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The Role of the Dispute Settlement Body (DSB) in the Settlement of Trade Disputes Between Member Countries of the World Trade Organization (WTO)

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Abstract

The flow of globalization that is taking place more rapidly at this time makes free trade no longer unstoppable. The dominance of the WTO in regulating the international trade system cannot be separated from the rapid and dynamic economic growth and development among nations. In this development, disputes between countries in international trade will certainly occur. This research aims to examine the role of the Dispute Settlement Body (DSB) in the settlement of trade disputes between member countries of the World Trade Organization (WTO). This research uses a normative legal research method and data collection is done by literature study. The results of this study showed that the dispute resolution system through the Dispute Settlement Body of the WTO is set forth in the Understanding of Rules and Procedures Governing the Settlement of Disputes. The substance of the provisions contained in this section is the interpretation and implementation of the provisions of Article III of the GATT of 1947 and the implementing agency is the Dispute Settlement Body. The institution is part of the WTO General Council so all member countries are bound by its rules and regulations and have the same right to use the existence of the Dispute Settlement Body.

Keywords: Dispute settlement; dispute settlement body; international trade; wto

I. INTRODUCTION

Trade between nations has been carried out for centuries BC. The age of trade is parallel to human civilization. However, trade issues between nations will certainly occur at the time an international community has been created, which is divided into a number of countries. The history of international agreements or treaties in the field of trade has been woven since the 14th century BC as stated by Lamy (2006), as follows:

"Trade is at the origin of entire segments of public international law, and accounts for one of its main sources: the treaty. Indeed, one of the first international legal instruments to leave its trace in history was the commercial treaty between Amenophis IV and the king of Alasia (Cyprus) during the XIV century BC. This treaty exempts Cypriot traders from customs duty in exchange for the importation of a certain quantity of copper and wood. Nothing has fundamentally changed since: at the beginning of the XXI century AD we still have bilateral trade agreements. But they now have to be notified to the WTO where they are checked for consistency with international trade rules" (Lamy, 2006).

The international trade legal system should be in line with the basic principles of international law and international treaty law and of course all of them must be a harmonious structure, so they have legal validity in the context of international law. The basic principles of international law include equality of state sovereignty, the principle of

good faith, international cooperation and the obligation to resolve disputes peacefully. The World Trade Organization (WTO) respects the principles of international law and, at the same time, adapts itself to the realities of international trade (Suherman, 2015:46).

The dominance of the WTO in regulating the international trading system cannot be separated from the economic growth and development among nations which are progressing rapidly and dynamically. The rapid economic growth of countries such as those ASEAN, the USA, the European Union, and others have resulted in a higher level of competition in trade relations. The flow of globalization that is currently progressing rapidly has made free trade unstoppable (Syahmin, 2006:357).

WTO is a world organization in the field of trade which is very dominant in shaping the direction of international trade regulations. Every regulation issued by the WTO must be obeyed by every member country, especially regarding the international trade discipline it issues. The rules of the WTO have now become an important element in the implementation of each country's economic strategy in general and in particular its strategy in international trade (Rubiyanto, 2019).

A dispute arises when one WTO member makes a trade policy or takes an action that another member country considers to have violated a WTO agreement, or has failed to comply with its obligations. International trade disputes are the responsibility of the Dispute Settlement Body (DSB) which involves all WTO members. The DSB has the authority to form a Panel of Experts to examine cases and accept or reject the Panel's findings or the outcome of an appeal decision.

The research results conducted by Oktaviano & Waluyo (2017) in their study about explaining the role of an international trade organization or rather an international trade regime better known as the world trade organization, showed that Neoliberalism is a theory in international relations that describes concepts of rationality, and contract, and focuses on the role of institutions and organizations in international politics. Neoliberalism reduces state intervention in the economy to be replaced by markets, and markets serve as one system for regulating the economy and at the same time the only benchmark for judging the success of government policy. Utomo (2023) in his research that examined Indonesia's Interests in the World Trade Organization and the Appellate Body Impasse: Questioning the Existence of Special and Differential Treatment, showed the research result that Indonesia has a vested interest in fighting for its future by resolving conflicts through the WTO, and this cannot be achieved if the WTO is unable to function properly. Therefore, meaningful steps must be taken to safeguard the nation's interests and—above all—to improve the social well-being of its people.

Based on the background and previous studies above, this research aims to examine the role of the Dispute Settlement Body (DSB) in the settlement of trade disputes between member countries of the World Trade Organization (WTO).

II. METHOD

This research was conducted using a normative legal research method, that is, examining the norms and rules that prevail in the multilateral trading system that is beneficial to developing countries. Data were collected using the literature study method with emphasis on secondary data, which is primary legal material in the form of all agreements contained in the WTO Agreement, and secondary legal material in the form of writings and ideas from experts. The data analysis method used is analytical descriptive, that is to conduct an in-depth analysis in order to answer the main issues raised in the study.

III. DISCUSSION

In the opening part of the WTO Agreement, it has been clearly stated that each WTO member country shall recognize the existence of positive efforts designed in order to ensure the presence of developing countries in the international trade system, and also in particular for countries that are classified as underdeveloped countries. This is an integral part of the multilateral trading system and guarantees the equitable distribution of the

results of international trade in the context of an unavoidable need for the economic development of these countries. This is confirmed in the section Understanding on Rules and Procedures Governing the settlement of disputes article 3 paragraph 3, as follows:

"The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members".

The interests and needs of developing countries, especially underdeveloped countries, have become a very big need beyond what has been the WTO's activities and concerns so far since 2001 after the ministerial level meeting at the Doha Round. At the Doha meeting itself, WTO members adopted Decisions on Implementation Related Issues and Concerns, relating to the problems faced by developing countries in implementing the WTO Agreement which was the result of the Uruguay Round negotiations. The joining of developing countries, especially underdeveloped countries, in the multilateral trading system and becoming an effort to guarantee a large amount of equitable distribution of international trade is the most important agenda of the WTO itself (Hidayati, 2014).

The similarity in views and the need for a solution to economic problems gave birth to a World Economic Conference in May 1927. At this conference, countries made regulations and entered into various multilateral trade agreements. In 1947, an agreement related to the General Agreement on Tariffs and Trade or better known as the General Agreement on Tariffs and Trade (GATT) was successfully formed to regulate free trade flows. Then a multilateral trade organization was formed, the so-called World Trade Organization (WTO), which was born as a refinement of the GATT. The WTO itself is an organization engaged in international trade whose task is to oversee various cross-national trade regulations, including free trade agreement policies, trade dispute resolution between members and as a forum for discussion (Kurniawardhani, 2021).

Disputes in the WTO are basically about broken promises. WTO members have agreed that if a member violates trade rules, they will use the multilateral system to settle the dispute, rather than take action unilaterally. This means adhering to mutually agreed-upon procedures and adhering to decisions made.

International disputes are disputes that are not exclusively the internal affairs of a country. International disputes are also not exclusively related to relations between states, bearing in mind that international law subjects are currently experiencing expansion in such a way as to involve many non-state actors. Disputed issues in an international dispute can involve many things. Some experts separate legal disputes from political disputes. Friedmann suggests that the characteristics of legal disputes are as follows:

- Capable of being settled by the application of certain principles and rules of international law;
- Influence vital interests of the State such as territorial integrity;
- Implementation of the existing international law enough to raise a justice decision and support progressive international relations;
- The dispute is related to legal rights by claims to change the existing rule (Sefriani, 2018:298).

Article 36 paragraph (2) of the Statutes of the Court confirms that legal disputes that can be brought to the Court concern matter as follows:

- Interpretation of a treaty;
- Any question of international law;
- The existence of any fact that, if established, would constitute a breach of an international obligation;
- The nature or extent of the reparation to be made for the breach of an international obligation.

According to John Collier, the legal function of international dispute resolution when

an international dispute occurs is to manage, rather than to suppress or to resolve a dispute. Broadly speaking, dispute resolution in international law can be described as follows (Sefriani, 2018:299-300).

- Peaceful Settlement:

  Settlement through politics:

  Negotiation;

  Mediation;

  Good offices;

  Enquiry.

  Settlement through law

  Arbitration;

  International court.

- Settlement by use of force:

  War

  Non-war: termination of diplomatic relations, retorts, blockades, embargoes, reprisals.

The principles of WTO dispute resolution and WTO principles are generally in line with international law and UN principles, which are regulated in Chapter I concerning the Purposes and Principles of the UN. Thus, in educating an international organization, countries must ensure that the goal is to maintain peace by preventing and controlling disputes and preventing international relations in high tension. Finally, as a solution to trade disputes, a separate institution is needed, that is to say, the creation of a multilateral trading system as a means of ensuring both peace through law and peace through prosperity (Suherman, 2015:49).

In accordance with the mandate of Chapter VI concerning the Pacific Settlement of Disputes (Articles 33-38), these articles emphasize that the parties to the dispute, where the continuation of the dispute will endanger the maintenance of international peace and international security, the first procedures to be taken according to Article 33 shall be seeking solutions by negotiation, enquiry, mediation, conciliation, arbitration, and legal settlement. Today states are demanded to be responsible for all violations, or more specifically, the negative impact of their wrongful acts. In the condition that there are many disputes caused by wrongful acts against other countries, the WTO positions it as something special or different where the mechanical system in the DSB is a solid organ instead of being said to be a “liquid” organization. The WTO DSB mechanism is a special system or *lexspecialis*.

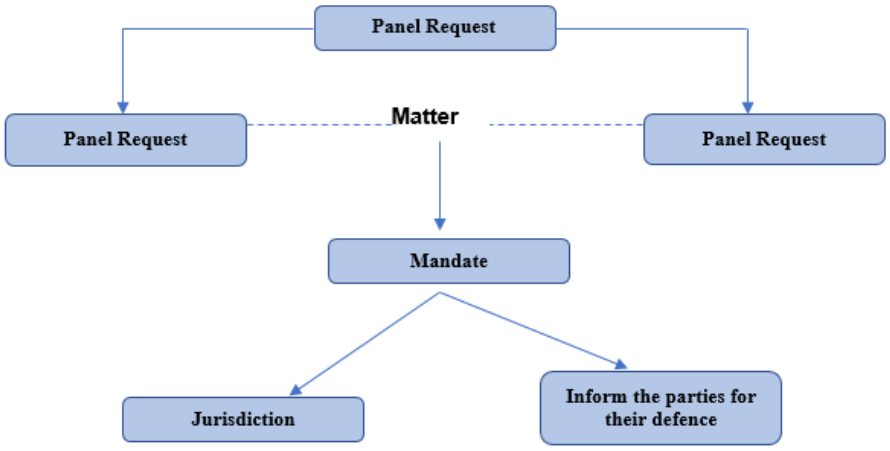

Figure 1. Dispute Settlement in the WTO

The dispute resolution system through the Dispute Settlement Body of the WTO is

regulated in the section Understanding on Rules and Procedures Governing the Settlement of Dispute, commonly called the DSU. The substance of the provisions in the DSU is the interpretation and implementation of the provisions of Article III of the GATT of 1947 and the implementing agency is the DSB. This institution is part of the General Council of the WTO, thereby all member countries are bound by it and have the same right to use the existence of the DSB.

The DSB has the authority to form a Panel of Experts to hear cases and accept or reject the Panel's findings or the outcome of an appeal decision. This institution monitors the implementation of decisions and recommendations and has the authority to authorize retaliation in the event that a country does not comply with decisions. Officially, the Panel assists the DSB in making decisions or recommendations. However, because panel reports can only be rejected by consensus at the DSB, their findings are difficult to reject. Panel findings should be based on the agreement on which they are based (Hata, 2016:150). DSU determines the details of the Panel's duties in the following stages (Hata, 2016):

- Prior to the hearing, the first stage: each party presents their case in writing to the Panel;
- Objection: the parties involved submit written objections and submit oral rebuttals at the second-panel meeting;
- Expert opinion: if a party submits scientific or technical material, the Panel may seek expert opinion or form a group of experts to prepare a report containing its advice;
- First draft: The panel submits the fact and argument sections of its report to both parties, giving it two weeks to comment on them. This section of the report does not include findings and conclusions.
- Interim report: The panel submits an interim report, including the findings and conclusions of both parties, and gives them one week to request a review.
- Review: Time should not exceed two weeks. During this time, the Panel may hold additional meetings with both parties.
- Final report: the final report is submitted to both parties and three weeks later; the report is distributed to all WTO members. If the Panel decides that the disputed trade action violates a WTO agreement or obligation, it will recommend that the action be amended to bring it into line with WTO provisions. The panel can suggest how the action should be carried out.
- The report becomes a decision: The report becomes a DSB decision within 60 days unless there is a consensus to reject it. Both parties can appeal the decision (in some cases both parties do).

The WTO DSB receives a mandate from member countries, in particular from applicant countries, to examine objections or lawsuits from countries whose rights have been violated by other member countries based on WTO provisions. Regarding the authority of the DSB, it includes forming a Panel, adopting Panels and appellate body reports, monitoring the implementation of recommendations and decisions that have been made and authorizing the suspension of concessions. With the DSB, all WTO members are obliged to resolve trade disputes through this means and all member countries are not allowed to take unilateral action which will create new problems bilaterally or unilaterally (Suherman, 2015:56). Based on Article 3 of the DSU, the main duties of the DSB are as follows:

- Clarifying the provisions contained in the WTO agreement by interpreting it according to public customary international law;
- The results of the dispute settlement may not add to or reduce the rights and obligations regulated in the WTO provisions;
- Ensuring a positive solution that is accepted by the parties and is consistent with the substance of the agreement in the WTO; and
- Ensuring the withdrawal of the actions of the violating country that are not in accordance with the provisions of the agreement already included in the covered agreement.

Retaliation is possible but as a last-resort settlement.

Decisions taken by the DSB must be made by consensus, in that, the mechanism used is reverse consensus or negative consensus, which means that the DSB must be deemed to have made a decision if there is no consensus to make the decision in question. In other words, the formation of panels and the adoption of panel reports can run automatically, unless there is an objection from all WTO members.

IV. CONCLUSION

International trade disputes are resolved through the WTO Dispute Settlement Body which is regulated in the section Understanding on Rules and Procedures Governing the Settlement of Dispute, commonly called the DSU. The substance of the provisions contained in the DSU is an interpretation and implementation of the provisions of Article III of the GATT of 1947 and the implementing agency is the Dispute Settlement Body (DSB). The agency is part of the WTO General Council. With the DSB, all WTO members are obliged to resolve trade disputes through this channel and all member countries are not allowed to take unilateral action which will cause new problems bilaterally or unilaterally. Decisions taken by the DSB must be made by consensus, in that, the mechanism used is reverse consensus or negative consensus. In Article 3 of Understanding on Rules and Procedures Governing the Settlement of Dispute, it is known that the main tasks of the DSB are as follows:

Clarifying the provisions contained in the WTO agreement by interpreting it according to public customary international law;

The results of the dispute settlement may not add to or reduce the rights and obligations regulated in the WTO provisions;

Ensuring a positive solution that is accepted by the parties and is consistent with the substance of the agreement in the WTO; and

Ensuring the withdrawal of the actions of the violating country that are not in accordance with the provisions of the agreement already included in the covered agreement. Retaliation is possible but as a last-resort settlement.

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Statute of Court
Understanding on Rules and Procedures Governing the settlement of dispute
Pacific Settlement of Disputes