

BAB VII

KESIMPULAN DAN SARAN

7.1 Kesimpulan

Kesimpulan yang dapat ditarik terbagi dalam beberapa poin sebagai berikut. Pertama, sanksi ekonomi adalah instrumen yang umum digunakan negara dalam melindungi kepentingan keamanan nasionalnya. Keamanan nasional sebagai perwujudan kedaulatan negara tersebut harus diseimbangkan dengan perdagangan bebas sebagai tujuan utama GATT 1994. Atas dasar tersebut, dibentuklah Article XXI GATT 1994 yang dapat membenarkan pelanggaran negara terhadap GATT 1994 dengan dasar keamanan nasional.

Kedua, Upaya penyeimbangan tersebut nampak dalam penerapan Article XXI GATT 1994, khususnya berkaitan dengan apakah negara dapat secara sepihak menentukan keamanan nasionalnya ataukah Panel DSB WTO masih memiliki kewenangan terhadap ketentuan ini. Upaya penyeimbangan tersebut diwujudkan dengan putusan Panel DSB WTO dalam kasus *Russia Measures concerning Traffic in Transit* bahwa negara memang dapat menentukan keamanan nasional yang hendak dilindunginya, namun harus dilakukan dengan itikad baik. Dalam hal inilah, Panel DSB WTO dapat menilai itikad baik negara yang dimaksud dalam menggunakan Article XXI GATT 1994.

Ketiga, pemaknaan jenis keamanan nasional yang masih membuka ruang ambiguitas terletak dalam Article XXI(b)(iii) GATT 1994, terkhusus terhadap kondisi “kegentingan dalam hubungan internasional lainnya”. Kegentingan yang dimaksud haruslah signifikan dan memang mengancam hubungan internasional antar negara. Meskipun beberapa kasus dalam Panel DSB WTO dapat dijadikan rujukan dalam memahami pemaknaan kondisi tersebut, penentuan kegentingan dalam hubungan internasional yang dimaksud tersebut memang bergantung pada fakta kasus masing-masing.

Keempat, dikarenakan penentuan keamanan nasional tersebut bergantung pada fakta pada masing-masing kasus, permasalahan kemudian timbul mengenai seberapa jauh keamanan nasional harus dimaknai. Seringkali

sanksi ekonomi digunakan untuk melindungi industri domestik atau faktor lain yang memang berkaitan dengan keamanan nasional negara. Di lain sisi, pembenaran akan sanksi ekonomi tersebut dapat dianggap sebagai upaya proteksionisme terhadap industri domestik negara yang tidak sejalan dengan tujuan GATT 1994. Maka, permasalahan tersebut menunjukkan bahwa keberadaan Article XXI(b)(iii) GATT 1994 masih belum cukup dalam mencari keseimbangan makna keamanan nasional dan perdagangan bebas.

7.2 Saran

Dikarenakan keberadaan Article XXI(b)(iii) GATT 1994 masih belum cukup dalam menyeimbangkan keamanan nasional dan perdagangan bebas, penulis memberikan saran bahwa Panel DSB WTO harus merujuk pada hukum kebiasaan internasional sebagaimana dimuat dalam Article 25 ILC ARSIWA. Ketentuan ini mengisyaratkan tindakan negara sebagai cara terakhir untuk melindungi keamanan nasional negara, sehingga negara tidak dapat dengan mudah melakukan upaya proteksionisme dengan dalih keamanan nasional. Dengan mengadopsi syarat tersebut, Article XXI(b)(iii) GATT 1994 dapat mengakomodir kebutuhan negara untuk melindungi keamanannya yang telah berkembang tanpa adanya kekhawatiran penyalahgunaan negara.

Penulis menyadari bahwa sifat *self-contained* dari WTO dapat menjadi tantangan pelaksanaan saran di atas. Atas dasar hal tersebut, Panel DSB WTO sudah sepatutnya tidak sepenuhnya menutup diri dari sumber hukum di luar *WTO Agreements*, termasuk hukum kebiasaan internasional. Hal tersebut sejatinya sejalan dengan beberapa putusan Panel DSB WTO yang mengindikasikan rujukan terhadap hukum kebiasaan internasional. Maka, Panel DSB WTO seharusnya tidak melihat GATT 1994 secara sepenuhnya eksklusif, namun juga mempertimbangkan hukum kebiasaan internasional guna mencapai keseimbangan antara kedaulatan negara dan perdagangan bebas.

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