

Jurnal

by Satria Unggul Wicaksana Prakasa

Submission date: 30-Jun-2021 05:20PM (UTC+0700)

Submission ID: 1614111778

File name: 10._Subsidies_Countervailing_S4.pdf (196.43K)

Word count: 6088

Character count: 33402



Subsidies and Countervailing Measures: Challenges in International Trade Law

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Info Artikel

Masuk: 14 Desember 2020

Diterima: 23 Januari 2020

Terbit: 5 Februari 2021

Keywords:

Regulation
International Trade,
Subsidies,
Countervailing
Measures, GATT
1994, The SCM
Agreement

Abstract

In the global era with all demands and expectations for a better economic condition in a country that an international trade is needed. Fair competition can be carried out in competition between business actors and commodity (goods or services) in overseas with business actors and commodity (goods or services) in country. One form of creating justice in international trade competition is by providing subsidies. The issue of subsidies created the problems and disputes. The problem formulations of this research were: (1) how are the effects of subsidies and countervailing in international trade regulations? (2) how is the case analysis related to subsidies and countervailing measures according to the provisions of the GATT 1994, The SCM Agreement and other legal provisions? The results showed that (1) the effect of subsidies and countervailing measures based on their types (red light, yellow light, green light) in international trade regulations had provided clear provisions as well as the impact and limitations in implementing these provisions in accordance with the provisions. GATT 1994 and The SCM Agreement. (2) The several cases described regarding subsidies that were not allowed because they created injustice that the subsidies were only carried out in an emergency situation and their nature rescued them from an economic crisis.

Kata kunci:

Regulasi perdagangan internasional, Subsidi, Countervailing Measures, GATT 1994, The SCM Agreement

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Abstrak

Di jaman global dengan segala tuntutan dan harapan atas kondisi perekonomian suatu Negara yang lebih baik, maka dibutuhkan sebuah perdagangan internasional. Persaingan sehat dapat dilakukan dalam persaingan antara pelaku usaha beserta komoditas (goods or services) luar negeri dengan pelaku usaha beserta komoditas (goods or services) dalam negeri. Salah satu bentuk menciptakan keadilan dalam persaingan perdagangan internasional adalah dengan memberikan subsidi. Permasalahan subsidi menimbulkan masalah dan sengketa. Rumusan masalah dari penelitian ini adalah: (1) bagaimanakah pengaruh subsidi dan countervailing didalam regulasi perdagangan internasional?. (2) bagaimana analisis kasus terkait subsidi dan countervailing measures menurut ketentuan GATT 1994, The SCM Agreement dan ketentuan-ketentuan hukum lainnya?. Hasil dari Penelitian ini adalah: (1) pengaruh subsidi dan countervailing measures berdasarkan jenis-jenisnya (Red light, yellow light, green light) didalam regulasi perdagangan internasional telah memberi ketentuan yang jelas serta dampak dan batasan-batasan dalam menerapkan ketentuan tersebut sesuai dengan ketentuan GATT 1994 dan The SCM Agreement. (2) Dari beberapa kasus yang dipaparkan terkait subsidi yang tidak diperbolehkan karena menciptakan ketidakadilan, subsidi hanya dilakukan dalam keadaan darurat dan sifatnya untuk penyelamatan dari krisis ekonomi.

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A. INTRODUCTION

In the global era with all the demands and hopes for a better economic condition in a country, international trade is needed, this is aimed at creating an economic balance for both export and import activities where the State as an "institution" is obliged to bring welfare to its people because it is in their national interest, what kind of welfare in this case? the answer is how healthy competition can be done in competition between business actors and goods or services foreign and domestic business actors and goods or services. One form of creating justice in international trade competition is by providing subsidies. Subsidies are an international trade instrument that is subject to legal provisions regulated by the

World Trade Organization (WTO) and the General Agreement on Tariff and Trade (GATT).

The subsidies in the WTO / GATT provisions are broadly determined in The General Agreement on Tariffs and Trade 1994, followed by the 1994 Marakesh Declaration which is more familiarly called the Uruguay Round. The next big step is through the "Subsidy Code" in the Tokyo Round, then refined through the WTO Agreement on Subsidy Countervailing Measure (SCM Agreement) which provides the reason for the subsidies. (WTO, 2006)

Problems arise when intervention government through subsidies is carried out, on the other hand because subsidies are a legal step in the provisions of national law, but the government program does not provide benefits for other business actors where this is unacceptable in the aspect of international trade. The main concern of WTO / GATT since the beginning of the discussion of the formulation of the subsidies itself, then the cancellations of trade aspects that are not violations, then the encouragement of developing countries to limit subsidies to the agricultural sector alone, not other sectors ((UNEP), 2010), then how to recover domestic subsidies under the WTO it causes more problems, because it is unable to maximize the principle of countervailing measures (SyKes, 2003).

The questions that arise when international trade insistence wants the subsidies are only small in scope while the interests of the State have not been met, especially in aspects of public welfare, then the resulting conflicts of interest in the implementation of the subsidy, it is necessary depth legal analysis related to the issue (Donald. K. Anton, 2011).

FORMULA OF THE PROBLEMS

1. Looking at the facts and background above, the legal issues raised in this legal research are:
2. How are the effects of subsidies and countervailing measures in international trade regulations?
3. How is the case analysis related to subsidies and countervailing measures according to the provisions of the GATT 1994, The SCM Agreement and other legal provisions?

B. RESEARCH METHODS

The writing of this legal research was normative juridical writing, while the approach used a statue approach, departs or an approach that from statutory regulations, in this case international regulations regarding international trade, and was based on statutory regulations as the centre of study and regulations related to legal issues that are handled both vertically and horizontally, from the basis of juridical law it became the target of researcher to compile legal arguments and legal opinions in solving legal issues being researched. (Marzuki, 2005)

C. ANALYSIS AND DISCUSSION

1. Effects of Subsidies and Countervailing Measures in International Trade Regulations
1. Definition of Subsidies and Countervailing Measures
 - a. Definition of Subsidies

The definition of subsidies can be found in Article 16 GATT 1994 that in general, the implementation of subsidies with the aim of increasing exports and reducing imports of a commodity must be notified to the parties participating in the GATT. When there was an implication in the provision of subsidies that caused the commodities from this Convention State (GATT 1994) regarding the subsidy policy, dialogue and discussion was held with those who felt they were disadvantaged. In particular, in Section B, the provisions regarding subsidies can be explained regarding the efforts for States parties to this conference to be careful in applying these subsidies because they were afraid that it can create injustice in international trade. (Prakasa, 2018)

Referring to The Oxford Dictionary, subsidies are defined as “a sum of money granted from public funds to help an industry or business keep the price of a commodity or service low”, namely a sum of money granted from the Government. That was given to the weak industrial and business sectors to maintain the prices of commodities and services which were included in the low category, but not only money granted from the government was included in the subsidy category, but tax conclusions and borders protection e.g. Tariffs can also be categorized as subsidies, although they did not include money granted for the government, especially for borders protection e.g. Tariff when it generated a fiscal surplus for the State, it can be categorized as a subsidy even though it is still debatable⁵. Therefore, the definition of this subsidies that had many meanings whose main purpose was not to benefit business actors, but as state responsibility in terms of export and import stability of products in the country. (Lee, 2012)

b. Definition of Countervailing Measures

Furthermore, the definition of countervailing measures is contained in Article 6 of the GATT 1994 in a package with anti-dumping provisions in which article specifically discusses countervailing measures in paragraph (3) - paragraph (7). The main function of regulating countervailing measures is the process of balancing the negative impacts of the application of subsidies for both goods and services in the production of goods, manufacturing and subsidies on the transportation aspect, either directly or indirectly. Meanwhile, in the provisions of Article 10, The SCM Agreement discusses the methods that must be taken to be able to apply Article 6 GATT 1994 which can be discussed in full in the next section.

2. Forms and Types of Subsidies and Countervailing Measures

a. Forms and Types of Subsidies

The forms and types of subsidies provided by the government, either directly or indirectly that are in accordance with the provisions of Article 1.1. The SCM Agreement that brings benefits both to the development of the country as well as to certain recipient parties. The implementation of this subsidy is in accordance with the provisions of Article 14 of The SCM Agreement. Therefore, the restrictions on the application of subsidies are quite specific, which becomes a problem when the impact received by competitors in particular foreign business actors in facing subsidy provisions, therefore countervailing measures are used to resolve these problems. Therefore, according to the authors, the distribution of the forms and types of subsidies is divided into three types when referring to The SCM Agreement, namely: Green like subsidy / Actionable subsidy, Yellow like subsidy / Non-

actionable subsidy, and Red like subsidy / Prohibited subsidy, (P.K.Rao, 2000) namely:

Green Light Subsidy / Actionable Subsidy

The provisions in article 5 of The SCM Agreement provide provisions for actionable subsidies (green light subsidy/ actionable subsidy) when domestic industry players are injured for members of other countries, cancellation of interference from the benefits of the applied bound concessions for the other, under the provisions of GATT 1994, prejudice seriously over the interests of its members, and does not apply to subsidies maintained on the substance of agricultural products as well as the agreement made with the government both instruments, personnel, and consulting services, including property rights, the cost of overhead additional and other operational costs Those that are not allowed to receive subsidies. (Chioma, 2009)

The types of subsidies that may be implemented are in accordance with the provisions of Article 1 (a) (1) The SCM Agreement which contains the following:

(a) (1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

- (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- (iii) a government provides goods or services other than general infrastructure, or purchases of goods;
- (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

Therefore, the provisions regarding the allowable subsidy (green light / actionable) subsidy in general are for the protection and development of industry, such as in the case of soft loans, infrastructure development, supporting small and micro business activities (Small Middle Enterprises / SME's) also apply provisions regarding Special & Different (S&D) Treatment for third world countries to apply subsidy provisions to support the domestic economy. (Tsuyoshi, 2011)

b. Yellow Light Subsidy

The yellow light subsidy / non-action provisions previous are actually included in the category of green light subsidy / actionable at certain times, but the result of this continuous application will result in being included in the category of dangerous or dangerous subsidies. not allowed, this is stated in Article 5 of The SCM Agreement related to the provisions adverse effect, namely:

No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.:

- (a) injury to the domestic industry of another Member;

(b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994;

(c) serious prejudice to the interests of another Member. This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

The provisions related to yellow light subsidy can be analysed with several conditions, namely if it contradicts Article 2 of The SCM Agreement and creates financial benefits for companies that are subsidized by the State and this clearly violates the original purpose of the subsidy, namely to boost the economy. domestic which means, in this case, is a serious injury in the domestic industry, which is stated in nullification or impairment, as well as protection from legislation that benefits certain companies in providing subsidies.

c. Red Light Subsidy

What is meant by red light subsidy / prohibited subsidy is explained in Article 3 of The SCM Agreement which stipulates whether subsidies are solely a condition for several other facts as representative subsidies in the legal sense or in other conditions that are excluded for agricultural commodities that have already promised.

This subsidy prohibition is motivated by the reasons for whether this subsidy is appropriate to be given in conditions that are not needed and contrary to the provisions of Article 2 of The SCM Agreement. It provides specifications for the provision of its own subsidies which are also contrary to Article 1 (a) (1) of The SCM Agreement. In essence, what is meant by red light subsidy is to provide financial benefits to domestic business actors in order to be able to compete in foreign business activities, however this is detrimental to the economies of other WTO member countries, meaning that the subsidy provisions provided are not effective and including red light subsidy / prohibited. (Taro, 2010)

Therefore, we can know that the application of red-light subsidy / prohibited subsidy must be avoided as far as possible from WTO members in an effort to create a fair international trade system for WTO members.

3. Forms and Types of Countervailing Measures

Regarding the form and type of countervailing measures, the difference is actually very slight to be classified, but if you refer to the provisions of Article VI GATT 1994 and Article 10 and Article 11 of The SCM Agreement. Moreover, if you refer to the agreement on agriculture following the form countervailing, it can be divided into two, namely: Countervailing Duties and Countervailing Investigation. Related to Countervailing Investigation are all investigations and investigations carried out by States that feel disadvantaged from the imposition of subsidies based on accurate data based on graphs of profits after being subsidized and as well as a written report from the importing country. The country is considered to be detrimental due to the imposition of the subsidy (injury to a domestic industry) while the countervailing duties are actions in which in the investigation process it is found that real losses have been received by the importing country which feels aggrieved, so the sections can be carried out countervailing. 7

Therefore, the classification of types and forms of countervailing measures is based on their phases and functions and after an in-depth investigation is carried out. It is not the same as the differences in subsidy classifications with different classifications, both red subsidy / prohibited subsidy, yellow like subsidy, and light green light. subsidy / actionable subsidy.

4. Implementation of Subsidies and Countervailing Measures

a. Implementation of Subsidies

In relation to the circumstances and how the application of subsidies is allowed only with limited provisions, namely:

- (a). Represent a financial contribution or income support by a government.
- (b). Confers a benefit.
- (c). To a specific recipient⁸

The implementation of subsidies in GATT 1994 and The SCM Agreement was initiated with an implementation mechanism and an approach to cases related to objects goods and services related to the effects resulting from the application of these subsidy provisions.

For issues related to subsidies in Article 1.1 (a) (2) and article 1 (b) The SCM Agreement provides a definition:

1.1 For the purpose of this Agreement, a subsidy can be deemed to exist if:



(a) (2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and

(b) a benefit is conferred.

1.2 A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

The provisions regarding subsidies when referring to The SCM Agreement translate the provisions of subsidies in the GATT 1994 provisions. The provisions are more about how the government attempts to provide funds to business actors whether it is in the form of loans, grants, and equity infusion, then providing goods and services other than those including public infrastructure or purchases of goods. Then facilitating fiscal incentives and other things with the assumption of the government to encourage the creation of an economic condition competitive.

5. Implementation of Countervailing Measures

Furthermore, related  countervailing measures that are imposed on imported products as high as the normal value with the export price of the  goods. This regulation is the same as anti-dumping imposed on imported goods in accordance with Article 19 of The SCM Agreement, namely related to the imposition of and collection of countervailing measures with the core points are:

- a. The subsidy must result in an increase in price in the importing country
- b. Primary product subsidies that have resulted in a flood of goods exceeding the "equitable share" in the international market
- c. These subsidies cause losses to existing industries.
- d. These subsidies hamper the establishment of industries, especially domestic industries that there is a need for consultation and concessions so that the problem does not get worse.

Regarding the implementation of countervailing measures, the provisions in Article 11 of The SCM Agreement to carry out countervailing measures must go

through an investigation into the existence, effects and degrees of loss resulting from the implementation of subsidies contained in applications written representing industrialized countries that feel disadvantaged. It must be supported by facts. -related legal facts: (a). Subsidies and the amount given, (b) injuries in implementing subsidies in accordance with the provisions of Article 6 GATT 1994, and (c) concerning the causal relationship between subsidized imports and alleged violations of the implementation of subsidies with simple confirmation and sufficient evidence such as the identity of the applicant and Industry identification is made by all known domestic producers of a kind or similar producer association and the accountability of the product. (Watson, 2012)

Description and identity of the list of importers and foreign products, evidence regarding the existence and amount and nature of the subsidies, and evidence that from the implementation of import and export subsidies and the impact on domestic production, as well as the prerequisites for conducting an investigation before carrying out an investigation in relation to the requirements administrative. As well as the provisions of countervailing measures, the government making the subsidy policy can support or oppose this provision with the consideration of domestic production and the creation of adequate employment opportunities in the country.

The regulations relate to countervailing measures should be an effort to give pressure to the State which makes a subsidy policy so that it does not arbitrarily apply subsidies, which in fact harms the trade aspect which is greater than merely a subjective issue rather than merely protecting national interests.

6. Impact of Subsidies and Countervailing Measures

a. Impact of Subsidies

Related to impact of the imposition subsidies in international trade regulations that there are good and bad impacts. The good impact that subsidies can help domestic importers to develop more through non-profit forms such as: grants, loans, infrastructure development, can revive micro small businesses (small middle enterprises / SME's) as well as for small and developing countries benefit from the support of clauses special and different treatment (S&D Treatment).

Whereas the negative impact arising from this subsidy is how it can be categorized as an attempt to discriminate by giving benefits to business actors. However, this can be submitted to the Panel or appellate body or through a given sentence, or the State that is harmed by the provision of subsidies for businesses. domestic can perform countervailing measures.

b. Impact of Countervailing Measures

The impact arising from the application of countervailing measures is that importing countries provide subsidies banned /prohibited subsidy provisions may be subject to countervailing measures. The expected impact is the creation of an international trade justice especially for countries that feel disadvantaged from the subsidy provisions. As well as being able to return the losses suffered by the country that has suffered from trading businesses that are supported through prohibited subsidies. (Opeida, 2017)

The provisions of countervailing measures cannot be carried out directly except by in-depth investigation. Therefore, the deemed effect to provide compensation /liability due to the prohibited practice of subsidies.

7. Types of Subsidies that can be Submitted to the Dispute Settlement Body (DSB)

Regarding which the subsidies can be submitted to the Dispute Settlement Body (DSB) must refer to Article 4 paragraph 11 of the Agreement of Dispute Settlement Understanding (DSU). It states that "Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements". It is explained that in order to submit consultation steps substantial trade to the DSB in accordance with the provisions of Paragraph 11 Article XXII paragraph 1 of GATT which reads "Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.". As well as Article XXII paragraph 1 GATS which states "Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations".

If you return to Article 4 paragraph 11 of the DSU Agreement in the quotation, one of the things that can be put forward in the DSB is in accordance with the provisions of Article 30 of the SCM Agreement, namely: "The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein ". Therefore, it is clear that the subsidy provisions can be submitted for consultation steps to the DSB. Then what types of subsidies can be proposed for changes and policies by the DSB. It is clear which types of subsidies include red light subsidy / prohibited subsidy, yellow light subsidy, and green light subsidy / actionable subsidy.

It can be concluded in this discussion that the effect of subsidies and countervailing measures in international trade regulations has actually provided clear provisions as well as implications and limitations in implementing these provisions in accordance with the provisions of the GATT 1994 and The SCM Agreement. However, the problem that has not found an absolute answer is how can the national interest of a country through the provision of subsidies be faced with the interests of international trade with the provisions of countervailing measures for those who feel disadvantaged by this regulation can they find a compromise. Therefore, the interests of the state to create public welfare can run without forgetting the obligation to carry out free trade obligations which is fair to other countries where the company / business actor is located that feels aggrieved by the application of these provisions. (Mitsuo Matsushita, 2006)

8. Analysis of Cases Related to Subsidies and Countervailing Measures in the Gatt 1994 Provisions, The Scm Agreement and Other Legal Provisions

Related to dispute settlement of subsidies and countervailing measures where cases raised are related to subsidies such as in EC-Aircraft Cases between the European Union as applicant / Apelles with the United States as the other applicant / Apelles dealing with several countries in the European Union that provide subsidies for Airbus manufacturing. (Lester, 2010) The case the governments of

some countries in the European Union gave indirect protectionism reasons to the aviation policy at the economic conference held by the League of Nations in the 1920-1930s and could be seen as targets for protective measures. This case has reached the WTO panel and appellate body phase. In this classic example, it is not possible to distinguish which one is "good" subsidies and which is "bad subsidies", whether they are "natural" or "artificial or unnatural".

How the logic of thinking that is considered inaccurate regarding the allocation of these subsidies should be intended for the welfare of the poor in fact by the government that the subsidies in the EC-Aircraft Cases. The case provides given to domestic airlines with the target that these domestic airlines can expand overseas and are only for commercial interest. It is not for the benefit of the public's life and the losers from inappropriate subsidies are for the affected countries. Therefore, according to the construction, thinking in conclusion that the case can be made through The SCM Agreement and the settlement of the dispute EC-Aircraft Cases underlies the purpose of The SCM Agreement to fight protectionism.¹⁰ Therefore, the provisions regarding subsidies should be appropriate and right on target.

Then in the 1800s, where the Supreme Court of the United States in the case of *The Passenger Cases* and *Cooley v Board of Warden* stated that several types of state regulations questioned congressional rules regarding trade in some absence a conflicting act of Congress. It gives losses to competitors where there is a discriminatory tax for domestic business actors. However, this is considered in accordance with the provisions of national subsidies and contributes to a monetary surplus to the state. It is considered to be cheating and illegal discrimination for foreign business actors. Therefore, in the Supreme Court judicial decision provides a simple analogy by assuming a question, namely, is discriminatory tax illegal, then is it related to direct monetary payments as well as illegal? Obviously, the answer is no, which is why the Supreme Court and it's for many years constitutional commentator has pointed out that state subsidies that do not look like tax discrimination are allowed.

The case related to yellow light subsidy is related to Brazil's WTO Case Against the US Cotton Program dispute settlement case (DS267) where the United States Government provides subsidies by providing agricultural support payments and export credit guarantees under the GSM-102 provisions which are contrary to WTO provisions to cotton companies on the pretext of saving cotton farmers. The subsidies at that time are actually allowed (green light subsidy / actionable subsidy), however what happened was that the subsidy was carried out for a long period of time and was detrimental to cotton farmers in Brazil (it became red light subsidy / prohibited subsidy), in 2007 Brazil submitted a panel against the QTO. The verdict was knocked on in June 2008, and in August 2009 an appeal was held /appellate body and finally, on June 17, 2010 agreed to resolve the dispute by negotiation at the WTO (WT / DS267) as a measure to avoid sanctions given by the WTO through the MoU with the following clauses:

- 1) US \$ 147.3 million in compensation payments for the development of the Brazilian cotton sector;
- 2) quarterly discussions on potential trade distortions on US corporate cotton subsidies, and;

- 3) Short-term modification of GSM-102 operation plus are view half-year of program implementation including modification of animal disease in the State of Santa Catarina to allow export products such as pork to be exported in the US and pending changes and evaluations regarding domestic US cotton companies by the end of 2012. (Schnepf, 2010)

Meanwhile, the cases related to red light subsidy / prohibited subsidy can be found in the Canada-Aircraft Cases (DS70) between Brazil as the plaintiff and Canada as the defendant, a panel which was held since July 23, 1998 and decided on August 20, 1999, in which case Brazil gets disadvantaged in this sector. Canada's domestic civil aircraft industry has benefited financially from the government and it is clear that the Brazilian civil aircraft company has suffered from this case because of the double profits received by the Canadian domestic civil aircraft company. In the decision of the panel and the appellate body found that the State of Canada had violated several provisions.

In the SCM Agreement which violates the provisions of Article 1 where the Panel has found that the subsidy has provided significant benefits to Canadian domestic airlines and violates the essential provisions of the subsidy where it is. This has also been supported by the findings of the investigation appellate body. Then it fulfils the provisions of Article 3.1. The SCM Agreement is related to prohibited subsidy where it was found by the panel and appellate body that there was a conjunction between providing subsidies and fulfilling exports. In the end the Dispute Settlement Body (DSB) issued a policy so that the Technology Partnership Canada (TPC) as the subsidizing authority to comply with and obey the OECD Arrangement on Guidelines for Officially Supported Export Credits (the "OECD Arrangement") as a punishment for the Canadian government, then the latter ensures that the practice of interest sukuk export credit granted by the Canadian Government to domestic civil aircraft companies in accordance with the OECD arrangement is to avoid subsidy classification wh is prohibited as a preventive measure. Therefore, the similar cases do not harm other WTO members in the futures.

From these cases, the application of subsidies which are categorized as yellow light subsidy and red-light subsidy / prohibited subsidy is not allowed to harm the economy of other countries. It is aimed at creating a healthy economic climate that this subsidy provision is only implemented in an emergency situation and its nature to save from the economic crisis which is macro in nature. Therefore, the allocation of subsidies is for good interests that is not in the context of creating an unfair and healthy business climate (Khairunisa, 2016).

D. CONCLUSION

Closing Statement

The effect of subsidies and countervailing measures in international trade regulations has actually provided clear provisions as well as implications and limitations in implementing these provisions in accordance with the provisions of the GATT 1994 and The SCM Agreement. However, the problem that has not found an absolute answer is how a national interest is. The state through the provision of subsidies that is faced with the interests of international trade with the provisions of countervailing duties for those who feel disadvantaged by this regulation. They find a compromise. Therefore, the state's interest in creating public welfare can run

without forgetting the obligation to carry out fair free trade obligations for the country. Other places where the company / business actor is located that feels aggrieved by the implementation of these provisions.

4. SUGGESTION

As for what the authors can suggest related to the above discussion are:

1. For the parties to a dispute at war or not. We must continue to carry out the rules contained in this Geneva convention, even though there are no sanctions that apply if we ignore this rule, but we as living beings created by God who have the best feelings, minds and thoughts among other living beings must do our best to save others. us if someone is injured, sick or dies so that his family will not be too worried and if we experience bad luck there is someone to help us.
2. For those who were injured and sick during the war or after. Immediately ask for help around even though in the opposing area so that the pain and injuries suffered are not too severe and you do not die in vain, be honest with your identity so that it is easy to find where you come from and you are quickly met by your family.

5. RECOMMENDATION

Of these cases, the application of subsidies which are categorized as yellow light subsidy and red-light subsidy / prohibited subsidy is not allowed to harm the economy of other countries. It is aimed at creating a healthy economic climate that the subsidy provision is only implemented in an emergency. Furthermore, its nature saves from an economic crisis which is macro in nature. Therefore, the allocation of subsidies is for good interests that are not for the purpose of creating an unfair and healthy business climate.

Bibliography

- (UNEP), U. N. (2010). *Overview of the Republic of Korea's National Strategy for Green Growth*. UNEP.
- Chioma, F. (2009). *Environmental Justice in New Millenium: global perspectives on race, ethnicity, and human right*. Basingstone: Palgrave Macmilan.
- Donald. K. Anton, D. L.-S. (2011). *Environmental Protection & Human Right*. New York: Cambridge University Press.
- Khairunisa, I. P. (2016). *Tanggung Jawab Koorporasi dalam Hukum HAM Internasional*. Surabaya: Airlangga University Press.
- Lee, E. S. (2012). *World Trade Regulation: International Trade Under The WTO Mechanism*. New York: Springer.
- Lester, S. (2010). The Problem of Subsidies as a Means of Protectionism: Lessons From The Wto Ec-Aircraft Case. *Meulborne Journal of International Law*, 2(1), 2.
- Marzuki, P. M. (2005). *Penelitian hukum*. Jakarta: Kencana Prenada Group.
- Mitsuo Matsushita, e. (2006). *The World Trade Organization; law, practice, and policy*. New York: Oxford University Press.
- Opeida, Z. (2017). Strengthening the WTO Subsidies Regime. *ProQuest Dissertations Publishing (10831880)*, 1-369.

- P.K.Rao. (2000). *The World Trade Organization and Environment*. Bassingstoke: Palgrave Macmilan.
- Prakasa, S. U. (2018). Perdagangan Internasional Dan Ham: Relasinya Dengan Sustainable Development. *Jurnal Hukum Novelty*, 9(1), 36-53.
- Schnepf, R. (2010). *Brazil's and Canada's WTO Cases Against US Agricultural Direct Payments, Congressional Research Services Report*. New York: WTO Publisher.
- SyKes, A. O. (2003). The Economics Of WTO Rules on Subsidies and Countervailing Measures. *The Law School University of Chicago Journal of International Law*, 7(1), 1-2.
- Taro, H. (2010). "Serious prejudice" through the use of subsidies in the agreement on subsidies and countervailing measures in the WTO: Focusing on U.S. upland cotton case (japanese). *St. Louis: Federal Reserve Bank of St Louis*, 1-55.
- Tsuyoshi, K. (2011). State aid amid a global financial crisis and WTO rules on subsidies (japanese). . *St. Louis: Federal Reserve Bank of St Louis*. , 101-127.
- Watson, K. W. (2012). Interpreting WTO accession commitments according to their functional relationship with provisions of the WTO agreements (Order No. 1510354. *ProQuest Dissertations & Theses Global: The Humanities and Social Sciences Collection; Publicly Available Content Database*. (1017541249). , 1-124.
- WTO. (2006). *World Trade Report 2006;exploring the link between subsidies, trade, and the WTO*. Geneva: WTO Publisher.

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