ABSTRAK

Disertasi ini memiliki 3 (tiga) isu hukum / *legal issues,* meliputi:

1. Bagaimana *Pengaturan* atas prinsip Direct Effect dan Hak warga Negara di EU dan ASEAN dalam menuntut ganti rugi di pengadilan Nasional sehubungan dengan Keputusan WTO-DSB GATT 1994?
2. Bagaimana *implementasi* dalam praktek pengakuan atas prinsip Direct Effect dan Proses menuntut ganti rugi di pengadilan Nasional EU dan ASEAN?
3. Bagaimana *idealnya* Pengaturan atas aplikasi prinsip Direct Effect dan tuntutan ganti rugi di Indonesia?

Dimana dari penelitian hukum ini, didapati kesimpulan tentang *pengaturan dan penerapan hukum* di Indonesia sebagai berikut;

1. Perjanjian Internasional, Indonesia tunduk dan mematuhi traktat WTO 1994.
2. Monisme-Dualisme, pengaturan dan implementasinya rancu
3. *Direct Effect*, tidak dikenal di pengadilan Indonesia
4. *Judicial Review*, terbatas pada penguji perundang undangan
5. *Claim for Damages, Burden of Proof* pada penggugat,

Adapun saran-saran yang penulis berikan, *idealnya* adalah sebagai berikut;

1. Indonesia dalam menyikapi keputusan WTO DSB, bisa memilih *opt-in* atau *opt-out* sehubungan dengan kepatuhan untuk mengimplementasi keputusan panel WTO DSB dengan mengimplementasikan konsep CBA (Cost Benefit Analysis) dalam konteks EAL (Economic Analysis of Law).
2. Dengan mempertimbangkan variabel –variabel makro ; perubahan teknologi/social/ budaya, dan sikap mitra dagang serta kepentingan nasional maka untuk 5 tahun kedepan penulis cenderung merekomendasikan Indonesia mengadopsi paham *Monisme Primat Hukum Nasional* yang berjiwa sesuai moto *Indonesia First* melalui revisi UU 24/2000.
3. Baiknya segera dikeluarkan PERMA yang mengatur penerapan *direct effect* atas kasus kasus yang berkaitan dengan perjanjian internasional dibidang perdagangan dan investasi yang mendorong kepercayaan investor tanpa melanggar konstitusi dan mengeliminasi kedaulatan nasional, serta searah dengan isu global dibidang perlindungan lingkungan hidup dan kaum minoritas , juga kesetaraan gender dan HAM.
4. Penulis menekankan perlunya perluasan *ground of claim* pada proses uji materiil atau *Judicial Review* sesuai Perma No 1/ 2011 dengan memasukkan motif adanya *unlawful act* atau perbuatan melawan hukum (PMH) sehingga memungkinkan penggugat melakukan gugatan kepada pemerintah atau pejabatnya atas dasar diatas.
5. Meringankan *Burden of Proof* dari penggugat pada saat melakukan gugatan ganti rugi dengan mengadopsi praktek di Filipina, di Indonesia mengacu pada Kitab Undang Undang Perdata Pasal 1365 untuk bisa mendapatkan verifikasi terlebih dahulu dari auditor pemerintah agar mempermudah dan memberikan kepastian hukum bagi penuntut ganti rugi dalam menjalankan *Burden of Proof*-nya.

ABSTRACT

This disertation contain 3 (three) legal issues such as:

1. How the *regulation* of Direct Effect principles and Peoples Rights at EU and ASEAN deals with claim of damages concept in the national court in the connection with WTO-DSB GATT 1994 decision?
2. How the national court at EU and ASEAN practices its *implementation* in the recognition of Direct Effect principles and claim of damages process?
3. How to ideally organize the application of Direct Effect principles and claim of damages concept in Indonesia?

According to this legal research, there are several facts about rules and legal application in Indonesia which lead to the conclusions that:

1. In case of International Treaty, Indonesia already submits and follow the WTO Treaty 1994.
2. In case of monism-dualism, the rules and implementation are obscured.
3. Indonesia national court does not recognized Direct Effect principles.
4. Judicial Review are limited only to review Acts.
5. In Claim for Damages, plaintiff is the one who bear the Burden of Proof obligation.

And following the research process, there are several researcher's advice about what Indonesia have to do to make things going ideal, such as:

1. When responding the WTO-DSB decision, Indonesia have the ability to choose opt-in or op-out in dealing with the obedience to implement WTO-DSB panel decision by implementing CBA concept under the context of EAL.
2. With consideration to macro variables; Changes in technology, social and culture, the attitude of trading partners and also national concern. In 5 years ahead, researcher more likely to recommend Indonesia to adopt Monism with National Law Primate which parallel with Indonesia First motto via revision of UU 24/2000.
3. It is better to published PERMA which organize direct effect application to several cases which connected to International Treaty in Trade and Investment in order to raise investor's trust without violate the constitution and eliminate the national sovereignity but still in line with global issues in enviromental protection and minority rights, also with gender equality and human rights.
4. Researcher argue that the ground of claim in judicial review according to Perma No. 1/2011 need to be widened by adding unlawful act so plaintiff will be able to raise claim to the goverment or the institution.
5. In order to lightened the plaintiff's burden of proof when a claim is raised based on Pasal 1365 Kitab Undang-Undang Perdata, Indonesia can adopt the practice in Phillipines which give the plaintiff a legal obligation to have State Auditor verification before raising a claim to the State of the Goverment.