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Interpretasi â€œAnti-Frustrationâ€• atas Perjanjian TRIPS terhadap Anti-Suit Injunction dalam Litigasi Standard Essential Patents dan Implikasinya bagi Indonesia: Studi Kasus WTO DS611
Afiyah Arinda Putri, Irna Nurhayati, S.H., M.Hum., LL.M., Ph.D.
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INTERPRETASI "*ANTI-FRUSTRATION*" ATAS PERJANJIAN TRIPS TERHADAP *ANTI-SUIT INJUNCTION* DALAM LITIGASI *STANDARD-ESSENTIAL PATENTS* DAN IMPLIKASINYA BAGI INDONESIA: STUDI KASUS WTO DS611

Oleh: Afiyah Arinda Putri[1] dan Irna Nurhayati[2]

INTISARI

Penelitian ini bertujuan menganalisis 3 (tiga) hal, yaitu legitimasi interpretasi *anti-frustration* yang dibangun oleh Arbiter MPIA terhadap Perjanjian TRIPS dalam Sengketa DS611 antara Uni Eropa dengan Tiongkok, rasio partisipasi Indonesia sebagai *third party*, dan implikas partisipasi tersebut terhadap kepentingan Indonesia sebagai anggota WTO. Sengketa ini berpusat pada penggunaan *anti-suit injunction* (ASI) oleh pengadilan Tiongkok dalam litigasi *standard-essential patents* (SEP) yang dipersoalkan Uni Eropa karena bertentangan dengan beberapa pasal dalam Perjanjian TRIPS, termasuk diantaranya Pasal 1.1, Pasal 28.1, dan Pasal 28.2 Perjanjian TRIPS. Dalam putusannya, Arbiter MPIA menafsirkan kembali frasa *"give effect to"* dalam Pasal 1.1 dengan disertai kewajiban turunan berupa larangan bagi anggota WTO untuk mengambil tindakan yang menghambat sistem pelindungan HKI anggota lain.

Penelitian ini menggunakan metode penelitian hukum kombinasi (normatif dan empiris) dengan pendekatan berbasis kasus (*case-based approach*), yang didukung data primer berupa wawancara dengan Negosiator Perdagangan Kementerian Perdagangan Republik Indonesia dan advokat spesialisasi hukum WTO, beserta data sekunder berupa dokumen kasus terkait dari WTO disertai dengan kepustakaan yang relevan.

Hasil penelitian menunjukkan bahwa interpretasi *anti-frustration* oleh Arbiter dapat dibenarkan secara normatif-metodologis karena tetap berlandaskan Pasal 31 VCLT meskipun hasilnya berbeda dari interpretasi Panel. Lebih lanjut, partisipasi Indonesia dalam DS611 dilandasi oleh beberapa hal, antara lain kepentingan sistemik untuk mempelajari argumentasi Tiongkok, membangun kapasitas litigasi WTO, sekaligus mengamati proses arbitrase di MPIA sebagai bahan kajian keanggotaan Indonesia. Meskipun putusan MPIA tidak mengikat Indonesia secara formal, interpretasi tersebut tetap berpotensi menjadi rujukan persuasif dalam praktik WTO.

Kata kunci: WTO, DS611, MPIA, SEP, Ekstrateritorial, Arbitrase, *third party* WTO

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INTERPRETATION OF "ANTI-FRUSTRATION" UNDER TRIPS AGAINST ANTI-SUIT INJUNCTION IN STANDARD-ESSENTIAL PATENT LITIGATION AND ITS IMPLICATIONS FOR INDONESIA: A CASE STUDY OF WTO DS611

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ABSTRACT

This research aims to analyze three matters, namely the legitimacy of the "anti-frustration" interpretation constructed by the MPIA Arbitrator against Article 1.1 of the TRIPS Agreement in the dispute between the European Union and China, Indonesia's rate of participation as a third party, and the implications of that participation for Indonesia's interests as a WTO member. The dispute arose from China's use of anti-suit injunctions (ASI) issued by Chinese courts in standard-essential patent (SEP) litigation, which the European Union considered to conflict with several provisions of the TRIPS Agreement, including Articles 1.1, 28.1, and 28.2. In its award, the MPIA Arbitrator reinterpreted the phrase "give effect to" in Article 1.1 and thereby imposed a corollary obligation on WTO members to refrain from actions that undermine the intellectual property rights protection system of other members.

This research employs a combined (normative and empirical) legal research method with a case-based approach, supported by primary data obtained through an interview with a Trade Negotiator of the Ministry of Trade of the Republic of Indonesia, and a lawyer that specialized in WTO Law, as well as secondary data comprising official WTO documents and relevant literature.

The findings show that the anti-frustration interpretation developed by the Arbitrator can be justified from a normative-methodological standpoint, as it remains grounded in Article 31 of the VCLT, even though its outcome differs from the Panel's interpretation. Furthermore, Indonesia's systemic-interest participation in DS611 was driven by several factors, including the interest in studying China's arguments, building litigation capacity in MPIA arbitration, and observing the arbitration process as material for study given Indonesia's membership. Although the MPIA award is not formally binding on Indonesia, this interpretation nevertheless holds the potential to become a persuasive reference in practice.

Keywords: WTO, DS611, MPIA, SEP, Extraterritorial, Arbitration, WTO third party

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