

**JURIDICAL ANALYSIS OF THE RAMPANT PRACTICE OF DUMPING BASED  
ON POSITIVE LAW AND ISLAMIC LAW****Al Rizal Gahwi**Legal Studies Program, Faculty of Law, Universitas Muhammadiyah Surakarta  
c100200074@student.ums.ac.id**Mutimatun Ni'ami**Legal Studies Program, Faculty of Law, Universitas Muhammadiyah Surakarta  
mn272@ums.ac.id**ABSTRACT**

Dumping is an act of price discrimination that includes the sale of goods abroad at a lower price than the same domestic goods or at a price different from the normal price with the aim of preventing a decrease in the price of goods purchased domestically, which can kill the goods market and result in company bankruptcy. This research uses a doctrinal (Normative) approach because this research focuses on laws that are considered norms or rules that apply in society and are used as a reference for everyone's behavior. In Law No. 10/1995 on Customs, as amended by Law No. 17/2006 on Customs, there are dumping provisions governing import and export in Indonesia. These provisions are listed in Chapter IV on anti-dumping duties and countervailing duties, where the first part regulates anti-dumping duties, namely from Article 18 to Article 20, and the second part regulates countervailing duties, namely from Article Human beings have the right to differ in value in Islamic law. However, if one spends money with the intention of harming others, it is haram according to the law: "There is no harm to oneself, and no harm to others." In other words, if one does so with the intention of harming others, it is haram.

**Keywords:** Dumping; Anti-Dumping; Islamic Law

**INTRODUCTION**

Trade has many ways ranging from fair to unfair fraudulent ways that we often know as unhealthy trade. Agus Brotosusilo revealed that one of the unhealthy trade practices is called "Dumping" which is a form of trade that uses international scale prices which are often carried out by companies or countries that "export" goods and sell them at a much cheaper price. These practices are considered unfair and unhealthy.<sup>1</sup>

Dumping is defined as an act of price discrimination and includes the sale of goods

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<sup>1</sup> Muhammad Sood, 2011, *Hukum Perrdagangan Internasional*, Jakarta: Rajawali Pers, pg.116-117.

abroad at a lower price than the same domestic goods or at a price different from the normal price with the aim of preventing a decrease in the price of domestically purchased goods, which in turn can kill the market for goods and result in the bankruptcy of the company. In addition, waste dumping is referred to in Islam as *siyasa al-ighraq*, which means waste dumping or price gouging. This behavior is clearly prohibited in Islam as it can harm society. However, dumping is allowed, especially for the consumption of products that we no longer have, if it is done in accordance with the applicable procedures. Unlike vicious and cruel dumping that will hurt and kill competitors, this is prohibited.<sup>2</sup>

Market mechanisms have been shown to be affected by this. For example, domestic companies may not be able to compete because the price of imported products is much cheaper, or layoffs may occur on a large scale because domestic companies have to reduce operational costs to compete with imported products. Therefore, dumping is prohibited by Islam as it causes damage and loss to society.

Among the many cases that occur in Indonesia, one of them is dumping. There is unfair competition domestically and abroad, which will have a significant impact, namely advantages for the country when compared to other countries, such as in terms of economy and impact on national politics such as domestic market access. This competition causes conflicts that not only impact a country but also impact society as a whole as a result of a country's government policies relating to trade or so-called commerce.<sup>3</sup>

An example is the wheat flour commodity dumping case. China dumped wheat flour products, causing protests in Indonesia. The case occurred between 2000 and 2005, and ended with the Indonesian government claiming. Jusuf Anwar, the finance minister at the time, decided to apply Anti-Dumping Import Duty (BMAD). Indian manufacturers shipping their products to Indonesia also experienced the same thing. In fact, developed countries often use the political practice of dumping. Other countries often blame the United States, South Korea and Taiwan for their dumping practices. One of them is Japan, which uses it as a political tactic abroad.

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<sup>2</sup> Muhammad Reza Syariffudin Zaki, 2022, *Hukum Investasi Multimoda Dan Perdagangan Internasional Di Era Pandemi Covid -19*, Jakarta: Publica Indonesia Utama, pg.73

<sup>3</sup> Moh Mufid, 2018, *Ushul Fiqh Dan Keuangan Kontemporer Dari Teori ke Aplikasi*, Jakarta: Prenadamedia Group, pg. 129-130.

The positive legal view usually makes a comparison between the “Normal Price” and the “Export Price”; the dumping margin is the difference between the two prices. As this margin cannot exceed the limit, it is very important. The Indonesian Anti-Dumping Committee (KADI), listed in Articles 9 and 10 of Minister of Industry and Trade Decree 427/MPP/Kep/10/2000, has an important role to play. In addition to providing services, the Committee’s goal is to achieve profitability and fairness in global trade rules. In view of the issuance of Government Regulation No. 34/1996 on dumping duties and countervailing duties and the establishment of the Anti-Dumping Commission Indonesia should utilize legal counsel who has experience in dumping.<sup>4</sup>

### **RESEARCH METHOD**

This research uses a doctrinal (Normative) approach because this research basically examines the law which is considered a norm or rule that applies in society and becomes a reference for everyone's behavior. Therefore, the researcher will examine only (written) legal norms or regulations related to the research subject. This research uses a descriptive type of research. This study focuses only on the discovery and explanation of a situation or symptom in society. Specifically, this research analyzes dumping practices based on Indonesian and Islamic law.<sup>5</sup> In this study, researchers used data, namely secondary data in the form of legal materials and other library materials such as books, journals, related regulations and documents. The data used by researchers is collected by the literature study method.<sup>6</sup>

### **RESULTS AND DISCUSSION**

#### **Dumping Under Indonesian Positive Law**

Indonesia and South Korea have faced dumping issues in their own history. Indonesia and South Korea were subject to antidumping duties on September 30, 2002. To stop dumping, the country affected by dumping must accept sanctions or anti-dumping policies. The WTO

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<sup>4</sup> Nella Octaviany Siregar, 2022, *Regulasi Anti-Dumping dalam Hukum Perdagangan Internasional dan Penerapannya di Indonesia*, Jambi: Universitas Muhammadiyah Sorong, <https://ejournal.um-sorong.ac.id/index.php/js/article/download/1563/845/4440> diunduh 13 November 2023, at 12.20 WIB.

<sup>5</sup> Ishaq, 2017, *Metode Penelitian Hukum*, Bandung: Alfabeta, pg. 66.

<sup>6</sup> Sugiyono, 2015, *Metode Penelitian Pendidikan (Pendekatan Kuantitatif, Kualitatif dan R&D)* Bandung: Alfabeta, page. 93.

(World Trade Organization) does not prohibit dumping, but allows countries that feel aggrieved by dumping to apply for an anti-dumping policy. Anti-dumping is a counter-sanction in the form of additional import duties imposed on a country.<sup>7</sup>

After Law No. 10 of 1995 on Customs dated December 30, 1995 was amended into Law No. 17 of 2006 on the Amendment of Law No. 10 of 1995 on Customs, a National Anti-dumping Regulation has been established. By ratifying the Agreement Establishing the World Trade Organization, Indonesia also ratified the Anti-Dumping Law (1994), which is one of the trade agreements between the three countries. In keeping with Indonesia's commitment to follow the wisdom of ratifying the World Trade Organization Establishment Agreement, the next step was to incorporate several anti-dumping laws into the Customs Law No. 10 of 1995.<sup>8</sup>

Gabrielle Marceau said that importing and exporting countries can see the impact of dumping practices. The anti-dumping policy regulates the basic rules of dumping. The practice of dumping clearly harms the country and has a negative impact on the international economy, which is part of international trade violations. It is therefore evident that a country requires protection or safeguards for its economy, which is undeniably still growing rapidly. The practice of exporting goods from one country to another at a price that is lower than the domestic selling price or normal value is referred to as dumping.

Article VI of the GATT provides for anti-dumping institutions, which require each member country to implement the provisions of the GATT in their own national legal systems. Following this provision, the last Uruguay Anti-dumping Code was abolished in 1994 and replaced by the Agreement on Implementation of Article VI of GATT 1994, which is a Multilateral Trade Agreement (MTA) signed by all GATT member countries.<sup>9</sup>

When compared to other countries, Indonesia seems to have established regulations to prevent dumping. These regulations start with the Law governing import duties and excise duties on imported goods, and are then followed by implementing regulations, namely Government Regulations and Ministerial Decrees, that address dumping. Indonesia established

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<sup>7</sup> Ucha Widya, *Kebijakan Negara Terhadap Dampak Dumping Sebagai Praktik Dagang Yang Tidak Sehat Bagi Negara Importir Menurut Ketentuan GATT/WTO*, Doctoral Dissertation, 2018, pg. 39

<sup>8</sup> Lusy K.F.R. Gerungan, 2014, *Kajian Yuridis Kebijakan Anti-dumping dalam Perdagangan Internasional*, Lex Administratum, II (3), pg. 135-144.

<sup>9</sup> Barutu Christophorus, 2007, *Ketentuan Anti-dumping, subsidi, dan tindakan pengamanan (safe guard) dalam GATT dan WTO*, Bandung: Citra Aditya Bakti, pg. 38

basic anti-dumping regulations as a result of the ratification of the Agreement Establishing the World Trade Organization. This regulation is incorporated into Law No. 10/1995 on Customs, which has been amended by Law No. 17/2006 on Customs. Chapter IV Part One, Articles 18-20 provide for anti-dumping, and Articles 21-23 provide for countervailing duties. Indonesia's anti-dumping implementing regulations are based on these provisions.<sup>10</sup>

As the customs law is the basis of anti-dumping law, other instruments that support and fall within the scope of customs should also be anti-dumping instruments. The policy on dumping and prevention of dumping will be part of customs, but it would be better if the policy has a different space from customs because if it is only based on customs, there will be legal uncertainty and doubt on legal issues related to dumping.

### **Dumping Under Islamic Law**

Basically, the concept of fair pricing has existed and been used since the beginning of Islam. The Qur'an specifically emphasizes the importance of justice in every aspect of human life. Consequently, it is only natural that justice is also applied to market activities, especially prices. Several prophetic traditions mention the term fair price to pay an owner, such as when a master frees his slave. In this case, the slave becomes a free individual and the owner receives fair compensation from the slave (*qimah al-adl*).

A fair price in the quotation marks of the term that we often use everyday has been exemplified during the reign of Umar bin Khattab, during the reign of Umar bin Khattab exemplified a fair price in determining the amount of the new *diyat* after the purchasing power of the dirham had decreased. There are 2 (two) terms used by Ibn Taymiyyah, namely equal compensation or *iwadh al-mitsl* and fair price or *tsaman al-mitsl*, although they have almost the same vocabulary, but these two things are different things in the concept of their application. Ibn Taymiyyah distinguishes prices into two categories: fair and desirable prices and unfair and prohibited prices. He considers an equal price as a fair price.<sup>11</sup>

On the issue of moral and legal obligations, Ibn Taymiyyah explained that equality is a matter of specific amounts of the same goods, the price level and customs are certainly a

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<sup>10</sup> Yulianto Syahyu, Hukum Anti-dumping di Indonesia dari Perspektif Ketahanan Industri dalam Negeri, Jurnal Keamanan Nasional Volume V, No 1(2019), pg. 54

<sup>11</sup> Sukarmi, 2002, Regulasi Anti-dumping di Bawah Bayang-bayang Pasar Bebas, Jakarta: Sinar Grafika, pg.183

separate problem factor. Ibn Taymiyyah also explained that there needs to be a precise evaluation of fair compensation which is based on analogy and comparison of specific similar goods. In the eyes of ethical and economic law between equal compensation and equal price, compensation based on the specific form of goods is a form of justice that has been established, and the payment can be increased if it is better, but it is forbidden to reduce compensation.<sup>12</sup>

When there is a purchase and exchange of goods at the actual price, a price that feels fair will be revealed. A fair price is a price based on market forces that have the concept of freedom in the process, where this freedom is the occurrence of demand and supply from consumers. There are several things that affect an equitable price, such as the price level (rate) and the price received by society for the same type of goods at a specific time and place. Fair price and equal compensation are related to each other. They are influenced by the price of the good and the compensation in determining the price. If the compensation for goods is equal to the labor and operating costs that affect a good, then the price used can be said to be fair. However, it should be underlined that the price that is said to be fair can be applied more flexibly because it is influenced again by supply and demand. According to Imam Yahya, a price based on supply and demand is a fair price, however, the price mechanism is based on these two things. The government has the authority to intervene in the event of out-of-control actions that are considered to cause public harm. The government also has the authority to impose sanctions on the perpetrators who cause losses and prohibit the perpetrators from selling or doing economic activities back in the market.

Rifa'at al-Audi states that Imam Yahya bin Umar's statement prohibiting the practice of dumping or price gouging was not intended to prevent prices from falling. Nonetheless, the purpose of the prohibition was to reduce its negative impact on the market mechanism and the lives of the people as a whole. Therefore, laws in Islamic economics serve as protectors and guarantors of the rights of individuals to improve their quality of life, not as tools to control wealth. Based on the above statements of Islamic economic thinkers, we can conclude that the forces of demand and supply more often than not outweigh the unfair actions of the individuals involved in the transaction. "*La tuzhlimuuna wa la tuzhlamuuna*" is a fair word in Islam.

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<sup>12</sup> Euis Amalia, 2005, Sejarah Pemikiran Ekonomi Islam dari Masa Klasik hingga Kontemporer, Jakarta: Pustaka Asatruss, pg.118

As long as there are no parties who feel loss due to dumping actions, the price of a good will be considered a fair and healthy price for the community. The Directorate of Trade Security of the United States has a different view on Dumping, dumping in the United States is allowed with the provision of a margin of no more than 2% to 3% which for countries that have a high import value, the dumping margin can touch the number above 3% and of course this can cause losses to the country. This happens because the country will be flooded with cheap goods and will damage the prices of domestic goods and domestic products will be less competitive with the dumped products.

Dumping is haram if one does it with the intention of harming others. The practice of dumping is similar to warehouse washing, which is selling goods below the market price. What distinguishes dumping from warehousing is the purpose of selling the product. Warehouse washing usually seeks to deplete the stock of goods in the warehouses of producers, so that they can sell their goods at low prices so that they can deplete the accumulated stock of goods. Even if no harm occurs, we do not state here that he has done anything forbidden. If he harms others, it is haram. And that is what distinguishes dumping (diversionary, predatory, persistent, and downstream) from dumping.

However, if understood thoroughly, an action is considered dumping if there are criteria that determine whether a country or company is dumping. These include:

1. Dumping has been committed on products entering Export destination countries;
2. There is material loss;
3. The material loss is believed to be related to the dumping activities.

## CONCLUSION

First, dumping activities have basically been regulated in the legislation, especially the customs law, in which the law has stipulated matters related to export and import activities contained in CHAPTER IV of the customs law. Government regulations function as material law to protect domestic industries from dumping practices, and the Minister of Industry and Trade's decree functions as formal law. The government through the Ministry of Industry and Trade has made preventive and repressive efforts to prevent domestic products from being dumped. The domestic industry can be legally protected through preventive and repressive

protection, such as the imposition of Anti-Dumping Import Duty to dumpers that harm the domestic industry.

Second, price issues are the basis of dumping practices. In general, dumping is a trade practice that sells goods or products at a price below the market price. Humans have the right to differ in value in Islamic law. However, if a person spends money with the intention of harming others, it is haram according to the law: “There is no harm to oneself, and no harm to others.” In other words, if someone does it with the intention of harming others, it is haram. However, if he does it without any specific intention, the dumping is valid. In other words, as long as the dumping is not harmful, it is legitimate. However, dumping is prohibited if it starts to disrupt the market mechanism.

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