

I recommend this book to legal practitioners, student and public that wished to learn the knowledge of current free market orientation in Indonesia and internationally.  
**Chairul Tanjung- Economic Coordinator Minister of the Republic of Indonesia**

This book is the culmination of theoretical and practical research in business world by Serian Wijatno and Dr. Ariawan Gunadi, S.H., M.H. regarding international trade law. This scientific literature written by both experts can expand the readers' horizon regarding international trade. **Dr. Amir Syamsudin, S.H., M.H.- Minister of Justice and Human Rights of the Republic of Indonesia**

This book presented a positive contribution and is a must read for readers and legal researchers that is interested to study international trade law. **Dr. Syarief Hasan- Minister of Cooperatives, Small and Medium Enterprises of the Republic of Indonesia**

The book about international trade law written by Serian Wijatno and Dr. Ariawan Gunadi, S.H., M.H. reviews trade aspect with concise language and trustworthy reference. Everyone who is interested to learn international trade law should consider this book seriously. **Ir. Basuki Tjahaja Purnama, MM-Plt. Gubernur DKI Jakarta**

Free trade is an unavoidable global phenomenon. This books offers analysis and solution for Indonesia's current and future free trade challenges. **Prof. Dr. Eriyantouw Wahid, S.H., M.H.- Emeritus Professor of Law, Trisakti University.**

The narration and language of the author distinctly observes the economic legal policy and business impact from international trade to business activity in Indonesia. The expertise of the author will become a good reference for lawyers and economics in Indonesia. **Indra Wijaya-Vice President Agung Podomoro Land/ CEO Agung Podomoro Education Foundation**

My belief is that the authors have published one of their best ideas in international trade law and this book is a must read for all people, bureaucrat, businessman, academicians or students with interest on free trade law, international trade law, economic law and economic science in general. **Theodore P. Rachmat- President Director PT. Triputra Investindo Arya**

This book is the incorporation of both authors with deep grasp of knowledge and potential to increase our horizon regarding international trade law. I bid appreciation and congratulations to both authors and wish a fruitful reading for practitioners and researchers. **Prof. Rhenald Kasali, Ph.D-President of Podomoro University**



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**B. 1**

**Serian Wijatno**  
**Dr. Ariawan Gunadi, S.H., M.H.**



# FREE TRADE

IN  
INTERNATIONAL  
TRADE LAW  
PERSPECTIVE



415 x 100 x 16

# FREE TRADE

IN  
INTERNATIONAL  
TRADE LAW  
PERSPECTIVE



*"My Family, My Foundation"*

*With love, I dedicate this book too:*

*My beloved wife, Lie Livia*

*My beloved daughter, Lindsay Joyceline  
Ariawan*

*My brothers, Hermawan Gunadi, SH and  
Agnes Anastasia, SH and Lukas Setiawan*

*My family Gunadi and Lenyati Yadi*

*My utmost thanks also goes to:*

- Prof. Dr. Felix Oentoeng Soebagjo, SH, LLM  
(Professor in Law of FHUI)*
- Dr. Agus Brotosusilo, SH, MA*
- Melda Kamil Ariadno, SH, LLM, Ph.D*

*"Respice, Adspice, Prospice*

*Examine the past, examine the present,  
examine the future"*

**Dr. Ariawan Gunadi, S.H., M.H.**



# CONTENT

Preface by Coordinator Minister of the Republic of Indonesia	v
Preface by Minister of Justice and Human Rights of the Republic of Indonesia	vii
Preface by Minister of Cooperatives, Small and Medium Enterprises of the Republic of Indonesia	ix
Preface by Plt of Governor of DKI Jakarta	xi
Preface by President Director of PT. Triputra Investindo Arya	xiii
Preface by President of Podomoro University	xv
Authors' Preface	xxiii
Chapter I. Origin of Free Trade Agreement	1
Chapter II. Free Trade Legal Theory	25
Chapter III. Free Trade Agreement and Subjects of Current Free Trade Agreement	45
Chapter IV. Free Trade Agreement: Effect and Issues	89
Bibliography	123
Authors' CV	143



## AUTHORS' PREFACE

Consumer is getting more intensive to conduct trade activities on a vast market along with the development of globalization. In some states, trade incomes have even become a vital source of growth for the state to increase society welfare, economic growth and job creation. A society that actively manages the economic potential of its people will perform and rise as developed state in the world economic realm.

The first example is Singapore that emerges after seceding with Malaysia on 1965. Singapore's founder, Lee Kuan Yew commented, " *We had no choice but to take a chance and sail into rough waters.*" As a politician and businessman, he then pioneered business and legal reform. Singapore took that advantage to leap into decades ahead: legal sovereignty, strategic location and human resource development. From the business aspect, the Singaporean government emphasized the pragmatic development of market players and adapting to the constant world market change. From the legal perspective, economic planning was also coupled



with transparent business law regulation. It is small wonder that the Singaporean economist, Goh Keng Swee views Singapore as *"a socialist economy that works"*.

The second example is Swiss, a small but very important state in the European continent. Its economic structure plays total orientation to free trade since state welfare depends completely on international trade and cross border investment. As consequence, Swiss actively pursues foreign economic activity that could grant universal access to market in developing states by means of Free Trade Agreement (FTA). As a developed state, Swiss manages 2 aspect: 1) the state plays passive role by conditioning the international market access and demanding similar condition to its competitor such as the European Union, United States of America (US) and Japan; and 2) Swiss companies with their advanced technology and human resources tended the "gap" on FTA to penetrate the free trade market at developing state. Swiss relies on its private entity as major market player so that the former can reap benefits from the latter as government regulator.

The third example is Japan as Asia's free market pioneer. Known for its world class industry standards such as Mitsubishi, Honda, philosophy of *kaizen* and *bushido*, Japan adopted free trade by orienting on heavy industry and intellectual property innovation. What makes

Japan unique from other state is the courage to test the standard of its national industry on an international scale. This success made it as a powerful contender for multilateral economic organization such as ASEAN, AFTA and the European Union. However, Japan also tenaciously protects its national industry such as crops and textile which has failed to contest with other states whether in quantity or price. Until now, the Japanese government has successfully created its own free trade concept and dominated automotive market in America, South East Asia and Europe.

Each state respectively applies their respective pattern of free trade. This thing had become a source of inspiration for the author to deduct knowledge and experience in describing the topic of free trade and its impact to Indonesia. Free trade is an idea that predates back to the beginning of the 20<sup>th</sup> century, pioneered by mercantilism and promoted by trade guilds to explore a better business opportunity. Along with the progress of age, states began to take over the role although still requiring support from private entities and academician to study and understand the impact of free trade to the state.

Internally, the trend of free trade is the gateway for state to protect national industry and accommodating small medium enterprise owners to meet international market



demand with creative standards. The key is to increase industrial capacity and increase human resource quality. Externally, state to inquire free trade and reach regional scale alliance to strengthen economic, social, cultural, defense and security relationship to fend off foreign threat.

The author understands that the writings on this book were made will all its limitation and available resource. For that, the author humbly accepts any suggestions and critics from the reader.

Regards,

Serian Wijatno

Dr. Ariawan Gunadi, S.H., M.H.

## CHAPTER I

# ORIGINS OF FREE TRADE AGREEMENT

### A. History of Free Trade Regime

With the passing of time, the development of global economy nowadays has entered the free trade regime<sup>1</sup>, whereas some states and faction considers free trade as a new form of colonialism<sup>2</sup>. Within the international trade, interstate trade has the potential to benefit both parties by specializing on their respective commodity products. However, reality demonstrated that a liberal economy does

<sup>1</sup> *Free trade* is a policy by which a government does not discriminate against imports or interfere with exports by applying tariffs (to imports) or subsidies (to exports) or quotas. See Encyclopaedia Britannica, <http://global.britannica.com/EBchecked/topic/218403/free-trade>, downloaded on January 17, 2013.

<sup>2</sup> See: Clarence Clyde Ferguson, Jr, "Redressing Global Injustices: The Role of Law", in Frederick E. Snyder dan Surakiart Sathiratai (eds). *Third World Attitudes Toward International Law-An Introduction* (The Netherlands: Martinus Nijhoff Publishers, 1987), p. 365.; Stephen Gill dan David Law stated that : "The Terms 'North' and 'South' are crude and contestable labels. By the North is usually meant the states of Asia (except Japan) Africa and Latin America. Australia and New Zealand may be southern in location but are counted as part of the affluent West." Lihat: Stephen Gill dan David Law, *The Global Political Economy: Perspectives, Problems and Policies*, (Baltimore: The John Hopkins University Press, 1988), p. 280.



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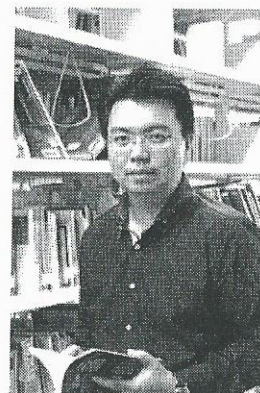
Serian Wijatno has earned multiple awards during his career and dedication to society such as:

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