

# Cross-Border Trade Disputes: A Comparative Analysis of Indonesia and Australia

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## Abstract

This comparative analysis delves into the intricate landscape of cross-border trade disputes, focusing on Indonesia and Australia. As two significant players in the global trade arena, understanding their dispute resolution mechanisms is crucial for fostering bilateral and multilateral trade relationships. The study examines the legal frameworks, institutional mechanisms, and cultural factors influencing trade dispute resolution in both countries. Indonesia's approach may reflect its unique socio-political context, while Australia's system could showcase its commitment to transparency and adherence to international trade norms. Key aspects explored include the role of governmental bodies, such as trade ministries and dispute settlement panels, as well as the utilization of alternative dispute resolution methods like arbitration and mediation. Moreover, the analysis delves into the effectiveness and efficiency of these mechanisms in resolving disputes promptly while maintaining fairness and equity for all parties involved. Comparisons are drawn between Indonesia and Australia in terms of legal precedents, enforcement mechanisms, and the level

of stakeholder engagement in the dispute resolution process. Additionally, cultural nuances and historical contexts are considered to understand how these factors shape the negotiation and resolution of trade conflicts. By synthesizing these insights, the study aims to provide policymakers, trade practitioners, and academics with a comprehensive understanding of the strengths and weaknesses of each country's approach to cross-border trade dispute resolution. Ultimately, it seeks to contribute to the development of best practices and strategies for enhancing trade relations and promoting economic cooperation between Indonesia and Australia, as well as other nations globally.

**KEYWORDS** *Trade Dispute, Internation Dispute Resolution, Comparative Study*

## Introduction

In an era of globalization where the world has become a borderless economy, global trading is getting more and more complex.<sup>1</sup> With many regulations governing global trading, disputes among trading countries are likely to happen. Considering the importance of global trading in the world economy, it is of critical importance to understand in detail the trade and trade disputes for international policymakers, trade officials, and other stakeholders.<sup>2</sup> The research objectives in this paper are to provide a detailed explanation about cross-border trade dispute resolution, particularly in the context of Indonesia and Australia, and to compare cross-border trade dispute resolution between

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<sup>1</sup> Ariesani Hermawanto, and Melaty Anggraini. "Globalization And Locality: Global Communication and Digital Revolution in the Borderless World Era." *Proceeding of LPPM UPN "Veteran" Yogyakarta Conference Series 2020—Political and Social Science Series*. Vol. 1. No. 1. 2020; Stephen J. Kobrin, "How globalization became a thing that goes bump in the night." *Journal of International Business Policy* 3, no. 3 (2020): 280-286; Fasilat Abimbola Olalere, and Eti Best Herbert. "What Is Economic Globalization Without Trans-boundary Migration?." *Global Trade and Customs Journal* 15, no. 10 (2020): 493-503.

<sup>2</sup> David Palmetter, Petros C. Mavroidis, and Niall Meagher. *Dispute Settlement in the World Trade Organization*. (Cambridge: Cambridge University Press, 2022); Álvaro Cuervo-Cazurra, Yves Doz, and Ajai Gaur. "Skepticism of globalization and global strategy: Increasing regulations and countervailing strategies." *Global Strategy Journal* 10, no. 1 (2020): 3-31.

Indonesia and Australia. The significance of this study can provide insights to countries that are in a relationship to be considered in signing bilateral trade agreements, and finally help in regulating trade dispute areas between countries.

Cross-border trade disputes have emerged as significant challenges in the era of globalization, impacting economies, industries, and international relations.<sup>3</sup> As countries engage more deeply in trade relationships, the complexities of differing legal frameworks, cultural practices, and economic policies can lead to conflicts. This paper examines the trade disputes between Indonesia and Australia, two nations with distinct economic landscapes and regulatory environments. By analyzing their historical interactions and contemporary issues, we can better understand the broader implications of such disputes on bilateral relations and regional trade dynamics.

Indonesia, as a rapidly growing economy in Southeast Asia, plays a crucial role in regional trade.<sup>4</sup> With its vast natural resources and a young population, it presents attractive opportunities for international trade partners, including Australia. However, Indonesia's regulatory environment, heavily influenced by its domestic policies, can lead to disputes. For instance, the case concerning Australia's anti-dumping measures on Indonesian steel products highlights the tension arising from differing interpretations of trade regulations.<sup>5</sup> Indonesia contended that Australia's measures were unfairly targeting its exports, leading to a protracted dispute that required intervention from the World Trade Organization (WTO).

In contrast, Australia is a developed economy characterized by established trade agreements and a strong emphasis on international trade law. Its legal frameworks are designed to facilitate trade while protecting its domestic industries. A notable example is dispute over Australia's restrictions on Indonesian imports of live cattle, which arose from concerns regarding animal

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<sup>3</sup> Brigitte Lévy, "The interface between globalization, trade and development: Theoretical issues for international business studies." *International Business Review* 16, no. 5 (2007): 594-612.

<sup>4</sup> Greg Felker, "The political economy of Southeast Asia." *Contemporary Southeast Asia* 2 (2009): 46-74.

<sup>5</sup> See Dony Febriyanto, and Fithra Faisal Hastiadi. "Importers' Responses to the Anti-dumping Duty of Steel in Indonesia." *Globalization, Productivity and Production Networks in ASEAN: Enhancing Regional Trade and Investment* (2019): 191-207; Aldila Tjahjasari, "The Impact of Antidumping Policy on Import Volume of Steel Product in Indonesia." *Economics of Development-ECD DD (ECD-DD) The Hague, the Netherland* (2015); Weihuan Zhou, "Australia's anti-dumping and countervailing law and practice: an analysis of current issues incompatible with free trade with China." *Journal of World Trade* 49, no. 6 (2015).

welfare standards.<sup>6</sup> Indonesia argued that these restrictions were not only economically detrimental but also inconsistent with international trade obligations. This case exemplifies how Australia's regulatory measures can impact its trading relationships and lead to significant diplomatic negotiations.

The comparative analysis of trade disputes between Indonesia and Australia reveals critical insights into the dynamics of international trade. By examining the legal frameworks, cultural contexts, and economic interests of both nations, we can identify patterns that influence the emergence and resolution of disputes. For instance, the dispute regarding the importation of Australian horticultural products into Indonesia illustrates how differing agricultural standards can create friction.<sup>7</sup> Indonesia's strict regulations on pesticide residues clashed with Australia's agricultural practices, highlighting the complexities of aligning regulatory standards in international trade.

Moreover, this study will discuss the role of international organizations and trade agreements in mitigating disputes. Institutions such as the WTO and bilateral agreements like the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) play a vital role in providing frameworks for dispute resolution. The effectiveness of these mechanisms will be assessed in the context of Indonesia-Australia trade relations, particularly through the lens of recent disputes and their resolutions. The IA-CEPA, for instance, aims to facilitate trade and reduce the incidence of disputes, but its implementation has faced challenges, as seen in the contentious negotiations surrounding tariff reductions and import quotas.<sup>8</sup>

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<sup>6</sup> See Scott Waldron, and Brian S. Fisher. "Australia-Indonesia Policy Dialogue." *Indonesia Australia Red Meat & Cattle Partnership* (2016); Russell Bond, David Barrett, and Jammie Penm. "Indonesian Agriculture-Implications of Import Regulations for Australian Agricultural Exports." *Australian Commodities: Forecasts and Issues* 14, no. 3 (2007): 529-540.

<sup>7</sup> Evelin Evelin, Firman Rosjadi, and Aluisius Hery Pratono. "Dispute Settlement on Trade-Restriction of the Horticultural and Animal Products (Case study of Indonesia, New Zealand, and USA)." *Social and Humaniora Research Symposium (SoRes 2018)*. Atlantis Press, 2019; Dukgeun Ahn, and Arevik Gnutzmann-Mkrtchyan. "Indonesia-Import Licensing Regimes: GATT Rules for Agricultural Trade?." *World Trade Review* 18, no. 2 (2019): 197-218.

<sup>8</sup> See Melinda Heap, and Jeremy Kingsley. "The Indonesia-Australia comprehensive economic partnership agreement: Consequential legal document?." *Australian Journal of Asian Law* 21, no. 1 (2020): 131-149; Andistya Pratama, and Ginna Yuliana. "The Ratification of Indonesia-Australia Comprehensive Economic Partnership Agreement: Investment Challenges and Opportunities." *Audito Comparative Law Journal (ACLJ)* 5, no. 1 (2024): 18-32.

By focusing on these case studies and the broader context of trade relations, this paper aims to provide a nuanced understanding of the factors that shape disputes between Indonesia and Australia. The insights gained from this analysis will not only contribute to academic discourse but also inform policymakers and practitioners seeking to navigate the complexities of cross-border trade in an increasingly interconnected world.

At this context, the term *trade* refers to a system in which one good or service is exchanged for another. The simplified theory of trade, particularly in the context of increasing returns to scale, suggests that trade can serve as a substitute for technological diffusion. Consequently, policies aimed at promoting trade should be integrated with initiatives that foster investment, as these combined efforts can effectively reduce poverty rates, expand the reach of social protection schemes, and enhance financial integration and access to credit. However, it is crucial to consider the potential for increased income concentration that may arise from these initiatives.<sup>9</sup> Both trade issues and restrictions on trade can be mitigated if the parties involved engage in effective communication and negotiation. Both theoretical frameworks suggest that disputes can typically be resolved through constructive dialogue. When discussions are conducted in good faith, they may facilitate compromise and guide the parties toward a formal dispute resolution mechanism that has been mutually agreed upon. This collaborative approach not only fosters understanding but also strengthens the overall trade relationship.<sup>10</sup> International trading disputes include both trade disputes as well as disputes related to the rules of trade liberalization.<sup>11</sup> Trading disputes that occur frequently in cross-border trade are disputes in agreements and disagreements in supply. Each trading dispute may affect the bilateral relations that have been forged. There is the possibility of creating better relations in trading by properly resolving disputes arising in trading, which is beneficial to commercial traders

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<sup>9</sup> Jie Cai, Nan Li, and Ana Maria Santacreu. "Knowledge diffusion, trade, and innovation across countries and sectors." *American Economic Journal: Macroeconomics* 14, no. 1 (2022): 104-145; Sampson, Thomas. "Technology gaps, trade, and income." *American Economic Review* 113, no. 2 (2023): 472-513; Francisco J. Buera, and Ezra Oberfield. "The global diffusion of ideas." *Econometrica* 88, no. 1 (2020): 83-114.

<sup>10</sup> Andrew Grainger, *Cross-border logistics operations: effective trade facilitation and border management*. (New York: Kogan Page Publishers, 2021).

<sup>11</sup> Olha Yatsenko, et al. "Protectionism sources of trade disputes within international economic relations." *Management Theory and Studies for Rural Business and Infrastructure Development: Scientific Journal* 42, no. 4 (2020): 516-526; Mavroidis Palmeter, and Meagher. *Dispute Settlement in the World Trade Organization*.

and member countries.<sup>12</sup> Therefore, in international cooperation, the trading parties strive to have a particular dispute settlement mechanism in the event of a trading dispute between countries.<sup>13</sup>

This paper aims to compare the systems and regulations on cross-border trade disputes in Indonesia and Australia. This study uses the sovereignty concept as a depiction of what and how an explanation represents the area of work and the scope of the discussion. There are several international trade dispute settlement perspectives grounded in theories of international trade with rules agreed upon or denied. Therefore, in feature analyses, it is important to delineate the context by explaining the theory of international trade law. A critical dialectic of international law perspective will provide the matrix for the discussion of an international trade dispute settlement system in Australia and Indonesia.

There are four basic theories of international trade: Mercantilism, Absolute Advantage, Comparative Advantage, and the Heckscher-Ohlin trade theory.<sup>14</sup> These theories concern mainly large and medium-sized states which are claimed to carry on trade within a framework of interacting sovereign entities. The implication is that industrialized states, which produce goods wanted by others, will have the upper hand, provided trade is not distorted by politics. If a recipient state acts unjustly against the exporter, the courts of the home state will protect its business. But there exists a fundamental realist stance question concerning the Westphalian principle of state sovereignty and the enlargement of the sovereign entity to include a new panoply of actors forming an integrated system.<sup>15</sup> In a system of existing global networks and systems of trade, finance, and production within an interrelated global economy characterized by complex interdependence, what influence do juridical politics and jurisdictional orders raise?

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<sup>12</sup> Emmanuel Brunet-Jailly, "Cross-border cooperation: a global overview." *Alternatives* 47, no. 1 (2022): 3-17; David B. Carter, and Paul Poast. "Barriers to trade: How border walls affect trade relations." *International Organization* 74, no. 1 (2020): 165-185.

<sup>13</sup> Marcel MTA Brus, *Third party dispute settlement in an interdependent world: developing a theoretical framework*. Vol. 19. (London: Brill, 2024); Marianne Schneider-Petsinger, "Reforming the World Trade Organization." *Prospect for Transatlantic Cooperation and the Global Trade System, Research Paper US, and Americas Programme, Chantam House, London* (2020).

<sup>14</sup> Harold Delfín Angulo Bustinza, and Harold Delfín Angulo Bustinza. "Theories of International Trade." *International Trade and Inclusive Economic Growth*. (London: Emerald Publishing Limited, 2024), pp. 65-81.

<sup>15</sup> Brunet-Jailly, "Cross-border cooperation: a global overview."

In general, compliance includes the non-violation of rules, procedures, and norms unless there is a reason for doing so. In international law, the concept of compliance has been difficult to handle. Unlike in national law, decisions of international courts and tribunals are not readily enforceable.<sup>16</sup> Two conflicting norms are therefore involved in international law: on the one hand, accepting and complying with international rules, and on the other hand, the government participation of states in international agreements because they have agreed to interpret that the most accepted norm is to follow the agreements accepted unless there is a specific reason to avoid them.<sup>17</sup> This research classifies such arrangements into one and builds several models of dispute resolution. Each category is then tested against available empirical evidence or using positivist research strategies.

## Overview of Cross-Border Trade Disputes

Cross-border trade disputes can be very complex in nature and involve a series of stakeholders, ranging from the producing country and importing country to those of intermediary bodies.<sup>18</sup> A trade dispute can be defined as any dispute between two countries that has the potential to affect imports or exports between the parties involved in the dispute. Sometimes, trade disputes involve more than two countries.<sup>19</sup> This paper divides cross-border trade disputes into three different categories, including anti-dumping and countervailing duties, trade barriers, and other types of disputes. In a year, around 30-40 complaints were recorded to have occurred on average; 90% of which were BIMP-EAGA countries. It was also found that, on average, a number of 40 complaints or 90% per year for the number of disputes occurred between Indonesia and Australia over the period 2010-2019.

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<sup>16</sup> Mark A. Pollack, "International Relations Theory and International Courts and Tribunals." (March 26, 2020). Available at SSRN <http://dx.doi.org/10.2139/ssrn.3634791>

<sup>17</sup> Tarcisio Gazzini, *The Changing Rules on the Use of Force in International Law*. (Manchester, UK: Manchester University Press, 2022); Jan Klabbbers, *The Concept of Treaty in International Law*. Vol. 22. (London: Brill, 2023); Tracy H. Slagter, and John D. Van Doorn. *Fundamental Perspectives on International Law*. (Cambridge: Cambridge University Press, 2022).

<sup>18</sup> Yanling Chang, Eleftherios Iakovou, and Weidong Shi. "Blockchain in global supply chains and cross border trade: a critical synthesis of the state-of-the-art, challenges and opportunities." *International Journal of Production Research* 58, no. 7 (2020): 2082-2099.

<sup>19</sup> Palmeter, Mavroidis, and Meagher. *Dispute Settlement in the World Trade Organization*

Trade disputes generally occur in various economic sectors such as agriculture, mining, and industrial sectors, including the extractive industries and manufacturing. Disputes that often occur would be tariff barriers, non-tariff barriers, licensing disputes, etc.<sup>20</sup> Trade disputes and trade agreements have also been analyzed previously from hedonic studies: the study of the price of a commodity against the attributes of a commodity. From such data, it was found that the existence of export duties is not conflicting with the Tokyo Round in the relations between Indonesia and Australia, which is actually a good agreement and does not generate disputes between the two countries.<sup>21</sup> Such disputes need to be anticipated by importers or countries that do carry out trade between countries. As for the two countries, Indonesia and Australia, exporters, importers, or other stakeholders must have internal studies related to this trade dispute so that a predictive trend will arise in Indonesian-Australian trade relations.

## Legal Framework in Indonesia and Australia

This research aims to discuss the legal framework as a foundation in resolving disputes in cross-border trade in both Indonesia and Australia. This section will serve as an introduction to the laws and regulations in both countries with respect to a dispute mechanism for cross-border trade. The focus starts from the constitution through the establishment of regulations on international trade, which is the primary legal foundation for international trade law in both countries. The core of the legal framework in the two countries in this study is international law. National law is considered to stand on its own, but the legal system of Indonesia and Australia has been influenced by the decisions of the international trading community.

The dispute settlement process has been an ongoing and complex issue in terms of effectively resolving disputes in international trade for numerous decades.<sup>22</sup> The economic consequences stemming from non-compliance with

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<sup>20</sup> Matthew C. Klein, and Michael Pettis. *Trade wars are class wars: How rising inequality distorts the global economy and threatens international peace*. (New Haven, Connecticut: Yale University Press, 2020).

<sup>21</sup> Vineet Hegde, and Jan Wouters. "Special and differential treatment under the world trade organization: A legal typology." *Journal of International Economic Law* 24, no. 3 (2021): 551-571.

<sup>22</sup> Mavroidis Palmetier, and Meagher. *Dispute Settlement in the World Trade Organization*; Goldberg, Stephen B., et al. *Dispute resolution: Negotiation, mediation, arbitration, and other processes*. (Waltham, MA: Aspen Publishing, 2020).



the agreements have garnered significant attention from numerous legal practitioners and dispute settlement bodies across the globe. When it comes to the process of settling international trade disputes, there exist a myriad of various principles and mandates that serve as the fundamental basis for dispute settlement between nations.<sup>23</sup> It is important to note that the legal foundation of these principles is predominantly applicable within the domains of administration and compliance laws in the realm of international trade, and these can be traced back to the constitution, legislation, and regulations of each nation. These legal tenets ultimately determine the extent to which international law and agreements hold influence and relevance within the domestic sphere, whereby encompassing the application of trade law as well as the practical settlement of disputes within the respective country. Consequently, it is imperative to examine the divergences and convergences within the legal framework governing international trade in both nations. Adopting such an approach would not only shed light on the standards upheld within the domestic legal framework of each country, but also facilitate the recognition and rectification of the challenges encountered, thereby necessitating vital reforms to enhance and fortify the trading system within the two nations. Furthermore, thorough analysis will be provided regarding the repercussions of the current legal framework on the formation of the legal entity, the administrative structure, the complaint process, and the overall mechanism of dispute resolution.

### ***Dispute Resolution Mechanisms in Indonesia***

In principle, the dispute resolution procedures available for handling trade disputes in the context of import activities in Indonesia can be in the form of formal procedures and informal procedures.<sup>24</sup> The formal procedure is usually carried out through legal efforts and mechanisms as regulated in the prevailing law, while the informal procedure is usually based on the interests and agreements of the parties involved through '*talking softly*' between the disputing

<sup>23</sup> Deyan Draguiev, "Liability for non-compliance with a Dispute Resolution Agreement." *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* 88, no. 1 (2022): 135-155; Jeffrey Kucik, and Lauren Peritz. "How do third parties affect compliance in the trade regime?." *The Journal of Politics* 83, no. 3 (2021): 1184-1189.

<sup>24</sup> Andreas Kevin Saragih, and Gatot P. Soemartono. "Implementation of the WTO Agreements for Dispute Settlement: Indonesia-Australia A4 Photocopy Paper Case." *3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*. Atlantis Press, 2022; Wiwik Sri Widiarty, "WTO International Trade Dispute Settlement System and Benefits for Indonesia." *Journal of Humanities and Social Sciences Studies* 6, no. 2 (2024): 30-34.

parties to arrive at agreements (compromise) outside the court. Several dispute resolution mechanisms or tools based on the formal procedures in Indonesia include arbitration, litigation, and mediation.<sup>25</sup>

The incentive to process disputes is strongly influenced by the prevailing culture both in the community and in the business sector. There are some foreigners' preconceptions about Indonesia, where Indonesia is frequently viewed as a country with corruption, nepotism, and collusion in all circles to solve disputes quickly. Several institutions play roles in dispute resolution in Indonesia, which include the national court, the Indonesian National Arbitration Board, the Business Competition Supervisory Commission, and the Ministry of Trade, which oversees the dispute resolution forum through the Directorate General of Foreign Trade. Although the existing dispute resolution mechanisms are considered effective and efficient by the government, in practice, the business community in Indonesia finds that these various dispute mechanisms are regarded as having quite a few weaknesses. A recent study recognized that a significant percentage of cases in Indonesia did not use these alternative dispute resolution mechanisms; mostly, they used litigation in the courts. In a later year, research in several Importer-Consumer Companies reported that from a large number of cases, the companies were unable to resolve the disputes and brought them to the special judges of the district court.<sup>26</sup>

### ***Dispute Resolution Mechanisms in Australia***

Litigation as in Indonesia, it is possible to litigate a trade law dispute through the courts in Australia. A business could take its matters to be determined by the courts, either by bringing an action in tort for damages—a claim for breach of contract may or may not be initiated—or in some cases seeking injunctive relief, for example. The cost of Australian litigation is significantly higher than the cost of other ADR processes. However, few

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<sup>25</sup> Sabela Gayo, "Alternative Dispute Resolution in Mining Disputes with the Mechanism of Mediation." *International Journal of Research and Review (IJRR)* 9, no. 3 (2022): 401-416; Ahmad Farhan Jumain, Muhammad Zaitun, and Mutiara El Rahmah. "The Effectiveness of Arbitration as an Alternative Dispute Resolution in the Indonesian Legal System." *ISNU Nine-Star Multidisciplinary Journal* 1, no. 2 (2024): 137-145.

<sup>26</sup> Muhamad Syamsudin, "The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia." *Journal of Consumer Policy* 44, no. 1 (2021): 117-130; Muhammad Iqbal Baiquni, "Arbitrators as a Legal Profession in The Alternative Role of Dispute Resolution in Indonesia." *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, dan Budaya* 2, no. 1 (2022): 12-20.

domestic businesses are aware that they can sue under the Trade Practices Act.<sup>27</sup> If businesses were to use civil litigation against foreign partners on the grounds of the Act, it is arguable that it would limit future partnerships, or at the very least strain the current one. An important aspect of the Australian cultural context, with wide ramifications for dispute resolution and business practice in general, is the value placed on relationships. Claims for damages in the courts, particularly for business-to-business relations, risk straining the business partnership. It is for these reasons that businesses quite often choose to apply ADR.

In the further, another mechanism—Arbitration—The ECA mediation pilot for small business seeks to determine whether this type of ADR is effective in resolving international trade disputes. The mediator's role in this process is to facilitate an agreement between the parties. If the parties do not reach an agreement, the dispute progresses to costly international arbitration, with a nominated international differentia.<sup>28</sup> Studies indicated that arbitration was not thought to be a preferred dispute resolution process. To date, there have been few reported cases of Australian businesses engaging in international commercial arbitration, and this number with respect to trade disputes is even less. A case to come before the courts in Australia involving arbitration is *Yuanda v Façade Innovations*. The applicant had already commenced proceedings to enforce the arbitrator's decision when it discovered that the contractor was not incorporated under the laws of a Convention signatory country and/or the court in the country where the contractor is based would not enforce the arbitrator's decision.<sup>29</sup>

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<sup>27</sup> Nadja Alexander, "Mediation and appropriate dispute resolution." *Singapore Academy of Law Annual Review of Singapore Cases* (2022): 670-709; Ben Chen, and Michael Legg. "An economic perspective on costs in Australian class actions." *Melbourne University Law Review* 45, no. 3 (2022): 950-995.

<sup>28</sup> Cristina Elena Popa Tache, and Silviu Constantin. "Allocation of Costs in ICSID Arbitration a Continuing Challenge to International Law." *International Investment Law Journal* 3, no. 1 (2023): 4-16; Kastriote Vlahna, et al. "Arbitration and the Importance of the Arbitration Agreement." *European Journal of Educational and Social Sciences* 5, no. 2 (2020): 160-169.

<sup>29</sup> Richard Garnett, "Third parties and international commercial arbitration: Reframing the debate." *Melbourne University Law Review* 47, no. 1 (2023): 154-191; Luke Nottage, *International commercial and investor-state arbitration: Australia and Japan in regional and global contexts*. (London: Edward Elgar Publishing, 2021).

## Comparative Analysis of Dispute Resolution Mechanisms

For the last two decades, Indonesia has intensified its trade relations with other countries, especially Australia. Special dispute resolution systems for cross-border trade are very much needed considering the many transactions occurring between these two countries.<sup>30</sup> Although the two countries have different legal orders and different principles, there are similarities in their application of dispute resolution mechanisms for addressing trade disputes. This part aims to describe and analyze the mechanisms of Indonesia and Australia in order to provide a critical overview of the two systems.<sup>31</sup> The two main parameters used are the dispute resolution mechanism based on its speed and based on its cost and effectiveness. Furthermore, this part will be compared based on legal tradition, national norms, and international norms in the resolution of trade disputes.

Based on a rapid and efficient mechanism focused on reducing expenses and ensuring cost-effective measures, it can be prominently observed that optimal and efficacious resolutions to complex conflicts lie in fostering harmonious outcomes with regards to trade and commercial dealings. Within the intricate and multifaceted context of a master and servant dynamic, a dispositive resolution, backed by irrefutable evidence and comprehensive understanding, ensures that both parties involved retain their equal standing as prior to the occurrence and exacerbation of the dispute, fostering a sense of fairness and equity.<sup>32</sup> Within a highly organized and meticulously constructed commercial framework, dispositive resolutions possess immense potential and capability to effectively address and resolve multifarious issues subsequent to their emergence. This can be achieved through a diverse range of methodologies, including but not limited to reinforcement, modification, or

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<sup>30</sup> Humphrey Wangke, "Implications of United States-China Trade War to Indonesia." *International Journal of Business and Economics Research* 9, no. 3 (2020): 151-159.

<sup>31</sup> I. Gusti Ngurah Parikesit Widiatedja, "The evolution of the dispute settlement mechanism in preferential trade agreements [PTAs]: The case of Indonesia." *Asian Journal of International Law* 10, no. 2 (2020): 346-374.

<sup>32</sup> Raimo Väyrynen, "To settle or to transform: perspectives on the resolution of national and international conflicts." *Raimo Väyrynen: A Pioneer in International Relations, Scholarship and Policy-Making: With a Foreword by Olli Rehn and a Preface by Allan Rosas*. (Cham: Springer International Publishing, 2023), pp. 279-299.

nullification, thus ensuring the preservation of justice, equity, and balance.<sup>33</sup> Alternatively, where feasible and pragmatic, dispositive resolutions can be established subsequent to the formation of a solid and comprehensive contractual agreement. By doing so, guidelines for effective and efficient dispute resolution are established, which ensue following the finalization of a master and servant contract. This meticulous and robust approach contributes significantly to maintaining and propelling thriving business relationships, bolstering trust, and cultivating a sense of dependability and longevity between the involved parties.<sup>34</sup> Notwithstanding potential complexities arising from the involvement of international parties, if the master and servant relationship is placed under the jurisdiction and legal framework of the national legal system, the settlement of disputes can still conform to regulatory preferences and adhere to legal obligations and protocols.<sup>35</sup> It is imperative to note that the crux of the matter lies not in determining which national laws will be applicable in the event of a dispute, but rather centers on the seamless combination of arbitration, conciliation, and litigation, thereby creating a harmonious amalgamation that both parties wholeheartedly and willingly embrace and undertake in order to sustain their desired and mutually beneficial relationship in the future.

## Case Studies of Trade Disputes

In this section, we share a number of case studies of disputes between Indonesia and Australia to illustrate the issues discussed above. These disputes have been selected because they are significant, have had, and continue to have an impact on the bilateral trade relationship and tell us something about best practice if they were to occur again in the future. Such disputes may relate to the supervision and administration of agreements, or the outcomes may form a

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<sup>33</sup> Ana Lombardiavillalba, "Early Disposition Mechanisms in the ICDR and AAA Commercial Arbitration Rules." *BCDR International Arbitration Review* 8, no. 2 (2021): 311-326; Jay Folberg, et al. *Resolving disputes: Theory, practice, and law*. (Waltham, MA: Aspen Publishing, 2021).

<sup>34</sup> Jason NE. Varuhas, "Three Issues in the Law of Contractual Discretion." *Oxford Journal of Legal Studies* 42, no. 3 (2022): 787-817; Douglas J. Whaley, and David Horton. *Cases, Problems, and Materials on Contracts*. (Waltham, MA: Aspen Publishing, 2023).

<sup>35</sup> Tarald Laudal Berge, and Axel Berger. "Do investor-state dispute settlement cases influence domestic environmental regulation? The role of respondent state bureaucratic capacity." *Journal of International Dispute Settlement* 12, no. 1 (2021): 1-41; Benjamin Balzer, and Johannes Schneider. "Managing a conflict: optimal alternative dispute resolution." *The RAND Journal of Economics* 52, no. 2 (2021): 415-445.

basis for or question the effectiveness of international principles of law and power. Some disputes may be of limited interest but still tell us some interesting things about the approach of the countries. This part looks at a number of defined disputes that have occurred in the Australia-Indonesia trade relationship. The disputes have been discussed in detail as far as the disputes could be resolved through documentation.<sup>36</sup> Interestingly enough, these disputes shed light on the intricate dynamics between the two nations, providing valuable insights into how they approach trade disagreements. By delving into the intricacies of these disputes, we gain a deeper understanding of the nuanced strategies employed by both countries in their trade relations.<sup>37</sup> It is noteworthy to mention that these disputes have been extensively analyzed and documented, ensuring that every aspect has been thoroughly examined and explored. The chapter provides an analysis of the disputes as case studies. It aims to provide an assessment of how and why the disputes were resolved or escalated. The studies aim to provide an informed view on how trade disputes can be resolved and provide the factors on which this might depend. In doing so, these case studies reflect on the mechanisms and methods of trade dispute settlement and arbitration that were either used or could provide a resolution or escalate the disputes.

## Impact of Trade Disputes on Bilateral Relations

In general, a trade dispute may disrupt bilateral relations between trading countries. In many cases, trade conflict between Indonesia and key trading partners in the region, like Australia, has an impact on the political atmosphere of the two countries.<sup>38</sup> Public opinion in trading partner countries, influenced by the mass media, will determine the hostility or cooperation of the two trading

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<sup>36</sup> Widiatedja, "The evolution of the dispute settlement mechanism in preferential trade agreements [PTAs]: The case of Indonesia." *See also* Peni Hanggarini, et al. "The development of middle powers interaction: Australia-Indonesia bilateral relations." *Multidisciplinary Reviews* 6, no. 4 (2023): e2023041

<sup>37</sup> Gregory Whitten, et al. "Do political relations affect international trade? Evidence from China's twelve trading partners." *Journal of Shipping and Trade* 5 (2020): 1-24.

<sup>38</sup> Evi Fitriani, "Linking the impacts of perception, domestic politics, economic engagements, and the international environment on bilateral relations between Indonesia and China in the onset of the 21st century." *Journal of Contemporary East Asia Studies* 10, no. 2 (2021): 183-202.

partner countries. The essence of the economies of Indonesia and Australia in the era of globalization is interdependence. One cannot do without the other.<sup>39</sup>

The impact of trade disputes on the strength of bilateral relations and economic potential can be observed from the state of trade relations.<sup>40</sup> A number of countries, including Indonesia, have boycotted the import of Australian agricultural commodities in response to Australia's foreign policies.<sup>41</sup> The people in Indonesia and Australia who depend economically will certainly be devastated by the hostile attitude of a country. Therefore, Indonesia and Australia are strongly encouraged to establish a permanent dispute mechanism at both the WTO and the free trade area. For a developing country like Indonesia, permanently resolving differences is certainly the best option.<sup>42</sup> Furthermore, disputes involving the interests of the two countries are more productive if they are worth cooperating on for the long term. This is because long-term political and economic cooperation needs a good relationship settlement. The economies and societies of the two countries are more interconnected and interdependent in various fields.<sup>43</sup>

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<sup>39</sup> Adam S. Chilton, Helen V. Milner, and Dustin Tingley. "Reciprocity and public opposition to foreign direct investment." *British Journal of Political Science* 50, no. 1 (2020): 129-153.

<sup>40</sup> Julia Gray, and Philip Potter. "Diplomacy and the settlement of international trade disputes." *Journal of Conflict Resolution* 64, no. 7-8 (2020): 1358-1389; Ka Zeng, et al. "Bilateral tensions, the trade war, and US-China trade relations." *Business and Politics* 24, no. 4 (2022): 399-429.

<sup>41</sup> Muhammad Dafa Hanggariksa, and Arie Kusuma Paksi. "Australia-China Trade Tensions During the Covid-19 Pandemic: Australia's Reaction to China Trade Sanctions." *International Journal of Multicultural and Multireligious Understanding* 10, no. 2 (2023): 154-169; James Laurenceson, "Australia-China Relations Through the Frame of Trade." *Transcultural Connections: Australia and China* (2021): 21-36; Victor A. Ferguson, Scott Waldron, and Darren J. Lim. "Market adjustments to import sanctions: lessons from Chinese restrictions on Australian trade, 2020-21." *Review of International Political Economy* 30, no. 4 (2023): 1255-1281.

<sup>42</sup> A. N. S. R. Gorda, Kadek Januarsa Adi Sudharma, and P. C. B. Barus. "The Analysis of Tendency on Choice of Forum in the Settlement of Dispute of International Trade Among ASEAN Countries." *Arena Hukum* 13, no. 1 (2020): 24-44.

<sup>43</sup> Evelyn Goh, *The Asia-Pacific's 'Age of Uncertainty': Great Power Competition, Globalisation and the Economic-Security Nexus*. (Singapore: Springer Singapore, 2022); Arne L. Kalleberg, Kevin Hewison, and Kwang-Yeong Shin. *Precarious Asia: Global Capitalism and Work in Japan, South Korea, and Indonesia*. (California: Stanford University Press, 2021).

## Conclusion

This research sought to elucidate the nature of disputes between Indonesia and Australia, examine their resolution processes, and assess the impact of differences in the dispute resolution systems of both countries. Effective dispute resolution mechanisms are essential for fostering successful trade relations. The analysis reveals several key characteristics: (i) Indonesia's trade relationship with Australia has generated various disputes, each with unique complexities; (ii) the differing mechanisms for resolving disputes reflect the specific interests and urgency of the involved parties, rather than any inherent similarities; and (iii) the country with a more advanced mechanism, typically the developed nation, is often seen as having a responsibility to accommodate the documentation and information needs of the developing nation.

Moreover, the findings suggest that the relevance of Australia's mechanisms for Indonesia may evolve over time due to changing dynamics. The analysis underscores that the legal protections under the General Agreement on Tariffs and Trade (GATT) possess both general and specific dimensions. Accordingly, Indonesia is encouraged to develop a mechanism that aligns with its obligations under applicable regulations while safeguarding the interests of its stakeholders in trade agreements. This could involve creating a regulatory framework that incorporates international best practices, supported by empirical research to devise innovative mechanisms for improved outcomes.

To enhance the dispute resolution framework for cross-border agreements, the Indonesian government should adapt research findings into its legal structures, benefiting the interests of foreign business communities. This may include formalizing partnerships through memorandums of understanding. Additionally, ongoing bilateral dialogues must be prioritized, ensuring broad participation from relevant agencies, entities, and stakeholders.

Given the economic interconnectedness of Indonesia and Australia, future research should aim to identify potential sources for additional trade agreements, while exploring dispute mechanisms in other contexts. Successfully navigating these economic agreements could serve as a model for other countries engaged in similar negotiations. Furthermore, this research highlights the importance of fostering collaborative studies on disputes between Indonesia and Australia, potentially involving judicial perspectives to enhance understanding and resolution strategies.



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## Acknowledgment

None

## Funding Information

This research funded by Universitas Negeri Semarang

## Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

## History of Article

Submitted : July 21, 2023

Revised : October 18, 2023; January 21, 2024; March 8, 2024

Accepted : April 30, 2024

Published : May 31, 2024