

Research Article

Between Global Competition and National Justice: The Legal Protection Dilemma in Indonesia

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Abstract: This article examines Indonesia's legal-protection dilemma amid intensifying global competition. Addressing a gap in prior literature that treats globalization's legal effects descriptively, we evaluate the effectiveness of Indonesia's legal protection through the lenses of legal certainty (Radbruch), distributive justice (Rawls), and institutional quality (North). Using a normative juridical method—statute, conceptual, and comparative approaches—our analysis of WTO-related disputes and domestic regulatory practice shows: First, persistent disharmony and overlap across trade, investment, and IPR regimes; Second, weak and uneven enforcement that erodes legal certainty; and Third, structural asymmetries in international fora impacting national justice goals. We propose targeted reforms: accelerated regulatory harmonization aligned with international commitments, capacity-building for trade-remedy and IPR enforcement, and calibrated safeguards for MSMEs within ASEAN and WTO frameworks. These steps reconcile competitiveness with national justice, strengthening Indonesia's legal readiness in a globalized economy.

Keywords: ASEAN; Distributive Justice; Globalization; Legal Certainty; WTO Disputes

1. Introduction

Economic globalization has compelled developing countries, including Indonesia, to enter an increasingly intense arena of global competition. Market integration, trade liberalization, cross-border capital flows, and technological advancement present opportunities for growth, investment, and expanded access to international markets. However, behind these opportunities lies a fundamental dilemma: how to safeguard national justice when domestic law is pressured to conform to the demands of global competition.

Through its participation in international organizations and agreements such as the WTO, ASEAN Free Trade Area (AFTA), and ASEAN Economic Community (AEC), Indonesia cannot escape the current of globalization. This position requires reform of the national legal system to align with global standards. Yet, domestic conditions still face classic problems: weak law enforcement, overlapping regulations, low levels of legal literacy, and a lack of harmonization between national legal instruments and international obligations.

The dilemma becomes more complex when practices such as monopolistic strategies, violations of intellectual property rights, weak consumer protection, labor exploitation, and cross-border digital trade—still not fully regulated—further erode the effectiveness of national legal protection. As a result, there is a risk that national law becomes merely a formal symbol without the capacity to protect public interests in the global marketplace.

Accordingly, it is essential to reassess the effectiveness of Indonesia's legal protection in facing economic globalization, not only from the perspective of legal certainty but also through the lens of distributive justice and the quality of legal institutions. This analysis is

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expected to provide policy recommendations so that Indonesian law is not only responsive to global pressures but also fair and inclusive in protecting national interests.

2. Literature Review

Challenges of Globalization

Globalization is often understood as the process of economic, political, social, cultural, legal, and technological integration that makes the world increasingly interconnected. The literature identifies several major theories explaining this dynamic, yakni: Modernization Theory, which views globalization as a natural path toward modernity, where developing countries simply follow the trajectory of developed nations. Dependency Theory, which emphasizes inequality, portraying developing countries as consumers or suppliers of resources to developed countries. World Systems Theory (Wallerstein), which divides the world into the *core*, *semi-periphery*, and *periphery*, thereby creating relations of domination and dependency. Transformationalist Theory, which sees globalization as an ambivalent phenomenon: offering opportunities and risks depending on how states formulate their strategies.

For developing countries such as Indonesia, the challenges of globalization can be grouped into several sectors: Economic, competition from imported products, vulnerability to foreign investment, and disparities in industrial competitiveness. Political and Legal, diminishing national sovereignty due to compliance with international treaties; the dominance of international institutions in domestic policymaking. Social and Cultural, erosion of local identity, penetration of foreign values, and social inequality exacerbated by digitalization. Technology and Information, dependence on foreign technology, exposure to cybercrime, and gaps in digital access. Education, the demand to improve human resources to remain competitive globally.

From the perspectives of Dependency Theory and World Systems Theory, Indonesia is positioned as vulnerable and subordinated. However, Modernization Theory suggests globalization could serve as an opportunity to catch up. Thus, globalization is an ambivalent phenomenon that requires adaptive strategies, not passive acceptance.

Economic Effectiveness

Economic effectiveness is a measure of how far legal systems and economic policies can optimize resources to achieve development goals. Its key dimensions include: Allocative Efficiency – the allocation of resources into productive sectors. Productivity – producing more output with the same or fewer inputs. Social Welfare – the real impact of economic outcomes on people's quality of life. Distributive Equity – equitable distribution of benefits, not merely growth. Global Competitiveness – a country's ability to compete in trade and attract investment.

Quantitative indicators such as GDP growth, unemployment, the Gini index, labor productivity, the Human Development Index (HDI), and the Global Competitiveness Index are often used to measure economic effectiveness. However, economic effectiveness cannot be separated from legal effectiveness. Without legal certainty and fair protection, growth may widen inequality and weaken long-term competitiveness.

The Role of Legal Protection

In globalization, law functions not only as a normative instrument but also as a navigational tool for developing countries. Its roles include: Regulator, governing cross-border activities (trade, investment, technology). Protector, safeguarding national interests, domestic industries, consumers, and workers. Mediator, balancing international commitments with local interests. Stabilizer, creating legal certainty for investors, businesses, and society.

Several legal theories are relevant to evaluating the effectiveness of Indonesia's legal protection: Legal Certainty Theory (Radbruch). Law must guarantee predictability and consistency when facing global pressures. Overlapping regulations in Indonesia—such as contradictions between the Trade Law, Consumer Protection Law, and sectoral regulations—create uncertainty, reflecting weak legal certainty in Radbruch's sense. Justice Theory (Rawls/Aristotle). Law must ensure distributive justice so that the benefits of globalization are not captured only by powerful groups. The WTO anti-dumping dispute over Indonesian paper exports to South Korea highlights the structural injustice of developing countries forced to prove fairness in a system designed by developed economies. From Rawls' perspective, this represents global distributive injustice. Rule of Law Theory (*Rechtsstaat*). All economic activities must be governed by law, not merely market forces. Yet Indonesia still struggles to enforce Intellectual Property Rights (IPR) on digital platforms: imported goods often infringe trademarks or copyrights, but enforcement remains slow compared to the speed of cross-border e-commerce. This illustrates weak rule of law vis-à-vis the global digital market. Development Law Theory (Mochtar Kusumaatmadja). Law functions as a means of development and must guide sustainable transformation. In practice, Public-Private Partnership (PPP) projects are often measured only by bankability or value for money. However, Jeffrey Sachs in *The Age of Sustainable Development* stresses that development must also safeguard social justice, empower local communities, and ensure environmental sustainability. Without such orientation, legal frameworks risk benefiting investors disproportionately at the expense of society. Without such orientation, legal frameworks risk benefiting investors disproportionately at the expense of society. Institutional Economic Theory (Douglass North). The effectiveness of law depends on institutional quality. Weak trade remedy institutions in Indonesia—characterized by limited data and capacity—undermine the ability to defend against unfair trade practices at the WTO. Although legal rules exist, weak institutions reduce the effectiveness of protection.

This framework broadens the role of law in globalization: law should not only regulate international transactions but also ensure that contracts and public-private arrangements internalize values of justice, sustainability, and protection of rights. Thus, law serves a dual function: maintaining global competitiveness while guaranteeing national social and environmental justice.

3. Research Method

This study employs a normative juridical approach, as its primary focus is the analysis of legal norms, principles, and doctrines in addressing the challenges of economic globalization. This approach was chosen to emphasize the quality of regulation and the effectiveness of legal protection, rather than merely relying on quantitative calculations.

Within normative research, three main approaches are applied. First, the statute approach. Through this approach, the study examines various relevant national laws, such as the Trade Law, the Consumer Protection Law, the Electronic Information and Transactions (ITE) Law, the Personal Data Protection (PDP) Law, and the Intellectual Property Rights Law. This analysis is complemented by technical regulations concerning trade remedies such as anti-dumping, anti-subsidy, and safeguard measures. On the international level, the study also reviews legal instruments such as the WTO Agreements, the ASEAN Free Trade Area (AFTA), the ASEAN Economic Community (AEC), as well as bilateral investment treaties binding upon Indonesia. This allows the research to identify the extent to which national law aligns with international commitments, as well as the disharmonies that create legal uncertainty.

Second, the conceptual approach. At this stage, legal theories are employed as analytical tools. Gustav Radbruch's Theory of Legal Certainty is used to assess the extent to which

national regulations provide predictability and reliability for economic actors amid globalization. John Rawls' Theory of Justice is applied to evaluate the distribution of benefits and burdens of globalization, for instance, when Indonesia faces dumping allegations from developed countries. Mochtar Kusumaatmadja's Theory of Law as a Tool of Development emphasizes that law functions as an instrument of development, and therefore must not merely be reactive to global pressures but proactively direct national development. In addition, Douglass North's Institutional Economic Theory is utilized to assess the strength of Indonesia's legal institutions in safeguarding national interests in international forums. Jeffrey Sachs' perspective in *The Age of Sustainable Development* is also incorporated, stressing that legal development should not only focus on economic competitiveness but also on social justice, local empowerment, and environmental sustainability.

Third, the comparative approach. This research compares Indonesia's legal protection practices with those of other countries with different characteristics. For instance, Singapore, known for its efficient and responsive legal system in international trade; the Netherlands, with its strong civil law tradition and balanced trade policies; and South Korea, which has previously faced Indonesia in an anti-dumping dispute at the WTO. Such comparisons illustrate how other states build effective legal instruments to address globalization and highlight lessons Indonesia can adopt.

In terms of data collection, this research relies on library research utilizing primary legal materials (statutes, international treaties, court and WTO decisions), secondary legal materials (academic literature, reputable journals, and international organization reports), and tertiary legal materials (legal dictionaries, encyclopedias, and indices). The analysis is conducted through qualitative juridical methods, involving the reading, interpretation, and connection of legal provisions with the selected theories, followed by testing them against concrete cases. For example, the WTO anti-dumping paper dispute is analyzed through Rawls' Theory of Justice to reveal the structural injustices faced by developing countries, while overlapping national regulations are assessed using Radbruch's Theory of Legal Certainty.

In this way, the research goes beyond mere description, producing more evaluative legal arguments. Ultimately, the conclusions are drawn deductively, moving from general norms and theories to the evaluation of specific Indonesian cases. The results are expected to provide concrete recommendations for national legal reform, making Indonesian law more responsive to globalization while safeguarding justice and national interests.

4. Results and Discussion

Structural Challenge in Indonesia's Economic Law

Globalization has intensified economic interdependence, making international economic law crucial for governing trade, investment, services, and other cross-border economic activities. However, Indonesia faces structural legal challenges in adapting to this global framework. Unlike domestic law – where a central authority enforces rules on individuals – international law operates horizontally among sovereign states. This means Indonesia cannot simply rely on hierarchical enforcement and must instead strengthen its capacity to cooperate under agreed international norms. A key challenge is updating Indonesia's legal system to keep pace with rapid developments such as the digital economy and the rise of e-commerce, as well as incorporating new concerns like environmental protection and human rights into economic regulations. These issues require continuous legal reform so that Indonesian law remains effective and relevant amidst technological advancement and evolving global standards. Failing to modernize the legal framework could leave Indonesia's economy vulnerable in global markets and limit its ability to safeguard national interests.

Another structural hurdle is overcoming outdated perceptions that international law is separate from or inferior to national law. In reality, international economic agreements and norms directly impact domestic policy. Many foundational principles accepted by the global community – as reflected in treaties, conventions, charters, and international customs – must be integrated into Indonesia's legal order. For example, core rules of the General Agreement on Tariffs and Trade (GATT) have been incorporated into Indonesia's Trade Law No. 7 of 2014, reflecting efforts to harmonize domestic legislation with global trade principles. Ensuring such harmony is an ongoing challenge. It demands that Indonesia review and revise national laws to align with international commitments, so that domestic regulations do not conflict with or lag behind the standards set by global agreements. In sum, structurally Indonesia must bridge the gap between a traditionally inward-looking legal system and the demands of an increasingly borderless economic order.

Gaps Between Domestic Law and International Obligations

Closely related to the structural issues are specific gaps between Indonesia's domestic law and its international economic law obligations. These gaps manifest when national policies are inconsistent with rules under World Trade Organization (WTO) agreements or other treaties. A notable example was Indonesia's restrictive import licensing regime for horticultural and animal products, which was challenged by trading partners. In 2017, the WTO's dispute settlement body confirmed that Indonesia's import restrictions violated WTO rules, forcing Indonesia to revise those measures. This case underlines that discrepancies between domestic regulations and international commitments can result in legal disputes and trade sanctions that harm Indonesia's economic interests. The lesson is clear: Indonesia must proactively adjust its laws and regulations to comply with international standards, thereby preventing costly disputes and ensuring its industries are not unfairly targeted abroad.

Another gap lies in enforcement and institutional capacity. International economic law relies on each state's implementation – for instance, enforcing intellectual property rights or fair trade practices at the national level. If Indonesian institutions are weak or laws are not effectively enforced, the country cannot fully benefit from its international rights (such as protection against dumping or intellectual property theft) and may struggle to meet its obligations. Power imbalances in international economic relations exacerbate this issue. Developed countries often have greater resources to assert their rights or challenge others, while developing countries like Indonesia might find it challenging to respond with equal force. Bridging this gap requires strengthening domestic agencies (e.g. trade remedy authorities, competition and IP regulators) so that Indonesia can both uphold its commitments and defend its interests. By enhancing legal clarity and institutional effectiveness at home, Indonesia can engage in the global economy on a more equal footing, mitigating the risk that legal shortcomings at the national level undermine its position internationally.

Lessons from Trade Dispute

The importance of aligning national law with international rules is illustrated by Indonesia's experience in a high-profile trade remedy dispute. In the early 2000s, Indonesia was accused of dumping its paper products in South Korea, threatening Korea's domestic paper industry. South Korea's authorities imposed anti-dumping duties ranging up to 28% on Indonesian paper, based on claims that Indonesian exporters sold below normal value. Indonesia vehemently contested these allegations through the WTO dispute settlement mechanism, arguing that the Korean investigation was flawed and violated WTO's Anti-Dumping Agreement. A WTO panel in 2004 found in Indonesia's favor on most claims – ruling that South Korea's determination breached numerous WTO provisions – and recommended that the

improper measures be corrected. South Korea eventually complied by withdrawing or amending the offending duties, and the case was settled amicably.

This case offers several critical lessons for Indonesia. First, it shows that robust engagement with international legal processes can yield tangible protections for Indonesian industries. By leveraging WTO rules, Indonesia proved the dumping accusations were unfounded and secured justice for its exporters. Had Indonesia lacked the legal capacity or the will to challenge the measures, its paper sector might have suffered significant harm. Thus, a strong takeaway is that Indonesia needs to invest in legal expertise and infrastructure to utilize international dispute mechanisms effectively. Second, the dispute underscores the importance of maintaining fair practices and solid evidence at home. Indonesia's defense was aided by demonstrating that its companies were not actually underpricing unfairly; this highlights that sound record-keeping and compliance by domestic firms can fortify the government's position in international cases. Finally, the outcome emphasized that international law can complement national law in protecting Indonesia's interests. Rather than viewing international economic law as an external constraint, Indonesia can see it as an extension of its legal toolkit – one that provides remedies when foreign protectionism or unlawful measures threaten Indonesian commerce. Going forward, Indonesia should internalize these lessons by bolstering its national trade remedy laws and institutions, ensuring they meet WTO standards. This will enable Indonesia to both prevent unfair trade practices through domestic legal actions and confidently challenge violations by other countries, thereby improving legal protection for its economy at both the national and international level.

Reform Strategies for a More Inclusive Economic Law

To address the above challenges and gaps, Indonesia needs a comprehensive reform strategy aimed at enhancing equality and inclusiveness in international economic law. This involves strengthening substantive legal frameworks and procedural capabilities so that Indonesia can participate on equal terms with other nations. Key strategic initiatives include:

Harmonizing Domestic Regulations

Indonesia should align its national laws with international economic agreements wherever possible [Error! Bookmark not defined.]. This means reviewing trade, investment, and financial regulations to ensure they comply with WTO rules and ASEAN commitments. By harmonizing standards – for example in customs procedures, product standards, or intellectual property protection – Indonesia reduces legal inconsistencies that could hinder trade or invite disputes. Harmonization also extends to adopting global best practices (tailored to local values like Pancasila) so that Indonesia's economic governance meets international norms without sacrificing national principles.

Building Legal Capacity and Expertise

Improving the quality and quantity of Indonesia's human resources in international economic law is crucial. The government and academic institutions should invest in training legal scholars, trade lawyers, economists, and judges who specialize in international trade and investment law. Expertise is needed not only to negotiate and draft agreements, but also to implement them and handle disputes. Increasing the number of skilled professionals will help Indonesia assert its rights and obligations more effectively on the world stage.

Active Participation in International Forums

Indonesia must take a more active role in global and regional economic law for a such as the WTO, United Nations Conference on Trade and Development (UNCTAD), Asia-Pacific Economic Cooperation (APEC), and ASEAN. By engaging meaningfully in negotiations and discussions, Indonesia can help shape the rules that it will later implement. Active

participation also means Indonesia can champion the interests of developing countries, pushing for fair and inclusive rules (for instance, special and differential treatment or technical assistance provisions) that address its development needs. Regionally, Indonesia's leadership in ASEAN is vital for collective economic rule-making that benefits all members.

Enhancing International Cooperation and Networks

Cooperation with other nations – especially fellow developing countries in ASEAN and beyond – is a strategic asset. Indonesia should strengthen alliances and coalitions to advocate common interests in trade negotiations or to support each other in disputes. For example, sharing information and best practices on implementing trade facilitation or sustainable development standards can help ASEAN countries present a united front. Networking also involves collaborating with international organizations and non-governmental organizations to gain technical know-how and support for legal reforms. An inclusive approach means involving civil society and the private sector at home as well, so that Indonesian stakeholders are aware of and can contribute to international economic policy decisions.

Improving Dispute Resolution Mechanisms

Procedurally, Indonesia needs to sharpen its approach to dispute settlement, both within its domestic system and at the international level [Error! Bookmark not defined.]. Domestically, this could mean establishing clear legal avenues (administrative courts or trade courts) for businesses affected by international trade issues to seek redress. Internationally, Indonesia should continue to use WTO panels, arbitration, or mediation to resolve conflicts – and do so in a transparent and impartial manner [Error! Bookmark not defined.]. By upholding transparency and rule of law in how it handles disputes (for instance, by respecting decisions and implementing them in good faith), Indonesia boosts its credibility. It should also seek opportunities to serve on WTO panels or arbitral tribunals, which would build experience and signal its commitment to a rules-based system.

Through these reforms, Indonesia can better maximize the benefits and minimize the risks of international economic law. Strengthening legal structures and capacities will help ensure that globalization becomes an opportunity for Indonesia's development rather than a threat. Crucially, these steps will also contribute to the evolution of international economic law itself, steering it towards greater fairness and inclusivity for all states.

5. Comparison Perspective: ASEAN Experience

Indonesia is not alone in confronting the demands of international economic law – other ASEAN countries face similar challenges and offer useful comparisons. As a region, ASEAN has actively pursued economic integration and legal harmonization. Under the ASEAN Economic Community (AEC) Blueprint, member states committed to deeper economic integration through regulatory harmonization, trade liberalization, and removal of intra-ASEAN barriers [1]. This regional approach has pushed countries like Indonesia, Malaysia, and Vietnam to update their domestic laws in line with agreed standards on goods, services, and investment. For instance, ASEAN emphasizes common product standards, transparent trade rules, and investment protections, which require each nation to adjust its legal frameworks accordingly. Indonesia can draw lessons from neighbors that have been proactive in this harmonization. Malaysia, for example, has periodically amended its trade and investment laws to comply with both WTO obligations and ASEAN agreements, helping to foster a more predictable business climate [2]. Singapore's legal system, likewise, is highly aligned with international commercial norms, illustrating the competitiveness gains from consistent and transparent regulations.

ASEAN countries also demonstrate the value of collective action in international economic law. A recent example is the Indonesia–Malaysia cooperation in challenging the European Union’s palm oil policies. Both countries saw the EU’s restrictions on palm oil biofuels as discriminatory barriers to their exports, and together they brought the dispute to the WTO for resolution [Error! Bookmark not defined.]. This joint effort underscores how ASEAN members can leverage international legal forums to defend their economic rights. By standing side-by-side, Indonesia and Malaysia strengthened their bargaining position and signaled unity against unfair trade practices. Such collaboration is a hallmark of ASEAN’s approach – whether in negotiating free trade agreements or addressing trade disputes, the region often benefits when members coordinate their legal and diplomatic strategies.

Moreover, ASEAN’s experience highlights the importance of capacity building. Countries like Vietnam, which underwent extensive legal reforms to join the WTO, have rapidly modernized their trade laws and institutions, serving as a model for legal adaptation. Vietnam’s swift overhaul of its commercial laws in the 2000s to meet WTO standards exemplifies the commitment needed to integrate smoothly into the global trading system. Indonesia can take inspiration from this by accelerating its own legal reforms and learning from technical training programs or exchanges facilitated through ASEAN partnerships. All these comparative insights reinforce that while Indonesia has unique national circumstances, the overarching solutions – harmonize laws, build expertise, cooperate regionally, and engage globally – are shared across ASEAN. Embracing these lessons will not only help Indonesia improve its national legal protection but also contribute to strengthening ASEAN’s collective role in shaping fair international economic legal norms.

6. Conclusions

This study has analyzed the dilemma faced by Indonesia in balancing global economic competition with the imperative of national justice. The findings demonstrate that Indonesia’s legal system encounters structural challenges, including regulatory overlaps, weak enforcement, and limited institutional capacity, which undermine the effectiveness of legal protection in the era of globalization. The analysis further shows persistent gaps between domestic regulations and international commitments, illustrated by WTO disputes such as *Indonesia–Import Licensing Regimes* and the *anti-dumping paper case*, which highlight both vulnerabilities and opportunities for Indonesia to leverage international law. Synthesizing these findings, the research confirms that international economic law can function not only as a constraint but also as a strategic instrument for defending national interests when supported by robust legal institutions. Theoretical perspectives such as Radbruch’s legal certainty, Rawls’s distributive justice, North’s institutional economics, and Sachs’s sustainable development framework collectively emphasize that effectiveness of legal protection depends on harmonizing national law with international standards while ensuring fairness, inclusivity, and sustainability.

The implications are twofold. At the policy level, Indonesia must prioritize regulatory harmonization, strengthen trade remedy mechanisms, enhance legal expertise, and actively engage in ASEAN and WTO forums to shape fairer rules. At the academic level, this study contributes to the discourse by reframing globalization not merely as a process of liberalization but as a test of legal resilience in safeguarding social justice, protecting domestic industries, and ensuring sustainable development. Nonetheless, this research is limited to a normative juridical approach and relies primarily on doctrinal analysis and comparative perspectives within ASEAN. Further research should incorporate empirical data, including case studies of Indonesian industries affected by globalization, and explore interdisciplinary approaches integrating economics, political science, and sustainability studies. Such future inquiry will enrich understanding of how Indonesia can transform its legal system into a more adaptive, just, and sustainable framework in the global economic order.

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