

# Justifikasi berdasarkan Non-Trade Policy Objectives atas Klaim Ketidapatuhan terhadap General Agreement on Tariffs and Trade dan Praktiknya: Studi Kasus Indonesia di World Trade Organization = Justification based on Non-Trade Policy Objectives for Claim of Incompliance to the General Agreement on Tariffs and Trade and its Practices: Indonesia Case Study in the World Trade Organization

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## Abstrak

Setiap negara, termasuk Indonesia, memiliki otonomi dan kedaulatan dalam membentuk peraturan nasional untuk mencapai tujuan kebijakan yang bukan perdagangan atau non-trade policy objectives yang dikehendaki oleh negara tersebut. Pada praktiknya muncul sengketa-sengketa di hadapan Dispute Settlement Body World Trade Organization (DSB WTO) dimana justifikasi berdasarkan non-trade policy objectives atas klaim ketidapatuhan terhadap komitmen liberalisasi dalam General Agreement on Tariffs and Trade 1994 (GATT) diuji keabsahannya, namun banyak negara gagal dalam menjustifikasikan non-trade policy objectivesnya, termasuk dalam hal ini, Indonesia. Terkait dengan hal tersebut, penelitian kritis mengenai pengaturan justifikasi berdasarkan non-trade policy objectives dalam GATT, praktik negara-negara, serta praktik justifikasi Indonesia berdasarkan non-trade policy objectives menjadi penting. Tesis ini disusun dengan menggunakan metode penelitian doktrinal. GATT pada dasarnya memiliki mekanisme justifikasi berdasarkan non-trade policy objectives sebagaimana diatur dalam Article XX GATT tentang General Exceptions. Praktik negara-negara dalam melakukan justifikasi menunjukkan bahwa negara hanya dapat menjustifikasikan non-trade policy objectivesnya berdasarkan Article XX GATT apabila, berdasarkan bukti yang cukup, kebijakan negara tersebut secara murni dan berdasarkan itikad baik ditujukan untuk objectives yang tercakup dalam Article XX GATT seperti dalam Kasus EC - Asbestos. Praktik yang dilakukan Indonesia bahkan belum dapat menunjukkan necessity dan keterhubungan antara non-trade policy objectives yang diadopsinya dengan objectives yang tercakup dalam Article XX GATT. Putusan DSB WTO cenderung menggunakan interpretasi dengan metode tekstual dan tidak menggunakan interpretasi berdasarkan pertimbangan deference to states yang mempertimbangkan Indonesia sebagai negara berkembang. Sehingga Indonesia tetap wajib menyesuaikan peraturan domestiknya dengan ketentuan-ketentuan GATT berdasarkan prinsip pacta sunt servanda dan menjalankannya dengan itikad baik.

.....Any states, including Indonesia, has the autonomy and sovereignty to establish domestic regulations to achieve non-trade policy objectives which the states desired. In practices dispute appears before the Dispute Settlement Body of the World Trade Organization (DSB WTO) where justification based on non-trade policy objectives for claim of incompliances to liberalization commitment in the General Agreement on Tariffs and Trade 1994 (GATT) is being tested for its legitimation, however many countries failed to justify its non-trade policy objectives, including in this case, Indonesia. In relation to that, the critical research on the rules of justification based on non-trade policy objectives in the GATT, state practices, as well as Indonesia's justification practices based on non-trade policy objectives is important. This thesis is written with doctrinal research method. Fundamentally, GATT have justification of non-trade policy objectives mechanism based on Article XX GATT on General Exceptions. State practices in justifying its non-trade

policy objectives shows that a country can only justify its non-trade policy objectives based on Article XX GATT if, based on sufficient proof, the state's measure purely and based on good faith is aimed to achieve the objectives covered in Article XX GATT as appeared in EC – Asbestos case. Indonesia practices has not shown necessity and interlinkage between the adopted non-trade policy objectives with the objectives stipulated in Article XX GATT. The DSB WTO tends to use interpretation using traditional-textual methods, nor does it use interpretation based on considerations of deference to states where Indonesia is a developing country. Thus, Indonesia is still obliged to adapt its domestic regulations in accordance with the GATT provisions based on the *pacta sunt servanda* principle and implement them in good faith.