

Analisa yuridis terhadap pelaksanaan amicus curiae dalam penyelesaian sengketa di WTO = Juridical analysis of amicus curiae implementation in WTO dispute settlement

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Abstrak

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Amicus curiae atau friends of court merupakan praktek yang sudah ada sejak jaman Romawi Kuno dan dalam sistem common law. Atas persetujuan pengadilan, amicus memberikan informasi mengenai area-area hukum di luar keahlian pengadilan atau informasi hukum tidak memihak yang tidak diketahui oleh pengadilan, sehingga hakim dapat memberikan putusan yang berkualitas. Sekarang ini, amicus curiae juga berpartisipasi dalam proses pemeriksaan di pengadilan-pengadilan internasional, seperti ICJ, ITLOS, ICC, NAFTA, ICSID dan WTO, juga pengadilan-pengadilan dalam negeri dengan sistem civil law. Masuknya amicus curiae dan diterimanya amicus brief dalam proses penyelesaian sengketa di WTO, menuai protes keras dari negara-negara berkembang anggota WTO. Amicus curiae dianggap telah mengganggu hak negara anggota, dalam hal sebagai pihak berperkara pada proses penyelesaian sengketa. Amicus curiae juga dianggap mempengaruhi kedaulatan negara anggota. Tujuan penulisan ini adalah untuk mengetahui bagaimana sebenarnya posisi amicus curiae dalam penyelesaian sengketa di WTO dan terhadap negara-negara berkembang anggota WTO.

Dari hasil penelitian diketahui bahwa amicus curiae dalam penyelesaian sengketa di WTO, semata-mata merupakan pemenuhan kebutuhan Panel untuk melaksanakan objective assessment dalam proses pemeriksaan setiap kasus yang diajukan kepadanya. Hak negara anggota sebagai pihak berperkara tidak akan terganggu karena amicus curiae bukan pihak dan tidak akan pernah dapat menjadi pihak dalam proses penyelesaian sengketa di WTO. Berkaitan dengan hal tersebut, amicus curiae juga tidak berpengaruh terhadap kedaulatan negara anggota. Diketahui juga bahwa dengan perkembangan amicus curiae yang ada sekarang, ternyata amicus curiae tidak memberikan banyak manfaat dalam proses penyelesaian sengketa di WTO.

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ABSTRACT

Amicus curiae or friends of the court was a practice known in ancient Roman times and in the common law system. The amicus, at the court's discretion, provided information on areas of law beyond the expertise of the court or impartial legal information that was beyond the court's notice, so for the judge may make a quality judgment. Now, amicus curiae also participated in proceeding

before the international courts, such as the ICJ, ITLOS, ICC, NAFTA, ICSID and WTO, as well as the domestic courts with civil law system.

The participation of amicus curiae and receipt of amicus briefs in the dispute settlement process in the WTO, has lead the protests from developing countries members of the WTO. Amicus curiae is considered to interfere with the rights of members, in the respect of a party in the dispute settlement proceeding. Amicus curiae is also considered to affect the sovereignty of member states. The purpose of this paper is to determine how the actual position of the amicus curiae in the WTO dispute settlement and toward the developing countries of WTO members. The survey revealed that the amicus curiae in the WTO dispute settlement, merely the fulfillment of the Panel to make the objective assessment of the matters before it. The member states right as the party shall not be interfered because amicus curiae is not the party and will never be as the party to the dispute settlement in the WTO. In this regard, amicus curiae also does not affect the sovereignty of member states. With the development of amicus curiae, amicus curiae turns not provide much benefit in the process of dispute settlement in the WTO.

Rights of member states as parties litigant will not be interrupted because an amicus curiae is not a party and will never be a party to the dispute settlement process in the WTO. Please also note that with the development of the present amicus curiae, amicus curiae turns not provide much benefit in the process of dispute settlement in the WTO.;Amicus curiae or friends of the court was a practice known in ancient Roman

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