

THE LACK OF ENVIRONMENTAL CONCERN UNDER PREFERENTIAL TRADE AGREEMENTS (PTAs): A CASE STUDY OF INDONESIA

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ABSTRACT

International trade has resulted positive impacts, such as alleviating poverty and increasing jobs, encouraging all countries to start concluding trade agreements. The existence of preferential trade agreements is increasingly significant due to the deadlock of multilateral trade agreements. Although providing benefits, international trade has adversely affected environment. Some international treaties suggest how countries should include environmental concern in their PTAs. Unlike traditional PTAs, most of modern PTAs have incorporated environmental concern, reconciling the goal of trade liberalization and environmental protection. In Indonesia, however, does not follow this trend. This article aims to show the existing Indonesia's PTAs, analysing how Indonesia has put, and how it should put environmental concern in its PTAs. This article argues the lack of environmental concern in Indonesia's existing PTAs. Moreover, when they include environmental concern, there is no further elaboration on how this concern should be incorporated. Compare to other existing PTAs, Indonesia should start incorporating environmental concern in its PTAs, and then implement the right of regulate to impose protective measure in order to protect environment.

Keywords: environmental concern; preferential trade agreements.

I. INTRODUCTION

In a globalized world, international trade has given positive impacts. Specifically, it can absorb more jobs (The Organisation for Economic Cooperation and Development, 2011: 34), generate substantive productivity gains (Przemyslaw Kowalski, 2013: 44), promote the Sustainable Development Goals (SDGs), particularly for embattling famine and poverty and increase GDP (World Trade Organization, 2014). The presence of bilateral and regional trade agreements (hereinafter preferential trade agreements (PTAs)) is important for realising those goals (Widiatedja, 2011: 42). For example, the North American Free Trade Agreement (NAFTA) shows that the decrease of trade barriers can provide more jobs and increase standards of living (NAFTA, 1994). Similarly, in the Australia-China FTA, the goal of the reduction of trade distortion is aimed to enhance job opportunities (Australia-China FTA, 2015).

While PTAs was analysed as the loyal supporter of the World Trade Organization (WTO), this trend is no longer completely true (Simon Lester and Bryan Mercurio, 2009:53). Over the last two decades, the number of PTAs is considerably increased. From 430 PTAs, almost 350 PTAs has been concluded since the 1990s. The failure of the WTO negotiations has encouraged countries to find an alternative forum to continue their economic cooperation (Simon Lester and Bryan Mercurio, 2009:56). Besides, the OECD negotiation is unable to conclude a multilateral rule-based system in the realm of investment (Andreas Dür and Manfred Elsig, 2015:2). As an ardent member of the WTO, Indonesia has joined many groups that focus on the promotion of the importance of trade liberalisation, such as the G-20, the G-33 and the Cairns Group. In PTA, Indonesia establishes agreement with other WTO member states, such as Bulgaria, and with non-WTO members, such as Uzbekistan (2008). As ASEAN entity, Indonesia involves in ASEAN FTA, such as with China (2002), and Japan (2007).

Although providing benefits, international trade has adversely affected environment. When trade's products are from endangered species, they can negatively impact environment through the existence of illegal hunt (Daniel Bethlehem, 2009:511). Furthermore, the existence of climate change from the greenhouse effect of industrial activities has threatened environment (United Nations Conference on Trade and Development, 2013:3). Anticipating environmental impact as a result from international trade, some PTAs have put environmental concern in their provisions. The preamble of the WTO expressly states that trade activities are conducted to reach the utilisation of the world's assets, taking into account the goal of sustainable development (World Trade Organization, 1994). In addition, the Preamble of the NAFTA 1994 encourages parties to balance the goal of eliminating trade barriers with the promotion of sustainable development (North America Free Trade Agreement, 1992).

The incorporation of environmental concern under PTAs has enabled countries to implement what so called a "right to regulate" for policy goals (Muchlinski, 2008: 15). In this context, they can impose measures to anticipate and mitigate any environmental damage from international trade. Some elaborations of these measures are, among other things, the right to determine country's sustainable development policies and priorities, the right to issue its own levels of domestic environmental protection, and the prohibition to relax or lower the standard of environmental protection to increase international trade (Japan – EU FTA, 2018).

In Indonesia, international trade has linked to environmental problems. The reduction of tariffs has led to the excessive use of timber. Equally, international trade has contributed to the deforestation (Chrstian Nellemann *et al.*, 2007:5), particularly due to the increase of global demand for agricultural products and vegetable oil

(Serge Wich *et al.*, 2011: 41). The incorporation of environmental concern in PTAs can help Indonesia to anticipate and mitigate environmental impact of international trade. However, only a few Indonesia's PTAs have incorporated this concern.

This article aims to show the existing Indonesia's PTAs, analysing how Indonesia has put environmental concern in its PTAs. This article argues that only a few Indonesia's PTAs have incorporated environmental concern in their provisions. The lack of environmental concerns in Indonesia's PTAs may cause difficulties for the government to anticipate any environmental damage from international trade, and to impose measures if the presence of international trade within Indonesia's territory has damaged the environment.

To begin with, this article explains the impact of international trade on environment, covering global and Indonesia's perspective. Then, it discusses the existence of environmental concern under PTAs, explaining how modern PTAs mostly include environmental concern. The environmental concern under Indonesia's PTAs is the next section. It shows how Indonesia has put environmental concern in its PTA's from old order, new order to reformation order. Finally, it will analyse how Indonesia should put environmental concern by looking at other existing PTAs. In accordance with the above-mentioned theme, this article analyses how Indonesia has put environmental concern in its PTAs. Compare to other PTA's, how Indonesia should put environmental concern in its existing and future PTAs.

II. RESEARCH METHODS

The type of this research uses normative legal research, a legal research that is conducted based on law and regulation and library material, which is known as secondary material. Related with this type of research, the approach used in this paper are legal approach and historical approach. these approach are done by reviewing the acts and regulations that related to the problem that is being discussed in this research and also this research conduct a review related to the lack of environmental concern under Preferential Trade Agreements (PTAs)

III. RESEARCH RESULT AND DISCUSSION

A. The impact of international trade on environment

1. Global perspective

International trade has negative impacts on the environment both directly and indirectly. Trade's products from endangered species directly causes environmental harm by encouraging illegal hunt. Trade in dangerous products can also lead to environmental damage both during transportation and at

the source and destination sites. Furthermore, the movement of transport vehicles can encourage the spread of invasive alien species, and contribute to air and water pollution (Daniel Bethlehem, 2009:511). Industrial activities that hugely produced CO₂ emissions created the greenhouse effect, leading to what have been regarded as a climate change that may compound or reinforce other environmental harms (Kyla Tienhaara, 2018:229). Some developing countries, such as China and South Africa experienced with the environmental degradation as undeniable impact from industrial activities (The Organisation for Economic Cooperation and Development, 2012:8), reflecting how developing countries are more vulnerable to the implication of this undesirable process (United Nations Environment Programme, 2016: 11).

International agreements have started putting environmental issue in order to promote sustainable development. The Report of the World Commission on Environment and Development (Brundtland Report) defines sustainable development as the balance the needs of the present without adversely affecting the needs of future generations (United Nations, 1987). According to the Declaration of the United Nations Conference on Environment and Development that so-called 'Rio Declaration', all international agreements shall prioritise the protection of environment (United Nations, 1992). Rio Declaration Programme of Action for Sustainable Development that so-called 'Agenda 21', then emphasises the importance to reconcile trade liberalisation and sustainable development by stating that the existence of multilateral trading system must respect the importance of the objectives of sustainable development (United Nations, 1992).

Although only "soft law", some trade agreements then followed the provision of Rio Declaration and Agenda 21. Specifically, the preamble of the WTO agreement expressly recognises that the goals of trade and economic cooperation to reach optimal utilisation of the resources of the world must be conducted in comply with the goals of sustainable development (World Trade Organization, 1994).

2. Indonesia's perspective

Some empirical studies have assessed the impact of trade liberalisation on environment. First, United States Trade Representative estimated that the reduction of tariffs led to an increase of timber harvest by 4.4 per cent in Indonesia (United States Trade Representative, 1999:43). Next, UNEP assessed the environmental impact of the WTO on the rice sector in Indonesia, finding how this sector has impacted environment through the pollution as a

result of the use of agro-chemicals (United Nations Environment Programme, 2005: xvi).

Some studies have expressed a concern about deforestation linked to international trade. Specifically, Nelleman et al indicated that crops such as palm oil and illegal logging were the major contributing factors of deforestation. This study also pointed out that the actors in this process were huge companies that have sophisticated machinery and links to the global market (Christian Nellemann *et al.*, 2007:5). Hermosilla, Doornbosch and Lodge (2007) then revealed that 40 per cent of all woods products in China, between 1997 and 2005, had been imported from Russia and Indonesia (Arnoldo Contreras-Hermosilla, Richard Doornbosch and Michael Lodge, 2007: 13). Robalino and Herera (2010) analysed the link between trade liberalisation and deforestation by stating that higher trade would cause higher production of agricultural goods in net exporting countries, such as Brazil, Canada and Indonesia. Consequently, an increase of trade would likely cause higher deforestation rates in these countries (Juan Robalino and Luis Diego Herrera, 2010:7). A study from Wich (2011) determined that the global demand for vegetable oil, timber, and agricultural products was the driving force behind deforestation in Indonesia (Serge Wich *et al.*, 2011: 41).

Oktavilia and Firmansyah (2006) examined the causal relation between trade openness and environmental degradation in Indonesia. The study found no strong evidence of environmental degradation in the short-term, but this degradation would eventually affect Indonesia in the long-term (Shanty Oktavilia and Firmansyah, 2016: 129). Nevertheless, Anna Strutt (2009) analysed the impact of trade liberalisation on soil degradation in Indonesia, assessing the cost of damage from increased erosion as only 0.2 per cent of the welfare gains from trade liberalisation (Anna Strutt, 2009:41). Similarly, Kurniawan (2011) analysed the environmental impact of the ACFTA, showing how the impact was limited to the increase of energy demands and CO₂ emissions (Kukuh Kurniawan, 2011:7).

A study from the OECD (2012) has a potential explanation why international trade will likely affect natural resources in Indonesia. In 2010, international trade that involved Indonesia was mainly dominated by energy-related products, amounting to 30 per cent of Indonesia's export. The next highest contributing sectors for Indonesia's exports were other natural resource-based products, including agriculture-based commodities, and non-energy mining and quarrying (The Organization for Economic Cooperation and Development, 2012:3).

B. Preferential trade agreements and environmental concern

1. Traditional PTAs

Historically, trade agreements had been concluded before World War II. To begin with, the Cobden-Chevalier Treaty of 1860 was agreed to open the French market to British manufacturers, triggering other trade agreements among the European countries (Michael Fakhri, 2014:22). In 1930, Norway, Denmark, the Netherlands, and Sweden created the Dutch-Scandinavian Economic Pact as a means of securing themselves from economic crisis (World Trade Organization, 2011:53). Later, the United States promulgated the Reciprocal Trade Agreements Act in 1934 to conclude trade agreements with country with Latin American countries, Canada and the United Kingdom (Abraham Berglund, 1935:414). However, none of those PTAs had put environmental concern in their provisions.

After World War II, The presence of the GATT 1947 encouraged the establishment of PTAs. Article I and III of the GATT 1947 required the prompt application of the nondiscriminatory principle, stating that any concessions given to one member had to be equally given to all members of the GATT. However, pursuant to Article XXIV (4), the GATT 1947 permitted its contracting parties to enter into PTAs if these PTAs have objectives “to facilitate trade between the constituent territories, and not to raise barriers to the trade of other contracting parties”.

Article XXIV (5) then explained that the duties and other regulations of commerce imposed by PTAs “...shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation...” of PTAs. In the first four decades of the GATT 1947, only a few contracting parties had used this exemption, in particular, European Economic Community (EEC) in 1957 and European Free Trade Agreement (EFTA) in 1960 (Andreas Dur and Manfred Elsig, 2015:4).

2. The new generation of PTAs

The number of PTAs has significantly increased over the last two decades. By November 2016, 430 PTAs have been concluded, from which 350 PTAs were from the 1990s (World Trade Organization, 2011: 6). Some reasons could explain why PTAs have been popular since the 1990s. The deadlock in the WTO negotiation stimulated countries to find alternative forum to continue their economic cooperation, particularly to increase trade and investment flows. Equally, the OECD negotiations on agreement in the realm of investment was unable to establish a multilateral rule-based system (Andreas Dur and Manfred Elsig, 2015:2).

The new generation of PTAs is coloured by cooperation of regional groupings with third countries, such as the ASEAN-Australia-New Zealand FTA, ASEAN-Korea Framework Agreement, and ASEAN-India Comprehensive Economic Cooperation. Besides, the EU is negotiating economic cooperation agreements with MERCUSOR (Simon Lester and Bryan Mercurio, 2009:56). Roughly 68 percent of PTAs in force focus on trade in goods, and 31 percent cover both trade in goods and services. However, from 2000 to 2010, the percentage of PTAs encompassing both goods and services more than doubled (World Trade Organization, 2011: 63). Even, there is a PTA that mainly focus on services instead of goods that can be seen through the negotiation of the Trade in Services Agreement (TiSA).

Many PTAs now include investment chapters, although investment has traditionally been covered by BITs (Molly Leshner and Sebastien Miroudot, 2006:7). NAFTA has inspired almost all subsequent PTAs such as AFTA, TPP, TTIP and CARICOM (Peter Muchlinski, 2008:208). Some PTAs, such as the TPP cover issues beyond the WTO agreements such as: environmental and labour standards, small to medium-sized enterprises (SMEs), state-owned enterprises, and human rights (World Trade Organization, 2011:110).

In relation to environmental concern, some PTAs have expressly put environmental concern in their provisions. Specifically, the Preamble of the NAFTA 1994 encourages parties to balance the elimination of trade barriers with the promotion of sustainable development (North America Free Trade Agreement, 1992). Meanwhile, in the Southern Common Market or well-known as Mercosur, all members realise that the expansion of domestic markets through integration must be reached by creating optimum utilization of resources, preserving environment (Southern Common Market, 1991). In the same way, Singapore-EFTA States PTA acknowledges that trade liberalisation should allow for the optimal utilisation of the existing resources, taking into account the objective of sustainable development (EFTA States-Singapore PTA, 2002). Then, Trans-Pacific Partnership Agreement (TPP) provide a clear statement that the agreement intends to “promote high levels of environmental protection and effective enforcement of environmental laws” (Trans-Pacific Partnership Agreement, 2016).

Some newest PTAs then elaborate what constitute environmental concern. Japan – EU FTA (2018) in Article 16.2(1) states the right to regulate of parties to decide policies and priorities in relation to sustainable development, and to determine the standard of environmental protection. Article 16.2 (2) expressly prohibits parties to relax or lower environmental standard in order to increase international trade within its territory. Article

16.6(1) also put biological diversity as a subject of protection from the negative impact of international trade (Japan – EU FTA, 2018). In Canada – EU CETA (2016), the environmental concern covers enforcement mechanism. Article 24.6 states that each party “ensure that its authorities competent to enforce environmental law give due consideration to alleged violations of environmental law”. Article 24.8 then encourages the use of scientific and technical information to support measures aimed at preventing environmental damage (Canada – EU CETA, 2016).

C. Environmental concern under Indonesia’s PTAs

1. The old order (1945-1966)

PTAs can be traced from treaties of friendship, which commonly included provisions with a view to concluding additional agreements in relation to trade or commerce. The first Indonesian treaty was the Treaty of Friendship between the Kingdom of Egypt and the Republic of Indonesia in 1947. The two countries agreed to “enter into negotiations for the conclusion of a comprehensive Treaty or Treaties of Commerce and Establishment” (Indonesia-Egypt PTA, 1947). Similar language allowed treaties of friendship had been to provide a bridge for trade agreements concluded between Indonesia and India, Pakistan, and Philippines in 1951.

Indonesia started concluding PTAs with Japan in 1952 and India in 1953 with the main objective to encourage trade between two parties (Indonesia-Japan PTA, 1952). Specifically, both parties consented to grant facilities and issue licenses necessary for the importation and exportation of goods and commodities (Indonesia-India, 1953). Each party then created schedules on an annual basis, consisting a list of goods and commodities that were available for such facilities and licenses (Indonesia-Japan, 1952). Indonesia put goods and commodities such as tea, coffee, palm oil, rubber, raw sugars, peanut and rattan on its export schedule. Indonesia’s country partner then put goods and commodities such as electric machinery, textiles, cotton and metal on its export schedule. This pattern can be found from Indonesian PTAs with China (1953), Pakistan (1953), Poland (1955), Romania (1956), Iraq (1960), Bulgaria (1961), Romania (1962), and Hungary (1965). Nevertheless, none of those PTAs in this period incorporated environmental concern.

2. The new order (1966-1998)

The existence of the GATT 1947 considerably inspired trade agreements of Indonesia. Agreements between Indonesia and other GATT contracting parties expressly referred to the GATT 1947. For example, article 2 the

trade agreement between Indonesia and Australia in 1972 stated that trade commitments between two parties are conducted in comply with the rights and obligations arising from their involvement in the GATT (Indonesia-Australia PTA, 1972). Similar provisions can be found in the trade agreements of Indonesia with the following countries: Malaysia (1973), Hungary (1974), Czechoslovakia (1975), Romania (1975), Romania (1991), Korea (1991), Czechoslovakia (1994), and Cambodia (1997).

The inspiration of GATT 1947 also occurred when Indonesia conducted PTA with non-GATT contracting parties, typically including the MFN rule as contained in the GATT 1947 without referring explicitly to the GATT 1947. In 1973, Indonesia concluded trade agreements accommodating regulatory autonomy. For example, the trade agreements between Indonesia and Malaysia (1973) and Romania (1991) stated that the provisions of the existing trade agreement would not impede government's right from both parties to apply or uphold protective measures in relation to security, public health or the prevention of diseases and pests in plants and animals (Indonesia-Romania PTA, 1991).

The rise of regionalism coloured trade agreements in Suharto's administration. In 1977, ASEAN contracting states started establishing Preferential Trading Arrangements that later became a stepping stone to the establishment of ASEAN Free Trade Area (AFTA). This arrangement aimed at realising ASEAN trade expansion, covering basic commodities, such as rice and crude oil and other products related to the ASEAN states' interest (ASEAN PTA, 1977).

The rise of regionalism has influenced the provision of bilateral trade agreements of Indonesia. Trade agreement with Romania in 1991, for example, stated that the provision of this agreement shall not apply to preferences or exceptions which of the contracting parties has granted to countries who are members of a free trade area or a customs union that either of the contracting parties has joined or may join; and as a consequence of participation in bilateral, multilateral, and regional trading arrangements. (Indonesia-Romania PTA, 1991). These similar provisions were also found in trade agreements with Korea in 1991 and Suriname in 1994.

3. The reformation order (1998- present)

Indonesia continued to conclude PTAs with other WTO member states in this era, including Papua New Guinea (2000), Bosnia Herzegovina (2002), Slovakia (2002), Bulgaria (2004), and Thailand (2011). Relating to MFN principle, all agreements mainly referred to the WTO establishing agreement and covered the following measures: custom duties and charges, jaw

regulations in relation to customs procedures, transit, store and reloading; and domestic taxes and other charges, regulations and requirements connected to the imported goods (Indonesia-Bulgaria PTA, 2004).

Most of Indonesia's PTAs also included the exemption provision both from MFN treatment and general exemptions. The exemptions from MFN treatment, particularly related to advantages granted to neighbouring countries in order to boost trade; advantages granted to any countries over a preferential trade agreement, custom union or free trade area; advantages granted under any scheme for the expansion of trade and economic cooperation among developing countries; and advantages that may be granted in relation to agreements on avoidance of double taxation. Following the WTO scheme, general exemptions also cover economic reasons, such as to safeguard the external financial position and balance of payment, and non-economic reasons, such as public health, morals, order, and protection of plants and animals against diseases and pests (Indonesia-Bulgaria PTA, 2004).

Indonesia also concluded trade agreements with Non-WTO members, namely Pakistan (2003), Bangladesh (2004), and Uzbekistan (2008). Nevertheless, the influence of the WTO agreement is still dominant. Specifically, in the trade agreement with Uzbekistan, both parties agreed to grant MFN treatment in all matters related to trade and economic cooperation and intellectual property rights. (Indonesia-Uzbekistan PTA, 2008).

Under ASEAN framework, Indonesia has involved in the establishment of ASEAN Economic Community (AEC). In the Declaration of ASEAN Concord II (also known Bali Concord II), ASEAN member states committed to deepen and broaden its internal economic integration and linked to the world economy in order to realise AEC in 2020. In 2007, ASEAN member states then committed to accelerate the establishment of AEC by 2015 (ASEAN Concord II, 2003). Later that year, the Declaration on the AEC Blueprint was established (ASEAN Economic Community Blueprint, 2007).

Indonesia, along with other ASEAN member states, has concluded free trade area (FTA) agreements on behalf of ASEAN with China (2002), India (2003), Korea (2005), Japan (2008), and Australia and New Zealand (AANZFTA) (2009). Indonesia itself has also concluded a bilateral FTA with Japan in 2007. In the FTAs' objectives, most of agreements have goals to progressively liberalise and facilitate trade in goods by eliminating tariff and non-tariff barriers; to gradually liberalise trade in services with substantial sectoral coverage; and to promote and protect investment and intellectual property rights (ASEAN-Australia-New Zealand FTA, 2009). Nonetheless, ASEAN-Japan FTA mentioned more specific objective by stating that the

agreement also intended to assist the economic integration of ASEAN, reducing gap among ASEAN states, and improving trade and investment flows (ASEAN-Japan FTA, 2007).

ASEAN FTAs commonly covered similar field of economic cooperation. For example, ASEAN-Japan FTA mentioned the following field as the scope of their economic cooperation, including trade-related procedures, business environment, intellectual property, energy, small and medium enterprises (SMEs), tourism and hospitality, and environment (ASEAN-Japan FTA, 2008). Although being similar, some FTAs explained the different areas of cooperation. ASEAN-China FTA included the development of the Mekong River basin as one of its priority sectors. (ASEAN-China FTA, 2002). ASEAN-India put emphasis on the trade facilitation program, covering mutual recognition arrangements, conformity assessment, and accreditation procedures (ASEAN-India PTA, 2003) Meanwhile, ASEAN-Korea FTA mentioned the importance of capacity building programmes and technical assistance, particularly for the newer ASEAN Members (ASEAN-Korea PTA, 2005).

In this period, Indonesia started concluding PTAs that put environmental concern in their provisions. For example, the objective of US-ASEAN TIFA (2006) is to realise mutually supportive trade and environmental policies as a means of actualizing sustainable development (United State-ASEAN Trade and Investment Framework Agreement, 2006). Besides, ASEAN-Japan FTA contains some provisions that put environmental concern. Article 74 states that all parties are prohibited to attract investors by relaxing environmental policies within their territories (ASEAN-Japan FTA, 2007). In Article 102, this PTAs emphasis the obligation of both parties to anticipate or mitigate environmental damages from energy and mineral-related activities (ASEAN-Japan FTA, 2007).

Framework Agreement on Trade and Investment Between The Ministry of Trade of Indonesia and the Ministry of National Planning and Economic Development of Myanmar also put environmental concern. It states that both parties should establish mutually supportive policies, reconciling the expansion of trade and the promotion of sustainable development, taking into account the Doha Declaration (Indonesia-Myanmar PTA, 2013).

To sum up, after explaining the existing Indonesia's PTAs, only a few PTAs have incorporated environmental concern in their provisions. They are US-ASEAN TIFA, JAPAN-ASEAN FTA, and the Agreement that involve two ministries from Indonesia and Myanmar. If they are further analysed the incorporation of environmental concern is somewhat general, saying

that the party will respect the balance between trade liberalisation and sustainable development, and how mutually supportive policies between trade and environment should be considered. Nevertheless, there is no further explanation or elaboration on how this process should be undertaken by two parties. This lack of environmental concerns in Indonesia's PTAs may cause difficulties for the government to anticipate any environmental damage from international trade, and to impose measures if the presence of international trade within Indonesia's territory has damaged the environment.

D. How Indonesia should put environmental concern

Compare to WTO and NAFTA, both agreements expressly states that trade integration must be conducted by taking into account the goal of sustainable development, particularly preserving environment. They then elaborated this objective by providing a kind of provision that enable member states (regulatory autonomy) to impose and uphold protective measures in relation to environmental protection. The Trans-pacific partnership then provides a more specific environmental protection's goal by incorporating the right of parties to impose high level protection and enforce environmental regulations.

The case of ASEAN-JAPAN FTA provides a good example on how to incorporate and elaborate environmental concern in PTA. It states that all parties are strictly prohibited in attracting investors by relaxing environmental policies within parties' territories, particularly in energy and mineral-related sectors. It seems that the parties anticipated what has been regarded as "pollution haven hypothesis". Although it was examined in the realm of investment, the proximity between international trade and investment has opened a possibility if this hypothesis may also cover international trade. ASEAN-JAPAN FTA then put this issue in its provision.

According to "pollution haven hypothesis", some companies migrated from countries with stringent environmental protection standards to countries with lower environmental standards and weak environmental policy (Daniel Bethlehem 2008:88). Furthermore, because getting standards in their home countries costly, companies intend to relocate their activities for gaining advantage of lower costs of production (Daniel Bethlehem, 2009:511). An empirical study from Dean, Lovely and Wang indicated that environmental stringency influenced location choice of investment in China. Nevertheless, a weaker environmental policy only attracted for joint venture companies in highly-polluting industries with partners from Macao, Taiwan and Hong Kong (Judith Dean, Mary Lovely and HuaWang, 2005: 3).

Indonesia should also consider elaborating what constitute environmental measures. Referring to Japan – EU FTA (2018), Indonesia should expressly state its right to decide policies and priorities in relation to sustainable development, and to set up the standard of environmental protection. Equally, Indonesia should put biological diversity as a subject of protection from the negative impact of international trade. Following Canada – EU CETA (2016), Indonesia should encourage the use of scientific and technical information to support measures aimed at preventing environmental damage.

Beside the lack of environmental concern in investment treaties (Widiatedja, 2017: 246), the existing Indonesia's PTAs also show the similar trend. In the future, Indonesia should start incorporating environmental concern in its PTAs. It should allow the right of government to impose protective measure to preserve environment. In addition, the provision should contain the prohibition to relax environmental standards as a means of attracting international trade.

IV. CONCLUSION

International trade has resulted positive impacts, such as alleviating poverty, increasing GDP, and providing job. The existence of PTAs is increasingly significant due to the deadlock of multilateral trade agreements. Since the last ten years, most countries are eager to conclude PTAs to pursue positive impacts of international trade. Although providing benefits, international trade has adversely affected environment. Some international treaties suggest how countries should include environmental concern in their PTAs. Unlike traditional PTAs, most of modern PTAs have incorporated environmental concern, reconciling the goal of trade liberalization and environmental protection. As a result, the incorporation of environmental concern in PTAs can help countries to anticipate and mitigate environmental damage of international trade. However, Indonesia does not follow this trend as only a few Indonesia's PTAs have incorporated environmental concern in their provisions. Moreover, when they include environmental concern, there is no further explanation or elaboration on how this process should be undertaken by the parties. The lack of environmental concerns in Indonesia's PTAs may cause difficulties for the government to anticipate any environmental damage from international trade, and to impose measures if the presence of international trade within Indonesia's territory has damaged the environment. Compare to other existing PTAs, Indonesia should start incorporating environmental concern in its PTAs. Furthermore, it should allow the right of government to impose protective measure to preserve environment. In addition, the provision should contain the prohibition to relax environmental standards as a means of attracting international trade.

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