



China's Belt and Road (BRI) Policy for Trade Interests in Indonesia

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Abstract

In promoting international trade within Indonesia, the government relies on Law Number 7 of 2014 concerning Trade. This legislation serves as a foundational framework for facilitating trade activities and addressing related issues. As part of efforts to bolster infrastructure development amidst financial constraints, Indonesia has turned to initiatives such as the Chinese Silk Road, or Belt and Road Initiative (BRI). This strategic partnership aims to enhance Indonesia's infrastructure capabilities, particularly in light of budgetary limitations that have hindered optimal development. However, the implementation of BRI projects has sparked concerns and varying interpretations, particularly regarding the potential risks of falling into a "debt trap" or succumbing to "debt diplomacy" with China. This research employs a normative juridical approach, utilizing statutory analysis and conceptual frameworks to explore these complexities. A notable case is the Jakarta-Bandung high-speed rail project, slated for operation by August 18, 2023, which exemplifies BRI's application in Indonesia. Addressing legal uncertainties and ensuring robust dispute resolution mechanisms are crucial for mitigating risks associated with BRI policies. It is imperative for Indonesia to proactively safeguard against adverse impacts while harnessing the benefits of international partnerships for sustainable development.

Keywords: *Belt and Road Initiative, Cooperation, International Trade, Infrastructure Development.*

A. INTRODUCTION

The Belt and Road Initiative (BRI), previously known as One Belt One Road (OBOR), represents a comprehensive global infrastructure development strategy spearheaded by the Chinese Government. This initiative spans nearly 70 countries and involves various international organizations (World Bank, 2018). The overarching

objective of the BRI, as articulated by Zeng Lingliang (2016), is to promote peace, cooperation, development, and mutual benefit among participating nations.

According to the China Britain Business Council, the BRI seeks to enhance the global economy by establishing new trade routes that offer expanded business opportunities, particularly benefiting China (China Britain Business Council). The initiative was initially coordinated by a core group led by Deputy Prime Minister Zhang Gaoli, comprising the National Development and Reform Commission (NDRC), the Ministry of Foreign Affairs, and the Ministry of Commerce of China (Fahmi, 2018).

In encouraging international trade activities in Indonesia, the Government utilizes Law Number 7 of 2014 concerning Trade. In Law no. 7 of 2014 concerning Trade states that "Facilities and Infrastructure Supporting Foreign Trade". Departing from this article, the construction of the Chinese Silk Road is one of the development solutions that can support international trade activities in Indonesia. This is due to the lack of an adequate budget so that infrastructure development in Indonesia is still not optimal. Indonesia needs budget assistance to support infrastructure development, therefore cooperation with China in the initiation of BRI can help infrastructure development in Indonesia.

At that time, Indonesia also had a trade route known as the Spice Route. Civilizations show Indonesia as one of the points on the international spice trade route. The spice route is considered a world cultural heritage (Ananto, 2020). According to UNESCO, the Spice Route is the name given to the shipping network routes that connected the Eastern World with the Western World. The spice route led to the development of various knowledge and cultures. Because its geopolitical and geoeconomic position is very strategic, located between two continents and oceans. Thanks to spices, the archipelago has become a meeting place for people from various

parts of the world and has become a breeding ground for bringing together various ideas, ideas, concepts, science, religion, language, aesthetics and customs. The spice trade route by sea is a means for intercultural exchange which makes an important contribution to shaping world civilization (Kemendikbud, 2022).

The policy issued by the President of China regarding OBOR has two trade routes, namely the land trade route called The Silk Road Economic Belt and the sea trade route called The 21st Century Maritime Silk Road (Handriyanto, 2020). The Silk Road Economic Belt policy focuses on developing land routes which aim to connect underdeveloped provinces in the western part of China with Europe via Central Asia with development in the transportation sector, namely railways. The aim of this development in the transportation sector is to connect one country to another. This is to create a silk road for China with China's various interests. Meanwhile, the concept of the 21st Century Maritime Silk Road was announced by President Xi Jinping during a visit to Indonesia in October 2013. This sea route was built by President Xi Jinping as an effort to strengthen China's relations with South Asia and Southeast Asia which focuses on Maritime trade (Santi. 2019).

However, there are many interpretation problems in this BRI policy. There have been many debates regarding China's motives for this policy. This debate arose because the initiative's vision, goals and achievements were unclear. One of the concerns that arises is a country's ability to handle BRI projects and Dispute Resolution. Where in the MoU of Mutual Understanding between China and Indonesia in article 5 it is stated that "Any differences or disputes that may arise between the Parties regarding any issues in this Memorandum of Understanding will be resolved peacefully through consultation or negotiation." From this article, concerns arise about the possibility of Indonesia being

trapped in "debt" or what is called "The China's Debt Trap" or "debt diplomacy" (Ni Made, 2019).

With the cooperation between Indonesia and China through BRI, Indonesia will face the threat of a Double Trap which will have a negative impact on Indonesia. When a country cannot repay its debt to China, China will control the project that failed to pay for a period of 99 years, meaning that all assets in the project that failed to pay will be controlled entirely by China. In this case, China's BRI is considered to have violated the National Treatment principle contained in GATT because it forces borrowing countries to use Chinese products for infrastructure and workforce development. China is also considered to have violated the transparency principle stipulated in Article 6 of TRIMs due to the lack of openness and clarity of investment rules set for investment recipient countries.

Therefore, this article aims to examine two legal issues, first regarding the implementation of China's Belt and Road Initiative (BRI) Policy in Indonesia and regarding the Dispute Resolution mechanism that occurs in China's BRI concept. It is hoped that the results of this research can provide input, especially to the Indonesian government, to make clearer laws and regulations regarding the Chinese BRI concept, considering that this cooperation is a long-term collaboration that will continue, Indonesia needs a strategy to face China's BRI by optimizing Indonesia-China cooperation regulations.

Legal research is a process of analyzing legal problems and resolving these problems by applying applicable law to relevant facts (Efendi, et.al, 2019). The type of research used in this research is normative juridical research, namely research that examines and

examines legal issues through the principles of international law, especially in the field of trade.

The approach used in this research is the Statute Approach, this approach is carried out by examining and reviewing all statutory regulations, regulations and other regulations relating to the legal issue being studied. Apart from that, it is also supported by the Conceptual Approach, namely bringing up interesting objects from a practical knowledge point of view so that they can determine their meaning precisely and can be used in the thought process by identifying legal issues regarding legal principles, legal concepts. and legal principles contained in existing views and doctrines to then obtain relevant new ideas (Octorina, 2014).

B. RESULT AND DISCUSSION

Implementation of China's Belt and Road Initiative (BRI) Policy in Indonesia

China's economic cooperation and investment in Indonesia can be seen in the emergence of new infrastructure that supports the economy. Regarding foreign debt, it is not only the Indonesian government that borrows from China, but also state-owned and private companies also owe China. This situation has the potential for high risk and affects how Indonesia handles debt payments. The risk of default always exists, and this can result in disruption of Indonesia's national defense and national interests. The case in Sri Lanka clearly provides a lesson on how a cooperative project with China ended in no profit and defaulted on debt payments. Finally, the assets owned by the government were then transferred to Chinese companies (Irmanjaya, 2022).

The implementation of the OBOR policy in Indonesia is based on an MoU of mutual understanding between the Government of the Republic of Indonesia and the Government

of the People's Republic of China regarding Joint Promotional Work within the Framework of the World Maritime Axis Vision and the Silk Road Economic Belt and the 21st Century Maritime Silk Road Initiative, the Government of the Republic of Indonesia and the Government The People's Republic of China (individually a “Party” and collectively the “Parties”) is based on the aspiration to jointly strengthen the Indonesia-China Comprehensive Strategic Partnership and deepen practical bilateral cooperation.

In its implementation, BRI prioritizes increasing policy coordination as a framework for realizing and promoting inter-governmental cooperation, building inter-governmental macro policy exchanges and multi-level communication mechanisms, expanding shared interests, increasing mutual political trust, and achieving cooperative consensus. China said countries along the Belt and Road (BRI) initiative should coordinate their economic development strategies and policies, draw up plans and actions for regional cooperation, negotiate to resolve issues related to such cooperation, and jointly provide policy support for the implementation of practical cooperation and large-scale projects (Wiko, 2021).

As international trade activities continue to develop, especially in Indonesia, regulations are needed that can contribute to law enforcement in the field of international trade and safeguard the rights and obligations of actors in establishing international trade cooperation. In connection with efforts to establish legal rules governing international trade, Law Number 7 of 2014 concerning Trade was passed as the basis for every policy and control in the field of international trade. The regulations regarding international cooperation in this Law aim to expand access to international trade cooperation in the era of globalization while remaining subject to national interests without abandoning world free trade. The Trade Law also contains provisions regarding international trade cooperation as part of the field of foreign trade. Article 1 number 22 of Law Number 7 of

2014 concerning Trade states that international trade cooperation is as follows: "Government activities to fight for and secure national interests through trade relations with other countries and/or international institutions/organizations".

On November 16 2022, President Joko Widodo and PRC President Xi Jinping held the G20 High Summit Conference (KTT) in Bali. After holding a bilateral meeting, the two leaders witnessed the signing of five cooperation documents that had been agreed upon by the two countries in a number of fields. The five documents include (Indonesia.go.id, 2022):

1. Action Plan for joint promotional cooperation within the World Maritime Axis Framework and the Belt and Road Initiative;
2. Memorandum of Understanding on the joint development of the Indonesian-Chinese Medicinal Plant Conservation, Research and Innovation Center;
3. Memorandum of Understanding on Vocational Training in the Industrial Sector;
4. Memorandum of understanding to increase digital economic cooperation; And
5. Agreement on further expansion and deepening of bilateral economic and trade cooperation.

This legal benefit theory of implementing the BRI or OBOR policy in Indonesia is expected to have legal benefits, not only for the country but for all people who feel the benefits of Indonesia's participation in the OBOR concept. In accordance with the OBOR concept, namely to improve the country's economy and infrastructure development so that Indonesia is able to compete in international trade. In a country, the success of infrastructure development is determined by various superior factors that a country has, including capital and human resources. In order to develop country development, developed countries and developing countries can join forces to mutually benefit each

other. One form of relationship between developed and developing countries is carrying out global trade activities through import, export and investment activities. From this collaboration, technology exchange or transfer, capital loans and knowledge can occur for developing countries. From this investment, developing countries are able to strengthen their economies and advance economic and human resources.

Investment activities certainly have a practical aim, namely how to accelerate increased economic growth by expanding investment activities carried out in the country receiving the investment or the place where the investment is carried out. The function and role of foreign investment activities must meet the requirements of usefulness for the country where the investment is carried out and also for the investor who makes the investment in that country. The principle of utility is that investment activities in any form must produce benefits, profits and happiness for the parties involved in foreign investment activities, in particular, society in general, as intended in the sense of the theory of utility (legal benefit) stated by John Stuart Mill and Jeremy Bentham. (Zulfikar, 2019)

An agreement is a law that must be respected and obeyed by the parties making the agreement. International law is based on the idea of an international community consisting of a number of sovereign and independent states. Each country is a subject of international law, so the presence of international law, one of the formal forms of which is an international agreement, is a legal order of coordination between equal members of the international community (Purwanto, 2009). Based on different perceptions about international agreements based on both theoretical and juridical understanding, it can be said that the agreement will become an international agreement if it is made by a subject of international law in writing and must be subject to international law. The contents of

the agreement concern whatever has been agreed upon by the parties, as long as it does not violate and does not conflict with the norms and principles of international law. The contents of international agreements must comply with the principle of *pacta sunt servanda*.

In this case, the implementation of the BRI concept in Indonesia can be seen from the Jakarta-Bandung fast train project which is targeted to operate on August 18 2023. The Jakarta-Bandung fast train project is one of the BRI projects that has been realized among several other projects. The Jakarta-Bandung high-speed train project started on October 26 which was agreed upon by China and Indonesia, then the agreement was signed by China International Co.ltd with PT. The Synergy Pillar owned by BUMN to form a foreign capital company (PMA) which has the name PT. Indonesian Express Train (KCIC). This capital from KCIC was approved by the MENKUMHAM with Number AUU-02220.AUU.01. 2016. On February 19 2016 PT. KCIC continued the implementation of the construction of the fast train project connecting Jakarta and Bandung with funds of approximately Rp. 22.8 trillion for the construction of the fast train project (Amanda, 2021). The Minister of Environment and Forestry also initiated and signed a concession agreement for cooperation in organizing public trains from Jakarta to Bandung between PT KCIC and the Ministry of Transportation on January 21 2016 (Amanda, 2021).

Based on the *Pacta Sunt Servanda* Principle, the binding agreement between China and Indonesia in the construction of the Jakarta-Bandung high-speed train project within the BRI is based on President Jokowi giving the order to build the project. This decision is contained in Presidential Regulation Number 93 of 2021 concerning Amendments to Presidential Regulation Number 107 of 2015 concerning the Acceleration of

Implementation of Infrastructure and Facilities for the Jakarta-Bandung Fast Train. These rule changes create various problems that affect project implementation. For example, in granting concessions, Presidential Decree no. 107 of 2015 states that "Railway concessions are granted for a maximum of 50 years and come into effect when the agreement is signed." Meanwhile, KCIC asked the Ministry of Transportation to extend the KCJB concession period, which was initially 50 years to 80 years. KCIC submitted a request for a permit extension from the Director of PT. KCIC to the Ministry of Transportation via letter Number 0165/HFI/HU/KCIC08.2022 on August 15 2022 (Idris, 2022).

Dispute Resolution Mechanism that Occurs in China's One Belt One Road (OBOR)

Concept

BRI cooperation involving around 65 countries with different social, political and legal patterns can give rise to the potential for very complex legal disputes. Along the BRI route, there are various legal systems that apply, such as common law, civil law, continental Europe, Islamic law and other legal systems. The countries involved also come from various economic powers. This is a challenge for Indonesia to be able to manage legal relations between BRI project implementers. The types of regional disputes that may arise also have the potential to vary. It can be understood that with the number of goods, services, funding, government and cooperation involved in BRI, the pattern of legal relations between public and private entities, most of which will be international or transnational in nature. This requires special attention, especially to aspects of dispute resolution in the trade, investment, energy, construction, environmental protection, labor relations, taxation and financing sectors (Yudilla, 2019)

In the MoU of mutual understanding between Indonesia and China, article 5 states that "any differences or disputes that may arise between the parties regarding any issues in this MoU of Mutual Understanding will be resolved peacefully through consultation or negotiation between the parties." The use of mediation methods is also expected to become one of the main forums in resolving OBOR project disputes. Currently, China has signed the United Nations Convention on International Settlement Agreements Resulting from Mediation or Singapore Mediation Convention in August 2019. This convention is the legal basis for implementing dispute resolution agreements resulting from the mediation process. The existence of this legal framework will certainly provide a sense of security for the parties in implementing OBOR projects, especially complex OBOR projects. In the event that negotiation and mediation methods are unsuccessful in resolving the dispute, the parties have no choice but to take it to a more formal dispute resolution forum. The parties can resolve litigation and non-litigation disputes which include (Wiko, 2021):

1. National Court

Resolving transnational disputes before the district courts in a country has its own challenges. This is because parties and lawyers who come from other countries will find different patterns, legal systems and judicial systems. Not to mention the suspicion of impartiality on the part of the judge. This issue actually exists even in ordinary transnational disputes (non-OBOR). That's why parties usually avoid court forums. In the current context of OBOR, there are less than 20 countries that have signed bilateral agreements regarding judicial assistance in civil and criminal cases (Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters) with China. Based on the existing database, Indonesia is not included in the category of countries that signed the agreement.

2. China's International Commercial Courts (CICC)

CICC was formed in January 2018 as a permanent body under the Supreme People's Court of China. China's aims and objectives in establishing the CICC are as a form of dispute resolution such as mediation, arbitration and litigation. The formation of this Institution was carried out within the BRI framework to prepare a forum for resolving disputes arising from this project. The International Commercial Court (ICC) is actually not a new concept introduced to BRI members, the ICC was born from the need in the international business world for an international court resolution forum.

3. National Arbitration Forum

In each country, there are various arbitration institutions that offer business dispute resolution. In Indonesia there is the Indonesian National Arbitration Board (BANI) as the oldest national arbitration institution which is often used to resolve national business disputes. The use of the arbitration method provides flexibility in aspects of legal selection and trial methods that are not found in national courts.

4. International Arbitration

In contrast to national arbitration forums, international arbitration is often used by business people in cross-border disputes. Using international arbitration methods can be a good choice because the guarantee of execution of awards is guaranteed based on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The use of international arbitration forums is expected to become the main method for the OBOR project considering that almost all countries are participants in the New York Convention. Apart from that, international arbitration institutions, especially well-known

ones, are used to being involved in resolving complex transnational business disputes and high-cost, high-risk projects.

International trade disputes between countries refer to legal disputes arising from the interpretation and implementation of bilateral or multilateral agreements made or entered into by countries, including disputes related to international trade, investment, competition, intellectual property, finance. Labor, transportation and the environment. Based on statistics, China and countries along the OBOR have signed around 3,000 bilateral agreements and multilateral agreements including around 25% of bilateral economic and trade agreements and free trade agreements (FTAs). The multilateral agreements of the WTO, China Cooperation Organization and the Asian Infrastructure Investment Bank are also included (James, 2018).

Bilateral settlement mechanisms should be adopted in other areas of international trade. The international trade of countries along the OBOR is a peer to peer trading status centered on China and under the WTO multilateral trading system, which determines the tendency of bilateral negotiations on the choice of dispute resolution mechanisms. In terms of constructing certain dispute resolution mechanisms, mature systems such as consultation, mediation and arbitration can be used, but must consider their feasibility, effectiveness and convenience (Ren, 2019).

C. CONCLUSION

The concept of China's BRI strategy from an Indonesian perspective can be seen from Indonesia's geostrategic and geopolitical position which provides opportunities for Indonesia not only as a global economic route but also as an international maritime security route. These conditions place Indonesia at the same time as having superiority

and high dependence on the maritime sector. It is very logical if maritime economics becomes the basis for national economic development plans through the idea of a World Maritime Axis. Indonesia utilizes article 38 paragraph (3) letter d of Law Number 7 of 2014 concerning Trade which states that "Facilities and Infrastructure supporting foreign trade". President Xi Jinping said that the implementation of BRI policies must be based on the principles of transparency, openness and inclusiveness and no discrimination as stated in the WTO agreement. Considering the BRI concept is based on debt where China provides funds for infrastructure development such as (railroads, ports, airports). Based on the legal benefit theory, the implementation of China's BRI policy in Indonesia must be able to have benefits, not only for the country but for the Indonesian people. This activity carried out by Indonesia is to accelerate economic development and increase international trade by utilizing the investment model from China through the BRI Policy. Dispute Resolution Mechanisms can be carried out through: 1. National courts, 2. China's International Commercial Courts (CICC), 3. National Arbitration Forum, 4. International Arbitration Forum. From a regulatory aspect, development law in the OBOR development project in Indonesia is expected to be able to provide solutions to any problems that occur in the future. The resulting legal product must create an orderly life in society, nation and state. Of the several regulations that can be used as a reference for Indonesia's participation in China's policy, Indonesia still has doubts because the regulations regarding the OBOR concept in Indonesia are still unclear. So, it is feared that this legislation cannot provide legal protection for Indonesia.

Based on the conclusions outlined above, the advice that can be given is that it is hoped that Indonesia's participation in the OBOR Policy can increase economic growth in Indonesia, with infrastructure development with capital from China this will help

Indonesia in realizing the World Maritime Axis. However, new regulations or policies regarding OBOR are needed, considering that the OBOR policy is a long-term policy and will continue to carry out developments through the OBOR project. Indonesia is expected to be able to control the loan funds that come in for OBOR projects in Indonesia, because this system is a trap for diplomacy. Legal certainty is urgently needed so that there is no legal vacuum in implementing the OBOR policy in Indonesia. Indonesia must make efforts to prevent negative impacts from this policy. Indonesia must be able to manage funding from China, because there is the potential for massive corruption by irresponsible individuals.

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