



ICA-CEPA Within the Framework of GATT 1994: Negative Impact on Indonesia as a Developing Country

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Abstract: The Indonesia-Canada Comprehensive Economic Partnership Agreement (ICA-CEPA) is a comprehensive trade agreement that stands under the framework of the GATT 1994, specifically Article XXIV, which regulates the establishment of free trade areas and customs unions. The purpose of this article is to examine Indonesia's position in the ICA-CEPA negotiations from the perspective of international trade law and assess whether the provisions of the GATT provide sufficient space for Indonesia to protect its national interests. This study uses a normative-critical approach with an analysis of international laws and agreements, as well as a policy review related to the mechanism of revocation and postponement of agreements. The results of the analysis show that the GATT 1994, in particular Article XXIV, only provides a legal basis for the establishment of the ICA-CEPA, but does not clearly regulate the clause for the revocation or postponement of the implementation of the agreement. These provisions are entirely dependent on the text of the ICA-CEPA itself, so Indonesia has limited power to terminate or suspend the agreement if it is proven to have a severe negative impact on the economy and the sovereignty of domestic regulations. This article argues that the absence of a strong legal basis in the 1994 GATT makes the ICA-CEPA potentially serve more as a trade political tool that benefits Canada, while Indonesia is in a less protected position within the structure of the agreement.

Keywords: ICA-CEPA, GATT 1994, Developing Countries, Developed Countries, International Agreements.

INTRODUCTION

Within the framework of international law, the ICA-CEPA was built under the umbrella of the 1994 General Agreement on Tariffs and Trade (GATT), specifically Article XXIV, which regulates the establishment of *free trade areas (FTAs)* and *customs unions* among WTO member states. A *free trade area (FTA)* is defined as a group of two or more customs areas in which import duties and other trade barriers are eliminated for substantially *all trade* between these regions, but each member maintains its own tariff policy towards countries outside the region. Meanwhile, the *customs union* is a form of deeper integration, where in addition to

removing trade barriers among members, members also apply the same common *external tariffs* to countries outside the region.

However, it should be understood that *the Comprehensive Economic Partnership Agreement* (CEPA) such as ICA-CEPA is substantively a form of international agreement equivalent to an FTA, but with a much broader and deeper scope. While traditional FTAs generally only focus on tariff liberalization and non-tariff barriers in trade in goods, then CEPA also covers trade in services, investment, development cooperation, intellectual property rights, business competition policies, government procurement of goods and services, *regulatory coherence*, and modern economic issues such as environmental sustainability, employment, and empowerment of micro, small, and medium enterprises (MSMEs). In other words, CEPA is a comprehensive and multidimensional version of the FTA, which not only opens up market access but also harmonizes the regulatory frameworks of the two countries significantly (Budiman *et al.*, 2025: 102)

The General Agreement on Tariffs and Trade (GATT) 1994 Article XXIV provides a normative basis that Indonesia and Canada may treat each other preferentially without violating the *most-favoured-nation* (MFN) principle, as long as they meet the requirements for the removal of tariff and non-tariff barriers and do not worsen trade conditions with third countries. The problem is that Article XXIV does not regulate in detail the depth of liberalization, the mechanism for protecting sensitive sectors, or the special obligation for developed countries to limit their profits (Soeparman, 2012:12).

The main objective of ICA-CEPA is to increase market access for Indonesian products and services to Canada, while opening up opportunities for Canadian products to enter the Indonesian market with lower barriers. Canada will open access to about more than 90% of tariff posts for Indonesian products, including textiles, footwear, furniture, processed foods, and seafood, while Indonesia will open about 85.54% of tariff posts for priority Canadian products. In the official narrative, this agreement is expected to encourage Indonesia's export growth, create jobs, and increase Indonesia's participation in the global value chain (ICA-CEPA, 2025).

However, behind the promotion of economic benefits, Indonesia's position as a developing country in the ICA-CEPA negotiations raises concerns about the imbalance in the distribution of benefits. Developed countries like Canada have stronger negotiation, institutional, and regulatory standards, so they tend to maximize the benefits of trade liberalization. In the context of ICA-CEPA, Indonesia risks facing pressure on domestic industries, MSMEs, and sectors that are not fully prepared to compete with imported products that are more of a higher standard, strongly branded, and supported by global distribution networks (Cut, 2023:246).

Normatively, Article XXIV of the GATT 1994 only provides a general legal basis that Indonesia and Canada are allowed to establish a *free trade area* without violating the MFN principle. However, this provision does not explicitly govern the revocation, postponement, or review clause of modern treaties such as the ICA-CEPA. The implication is that when negative impacts occur in the future, Indonesia does not have a strong international legal basis to stop or suspend the agreement; such a mechanism relies on clauses in the ICA-CEPA's own text, which tend to be designed with Canada's interests in mind as a more experienced advanced partner in trade agreements.

Under these conditions, the ICA-CEPA has the potential to function more as a trade political tool that benefits Canada than Indonesia. The wide negotiating space and minimalist provisions of the GATT 1994 allowed Canada to maximize market access, expand regulatory influence, and strengthen its position as a *"standard-setter"* for Indonesia. On the other hand, Indonesia must fight hard at the domestic level to ensure that sensitive sectors are not displaced, without the strong support of a balanced international normative framework.

Historically, examples of cases such as *the "Banana Wars"* show how the developed country, the United States, once used a combination of political, military, and economic power to protect the interests of fruit companies in Central America. In the modern context, the ICA-CEPA does not use weapons, but can function similarly through the dominance of negotiations, regulatory influence, and the imbalance of imposed standard adjustments. Modern comprehensive trade agreements, including CEPA, can be a subtle form of economic dominance, but still have a serious impact on the economic structure of developing countries (Steve, 2003).

In addition, ICA-CEPA requires Indonesia to adapt to international standardization in the fields of environment, employment, and investment protection. This standardization can improve the quality, efficiency, and sustainability of the industry, but at the same time pose challenges for local business actors who do not have adequate capacity. National policies on education, training, technology, and subsidies can be key, but the GATT 1994 framework does not impose an obligation on developed countries to finance or accelerate the adjustment process. In other words, the burden of adjustment practically falls more on the shoulders of Indonesia, while the initial benefits are more felt on the Canadian side.

On the basis of the above conditions, there is an urgent need to critically analyze the ICA-CEPA from Indonesia's perspective, particularly with regard to the negotiating position, the framework of the GATT 1994, and the limitations of the mechanism for revoking or postponing agreements. This article not only assesses the promised economic benefits, but also examines whether the ICA-CEPA really safeguards Indonesia's national interests in the long term, or has the potential to serve as a trade policy tool that is more favorable to Canada as a developed country. As such, this article aims to contribute to a more balanced understanding of the risks and benefits of ICA-CEPA, as well as policy recommendations for Indonesia to maximize the benefits and minimize the losses of this agreement. For this reason, based on the description above, the author is interested in writing an article with the title "ICA-CEPA Within The Framework Of GATT 1994: Negative Impact On Indonesia As A Developing Country".

Problem Formulation

1. What is Indonesia's position in the ICA-CEPA negotiations between Indonesia and Canada according to the 1994 GATT framework article XXIV?
2. What could be the basis for the revocation and postponement of the ICA-CEPA in Article XXIV of the GATT 1994?

RESEARCH METHODS

Research Object

The object of research in this study is the *Indonesia-Canada Comprehensive Economic Partnership Agreement (ICA-CEPA)* as an international agreement in the field of trade and investment signed by the Republic of Indonesia and Canada on September 24, 2025 in Ottawa. The scope of the research object includes all the provisions in the agreement text related to the liberalization of trade in goods, services and tariff reduction.

In addition, this study also uses the normative framework of GATT 1994 Article XXIV as an object of analysis to assess the suitability and limitations of the legal basis for the establishment of ICA-CEPA in the context of relations between developed countries (Canada) and developing countries (Indonesia). Thus, the object of the research is not limited to the text of the treaty alone, but also includes the context of international law that underlies it as well as the practical implications for Indonesia's national interests.

Types and Sources of Data

This research uses a type of normative legal research that emphasizes the study of primary, secondary, and tertiary legal materials. The normative approach was chosen because the main focus of the research is on the analysis of the written legal provisions in ICA-CEPA and GATT 1994 Article XXIV, as well as how they should be interpreted and applied in the context of the imbalance between developed and developing countries. The data sources in this study consist of three categories:

- a. Primary legal materials, namely the official text of the *Indonesia-Canada Comprehensive Economic Partnership Agreement (ICA-CEPA)*, the *General Agreement on Tariffs and Trade (GATT) 1994*, especially Article XXIV paragraphs (4), (5), and (8), the *Vienna Convention on the Law of Treaties (VCLT) 1969*, especially Articles 54 to 64 which regulate the termination and postponement of agreements, Law of the Republic of Indonesia Number 24 of 2000 concerning Agreements International, Law Number 25 of 2007 concerning Investment, official documents issued by the Ministry of Trade of the Republic of Indonesia, the Coordinating Ministry for Economic Affairs, and Global Affairs Canada regarding the negotiation process and the results of the ICA-CEPA.
- b. Secondary legal materials, namely scientific publications and legal literature that discuss or comment on provisions relevant to the object of research. Secondary legal materials include: legal journals, textbooks, expert opinions and policy analyses published in credible mass media and institutional websites.
- c. Tertiary legal materials, namely legal dictionaries, legal encyclopedias, and legal literature indexes used to verify the meaning of technical terms in international trade and investment law.

Data Collection Techniques

The data collection technique in this normative law research is carried out through literature studies. Data is collected by searching, identifying, inventorying, and systematically reviewing all primary, secondary, and tertiary legal materials relevant to the object of research. The data collection procedure is carried out through the following steps (Soerjono, 2024:23).

Data Analysis Techniques

Data analysis in this normative legal research is carried out using a qualitative analysis method, namely by interpreting, delineating, and connecting primary, secondary, and tertiary legal materials systematically to answer the formulation of problems. Through this analysis, the researcher interprets the provisions of Article XXIV of the GATT 1994 on the establishment of free trade areas, the provisions of the Vienna Convention on the Law of Treaties 1969 on the termination and postponement of agreements, and the articles in the ICA-CEPA that regulate tariff liberalization, investment, and dispute settlement mechanisms. The researcher then linked these provisions to the concept of imbalance between developed and developing countries and to the practice of their application in investment dispute cases that have involved Indonesia. The results of the analysis are then arranged in a descriptive juridical manner, which describes the positive legal provisions that apply while providing a critical assessment of whether the GATT 1994 Article XXIV framework has protected Indonesia's interests as a developing country or actually strengthens Canada's position and makes it difficult for Indonesia to revoke or postpone the agreement if it proves to be detrimental in the future (Muhaimin, 2020:71).

DISCUSSION RESULTS

Indonesia in ICA-CEPA Negotiations Based on the GATT 1994 Framework Article XXIV

The Indonesia-Canada Comprehensive Economic Partnership Agreement (ICA-CEPA) signed on September 24, 2025 in Ottawa is the first comprehensive trade agreement between Indonesia and countries in the North American region. Within the framework of international law, this agreement was built under the umbrella of *the General Agreement on Tariffs and Trade (GATT) 1994*, specifically Article XXIV, which regulates the establishment of *free trade areas (FTAs)* and customs unions among *World Trade Organization (WTO)* member states. Article XXIV provides a normative basis that Indonesia and Canada are allowed to treat each other preferentially without violating the *most-favoured-nation (MFN)* principle, provided that tariff and non-tariff barriers are eliminated for "*substantially all the trade*" between the two countries.

"(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories."

However, the provisions of Article XXIV of the GATT 1994 have a fundamental weakness when it is associated with Indonesia's position as a developing country in negotiations with Canada as a developed country. As stated by *The South Centre* in its 2008 *Analytical Note*, Article XXIV basically "does not have a development dimension". This means that the legal framework that allows the establishment of FTA or CEPA is not designed to protect the interests of developing countries that have lower negotiating capacity and industrial competitiveness than their counterparts from developed countries.¹

In the context of ICA-CEPA, the inequality of capacity between Indonesia and Canada is clearly reflected in the economic data of the two countries. Based on the *Economic Impact Assessment* report published by *Global Affairs Canada* in December 2025, Canada's gross domestic product (GDP) will reach US\$3.1 trillion in 2024, while Indonesia's GDP will be at US\$1.9 trillion. This gap is even sharper when calculated on a per capita basis: Canada's GDP per capita reaches US\$74,400, more than ten times that of Indonesia's US\$6,700. This economic capacity gap has direct implications for Indonesia's *bargaining position* at the negotiating table. Developed countries such as Canada have a team of professional negotiators backed by extensive research and decades of experience in negotiating trade agreements (such as CUSMA, CETA, and CPTPP), while Indonesia has to deal with limited institutional and technical capacity (Clair, 2016:69).

Structurally, this inequality is exacerbated by the fact that Article XXIV does not provide for a special obligation for developed countries to provide special *and differential treatment* to developing countries. As noted by *The South Centre*, in practice, "*some WTO Members, especially developed countries, have protected their markets in their RTAs*" and this is "*grounds for developing countries to legitimately open up less fully*". However, the basis for legitimacy to open markets in a more limited way is not expressly accommodated in the text of Article XXIV, so that in negotiation practice, developing countries such as Indonesia continue to face pressure to liberalize on par with developed countries (Nandang, 2012: 45).

The legal loophole in Article XXIV becomes increasingly problematic considering that *the Comprehensive Economic Partnership Agreement (CEPA)* has a much broader scope than the traditional FTA. The CEPA not only regulates the liberalization of tariffs on goods, but also covers trade in services, investment (including commercial presence or Mode 3 of the GATS),

intellectual property rights, business competition policy, government procurement of goods and services, *regulatory coherence*, and environmental and labor issues. The wider the scope of the agreement, the greater the potential for an imbalance of benefits that can occur, especially when developing countries do not have the equal capacity to take advantage of opportunities while protecting their strategic sectors.

The impact of this imbalance can be seen from the projected tariff liberalization in the ICA-CEPA. Based on official data, Canada will remove import duties for 90.5% of its tariff posts, which cover 92% of existing trade with Indonesia. Meanwhile, Indonesia will eliminate or reduce tariffs on 85.9% of its tariff posts, representing 97% of existing trade with Canada. These figures may seem symmetrical at first glance, but a closer analysis shows that Indonesia's leading products that gain tariff-free access to Canada (such as textiles, footwear, furniture, processed foods, and seafood) still have to face significant *non-tariff barriers*, including relatively stricter labor, environmental, and health standards. On the other hand, Canadian products entering Indonesia (such as frozen meat, wheat, potatoes, processed products, as well as capital and technology goods) have superior competitiveness in terms of technology, brands, and global distribution networks (ICA-CEPA, 2025).

More worryingly, the projected economic impact of the ICA-CEPA shows that the short- to medium-term benefits tend to be unbalanced. Based on economic modeling conducted by the *Office of the Chief Economist Global Affairs Canada*, it is estimated that once CEPA is fully implemented, Canada's GDP will increase by US\$226 million, while bilateral trade is expected to increase by US\$1.5 billion. Canada's exports are projected to increase by US\$173 million (4.8%), with profits spread across sectors such as electronics, machinery, motor vehicle parts, chemicals, metals and business services. Meanwhile, Canada's imports from Indonesia are projected to grow by US\$1.3 billion (39%), mainly in apparel and leather products. This projection shows that despite the increase in trade volumes, the profit structure is still biased as the growth of Canadian imports from Indonesia is dominated by low-value-added products, while Canada's exports to Indonesia are in high-value-added sectors.

An even greater challenge arises from the existence of an *Investor-State Dispute Settlement (ISDS)* mechanism in the ICA-CEPA. As criticized by experts in *bilaterals.org* publications, ISDS provides a powerful mechanism for corporations to challenge public policies and court rulings designed to protect health, the environment, and human rights. More than 1,400 ISDS cases have been filed against countries around the world, including 36 cases against Canada. Extractive industries (mining, oil and gas) have initiated more than a quarter of all ISDS cases, and Canadian mining companies are among the most frequent use of this mechanism.

For Indonesia, the existence of ISDS in ICA-CEPA presents a serious risk to the domestic policy *space*. As warned by researchers from the *Transnational Institute*, the effectiveness of Indonesia's *mineral downstreaming* policy can be threatened by trade agreements that provide excessive protection to foreign investors. In this context, ICA-CEPA has the potential to lock Indonesia into a position as an exporter of raw materials at the bottom of the *global value chain*, instead of encouraging industrialization to higher value-added sectors (Press Release, 2026)

Furthermore, the *Lowy Institute* in its analysis of Indonesia's trade strategy emphasizes that the success of agreements such as ICA-CEPA is determined not only by the text of the agreement itself, but also by the accompanying public narrative. Experience with the *Trans-Pacific Partnership* and the *EU-US Transatlantic Trade and Investment Partnership* shows that these agreements "*didn't collapse over tariffs but because the public narratives around them, framed as threats to sovereignty and jobs, became politically toxic*". In the case of ICA-CEPA, the narrative challenge is no less complex: Canada brings "*intense public scrutiny of Indonesia's extraction and labour practices*", while Indonesia brings "*determined industrial*

ambitions and expectations of policy space for downstream processing". In the absence of a legally guaranteed balance in the treaty text, the risk that negative narratives will dominate and undermine the legitimacy of the agreement in the eyes of the two countries' public becomes very real.

Thus, it can be concluded that Indonesia's position in the ICA-CEPA negotiations is very vulnerable to an imbalance of benefits, caused by three main factors: first, the normative weakness of Article XXIV of the GATT 1994 which does not have a development dimension and does not require special treatment for developing countries; second, the very unequal economic and institutional capacity gap between Indonesia and Canada; third, the existence of an ISDS mechanism that has the potential to limit space Indonesia's domestic policy in regulating strategic sectors such as mining, renewable energy, and mineral downstreaming. Without a comprehensive mitigation strategy, including the affirmation of *right-to-regulate clauses*, restrictions on ISDS coverage, and robust *safeguard* and *review period* mechanisms, ICA-CEPA risks becoming an instrument that benefits Canada as a developed country, rather than being a balanced and equitable economic partnership as promised in its official narrative.

Basic Analysis of the Revocation and Suspension of the ICA-CEPA in the Framework of GATT 1994 Article XXIV

In international treaty law, the mechanism of revocation, withdrawal, or postponement of an agreement is a fundamental aspect that determines the extent to which a participating country has the flexibility to exit its international commitments when circumstances change or when the agreement has a negative impact that was not anticipated beforehand. Regarding the ICA-CEPA, the crucial issue that arises is whether Indonesia has an adequate legal basis to carry out termination, suspension, or *unilateral withdrawal* from the agreement, if in the future this agreement proves to cause fundamental losses to the national interest. In the provisions of the GATT 1994, Article XXIV serves as an umbrella framework as well as the customary international law that regulates the termination of agreements as codified in the *Vienna Convention on the Law of Treaties (VCLT) 1969* (Sri Setianingsih, 2019:185).

Article XXIV of the GATT 1994, which is the legal basis for the establishment of the ICA-CEPA as a *free trade area*, basically does not regulate at all the mechanism for the revocation, postponement, or withdrawal of a free trade agreement. This article only regulates the conditions for the establishment of FTAs, such as the obligation to remove trade barriers for "*substantially all trade*" and the aim to facilitate trade between members without raising barriers for third countries. In other words, the GATT 1994 provides "permission" for the formation of an FTA or CEPA, but in no way provides a "way out" for disadvantaged member states. This differs significantly from the legal regime of bilateral investment agreements (BITs) which generally contain explicit duration and termination clauses (GATT, 1994).

The absence of termination arrangements in Article XXIV has very serious implications for Indonesia. When an agreement such as the ICA-CEPA does not contain provisions on the duration or mechanism of withdrawal, then under international law, the arrangements regarding termination or delay must refer to the *Vienna Convention on the Law of Treaties (VCLT) 1969*, in particular Articles 54 to 64. VCLT, although not ratified by all countries (including Indonesia, which only ratified it through Law No. 24 of 2000 concerning International Agreements), is widely recognized as a codification of *customary international law* in the field of international agreements. Article 56 paragraph (1) of the VCLT expressly states that an agreement that does not contain provisions regarding termination or withdrawal cannot be withdrawn or terminated unless: (a) it is proven that the parties intend to allow for the possibility of withdrawal; or (b) the right of withdrawal may be implied by the nature of the agreement (*Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331, art 56*).

"A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is **not subject to denunciation or withdrawal** unless: (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty."

The provisions of Article 56 of the VCLT are very restrictive and place a heavy *burden of proof* on the party who wants to withdraw. In the context of the ICA-CEPA, Indonesia must be able to prove that the parties (Indonesia and Canada) originally intended to allow withdrawal, or that the nature of the CEPA agreement is such that it implicitly recognizes the right of withdrawal. This kind of evidence is difficult to present given that modern trade treaty practices, including CEPA, are generally designed as long-term commitments with termination mechanisms explicitly set out in the text of the agreement itself, rather than being left to the interpretation of the parties' intentions (Anthony, 2012).

In addition, VCLT also regulates several reasons for termination or delay outside the terms of the agreement, namely: (a) material breach by one of the parties (Article 60); (b) *supervening impossibility of performance* due to the permanent loss of the object of the agreement (Article 61); (c) a *fundamental change of circumstances* that was not anticipated in advance (Article 62); and (d) the *consent of all the parties* (Articles 54 and 57).

Of the five reasons, the most theoretically relevant and the most difficult to prove in practice is Article 62 of the VCLT on the *fundamental change of circumstances* or the doctrine of *boiling sic stantibus*. This doctrine allows a country to terminate or withdraw from the treaty in the event of a fundamental change in the circumstances on which the country's agreement to be bound by the treaty is based. However, Article 62 of the VCLT also sets very strict conditions: the changes must not be anticipated in advance by the parties, must be fundamental, and radically change the scope of the obligations that still have to be implemented. More importantly, Article 62 paragraph (2) explicitly excludes the application of this doctrine to treaties that establish territorial boundaries or other agreements of a "stable" nature. The International Court of Justice (ICJ) in its various rulings, including the *Fisheries Jurisdiction* case (1973) and *Gabcikovo-Nagymaros* (1997), has affirmed that the *doctrine of boiling sic stantibus* can only be applied in very exceptional and unforeseeable circumstances (*Fisheries Jurisdiction Case*, 1973).

In the context of ICA-CEPA, the burden of proof that Indonesia must bear to use Article 62 of the VCLT is almost impossible to meet. Indonesia must prove that from the time the negotiations began in 2021 until the agreement was signed in September 2025, there has been a fundamental, unanticipated and radically changing situation of Indonesia's obligations. In fact, the structural condition of inequality between Indonesia and Canada has been known since the beginning of negotiations. The fact that Indonesia still agrees to the agreement despite knowing the inequality can be interpreted as an assumption *of risk*, so that the *doctrine of boiling sic stantibus* is difficult to apply.

More worryingly, based on an analysis of the ICA-CEPA public text and various expert comments, this agreement does not contain a unilateral revocation or withdrawal clause with a reasonable *notice period*. In comparison, many modern trade agreements (such as the CPTPP or USMCA) include clauses that allow participating countries to withdraw by giving written notice 6 to 12 months in advance. The absence of such a clause in the ICA-CEPA means that the only way for Indonesia to exit the agreement is through renegotiation and mutual agreement with Canada (Articles 54 and 57 of the VCLT), or through an almost impossible proof of a material breach or fundamental change of circumstances (*Vienna Convention on the Law of Treaties* 1969, 1155 UNTS 331, art 56).

The absence of a clear revocation mechanism is no coincidence. In the practice of negotiating trade agreements, developed countries such as Canada with greater capacity and

experience tend to avoid the inclusion of loose withdrawal clauses because it can reduce predictability and legal certainty for their investors and business actors. Canadian investors who invest in Indonesia under the protection guarantees provided by the ICA-CEPA (including the *Investor-State Dispute Settlement* (ISDS) mechanism will feel threatened if Indonesia can easily exit the agreement. Therefore, from a Canadian perspective, long time lags and difficult termination mechanisms are precisely the desired features to protect the interests of their investors.

In this context, the ISDS mechanism actually strengthens the position of foreign investors and further complicates Indonesia's efforts to exit the agreement. When Indonesia attempts to suspend or terminate an agreement for reasons of public interest protection (e.g., to impose a stricter mineral downstream policy), Canadian investors can immediately file an ISDS lawsuit based on the investment protection guarantee provided by the ICA-CEPA, even before the agreement termination process is complete. Thus, ISDS functions as a "*lock-in mechanism*" that effectively neutralizes Indonesia's right to use the termination instruments available in customary international law (Elysa, 2025: 220).

Historically, the practice of developing countries trying to exit adverse investment or trade agreements shows how difficult the process can be. Examples are South Africa's efforts to reevaluate its bilateral investment agreements (BITs) with European countries, or India's efforts to end BITs with various countries, both of which have faced significant political and legal resistance. In a more extreme context, *Venezuela's* efforts to withdraw from the *ICSID Convention* (which governs international investment arbitration) took years and still have complex legal consequences for ongoing claims (Pillsbury, 2026)

Based on the analysis above, the following conclusions can be drawn. First, Article XXIV of the GATT 1994 does not in any way provide for the mechanism for the revocation or postponement of FTA/CEPA, so that the entire regulatory burden on termination is left to the customary international law codified in the VCLT. Second, the VCLT provides a very narrow exit for Indonesia to withdraw from the ICA-CEPA, especially since the agreement does not contain a unilateral withdrawal clause and the structural conditions of inequality have been known since the beginning of the negotiations. Third, the existence of the ISDS mechanism in the ICA-CEPA effectively serves as a "locking mechanism" that strengthens the position of Canadian investors and makes it difficult for Indonesia to exercise the available termination rights. Fourth, Indonesia has practically little choice but to abide by the agreement for its entire duration, unless Canada voluntarily agrees to an amendment or mutual termination, or there is a catastrophic and completely unforeseeable change of circumstances.

The implications of this finding are very serious for Indonesia's position. Once the ICA-CEPA has been ratified and enters into force, Indonesia essentially loses the sovereignty to unilaterally terminate its commitments, even if the agreement proves to be economically detrimental, damaging domestic sectors, or hindering national development policies. This is why the analysis of the final text of the ICA-CEPA, especially the articles regulating the duration, termination, and *review period*, is crucial before the ratification process by the House of Representatives. In the absence of a *fair sunset* clause or *withdrawal clause*, the ICA-CEPA has the potential to become a "perpetual agreement" that binds Indonesia to an unbalanced commitment with Canada for an indefinite period.

CONCLUSION

Article XXIV of the GATT 1994 which formed the basis for the establishment of the *Indonesia-Canada Comprehensive Economic Partnership Agreement* (ICA-CEPA) does not have a *development dimension* as criticized by *The South Centre* in its 2008 *Analytical Note*. Juridically, the legal framework that allows the establishment of a *free trade area* or CEPA is not designed to protect the interests of developing countries such as Indonesia, which have

lower negotiating capacity and industrial competitiveness than their counterparts from developed countries such as Canada. The symmetrical provisions of Article XXIV force Indonesia and Canada to assume the same obligations, without any special obligation for developed countries to provide special and differential *treatment*. The highly unequal economic capacity gap—Canada's GDP per capita is more than ten times that of Indonesia's—reinforces the finding that Indonesia's position in the ICA-CEPA negotiations is vulnerable to an imbalance of benefits, reflected in Canada's more favorable liberalization structure and the existence of an *Investor-State Dispute Settlement (ISDS)* mechanism that has the potential to limit domestic policy *space* Indonesia, included in the mineral downstream policy which is a national priority.

Further, Article XXIV of the GATT 1994 does not in any way provide for the mechanism for the revocation, postponement, or withdrawal of a free trade agreement. Juridically, the absence of this arrangement resulted in the entire burden of termination of the agreement being placed on *the Vienna Convention on the Law of Treaties (VCLT)* 1969, which provided a very narrow remedy through Article 56 and Article 62 on the doctrine of *fundamental change of circumstances (rebus sic stantibus)*. The structural inequalities between Indonesia and Canada that have been known since the beginning of the negotiations cannot be qualified as a fundamental, unanticipated and radically altering change in the obligations of the agreement. Thus, the absence of a unilateral *withdrawal clause* in the ICA-CEPA text, coupled with the existence of an ISDS mechanism that functions as a *lock-in mechanism*, effectively complicates and even eliminates Indonesia's ability to exit the agreement if it is proven to be detrimental to national interests in the future. Legal considerations in this analysis consistently assert that once the ICA-CEPA is ratified and enters into force, Indonesia essentially loses the sovereignty to unilaterally terminate its commitments, so the analysis of the final text of the agreement—particularly the articles on duration, termination, and *review periods*—becomes crucial.

ADVICE

The researcher argues that the formulation of the ICA-CEPA text, especially related to the protection of the interests of developing countries, needs to be carried out more precisely by detailing the objective parameters regarding the right *to regulate*, limiting the scope of ISDS only to cases of direct expropriation without compensation, and including a fair *withdrawal clause* with a *notice period* which is reasonable. Clarity of these arrangements is important to prevent an imbalance of benefits and protect Indonesia's domestic policy space from lawsuits from foreign investors. In addition, before the ratification process, the government should prioritize the principle of prudence by conducting an in-depth review of the final text of the agreement and developing a comprehensive national strategy to prepare vulnerable domestic sectors (agriculture, fisheries, MSMEs, and labor-intensive industries). Institutions that approve ratification should exercise their constitutional right to conduct strict supervision by involving international legal experts, economists, representatives of the industrial sector, and civil society organizations, so that the balance of rights and obligations between Indonesia and Canada is maintained and legal certainty in international trade relations can be optimally realized.

REFERENCE

Books

- Striffler, Steve, and Mark Moberg (eds.). *Banana Wars: Power, Production, and History in the Americas*. Durham: Duke University Press, 2003.
- Soerjono Soekanto and Sri Mamudji. 2024. *Normative Law Research: A Brief Review*. Depok: Rajawali Press.

- Soeparman Soedjono. 2012. *International Trade Law*. Jakarta: Rajawali Press.
- Sri Setianingsih Suwardi and Ida Kurnia. 2019. *International Treaty Law*. Jakarta: Sinar Grafika.
- Sutrisno, Nandang. *Advancing the Interests of Developing Countries in the WTO System*. Translated by Susi Fauziah. Cianjur: IMR Press, 2012.
- Muhaimin. 2020. *Legal Research Methods*. Mataram: Mataram University Press.

Journal

- Imam Budiman, Bulbul Abdurrahman, and Masayu Fatimah Azmi Aradea. 2025. "The Role of the Comprehensive Economic Partnership Agreement (CEPA) and Investment in Indonesia's Economic Diplomacy." *Journal of Indonesian Social Sciences and Humanities* 14 (2): 99.
- Cut Dhea Permata Sari and Hendra Ibrahim. 2023. "The Role of Politics in International Trade Policy Shaping (A Comparative Study Between Developed and Developing Countries)." *Journal of Minfo Polgan* 12 (2): 2464-2473.
- Clear Gammage. 2016. "Overcoming the Development Deficit of Article XXIV: Promoting Equality through North-South RTAs." *Law and Development Review* 9 (1): 69-93.
- Anthony Aust. 2012. "Treaties, Termination." In *Max Planck's Encyclopedia of Public International Law*, ed. Rüdiger Wolfrum. Oxford: Oxford University Press.
- Apriyanti, Elisha Karina. "Paradigm Shift in International Investment Law: Balancing Foreign Direct Investment (FDI) Protection with State Regulation Sovereignty in the Context of Post-BIT Indonesia Agreement Reform." *Media Hukum Indonesia* 3, no. 4 (2025).

Laws and Regulations

Law Number 24 of 2000 concerning International Agreements

Other Resources

- Canada-Indonesia Comprehensive Economic Partnership Agreement (ICA-CEPA)
- Vienna Convention on the Law of Treaties (VCLT 1969)
- General Agreement on Tariffs and Trade 1994 (GATT 1994)
- Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland)* [1973] ICJ Rep 49.
- Transnational Institute. 2026. "Joint Statement on Raw Materials in EU-Indonesia CEPA." Press release, March 16. <https://www.tni.org/es/node/18861>.
- Pillsbury Winthrop Shaw Pittman LLP. "Venezuela Reopens to Foreign Investment: Legal Reforms and Emerging International Dispute Risks." JD Supra, May 18, 2026. <https://www.jdsupra.com/legalnews/venezuela-reopens-to-foreign-investment-4424968/>.