

Kajian hukum implementasi asas cabotage dalam hukum positif Indonesia terhadap kapal penunjang migas lepas pantai dalam perspektif General Agreement on Trade in Services (GATS) = Legal study of the implementation of the cabotage principle in Indonesia's positive law to offshore oil and gas supporting vessels in perspective of the General Agreement on Trade in Services (GATS)

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Abstrak

Penelitian ini membahas mengenai implementasi asas cabotage dalam hukum positif Indonesia terhadap kapal penunjang Migas (Migas) atau anjungan Migas yang beroperasi di wilayah lepas pantai yang termasuk dalam wilayah laut zona ekonomi eksklusif (ZEE) maupun landas kontinen dimana ketentuan hukum internasional berlaku, kesesuaiannya dengan ketentuan WTO yaitu ketentuan General Agreement on Trade In Services (GATS) dan schedule of commitment Indonesia. Penelitian ini menggunakan metode pendekatan yuridis normatif yang di dukung oleh penelitian empiris. Dengan rumusan pengertian kapal yang meliputi juga floating platforms di lepas pantai (dalam hal ini termasuk rig-rig, anjungan Migas lepas pantai) sepanjang berada dalam yuridiksi dan kedaulatan Indonesia yaitu berada di laut teritorial Indonesia beserta perairan kepulauan dan perairan pedalaman maka asas cabotage berlaku terhadap kapal dan floating platforms tersebut. Sedangkan menurut hukum positif Indonesia asas cabotage tidak berlaku di landas kontinen dan ZEE namun dalam pelaksanaannya berlaku karena dalam operasional tersebut harus melalui Pelabuhan, laut teritorial, perairan kepulauan dan perairan pedalaman. Implementasi asas cabotage belum dapat dilaksanakan sepenuhnya karena pemerintah masih memberikan dispensasi terhadap penggunaan kapal asing untuk usaha Migas lepas pantai melalui Permenhub No.46 Tahun 2019, namun peraturan ini secara substansi tidak sejalan atau bertentangan dengan asas hukum *lex superior derogate legi inferiori*. Pengaturan asas cabotage merupakan bagian dari prinsip yang diatur dalam GATS tentang domestic regulation, dan WTO tetap mengakui eksistensi kedaulatan negara anggotanya. Hasil penelitian menyarankan perlu menyempurnakan hukum positif Indonesia sebagai peraturan domestik untuk menyesuaikan dengan perkembangan liberalisasi jasa angkutan laut khususnya penggunaan kapal asing untuk menunjang usaha Migas lepas pantai di Indonesia dan memberikan kelonggaran bagi armada angkutan laut asing pada kegiatan Migas lepas pantai.

.....This focus of this study is assessed implementation of the cabotage principle in Indonesian positive law to offshore oil and gas supporting vessels or oil and gas platforms operating in offshore areas that are included in the exclusive economic zone (EEZ) sea area or the continental shelf where international law provisions apply, the compliance with WTO provisions namely the provisions of the General Agreement on Trade in Services (GATS) and Indonesias schedule of commitment. This research applies a normative juridical approach which is supported by empirical research. With the formulation of the definition of a vessel which includes offshore floating platforms (in this case including rigs, offshore oil and gas platforms) as long as it is within the jurisdiction and sovereignty of Indonesia, which are in the territorial sea of Indonesia, archipelagic waters and inland waters, the cabotage principle applies to vessel and floating platforms. Meanwhile, according to positive Indonesian law the cabotage principle does not apply to vessel and

floating platforms on the continental shelf and EEZ, but in practice the cabotage principle also applies because vessel and floating platforms in these operations must go through ports, territorial seas, archipelagic waters and inland waters. Implementation of the cabotage principle cannot yet be fully implemented because the government is still giving dispensation for the use of foreign vessel for offshore oil and gas business through Permenhub No.46 of 2019, but this regulation is substantially not in line with or against the legal principle of the *lex superior derogate legi inferiori*. Implementation of the cabotage principle is part of the principles that is regulated in GATS regarding domestic regulation, and the WTO continues to recognize the existence of the sovereignty of its member countries. The results suggest that it is necessary to improve Indonesias positive law as a domestic regulation to adjust to the development of liberalization of sea transportation services, especially the use of foreign vessels to support offshore oil and gas businesses in Indonesia and to provide leeway for foreign marine transportation fleets in offshore activities.