

Kecenderungan historis penerapan pasal-pasal agreement on implementation of article VI of the general agreement on tariffs and trade 1994 (anti-dumping agreement) dalam sengketa pada dispute settlement body tahun 1995 sampai tahun 2017 guna analisis pengenaan measure anti-dumping = Historical trend of the application of the articles of the agreement on implementation of the general agreement on tariffs and trade 1994 (anti-dumping agreement) in the dispute settlement process before the wto dispute settlement body from 1995 to 2017 for the purpose of analysing the imposition of an anti-dumping measure

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Abstrak

Pada tanggal 2 September 2017, Ministry of Commerce & Industry India mengirimkan notifikasi tentang laporan investigasi anti-dumping terhadap beberapa negara termasuk Indonesia. Walaupun akumulasi pembahasan Anti-Dumping Agreement pada DSB WTO sudah cukup banyak, namun dalam menanggapi rencana pengenaan bea masuk anti-dumping terhadap Indonesia, belum pernah dicoba menggunakan analisis sistematis terhadap data historis pembahasan Anti-Dumping Agreement. Data historis tersebut dapat menunjukkan, antara lain, sebaran Pasal-Pasal Anti-Dumping Agreement yang paling sering dibahas dalam sengketa dihadapan DSB WTO, sehingga penentuan prioritas dalam perumusan tanggapan legal formal dapat dilakukan atas preseden yang telah ada. Penelitian ini menggunakan pendekatan sosio-legal dan bersifat interdisipliner, melibatkan dua disiplin ilmu, dimana metodologi ilmu hukum digunakan dalam menemukan pola sikap Panel dan Appellate Body dalam pembahasan Pasal-Pasal Anti-Dumping Agreement, dibantu dengan hasil penelitian disiplin ilmu sosial dalam mengkaji data historis pembahasan ketentuan-ketentuan Anti-Dumping Agreement dalam sengketa dihadapan DSB WTO untuk menemukan pola sebaran Pasal-Pasal yang paling sering dibahas dalam sengketa dihadapan DSB WTO. Dari hasil penelitian, ditemukan bahwa, empat Pasal ADA yang paling banyak dibahas, secara berurutan, adalah Pasal 2, Pasal 6, Pasal 3, dan Pasal 5. Kaidah yang terkandung dalam masing-masing Pasal tersebut, sebagaimana dipraktikkan oleh DSB WTO, dapat dilihat pada daftar periksa<i>checklist</i> pada bagian selanjutnya dari Penelitian ini.

.....On 2 September 2017, the Ministry of Commerce & Industry of India issued a notification regarding the result of an anti-dumping investigation involving several countries, including Indonesia. Although the WTO DSB has accumulated a considerable amount of precedent regarding the Anti-Dumping Agreement, in formulating a response to a possible application of anti-dumping duties on Indonesia, a systematic analysis of historical data of the usage of the provisions of the Anti-Dumping Agreement has never been attempted. The historical data may reveal, among others, the distribution pattern of the most frequently discussed provisions of the Anti-Dumping Agreement in disputes before the WTO DSB, enabling the prioritization in formulating the formal legal response to be made based on robust existing precedent. This study utilizes the socio-legal approach in an interdisciplinary manner, wherein legal methodology is used to determine the actual practice of the Panel and the Appellate Body during their discussion of the most frequently discussed

provisions of the ADA, aided by the result of the examination, by social studies discipline, of the historical data of the usage of the provisions of the Anti-Dumping Agreement in disputes before the WTO DSB in order to find out the distribution pattern of the most frequently discussed provisions. The study revealed the four most frequently discussed ADA provisions, respectively articles 2, 6, 3, and 5. The legal rule contained in each respective article, as practiced by the WTO DSB, can be observed in the checklist in the closing section of this study.