

Larangan impor rokok kretek oleh Amerika Serikat menurut ketentuan WTO = Import ban on clove cigarettes by the United States according to WTO laws

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Abstrak

Pada tanggal 22 Juni 2009, Amerika Serikat mengesahkan Family Smoking Prevention and Tobacco Control Act FSPTCA (Section 907(a)(1)(A)), yang melarang penjualan rokok dengan zat perasa tertentu, termasuk rokok kretek dan rokok beraroma buah-buahan kecuali menthol, dengan tujuan untuk menurunkan tingkat perokok muda di AS. Indonesia merupakan Negara produsen dan pengeksport rokok kretek ke AS. Larangan penjualan rokok kretek ini menyebabkan larangan impor sejak tahun 2009 sampai sekarang. Rokok kretek Indonesia tidak dapat masuk ke pasar rokok AS, sehingga terjadi hambatan perdagangan dan menghilangkan persaingan. Badan Penyelesaian Sengketa dalam WTO baik Panel dan Appellate mendapati AS telah melakukan pelanggaran terhadap Pasal 2.1, 2.9.2 dan 2.12 dari Technical Barrier to Trade Agreement. TBT Agreement mengatur tentang bagaimana Negara dapat mengeluarkan peraturan berupa regulasi teknis yang harus sesuai dengan prinsip-prinsip dasar WTO, yaitu prinsip non-diskriminasi, prinsip perdagangan adil dan persaingan adil. Apabila ditinjau dari peraturan persaingan usaha di Indonesia, tidak terjadi pelanggaran terhadap hukum persaingan usaha, tetapi FSPTCA memberikan dampak anti persaingan. Penelitian ini menggunakan metode yuridis normatif dengan menggunakan beberapa perjanjian WTO dan laporan Working Group on the Interaction between Trade and Competition Policy, Undang-Undang No. 5 Tahun 1999 tentang Larangan Praktik Monopoli dan Persaingan Usaha Tidak Sehat, dan narasumber lain.

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Tobacco Control Act (Section 907(a)(1)(A)), which put a restriction on sales of cigarettes with certain flavors, including clove and aromatic fruits except menthol, with the objective to reduce smoking on children and youth in the US. Indonesia is a producer and an exporter of clove cigarettes to the US. This restriction on sales had caused an import ban since 2009 up to now. The issuance of FSPTCA had blocked market access of Indonesia's clove cigarette into the US cigarette market, such that there exist a barrier to trade and elimination of competition. The Dispute Settlement Body on WTO, Panel and Appellate, found that US had acted inconsistently with Article 2.1, 2.9.2 and 2.12 of the Technical Barrier to Trade Agreement. TBT Agreement set rules on how Members State can issue law or regulation in the form of technical regulation that should abide the WTO principles such as principle of non-discrimination, principle of fair trade and principle of fair competition. From Indonesian' competition law, there is no violation of competition law but FSPTCA had an anticompetitive impact. This paper is using a normative juridical method by utilizing agreements of the WTO and reports by the Working Group on the Interaction between Trade and Competition Policy, Law No. 5 of 1999 on Restriction of Monopoly Behavior and Unhealthy Competition, and other sources.