

Perlindungan berdasarkan prinsip national treatment pada agreement on technical barriers to trade dan penerapannya dalam dispute settlement body-WTO: studi kasus: 1) appellate body report no. WT/DS406/AB/R, 2) no. appellate body report no. WT/DS384/AB/R dan WT/DS386/AB/R = Protection based upon national treatment principle in agreement on technical barriers to trade and its applicability in dispute settlement body wto: case study 1) appellate body report no. WT/DS406/AB/R, 2) no. appellate body report no. WT/DS384/AB/R and WT/DS386/AB/R

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Abstrak

Dalam perdagangan internasional, salah satu bentuk perlakuan yang wajib diberikan oleh negara anggota World Trade Organization ialah perlakuan berdasarkan prinsip National Treatment. Prinsip National Treatment dapat ditemukan pada berbagai perjanjian multilateral dalam WTO, salah satunya dalam Agreement on Technical Barriers to Trade. Persetujuan TBT rd. Namun berbeda dengan perjanjian multilateral dalam WTO lainnya, prinsip National Treatment dalam Persetujuan TBT tidak secara eksplisit diatur. Dengan menggunakan pendekatan normatif yuridis, penulis ingin mengetahui lebih lanjut unsur-unsur dari prinsip National Treatment dalam TBT Agreement serta penerapannya pada sengketa yang diselesaikan oleh Dispute Settlement Body-WTO. Penulis menyimpulkan bahwa meskipun tidak diatur secara eksplisit seperti perjanjian lainnya dalam WTO, perlakuan berdasarkan prinsip National Treatment dapat ditemukan pengaturannya dalam Pasal 2.1. Apabila seluruh unsur dalam pasal tersebut terpenuhi akan tercipta perlindungan berdasarkan prinsip National Treatment. Penulis menyarankan perlu adanya dokumen tambahan yang menjelaskan mengenai pengaturan-pengaturan yang tercantum dalam Persetujuan TBT, demi memudahkan penafsiran atas pengaturan tersebut.

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In intertational trade realm, one of the principles that shall be upheld by World Trade Organization members is the National Treatment principle. National Treatment principle can be easily and explicitly found in numerous of WTO Agreements. But unlike another multilateral agreement in WTO, the Agreement on Technical Barriers to Trade does not explicitly regulate national treatment principle. This research is conducted with juridical normative approach, which author would like to find out the elements of National Treatment principle in TBT Agreement and its applicability in cases brought before the Dispute Settlement Body WTO. The author concludes that even though we can not find national treatment principle to be explicitly regulated in TBT Agreement, the protection based upon national treatment principle is used in Article 2.1. If every element in Article 2.1 is fulfilled it will create a protection based upon national treatment principle. The author suggests that a creation of document elaborating about the TBT Agreement is needed, as it will help to facilitate the interpretation of TBT Agreement.