

Debureaucratization and Deregulation of Trade-Related Laws in Indonesia to Increase Exports

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Abstract

The COVID-19 pandemic caused the majority of countries in 2020 to experience an economic crisis and economic growth in 2021 to slow down. Trade is one of the sectors affected by the pandemic in 2020 due to the policy of limiting activities to reduce the negative impact of COVID-19 and slowing down of economic activities. This condition also becomes more difficult if the number of laws and regulations is considered too many and overlapping. In the midst of pandemic and uncertainty, a breakthrough is needed. Therefore this research will discuss Debureaucratization and Deregulation of Trade-Related Laws in Indonesia to Increase Exports. Based on the Juridical Legal Analysis, it can be seen that since Omnibus Law/the Act Number 11 of 2020 concerning Job Creation and its derivative regulations related to trade has been enacted, there is potential to create Legal Simplification. In 2021, there are 4 new technical regulations derived from Omnibus Law (Regulation of the Minister of Trade No.16 concerning Verification or Technical Investigation in the Foreign Trade Sector, Regulation of the Minister of Trade No. 17 concerning Exporters and Importers of Good Reputation, Regulation of the Minister of Trade No. 18 concerning Export Prohibited Goods and Goods Prohibited from Imports, and Regulation of the Minister of Trade No. 19 concerning Export Policies and Regulations) which are expected to improve the ease of doing business and export in Indonesia. After the enactment of these 4 Regulations of the Minister of Trade in 2021, there are 24 old regulations that have been withdrawn and declared inapplicable. Apart from that, there is also ease of doing business for exporters, such as for coffee commodities, where coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported. The regulation of an online licensing system can minimize the cost and the possibility of direct meetings between business people and the government so as to reduce the opportunities for corruption, collusion and nepotism. The online system of the Indonesia National Single Window (SINSW) and INATRADE systems can facilitate the process of disclosure of information and permits needed by stakeholders to increase ease of doing business, including Indonesian exports.

Keywords: *Legal Debureaucratization and Deregulation, Indonesian Trade, Juridical Legal Analysis, Indonesian Exports.*

A. Introduction

Central Bank estimates that Indonesian economic growth projection in 2021 will be around 3.2%-4%, or lower than the Central Bank's initial forecast, which was 3.5%-4.3% [1]. In the midst of pandemic COVID-19 year 2020, the Indonesian economic growth is minus 2.07% and it is the first time of economic crisis since 1998-1999 period [2][3]. So during this situation, the government need to do something that change the situation to be a better environment. Therefore, the Central Government of Indonesia together with House of Representative of Republic of Indonesia (DPR RI) in November 2021 promulgated the Act Number 11 of year 2020 concerning Job Creation through the Omnibus Law Scheme. The concept of Omnibus Law is framework that has characteristics change or withdraw several laws/regulations or part of regulations into 1 (one) new regulation/act that can accommodate all the laws/regulations contained therein [4]. Although, there is also literature research related to Omnibus Law by Aedi et al. [5] and Unpad [6] that critics this new regulation. The point of view of research paper can be varied and can become an auto critique for policy makers so that the law and business environment can be better by accommodating the policy recommendation from all stakeholders.

After Omnibus Law was enacted, there are 4 new technical regulations in the year 2021 released by Ministry of Trade. This new technical regulations is expected to improve the ease of doing business in Indonesia especially can help all stakeholder increasing export. So, to the best of author knowledge, not much research has been done related to the latest changing of trade-related laws in Indonesia in order to increase export. From the description above, this study goals to understand the debureaucratization and deregulation of trade-related laws and the new laws to increase exports.

B. Research Method

Figure 1 shows there is a thought process in conducting research related to Trade-Related Laws to Increase Exports. Starting from the big theme Debureaucratization and Deregulation of Indonesian Laws and Regulations especially related to trade and exports. The next two objectives of this research are to understand the concept of debureaucratization and deregulation of new trade-related laws and the implementation for this laws can help and support to increase exports. Then the research methodology of this research uses literature study from scientific writings, books and other secondary data, and uses legal juridical analysis method from existing laws and regulations in Indonesia. Finally, it is hoped that results of this study can describe the simplification of trade-related laws to increase of doing business in Indonesia including exports and provide policy recommendation to relevant stakeholders.



FIGURE1.Research Conceptual Framework

Source: Author, 2022 (Modified fromJati, et al., 2019) [7]

Research Method is the science of how to conduct research systematically and correctly to achieve the research goals. The Literature Study Analysis is used before carrying out the Legal Juridical Analysis. The definition of Literature Study is a review of a written research literature about applicable laws/regulations originating from various sources and widely published, the results of which are required in the normative legal method [8].

Figure 1 shows there is a thought process in conducting research related to Trade-Related Laws to Increase Exports. Starting from the big theme Debureaucratization and Deregulation of Indonesian Laws and Regulations especially related to trade and exports. The next two objectives of this research are to understand the concept of debureaucratization and deregulation of new trade-related laws and the implementation for this laws can help and support to increase exports. Then the research methodology of this research uses literature study from scientific writings, books and other secondary data, and uses legal juridical analysis method from existing laws and regulations in Indonesia. Finally, it is hoped that results of this study can describe the simplification of trade-related laws to increase of doing business in Indonesia including exports and provide policy recommendation to relevant stakeholders.

C. Findings and Discussion

1. Analysis of Literature Study

TABLE I. Top 20 Exports of Indonesian Commodities to the World Year 2019-2021

NO	HS	Description	Year / Period			Change %	Trend (%)
			2019	2020	Jan- Nov 2021		
						19/20	19 - 21
1	27	Mineral fuels, mineral oils (Coal)	34,105	25,506	40,769	-25	9
2	15	Animal or vegetable fats and oils (Palm Oil)	17,635	20,716	29,857	17	30
3	72	Iron and steel	7,387	10,862	18,623	47	59
4	85	Electrical machinery and equipments	9,012	9,233	10,566	2	8
5	87	Vehicles other than railway/tramway rolling-stock	8,188	6,603	7,873	-19	- 2
6	40	Rubber and articles thereof	6,026	5,619	6,498	-7	4
7	38	Miscellaneous chemical products	4,110	3,796	6,184	-8	23
8	26	Ores, slag, and ash	3,127	3,235	5,778	3	36
9	84	Nuclear reactors, boilers, machinery and mechanical	5,543	5,204	5,670	-6	1
10	64	Footwear, gaiters and the like; parts of such articles	4,409	4,804	5,534	9	12
11	71	Natural and cultured pearls, precious/semi precious stones	6,620	8,223	5,155	24	- 12
12	44	Wood and articles of wood; wood charcoal	3,838	3,790	4,391	-1	7
13	61	Articles of apparel and clothing accessories, knitted	3,764	3,350	3,886	-11	2
14	48	Paper and paperboard; articles of paper pulp or of paper	4,370	4,193	3,882	-4	- 6

15	62	Articles of apparel and clothing accessories, not knitted	4,473	3,634	3,663	-19	-10
16	03	Fish and crustaceans, Molluscs and other aquatic invertebrates	3,269	3,513	3,343	7	1
17	29	Organic chemicals	2,730	2,367	3,297	-13	10
18	47	Pulp of wood or of other fibrous cellulosic material	2,783	2,536	2,951	-9	3
19	74	Cooper and articles thereof	1,844	1,895	2,763	3	22
20	94	Furnitures, bedding, mattresses, mattress supports, cushions	2,064	2,287	2,723	11	15
Other Products			32,386	31,826	35,757	-2	5
Total Products			167,683	163,192	209,163	-3	12

Source: Indonesian Statistics (2022), in Million USD

Coal (Hs Code 27), Palm Oil Products (Hs Code 15), Iron and Steel (HS Code 72), and Electrical Machinery and Equipments (HS Code 85) are the 4 largest Indonesian export commodities to the world. Besides that, there are 2 (two) other main commodities whose exports increase significantly in 2021 which are: Miscellaneous Chemical Products (HS Code 38) and Ores, Slag and Ash (HS Code 26). In 2020, the total Indonesian export to the world is decrease 3%. One of the reasons is that there is Pandemic of COVID-19. Then there is increase of export from USD 163 billion in 2020 to USD 209 billion in period January-November 2021. This number will be increased more because the data in December not yet calculated. So there is indication that in 2021, the situation of business climate is getting better from the economic crisis in 2020.

According to Ministry of Trade press conference in January 2022[9], the Indonesian export data achievement in the year 2021 is the highest record in the history with total USD 231 billion for total export and USD 219 billion for non-oil and gas export. So in 2021 the total export is increase 41% compare to 2020 for total trade. One of the reasons is that there is commodity super cycle, where some export commodity price is increasing in 2021. Although the government also makes many efforts to increase the ease of doing business including related to the economic policy and deregulate unnecessary regulations.

TABLE II. Top 20 Destination Country/Economy of Indonesian Export Year 2019-2021

NO	COUNTRY/ ECONOMY	YEAR/PERIOD			CHANGE %	Trend (%)
		2019	2020	JAN-NOV 2021		
					19/20	19 - 21
1	CHINA	27,962	31,782	48,435	13.7	32
2	USA	17,845	18,623	23,133	4.4	14
3	JAPAN	16,003	13,665	16,006	-14.6	0
4	INDIA	11,823	10,394	12,083	-12.1	1
5	MALAYSIA	8,802	8,099	10,997	-8.0	12
6	SINGAPORE	12,917	10,662	10,519	-17.5	- 10
7	SOUTH KOREA	7,234	6,508	8,098	-10.0	6
8	PHILIPPINES	6,770	5,901	7,802	-12.8	7
9	THAILAND	6,218	5,110	6,416	-17.8	2
10	TAIWAN	4,035	4,097	6,332	1.6	25
11	VIETNAM	5,153	4,941	6,213	-4.1	10
12	NETHERLAND	3,205	3,114	4,152	-2.8	14
13	PAKISTAN	1,944	2,386	3,397	22.7	32
14	AUSTRALIA	2,329	2,506	2,978	7.6	13
15	BANGLADESH	1,914	1,685	2,631	-12.0	17
16	GERMANY				2.1	

		2,406	2,456	2,624		4
17	ITALY	1,749	1,746	2,544	-0.2	21
18	SPAIN	1,599	1,516	2,193	-5.2	17
19	HONG KONG	2,502	2,035	1,864	-18.7	- 14
20	UAE	1,471	1,244	1,708	-15.4	8
REST OF THE WORLD		23,802	24,723	29,037	3.9	10
TOTAL		167,683	163,192	209,163	-2.7	12

Source: Indonesian Statistics (2022), in Million USD

The 5 biggest destination country/economy of Indonesian export are China, USA, Japan, India and Malaysia that dominate 53% of total Indonesia export to total 229 countries/economies in the world. Of the top 20 export destination countries/economies, 14 of them is in Asia and most of them is developing countries that dominate 68% of total Indonesia export destination. According to McKinsey [10] and ADB [11], global cross-border flows are shifting towards Asia on 7 dimensions: trade, people, knowledge, culture, resources, environment and capital. So, Indonesia as a part of country in Asia also need to be ready because of this shifting. Need a breakthrough to compete with other countries globally. A better law environment and not overlapping is a must to be a part of global trade activities.

2. Analysis of Juridical Legal

Based on the juridical legal analysis, it can seen that Omnibus Law/the Act Number 11 of 2020 concerning Job Creation has 4 (four) objectives of restoring the national economy during and after the pandemic as stated in Article 3, namely:

- (i) Creating and increasing job opportunities by providing convince, protection, and empowerment for cooperatives and Micro Small Medium Enterprises (MSMEs) as well as national industry and trade as an effort to be able to absorb Indonesian workers as widely as possible while taking into account the balance and progress between regions in the national economic unit.
- (ii) Ensuring that every citizen gets a job, and gets fair and proper remuneration and treatment in an employment relationship.
- (iii) Adjusting various regulatory aspects related to partiality, strengthening, and protection for cooperatives and MSMEs as well as national industry.

- (iv) Adjusting various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

This 4 (four) objectives of the Act Number 11 of 2020 can be used as the basis of guiding goals of national economic recovery in the trade and export sectors related to employment. This can happen if licensing services and ease of doing business are also carried out properly in accordance with the mandate of the applicable regulations. In addition, it is also necessary to improve public service to all stakeholders at the central and local government.

Furthermore, the national economic recovery can be done in the context of legal reformation with trimming business licenses and simplifying licensing procedures [12]. So, business permits are not under different Ministries/Institutions, but it is regulated directly by the Central Government. This applies because there is a revision in the Amendment of the Act Number 7 of 2014 concerning Trade as contained in the Omnibus Law, especially in Article 46 that abolishes Article 49-Paragraph (3): the Minister may delegate or bestow the granting of permits as referred in Paragraph (1) to Local Government or Certain Technical Agencies. So, based on this explanation, it means that the licensing of business permit will only be regulated directly by the Central Government so easier for the business people to come to “one door” submission online.

Moreover, this online system can reduce the intensity of direct meetings between business people and the government so that the process of submission will be easier and efficient. Later on, the system also can help the stakeholder to overcome economic slow down because of the pandemic and reduce the change of corruption, collusion and nepotism. Also the change in authority is also carried out in order to increase the enthusiasm of private sector to expand the business and absorb more workers without having to be trapped in the licensing bureaucracy system in several agencies/institutions. There is only one license registration and it can be completed immediately because there is already the Act No.11 of 2020 concerning Job Creation which can improve the coordination relationship between agencies which is also regulated in an integrated public policy.

As the implementation of the Act No.11 of 2020 above especially article 46, 47, and 185, the Central Government of Republic of Indonesia has also established regulations in the derivative regulation related to trade, including the Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector. Total there are 14 Chapters and 179 Article with total around 124 pages. Later on after the Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector, the Ministry of Trade of Republic of Indonesia release 4 regulation in the field of foreign trade and exports, including as follows:

- (i.) Regulation of the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector,
- (ii.) Regulation of the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation,
- (iii.) Regulation of the Minister of Trade Number 18 of 2021 concerning Export,
- (iv.) Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations.

First Regulation is the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector. It is released on April 1, 2021 and implemented 60 days after released. In this regulation, there are 25 articles with total 19 pages. In article number 8, mention that the verification or technical investigation of the export of certain goods as referred in article 2, shall at least include:

- a) examination and assurance of the suitability of data and conformity of administrative documents,
- b) identification of specifications/criteria of goods through qualitative and/or quantitative analysis,
- c) amount and/or volume,
- d) port of loading or country of origin of the goods,
- e) country of destination
- f) data and/or other necessary information.

Also in chapter 10 mentions that the issuance of surveyor reports for verification or technical investigation of export of certain goods as referred in article 8 is carried out no later than 1 (one) day after completion of inspection. Then the surveyor's report is sent by the surveyor electronically in the form of data elements to the INATRADE system to be forwarded to SINSW. So, the electronic system in this regulation hopefully can make the implementation of export is more efficient and effective because the certainty of business will increase. Also during pandemic, this system can make the flow paperless and less offline activity.

Second Regulation is the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation. there are 13 articles with total 17 pages including appendixes. Definition of good reputation exporter in article 1- paragraph 5 is an exporter who has a good track record of compliance in the implementation of laws and regulations in the export sector. Furthermore, article 3 shows that in order to be designated as an exporter with good reputation, the exporter must meet the following criteria:

- a) has fulfilled the obligation to report on the realization of all export approvals that have been made for each commodity in the last 1 (one) year in accordance with the provisions of laws and regulations,
- b) obtain valid status in confirmation of taxpayer status from the ministry that carries out government affairs in the financial sector for the last 2 (two) years,

- c) implementation of export of goods in the last 2 (two) years in accordance with the line of business or nature of business,
- d) has never been subject to administrative sanctions in the form of revocation of licensing for violations of regulations in the field of export in accordance with the provisions laws and regulations in the last 2 (two) years,
- e) not being subject to administrative sanctions in the form of written warnings, suspension of permits or suspension of permits for violations of regulations in the export sector in accordance with the provisions of laws and regulations,
- f) has never been subject to criminal sanctions in the trade sector.

Third Regulation is Minister of Trade Number 18 of 2021 concerning Export that regulates 10 articles with total 48 pages including appendices. In Article 2 shows that export prohibited goods including: a) export prohibited goods in the forestry sector, b) export prohibited goods in agriculture, c) export prohibited goods subsidized fertilizer, d) export prohibited goods in the mining sector, e) export prohibited goods in the cultural heritage goods, f) export prohibited goods in waste and scrap metal. In the appendix, there is 275 products in 6 digit hs code that are prohibited to export from Indonesia to other country in the world.

Fourth regulation is Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations. There are 51 articles with total 408 pages including appendixes. This regulation is very detail with the technical implementation of export policies. In article 5 mentions that:

- 1) to obtain a business license in the export sector as referred to in article 3-paragraph (4), the exporter must submit an application electronically to the Minister through SINSW,
- 2) to be able to submit the application electronically referred in paragraph (1), the exporter must have access rights,
- 3) access rights as referred to in paragraph (2) can be obtained by registering through SINSW and uploading scanned original documents in the form of at least: (a) taxpayer identification number (NPWP) or Population Identification Number (KTP), for exporters who are individuals; (b) taxpayer identification number (NPWP), for exporters who are State-Owned Enterprises and Foundations; (c) Business Identification Number (NomorIndukBerusaha/NIB) for exporters who are cooperatives and business entities.

In this regulation, there are 20 old regulations have been withdraw and declared inapplicable including Regulation of Minister of Trade Number 109 of 2018 concerning Coffee Export as amended by Regulation of the Minister of Trade Number 80 of 2019. One of the implication is that coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported.

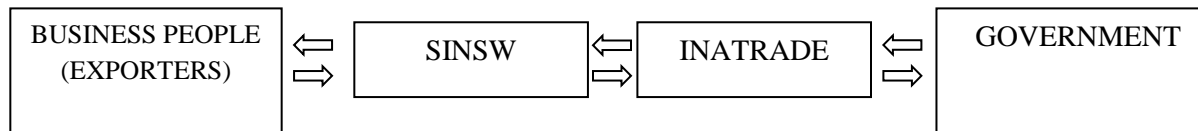


Figure 2. Process of Application for Business License in the Trade/Export Sector

Source: Ministry of Trade [14], modified by the author (2022)

Figure 2 shows the process of applying for a business license in the export sector. There is a process that needs to be carried out by exporters if they want to export products regulated by the Indonesian Government. Exporters submit applications to the System of Indonesia National Single Window (SINSW) which integrated with the INATRADE system. Based on Presidential Regulation Number 44 of 2018 concerning the System of Indonesia National Single Window, this SINSW is an electronic system that integrates information relating to the process of handling documents at customs, licensing documents, quarantine documents, airport/seaport documents, or other documents related to import/export that ensures data and information security and combines processes and information flows between systems automatically [13].

INATRADE is an application provided by the Central Government, namely the Ministry of Trade of Republic of Indonesia, to business people/community in the context of export facilitation that is used in the purpose of applying for export and import permits. The process carried out is that companies need to be registered so they can get “Access Rights”, Business People/community can register online at <http://inatrade.kemendag.go.id/> to get export permits from the Central Government. The objectives of implementing the INATRADE system are:

- i. to speed up and simplify the export licensing process because it is integrated with SINSW and can be accessed anytime and anywhere;
- ii. Automatically verify documents so as to speed up Customs and Excise settlement, and reduce paper usage [15].

Hopefully the system of SINSW and INATRADE can help and support increasing international trade and business. According to Jankulovski and Bojkovska (2017) [16] international business is realized the globalization process of business that increase international integration and market for goods and services that can reduce the trade restrictions and strengthening the international companies role. Therefore, it is essential for business people and exporters to increase their connection in international business with the support of the government to make a good governance that is based on accountability, innovation, integration, collaboration, transparency and openness principles [17].

D. Conclusion

The economic crisis in 2020 and the slowing down of economy in 2021 because of the pandemic COVID-19 hit Indonesia and most of the countries in the world. Trade is one of the sectors that affected by the pandemic in 2020. One of the reasons is more than 80 countries and customs territories had introduced export restrictions/prohibitionsto response the pandemic situation [18][19]). Based on the literature review, Indonesian export data to the world in the year 2020 is decrease 2.7 percent to USD 163 billion from USD 167 billion in 2019. In period of January-November 2021, the export data from Indonesia to the world is increase 28 percent become USD 209 billion. Ministry of Trade press conference in January 2022, the Indonesian export data achievement in the year 2021 is the highest record in the history of Indonesia with total USD 231 billion for total export. One of the reasons is that there is commodity super cycle, where some export commodity price is increasing in 2021.

The government need to make breakthrough to minimize the negative impact of the pandemic and increasing the ease of doing business especially export. Based on the juridical legal analysis, Omnibus Law/the Act Number 11 of 2020 concerning Job Creation has 4 (four) objectives of restoring the national economy including: (i) creating and increasing job opportunity, (ii)ensuring that every citizen gets a job, (iii) adjusting various regulatory aspects to strengthening and protecting MSMEs and industry, (iv) improving the investment ecosystem, facilitating and accelerating national strategic projects.

As the implementation of the Act No.11 of 2020 above especially article 46, 47, and 185, the Central Government of Republic of Indonesia has also established regulations in the derivative regulation related to trade, includingthe Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector. Then based on this regulation, the Ministry of Trade of Republic of Indonesia release 4 regulation in the field of foreign trade and exports, including as follows: (i)Regulation of the Minister of Trade Number 16 of 2021 concerning Verification or Technical Investigation in the Foreign Trade Sector, (ii) Regulation of the Minister of Trade Number 17 of 2021 concerning Exporters and Importers of Good Reputation, (ii) Regulation of the Minister of Trade Number 18 of 2021 concerning Export, and (iv)Regulation of the Minister of Trade Number 19 concerning Export Policies and Regulations. After the enactment of these 4 Regulations of the Minister of Trade in

2021, there are 24 old regulations that have been withdrawn and declared inapplicable. Apart from that, there is also ease of doing business for exporters, such as for coffee commodities, where coffee export licensing is simplified because this commodity is excluded as goods that are regulated by the export trade system so that coffee becomes a product that is free to be exported.

All stakeholders especially business people need to understand and study the new regulations that have been implemented as the consequence of debureaucratization and deregulation of trade-law. There is a process that needs to be carried out by exporters if they want to export products regulated by the Indonesian Government. Exporters need to submit applications to the System of Indonesia National Single Window (SINSW) which integrated with the INATRADE system. The objectives of implementing this online system are: (i) to speed up and simplify the export licensing process because it is integrated and can be accessed anytime and anywhere; (ii) automatically verify documents so as to speed up Customs and Excise settlement, and reduce paper usage. In the end, hopefully the regulation of an online licensing system can minimize the cost and the possibility of direct meetings between business people and the government during pandemic, so as to reduce the spreading of COVID-19 virus and to avoid corruption, collusion and nepotism (KKN). The online system of the Indonesia National Single Window (SINSW) and INATRADE systems can facilitate the process of disclosure of information and permits needed by stakeholders to increase ease of doing business, including Indonesian exports. In the future, further study can be made, by adding analysis of the costs and benefits to the new regulations especially related to trade with other countries.

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