

AN EVALUATION OF THE PRINCIPLE OF ADEQUACY IN INDONESIA AND THE UNITED STATES RECIPROCAL TRADE AGREEMENT

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Abstract

International trade today is no longer limited to the pricing of physical commodities; it has shifted toward the exchange of data, digital services, and high-tech investments. In this dynamic, the Adequacy Principle emerges as a key instrument. Article 56 of Law Number 27 of 2022 on Personal Data Protection (PDP) stipulates that cross-border data transfers are only permitted if the destination country has: (1) an equivalent or higher level of PDP, or (2) adequate and legally binding PDP measures, or (3) the consent of the data subject. To date, the Government Regulation—which is intended to establish the aforementioned equivalence criteria as a derivative of Article 56 has not yet been issued. In Article 3.2 Agreement Between The United States Of America And The Republic Of Indonesia On Reciprocal regarding Trade Data Transfers The principle of adequacy in U.S.-Indonesia trade relations remains asymmetrical. The United States tends to use adequacy as a leverage tool for global standardization, while Indonesia is still in a transitional phase of aligning domestic regulations (such as the PDP Law) to gain international recognition. Major Obstacles to Achieving a Mutually Beneficial Adequacy Status in U.S. and Indonesia Trade Relations include Differences in Cross-Border Data Protection Paradigms, Differences in Cross Border Data Protection Paradigms, Misalignment of Intellectual Property Rights (IPR) Enforcement Standards, and Regulatory Inconsistencies and Legal Uncertainty in Indonesia

Keywords: *The Principle of Adequacy, Trade Agreements, United States-Indonesia*

INTRODUCTION

The United States is one of Indonesia's major trading partners. In August 2024, the United States was Indonesia's second-largest export destination, with a market share of 11.66%, following China (23.83%) and Japan (7.88%) (Central Bureau of Statistics, 2024). Tariffs, as a form of taxation or fee, are often used to protect domestic industries from foreign competition, while simultaneously affecting the competitiveness of domestic products in international markets. The imposition of high tariffs, such as those imposed by the United States (US) on goods originating from Indonesia, has significant impacts on both the trade balance of the affected country and international trade agreements. In bilateral trade relations, the imposition of a 32% tariff by the US on goods originating from Indonesia raises fundamental questions regarding its impact on the trade balance. Amid unstable global geopolitical tensions, wars between nations in the Middle East, and inter-state conflicts affecting global supply chains (World Economic Forum, 2024), trade relations between the two countries face numerous challenges and opportunities that can be maximized to increase Indonesia's exports to the United States and strengthen bilateral cooperation, particularly in the trade sector. Indonesia has also been actively involved in multilateral cooperation, including through the World Trade Organization (WTO). This multilateral cooperation serves as a platform for dialogue and the exchange of information and knowledge among member countries. This cooperation, which involves many nations, is also expected to foster fair trade for all member countries. Meanwhile, while Indonesia does not yet have a bilateral cooperation agreement with the United States, the two countries have agreed to elevate their partnership to a Comprehensive Strategic Partnership (CSP), with one of the key focuses of this cooperation being trade (Coordinating Ministry for Economic Affairs, 2024). One of the commitments under this partnership is to advocate for the extension of the Generalized System of Preferences (GSP) to Indonesia.

International trade today is no longer solely about tariffs on physical commodities; it has shifted toward the exchange of data, digital services, and high-tech investments. In this dynamic, the Principle of Adequacy emerges as a key instrument. This principle requires that trade and data flows can only move freely if the partner country has a level of legal protection deemed “adequate” or equivalent to the standards of the sending country.

LITERATURE REVIEW

International trade is defined as commercial transactions involving goods and services between one country and another (Ibrahim & Halkam, 2021). International trade is also an economic cooperation activity aimed at meeting the needs of each country and maximizing mutual benefits between the two nations (Purba et al., 2023). When viewed from the nature and scope of its binding legal force, a contract can be either a domestic contract or an international contract. A domestic contract is simply a contract entered into by two individuals (legal entities) within the territory of a single country, with no foreign elements involved. Meanwhile, an international contract is a contract that contains a foreign element (Huala Adolf, 2008: 1). The foreign element in this context refers to the connection between the legal systems of the countries involved in the contractual activity, as determined by the agreed-upon choice of law. In international trade, the WTO strives to create free international trade. This is a fundamental principle of the WTO in international trade. These efforts are carried out by removing existing barriers, both rate and non rate, through tariff binding, the elimination of quantitative restrictions, and the standstill principle. Tariff binding is an agreement to standardize customs duty rates on imported products. The elimination of quantitative restrictions is a non-tariff measure that removes maximum limits on the volume of imported goods entering another country. The principle of standstill is a principle whereby developed countries are prohibited from imposing new barriers on developing countries seeking to export potentially marketable goods from their home countries. The Adequacy Principle is a crucial pillar in international trade and economic law, particularly regarding data protection, investment, and cross-border legal compliance standards. Within this dynamic, the Adequacy Principle emerges as a key instrument. This principle requires that trade and data flows can only flow freely if the partner country has a level of legal protection that is considered “adequate” or equivalent to the standards of the sending country.

METHOD

The method used in writing this journal article is the normative legal approach. The study was conducted through a literature review of international agreements, legislation (statute approach), and an analysis of legal literature related to international trade. Secondary data in the form of international conventions and bilateral trade reports served as the primary sources for conducting a critical evaluation. The type of research applied is descriptive-analytical, which describes the entire situation and facts and analyzes current implementation. This research refers to a literature-based study that utilizes sources such as books, existing legislation, documents, and various other media that can serve as data sources or theoretical foundations for the issues discussed in the research.

RESULTS AND DISCUSSION

A. An Evaluation of the Principle of Adequacy in the U.S. and Indonesia Reciprocal Trade Agreement

In modern international trade, the principle of adequacy frequently arises in the General Agreement on Trade in Services (GATS) or European Union regulations (GDPR). If a country is deemed to have an adequate level of protection, trade barriers (such as data transfer restrictions or additional licensing requirements) can be minimized. Transactions involving digital products—or what we commonly refer to as e-commerce—have distinct characteristics that set them apart from transactions involving physical goods, thereby presenting new challenges in consumer protection. Consumers often lack sufficient information regarding their rights and obligations and face uncertainty regarding rules related to ownership, product returns, and service guarantees.

Currently, when determining whether a country meets the adequacy principle, several evaluations are typically conducted regarding a country’s legal system: the existence of laws specifically regulating the relevant sector, the presence of an independent authority enforcing those rules, and most importantly, the availability of legal remedies for resolving disputes through the legal system, allowing the aggrieved party (investor or consumer) to assert their rights. According to Peter Van den Bossche, the Adequacy Principle in International Trade emphasizes that in international trade, principles such as adequacy are often linked to Technical Barriers to Trade (TBT). In his view, member states have the right to determine the level of protection they deem appropriate, provided it does not constitute hidden discrimination. Adequacy here is viewed as a form of mutual recognition of each country’s legal standards. Meanwhile, Christopher Kuner argues that adequacy does not mean that partner countries must have identical or exactly the same laws. From his perspective, adequacy implies substantial equivalence; even if legal

systems differ, the ultimate outcome of the protection provided must be effective and comparable. However, Mitsuo Matsushita states that the principle of adequacy serves as a bridge to bridge the differences between the Common Law and Civil Law systems. He argues that recognition of adequate standards is the most efficient way to avoid protectionism disguised as domestic regulation. The Principle of Adequacy in the U.S.-Indonesia Reciprocal Trade Agreement can actually limit policy flexibility. The high-standard trade rules imposed by the United States on Indonesia clearly restrict the country's domestic policies and may reduce policy flexibility in responding to economic volatility and crises. On one hand, to comply with high-standard rules, member states may have to abandon or adjust certain policies that reflect their own characteristics, which in some cases could harm their own economic development. On the other hand, when facing a crisis or economic emergency, member states may be constrained by high regulatory standards and unable to take timely and effective steps to adjust their policies, thereby exacerbating the crisis's impact.

Furthermore, the trade agreement between the United States and Indonesia should also incorporate the principle of reciprocity, commonly known as the principle of mutual benefit. This principle requires that for every concession made by one country under the agreement, the other country must provide a similar concession, thereby ensuring mutual benefit. As implied by the MFN principle, this principle applies not only to and is enjoyed by the countries that entered into the agreement, but also requires other countries not party to the agreement to implement the terms of the agreement. This aspect is not fully reflected in the Principle of Adequacy in International Trade between the United States and Indonesia. In Article 3.2 Agreement Between The United States Of America And The Republic Of Indonesia On Reciprocal regarding Trade Data Transfers The principle of adequacy in U.S.-Indonesia trade relations remains asymmetrical. "Indonesia shall provide certainty regarding the ability to move personal data out of its territory to the United States by recognizing the United States as a country or jurisdiction that provides adequate data protection under Indonesia's law."

However, in free trade agreements, disputes tend to arise due to a lack of uniformity in regulatory policies and difficulties in policy implementation and coordination, which hinder and disrupt international investment and trade. Currently, regional investment and trade agreements jointly pursued or promoted by developing countries primarily include the RCEP, APTA, CPTPP, and others. Although developed countries still play a significant role in this process, the positions and needs of developing countries themselves are increasingly receiving attention in negotiations and even determine the direction and success of negotiations to a certain extent. High-standard regional free trade agreements place significant emphasis on consistency of content and consistency of process (Qureshi, 2015). Among these, consistency of content refers to the fact that the specific content of each investment and trade rule shares strong logical commonalities in terms of fundamental principles, internal mechanisms, and forms of expression, which can even achieve mutual recognition and mutual substitution to a certain extent. Process consistency refers to consistency in the formulation, implementation, and oversight of investment and trade rules by clearly establishing regulations, procedures, implementation deadlines, dispute resolution, and other content of relevant rules in the investment and trade process. Issues that need to be evaluated regarding the Adequacy Principle in the U.S.-Indonesia Reciprocal Trade Agreement include:

- Reducing the regulatory gap in data protection, where one of the key focuses of the adequacy principle in U.S.-Indonesia relations is cross-border data flow. The U.S. advocates for the free flow of data without server localization barriers. Meanwhile, Indonesia, through the Personal Data Protection Act (PDP Act), has begun adopting standards similar to the European GDPR.
- Evaluations indicate a clash regarding adequacy: from the U.S. perspective, data localization requirements are viewed as trade barriers that are economically inefficient, whereas from the Indonesian perspective, data protection on domestic servers is seen as a prerequisite for adequacy to ensure citizens' digital sovereignty.
- Intellectual Property Rights (IPR) as a Parameter of Adequacy in U.S.-Indonesia Relations, where the U.S. frequently uses the Special 301 Report to assess whether IPR protection in Indonesia is "adequate." If Indonesia is deemed to fail to provide protection equivalent to international standards (such as the TRIPS Agreement), then the adequacy status in this reciprocal relationship is considered flawed. This impacts the evaluation of granting Generalized System of Preferences (GSP) duty-free benefits for Indonesian products.
- To achieve adequacy, the US and Indonesia need to enter into a Mutual Recognition Agreement (MRA), whereby in trade relations between the US and Indonesia there must be mutual recognition of technical standards certifications for products and services; ultimately, reforms to Indonesia's law enforcement are required to demonstrate consistency in enforcement on the ground, rather than merely the completeness of regulatory texts on paper.

B. Major Obstacles to Achieving a Mutually Beneficial State of Trade Balance in U.S.-Indonesia Trade Relations

In light of all these implications, it is crucial for the Indonesian government, as a key stakeholder, to conduct a more in-depth analysis and formulate more prudent policies. An approach is needed that not only addresses short-term interests but also considers the long-term impact on relations with other countries. Mutually beneficial negotiations and the pursuit of solutions based on the principle of cooperation must be the primary focus to ensure the sustainability of positive trade relations. The Indonesian government must ensure that commitments under the agreement do not restrict the country's ability to regulate natural resources, protect personal data, or implement industrial policies, as well as mechanisms for dispute resolution and tariff flexibility based on national security. He highlighted a clause allowing the U.S. to review tariffs on the basis of national security interests. In his view, this provision has the potential to create legal uncertainty. In an asymmetrical bilateral relationship, this clause is considered cause for concern. The Main Obstacle to Achieving a Mutually Beneficial Adequacy Status in U.S.-Indonesia Trade Relations requires an in-depth review of the clash between U.S. liberal economic interests and Indonesia's data sovereignty policies and domestic industrial protectionism.

- Differences in Cross-Border Data Protection Paradigms Differences in Cross-Border Data Protection Paradigms.
- The U.S. adheres to the principle of free flow of data to support the efficiency of its technology companies, while Indonesia tends toward data localization policies. In Indonesia, this is enshrined in Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, which initially required the placement of data centers in Indonesia for the public sector. Although it has been revised, the U.S. continues to view localization requirements as trade barriers that are inefficient in terms of operational costs. Furthermore, without a data adequacy agreement, Indonesian companies will struggle to compete in the global digital market due to the high legal compliance costs when interacting with U.S. companies' cloud infrastructure.
- Discrepancies in Intellectual Property Enforcement Standards (Intellectual Property Rights) The U.S., through its domestic legal instrument under Section 301 of the Trade Act of 1974, routinely evaluates its trading partners, while Indonesia remains on the U.S. Trade Representative's (USTR) Priority Watch List. The U.S. assesses that Indonesia has not provided adequate IPR protection, particularly regarding law enforcement against digital piracy and the circulation of counterfeit goods on e-commerce platforms. Meanwhile, Indonesian regulations, as outlined in Article 10 of Law No. 20 of 2016 on Trademarks and Geographical Indications, are often considered to still have loopholes in litigation procedures for foreign trademark holders from the U.S.
- Regulatory Inconsistencies and Legal Uncertainty in Indonesia Rapid regulatory changes in Indonesia, such as sudden changes to import/export rules, create a perception of high risk; this clearly contradicts the principle of transparency in the General Agreement on Tariffs and Trade (GATT), which requires that any changes to trade rules be immediately and clearly published. Non-compliance with this transparency requirement hinders the achievement of a mutually beneficial adequacy status.

E-commerce businesses are required to process data lawfully, transparently, and responsibly. Furthermore, the imposition of administrative and criminal sanctions underscores that violations of personal data protection are serious offenses. The implementation of Law Number 27 of 2022 on Personal Data Protection (PDP Law) is expected to enhance the security of digital transactions and public trust in e-commerce, as well as regulate the obligations of entities managing personal data, such as companies or institutions. They must ensure that stored data remains secure, be accountable for its use, and not disclose it without the owner's consent. In the event of a data breach, data controllers are required to report the incident; failure to do so may result in legal sanctions, including substantial fines or criminal penalties. The aspect of transparency in e-commerce platform accountability is realized through the obligation to provide comprehensive information to data subjects regarding the identity of the data controller, the purpose of processing, the legal basis for processing, the categories of data collected, the retention period, and the rights of data subjects. However, the implementation of this transparency faces a practical dilemma between fulfilling legal obligations and user experience. A privacy policy that is too detailed and technical risks reducing readability and user understanding, while simplifying the information risks failing to meet the transparency standards set forth in Law Number 27 of 2022 on Personal Data Protection. In addition, the accountability of e-commerce platforms also includes ensuring the rights of data subjects, which encompass the right of access, the right to rectification, the right to erasure, the right to restrict processing, the right to data portability, and the right to object. E-commerce

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platforms are required to provide easily accessible and responsive mechanisms to facilitate the exercise of these rights, including providing a technical interface that allows data subjects to independently control their personal data. Failure to facilitate data subjects' rights may result in administrative sanctions and potentially serve as the basis for a claim for damages.

CONCLUSION

The principle of adequacy in U.S.-Indonesia trade relations remains asymmetrical. The United States tends to use adequacy as a tool to pressure for global standardization, while Indonesia is still in the transitional phase of aligning its domestic regulations (such as the Personal Data Protection Law) to gain international recognition. Ongoing dialogue is needed to ensure that the adequacy principle does not become a new instrument of protectionism, but rather a facilitator for safe and fair trade. The principle of adequacy in the U.S.-Indonesia Reciprocal Trade Agreement can limit policy flexibility. The high-standard trade rules imposed by the United States on Indonesia clearly restrict the country's domestic policies and reduce its flexibility in responding to economic volatility and crises. On the one hand, to comply with high-standard rules, member countries may have to abandon or adjust some policies that reflect their own characteristics, which in some cases could be detrimental to their own economic development. On the other hand, when facing a crisis or economic emergency, member countries may be bound by high regulatory standards and unable to take timely and effective steps to adjust their policies, thereby exacerbating the impact of the crisis. The main obstacle to achieving a mutually beneficial adequacy status is the asymmetry of interests. The U.S. seeks broad market access without technical barriers, while Indonesia uses regulations as an instrument to protect domestic industries and safeguard citizens' data. Without a robust Mutual Recognition Agreement (MRA), this adequacy status will remain caught in the tension between international compliance and domestic sovereignty.

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