guidance without voluntary cooperation of such person.

3. Such competent authority shall ensure, in accordance with the laws and regulations of its Party, that the person concerned not be treated unfavourably solely on account of non-compliance of such person with such administrative guidance.

4. Such competent authority shall, in accordance with the laws and regulations of its Party, provide to the person concerned in writing, upon the request of such person, the purposes and contents of the administrative guidance.

Article 8
Measures against Corruption and Bribery

Each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption and bribery regarding matters covered by this Agreement.

Article 9
Confidential Information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

2. Unless otherwise provided for in this Agreement, nothing in this Agreement shall require a Party to provide the other Party with confidential information, the disclosure of which would impede the enforcement of the laws and regulations of the former Party, or otherwise be contrary to the public interest of the former Party, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 10
Taxation

1. Unless otherwise provided for in this Agreement, the provisions of this Agreement shall not apply to any taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention in force between the Parties. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

3. Articles 3 and 9 shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 11
General and Security Exceptions

1. For the purposes of Chapters 2, 3, 4, 5 other than Article 66, and 8 of this Agreement, Articles XX and XXI of the GATT 1994 are incorporated into and form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapters 5 other than Article 66, 6 and 7 of this Agreement, Articles XIV and XIV *bis* of the GATS are incorporated into and form part of this Agreement, *mutatis mutandis*.

3. In cases where a Party takes any measure pursuant to paragraph 1 or 2, that does not conform with the obligations under Chapter 5 other than Article 66, the Party shall make reasonable effort to notify the other Party of the description of such measure either before the measure is taken or as soon as possible thereafter.

4. For the purposes of Chapter 9 of this Agreement, Article 73 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as “the TRIPS Agreement”) is incorporated into and forms part of this Agreement, *mutatis mutandis*.

Article 12
Relation to Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement or any other agreements to which both Parties are parties.

2. In the event of any inconsistency between this Agreement and the WTO Agreement, the WTO Agreement shall prevail to the extent of the inconsistency.

3. In the event of any inconsistency between this Agreement and any agreements other than the WTO Agreement, to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.

Article 13
Implementing Agreement

The Governments of the Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to as “the Implementing Agreement”).

Article 14
Joint Committee

1. A joint committee (hereinafter referred to as “the Joint Committee”) shall be hereby established.

2. The functions of the Joint Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Agreement;

(b) considering and recommending to the Parties any amendments to this Agreement;

(c) supervising and coordinating the work of all Sub-Committees established under this Agreement;

(d) adopting:

(i) the Operational Procedures for Trade in Goods and the Operational Procedures for Rules of Origin, referred to in Article 27 and Article 50, respectively; and

(ii) any necessary decisions; and

(e) carrying out other functions as the Parties may agree.

3. The Joint Committee:

(a) shall be composed of representatives of the Governments of the Parties; and

(b) may establish and delegate its responsibilities to Sub-Committees.

4. The Joint Committee shall establish its rules and procedures.

5. The Joint Committee shall meet as such times as may be agreed by the Parties. The venue of the meeting shall be alternately in Japan and Indonesia, unless the Parties agree otherwise.

Article 15
Sub-Committees

1. The following sub-committees shall be hereby established:

(a) Sub-Committee on Trade in Goods;

(b) Sub-Committee on Rules of Origin;

(c) Sub-Committee on Customs Procedures;

(d) Sub-Committee on Investment;

(e) Sub-Committee on Trade in Services;

(f) Sub-Committee on Movement of Natural Persons;

(g) Sub-Committee on Energy and Mineral Resources;

(h) Sub-Committee on Intellectual Property;

(i) Sub-Committee on Government Procurement;

(j) Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence; and

(k) Sub-Committee on Cooperation.

2. A Sub-Committee shall:

(a) be composed of representatives of the Governments of the Parties and may, by mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed; and

(b) be co-chaired by officials of the Governments of the Parties.

3. A Sub-Committee shall meet at such times and venues as may be agreed upon by the Parties.

4. A Sub-Committee may, as necessary, establish its rules and procedures.

5. A Sub-Committee may establish and delegate its responsibilities to Working Groups.

Article 16
Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

Chapter 2
Trade in Goods

Article 17
Definitions

For the purposes of this Chapter:

(a) the term “bilateral safeguard measure” means a bilateral safeguard measure provided for in paragraph 1 of Article 24;

(b) the term “customs value of goods” means the value of goods for the purposes of levying *ad valorem* customs duties on imported goods;

(c) the term “domestic industry” means the producers as a whole of the like or directly competitive goods operating in a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(d) the term “export subsidies” means export subsidies listed in subparagraphs 1(a) through (f) of Article 9 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (hereinafter referred to in this Chapter as “the Agreement on Agriculture”);

(e) the term “originating goods” means goods which qualify as originating goods under the provisions of Chapter 3;

(f) the term “other duties or charges of any kind” means those provided for in subparagraph 1(b) of Article II of the GATT 1994;

(g) the term “provisional bilateral safeguard measure” means a provisional bilateral safeguard measure provided for in subparagraph 9(a) of Article 24;

(h) the term “serious injury” means a significant overall impairment in the position of a domestic industry; and

(i) the term “threat of serious injury” means serious injury that, on the basis of facts and not merely on allegation, conjecture or remote possibility, is clearly imminent.

Article 18
Classification of Goods

The classification of goods in trade between the Parties shall be in conformity with the Harmonized System.

Article 19
National Treatment

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994.

Article 20
Elimination of Customs Duties

1. Except as otherwise provided for in this Agreement, each Party shall eliminate or reduce its customs duties on originating goods of the other Party designated for such purposes in its Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

2. Upon the request of either Party, the Parties shall negotiate on issues such as improving market access conditions on originating goods designated for negotiation in the Schedule in Annex 1, in accordance with the terms and conditions set out in such Schedule.

3. Each Party shall eliminate other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party, if any. Neither Party shall introduce other duties or charges of any kind imposed on or in connection with the importation of goods of the other Party.

4. Nothing in this Article shall prevent a Party from imposing, at any time, on the importation of any good of the other Party:

(a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the GATT 1994, in respect of the like domestic good or in respect of a good from which the imported good has been manufactured or produced in whole or in part;

(b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement; and

(c) fees or other charges commensurate with the cost of services rendered.

5. If, as a result of the elimination or reduction of its customs duty applied on a particular good on a most-favoured-nation basis, the most-favoured-nation applied rate becomes equal to, or lower than, the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall notify the other Party of such elimination or reduction without delay.

6. In cases where its most-favoured-nation applied rate of customs duty on a particular good is lower than the rate of customs duty to be applied in accordance with paragraph 1 on the originating good which is classified under the same tariff line as that particular good, each Party shall apply the lower rate with respect to that originating good.

Article 21
Customs Valuation

For the purposes of determining the customs value of goods traded between the Parties, provisions of Part I of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to as "the Agreement on Customs Valuation"), shall apply *mutatis mutandis*.

Article 22
Export Subsidies

Neither Party shall introduce or maintain any export subsidies on any agricultural good which is listed in Annex 1 to the Agreement on Agriculture.

Article 23
Non-tariff Measures

Each Party shall not introduce or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the other Party which are inconsistent with its obligations under the WTO Agreement.

Article 24
Bilateral Safeguard Measures

1. Subject to the provisions of this Article, each Party may, as a bilateral safeguard measure, to the minimum extent necessary to prevent or remedy the serious injury to a domestic industry of that Party and to facilitate adjustment:

(a) suspend the further reduction of any rate of customs duty on the originating good provided for in this Chapter; or

(b) increase the rate of customs duty on the originating good to a level not to exceed the lesser of:

(i) the most-favoured-nation applied rate of customs duty in effect at the time when the bilateral safeguard measure is taken; and

(ii) the most-favoured-nation applied rate of customs duty in effect on the day immediately preceding the date of entry into force of this Agreement,

if an originating good of the other Party, as a result of the elimination or reduction of a customs duty in accordance with Article 20, is being imported into the former Party in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that the imports of that originating good constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry of the former Party.

2. Each Party shall not apply a bilateral safeguard measure on an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its Schedule in Annex 1.

3. (a) A Party may take a bilateral safeguard measure only after an investigation has been carried out by the competent authorities of that Party in accordance with Article 3 and paragraph 2 of Article 4 of the Agreement on Safeguards in Annex 1A to the WTO Agreement (hereinafter referred to in this Article as “the Agreement on Safeguards”).

(b) The investigation referred to in subparagraph (a) shall in all cases be completed within one year following its date of initiation.

4. The following conditions and limitations shall apply with regard to a bilateral safeguard measure:

(a) A Party shall immediately deliver a written notice to the other Party upon:

(i) initiating an investigation referred to in subparagraph 3(a) relating to serious injury, or threat of serious injury, and the reasons for it; and

(ii) taking a decision to apply or extend a bilateral safeguard measure.

(b) The Party making the written notice referred to in subparagraph (a) shall provide the other Party with all pertinent information, which shall include:

(i) in the written notice referred to in subparagraph (a)(i), the reason for the initiation of the investigation, a precise description of the originating good subject to the investigation and its subheading of the Harmonized System, the period subject to the investigation and the date of initiation of the investigation; and

(ii) in the written notice referred to in subparagraph (a)(ii), evidence of serious injury or threat of serious injury caused by the increased imports of the originating good, a precise description of the originating good subject to the proposed bilateral safeguard measure and its subheading of the Harmonized System, a precise description of the bilateral safeguard measure, the proposed date of its introduction and its expected duration.

(c) A Party proposing to apply or extend a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party with a view to reviewing the information arising from the investigation referred to in subparagraph 3(a), exchanging views on the bilateral safeguard measure and reaching an agreement on compensation set out in paragraph 5.

(d) No bilateral safeguard measure shall be maintained except to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment, provided that such time shall not exceed a period of four years. However, in very exceptional circumstances, a bilateral safeguard measure may be extended, provided that the total period of the bilateral safeguard measure, including such extensions, shall not exceed five years. In order to facilitate adjustment in a situation where the expected duration of a bilateral safeguard measure is over one year, the Party maintaining the bilateral safeguard measure shall progressively liberalize the bilateral safeguard measure at regular intervals during the period of application.

(e) No bilateral safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a bilateral safeguard measure, for a period of time equal to the duration of the previous bilateral safeguard measure or one year, whichever is longer.

(f) Upon the termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for the bilateral safeguard measure.

5. (a) A Party proposing to apply or extend a bilateral safeguard measure shall provide to the other Party mutually agreed adequate means of trade compensation in the form of concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from the bilateral safeguard measure.

(b) If the Parties are unable to agree on the compensation within 30 days after the commencement of the consultation pursuant to subparagraph 4(c), the Party against whose originating good the bilateral safeguard measure is taken shall be free to suspend the application of concessions of customs duties under this Agreement, which are substantially equivalent to the bilateral safeguard measure. The Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary to achieve the substantially equivalent effects and only while the bilateral safeguard measure is maintained.

6. Nothing in this Chapter shall prevent a Party from applying safeguard measures to an originating good in accordance with:

(a) Article XIX of the GATT 1994 and the Agreement on Safeguards; or

(b) Article 5 of the Agreement on Agriculture.

7. Each Party shall ensure the consistent, impartial and reasonable administration of its laws and regulations relating to the bilateral safeguard measure.

8. Each Party shall adopt or maintain equitable, timely, transparent and effective procedures relating to the bilateral safeguard measure.

9. (a) In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional bilateral safeguard measure, which shall take the form of the measure set out in subparagraph 1(a) or (b) pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good have caused or are threatening to cause serious injury to a domestic industry.

(b) A Party shall deliver a written notice to the other Party prior to applying a provisional bilateral safeguard measure. Consultations between the Parties on the application of the provisional bilateral safeguard measure shall be initiated immediately after the provisional bilateral safeguard measure is taken.

(c) The duration of the provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of paragraph 3 shall be met. The duration of the provisional bilateral safeguard measure shall be counted as a part of the period referred to in subparagraph 4(d).

(d) Subparagraph 4(f) and paragraphs 7 and 8 shall be applied *mutatis mutandis* to the provisional bilateral safeguard measure. The customs duty imposed as a result of the provisional bilateral safeguard measure shall be refunded if the subsequent investigation referred to in subparagraph 3(a) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

10. Written notice referred to in subparagraphs 4(a) and 9(b) and any other communication between the Parties shall be done in the English language.

11. The Parties shall review the provisions of this Article, if necessary, five years after the date of entry into force of this Agreement, unless otherwise agreed by the Parties.

Article 25
Restrictions to Safeguard the Balance of Payments

1. Nothing in this Chapter shall be construed to prevent a Party from taking any measure for balance-of-payments purposes. A Party taking such measure shall do so in accordance with the conditions established under Article XII of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement.

2. Nothing in this Chapter shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund.

Article 26
Sub-Committee on Trade in Goods

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Goods (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee;

(d) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on the Operational Procedures for Trade in Goods referred to in Article 27; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Article 27
Operational Procedures for Trade in Goods

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Trade in Goods that provide detailed regulations pursuant to which the relevant authorities of the Parties shall implement their functions under this Chapter.

Chapter 3
Rules of Origin

Article 28
Definitions

For the purposes of this Chapter:

(a) the term “competent governmental authority” means the authority that, according to the legislation of each Party, is responsible for the issuing of a certificate of origin or for the designation of certification entities or bodies. In the case of Japan, the Ministry of Economy, Trade and Industry and in the case of Indonesia, the Ministry of Trade;

(b) the term “exporter” means a person located in an exporting Party who exports a good from the exporting Party in accordance with the applicable laws and regulations of the exporting Party;

(c) the term “factory ships of the Party” or “vessels of the Party” respectively means factory ships or vessels:

(i) which are registered in the Party;

(ii) which sail under the flag of the Party;

(iii) which are owned to an extent of at least 50 percent by nationals of the Parties, or by a juridical person with its head office in either Party, of which the representatives, chairman of the board of directors, and the majority of the members of such board are nationals of the Parties, and of which at least 50 percent of the equity interest is owned by nationals or juridical persons of the Parties; and

(iv) of which at least 75 percent of the total of the master, officers and crew are nationals of the Parties;

(d) the term “fungible originating goods of a Party” or “fungible originating materials of a Party” respectively means originating goods or materials of a Party that are interchangeable for commercial purposes, whose properties are essentially identical;

(e) the term “Generally Accepted Accounting Principles” means the recognized consensus or substantial authoritative support within a Party at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures;

(f) the term “importer” means a person who imports a good into the importing Party in accordance with the applicable laws and regulations of the importing Party;

(g) the term “indirect materials” means goods used in the production, testing or inspection of another good but not physically incorporated into the good, or goods used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(i) fuel and energy;

(ii) tools, dies and moulds;

(iii) spare parts and goods used in the maintenance of equipment and buildings;

(iv) lubricants, greases, compounding materials and other goods used in production or used to operate equipment and buildings;

(v) gloves, glasses, footwear, clothing, safety equipment and supplies;

(vi) equipment, devices and supplies used for testing or inspection;

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into another good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(h) the term “material” means a good that is used in the production of another good;

(i) the term “originating material of a Party” means an originating good of a Party which is used in the production of another good in the Party, including that which is considered as an originating material of the Party pursuant to paragraph 1 of Article 30;

(j) the term “packing materials and containers for shipment” means goods that are normally used to protect a good during transportation, other than packaging materials and containers for retail sale referred to in Article 38;

(k) the term “preferential tariff treatment” means the rate of customs duties applicable to an originating good of the exporting Party in accordance with paragraph 1 of Article 20; and

(l) the term “production” means a method of obtaining goods including manufacturing, assembling, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

Article 29
Originating Goods

1. Except as otherwise provided for in this Chapter, a good shall qualify as an originating good of a Party where:

(a) the good is wholly obtained or produced entirely in the Party, as defined in paragraph 2;

(b) the good is produced entirely in the Party exclusively from originating materials of the Party; or

(c) the good satisfies the product specific rules set out in Annex 2, as well as all other applicable requirements of this Chapter, when the good is produced entirely in the Party using non-originating materials.

2. For the purposes of subparagraph 1(a), the following goods shall be considered as being wholly obtained or produced entirely in a Party:

(a) live animals born and raised in the Party;

(b) animals obtained by hunting, trapping, fishing, gathering or capturing in the Party;

(c) goods obtained from live animals in the Party;

(d) plants and plant products harvested, picked or gathered in the Party;

(e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken in the Party;

(f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the other Party;

(g) goods produced on board factory ships of the Party outside the other Party from the goods referred to in subparagraph (f);

(h) goods taken from the sea-bed or subsoil beneath the sea-bed outside the Party, provided that the Party has rights to exploit such sea-bed or subsoil;

(i) articles collected in the Party which can no longer perform their original purpose in the Party nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;

(j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;

(k) parts or raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and

(l) goods obtained or produced in the Party exclusively from the goods referred to in subparagraphs (a) through (k).

3. For the purposes of subparagraph 1(c), the product specific rules set out in Annex 2 requiring that the materials used undergo a change in tariff classification or a specific manufacturing or processing operation shall apply only to non-originating materials.

4. (a) For the purposes of subparagraph 1(c), the product specific rules set out in Annex 2 using the value-added method require that the qualifying value content of a good, calculated in accordance with subparagraph (b), is not less than the percentage specified by the rule for the good.

(b) For the purposes of calculating the qualifying value content of a good, the following formula shall be applied:

$$Q.V.C. = \frac{F.O.B. - V.N.M.}{F.O.B.} \times 100$$

Where:

Q.V.C. is the qualifying value content of a good, expressed as a percentage;

F.O.B. is, except as provided for in paragraph 5, the free-on-board value of a good payable by the buyer of the good to the seller of the good, regardless of the mode of shipment, not including any internal excise taxes reduced, exempted, or repaid when the good is exported; and

V.N.M. is the value of non-originating materials used in the production of a good.

5. F.O.B. referred to in subparagraph 4(b) shall be the value:

(a) adjusted to the first ascertainable price paid for a good from the buyer to the producer of the good, if there is free-on-board value of the good, but it is unknown and cannot be ascertained; or

(b) determined in accordance with Articles 1 through 8 of the Agreement on Customs Valuation, if there is no free-on-board value of a good.

6. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b), the value of a non-originating material used in the production of the good in a Party:

(a) shall be determined in accordance with the Agreement on Customs Valuation, and shall include freight, insurance where appropriate, packing and all the other costs incurred in transporting the material to the importation port in the Party where the producer of the good is located; or

(b) if such value is unknown and cannot be ascertained, shall be the first ascertainable price paid for the material in the Party, but may exclude all the costs incurred in the Party in transporting the material from the warehouse of the supplier of the material to the place where the producer is located such as freight, insurance and packing as well as any other known and ascertainable cost incurred in the Party.

7. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) in determining whether the good qualifies as an originating good of a Party, V.N.M. of the good shall not include the value of non-originating materials used in the production of originating materials of the Party which are used in the production of the good.

8. For the purposes of subparagraph 5(b) or 6(a), in applying the Agreement on Customs Valuation to determine the value of a good or non-originating material, the Agreement on Customs Valuation shall apply *mutatis mutandis* to domestic transactions or to the cases where there is no transaction of the good or non-originating material.

Article 30
Accumulation

1. For the purposes of determining whether a good qualifies as an originating good of a Party, an originating good of the other Party which is used as a material in the production of the good in the former Party may be considered as an originating material of the former Party.

2. For the purposes of calculating the qualifying value content of a good under subparagraph 4(b) of Article 29 in determining whether the good qualifies as an originating good of a Party, the value of a non-originating material produced in either Party and to be used in the production of the good may be limited to the value of non-originating materials used in the production of such non-originating material, provided that the good qualifies as an originating good of that Party under subparagraph 1(c) of Article 29.

Article 31
De Minimis

For the application of the product specific rules set out in Annex 2, non-originating materials used in the production of a good that do not satisfy an applicable rule for the good, shall be disregarded, provided that the totality of such materials does not exceed specific percentages in value, weight or volume of the good and such percentages are set out in the product specific rule for the good.

Article 32
Non-qualifying Operations

A good shall not be considered to satisfy the requirement of change in tariff classification or specific manufacturing or processing operation set out in Annex 2 merely by reason of:

(a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;

(b) changes of packaging and breaking up and assembly of packages;

(c) disassembly;

(d) placing in bottles, cases, boxes and other simple packaging operations;

(e) collection of parts and components classified as a good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;

(f) mere making-up of sets of articles; or

(g) any combination of operations referred to in subparagraphs (a) through (f).

Article 33
Consignment Criteria

1. An originating good of the other Party shall be deemed to meet the consignment criteria when it is:

(a) transported directly from the other Party; or

(b) transported through one or more non-Parties for the purpose of transit or temporary storage in warehouses in such non-Parties, provided that it does not undergo operations other than unloading, reloading and any other operation to preserve it in good condition.

2. If an originating good of the other Party does not meet the consignment criteria referred to in paragraph 1, that good shall not be considered as an originating good of the other Party.

Article 34
Unassembled or Disassembled Goods

1. Where a good satisfies the requirements of the relevant provisions of Articles 29 through 32 and is imported into a Party from the other Party in an unassembled or disassembled form but is classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, such a good shall be considered as an originating good of the other Party.

2. A good assembled in a Party from unassembled or disassembled materials, which were imported into the Party and classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System, shall be considered as an originating good of the Party, provided that the good would have satisfied the applicable requirements of the relevant provisions of Articles 29 through 32 had each of the non-originating materials among the unassembled or disassembled materials been imported into the Party separately and not as an unassembled or disassembled form.

Article 35
Fungible Goods and Materials

1. For the purposes of determining whether a good qualifies as an originating good of a Party, where fungible originating materials of the Party and fungible non-originating materials that are commingled in an inventory are used in the production of the good, the origin of the materials may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

2. Where fungible originating goods of a Party and fungible non-originating goods are commingled in an inventory and, prior to exportation do not undergo any production process or any operation in the Party where they were commingled other than unloading, reloading and any other operation to preserve them in good condition, the origin of the good may be determined pursuant to an inventory management method under the Generally Accepted Accounting Principles in the Party.

Article 36
Indirect Materials

Indirect materials shall be, without regard to where they are produced, considered to be originating materials of a Party where the good is produced.

Article 37
Accessories, Spare Parts and Tools

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, accessories, spare parts or tools delivered with the good that form part of the good's standard accessories, spare parts or tools, shall be disregarded, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good, without regard of whether they are separately described in the invoice; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good.

2. If a good is subject to a qualifying value content requirement, the value of the accessories, spare parts or tools shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 38
Packaging Materials and Containers for Retail Sale

1. In determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2, packaging materials and containers for retail sale, which are classified with the good pursuant to Rule 5 of the General Rules for the Interpretation of the Harmonized System, shall be disregarded.

2. If a good is subject to a qualifying value content requirement, the value of packaging materials and containers for retail sale shall be taken into account as the value of originating materials of a Party where the good is produced or non-originating materials, as the case may be, in calculating the qualifying value content of the good.

Article 39
Packing Materials and Containers for Shipment

Packing materials and containers for shipment shall be:

(a) disregarded in determining whether all the non-originating materials used in the production of a good undergo the applicable change in tariff classification or a specific manufacturing or processing operation set out in Annex 2; and

(b) without regard to where they are produced, considered to be originating materials of a Party where the good is produced, in calculating the qualifying value content of the good.

Article 40
Claim for Preferential Tariff Treatment

1. The importing Party shall require a certificate of origin for an originating good of the exporting Party from importers who claim the preferential tariff treatment for the good.

2. Notwithstanding paragraph 1, the importing Party shall not require a certificate of origin from importers for an importation of a consignment of originating goods of the exporting Party whose aggregate customs value does not exceed 200 United States dollars or its equivalent amount in the Party’s currency, or such higher amount as it may establish.

3. Where an originating good of the exporting Party is imported through one or more non-Parties, the importing Party may require importers, who claim the preferential tariff treatment for the good, to submit:

(a) a copy of through bill of lading; or

(b) a certificate or any other information given by the customs authorities of such non-Parties or other relevant entities, which evidences that the good has not undergone operations other than unloading, reloading and any other operation to preserve it in good condition in those non-Parties.

Article 41
Certificate of Origin

1. A certificate of origin referred to in paragraph 1 of Article 40 shall be issued by the competent governmental authority of the exporting Party on request having been made in writing by the exporter or its authorized agent. Such certificate of origin shall include minimum data specified in Annex 3.

2. For the purposes of this Article, the competent governmental authority of the exporting Party may designate other entities or bodies to be responsible for the issuance of certificate of origin, under the authorization given in accordance with the applicable laws and regulations of the exporting Party.

3. Where the competent governmental authority of the exporting Party designates other entities or bodies to carry out the issuance of certificate of origin, the exporting Party shall notify in writing the other Party of its designees.

4. For the purposes of this Chapter, upon the entry into force of this Agreement, the Parties shall establish a format of certificate of origin in the English language in the Operational Procedures for Rules of Origin referred to in Article 50.

5. A certificate of origin shall be completed in the English language.

6. An issued certificate of origin shall be applicable to a single importation of an originating good of the exporting Party into the importing Party and be valid for 12 months from the date of issuance.

7. Where the exporter of a good is not the producer of the good in the exporting Party, the exporter may request a certificate of origin on the basis of:

(a) a declaration provided by the exporter to the competent governmental authority of the exporting Party or its designees based on the information provided by the producer of the good to that exporter; or

(b) a declaration voluntarily provided by the producer of the good directly to the competent governmental authority of the exporting Party or its designees by the request of the exporter in accordance with the applicable laws and regulations of the exporting Party.

8. A certificate of origin shall be issued only after the exporter who requests the certificate of origin, or the producer of a good in the exporting Party referred to in subparagraph 7(b), proves to the competent governmental authority of the exporting Party or its designees that the good to be exported qualifies as an originating good of the exporting Party.

9. The competent governmental authority of the exporting Party shall provide the other Party with specimen signatures and impressions of stamps used in the offices of the competent governmental authority or its designees.

10. Each Party shall ensure that the competent governmental authority or its designees shall keep a record of issued certificate of origin for a period of five years after the date on which the certificate was issued. Such record will include all antecedents, which were presented to prove the qualification as an originating good of the exporting Party.

Article 42
Obligations regarding Exportations

Each Party shall, in accordance with its laws and regulations, ensure that the exporter to whom a certificate of origin has been issued, or the producer of a good in the exporting Party referred to in subparagraph 7(b) of Article 41:

(a) shall notify in writing the competent governmental authority of the exporting Party or its designees without delay when such exporter or producer knows that such good does not qualify as an originating good of the exporting Party; and

(b) shall keep the records relating to the origin of the good for five years after the date on which the certificate of origin was issued.

Article 43
Request for Checking of Certificate of Origin

1. For the purposes of determining whether a good imported from the exporting Party under preferential tariff treatment qualifies as an originating good of the exporting Party, the customs authority of the importing Party may request information relating to the origin of the good from the competent governmental authority of the exporting Party on the basis of the certificate of origin.

2. For the purposes of paragraph 1, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide the information requested in a period not exceeding six months after the date of receipt of the request.

If the customs authority of the importing Party considers necessary, it may require additional information relating to the origin of the good. If additional information is requested by the customs authority of the importing Party, the competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the exporting Party, provide the information requested in a period not exceeding four months after the date of receipt of the request.

3. For the purposes of paragraph 2, the competent governmental authority of the exporting Party may request the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, to provide the former with the information requested.

Article 44
Verification Visit

1. If the customs authority of the importing Party is not satisfied with the outcome of the request for checking pursuant to Article 43, it may request the exporting Party:

(a) to collect and provide information relating to the origin of the good and check, for that purpose, the facilities used in the production of the good, through a visit by the competent governmental authority of the exporting Party along with the customs authority of the importing Party, which may be accompanied by other government officials with necessary expertise of the importing Party, to the premises of the exporter to whom the certificate of origin has been issued, or the producer of the good in the exporting Party referred to in subparagraph 7(b) of Article 41; and

(b) during or after the visit, to provide information relating to the origin of the good in the possession of the competent governmental authority of the exporting Party or its designees.

2. When requesting the exporting Party to conduct a visit pursuant to paragraph 1 or 6, the customs authority of the importing Party shall deliver a written communication with such request to the exporting Party at least 40 days in advance of the proposed date of the visit, the receipt of which is to be confirmed by the exporting Party. The competent governmental authority of the exporting Party shall request the written consent of the exporter, or the producer of the good in the exporting Party, whose premises are to be visited.

3. The communication referred to in paragraph 2 shall include:

(a) the identity of the customs authority of the importing Party issuing the communication;

(b) the name of the exporter, or the producer of the good in the exporting Party, whose premises are requested to be visited;

(c) the proposed date and place of the visit;

(d) the objective and scope of the proposed visit, including specific reference to the good subject of the verification referred to in the certificate of origin; and

(e) the names and titles of the officials of the customs authority and other government officials with necessary expertise of the importing Party to be present during the visit.

4. The exporting Party shall respond in writing to the importing Party, within 30 days of the receipt of the communication referred to in paragraph 2, if it accepts or refuses to conduct the visit requested pursuant to paragraph 1 or 6.

5. The competent governmental authority of the exporting Party shall, in accordance with the laws and regulations of the Party, provide within 45 days or any other mutually agreed period from the last day of the visit, to the customs authority of the importing Party the information obtained pursuant to paragraph 1 or 6.

6. (a) In cases where the customs authority of the importing Party considers as exceptional, that customs authority may, before or during the request for checking referred to in Article 43, put forward the exporting Party a request referred to in paragraph 1.

(b) Where the request referred to in subparagraph (a) is made, Article 43 shall not be applied.

Article 45
Determination of Origin
and Preferential Tariff Treatment

1. The customs authority of the importing Party may deny preferential tariff treatment to a good for which an importer claims preferential tariff treatment where the good does not qualify as an originating good of the exporting Party or where the importer fails to comply with any of the relevant requirements of this Chapter.

2. The competent governmental authority of the exporting Party shall, when it cancels the decision to issue the certificate of origin, promptly notify the cancellation to the exporter to whom the certificate of origin has been issued, and to the customs authority of the importing Party except where the certificate has been returned to the competent governmental authority. The customs authority of the importing Party may determine that the good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment where it receives the notification.

3. The customs authority of the importing Party may determine that a good does not qualify as an originating good of the exporting Party and may deny preferential tariff treatment, and a written determination thereof shall be sent to the competent governmental authority of the exporting Party:

(a) where the competent governmental authority of the exporting Party fails to respond to the request within the period referred to in paragraph 2 of Article 43 or paragraph 5 of Article 44;

(b) where the exporting Party refuses to conduct a visit, or that Party fails to respond to the communication referred to in paragraph 2 of Article 44 within the period referred to in paragraph 4 of Article 44; or

(c) where the information provided to the customs authority of the importing Party pursuant to Article 43 or 44, is not sufficient to prove that the good qualifies as an originating good of the exporting Party.

4. After carrying out the procedures outlined in Article 43 or 44 as the case may be, the customs authority of the importing Party shall provide the competent governmental authority of the exporting Party with a written determination of whether or not the good qualifies as an originating good of the exporting Party, including findings of fact and the legal basis for the determination. The competent governmental authority of the exporting Party shall inform such determination by the customs authority of the importing Party to the exporter, or the producer of the good in the exporting Party, whose premises were subject to the visit referred to in Article 44.

Article 46
Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of information provided to it as confidential pursuant to this Chapter, and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information.

2. Information obtained by the customs authority of the importing Party pursuant to this Chapter:

(a) may only be used by such authority for the purposes of this Chapter; and

(b) shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless the information is requested to the exporting Party and provided to the importing Party, through the diplomatic channels or other channels established in accordance with the applicable laws of the exporting Party.

Article 47
Penalties and Measures against False Declaration

1. Each Party shall establish or maintain, in accordance with its laws and regulations, appropriate penalties or other sanctions against its exporters to whom a certificate of origin has been issued and the producers of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, for providing false declaration or documents to the competent governmental authority of the exporting Party or its designees prior to the issuance of certificate of origin.

2. Each Party shall, in accordance with its laws and regulations, take measures which it considers appropriate against its exporters to whom a certificate of origin has been issued and the producers of the good in the exporting Party referred to in subparagraph 7(b) of Article 41, for failing to notify in writing to the competent governmental authority of the exporting Party or its designees without delay after having known, after the issuance of certificate of origin, that such good does not qualify as an originating good of the exporting Party.

Article 48
Miscellaneous

1. Communications between the importing Party and the exporting Party shall be conducted in the English language.

2. For the application of the relevant product specific rules set out in Annex 2 and the determination of origin, the Generally Accepted Accounting Principles in the exporting Party shall be applied.

Article 49
Sub-Committee on Rules of Origin

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Rules of Origin (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and making appropriate recommendations, as necessary, to the Joint Committee on:

(i) the implementation and operation of this Chapter;

(ii) any amendments to Annex 2 or 3, proposed by either Party; and

(iii) the Operational Procedures for Rules of Origin referred to in Article 50;

(b) discussing any issues related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Article 50
Operational Procedures for Rules of Origin

Upon the date of entry into force of this Agreement, the Joint Committee shall adopt the Operational Procedures for Rules of Origin that provide detailed regulations pursuant to which the customs authorities, the competent governmental authorities and other relevant authorities of the Parties shall implement their functions under this Chapter.

Chapter 4
Customs Procedures

Article 51
Scope

1. This Chapter shall apply to customs procedures required for the clearance of goods traded between the Parties.

2. This Chapter shall be implemented by the Parties in accordance with the laws and regulations of each Party and within the competence and available resources of their respective customs authorities.

Article 52
Definition

For the purposes of this Chapter, the term “customs laws” means the statutory and regulatory provisions relating to the importation, exportation, movement or storage of goods, the administration and enforcement of which are specifically charged to the customs authority of each Party, and any regulations made by the customs authority of each Party under its statutory power.

Article 53
Transparency

1. Each Party shall ensure that all relevant information of general application pertaining to its customs laws is publicly available.

2. When information that has been made available must be amended due to changes in its customs laws, each Party shall endeavor to make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.

3. Each Party shall, wherever appropriate, provide, as quickly and as accurately as possible, information relating to the specific customs matters raised by any interested person of the Parties and pertaining to its customs laws. The Party shall endeavor to supply any other pertinent information which it considers the interested person should be made aware of.

Article 54
Customs Clearance

1. Both Parties shall apply their respective customs procedures in a predictable, consistent and transparent manner.

2. For the accomplishment of the purposes of paragraph 1, each Party shall:

(a) make use of information and communications technology;

(b) simplify its customs procedures;

(c) harmonize its customs procedures, as far as possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Co-operation Council; and

(d) promote cooperation, wherever appropriate, between its customs authority and:

(i) other national authorities of the Party; and

(ii) the trading communities of the Party.

3. Each Party shall provide affected parties with accessible processes of administrative and judicial review in relation to the action concerning the customs matters taken by the Party.

Article 55
Cooperation and Exchange of Information

1. The Parties shall cooperate and exchange information with each other, in the field of customs procedures, including their enforcement against the trafficking of restricted and prohibited goods and the importation and exportation of goods suspected of infringing intellectual property rights.

2. Such cooperation and exchange of information shall be implemented as provided for in the Implementing Agreement.

Article 56
Sub-Committee on Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Customs Procedures (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing the implementation and operation of this Chapter;

(b) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. Further to paragraph 2 of Article 15, the composition of the Sub-Committee shall be specified in the Implementing Agreement.

Chapter 5
Investment

Article 57
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) investments of investors of the other Party in the Area of the former Party.

2. In the event of any inconsistency between this Chapter and Chapter 6:

(a) with respect to matters covered by Articles 59, 60 and 63, Chapter 6 shall prevail to the extent of inconsistency; and

(b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.

3. This Chapter shall not apply to measures affecting the movement of natural persons of a Party.

Article 58
Definitions

For the purposes of this Chapter:

(a) the term “enterprise” means any legal person or any other entity duly constituted or organized under applicable laws and regulations, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, organization or company;

(b) an enterprise is:

(i) “owned” by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and

(ii) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

(c) the term “enterprise of the other Party” means an enterprise constituted or organized under the applicable laws and regulations of the other Party;

(d) the term “financial services” means financial services as defined in subparagraph 2(a)(i) of Section 1 of Annex 7;

(e) the term “freely convertible currencies” means currencies which are, in fact, widely used to make payments for international transactions and are widely traded in the principal exchange markets;

(f) the term “investments” means every kind of asset invested by an investor, in accordance with applicable laws and regulations, including, though not exclusively:

(i) an enterprise and a branch of an enterprise;

(ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;

(iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;

(iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(v) claims to money and claims to any performance under contract having a financial value;

(vi) intellectual property rights, including copyrights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and

(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note 1: Investments also include amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note 2: For the purposes of subparagraphs (ii) and (iii), a Party may, on a non-discriminatory basis, exclude portfolio investments which are determined by the use of the non-discriminatory and objective criteria adopted by the Party.

(g) the term “investment activities” means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

(h) the term “investor of the other Party” means a national or an enterprise of the other Party;

(i) the term “national of the other Party” means a natural person having the nationality of the other Party in accordance with the applicable laws and regulations of the other Party;

(j) the term “New York Convention” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958; and

(k) the term “transfers” means transfers and international payments.

Article 59
National Treatment

1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to investment activities.

2. Notwithstanding paragraph 1, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, provided that such formalities do not materially impair the protection afforded by the former Party to investors of the other Party and to their investments pursuant to this Chapter.

Article 60
Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to investors of a non-Party and to their investments with respect to investment activities.

Article 61
General Treatment

Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security.

Article 62
Access to the Courts of Justice

Each Party shall in its Area accord to investors of the other Party treatment no less favourable than that it accords in like circumstances to its own investors or investors of a non-Party, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investors' rights.

Article 63
Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of the investor;

(e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to appoint, as executives or members of board of directors, individuals of any particular nationality;

(g) to locate the headquarters of the investor for a specific region or the world market in its Area;

(h) to achieve a given level or value of research and development in its Area; or

(i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides.

2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (g) through (i).

Article 64
Reservations and Exceptions

1. Articles 59, 60 and 63 shall not apply to:

(a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex 4:

(i) the central government of a Party; or

(ii) a prefecture of Japan or a province of Indonesia;

(b) any non-conforming measure that is maintained by a local government other than a prefecture and a province referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or

(d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 59, 60 and 63.

2. Each Party shall, on the date of entry into force of this Agreement, notify the other Party of the following information on any non-conforming measure referred to in subparagraph 1(a):

(a) the sector or matter, with respect to which the measure is maintained;

(b) the domestic or international industry classification codes, where applicable, to which the measure relates;

(c) the level of the government which maintains the measure;

(d) the obligations under this Agreement with which the measure does not conform;

(e) the legal source of the measure; and

(f) the succinct description of the measure.

3. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5.

4. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure:

(a) the sector or matter, with respect to which the measure is maintained;

(b) the domestic or international industry classification codes, where applicable, to which the measure relates;

(c) the obligations under this Agreement with which the measure does not conform;

(d) the legal source of the measure; and

(e) the succinct description of the measure.

5. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.

6. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 2 or 4, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, as soon as possible:

(a) notify the other Party of detailed information on such amendment, modification or new measure; and

(b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure.

7. Each Party shall endeavor, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains with respect to the sectors or matters specified in Annexes 4 and 5 respectively.

8. Articles 59 and 60 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

9. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

Article 65
Expropriation and Compensation

1. Neither Party shall expropriate or nationalize investments in its Area of investors of the other Party or take any measure tantamount to expropriation or nationalization (hereinafter referred to in this Chapter as “expropriation”) except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 61; and

(d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely convertible currencies.

4. Without prejudice to Article 69, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investors’ case and the amount of compensation in accordance with the principles set out in this Article.

Article 66
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely convertible currencies.

Article 67
Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include those of:

(a) the initial capital and additional amounts to maintain or increase investments;

(b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;

(c) proceeds from the total or partial sale or liquidation of investments;

(d) payments made under a contract including loan payments in connection with investments;

(e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;

(f) payments made in accordance with Articles 65 and 66; and

(g) payments arising out of the settlement of a dispute under Article 69.

2. Each Party shall further ensure that such transfers may be made in freely convertible currencies at the market exchange rate prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good-faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 68
Subrogation

1. If a Party or its designated agency makes a payment to any of its investors under an indemnity, guarantee or contract of insurance given in respect of an investment of that investor within the Area of the other Party, the other Party shall:

(a) recognize the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and

(b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. Articles 65 through 67 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

Article 69
Settlement of Investment Disputes
between a Party and an Investor of the Other Party

1. For the purposes of this Chapter, an “investment dispute” is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Agreement with respect to the investor and its investments.

2. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between an investor who is a party to the investment dispute (hereinafter referred to in this Article as “disputing investor”) and the Party that is a party to the investment dispute (hereinafter referred to in this Article as “disputing Party”).

3. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the disputing Party in accordance with the laws and regulations of the disputing Party.

4. If the investment dispute cannot be settled through consultation or negotiation referred to in paragraph 2 within five months from the date on which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:

(a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States(hereinafter referred to in this Article as “the ICSID Convention”), so long as the ICSID Convention is in force between the Parties;

(b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties;

(c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976; and

(d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. The applicable conciliation or arbitration rules shall govern the conciliation or arbitration set forth in paragraph 4 except to the extent modified in this Article.

6. A disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify:

(a) the name and address of the disputing investor;

(b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the provisions under this Agreement alleged to have been breached; and

(c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose.

7. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4.

(b) The consent given by subparagraph (a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:

(i) Chapter II of the ICSID Convention or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, for written consent of the parties to a dispute; and

(ii) Article II of the New York Convention for an agreement in writing.

8. Notwithstanding paragraph 7, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

9. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the law of the disputing Party.

10. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as “the disputing parties”) agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as “ICSID”), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12.

11. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

12. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

13. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

14. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

15. The disputing Party shall deliver to the other Party:

(a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

16. On written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

17. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

18. The award rendered by the arbitral tribunal shall include:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

20. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

21. Annex 6 provides additional provisions with respect to the settlement of investment disputes.

Article 70
Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 59 relating to cross-border capital transactions and Article 67:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. Measures referred to in paragraph 1:

(a) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;

(c) shall be temporary and eliminated as soon as conditions permit; and

(d) shall be promptly notified to the other Party.

3. Nothing in this Article shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 71
Prudential Measures

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 72
Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the enterprise has no substantial business activities in the Area of the other Party.

Article 73
Taxation Measures as Expropriation

1. Article 65 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 65.

2. Where Article 65 applies to taxation measures in accordance with paragraph 1, Articles 62 and 69 shall also apply in respect of taxation measures.

3. Notwithstanding paragraph 2, no investor may invoke Article 65 as the basis for an investment dispute under Article 69, where it has been determined pursuant to paragraph 4 that the taxation measure is not an expropriation.

4. The investor shall refer the issue, at the time that it gives a written notice of intent under paragraph 6 of Article 69, to the competent authorities of both Parties, through the contact points referred to in Article 16, to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of five months of such referral, the investor may submit the investment dispute to conciliation or arbitration under Article 69.

5. Paragraphs 2 through 4 shall apply only to taxation measure taken in the form of or in the applications of the laws and regulations which are enacted or amended after the entry into force of this Agreement.

Note: With respect to Indonesia, taxation measures referred to in this paragraph do not include those taken by tax administrative authorities in the applications of the relevant laws and regulations.

6. For the purposes of paragraph 4, the term “competent authorities” means:

(a) with respect to Japan, the Minister of Finance or his or her authorized representative, who shall consider the issue in consultation with the Minister of Foreign Affairs or his or her authorized representative; and

(b) with respect to Indonesia, the Minister of Finance or his or her authorized representative.

Article 74
Environmental Measures

Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

Article 75
Sub-Committee on Investment

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) reviewing the specific reservations and exceptions under Article 64;

(c) discussing any issues related to this Chapter;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 6
Trade in Services

Article 76
Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.

2. This Chapter shall not apply to:

(a) in respect of air transport services, measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services; and

(iii) computer reservation system services;

(b) cabotage in maritime transport services;

(c) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance;

(d) measures affecting the movement of natural persons of a Party, unless otherwise provided in a Schedule of Specific Commitments in Annex 8;

(e) measures affecting natural persons of a Party seeking access to employment market of the other Party, or measures regarding nationality, or residence or employment on a permanent basis; and

(f) government procurement.

3. Annex 7 provides supplementary provisions to this Chapter on financial services, including scope and definitions.

Article 77
Definitions

For the purposes of this Chapter:

(a) the term “aircraft repair and maintenance services” means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(b) the term “commercial presence” means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person; or

(ii) the creation or maintenance of a branch or a representative office,

within the Area of a Party for the purposes of supplying services;

(c) the term “computer reservation system services” means services provided by computerized systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations may be made or tickets may be issued;

(d) the term “juridical person” means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(e) the term “juridical person of the other Party” means a juridical person which is either:

(i) constituted or otherwise organized under the law of the other Party; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(A) natural persons of the other Party; or

(B) juridical persons of the other Party identified under subparagraph (i);

(f) a juridical person is:

(i) “owned” by persons of a Party or a non-Party if more than 50 percent of the equity interests in it is beneficially owned by such persons;

(ii) “controlled” by persons of a Party or a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and

(iii) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(g) the term “measure” means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

Note: The term “measure” shall include taxation measures to the extent covered by the GATS.

(h) the term “measure by a Party” means any measure taken by:

(i) central or local governments and authorities of a Party; and

(ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;

(i) the term “measures by a Party affecting trade in services” includes measures by a Party in respect of:

(i) the purchase, payment or use of services;

(ii) the access to and use of, in connection with the supply of services, services which are required by the Party to be offered to the public generally; and

(iii) the presence, including commercial presence, of persons of the other Party for the supply of services in the Area of the former Party;

(j) the term “monopoly supplier of a service” means any person, public or private, which in the relevant market of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;

(k) the term “natural person of a Party” means a natural person who resides in a Party or elsewhere and who is a national of the Party under the law of the Party;

(l) the term “person” means either a natural person or a juridical person;

(m) the term “service” includes any service in any sector except a service supplied in the exercise of governmental authority;

(n) the term “service consumer” means any person that receives or uses services;

(o) the term “services of the other Party” means services which are supplied:

(i) from or in the Area of the other Party, or in the case of maritime transport services, by a vessel registered under the law of the other Party, or by a person of the other Party which supplies such services through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of services through commercial presence or through the presence of natural persons, by service suppliers of the other Party;

(p) the term “service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(q) the term “service supplier” means any person that seeks to supply or supplies a service;

Note: Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the Area of a Party where the service is supplied.

(r) the term “state enterprise” means an enterprise owned or controlled by the Government of a Party;

(s) the term “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

(t) the term “the selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(u) the term “trade in services” means the supply of services:

(i) from the Area of a Party into the Area of the other Party (“cross-border supply mode”);

(ii) in the Area of a Party to the service consumer of the other Party (“consumption abroad mode”);

(iii) by a service supplier of a Party, through commercial presence in the Area of the other Party (“commercial presence mode”); and

(iv) by a service supplier of a Party, through presence of natural persons of that Party in the Area of the other Party (“presence of natural persons mode”); and

(v) the term “traffic rights” means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

Article 78
Market Access

1. With respect to market access through the modes of supply defined in subparagraph (u) of Article 77, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of Specific Commitments in Annex 8.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (u)(i) of Article 77 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (u)(iii) of Article 77, it is thereby committed to allow related transfers of capital into its Area.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire Area, unless otherwise specified in its Schedule of Specific Commitments in Annex 8, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 79
National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 8, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.

Note: Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party which accords such treatment compared to like services or service suppliers of the other Party.

4. A Party shall not invoke the preceding paragraphs under Chapter 14 with respect to a measure of the other Party that falls within the scope of an international agreement between the Parties relating to the avoidance of double taxation.

Article 80
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 78 and 79, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party’s Schedule of Specific Commitments in Annex 8.

Article 81
Schedule of Specific Commitments

1. With respect to sectors or sub-sectors where specific commitments are undertaken by each Party, its Schedule of Specific Commitments in Annex 8 shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments; and

(d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 78 and 79 shall be inscribed in the column relating to Article 78. In this case the inscription will be considered to provide a condition or qualification to Article 79 as well.

3. With respect to sectors or sub-sectors where specific commitments are undertaken in Annex 8 and which are indicated with “SS”, any terms, limitations, conditions and qualifications, referred to in subparagraphs 1(a) and (b), shall be limited to those based on non-conforming measures, which are in effect on the date of entry into force of this Agreement.

4. With respect to sectors or sub-sectors where specific commitments are undertaken by a Party in Annex 8 and which are indicated with “S”, any terms, limitations, conditions and qualifications on market access or national treatment, applied to a service supplier of the other Party on the date of entry into force of this Agreement, shall not be changed or modified so as to become more restrictive to such a service supplier.

Note: With regard to the rights given to the service supplier under the above mentioned terms, limitations, conditions and qualifications, this paragraph shall apply to the same extent as the rights that the service supplier has already exercised.

Article 82
Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords to like services and service suppliers of any non-Party.

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, sub-sectors or activities, as set out in its Schedule in Annex 9.

Article 83
Authorization, Licensing or Qualification

With a view to ensuring that any measure by a Party relating to the authorization, licensing or qualification of service suppliers of the other Party does not constitute an unnecessary barrier to trade in services, each Party shall endeavor to ensure that such measure:

(a) is based on objective and transparent criteria, such as the competence and ability to supply services;

(b) is not more burdensome than necessary to ensure the quality of services; and

(c) does not constitute a disguised restriction on the supply of services.

Article 84
Mutual Recognition

1. A Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other Party for the purposes of the fulfillment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Where a Party recognizes, by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met or licenses or certifications granted in the non-Party:

(a) nothing in Article 82 shall be construed to require the Party to accord such recognition to the education or experience obtained, requirements met or licenses or certifications granted in the other Party; and

(b) the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the other Party should also be recognized.

Article 85
Transparency

The competent authorities referred to in paragraph 2 of Article 3 shall, upon request by service suppliers of the other Party, promptly respond to specific questions from, and provide information to, the service suppliers with respect to matters referred to in paragraph 1 of Article 3 through the contact points referred to in Article 16.

Note: The information provided by the Parties under this Article will be supplied solely for the purposes of transparency and shall not be construed to affect any rights and obligations of the Parties under this Chapter.

Article 86
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its Area does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's commitments under this Chapter.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated juridical person, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in the Area of the Party in a manner inconsistent with such commitments.

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorizes or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its Area.

Article 87
Payments and Transfers

1. Except under the circumstances envisaged in Article 88, a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 88, or at the request of the International Monetary Fund.

Article 88
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions.

2. The restrictions referred to in paragraph 1:

(a) shall ensure that the other Party is treated as favourably as any non-Party;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programs. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.

Article 89
Emergency Safeguard Measures

1. The Parties shall take note of the multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination pursuant to Article X of the GATS. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement based on the results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a Party in a specific service sector prior to the conclusion of the multilateral negotiations referred to in paragraph 1, the Party may request consultations with the other Party for the purposes of taking appropriate measures to address such adverse impact. The Parties shall take into account the circumstances of the particular case in such consultations.

Article 90
Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party, and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party that is a juridical person of the other Party, where the denying Party establishes that the juridical person is owned or controlled by persons of a non-Party and has no substantial business activities in the Area of the other Party.

Article 91
Sub-Committee on Trade in Services

For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Trade in Services (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

(c) reporting the findings of the Sub-Committee to the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 7
Movement of Natural Persons

Article 92
Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the other Party and fall under one of the categories referred to in Annex 10.

2. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to employment market of the other Party, nor shall it apply to measures regarding nationality, or residence or employment on a permanent basis.

3. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, the former Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of specific commitments set out in Annex 10.

Note: The sole fact of requiring a visa or its equivalent for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under specific commitments set out in Annex 10.

Article 93
Definition

For the purposes of this Chapter, the term “natural persons of a Party” means natural persons who reside in a Party or elsewhere and who under the law of the Party are nationals of the Party.

Article 94
Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Chapter including the terms of the categories in Annex 10, provided that the natural persons comply with the laws and regulations related to movement of natural persons of the former Party applicable to entry and temporary stay which are not inconsistent with the provisions of this Chapter.

2. Each Party shall, in accordance with its laws and regulations, issue proper travel documents necessary for immediate return to the Party, to the natural persons of the Party who stay in the other Party based on the grant of entry and temporary stay under paragraph 1, where such persons are required to leave the other Party in accordance with the laws and regulations of the other Party which are not inconsistent with the provisions of this Chapter.

3. Each Party may require a natural person of the other Party to obtain an appropriate visa or its equivalent prior to entry and temporary stay under paragraph 1.

4. Neither Party shall impose or maintain any limitations on the number of granting entry and temporary stay under paragraph 1, unless otherwise specified in Annex 10.

Article 95
Requirements and Procedures

1. Each Party shall establish and make publicly available requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Party who has been granted entry and temporary stay under paragraph 1 of Article 94.

2. Each Party shall endeavor to provide, upon request by a natural person of the other Party, information on requirements and procedures referred to in paragraph 1.

3. Each Party shall, in accordance with its laws and regulations, ensure that fees charged by its competent authorities on application referred to in paragraph 1 do not in themselves represent an unjustifiable impediment to the movement of natural persons of the other Party under this Chapter.

Article 96
Sub-Committee on Movement of Natural Persons

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Movement of Natural Persons (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to this Chapter;

(c) adopting guidelines referred to in Annex 10;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 8
Energy and Mineral Resources

Article 97
Definitions

For the purposes of this Chapter:

(a) the term “energy and mineral resource good” means any good listed in Annex 11;

(b) the term “energy and mineral resource regulatory bodies” means the governmental bodies that regulate and control the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of an energy and mineral resource good;

(c) the term “energy and mineral resource regulatory measure” means any measure by energy and mineral resource regulatory bodies that directly affects the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of an energy and mineral resource good;

(d) the term “energy and mineral resource sector” means the sector relating to the exploration, exploitation, production, operation, transportation, transmission or distribution, purchase or sale of energy and mineral resource goods;

(e) the term “export licensing procedures” means administrative procedures, whether or not referred to as “licensing”, used by a Party for the operation of export licensing regimes requiring the submission of an application or other documentation, other than that required for customs procedures, to the relevant administrative body as a prior condition for exportation from that Party; and

(f) the term “person of the other Party” means either a natural person or an enterprise of the other Party.

Article 98
Promotion and Facilitation of Investment

1. (a) Both Parties shall cooperate in promoting and facilitating investments between the Parties in the energy and mineral resource sector through ways such as:

(i) discussing effective ways on investment promotion activities and capacity building;

(ii) facilitating the provision and exchange of investment information including information on the laws, regulations and policies of the Parties;

(iii) encouraging and supporting investment promotion activities of each Party or the business sectors of the Parties, relating to, in particular, the exploration, exploitation and production of energy and mineral resource goods and the infrastructural facilities in the energy and mineral resources sector; and

(iv) discussing effective ways of creating stable, equitable, favourable and transparent conditions for investors.

(b) The implementation and operation of this paragraph shall be subject to the availability of funds and the applicable laws and regulations of each Party.

2. Annex 12 provides additional provisions with respect to the promotion and facilitation of investment in the energy and mineral resource sector.

Article 99
Import and Export Restrictions

1. The Parties reaffirm their obligation to comply with the relevant provisions of the GATT 1994, with respect to prohibitions or restrictions on the importation or exportation of energy and mineral resource goods.

2. Each Party, when introducing a prohibition or restriction otherwise justified under the relevant provisions of the GATT 1994, with respect to the exportation to or importation from the other Party of an energy and mineral resource good, shall provide relevant information concerning such prohibition or restriction as early as possible to the other Party and reply, upon the request of the other Party, to specific questions on such prohibition or restriction from the other Party, with a view to avoiding disruption of ordinary business activities in the Parties.

Article 100
Export Licensing Procedures and Administrations

If a Party adopts or maintains export licensing procedures with respect to an energy and mineral resource good:

(a) the rules for export licensing procedures shall be neutral in application and administered in a fair and equitable manner;

(b) the rules and all information concerning procedures for the submission of applications, including the eligibility of persons of the other Party to make such applications, the administrative bodies to be approached, and the lists of products subject to the licensing requirement shall be published, as soon as possible, in such a manner as to enable the other Party and traders of the other Party to become acquainted with them. Any exceptions, derogations or changes in or from the rules concerning export licensing procedures or the list of products subject to export licensing shall also be published in the same manner as specified above;

(c) in the case of licensing requirements for purposes other than the implementation of quantitative restrictions, the Party shall publish sufficient information for the other Party and traders of the other Party to know the basis for granting and/or allocating licenses;

(d) where the Party provides the possibility for persons of the other Party to request exceptions or derogations from a licensing requirement, the former Party shall include this fact in the information published under paragraph (b) as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which such a request would be considered;

(e) the Party shall provide, upon the request of the other Party, all relevant information concerning the administration of the restrictions in accordance with its laws and regulations;

(f) when administering quotas by means of export licensing, the Party shall inform the other Party of the overall amount of quotas to be applied and any change thereof;

(g) the Party shall hold consultations upon the request of the other Party, on the rules for such procedures with the other Party; and

(h) any person of the other Party which fulfils the legal and administrative requirements of the former Party shall be equally eligible to apply and to be considered for a license. If the license application is not approved, the applicant of the other Party shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the former Party.

Article 101
Energy and Mineral Resource Regulatory Measures

1. Each Party shall seek to ensure that, in the application of any energy and mineral resource regulatory measure, the energy and mineral resource regulatory bodies of the Party shall avoid disruption of contractual relationships which exist at the time of the application of the energy and mineral resource regulatory measure to the maximum extent practicable and implement the energy and mineral resource regulatory measure in an orderly and equitable manner.

2. If the energy and mineral resource regulatory bodies of a Party adopt any new energy and mineral resource regulatory measure, the Party shall, as soon as possible, notify the other Party or publish the energy and mineral resource regulatory measure, and respond, upon the request of the other Party, to specific questions on the energy and mineral resource regulatory measure from the other Party.

Article 102
Environmental Aspects

1. Each Party, in pursuit of sustainable development and taking into account its obligations under those international agreements concerning environment to which it is a party, confirms the importance of avoiding or minimizing, in an economically efficient manner, harmful environmental impacts of all activities related to energy and mineral resources in its Area.

2. Each Party shall:

(a) take account of environmental considerations, in accordance with its laws and regulations, throughout the process of formulation and implementation of its policy on energy and mineral resources;

(b) encourage favourable conditions for the transfer and dissemination of technologies that contribute to the protection of environment, consistent with the adequate and effective protection of intellectual property rights; and

(c) promote public awareness of environmental impacts of activities related to energy and mineral resources and of the scope for and the costs associated with the prevention or abatement of such impacts.

Article 103
Community Development

Each Party welcomes any contribution by investors of the other Party to the development of its community when such investors make investments in the energy and mineral resource sector in its Area.

Article 104
Cooperation

1. Both Parties shall cooperate in the energy and mineral resource sector of Indonesia.

2. (a) The Parties shall endeavor to make available the necessary funds and other resources for the implementation of cooperation under this Article in accordance with their respective laws and regulations.

(b) Costs of cooperation under this Article shall be borne in an equitable manner to be mutually agreed upon by the Parties.

3. (a) Areas of cooperation under this Article shall include policy development, capacity building, and technology transfer.

(b) Forms of cooperation under this Article shall be set forth in the Implementing Agreement.

Article 105
Sub-Committee on Energy and Mineral Resources

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Energy and Mineral Resources (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) exchanging information on any matters related to this Chapter;

(b) reviewing and monitoring the implementation and operation of this Chapter;

(c) discussing any issues related to this Chapter, including issues related to business environment, cooperation, energy security, and the development of an open and competitive market;

(d) reporting the findings of the Sub-Committee and, where appropriate, making recommendations, to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 9
Intellectual Property

Article 106
General Provisions

1. The Parties, aiming at further promoting trade and investment, shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for the enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties.

3. Each Party shall endeavor to become a party, if it is not a party, to the following international agreements in accordance with its necessary procedures:

(a) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989, as amended;

(b) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of October 26, 1961; and

(c) the 1991 Act of International Convention for the Protection of New Varieties of Plants (hereinafter referred to in this Chapter as “the 1991 UPOV Convention”).

Article 107
Definitions

For the purposes of this Chapter:

(a) the term “intellectual property” means all categories of intellectual property:

(i) that are subject of Articles 112 through 118; and/or

(ii) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement; and

(b) the term “Nice Classification” means the classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as amended.

Article 108
National Treatment
and Most-Favoured-Nation Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.

2. Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement.

3. For the purposes of this Article:

(a) the term “nationals” shall have the same meaning as in the TRIPS Agreement; and

(b) the term “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article 109
Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to improve its administrative procedures concerning intellectual property rights in line with international standards.

2. Neither Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks.

3. Notwithstanding paragraph 2, a Party may require:

(a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and

(b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for requiring the submission.

4. Neither Party may require the certification of translation of an earlier application whose priority is claimed.

5. Each Party shall introduce and implement a system in which a power of attorney for application procedures or other administrative procedures on patents, utility models, industrial designs, or trademarks before the competent authority of the Party may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

6. Neither Party shall require that the submission of a power of attorney be completed together with the filing of the application as a condition for according a filing date to the application.

7. Each Party shall endeavor to improve patent attorney or registered intellectual property rights consultant system with a view to further facilitating acquisition and utilization of industrial property rights.

8. The applications for and the grants of patents and the publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended. The applications for registration of, and the registrations of, trademarks for goods and services and the publications thereof shall be classified in accordance with the Nice Classification.

Article 110
Transparency

For the purposes of further promoting transparency in administration of intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

(a) publish information on at least the applications for and the grants of patents, the registrations of utility models and industrial designs, and the applications for registration of, and the registrations of, trademarks and new varieties of plants, and make available to the public information contained in the dossiers thereof;

(b) make available to the public information on the applications for the suspension by the customs authority of the release of counterfeit trademark or pirated copyright goods as a border measure; and

(c) make available to the public information (including statistical information) on its efforts to provide effective enforcement of intellectual property rights and other information with regard to intellectual property protection system (including standards or guidelines on examination of the applications for patents and the applications for registration of industrial designs and trademarks).

Article 111
Promotion of Public Awareness
of Protection of Intellectual Property

The Parties shall endeavor to promote public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 112
Patents

1. Each Party shall ensure that any patent application is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program.

2. Each Party shall ensure that an applicant may, on its own initiative, divide a patent application containing more than one invention into a certain number of divisional patent applications within the time limit provided for in the laws and regulations of the Party.

3. Each Party shall ensure that an application for a patent is examined upon the request of the applicant, where appropriate, in preference to other applications, if the applicant has filed an application for a patent of the same or substantially the same invention in the other Party or in any non-Party. Each Party may require the applicant to furnish, together with the request, a result of relevant prior art search, or a copy of the final decision by the administrative authority for patents of the other Party or of a non-Party (hereinafter referred to in this Article as "the final decision") on the application filed in the other Party or in the non-Party.

4. Notwithstanding paragraph 3, a Party which requires, pursuant to relevant provisions of its laws and regulations, the applicant who filed an application for a patent in that Party to furnish a copy of the final decision on an application for a patent of the same or substantially the same invention which the applicant filed in the other Party or in any non-Party, shall examine the application in preference to other applications, if the applicant furnishes the aforementioned copy.

5. Each Party shall ensure that any person may provide the administrative authority for patents with information in writing that could deny novelty or inventive step of inventions claimed in patent applications during the pendency of those applications. Each Party shall take the information, as appropriate, into consideration for examining those applications.

6. Each Party shall ensure that an applicant may make amendments to its patent application within a certain period, in accordance with the laws and regulations of the Party, after the filing of its appeal petition with respect to the refusal of such application by the administrative authority for patents.

7. Each Party shall provide that at least the following acts shall be deemed as an infringement of a patent right if performed without the consent of the patent owner:

(a) in the case of a patent for an invention of product, acts of manufacturing, assigning, leasing, importing, or offering for assignment or lease, for commercial purposes, things to be used exclusively for the manufacture of the product; and

(b) in the case of a patent for an invention of process, acts of manufacturing, assigning, leasing, importing, or offering for assignment or lease, for commercial purposes, things to be used exclusively for the working of such invention.

Article 113
Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. Each Party shall provide that designs are not new or original if they do not significantly differ from known designs.

2. Each Party shall ensure that where more than one application for registration of industrial design relating to the same or similar industrial designs is filed on different dates, only the applicant who filed first may obtain a registration of the industrial design concerned.

3. Each Party shall ensure adequate and effective protection of industrial designs of a part of an article as well as an article as a whole.

4. Each Party shall ensure that an owner of protected industrial design has the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.

5. Each Party shall endeavor to establish appeal system in which an appeal may be filed with the administrative authority for industrial designs against its decision of refusal of an application for registration of industrial design.

Article 114
Trademarks

1. Each Party shall ensure that an owner of registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

2. Each Party shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in either Party as indicating goods or services of another person, if the use of that trademark is for unfair intentions, *inter alia*, intentions to gain an unfair profit or intentions to cause damage to such person whether or not such use would result in a likelihood of confusion.

3. Each Party shall ensure that, where more than one application for registration of trademark relating to identical or similar trademarks which are to be used on identical or similar goods or services is filed on different dates, only the applicant who filed first may obtain a registration for the trademark concerned.

4. Each Party shall ensure that one and the same application for registration of trademark may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.

5. Each Party shall ensure that the period during which the request for renewal of registration of a trademark may be presented and the renewal fee may be paid shall start at least six months before the date on which the renewal is due and shall end at the earliest six months after that date.

Article 115
Copyright and Related Rights

1. Each Party shall provide to authors all exclusive rights protected under the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as amended and the WIPO Copyright Treaty of December 20, 1996 (hereinafter referred to in this Article as “the WIPO Copyright Treaty”).

2. Each Party shall provide to performers and producers of phonograms all exclusive rights protected under the WIPO Performances and Phonograms Treaty of December 20, 1996, (hereinafter referred to in this Article as “the WIPO Performances and Phonograms Treaty”).

3. Each Party shall provide to broadcasting and cablecasting organizations the right to authorize or prohibit the fixation of their broadcasts and cablecasts, respectively, in accordance with its laws and regulations.

4. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyright or related rights:

(a) to remove or alter any electronic rights management information without authority; and

(b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

5. Each Party shall take necessary measures to promote the development of collective management organizations for copyright and related rights in the Party.

6. For the purposes of this Article:

(a) with respect to the rights of authors, the term “rights management information” shall have the same meaning as in Article 12 of the WIPO Copyright Treaty; and

(b) with respect to the rights of performers and producers of phonogram, the term “rights management information” shall have the same meaning as in Article 19 of the WIPO Performances and Phonograms Treaty.

Article 116
New Varieties of Plants

Each Party shall provide for the protection of all plant genera and species by an effective plant varieties protection system which is consistent with the 1991 UPOV Convention.

Article 117
Acts of Unfair Competition

1. Each Party shall provide for effective protection against acts of unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following acts, in particular, shall be prohibited as acts of unfair competition:

(a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

(b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, the services, or the industrial or commercial activities, of a competitor;

(c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the goods or services, or the manufacturing process of the goods; and

(d) acts by an agent or representative of an owner of right relating to a trademark, without a legitimate reason and the consent of the owner of such right, of using a trademark identical or similar to the trademark relating to such right in respect of goods or services identical or similar to those relating to such right; of assigning, delivering, displaying for the purposes of assignment or delivery, exporting, importing, or providing through a telecommunication line, goods using such identical or similar trademark which are identical or similar to the goods relating to such right; or of providing services by using such identical or similar trademark which are identical or similar to the services relating to such right.

4. The following acts may also be prohibited as acts of unfair competition:

(a) acts of using an indication of goods or other indication as one’s own which is identical or similar to another person's indication of goods or other indication which is famous; or acts of assigning, delivering, displaying for the purposes of assignment or delivery, exporting, importing, or providing through a telecommunication line, goods using such indication;

(b) acts of assigning, leasing, displaying for the purposes of assignment or lease, exporting or importing, goods which imitate the configuration of another person's goods except as provided for in the laws and regulations of each Party; and

(c) acts of acquiring or holding right to use domain names identical or similar to a specific indication of goods or services of another person, or using such domain names, with intention to gain unfair profit or intention of causing damage to such person.

5. Each Party shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Party shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request injunction against the act, destruction of the goods which constitute the act, removal of facilities used for the act, or any damages which result from the act, except as provided for in the laws and regulations of the Party.

Article 118
Protection of Undisclosed Information

Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article 119
Enforcement – Border Measures

1. Each Party shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation or exportation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authority of the release into free circulation of such goods.

2. In the case of the suspension with respect to importation pursuant to paragraph 1, the importer and the right holder shall be promptly notified of the suspension. In the case of the suspension with respect to exportation pursuant to paragraph 1, the exporter and the right holder shall be promptly notified of the suspension.

3. Each Party shall ensure that its competent authorities do not allow the re-exportation of counterfeit trademark or pirated copyright goods other than in exceptional circumstances.

Article 120
Enforcement – Civil Remedies

1. Each Party shall ensure that a right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. Each Party shall endeavor, as necessary, to improve its judicial system with a view to providing effective civil remedies against infringement of intellectual property rights.

Article 121
Enforcement – Criminal Remedies

Each Party shall provide for criminal procedures and penalties to be applied in cases of the infringement of patent rights, rights relating to utility models, industrial designs, trademarks or layout-designs of integrated circuits, copyrights or related rights, or plant breeder's rights, committed willfully and on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

Article 122
Cooperation

1. The Parties, recognizing the growing importance of protection of intellectual property in pursuing further promotion of trade and investment between the Parties, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property. Costs of cooperation under this Article shall be borne in as an equitable manner as possible.

2. Areas and forms of cooperation under this Article shall be set forth in the Implementing Agreement.

Article 123
Sub-Committee on Intellectual Property

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system;

(c) exchanging views on the following issues:

(i) protection of genetic resources, traditional knowledge and folklore; and

(ii) liability of internet service providers;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 10
Government Procurement

Article 124
Exchange of Information

1. Each Party shall, subject to its laws and regulations, respond in a timely manner to reasonable requests from the other Party for information on its laws and regulations, policies and practices on government procurement, as well as any reforms to its existing government procurement regimes.

2. The exchange of information under paragraph 1 shall be facilitated through the following governmental authorities:

(a) for Japan, the Ministry of Foreign Affairs; and

(b) for Indonesia, the State Ministry of National Development Planning (BAPPENAS).

Article 125
Sub-Committee on Government Procurement

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Government Procurement (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) exchanging views on laws and regulations, policies and practices, and other mutually agreed issues regarding government procurement;

(c) discussing ways to facilitate cooperations between relevant entities of the Parties in the field of government procurement;

(d) reporting the findings of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. The decision by each Party on the composition of representatives of the Government of the Party to the Sub-Committee, shall be facilitated by its governmental authority referred to in paragraph 2 of Article 124.

Chapter 11
Competition

Article 126
Promotion of Competition
by Addressing Anti-competitive Activities

Each Party shall, in accordance with its laws and regulations, promote competition by addressing anti-competitive activities, in order to facilitate the efficient functioning of its market.

Note: For the purposes of this Chapter, the term “anti-competitive activities” means any conduct or transaction that may be subject to penalties or relief under the competition laws and regulations of either Party.

Article 127
Cooperation on the Promotion of Competition

1. The Parties shall, in accordance with their respective laws and regulations, cooperate on the promotion of competition by addressing anti-competitive activities, and on the capacity building for strengthening competition policy and implementation of competition laws and regulations, subject to their respective available resources.

2. The details and procedures of cooperation under this Article shall be specified in the Implementing Agreement.

Article 128
Non-Discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

Article 129
Procedural Fairness

Each Party shall implement administrative and judicial procedures in a fair manner to address anti-competitive activities, pursuant to its relevant laws and regulations.

Article 130
Non-Application of Paragraph 2 of Article 9

Paragraph 2 of Article 9 shall not apply to this Chapter.

Chapter 12
Improvement of Business Environment
and Promotion of Business Confidence

Article 131
Basic Principles

1. The Parties, confirming their interest in creating a more favourable business environment with a view to promoting trade and investment activities by enterprises of the Parties, shall from time to time have consultations in order to address issues concerning the improvement of the business environment in the Parties and to facilitate the promotion of the business confidence among enterprises of the Parties.

2. Each Party shall, in accordance with its laws and regulations, take appropriate measures to further improve the business environment for the benefit of the enterprises of the Parties conducting their business activities in the Parties.

3. The Parties shall, in accordance with their respective laws and regulations, promote cooperation to further improve the business environment in their respective Parties and take necessary measures including establishing such mechanisms as provided for in subparagraph 1(j) of Article 15 and Article 133.

Article 132
Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Improvement of Business Environment and Promotion of Business Confidence(hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) addressing issues in relation to the improvement of business environment and the promotion of the business confidence that the Sub-Committee considers appropriate, taking into account, as necessary, the findings reported by a Liaison Office on Improvement of Business Environment established in accordance with Article 133, and in cooperation with other relevant Sub-Committees or existing mechanisms with a view to avoiding unnecessary overlap with the works of such Sub-Committees or mechanisms;

(b) reporting the findings and making recommendations to the Parties, including the measures to be taken by the Parties, regarding such functions as referred to in subparagraph (a). The Parties shall take into consideration such recommendations. The Sub-Committee may consult with the Joint Committee prior to the submission of recommendations to the Parties;

(c) where appropriate, reviewing the implementation of the recommendations referred to in subparagraph (b);

(d) making available, where appropriate, to enterprises of the Parties the recommendations referred to in subparagraph (b) and the results of the review referred to in subparagraph (c) in an appropriate manner;

(e) reporting the recommendations referred to in subparagraph (b) and other findings in relation to the implementation and operation of this Chapter to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. The other details of the Sub-Committee may be set forth in the Implementing Agreement.

Article 133
Liaison Office on Improvement of Business Environment

1. Each Party shall designate and maintain a Liaison Office on Improvement of Business Environment for the purposes of this Chapter.

2. The functions and other details of the Liaison Office on Improvement of Business Environment may be set forth in the Implementing Agreement.

Chapter 13
Cooperation

Article 134
Basic Principles

The Parties shall promote cooperation under this Agreement for their mutual benefits in order to liberalize and facilitate trade and investment between the Parties and to promote the well-being of the peoples of the Parties. For this purpose, the Parties shall cooperate between the Governments of the Parties and, where necessary and appropriate, encourage and facilitate cooperation between the parties other than the Governments of the Parties, in the following fields:

(a) manufacturing industries;

(b) agriculture, forestry and fisheries;

(c) trade and investment promotion;

(d) human resource development;

(e) tourism;

(f) information and communications technology;

(g) financial services;

(h) government procurement;

(i) environment; and

(j) other fields to be mutually agreed upon by the Parties.

Note: Cooperation in the fields of customs procedures, energy and mineral resources, intellectual property and competition is provided for in Chapters 4, 8, 9 and 11, respectively.

Article 135
Areas and Forms of Cooperation

Areas and forms of cooperation under this Chapter may be set forth in the Implementing Agreement.

Article 136
Costs of Cooperation

1. The Parties shall endeavor to make available the necessary funds and other resources for the implementation of cooperation under this Chapter in accordance with their respective laws and regulations.

2. Costs of cooperation under this Chapter shall be borne in an equitable manner to be mutually agreed upon by the Parties.

Article 137
Sub-Committee on Cooperation

1. For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Cooperation (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 15 shall be:

(a) exchanging information on cooperation;

(b) reviewing, monitoring and giving guidance on the implementation and operation of this Chapter;

(c) identifying ways for further cooperation;

(d) discussing any issues related to this Chapter;

(e) reporting the findings of the Sub-Committee to the Joint Committee; and

(f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

2. The Sub-Committee shall respect consultation mechanisms for Official Development Assistance and other cooperation schemes between the Parties and, as appropriate, share information and coordinate with such mechanisms and schemes to ensure effective and efficient implementation of cooperative activities and projects.

Chapter 14
Dispute Settlement

Article 138
Scope

1. This Chapter shall apply with respect to the settlement of disputes between the Parties arising out of the interpretation and/or application of this Agreement.

2. Notwithstanding paragraph 1, this Chapter except Article 139 shall not apply to Articles 104 and 122, and Chapters 10 through 13.

3. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

4. Notwithstanding paragraph 3, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute.

Article 139
General Principle

Any dispute between the Parties arising out of the interpretation and/or application of this Agreement shall, as far as possible, be settled peacefully and amicably.

Article 140
Consultations

1. Either Party may request in writing consultations to the other Party concerning any matter arising out of the interpretation and/or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1, the other Party shall reply to the request and enter into consultations in good faith within 60 days after the date of receipt of the request. In a case of consultations regarding perishable goods, the other Party shall enter into consultations within 20 days after the date of receipt of the request.

3. Unless otherwise agreed by the Parties, consultations shall be treated as confidential. Consultations shall be without prejudice to the rights of either Party in any further proceedings.

Article 141
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time by agreement of the Parties, and be terminated at any time upon the request of either Party.

2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

3. Proceedings involving good offices, conciliation or mediation and positions taken by the Parties during these proceedings, shall be treated as confidential, and without prejudice to the rights of either Party in any further proceedings.

Article 142
Establishment of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 140 may request in writing the establishment of an arbitral tribunal to the Party complained against:

(a) if the Party complained against does not enter into such consultations within 60 days, or within 20 days in a case of consultations regarding perishable goods, after the date of receipt of the request for such consultations; or

(b) if the Parties fail to resolve the dispute through such consultations within 90 days, or within 50 days in a case of consultations regarding perishable goods, after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations under this Agreement, or as a result of the application by the Party complained against of measures which are in conflict with its obligations under this Agreement.

2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:

(a) the legal basis of the complaint including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and

(b) the factual basis for the complaint.

3. The arbitral tribunal shall comprise three arbitrators, who should have relevant technical or legal expertise.

4. Each Party shall, within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to three candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party, nor have dealt with the dispute in any capacity.

5. The Parties shall agree on and appoint the third arbitrator within 60 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 4.

6. If a Party has not appointed an arbitrator pursuant to paragraph 4 or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 5, the arbitrator or arbitrators not yet appointed shall be chosen within 15 days by lot from the candidates proposed pursuant to paragraph 4.

7. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

Article 143
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 142:

(a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;

(b) shall make its award in accordance with this Agreement and applicable rules of international law; and

(c) shall set out, in its award, its findings of law and fact, together with the reasons therefor.

2. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

3. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from experts.

4. The arbitral tribunal may, at the request of a Party or on its own initiative, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.

Article 144
Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The venue for the proceedings of the arbitral tribunal shall be decided by mutual consent of the Parties, failing which it shall alternate between the Parties.

3. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.

4. Notwithstanding paragraph 3, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, that Party shall, upon request of the other Party, provide a non-confidential summary of the information or written submissions which may be disclosed publicly.

5. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceedings. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

6. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.

7. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both the descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit its draft award within the aforementioned 90 days period, it may extend that period with the consent of the Parties. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of submission of the draft award.

8. The arbitral tribunal shall issue its award, within 30 days after the date of submission of the draft award.

9. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make its decisions, including its award, by majority vote.

10. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 145
Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 7 and 8 of Article 144 and paragraph 8 of Article 146 shall be extended by the amount of time that the work was suspended. The proceedings of the arbitral tribunal shall be resumed at any time upon the request of either Party. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of the arbitral tribunal at any time before the issuance of the award to the Parties by jointly so notifying the chair of the arbitral tribunal.

Article 146
Implementation of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 144.

2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may request to the Party complained against consultations with a view to reaching a mutually satisfactory implementation period. If no satisfactory implementation period has been agreed within 30 days after the date of receipt of the request, the complaining Party may refer the matter to an arbitral tribunal.

3. If the Party complained against considers it impracticable to comply with the award within the implementation period as determined pursuant to paragraph 2, the Party complained against shall, no later than the expiry of that implementation period, enter into consultations with the complaining Party, with a view to developing mutually satisfactory resolution through compensation or any alternative arrangement. If no satisfactory resolution has been agreed within 30 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

4. If the complaining Party considers that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, it may refer the matter to an arbitral tribunal.

5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.

6. The suspension of the application of concessions or other obligations under paragraphs 3 and 5 may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:

(a) not be effected if, in respect of the dispute to which the suspension relates, consultations or proceedings before the arbitral tribunal are in progress;

(b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;

(c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the original award; and

(d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.

7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 5 or 6 have not been met, it may request consultations with the complaining Party. The complaining Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve the matter within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, the Party complained against may refer the matter to an arbitral tribunal.

8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have, as its arbitrators, the arbitrators of the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 4 through 6 of Article 142. The arbitral tribunal established for the purposes of this Article shall issue its award within 60 days after the date when the matter is referred to it. Such award shall be binding on the Parties.

Article 147
Modification of Time Periods

Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 148
Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

Chapter 15
Final Provisions

Article 149
Table of Contents and Headings

The table of contents and headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 150
Annexes and Notes

The Annexes and Notes to this Agreement shall form an integral part of this Agreement.

Article 151
General Review

The Parties shall undertake a general review of the implementation and operation of this Agreement in the fifth calendar year following the calendar year in which this Agreement enters into force, and every five years thereafter, unless otherwise agreed by the Parties.

Article 152
Amendment

1. This Agreement may be amended by agreement between the Parties.

2. Such amendment shall be approved by the Parties in accordance with their respective legal procedures, and shall enter into force on the date to be agreed upon by the Parties.

3. Notwithstanding paragraph 2, amendments relating only to Annex 2 or 3 may be made by diplomatic notes exchanged between the Governments of the Parties.

Article 153
Entry into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Governments of the Parties exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 154.

Article 154
Termination

Either Party may terminate this Agreement by giving one year’s advance notice in writing to the other Party.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Jakarta on this twentieth day of August in the year 2007 in duplicate in the English language.

For Japan:	For the Republic of Indonesia:
安倍晋三	S.B.Yudhoyono