

**KETENTUAN PENGUTAMAAN PRODUK DALAM NEGERI PADA  
PERDAGANGAN MELALUI SISTEM ELEKTRONIK (E-COMMERCE)  
DITINJAU DARI PRINSIP *NATIONAL TREATMENT* DALAM *GENERAL  
AGREEMENT ON TARIFFS AND TRADE* (GATT)**

**INTISARI**

Lucia Hanna Novyanti<sup>1</sup>, Irna Nurhayati.<sup>2</sup>

Tujuan dari penelitian ini adalah untuk mengkaji dan menganalisis ketentuan pengutamaan produk dalam negeri dalam Permendag No. 50 Tahun 2020 ditinjau dari prinsip *National Treatment* dalam GATT dan mengkaji dan menganalisis ketentuan terkait PMSE di Indonesia.

Jenis penelitian ini adalah penelitian hukum normatif dan penelitian ini bersifat deskriptif. Penelitian dilakukan melalui studi kepustakaan atau penelusuran dokumen, seperti perjanjian internasional, yurisprudensi, peraturan perundang-undangan, buku, artikel, berita, dan media internet. Data yang telah dikumpulkan kemudian diolah, dianalisis, dan disusun secara sistematis agar dapat menjawab rumusan masalah yang ditentukan.

Berdasarkan hasil penelitian yang telah dilakukan, dapat disimpulkan bahwa ketentuan pengutamaan produk dalam negeri pada PMSE tidak sesuai dengan Prinsip *National Treatment* dalam GATT 1994 yang diatur dalam Article III (4) GATT. Hal ini didapat berdasarkan hasil analisis bahwa ketentuan dimaksud memberikan *treatment less favourable* terhadap produk impor, ketentuan tersebut memenuhi klasifikasi *like products* melalui pendekatan *hypothetical like products when origin is the sole distinctive criterion*, dan ketentuan dimaksud merupakan *laws, regulation and requirements* yang mempengaruhi penjualan internal, penawaran untuk penjualan, pembelian, transportasi, distribusi atau penggunaan. Ketentuan pengutamaan produk dalam negeri pada PMSE juga tidak dapat dibenarkan berdasarkan pengecualian pada Article III (8) a dan b GATT terkait pengadaan oleh lembaga pemerintahan dan subsidi. Ketentuan ini juga tidak dapat dibenarkan berdasarkan pengecualian umum yang diatur dalam Article XX GATT. Selain itu, ketentuan terkait PMSE yang sesuai dengan Prinsip *National Treatment* adalah apabila ketentuan tersebut tidak diskriminatif dan tidak mempengaruhi *equality of competitive opportunities*, yaitu dengan tidak membedakan perlakuan terhadap produk impor dan domestik. Hal ini dapat dicapai dengan mengatur pelaksanaan kemitraan, edukasi atau pelatihan, dan fasilitas ruang promosi, sebagaimana diatur saat ini dalam Pasal 22-24 Permendag No. 50 Tahun 2020, namun diberikan kepada produk impor dan domestik.

Kata Kunci: Produk Dalam Negeri, PMSE, Permendag Nomor 50 Tahun 2020, *National Treatment*, GATT

---

<sup>1</sup> Mahasiswa Prodi Hukum Bisnis, Magister Ilmu Hukum, Fakultas Hukum Universitas Gadjah Mada Kampus Jakarta.

<sup>2</sup> Dosen Pembimbing, Magister Ilmu Hukum Fakultas Hukum Universitas Gadjah Mada Yogyakarta.

***THE REQUIREMENT OF DOMESTIC PRODUCT PRIORITIZATION IN E-COMMERCE AS SEEN FROM THE NATIONAL TREATMENT PRINCIPLE IN GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)***

***ABSTRACT***

Lucia Hanna Novyanti<sup>1</sup>, Irna Nurhayati.<sup>2</sup>

The purpose of this study is to examine and analyze the requirement of domestic products prioritization as stipulated in the Minister of Trade Regulation No. 50 of 2020 as seen from the principles of National Treatment in the GATT and to examine and analyze the requirement related to e-commerce in Indonesia.

This research is conducted through normative legal research and this research is descriptive. This research is conducted through literature study or document study, which to collect several data, such as international agreements, jurisprudence, national laws and regulations, books, articles, news, and internet media. The data that has been collected was processed, analyzed, and arranged systematically in order to answer particular problems raised in this research.

Based on the results of the research that has been carried out, it can be concluded that the requirement of domestic products prioritization in e-commerce is not in accordance with the National Treatment Principles in the 1994 GATT as stipulated in Article III (4) of the GATT. This finding was obtained based on the results of the analysis that the requirement in questioned provides less favourable treatment for imported products, the requirement meets the classification of like products through “hypothetical like products when origin is the sole distinctive criterion” approach, and the requirement in questioned is classified as “laws, regulations and requirements that affect internal sales, offers for sale, purchase, transportation, distribution or use”. The requirement of domestic products prioritization in e-commerce also cannot be justified based on the exceptions in Article III (8) a and b of the GATT on the procurement by government agencies and subsidies. This requirement also cannot be justified under the general exceptions set out in Article XX GATT. In addition, the requirement on e-commerce that is in accordance with the National Treatment Principle is if the requirement is not discriminatory and does not affect the equality of competitive opportunities, namely by not discriminating in the treatment of imported and domestic products. This can be achieved by regulating the requirement of partnership, education or training, and promotional facility, as currently stipulated in Article 22-24 of the Minister of Trade Regulation No. 50 of 2020, but given to both imported and domestic products.

**Keywords:** Domestic Product, E-Commerce, Minister of Trade Regulation No. 50 of 2020, National Treatment, GATT

---

<sup>1</sup> Mahasiswa Prodi Hukum Bisnis, Magister Ilmu Hukum, Fakultas Hukum Universitas Gadjah Mada Kampus Jakarta.

<sup>2</sup> Dosen Pembimbing, Magister Ilmu Hukum Fakultas Hukum Universitas Gadjah Mada Yogyakarta.