



The Impact of General Agreement on Trade in Services For The Operation Of Foreign Banks In Indonesia

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Abstract:- In Uruguay Round 1994, all participants committed to establish a multilateral framework of principles and rules for trade in services which was assumed as the proliferation of liberalization. It was comprehensively accepted as General Agreement on Trade in Services (GATS) that became inseparable part of World Trade Organization (WTO). They had hoped if GATS that entered into force in January 1, 1995, could remove any restrictions and internal governmental regulations in the area of services whose impact eventually emerged trade harassment. According to GATS, its substantial coverage encompassing bank as a legally binded sector in liberalization of trade in services. Indonesia agreed unanimously to be bound by GATS through promulgating Act 7 of 1994. Hence, the sui generis (specific) regulation of bank sector was revised which gradually allowed the operation of foreign banks in Indonesia. This paper attempts to identify and analyze meticulously what sort of impact arise from liberalization of bank service based on four modes of supplying services under article 1 of GATS encompassing cross-border supply, consumption abroad, commercial presence, and natural persons presence. In order to yield clear and objective explanation, its impact will be divided into positive impact and negative impact which significantly influenced the economic development in Indonesia.

Keywords:- Impact, GATS, foreign banks, Indonesia

I. INTRODUCTION

In the post industrial era, a challenge ahead is convoluted which is being reflected by liberalisation in myriad important sectors. It had been commenced through comprehensive negotiations of trade in Uruguay Round when 123 nations agreed unconditionally to establish the World Trade Organization (WTO) in Marakesh, Marocco. That unprecedented moment could be a stepping stone of proliferation in liberalisation because of their substantial coverages encompassing investment, intellectual property rights and services were an inherent part of tradable activities (IGN Parikesit Widiatedja, 2010)[1].

Despite being debatable, all participants committed to establish a multilateral framework of principles and rules for trade in services that were well-accepted as General Agreement on Trade in Services (GATS). They had hoped if GATS with entered into force in january 1995, could remove any restrictions and internal governmental regulations in the area of services whose impact eventually emerged trade harrasment.

The main document of GATS was a framework agreement which was arranged comprehensively and integrally in the area of services including banks, telecommunication, financial services, air transport, maritime transport and tourism. Most Favoured Nation, National Treatment, Transparency and Progressive Liberalization were the paramount principles. Eventually, the enactment of GATS has become the new episode in the internationalization and institutionalization of services provision (See Preamble of GATS)[2].

In addition, since the last decade service sectors have potential contribution for the world economy which were going to be the largest and fastest growing sector. In 1999, the value of cross-border trade in services amounted to US\$ 1350 billion, or about 20% of total trade. This understates the true size of international trade in services much of which takes place through establishment in the export market, and was not recorded in balance of payments statistics (World Trade Organization, 2004)[3].

Indonesia consent to be bound by GATS through promulgating law number 7 year 1994 regarding The Ratification of Agreement of Establishing the WTO including GATS. The increasing performance of development was an essential benchmark to ratify its agreement that progressively allowed the operation of foreign services provider. Indonesia's government thought over that GATS would be a conduit of its goal to be just and proper of our community which was clearly mentioned in the preamble of the Constitution of 1945 (H.S. Kartadjoemena, 1996)[4].

As a sector that has been legally binded in GATS, bank sector was estimated to be prime mover of the sustainability of national development which subsequently fostered prosperous society in Indonesia. Beside, it will engender people economy under lied equity, independent, reliable, fair, and competitive in global scope. Hence, it is undisputable if bank sector which executed function of intermediation, has a formidable role to boost growth economic in pertinent with the distribution of development and its results, national stability, and the enhancement of standard of living (Abdulkadir Muhammad and Rilda Murniati, 2004)[5]. So in this case the role of foreign banks to be a factor driving the development of countries in which it operates should be considered as well, so it does not take advantage of sheer.

Indonesia through Law No. 7 Year 1994, has ratified the Agreement Establishing the WTO comprising GATS. Hence, its political policy emerged the harmonisation of international law and national law. As a part from the commitment of liberalisation, Indonesia was progressively allowed the operation of foreign banks in Indonesia. All those special privileges which tend to be discriminative and unfair was taboo to be undertaken especially in banks field. Sketchily, all foreign service provider in bank can compete directly with local bank to grab Indonesia's potential market.

This paper attempts to identify and analysis series of issues in associated with what and how the construction of regulation of foreign banks in Indonesia and all kinds of impacts as an undeniable result from the presence of foreign banks in Indonesia?

II. DISCUSSION

A. The Liberalization of Services in the Perspective of GATS

It is clearly mentioned that the purpose of establishing a multilateral framework of principles and rules for trade in services, is to the expansion of tradable activities under conditions of transparency and progressive liberalisation. Likewise as a tool of promoting the economic growth of all trading partners and the development of developing countries (Preamble of GATS)[6]. In the inward looking perspective, GATS has underscored the increasing participation of developing countries through strengthening of their domestic services capacity and its efficiency as well as competitiveness. Meanwhile, in the outward looking perspective, GATS was aimed to ensure the equitable and fair treatment which was accompanied by overall balance of rights and obligation among all participants.

According to the article 1 of GATS, it can be distinguished into four modes of supplying services encompassing (H.S. Kartadjoemena, 1996)[7] :

1. cross-border supply is defined to provide services from the territory of one member into the territory of another member;
2. consumption abroad refers to situations where a service consumer moves into another member's territory to obtain a service;
3. commercial presence implies that a service supplier of one member establishes a territorial presence, including through ownership or lease of premises, in another member's territory to provide a service;
4. presence of natural persons consists of persons of one member entering the territory of another member to supply a service.

The definition of services is clearly mentioned in article 1 point 3. Services include any kinds of services except services supplied in exercise of governmental authority. Afterwards, a service supplied in the

exercise of governmental authority must be defined as any service, which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

According Baye and Prince, the performance of an industry refers to the result or profit or social impacts arising from the charter industry (Baye, Michael R & Jeffrey T. Prince, 2014)[8]. written by Sofyan, profitability is the most appropriate indicators to measure the performance of a bank (Sofyan, S., 2003)[9]. Within GATS, there are three main principles for all members and must be undertaken promptly and unconditionally. The first is Most Favoured Nations Principle (MFN) which can be found in article II GATS. It obliges that each member shall accord an equal treatment to services and service provider from another country as well as from other countries of member (Tourism and Travel-Related Services, 2004)[10]. Transparency which can be found in Article III GATS is the second principle. Each country of member must publish all the laws, rules of execution, and all generally applicable resolutions issued both by central and local government, which have impacts on the practices of GATS. Every change in laws and the addition of new rules must be reported to The Council of the Trade of Service (CTS). The countries must also comply with the demand of specific information from other countries of member about many generally applicable rules. Therefore, the countries have to find one information centre, or more, to provide all the information needed and demanded. The last principle is National Treatment which can be found in Article XVII. Within this principle, each member shall accord to services and service suppliers of any other member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like service and service suppliers.

The establishment of schedule of specific commitment is a part, that can be a crucial point in which each country is obliged to set up a list of liberalized sectors accompanied by timely manner schedule. The commitment will be an integral part of the agreement and it has also become an integral appendix. Referring to the article XX, each member shall set out in a schedule the specific commitments with respect to sectors, where such commitments are undertaken. From each schedule shall specify (IGN Parikesit, 2010)[11] :

- a. terms, limitations and conditions on market access;
- b. conditions and qualifications on national treatment;
- c. undertaking relating to additional commitments;
- d. where appropriate the time-frame for implementation of such commitments; and
- e. the date of entry into force of such commitments.

Referring to the article XXI GATS, each member may modify or withdraw any commitment in its schedule, at any time after 3 years have elapsed from the date on which its commitment entered into force in accordance with the provisions of this article.

Recognizing the GATS provision and as a part of its strong commitment, Indonesia has also drawn up a schedule of specific commitments which is contained in the document GATS/SC/43 dated in April 1994. Indonesia's Schedule of Commitments covers market access and national treatment for all four modes of supply and commits to the liberalisation of telecommunications, industrial services, transportation services (maritime transport services), tourism and financial services. Focusing in bank sector, Indonesia revealed the commitment of liberalisation in pertain with the operation of foreign banks in Indonesia encompassing:

1. In market access, foreign service provider who wish to sell or provide services in the territory of Indonesia must be present in Indonesia. Its presence should be in the form of representative offices or joint ventures in the form of limited liability company.
2. In cross border supply, Indonesia applied several restrictions on the number of services to foreign service provider which can be serviced and the location of the establishment of their branches and offices in Indonesia.
3. Foreign service provider may only own a national bank shares as much as 49% of the shares sold through the capital market.

B. The Regulation of Foreign Banks in Indonesia

The existence of foreign banks has an important role in endorsing the sustainability of foreign investment in Indonesia. Eleven branch offices of foreign banks have been established since 1968. Basically, their role were to facilitate foreign investment and export-import activities as well as to develop the domestic industry in the framework of economic and expansion of employment opportunities. Foreign banks which were

operated in Indonesia, were a part of commercial banks which tend to be similar to other commercial local banks. They were more specialized in certain fields and there were some specific restrictions in connection with the transaction (Kasmir, 2002)[12].

Foreign banks were branch office of a bank, which were located outside Indonesia. They were progressively allowed to operate in Jakarta and open sub-branches in the capital of several provinces besides Jakarta namely, Semarang, Surabaya, Bandung, Denpasar, Ujung Pandang, Medan and Batam. Since mid-1999, foreign banks were provided the opportunity to operate its branch office in compliance with the requirements from Bank Indonesia. Those banks must own assets in the category of the world's 200 largest and rated at least rating A from international institution (Dahlan Siamat, 2001)[13]. It affects the international relations between countries, because of the need for banking beyond borders that become barriers to the conventional period.

As a part of strong commitment in obeying GATS, the government of Indonesia revised the regulation of bank sector through promulgating Law No. 10 of 1998 concerning Amendment to Law no. 7 of 1992 which has accommodated several general principles of GATS. There has been some revisions including:

1. Article 20 which has allowed the opening of branch offices, and a representative office of a foreign banks, which can be undertaken through the permission of Head of Bank Indonesia.
 2. Article 26 in which every citizen of Indonesia, foreign citizen, legal entity of Indonesia and foreign legal entities may purchase shares of commercial banks, both directly or through stock exchange. Thus, there is no discrimination against the rights of purchase of shares of a bank in Indonesia.
 3. Article 39 which has declared that in carrying out its activities, each bank can use foreign labor.
- Further, Article 21 states that the legal form of representative offices or branches offices following the legal form of its origin offices. Afterwards, in terms of ownership, article 22 revealed that commercial banks can be established by Indonesian citizens or Indonesian legal entities with foreign nationals or foreign legal entities as well as partnerships model.

Detailed explanation can be found in Government Regulation No. 24 of 1999 on Terms and Procedures for Opening Branch Office and Representative Office of a Foreign Bank. Article 3 states that the foreign bank who can open an office in Indonesia was a good ranking and high reputation banks. Furthermore, in approving permission opening foreign bank offices, Bank Indonesia besides consider to the soundness of the bank concerned, also assess the level of fair competition among banks, saturation level of number of bank offices in a particular region as well as the equitable distribution of national economic development. In carrying out its activities, Article 5 requires that they have to obey all rules and regulations law in Indonesia. Responding GATS, Bank Indonesia as a prime regulator of banks in Indonesia will undertake a gradual liberalization policy in. This political measures was intended to provide wider access to the foreign services provider to establish, own and operate a banking institution in Indonesia according to the demands of globalization in the financial services sector of GATS.

C. Impact of GATS for the Operation of Foreign Bank

GATS agreement in the bank sector will give multifarious impact for the our growth economic in the future. Author attempts to identify what sort of impact both positive and negative arise from liberalisation of services underlied by three inseparable perspectives encompassing:

1. Government perspective.
2. Business practitioners in bank perspective.
3. Indonesia's consumer perspective.

Author expects through combining all those perspectives will engender objective and positive outlook, and also accommodates interest of all stakeholders in banks. In order to yield clear and objective explanation, the impact of liberalisation of service in Indonesia's banks will be divided into positive impact and negative impact.

Positive Impact

Basically, because of liberalization of services, all bank stakeholders have the same and wide opportunity to take part in the development of bank sector. It also will eliminate differential treatments in order to protect certain products both production and distribution as well as consumption levels from person or legal entities, who have intimate relationship with the decision maker, which tend to be deceptive and fraud. Unfair trade and monopoly as impact of their activities are the major argument why all those thing is prohibited to be

undertaken currently. For the consumer, according to the mode of cross border supply and consumption abroad which was expressly stated in GATS, they have freedom of choice to get the best services which emanated from services provider entire the world with accompanied by achievable price.

The emphasisment of good corporate governance will be indispensible in the liberalisation of services on Bank. Because it stipulates the rules-based system, transparent and accountable management and independence as well as fair principle. If all local banks can undertake consistently all those requirements, it will strengthen their domestic services capacity, their competitiveness and efficiency because they have to apply to compete directly with foreign services provider.

The increasing participation of developing countries which was clearly ensured in the preamble of GATS will be a huge opportunity in reducing gap between developed and developing countries especially in bank sector. The transfer of knowledge, technology and skills are the best way to attain its goal. Besides, it will stimulate the enhancement of competitive value of our business practitioners to provide creative and innovative services based on effective and efficient principle. Otherwise, foreign services provider that have been congested here, will dominate our bank market.

In term of transfer of technology, foreign banks were the market leader from their diversity of product innovations. They have been pioneers in some derivative products such as credit linked notes, investment linked deposits, and asset backed securities, in which local banks were still a follower. Their presence certainly brought a knowledge, skills, and technologies that benefit to the interests of banks in Indonesia. Furthermore, the banks in Indonesia will find a variety of types and tricks of marketing, labor management systems, human resource development through diversification of its products.

Negative Impact

As a result from the political policy to allow the operation of foreign banks, they have dominated the ownership in the bank industry in Indonesia until approximately 40%. The change of ownership was caused by the economic crisis that hit Indonesia in 1997. When compared to the time before the crisis, foreign banks only control 11%. The Ownership of foreign banks which were too large can engender a negative impact on general economic conditions due to the presence of excessive ownership. Consequently, they would probably interfere some banks and economic policies which was enacted by the government of Indonesia.

The excessive presence of foreign banks can also affect the currency exchange rate of rupiah in Indonesia. It will emerge very significant impact because of the influence of the currency provides a tremendous effect for bank regulation and policy in Indonesia. Hence, as a decision maker and prime authority, Bank Indonesia must act decisively all measures in pertinent with the speculation of rupiah. Furthermore, the internationalization of dollars must be prohibit promptly and unconditionally. This measure will release of rupiah from the political stability factor and maintain the stability of rupiah in every condition of state politics. Recently, some foreign banks prefer to lend to prioritize consumption sector by relying on their sophisticated technology and wide networks they have. Foreign banks were arden in marketing their credit card, credit for automotive products, currency speculation and offer foreign currency deposits as well as dollars with lower interest rates than local banks in Indonesia. This situation can engender a negative impact if held continuously which ultimately changed the consumer culture of people in Indonesia to be consumptive and dependent.

Intrinsically in term of global perspective, the proliferation of liberalisation which has been committed through Uruguay Round prone to assert developing countries have no choice to take part of its system. It was such an excessive argument when three new issues including services, intellectual property rights and investment, were categorized as an integral part of tradable activities. They proned to span myriad sectors in order to find new potential market in densely populated of developing countries which have not been exploited yet. The tendency of exploitation can also be detected from the market share of services. Since GATS entered into force in 1995, developed countries whose their giant transnational companies and tycoon businessmen were exist, have dominated the service sectors and emerged an oligopolistic market.

This situation depicts about scepticism whether developing countries will gain an benefit on such a liberalisation of service especially to enhance their economic growth. It can not be undertaken drastically but through a process sustainably and gradually with five phases including a traditional stage, a pre-condition for take off, take off, a drive to maturity, and an age of high-mass consumption (Walt Whiteman Rostow, 1962)[14]. In the matter of national sovereignty, it seems clearly that the sovereignty will be reduced gradually

by liberalisation of services especially in sensitive issues such as financial, investment, telecommunication, air transport and tourism. J.G Starke uttered that it was probably more accurate to say that the sovereignty of a state was the residuum of power which it possessed within the confined laid down by international law (J.G. Starke, 1984)[15].

Eventually, based on Francis Fukuyama statement, the economics who promoted liberalising economic reform understood this perfectly well in theory. But the relative emphasis in this period lay very heavily on the reduction of state activity, which could often be confused or deliberately misconstrued as an effort to cut back state capacity across the board. The state-building agenda, which was at least as important as the state reducing one, was not given nearly as much thought or emphasis. The result was that liberalising economic reform failed to deliver on its promise in many countries (Francis Fukuyama in Dewa Gede Palguna, 2009)[16]. Therefore, the operation of foreign banks should indeed help the country's development process, which will give rise to good effect between the operation of foreign banks and the development of the country in which it operates.

III. CONCLUSION

To sum up, GATS which strictly regulated the liberalisation of services on bank, has expected a pure commitment of all members for (1) actualizing fair and equitable treatment which is comply with framework agreement; (2) eliminating all kinds of protectionism barriers in the international transactions; (3) abolishing all kinds of discrimination measures and the dichotomy between domestic and foreign services provider in bank; and (4) upholding transparent and accountable principle in the international transactions

The multifarious impact in bank sector has emerged after the establishment of GATS. The positive impact are the equal and fair opportunity of doing business in providing bank services, the actualization of good corporate governance underlied by effective and efficient principle, the increasing opportunity both from bank income and transfer of technology, knowledge and skills. Meanwhile, the domination of foreign bank as a excessive ownership, the intervention of economy policy, and the rate of currency, consumptive mindset, and the tendency of exploitation through the proliferation of liberalization including bank, are the negative impact of liberalization of services. Author suggests that all stakeholders in bank must be cognizant and take equal responsibility in navigating bank in the liberalisation of service era. Henceforth, they must work hand in hand encouraging and nurturing each other to unleash Indonesia's bank true potential based on our ability, national interest, gradual, equity, and lawful.

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