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The Role of the WTO in Making a Trips Agreement as part of International Economic Law Sources

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Abstract

This research is a cross-border economic study that explains the role of the international trade organization, better known as the WTO. The WTO was officially established on January 1, 1995, with GATT's pioneer. At that time, the existence of GATT was still temporary. The framework for trade liberalization appears in the form of the WTO Agreement, which accommodates general provisions relating to trade. In the WTO Agreement agreed upon by the member countries, there are several additional agreements, such as the Agreement on Agriculture and TRIPs Agreement. In this study, we will discuss further the impact of the additional TRIPs Agreement made by the WTO and how it affects the global economy, accompanied by examples. Then it will be explained further how TRIPs minimize the negative impact of the agreement.

Keywords: Intellectual Property Rights, TRIPs Agreement, WTO

1. Introduction

A good introduction answers these questions in just a few pages and, by summarizing the relevant arguments and the past evidence, gives the reader a firm sense of What was done and why (Beck & Sales 2001). When referring to the membership of the United Nations (UN), there are 193-member states, and there are two members with limited authority, namely Palestine and the Vatican. With so many countries, it is impossible for one country with another country to have the same characteristics. These different characteristics result in the potential of each country being different from one another. There are countries that excel in agriculture, some countries also excel in animal husbandry, fisheries, and several other countries excel in technology and industry. The dynamic needs of society, limited resources, technological advances and differences in the advantages of commodities between countries are the forerunners of business transactions between countries. The customs of countries to conduct business transactions require a regulation. This is one of the reasons for the formation of the World Trade Organization or WTO (hereinafter referred to as WTO).

WTO as one of the only international organizations that specifically regulates issues in world trade, as well as being a forum for countries to make an agreement related to cross-border trade. The agreement to establish the WTO is a manifestation of the realization of the old ideals when negotiating the GATT for the first time. As the principles of international law, namely the legal principles that have been recognized by the majority of countries will become customary law for other countries. So, a collection of trade arrangements that were agreed upon and

then followed by other countries became a form of WTO rules and regulations. The decision of the Uruguay Round brought its participants to a very influential agreement in international trade. The results of the negotiated countries' agreements are then inscribed in the WTO Agreement or WTO Agreement (hereinafter referred to as the WTO Agreement). The member countries at that time signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations in 1994. The agreement between member countries is a binding agreement for its members because in signing the Final Act, the state agreed to sign the WTO Agreement and attachments therein. The governments of the member countries concerned must comply with the agreement in carrying out matters relating to their trade. It should be noted that the existence of the WTO Agreement is not the only source of law owned by the WTO, there is a WTO Case Law which is another source of law for WTO law.

WTO Agreements related to trade are Agreement on Agriculture, Agreement on Textiles and Clothing, The General Agreement on Trade in Service, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade, Trade Related Intellectual Property Rights and so on. One of the international agreements made by the WTO that has attracted the author's interest is the Trade Related Intellectual Property Rights or TRIPs Agreement (hereinafter referred to as the TRIPs Agreement).

In general, the TRIPs Agreement contains juridical norms that must be complied with and implemented in the IPR sector, in addition to regulations regarding the prohibition of trading on goods resulting from infringement. The WTO agreement on Intellectual Property Rights related to this trade includes 5 (five) things, namely:

1. The basic principles of the trading system and the approval of the IPR field
2. Adequate protection of intellectual property rights
3. Law enforcement in the field of intellectual property rights
4. Dispute resolution
5. Special arrangements imposed during the transition period

The TRIPs Agreement is a minimum standard set internationally in providing intellectual property rights protection. The provisions contained in the TRIPs Agreement must be implemented in all member countries. The emergence of IPR in international trade when it was initially formed caused debate and was rejected by various parties because it was considered inappropriate and led to protectionism. It further strengthened the monopolistic existence of industrialized countries in international trade.

Intellectual Property Rights are rights that arise from the intellectual abilities possessed by humans, which are naturally considered property rights of the legal subject of the creator. Intellectual Property Rights is intended to give respect to intellectual property. However, because developed countries more widely anticipate technological advances, it raises the notion that the TRIPs Agreement is more inclined toward developed countries' interests than developing countries.

Because of this assumption, a protective article known as The TRIPs Agreement Safeguards was born. The TRIPs Safeguard Agreement is contained in Article 8 of the TRIPs Agreement, which allows states to formulate and amend regulations, adopt measures to protect public health and nutrition, and promote public interest in important socio-economic and technological development sectors. This article is necessary to overcome the negative impacts of protecting intellectual property rights in the TRIPs Agreement.

Based on the background described above, the authors are interested in analyzing the WTO international economic organization with its role in the formation of sources of international economic law in the form of international agreements and put it in the form of a paper entitled "The Role of the WTO in Making the TRIPs Agreement as Part of the Source of Economic Law. International"

2. Method

The type of research used by the author in this study is a normative juridical approach. This normative juridical approach examines and interprets theoretical matters concerning principles, conceptions, doctrines, and legal norms. This type of research uses secondary data. Secondary data is obtained from official documents, books

related to the research object, and research results in the form of reports, theses, dissertations, and laws and regulations. This data is then used as supporting data in analyzing the international economic organization, namely the WTO, in making sources of international economic law, namely the WTO Agreement (TRIPs Agreement).*2.1 Identify Subsections*

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The research specification used in this research is descriptive-analytical, namely explaining, describing, and describing by related conditions closely related to the research that the author is doing so that the research objectives can be achieved as expected.

2.2 Sampling Procedures

This study takes secondary data because this research is normative. The following are three legal materials used in secondary data sources, namely primary, secondary and tertiary legal materials:

- **Primary Legal Material**
Primary legal materials consist of legislation, official records or minutes in legislation making, and judges' decisions. The primary legal materials supporting this research are:
 - World Trade Organization (WTO)
 - WTO Agreement
 - Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement)
- **Secondary Legal Material**
Secondary legal materials are legal materials to clarify primary legal materials. In this study, the authors take several publications on the law that are not official documents, namely books, legal journals, and the results of previous research, as secondary legal materials.
- **Tertiary Legal Materials**

Tertiary legal materials provide instructions or explanations for primary and secondary legal materials, such as legal dictionaries, encyclopedias, cumulative indexes, and so on.

3. Results

3.1 International Economic Law

3.1.1 Understanding International Economic Law

According to experts, there are several limitations to the scope of international economic law. One of them is, according to Schmitthoff, who is a scholar of international trade law, explaining that the scope of the study in the field of law is limited to two issues, namely:

- a. Sources of international economic law are international agreements, both multilateral and bilateral;
- b. International institutions or organizations in the economic field.

According to Prof. Huala Adolf, the division of the scope of international economic law needs to have relatively clear boundaries. It is said to be relatively clear because there may be an expansion of the boundaries given the increasing expansion and development of transactions in the international economy.

It can be said that international economic law is a branch of international law that regulates economic activities between countries that are not civil. The object of study in the field of law is very broad, covering legal subjects and legal sources, the rights and obligations of the state in the state economy, human rights in the economy, and dispute resolution in the economic field.

3.1.2. Characteristics of International Economic Law

In his book, Prof Huala Adolf describes several characteristics of the field of international economic law, including: First, international economic law is a branch of public international law. So it contains the basic principles and rules of public international law that apply in international economic law; Second, several distinct characteristics of international economic and public international law exist. International economic law contains little about customary norms, while international economic law is generally based on international agreements produced by international organizations; Third, international economic law contains quite several bilateral agreements compared to public international law; Fourth, interdisciplinary and transnational approaches to studying international economic law exist. Fifth, there is an important relationship between international economic law and applicable national law because international economic law will be effective depending on the implementation of the rule of law in a country.

3.2 *International Economic Organization*

According to Petermann, the International Economic Organization is an association of countries formed by countries through an agreement and has permanent organs and autonomous powers, functions, and common economic goals to be achieved by cooperating among its member countries. The International Economic Organization, as a subject of international economic law, plays an important role in the formulation of sources of international economic law.

There are two major categories of international organizational forms. The first is international economic organizations that specifically have the authority to regulate certain international economic relations, for example, the International Monetary Fund, The World Bank, World Trade Organization, and so on; and the second is international economic organizations within the United Nations (UN) organizational system that have competence in regulating international economic activities and other fields, for example, the United Nations Conference on Trade and Development, the Economic and Social Council, and so on.

In terms of stages of economic integration, it is divided into five different stages, namely organizations that aim only to establish a multilateral preferential tariff system, free trade areas, customs unions, common markets, and full economic integration.

3.3 *International Agreement*

International treaties are the main and most important source of international law in people's lives. The arrangements regarding this International Agreement are regulated in the 1969 Vienna Convention, which contains International Agreements.

An international agreement is a juridical instrument that accommodates the will and then puts it in the form of an agreement to achieve a common goal. The collective agreement that has been formulated in the agreement becomes the basis of international law to regulate the activities of the state and other subjects of international law.

International treaties not only create rights and obligations between states but also between states and international organizations because indirectly international agreements also regulate the relationship (economic) of individuals and their countries.

3.4 *World Trade Organization (WTO)*

The WTO is a world trade organization which came into force on January 1, 1995. Its main task is to encourage the flow of Trade between countries by removing some existing barriers related to goods and services and to become a negotiating forum for its members in fields related to multilateral Trade (because in the past international trade negotiations took a long time), dispute resolution forums (considering that trade relations often resulted in conflicts of interest) and carried out a review of trade policies.

There are basic principles that underlie all forms of agreements in the WTO, namely Trade without discrimination (the principle of non-discrimination in Trade): (a) Most favored nation (MFN): treating other people equally, (b) National treatment; Free Trade: gradually, through negotiation (reaching free Trade gradually through negotiation; Predictable); Promoting fair competition (encouraging fair trade competition); Encouraging development and economic reform (encouraging development and economic renewal for poor and developing countries).

The agreement and the principles of trade regulation that exist in it can be called the international trade constitution, which shows that the WTO Agreement is the highest basic rule regarding international Trade. Agreements made in all countries in the world, whether bilateral, multilateral, or regional, must not conflict with the principles contained in the WTO agreement.

3.5 WTO Agreement

The WTO Agreement is an international legal document in the form of a multi-text agreement, which was adopted from the results of the Uruguay Rounds covering goods, services, and intellectual property. Here are described the principles of liberalization and the exceptions allowed.

The WTO Agreement begins with broad principles such as GATT for goods, GATS for services, and TRIPs for intellectual property, which derives several other international agreements as annexes, for example, the Agreement on Agriculture and the General Agreement on Trade and Services; then there is a list detailed commitment made by each country that allows certain foreign products to access their markets.

3.6 TRIPs Agreement

TRIPs stand for Trade-Related Aspects of Intellectual Property Rights, which is Annex IC of the Agreement Establishing the World Trade Organization.

The TRIPs Agreement is the result of the Uruguay Rounds, which has also adopted two major international conventions in the field of industrial property and copyright, namely the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

The TRIPs Agreement is not a rule regarding the protection of IPR specifically, but the TRIPs Agreement is part of the WTO Agreement signed by its member countries which becomes a general reference to then make rules regarding IPR in their respective countries according to the needs of the country concerned.

4. Discussion

4.1 The Role of the WTO as an International Economic Organization in Making Sources of International Economic Law

The forerunner of the presence of the WTO was the GATT which at that time was temporary. In the GATT, there has been agreement on non-tariff barriers and interprets that there have been thoughts about it in the previous era.

The change from GATT to the WTO has a broad impact on the field of international trade because the WTO accommodates several areas of regulation that are more complex because they regulate services, intellectual property rights, investment, the environment, and so on, not only tariffs and goods as GATT in the past.

The WTO has an important goal in international trade, namely to encourage the flow of trade between countries by reducing and removing various obstacles that can disrupt the smooth flow of trade in goods and services. In addition, there are facilities for negotiations by providing a permanent negotiation forum.

Although there are so many agreements in the WTO that are used as sources of international law, they still contain several principles that form the basis of the multilateral trading system. These principles include:

1. The Principle of Non-Discrimination, Based on the MFN principle in the WTO agreement, all countries are treated equally and must not discriminate against their trading partners; there should be no difference in treatment for better or worse.
2. Principles of National Treatment, A country must give equal treatment to domestic and foreign production.
3. The Principle of Transparency, There needs to be an open attitude regarding trade policies to make it easier for business actors to carry out trading activities. Member countries need to notify policies related to trade in goods, services, and intellectual property.
4. The Principle of Reciprocity, This principle requires reciprocal treatment among WTO member countries in international trade policy

It can be said that the presence of the WTO in the international trade arena greatly contributes to development; the agreements in the WTO also contain general principles that must be applied by WTO members and provide flexibility for countries to apply these WTO rules.

The WTO makes it easier for countries, even underdeveloped countries, to receive special assistance from trade concessions such as the GATT regulations. The sources of law made by the WTO in the form of international agreements are very accommodating and help the running of free trade and encourage free, open, fair, and healthy competition.

4.2 The Role of the TRIPs Agreement in Smooth International Trade

The TRIPs Agreement is part of the new integration of the WTO system that applies to all WTO members. These members must design the highest level of intellectual property protection and enforce the highest protection. The TRIPs Agreement, if read continuously with other WTO Agreements, can be enforced by WTO members through the imposition of trade sanctions. There should be no reservations to the WTO Agreement/TRIPs so that here it can be seen that there is a very clear relationship between Intellectual Property Rights and international trade.

The TRIPs Agreement was concluded seven years after the Uruguay Round negotiations. As one of the major multilateral trade agreements, the TRIPs Agreement plays a new and important role in the world's international economic system. Trips are intended to end the era of global intellectual property under the auspices of WIPO, which are related to the interests of the OECD industry, and are deemed not strong enough; a new era must be initiated for joint competency improvement.

Several attentions were paid, especially to the interests of developing countries in the negotiation process of this TRIPs Agreement. The OECD promotes protecting IPR goods for developing countries because if developing countries do not adopt high IPR, scientists and inventors will leave because their innovations are not reciprocated. If there is no high IPR too, IPR holders from industrialized countries will not want to transfer technology to them. For example, US investors refuse to transfer data to developing countries because they do so by not recognizing their patent rights. After developing countries agree to patent protection, US investors start transferring their technology there. With this, it can be concluded that the TRIPs Agreement plays an important role in the global economy, it looks very small, but the welfare benefits related to IPR are real.

In addition, this TRIPs Agreement increases the economic benefits of IPR capital holders. Before the TRIPs Agreement, a capital of 100dollars was an unsafe nominal and could be lost quickly, but now it is safer, which is an economic advantage.

Undeniably, there is a risk that higher IPR protection will lead to stratification of IPR ownership in OECD country-based companies with public consequences for both developing and industrialized countries. Public policymakers will need to turn to the other side of the TRIPs Agreement so that trade can run better.

4.3 Forms of Protection of the TRIPs Agreement Against Negative Impacts Due to the Protection of Intellectual Property Rights It Provides

As mentioned earlier, many parties claim that the WTO Agreement was made to defend the interests of developed countries. The interests of developing countries are not given much attention; in fact, TRIPs are sufficient to accommodate the interests of developing country groups.

But in fact, TRIPs have moved one step forward in accommodating this problem. The TRIPs Safeguards in Article IX is a form of flexibility deliberately provided by the TRIPs to prevent the adverse effects arising from the birth of this TRIPs Agreement. Based on this provision, the state can take protective measures, both tariff and non-tariff, if there is a sudden and substantial increase in imports due to reducing tariffs. For example, patent protection, its existence is very strict.

The TRIPs Safeguards are a form of violation of the exclusive rights of patent holders, but if examined further, the purpose of granting exclusive rights (patent rights) is also based on public interest because that is the initial goal. The public interest in protecting IPR does not eliminate the interests of IPR owners but places them in an equal position.

Protection of the exclusive rights of patent holders must be balanced by considering the public interest, in this case, the interests of the people of other WTO member countries.

Without the TRIPs Safeguards, it is very difficult to be in the current condition, namely the fight against a pandemic, because this flexibility allows developing countries to provide access to medicines for people stricken with the disease. If a country is being stricken by an epidemic of disease and the medicine is still under patent protection, then the drug will inflate in price in the world of commerce. The high drug prices limit access to the necessary medicines, harming the country's national health.

Acknowledgments

The WTO has an important goal in international trade: to encourage trade flow between countries by reducing and removing various obstacles that can disrupt the smooth flow of trade in goods and services. In addition, there are facilities for negotiations by providing a permanent negotiation forum. The WTO has several international agreements in the form of the WTO Agreement, which was made during the Uruguay Rounds at the beginning of the formation of the WTO. The agreement accommodates equal treatment, national treatment, transparency, and reciprocity. The international agreement made by the WTO is used as a source of international economic law, which is a reference but remains flexible.

The TRIPs Agreement plays a new and important role in the world's international economic system. Trips are intended to end the era of global intellectual property under the auspices of WIPO, which are related to the interests of the OECD industry, and are deemed not strong enough; a new era must be initiated for joint competency improvement. For example, the US will only transfer its technology if there is already patent protection. With this, it can be concluded that the TRIPs Agreement plays an important role in the global economy, it looks very small, but the welfare benefits related to IPR are real.

The WTO Agreement is considered to be made to defend the interests of developed countries. The interests of developing countries are not given much attention, in TRIPs, it is sufficient to accommodate the interests of developing country groups with the existence of The TRIPs Safeguards. Without the existence of The TRIPs Safeguards, it is possible that many negative impacts arise and are not handled properly.

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