

**ASSESSING THE VALIDITY OF INDONESIAN ELECTRIC VEHICLE  
SUBSIDY RULES UNDER THE WTO REGULATIONS  
THESIS**



Arranged By:

**AGUSTINA ZAHROTUL JANNAH**

Student Number: 20410778

**INTERNATIONAL PROGRAM  
UNDERGRADUATE STUDY PROGRAM IN LAW  
FACULTY OF LAW  
UNIVERSITAS ISLAM INDONESIA  
YOGYAKARTA**

**2024**

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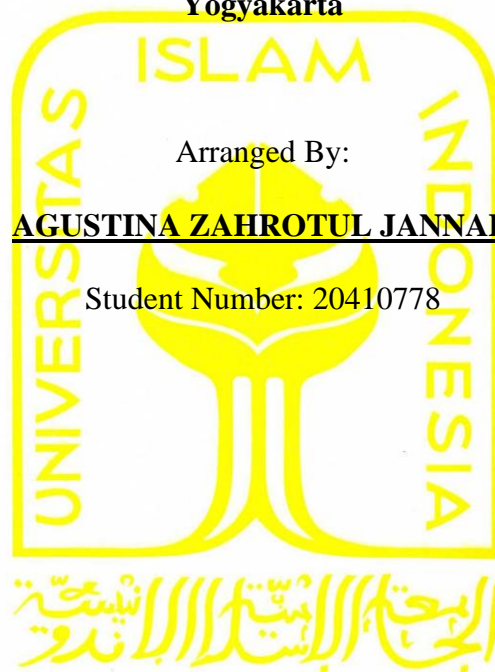
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THESIS**

**Presented as the Partial Fulfillment of the Requirements to Obtain**

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**Yogyakarta**



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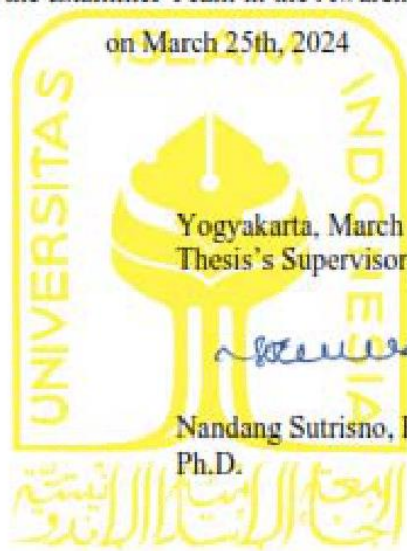
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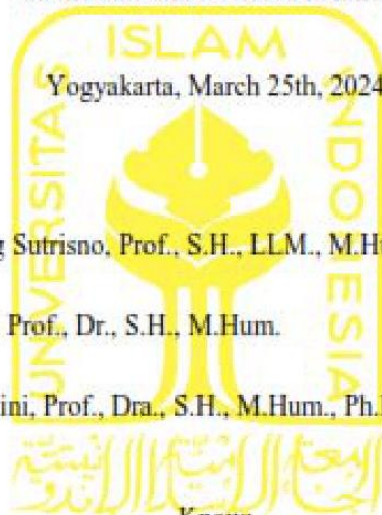
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A BACHELOR DEGREE THESIS

ASSESSING THE VALIDITY OF INDONESIAN ELECTRIC VEHICLE  
SUBSIDY RULES UNDER THE WTO REGULATIONS

THESIS

This bachelor thesis has been proven and declared acceptable by the Thesis  
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Adalah benar-benar Mahasiswa Fakultas Hukum Universitas Islam Indonesia yang telah melakukan penulisan Karya Tulis Ilmiah (Tugas Akhir) berupa Skripsi dengan judul **ASSESSING THE VALIDITY OF INDONESIAN ELECTRIC VEHICLE SUBSIDY RULES UNDER THE WTO REGULATIONS.**

Karya Ilmiah ini saya ajukan kepada Tim Penguji dalam Ujian Pendadaran yang diselenggarakan oleh Fakultas Hukum Universitas Islam Indonesia. Sehubungan dengan hal tersebut dengan ini saya menyatakan:

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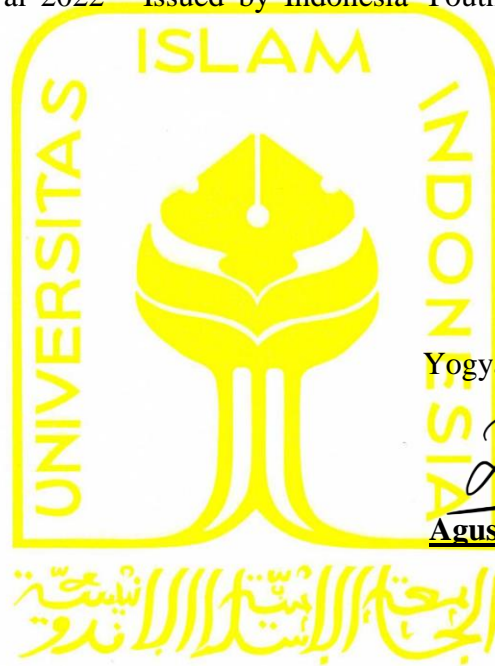
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- d. 2<sup>nd</sup> Winner for the Best Presenter at the International Student Colloquium 2022 - Issued by Faculty of Law, Universitas Islam Indonesia, · December 2022;

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Yogyakarta, March 8<sup>th</sup>, 2024

**Agustina Zahrotul Jannah**

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## MOTTO

*“So don’t lose hope, nor fall into despair, for you will be superior if you are true  
in faith”*

**(QS. Al Imran 3:139)**

*“Whoever truly trusts Allah in attaining something, he attains it.”*

**(Ibn Al-Qayyim)**

*“Anything that is within someone’s reach is also within yours. Set your goals  
no matter how impossible they may seem. Then focus on what is between you and  
that goal. And then, simply take out the obstacles as they come.”*

**(Liz Murray – Homeless to Harvard)**

*“I changed my mind. I’d pick the dangerous one because I’m not scared of a  
challenge.”*

**(Elle Woods – Legally Blonde)**

*“Never give up. Everyone has bad days.*

*Wake up and keep going,*

*Your day will come.”*

**(My Mom)**

## DEDICATION

With sincere dedication and profound gratitude, I offer this earnestly prepared work to my beloved ones who have provided invaluable contributions both emotionally and physically to assist me in completing this Thesis. I extend special thanks to:

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*Who consistently listens to and grants my prayers,*

**Myself,**

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*Extraordinary figures providing priceless support beyond measure,*

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*Constantly cheerful and ceaselessly acting as my life's mood-boosters,*

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*Who have accompanied me through it all,*

**Those of you who always support me endlessly,**

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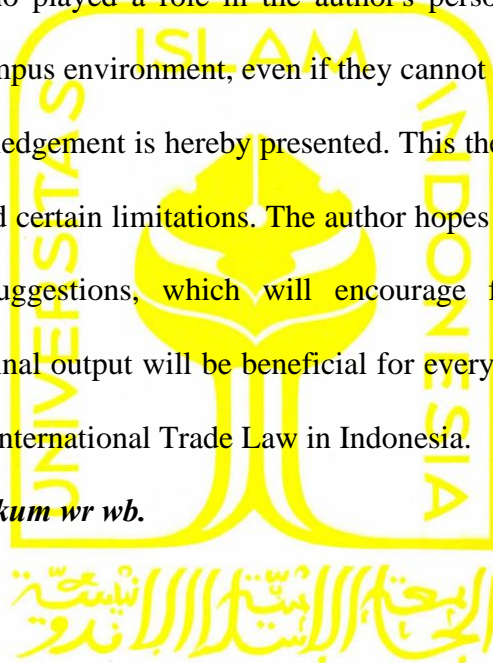
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Yogyakarta, March 8<sup>th</sup>, 2024

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## ABSTRACT

In achieving cooperation in green economic and infrastructure development within the ASEAN region, the Indonesian Government, through Presidential Regulation Number 79 Year 2023, has committed to accelerating economic transformation by implementing subsidies for the advancement of electric vehicles (EVs). This policy aims to enhance investment attractiveness within the EVs ecosystem, expand employment opportunities, expedite the transition from fossil fuel to electric energy use, and consequently accelerate emission reduction and energy subsidy efficiency. In international trade, subsidies are viewed as a form of unfair competition and therefore must be constrained. This study assessed whether Indonesia's legal framework concerning the EV subsidy is consistent with the WTO regulations and what are the potential legal consequences for Indonesia arising from its BBEVs subsidy's rules within the framework of WTO regulations. The study adopted normative legal research by analysing legal documents within the WTO, including GATT and SCM Agreement. Furthermore, it employed a statute approach, conceptual approach, and comparative approach to assess the implementation of subsidies for BEVs in Indonesia compared to other countries. To answer the problem formulations, the author used secondary data which gathered through a library research method, including legal texts, regulations, scholarly publications, research papers, working papers, official online databases and archives, and online news sources. The results showed that, firstly, Indonesian regulations pertaining to EVs are classified as an actionable-subsidies, often referred to as "yellow light" subsidies, which means they are not subject to legal challenges initiated by member states of the WTO. However, Indonesia could potentially encounter challenges within the WTO framework if the regulations associated with electric vehicles result in substantial adverse impacts on other WTO member states. Secondly, these challenges could materialize for Indonesia in the form of the imposition of countermeasures or even retaliatory actions. Therefore, the Indonesian government should enhance discernment when formulating policies pertaining to regulations governing EV subsidies, by evaluating the prior EV subsidy's policies from Norway, Colombia, United States, and China. The government can effectively support the deployment of EVs by transitioning from direct subsidies to market-based financial policy, such as EV feebates policy. Additionally, enhancing environmental regulations such as imposing carbon taxation across all sectors and conducting immersive green campaigns are suggested measures that can positively shape public perception of EVs. This nuanced approach not only aligns with WTO regulations but also ensures sustainable development and maintains harmony with international trade norms.

**Keywords:** Electric Vehicles (EVs), Indonesia, Legal Consequences, Subsidy, and WTO Regulations.



## CHAPTER I INTRODUCTION

### A. Background of Study

Promoting green energy transportation is a pivotal policy in mitigating the impact of climate change. However, its implementation must adhere to international standards. Climate change is primarily induced by 70% of air pollution that is attributable to carbon emissions from motor vehicle transportation activities.<sup>1</sup> The primary source of energy employed in these transportation activities is predominantly derived from fossil fuels, such as gasoline, coal, and other organic fuels, surpassing the capacity of plant and marine life to absorb it.<sup>2</sup> According to a report compiled by the *Intergovernmental Panel on Climate Change (IPCC)*, climate change has broader implications for the human environment, including changes in sea level, land degradation, species extinction, and biodiversity loss due to extreme droughts that may impact the future of human being.<sup>3</sup>

Recognizing climate change as a substantial threat to humanity, in 1992, at the *Rio de Janeiro Earth Summit*, all nations committed to establishing multilateral cooperation, as outlined in the *United Nations Framework Convention on Climate*

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<sup>1</sup> Arifin, Z.M.T, dan Sukoco. 2009. *Pengendalian Polusi Kendaraan*. Bandung: Alfabeta, as cited in Romi Darmawan. *Environmental Health Risk Assessment of NO2 Ambient Level and Toll Collectors Officer'S Health Complaints* (Jurnal Kesehatan Lingkungan Vol. 10, No.1 Januari 2018: 116–126).Pg. 117; Wakhidatul Mukaromah. *Pengaruh Bahan Bakar Kendaraan dan Perubahan Suhu terhadap Polusi Udara*. 2021. Undergraduate Thesis, Universitas Islam Negeri Raden Intan, Lampung), Pg 22.

<sup>2</sup>Arif Setiawan, et al. *Effect of Fossil Fuel Consumption on Indonesia Gross Domestic Products and Its Reciprocal Between Both of Them*. Jurnal Teknologi Mineral dan Batubara Volume 15, Nomor 3, September 2019: 213-223. Pg 215.

<sup>3</sup> Intergovernmental Panel on Climate Change (IPCC). *A Synthesis Report of the Intergovernmental Panel on Climate (IPCC) Sixth Assessment Report. IPCC AR6 SYR LongerReport.pdf*. Pg 37. Accessed on October 7<sup>th</sup> 2023.

*Change* (UNFCCC), which thereby provides a common direction and purpose in addressing climate change.<sup>4</sup> In pursuit of the objectives of the climate change convention, during the third session of the *Conference of Parties* (COP-3) convened in Kyoto, Japan, in 1997, a consensus was reached in the form of Decision 1/CP.3 to adopt the *Kyoto Protocol*, which legally binds the parties to it, with the aim of reducing emissions of greenhouse gases initiated by industrialized nations over the preceding 150 years.<sup>5</sup> Nonetheless, the *Kyoto Protocol* faltered in implementation due to economic disparities among signatory countries, the omission of major emitters from binding reduction targets, incongruous policies, and mutual distrust among nations.<sup>6</sup>

Subsequently, on November 30<sup>th</sup>, 2015, the 21<sup>st</sup> *Conference of Parties* (COP) to the UNFCCC was officially held in Paris, France, resulting in the 2015 *Paris Agreement*, which has been signed by more than 160 countries.<sup>7</sup> The objective of the *Paris Agreement* is to limit the rise in the global average temperature to a level significantly lower than 2°C above pre-industrial levels. It also strives to make continuous endeavours to limit the temperature increase to 1.5°C above pre-industrial levels. The *Paris Agreement* adopts the principles of "*Applicable to All Parties*" and "*Common but Differentiated Responsibilities and Respective*

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<sup>4</sup> United Nations Framework Convention on Climate Change (UNFCCC). *U.S. Climate Action Report – 2002: Third National Communication of the United States of America Under the United Nations Framework Convention on Climate Change. Third National Communication of the United States of America* (unfccc.int). Pg 2. Accessed on October 7<sup>th</sup> 2023.

<sup>5</sup> Dhysti Windyswara. *Alasan Pemerintah Indonesia Meratifikasi Paris Climate Agreement Tahun 2016*. eJournal Ilmu Hubungan Internasional, 2019, 7 (1) 069-090 ISSN2477-2623. Pg 70.

<sup>6</sup> Lisa M. Schenk. *Climate Change "Crisis" - Struggling for Worldwide Collective Action*. 19 Colo. J. Int'l Env'tl. L. & Pol'y 319 (2008). Pg. 328.

<sup>7</sup> Estefania Jiménez. *The Paris Agreement: the brand-new experiment*. [http://www.oas.org/en/sedi/dsd/IWRM/Documentspot/the\\_paris\\_agreement.pdf](http://www.oas.org/en/sedi/dsd/IWRM/Documentspot/the_paris_agreement.pdf). Pg 1. Accessed on October 7<sup>th</sup> 2023.

*Capabilities* (CBDR-RC)," which require all member states, whether developed or developing, to play a role in reducing greenhouse gas emissions and adapting to the global impacts of climate change.<sup>8</sup>

Southeast Asia is a highly vulnerable region to the impacts of climate change, primarily due to the predominance of coastal areas within its territory. In response to this, ASEAN, as a regional organization representing Southeast Asian nations, has initiated various policies and actions to protect its member states from the threats and consequences of climate change. Some of the policies advocated by ASEAN to mitigate the impacts of climate change include efforts to minimize CO<sub>2</sub> production through the transition from fossil fuel-based energy sources to renewable energy and the resolution of major energy crises by developing an eco-friendly vehicle ecosystem that involves all ASEAN member states.<sup>9</sup>

As one of the founding members of ASEAN in 1967, Indonesia has assumed a primary role in shaping the vision, direction, and objectives of ASEAN, as well as in establishing security, economic, social, political stability, and interstate relations in the Southeast Asian region.<sup>10</sup> Furthermore, Indonesia bears a significant responsibility in promoting sustainable economic growth and green development

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<sup>8</sup> UN Resolution 44/288 December 2<sup>nd</sup>, 1989, ¶ 14, as cited in Amira Bilqis, et.al. *Paris Agreement: A Response to an Approach of Common but Differentiated Responsibilities and Respective Capabilities Principle in Kyoto Protocol*. Jurnal Penelitian Hukum Volume 20, Nomor 3, September 2020 e-ISSN 2579-8561. Pg. 392.

<sup>9</sup> Dmr. *KTT ASEAN Sepakat Kolaborasi Pengembangan Ekosistem Kendaraan Listrik*. <https://www.cnnindonesia.com/otomotif/20230511104059-603-948139/ktt-asean-sepakat-kolaborasi-pengembangan-ekosistem-kendaraan-listrik>. CNN Indonesia. Accessed on October 9<sup>th</sup>, 2023.

<sup>10</sup>Raisa Rafina. *Kerjasama Negara-Negara ASEAN dalam Pengendalian Pencemaran Udara Lintas Batas Dilihat dari Hukum Internasional*. <https://media.neliti.com/media/publications/14978-ID-kerjasama-negara-negara-asean-dalam-pengendalian-pencemaran-udara-lintas-batas-n.pdf>. Pg 12. Accessed on October 9<sup>th</sup> 2023.

within the ASEAN region. For instance, Indonesia is currently tasked with enhancing the role of parliamentary members in formulating political agreements to expedite the implementation of climate change mitigation and adaptation actions, as well as policies related to carbon pricing.<sup>11</sup>

Indonesia also has implemented its foreign policy by ratifying the *Paris Agreement* which led to the enactment of Law Number 16 Year 2016 concerning the *Paris Agreement* and the determination of *Nationally Determined Contributions* (NDCs). These NDCs outline Indonesia's efforts in mitigation and adaptation across various sectors such as energy, forestry, industry, transportation, and more.<sup>12</sup> One of the agreements is to take stronger actions and investments for a greener and more sustainable future with fewer greenhouse gas emissions. Indonesia's commitment to reducing greenhouse gas emissions in the energy sector includes a focus on transportation.<sup>13</sup> Technological innovations, particularly in transportation, play a crucial role in the restructuring process to achieve Sustainable Development.<sup>14</sup> As a result, the direction of development will shift from relying on finite energy sources

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<sup>11</sup> DPR RI. *Laporan Delegasi DPR RI dalam Rangka Kegiatan BKSAP Day untuk Persiapan Keketuaan Indonesia di ASEAN Inter-Parliamentary Assembly (AIPA)*. <https://www.dpr.go.id/dokakd/dokumen/BKSAP-13-0dfe25322543bfdd96b91266c998c9e5.pdf>. Pg 49. Accessed on October 9<sup>th</sup> 2023.

<sup>12</sup> JDIH BPK RI. *Persetujuan Paris Atas Konvensi Kerangka Kerja Perserikatan Bangsa-Bangsa mengenai Perubahan Iklim*. <https://peraturan.bpk.go.id/Home/Details/37573>, as cited in Aldy Nofansya, et.al. *Implementasi Perjanjian Paris dalam Kebijakan Luar Negeri Indonesia*. *Padjajaran Journal of International Relations* e-ISSN:2684-8082 Vol. 5 No.1, Januari 2023 (75-90) doi: 10.24198/padjirv511.39685. Pg. 76.

<sup>13</sup>Tasya Amilia. *Implementasi Paris Agreement 2015 di Indonesia melalui Regulasi Percepatan Program Kendaraan Bermotor Listrik Berbasis Baterai*. Undergraduate Thesis, Universitas Sriwijaya, Indralaya. 2022. Pg 19.

<sup>14</sup>Rahayu Subekti. *The Urgency of EV Regulations for Climate Change Control and Acceleration of Renewable Energy: A Comparative Analysis between Indonesia, China, and United States*. *Jurnal RechtsVinding*, Vol. 11 No. 3, Desember 2022 hlm. 435–450. Pg 438.

to utilizing renewable energy. This shift is expected to lead to reduced energy consumption and lower CO<sub>2</sub> emissions from fossil fuel combustion.<sup>15</sup>

The Southeast Asian countries have concurred to devise a comprehensive electric vehicle industrial ecosystem within the ASEAN region. The initial commitment to develop an electric vehicle ecosystem in the region was previously agreed upon during the 42<sup>nd</sup> *ASEAN Summit* in Labuan Bajo, East Nusa Tenggara, in May 2023.<sup>16</sup> At that time, ASEAN leaders collectively issued a declaration to promote ASEAN as an integral part of the global battery electric vehicle-based supply chain.<sup>17</sup> Currently, several ASEAN countries, including Malaysia, Thailand, Singapore, the Philippines, and Indonesia, have initiated the development of electric vehicle batteries for the benefit of their respective nations' future interests.<sup>18</sup>

From a legal standpoint, Indonesia has formally articulated its commitment through Presidential Regulations Number 79 Year 2023 regarding Amendments to Presidential Regulations Number 55 Year 2019 concerning *the Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation* (hereinafter, Presidential Regulations Number 79 Year 2023). Indonesia's commitment, as outlined in this regulation, is directed towards the reduction of greenhouse gas

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<sup>15</sup> Marinova, D., Guo, X., & Wu, Y. *China's transformation towards a global green system of innovation*. *Journal of Science and Technology Policy in China*, Vol. 4(2), 2013, 76-98. doi:10.1108/JSTPC-01-2013-0002, as cited in Rahayu Subekti. *The Urgency of EV Regulations for Climate Change Control and Acceleration of Renewable Energy: A Comparative Analysis between Indonesia, China, and United States*. *Jurnal RechtsVinding*, Vol. 11 No. 3, Desember 2022 pg. 435–450. Pg 438.

<sup>16</sup> Agnes Theodora. *ASEAN Perkuat Rantai Pasok Kendaraan Listrik di Kawasan*. <https://www.kompas.id/baca/ekonomi/2023/09/02/asean-perkuat-rantai-pasok-kendaraan-listrik-di-kawasan>. Kompas.id. Accessed on October 9<sup>th</sup> 2023.

<sup>17</sup> *Ibid*

<sup>18</sup> Luthfi Anshori. *Indonesia dan 4 Negara ASEAN Sepakat Kembangkan Baterai Mobil Listrik*. <https://oto.detik.com/berita/d-6725382/indonesia-dan-4-negara-asean-sepakat-kembangkan-baterai-mobil-listrik>. Detikoto. Accessed on October 9<sup>th</sup> 2023.

emissions by 29% by 2030. This aligns with a global objective, as indicated in the 13<sup>th</sup> point of the *United Nations Sustainable Development Goals* (SDGs)<sup>19</sup>, which reads:<sup>20</sup>

*“Take urgent action to combat climate change and its impacts by regulating emissions and promoting developments in renewable energy.”*

This regulation is intended to create an environment conducive to the development of the production and use of electric vehicles by the general public. Several countries, including Norway, the United States, and China, have undertaken comprehensive legal measures to regulate electric vehicles within their legal systems.<sup>21</sup>

In Norway, as part of their efforts to promote the widespread adoption of electric vehicles and mitigate environmental issues, the local government has implemented fiscal and non-fiscal incentive policies for electric vehicles while imposing high taxes on conventional vehicle users.<sup>22</sup> In the United States, regulations pertaining to electric vehicles are governed at both federal and state levels with the aim of encouraging their use. The United States' policies for electric vehicle development include providing tax credits, fiscal incentives, and federal government funding for electric vehicle charging infrastructure.<sup>23</sup> Meanwhile, in China, the local government has taken similar actions to Norway to promote the

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<sup>19</sup> HM Fiskal FIA UI 2019. *Masa Depan Industri Mobil Listrik di Indonesia dalam Perspektif Fiskal*. <https://kostaffiaui.medium.com/masa-depan-industri-mobil-listrik-di-indonesia-dalam-perspektif-fiskal-2a9d844c878a>. Medium. Accessed on October 9<sup>th</sup> 2023.

<sup>20</sup> Eubios Ethics Institute. *SDG Curriculum SDG Goals 13. Climate Action*. [https://www.eubios.info/sdg\\_curriculum\\_resources/sdg13climate](https://www.eubios.info/sdg_curriculum_resources/sdg13climate). Accessed on October 9<sup>th</sup> 2023.

<sup>21</sup> Idoan Marciano. *Mengembangkan Ekosistem Kendaraan Listrik: Pelajaran dari Pengalaman Amerika Serikat, Norwegia, dan Cina*. <https://iesr.or.id/wp-content/uploads/2021/02/Launching-Presentation.pdf>. IESR. Accessed on 10<sup>th</sup> 2023.

<sup>22</sup> *Ibid*, Pg 6.

<sup>23</sup> *Ibid*, Pg 7.

widespread use of battery electric vehicles, offering fiscal and non-fiscal incentives, implementing a dual credit system, and providing subsidies for the general public and investors.<sup>24</sup>

Juridically, Indonesia can be considered relatively prepared to regulate electric vehicles within the country. However, in practice, there are still disparities in the development of various aspects of the electric vehicle ecosystem between Indonesia and the three aforementioned countries. Factors contributing to these disparities include the lack of infrastructure, economic constraints of the population, and the relatively small electric vehicle production capacity.<sup>25</sup> With the enactment of Presidential Regulation Number 79 Year 2023, several ministerial-level derivative regulations have been issued. These regulations contain provisions that can be implemented in the future. The implementation of these regulations is expected to expedite economic transformation, enhance investment attractiveness within the electric vehicle ecosystem, create broader employment opportunities, and accelerate the transition from fossil energy to electricity usage. These efforts are anticipated to facilitate a reduction in emissions and improve energy subsidy efficiency in the future.<sup>26</sup>

In this context, the derivative regulations that have been promulgated include Minister of Energy and Mineral Resources Regulation Number 3 Year 2023

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<sup>24</sup> *Ibid*, Pg 8.

<sup>25</sup> *Ibid*, Pg 5.

<sup>26</sup> Kementerian Perindustrian RI. *Akselerasi Transformasi Ekonomi, Pemerintah Luncurkan Insentif Pembelian KBLBB Roda Empat dan Bus Per 1 April 2023*. <https://kemenperin.go.id/artikel/23955/Siaran-Pers-Bersama:-Akselerasi-Transformasi-Ekonomi,-Pemerintah-Luncurkan-Insentif-Pembelian-KBLBB-Roda-Empat-dan-Bus-Per-1-April-2023>. Accessed on October 10<sup>th</sup> 2023.

on the *General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based Electric Motorcycles*; Minister of Finance Regulation Number 38 Year 2023 concerning *Value Added Tax on the Delivery of Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023*; Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on *Guidelines for Government Assistance for the Purchase of Two-Wheeled Battery Electric Motor Vehicles*, and Minister of Investment/Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning *Guidelines and Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration*. These regulations underscore the collaboration between the Central Government and Local Governments in providing various forms of incentives aimed at expediting the *Battery Electric Vehicle (BEV)* Program for road transportation.

These incentives are directed towards *Battery-Based Electric Vehicle (BEV)* industries that establish domestic manufacturing facilities. These incentives encompass fiscal incentives such as customs duty exemptions, luxury goods sales tax deductions, export financing support, and various others. Additionally, non-fiscal incentives are provided, including operational security enhancements for the industry, road usage concessions, and production rights transfers. Furthermore, to stimulate public interest in electric vehicles, the ministry of industry regulations



also specify that the government offers incentives in the form of a discount of IDR 7 million for each purchase of a two-wheeled *Battery-Based Electric Vehicle* (BEV). Other incentives pertaining to products include the reduction of *Motor Vehicle Transfer Fees* (BBNKB) and *Motor Vehicle Taxes* (PKB).

*World Trade Organization* (WTO) is one of the most influential organizations in managing the global trade system. Since January 1, 1995, the WTO has been established based on the *Marrakesh Agreement* Year 1994, which resulted from negotiations during the *Uruguay Round*, also known as the *Uruguay Round*.<sup>27</sup> The WTO currently boasts 164 member countries, including Indonesia.<sup>28</sup> Indonesia's membership in the WTO is marked by the ratification of Law Number 7 Year 1994 concerning the *Ratification of the Agreement Establishing the World Trade Organization*. Consequently, Indonesia has a responsibility to adhere to all regulations within the WTO, one of which is the *General Agreement on Tariffs and Trade* (GATT) Year 1994. GATT aims to reduce tariffs and other trade barriers and eliminate discrimination in international trade. The principle of fair competition is governed by GATT, which is realized through regulations related to restrictions on subsidies for export products.<sup>29</sup>

Provisions regarding subsidies are regulated in Article XV of GATT and further elaborated in the *Agreement on Subsidies and Countervailing Measures*

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<sup>27</sup> World Trade Organization Information and External Relations Division. *Understanding the WTO*. World Trade Organization: Geneva, Switzerland. 2011. ISBN: 978-92-870-3748-0. Pg 10.

<sup>28</sup> WTO. *WTO Members*. [https://www.wto.org/english/res\\_e/booksp\\_e/sli\\_e/4wtomembers.pdf](https://www.wto.org/english/res_e/booksp_e/sli_e/4wtomembers.pdf). Accessed on October 12<sup>th</sup> 2023.

<sup>29</sup>Intan Griya Purnamasari. *Pengaturan Dan Implementasi Subsidi Biodiesel Indonesia-Uni Eropa Dalam Agreement on Subsidies and Countervailing Measures*. LEX Renaissance NO. 1 VOL. 6 JANUARI 2021: 120-131. Pg 121.

(SCM Agreement). The legal basis for assessing whether a form of subsidy is permissible or not is specifically outlined in Article 1 (1) of the *SCM Agreement*.<sup>30</sup> Subsidies in international trade are strongly prohibited as they can lead to unhealthy competition among WTO member states. Consequently, restrictions on subsidies have been explicitly defined to foster fair competition among other nations. If linked to the issue of regulations on battery-based electric vehicle subsidies in Indonesia above, as quoted from data provided by the *Ortax Data Center* in 2023, currently, the domestic electric vehicle market is dominated by Chinese and South Korean manufacturers, represented by Wuling and Hyundai. These two brands will receive electric vehicle incentives from the government because they have met the *local content requirements* (LCR/TKDN) in accordance with the government's regulations regarding battery-based electric vehicles.<sup>31</sup> In this context, these policies could potentially lead to discrimination and unfair competition for other vehicle manufacturers seeking to market their products in Indonesia due to the binding subsidy regulations.

Based on the background provided, the primary objective of this study is to examine whether the regulations pertaining to battery-based electric vehicle subsidies implemented in Indonesia align with the regulations within the WTO and what are the potential legal consequences for Indonesia arising from subsidies rules under the WTO frameworks. Therefore, the title selected for this study is

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<sup>30</sup> *Ibid*

<sup>31</sup> Harian Bisnis Indonesia. *Jepang Memulai, Korea-China Yang Untung*. <https://datacenter.ortax.org/ortax/berita/show/18461>. Ortax. Accessed on October 12<sup>th</sup> 2023.

**“Assessing the Validity of Indonesian Electric Vehicle Subsidy Rules under the WTO Regulations”.**

**B. Problem Formulation**

1. Whether Indonesia’s legal framework concerning the electric vehicle subsidy is consistent with the WTO regulations?
2. What are the potential legal consequences for Indonesia arising from its Electric Vehicle Subsidy Rules within the framework of WTO regulations?

**C. Objective of Research**

1. To examine whether Indonesia's legal framework concerning electric vehicle subsidy aligns with the regulations set forth by the WTO.
2. To explore potential legal consequences for Indonesia arising from its Electric Vehicle Subsidy Rules within the framework of WTO regulations.

**D. Benefit of Research**

The expected benefits of the results of this study are divided into theoretically and practically, as follows:

1. Theoretical benefits
  - a. Contribute ideas to the development of legal science in general and international trade law regarding the subsidy regulations under the WTO;
  - b. Enrich references and literature on international law literature for the development of international trade law in the future;
  - c. Provide results that can be used as reference material for the same or similar research at a later stage.

## 2. Practical benefits

- a. For the author: As a requirement for bachelor degree (S1);
- b. For the public: Enhance public awareness and understanding of the regulations governing acceptable subsidies under WTO guidelines and aim to offer valuable insights into debates from the standpoint of international trade law;
- c. For academics: Serve as valuable input knowledge for sustainable research, particularly in the context of subsidy regulations within the global electric vehicle trade sector;
- d. For the government: Serve as a guiding resource in the formulation and implementation of policies concerning international trade, particularly in the context of electric vehicle subsidies.

### **E. Originality of Research**

This section elucidates a range of findings derived from prior studies, forming the foundation for the present study. Additionally, the current study draws upon relevant prior studies concerning the themes under discussion, with the aim of averting issues of plagiarism and redundancy in relation to comparable topics covered in scholarly literature. As a result, the author has curated a set of previous studies to examine their disparities in conceptual frameworks and research perspectives, as expounded upon subsequently.

Poniman (2018) conducted research on the abolition of the export subsidies by the World Trade Organization (WTO) and its impact on Indonesian agriculture export. The research delves into the significance of export subsidies to the landscape of Indonesian agricultural exports, as well as the predicaments

encountered by developed countries within the agriculture sector in the wake of these subsidies' discontinuation. It is well-established that economically underdeveloped countries, characterized by low GDP, face constraints in providing export subsidies to their exporters, thereby driving up the prices of goods. This, in turn, engenders a price disparity between developed and developing countries. This research ultimately ascertains that the policy of abolishing export subsidies by the WTO has a favorable impact on the export value of Indonesian agricultural products and other developing nations. Conversely, it brings about a negative impact on developed countries that traditionally bestow export subsidies, leading to a decline in export values.

Jonathan Cristhian Mengko (2019) in his thesis about “*Dampak Kebijakan Pemberian Subsidi Produk Panel Surya oleh Republik Rakyat China terhadap Implementasi Persetujuanm WTO*” explored the Implementation of the WTO Agreement and policy of the subsidies. This thesis adopts a normative legal approach and primarily centers on the employment of anti-subsidy measures by the United States regarding solar panel products and other commodities originating from China. In this context, the United States leveled allegations against China, contending that it was providing domestic subsidies with low-interest loans, thereby creating competitiveness challenges for American enterprises. Conversely, China also reacted by imposing anti-dumping and anti-subsidy import tariffs on U.S. Polysilicon, a key component in solar panel production. This incident subsequently led to a trade dispute between the United States and China. The outcomes of the thesis revealed that the actions undertaken by both China and the United States

unquestionably impede the execution of WTO accords and the core objective of the WTO: the establishment of an equitable and unobstructed global trade system benefiting all its member nations.

Dyan Franciska Dumaris Sitanggang (2019), conducted research on the Implementation of fisheries subsidy discipline in the global trade system and its implications for fisheries in Indonesia based on economic and legal perspectives. This study employs normative and qualitative study methods, adopting a narrative analysis approach. The research underscores Indonesia's role as a maritime nation, emphasizing the need for the sustainable management of its marine resources. It highlights the significance of supporting the fisheries industry, which has positive economic impacts and considers the interests of small and medium-sized fisheries enterprises. The World Trade Organization (WTO) has devised new disciplines on fisheries subsidies, primarily aimed at restricting environmentally harmful subsidies. In light of the ongoing discussions on fisheries subsidy disciplines, it has been agreed that the prohibition of fisheries subsidies should primarily target unsustainable fishing practices resulting from IUU-Fishing. However, subsidies for fishermen and small fisheries enterprises should be retained. This research concludes that fisheries subsidies are permissible when they are provided appropriately and effectively, ensuring profitability while promoting sustainable fisheries.

Leliana Galuh Manika (2020) explores the intricate landscape of subsidy control within the World Trade Organization (WTO) in her thesis titled "*Subsidy Control in the WTO, A Case Study: United States Measures Affecting Trade in*

*Large Civil Aircraft (Second Complaint).*" This study primarily focuses on elucidating the WTO's mechanisms for monitoring and regulating state subsidies. It delves into specific cases of subsidies, particularly scrutinizing those classified as prohibited. Manika employs two distinct approaches throughout her research: the statutory approach and the conceptual approach. Notably, the thesis underscores that the subsidies bestowed upon Boeing fall under the category of prohibited subsidies. It sheds light on the specialized institution responsible for overseeing subsidy control under the WTO—the Committee on Subsidies and Countervailing Measures. This committee serves as the recipient of subsidy notifications submitted by Member States. Furthermore, the thesis highlights the prohibited subsidies attributed to Boeing. These pertain to specific legislative measures enacted by the United States related to tax exemptions. These legal provisions grant Boeing the ability to circumvent and postpone their tax obligations, significantly affecting the financial aspects of their operations.

Intan Griya Purnamasari (2021) conducted research that revolves around the regulation and implementation of biodiesel subsidies by Indonesia within the European Union, examined through the SCM Agreement. The research employs a juridical method with a case study approach. The study unveils that the European Union Commission initiated an investigation into Indonesian biodiesel, prompted by the Minister of Energy and Mineral Resources Regulation Number 12 Year 2015. This inquiry discovered the presence of subsidies, which included grants, tax benefits, and access to raw materials offered below market prices, all of which aligned with the stipulations of Article 1 within the SCM. Further scrutiny, guided

by Article 3 of the SCM, classified these subsidies as prohibited subsidies. Thus, the research concludes that Indonesia's implementation of subsidies for biodiesel did not adhere to the established regulations outlined in the 1995 Agreement on Subsidies and Countervailing Measures (SCM).

Wulan Suci Putri Yanti Ismail (2021) conducted research entitled “*Penerapan Kebijakan Subsidi Perikanan Indonesia berdasarkan Pengaturan Subsidi Perikanan WTO*”. This research adopts normative legal research with a quantitative analytical approach. The research investigates how Indonesia applies its fisheries subsidy policy in line with the WTO's regulations on fisheries subsidies. In the process of analysis, the research also touches upon its alignment with sustainable development goals. The findings of this research suggest that Indonesia's implementation of fisheries subsidies does not violate international trade regulations. This is primarily due to Indonesia's classification as a developing country, which results in the continued application of Special and Differential Treatment (S&DT) provisions. The research provides assurance that the policy's implementation adheres to effective management practices in its distribution. Despite some persisting challenges, Indonesia remains committed to continuous improvement. The policy is designed to ensure that fisheries subsidies are in line with sustainable fishing practices, thereby advancing Indonesia's role as a global maritime hub.

Oscar Fernando & Lili Yan Ing (2021) on their research entitled “*Indonesia's Local Content Requirements: An Assessment on Consistency with Free Trade Agreement Commitments*” primarily concentrate on evaluating the



consistency of Indonesia's regulations related to Local Content Requirements (LCRs) with the commitments made under Free Trade Agreements (FTAs), the General Agreement on Tariffs and Trade (GATT), and Trade-Related Investment Measures (TRIMs). The research arrives at the conclusion that Indonesia's LCR regulations are likely to exhibit inconsistencies with the nation's obligations outlined in its FTAs. These inconsistencies are particularly evident concerning the principles of National Treatment and the prohibition of imposing Performance Requirements. Within this study, Fernando also presents various alternative policy instruments that align more consistently with Indonesia's trade commitments. For instance, Indonesia could consider raising tariffs to the bound rate for specific products, integrating corporate social responsibility practices, and incorporating LCRs into government procurement activities.

Guspendi A Simangunsong (2022) conducted research entitled “*Penyelesaian Sengketa Bisnis Ekspor Udang Indonesia Dan Amerika Serikat*”. The research employed a normative juridical approach with qualitative analysis. It aimed to elucidate the underlying causes of the trade dispute between Indonesia and the United States. Indonesia holds the distinction of being the largest shrimp exporter to the United States. The dispute was triggered by allegations made by the *Coalition of Gulf Shrimp Industries* (COGSI) against the Indonesian government. COGSI claimed that the influx of U.S. shrimp imports was unfair, with prices lower than domestically produced U.S. shrimp. The Indonesian government was accused of granting subsidies to exporters in an effort to suppress shrimp prices in the U.S. market. This dispute had an unintended impact on the trade relationship between

both nations, particularly concerning shrimp exports to the United States. The research findings shed light on a crucial revelation: the allegations of subsidies by U.S. shrimp producers who were members of the COGSI coalition, and who believed they were victims of unfair trade practices, were fundamentally flawed. Such accusations, if acted upon, could disrupt international trade, specifically in shrimp commodities between the United States and Indonesia, as well as other implicated countries. This disruption would not only harm Indonesian shrimp producers but also negatively affect U.S. consumers who rely on a steady supply of shrimp.

Michelle Limenta & Lili Yan Ing (2022) on her research entitled “*Indonesia’s Local Content Requirements: Assessment with WTO Rules*” evaluates Indonesia's local content regulations in sectors such as energy, telecommunication devices, pharmaceuticals, and modern retail. These regulations have raised concerns among select World Trade Organization (WTO) Members regarding Indonesia's compliance with multilateral trade rules. The study's findings indicate that Indonesia's Local Content Requirements (LCRs) in the aforementioned sectors are questionable and may potentially breach WTO regulations. This is particularly evident when these LCRs condition advantages on the use of domestic goods, resulting in a negative impact on the competitive opportunities for similar imported goods. Such practices are inconsistent with the Trade-Related Investment Measures (TRIMs) and the General Agreement on Tariffs and Trade (GATT), with a notable violation of the national treatment principle, even if these measures are presented in a voluntary guise.

Darmawan Febri Padmono (2023) on his research entitled “*Analysis of Subsidy Arrangements in Indonesia in View of the SCM Agreement (Agreement on Subsidies and Countervailing Measures)*” employs a qualitative analytical method to explore how subsidy arrangements in Indonesia align with the SCM Agreement. This study delves into the implementation of subsidy regulations in international trade within Indonesia, which are governed by Government Regulation Number 34 Year 1996 concerning Antidumping and Countervailing Duties. These regulations are consistent with existing standards. However, it is essential to note that the SCM Agreement does not provide specific guidance for cases that have arisen in Indonesia, particularly regarding the resolution of export subsidy disputes. As a result, the research concludes that Indonesia's rules on international trade subsidies can be found in Government Regulation Number 34 Year 1996, which follows accepted standards. Nonetheless, when it comes to cases in Indonesia, especially those related to solving disputes about export subsidies, the SCM Agreement doesn't offer clear guidance. In such situations, the process for resolving disputes is determined by WTO Article XXII and Article XXIII, which require the involved parties to engage in one-on-one discussions.

*Table 1* Research Originality– A Comparative Analysis of this Thesis and Other Scholarly Thesis and Articles

No	Title	Problem Formulations	Similarities	Differences
1.	<p>Poniman (2018). <i>Abolishing of the Export Subsidies by World Trade Organization (WTO) and the Impact for Indonesian Agriculture Export.</i></p>	<p>What are the consequences of the elimination of export subsidies by the World Trade Organization (WTO) on Indonesian agricultural product exports?</p>	<p>This study concurrently examines WTO provisions regarding export subsidies.</p>	<p>This study primarily focuses on discussing the implications of the elimination of export subsidy policies by the WTO on agricultural products.</p>
2.	<p>Jonathan Christian Mengko (2019). <i>Dampak</i></p>	<p>How Does the Policy of Granting Subsidies for Solar Panel Products by the People's Republic of China Impact the</p>	<p>This study similarly reviews export subsidy policies and</p>	<p>This study places greater emphasis on the</p>

No	Title	Problem Formulations	Similarities	Differences
	<p><i>Kebijakan Pemberian Subsidi Produk Panel Surya oleh Republik Rakyat China terhadap Implementasi Persetujuan WTO.</i></p>	<p>Implementation of WTO Agreement?</p>	<p>countervailing measures within WTO agreement.</p>	<p>impact of the trade conflict between China and the United States in the context of the policy of granting subsidies for solar panel products on the implementation of WTO agreements.</p>



No	Title	Problem Formulations	Similarities	Differences
3.	Dyan Franciska Dumaris Sitanggang (2019). <i>Disiplin Subsidi Perikanan dalam Sistem Perdagangan Global dan Implikasinya bagi Perikanan Indonesia.</i>	How is the Implementation of Fisheries Subsidy Discipline in the Global Trade System and Its Implications for Fisheries in Indonesia?	This study similarly addresses the provisions regarding subsidies in WTO agreements and their implications for Indonesia.	This study primarily focuses on the issue of fisheries subsidies in Indonesia from the perspectives of economic law and its relationship with the sustainability of fishing activities.
4.	Leliana Galuh Manika	1. How did WTO control the	This study similarly	This research

No	Title	Problem Formulations	Similarities	Differences
	<p>(2020). <i>Subsidy Control in WTO, Case Study: United-States-Measures Affecting Trade-In Large Civil Aircraft-Second Complaint.</i></p>	<p>subsidy under the Agreement of Subsidies and Countervailing Measures? 2. Why were the subsidies received by Boeing categorized as prohibited subsidies?</p>	<p>delves into the WTO's control of subsidies as regulated under the Agreement on Subsidies and Countervailing Measures.</p>	<p>primarily focuses on examining how the WTO exercises control over subsidies of Member States. Furthermore, it explores cases related to subsidies and discusses prohibited subsidies,</p>

No	Title	Problem Formulations	Similarities	Differences
				notably the case of the US – Large Civil Aircraft (2nd complaint)
5.	Intan Griya Purnamasari (2021). <i>Pengaturan Dan Implementasi Subsidi Biodiesel Indonesia-Uni Eropa Dalam Agreement on Subsidies and</i>	1. How are Subsidy Regulations addressed in the Agreement on Subsidies and Countervailing Measures of 1995 (SCM) and the World Trade Organization (WTO)?	This study similarly explores the regulation of subsidies within the Agreement on Subsidies and Countervailing Measures of 1995.	This study primarily focuses on the regulation and implementation of Indonesian biodiesel subsidies in the



No	Title	Problem Formulations	Similarities	Differences
	<i>Countervailing Measures.</i>	<p>2. What is the development of policy for Palm Oil-based Biodiesel (CPO) in Indonesia?</p> <p>3. How is the Implementation of Subsidies by Indonesia in the Biodiesel export policy examined under the Agreement on Subsidies and Countervailing Measures of 1995 (SCM)?</p>		European Union, as assessed in accordance with the SCM Agreement.
6.	Wulan Suci Putri Yanti	How is the implementation of	This study similarly	This study primarily

No	Title	Problem Formulations	Similarities	Differences
	<p>Ismail (2021). <i>Penerapan Kebijakan Subsidi Perikanan Indonesia berdasarkan Pengaturan Subsidi Perikanan WTO.</i></p>	<p>Indonesia's fisheries subsidy policy based on WTO fisheries subsidy regulations and its relation to sustainable development?</p>	<p>addresses the provisions regarding subsidies in WTO agreements and their implications for Indonesia.</p>	<p>focuses on examining the regulation of Indonesia's fisheries subsidies in line with the WTO and its relevance to sustainable development goals.</p>
7.	<p>Oscar Fernando &amp; Lili Yan Ing (2021).</p>	<p>Whether Indonesia's Local Content Requirements is consistent with Free</p>	<p>This study similarly involves the intricacies of</p>	<p>This study primarily focuses on the</p>

No	Title	Problem Formulations	Similarities	Differences
	<p><i>Indonesia's Local Content Requirements: An Assessment on Consistency with Free Trade Agreement Commitments.</i></p>	<p>Trade Agreement Commitments?</p>	<p>LCR policies and their alignment with international trade law, including the application of pertinent provisions within the WTO framework.</p>	<p>consistency of Indonesia's regulations concerning Local Content Requirements (LCRs) with Free Trade Agreement Commitments and Trade-Related Investment Measures (TRIMs).</p>

No	Title	Problem Formulations	Similarities	Differences
8.	<p>Guspendi A Simangunsong (2022). <i>Penyelesaian Sengketa Bisnis Ekspor Udang Indonesia Dan Amerika Serikat.</i></p>	<p>How is the resolution of the dispute over allegations of shrimp export subsidies between Indonesia and the United States achieved?</p>	<p>This study similarly delves into provisions on subsidies and mechanisms for settling subsidy disputes within WTO agreement.</p>	<p>This study primarily emphasizes the dispute resolution mechanisms between Indonesia and the United States concerning shrimp export business under the WTO agreement.</p>

No	Title	Problem Formulations	Similarities	Differences
9.	Michelle Limenta & Lili Yan Ing (2022). <i>Indonesia's Local Content Requirements: Assessment with WTO Rules.</i>	Whether the Indonesia's Local Content Requirements is consistent with WTO rules?	This study similarly examines local content requirements policies, specifically in modern retail sectors such as electric vehicles and their consistency with WTO regulations.	This study primarily focuses on assessing Indonesia's local content regulations in general, such as the energy, telecommunication devices, pharmaceutical, and modern retail sectors, in line with provisions

No	Title	Problem Formulations	Similarities	Differences
				in WTO regulations and TRIMs.
10.	<p>Darmawan Febri Padmono (2023). <i>Analysis of Subsidy Arrangements in Indonesia in View of the SCM Agreement (Agreement on Subsidies and Countervailing Measures).</i></p>	<p>How do subsidy arrangements in Indonesia align with the SCM Agreement (Agreement on Subsidies and Countervailing Measures)?</p>	<p>This study similarly addresses subsidy provisions in accordance with WTO rules and the SCM Agreement.</p>	<p>This study primarily focuses on examining the conformity of subsidy regulations within Government Regulation Number 34 of 1996 concerning Antidumpi</p>

No	Title	Problem Formulations	Similarities	Differences
				<p>ng Import Duty and Countervailing Duty with regulations from WTO and the SCM Agreement</p>

After conducting a thorough examination of the existing literatures, it appears that existing study tends to focus on the analysis of subsidy disputes recorded in the WTO's dispute settlement body. They also emphasize potential violations of subsidy provisions within the WTO, as well as their impacts and resolution mechanisms. Furthermore, some studies have identified Indonesian subsidy policies and regulations that may breach WTO provisions. Despite the valuable insights provided by existing literature, there seems to be no research that explicitly addresses the issue of electric vehicle subsidy regulations in Indonesia concerning the WTO agreement and Indonesia's commitments to such an

agreement. Therefore, this study aims to provide a detailed analysis of whether the electric vehicle subsidy regulations implemented in Indonesia are in line with the provisions outlined in the WTO agreement. Additionally, this research will examine which subsidies are allowed according to the WTO.

The author will explore the validity of several Indonesian electric vehicle subsidy rules that may potentially create discriminatory actions and violate the principle of fair treatment within the WTO framework. This will involve an analysis of Indonesian regulations that could be considered to violate provisions within the *General Agreement on Tariffs and Trade* (GATT) and the *Agreement on Subsidies and Countervailing Measures* (SCM). Furthermore, this study will discuss the potential legal consequences that Indonesia may face if found to be in violation of subsidy provisions within the WTO framework. Lastly, the author will also explore alternative actions that Indonesia can take to continue its policies without violating principles and provisions in international trade.

#### **F. Literature Review**

In examining the validity of Indonesia's regulations concerning the implementation of subsidies for battery-based electric vehicles, the author will analyze the provisions related to subsidies and countervailing measures established by the WTO under the *General Agreement on Tariffs and Trade* (GATT) as well as under *Subsidies and Countervailing Measures* (SCM) Agreement.

##### **1. Legal Relationship between Indonesia's Trade Law and WTO**

In the context of legal harmonization, Indonesia is perceived as a country that adheres to a combined approach, involving both the theory of incorporation



(monism) and the theory of transformation (dualism).<sup>32</sup> Monism theory posits that international law automatically becomes part of national law without requiring a formal adoption process.<sup>33</sup> In contrast, dualism theory asserts that international law cannot become national law without undergoing an adoption process, which necessitates prior approval by the legislative body to enact it into national law.<sup>34</sup>

Within the realm of international organizations, the *World Trade Organization* (WTO) serves as an illustrative example of an international body engaged in the unification and harmonization of international trade law.<sup>35</sup> The establishment of the *World Trade Organization* (WTO) can be traced back to the Uruguay Round negotiations (1986-1994) and earlier discussions conducted under the *General Agreement on Tariffs and Trade* (GATT). The overarching objective of the WTO is to facilitate the smooth flow of trade, promoting economic development and well-being while minimizing any negative repercussions. This entails the removal of trade barriers and the establishment of transparent trade rules worldwide. The underlying principles and basis of the WTO revolve around the pursuit of border openness, the assurance of *Most Favoured Nation* (MFN) treatment and non-discriminatory practices among member states, and a commitment to transparency in all endeavors.<sup>36</sup> By providing clarity and stability, the WTO instills confidence in individuals, companies, and governments, assuring

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<sup>32</sup> Sefriani. *Hukum Internasional: Suatu pengantar*. Depok: Rajawali Pres. 2018. Pg. 84.

<sup>33</sup> *Ibid*. Pg. 80

<sup>34</sup> *Ibid*

<sup>35</sup> Huala Adolf. *Hukum Perdagangan Internasional*. Jogjakarta: Raja Grafindo Persada, 2006. Pg. 36.

<sup>36</sup> World Trade Organization Information and External Relations Division. *Understanding the WTO*. World Trade Organization: Geneva, Switzerland. 2011. ISBN: 978-92-870-3748-0. Pg 18-19.

them of consistent trade policies and preventing abrupt changes that could disrupt international trade.<sup>37</sup> As a country adhering to the dualism doctrine, Indonesia has *de jure* ratified the establishment agreement of the WTO through Law Number 7 Year 1994. Through this ratification, Indonesia has committed itself to global trade liberalization.<sup>38</sup>

Through the trade liberalization initiated by WTO regulations, WTO member states are directed to open their markets to other member states. There are almost no longer any barriers to market entry for WTO member states, and the use of tariffs as a tool to protect foreign products upon entering the domestic market has gradually been abandoned. Consequently, countries that are members of the WTO, both directly and indirectly, implement a market economy system. In this system, decisions related to the quantity of production and methods of production are delegated to business entities, giving them the authority to make autonomous decisions concerning their business operations.<sup>39</sup> Upon its involvement to the WTO in 1995 as a developing country, Indonesia has experienced several advantages. One of these benefits is the ability to enhance production and optimize the utilization of its natural resources due to the presence of trade tariffs and provisions for special and differential (S&D) treatment within the framework of the WTO.<sup>40</sup>

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<sup>37</sup> Serlika Arpita & Rio Adhitya. *Hukum Perdagangan Internasional*. —Ed. 1, Cet. 1.—Depok: Rajawali Pers, 2020. Pg 187.

<sup>38</sup> Yuniarti. *Liberalisasi Sektor Pertanian di Indonesia Dalam Kerangka World Trade Organization Agreement on Agriculture (WTO-AoA)*. Jurnal Transnasional, Vol. 6, No. 2, Februari 2015. Pg 1647-1661. Pg. 1649-1650.

<sup>39</sup> Huala Adolf (2005). *Hukum Perdagangan Internasional*, as cited in Jamilus. (*Analysis of the Function and Benefits of WTO for Developing Countries (Especially Indonesia)*). JIKH Vol. 11 No. 2 Juli 2017: 205 – 225. Pg. 206.

<sup>40</sup> All Answers ltd. '*Advantages and Disadvantages of the WTO for Developing Nations*' (Lawteacher.net, October 2023) <https://www.lawteacher.net/free-law-essays/international->

In addition, Indonesia has experienced the benefits of the *Generalized System of Preference* (GSP), which encompasses the reduction and elimination of import tariffs on exported products by developed countries such as Canada, the United States, Australia, New Zealand, and Japan. GSP is a form of trade support provided to developing countries within the framework of international trade agreements.<sup>41</sup>

Nonetheless, in practice, it is the developed countries that reap the advantages of the free trade concept, as they already hold the upper hand in various aspects, such as possessing advanced technology, skilled human resources, and other resources that are lacking in developing countries. For instance, within the realm of the *Generalized System of Preferences* (GSP), it can induce heightened lobbying and pressure from exporters situated in developed countries. These exporters may attempt to sway GSP recipients in complying with trade prerequisites. This dynamic can potentially place developing countries at a disadvantage, as it may culminate in unpredictable and non-reciprocal trade policies. Such policies have the capacity to discourage investment and impede economic progress.<sup>42</sup> The dispute between Indonesia and the European Union concerning nickel serves as an illustration of how free trade may carry drawbacks for developing countries. The increased integration with the global market, an outcome of free trade, does not inherently translate into prosperity. The gains from

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[law/advantages-and-disadvantages-of-world-trade-organization-international-law-essay.php?vref=1](#). Accessed on October 25<sup>th</sup> 2023

<sup>41</sup> Alfi Nurjannah. *Legalitas Pemberlakuan Pembatasan Ekspor Bijih Nikel Oleh Indonesia Menurut Perjanjian World Trade Organization*. Undergraduate Thesis, Universitas Islam Indonesia Yogyakarta. 2022. Pg. 25.

<sup>42</sup> Jennifer L Tobin & Marc L. Busch. "The Disadvantage of Membership: How Joining the GATT/WTO Undermines GSP." *World Trade Review* 18 (1). Cambridge University Press: 133–60. 2019. doi:10.1017/S1474745618000034. Pg 5.

trade can be distributed in an exceedingly unequal manner, and associated risks encompass unemployment, heightened vulnerability, reduced food security, and the depletion of natural resources.<sup>43</sup>

## 2. The Principles of International Trade under the WTO

In pursuit of its vision as an international trade organization, the WTO has enshrined five fundamental principles of international trade within the GATT framework. These principles necessitate the compliance and adherence of member states. The aforesaid principles encompass:<sup>44</sup>

### a. Non-discrimination principle

In the context of the Non-Discrimination Principle, two fundamental principles are identified, namely, the *Most-Favored Nation* (MFN) and *National Treatment* (NT). The MFN principle is founded on the principle of equal treatment among member states in their trade relationships. The significance of the MFN principle is evident in its inclusion in Article I of the General Agreement on Tariffs and Trade (GATT).<sup>45</sup> As a member of the WTO, a country is prohibited from according differential treatment to trading partners from any country. This includes providing more favorable import facilities for products from one country compared to another when entering the domestic market.<sup>46</sup>

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<sup>43</sup> Stefan De Vylder, et al. *The Least Developed Countries and World Trade*. Stockholm: Sida Studies no. 5. issn 1404-9562 isbn 91-586-8993-1. Pg 27-29.

<sup>44</sup> World Trade Organization Information and External Relations Division, *loc.cit*.

<sup>45</sup> General Agreement on Tariffs and Trade (hereinafter, GATT 1994), § 1

<sup>46</sup> Huala Adolf, *op.cit* Pg 45.

Meanwhile, *the national treatment* (NT) principle, as outlined in Article III of GATT 1947, enforces the prohibition of discrimination against domestic products in favor of similar foreign products. This means that imported products entering a country's territory must be granted equal treatment to that of similar domestic products, in accordance with the treatment provided by the government to such domestic products.<sup>47</sup>

b. Freer Trade Principle

The primary objective of the WTO is to achieve greater stability and predictability within the framework of the international trading system. One of the methods adopted to eliminate various restrictions on export and import activities is by applying the principle of liberalization. In this context, regulations related to subsidies and tariffs are entirely absent.<sup>48</sup> Unlocking markets can be advantageous, yet it necessitates adaptation. The WTO accords permit nations to implement modifications incrementally, employing a process of "*progressive liberalization*."<sup>49</sup> In addition, there are regulations in place to limit liberalization processes, referred to as '*safeguards*.' These provisions grant WTO member states, particularly those classified as least developed and/or developing countries, the authority to undertake '*emergency*' actions in order to avert catastrophic consequences for their respective economies.<sup>50</sup>

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<sup>47</sup> I Gusti Ngurah P. Widiatedja. *Buku Ajar Hukum Perdagangan Internasional*. Denpasar: Udayana University Press. 1<sup>st</sup> Edition. 2021. Pg 41.

<sup>48</sup> Meria Utama. *Hukum Ekonomi Internasional*. Jakarta Pusat: PT. Fikahati Aneska. 2012. Pg 48.

<sup>49</sup> World Trade Organization Information and External Relations Division. *Op.cit* Pg 11.

<sup>50</sup> Meria Utama, *Loc cit*.

### c. Predictability Principle

The predictability principle, as applied here, encompasses the concept of binding tariffs and transparency. Within the framework of the WTO, countries, when committing to liberalize their markets for goods or services, establish legally binding commitments. These commitments translate into maximum limits on customs tariff rates for goods. On occasion, countries may impose import taxes at rates lower than the bound rates. Any modification to these commitments by a country necessitates negotiations with its trade partners, which may involve compensatory measures to offset potential trade losses.<sup>51</sup> Furthermore, the WTO mandates the establishment of clear and publicly accessible trade rules, emphasizing transparency, as specified in Article X and Article III of GATT.<sup>52</sup> Regular monitoring of national trade policies through the Trade Policy Review Mechanism serves as an additional instrument to promote transparency, both at the domestic and multilateral levels.<sup>53</sup>

### d. Fair Competition Principle

Associated with the prohibition of dumping (Article VI) and subsidies (Article XVI), the fair competition principle aims to prevent certain countries from gaining unfair advantages by implementing excessive policies.<sup>54</sup> Dumping activities can result in losses for the importing country, while subsidies can lead to dependence for exporters (domestic producers)

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<sup>51</sup> World Trade Organization Information and External Relations Division. *Op.cit* Pg 12.

<sup>52</sup> Meria Utama, *Op.cit* Pg. 52

<sup>53</sup> *Ibid*

<sup>54</sup> I Gusti Ngurah P. Widiatedja, *Op.cit* Pg 43.

on government assistance.<sup>55</sup> Therefore, the WTO views dumping and subsidies as unfair or dishonest economic practices. Consequently, if a country is proven to engage in these practices, the affected importing country has the right to impose countervailing duties.<sup>56</sup>

e. Special and Differential Treatment Principle

In its role as a source of multilateral international trade law, the WTO functions pragmatically to ensure that its implementation is not burdensome and to prevent violations, particularly of the fundamental principles established within the WTO framework. Approximately two-thirds of GATT member states are developing countries in the early stages of economic development. The WTO has introduced a specific principle known as ‘*Special and Different Treatment*’ (S&D) outlined in Part IV, specifically in Articles XXXVI-XXXVIII of the GATT.<sup>57</sup>

Likewise, the S & D principle is considered a guide to the principle of justice in international trade practices because it has been integrated into various legal instruments that prioritize equity as a key element.<sup>58</sup>

### 3. *Subsidies and Countervailing Measures (SCM) Agreement*

The *Subsidies and Countervailing Measures (SCM) Agreement* extends from the Subsidies Code and the original GATT provisions. Its purpose is to

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<sup>55</sup> Huala Adolf, *Op.cit* Pg 172

<sup>56</sup> *Ibid*, Pg 181

<sup>57</sup> Evita Isretno Israhadi. *Hukum Dagang Internasional*. Program Pascasarjana, Universitas Borobudur Jakarta. 2018. Pg 34.

<sup>58</sup> Hendra Djaja. *Penegakan Prinsip Special and Differential Treatment dalam Perspektif Hukum Perdagangan Internasional*. Jurnal Cakrawala Hukum, Vol.19, No.1 Juni 2014, hlm. 20–28. Pg 25.

implement multilateral rules governing subsidies that have a distorting impact on global trade. The SCM Agreement additionally oversees how WTO Members can respond to subsidized imports. Subsidies are a consequence of government choices. The SCM Agreement's provisions address not only the unilateral measures (*countervailing duties*) that can be applied to counteract subsidized imports but also create multilateral rules to regulate the utilization of subsidies themselves.<sup>59</sup>

To qualify as a subsidy under the SCM Agreement, it must encompass three essential components: (i) a financial contribution, (ii) originating from a government or any public entity within a member's jurisdiction, and (iii) resulting in a benefit, as it specifically stated below.<sup>60</sup>

“Subsidies in terms of the agreement are:<sup>61</sup>

- (1) Financial contributions granted by governments or any other public bodies, including subnational government entities, if these contributions involve: (i) the direct transfer of funds through grants, loans, equity infusion, or potential transfers like loan guarantees; (ii) foregone government revenue due to tax credits or other fiscal incentives; (iii) the provision of goods and services other than general infrastructure; (iv) government payments to a funding mechanism that carries out one or more of the functions illustrated in (i) to (iii) above.
- (2) Any form of income or price support.”

The SCM Agreement categorizes subsidies into three groupings according to their specificity, intended function, and inherent characteristics:<sup>62</sup>

- a. Subsidies that are completely banned, referred to as "*red-light subsidies*".<sup>63</sup>

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<sup>59</sup> WTO E-learning. *Detailed Presentation of Subsidies and Countervailing Measures in the WTO*. <https://www.uio.no/studier/emner/jus/jus/JUS5850/h17/tekster/overview-subsidies.pdf>. Pg 4. Accessed on October 28<sup>th</sup> 2023.

<sup>60</sup> *Ibid*, Pg 7.

<sup>61</sup> Subsidies and Countervailing Measures Agreement (Hereinafter, SCM Agreement) § 1 (1).

<sup>62</sup> Meti Government of Japan, *Chapter 6 Subsidies and Countervailing Measures*. <https://www.meti.go.jp/english/report/downloadfiles/gCT0006e.pdf>. Pg 85. Accessed on October 28, 2023.

<sup>63</sup> SCM Agreement § 2, 3, and 4.



The first category of prohibited subsidies consists of those tied to export performance (referred to as export subsidies) or the utilization of domestic products over imported ones (local content subsidies). These subsidies are intended to influence trade and are likely to negatively impact the interests of other WTO members.<sup>64</sup> The second category of banned subsidies, known as import substitution, encompasses measures that promote the use of domestic products over imported ones. According to the Agreement, WTO members are generally not allowed to provide export subsidies or local content subsidies.<sup>65</sup>

b. Subsidies that are not banned but could potentially face countervailing measures, known as "*yellow-light subsidies*,"<sup>66</sup>

*Actionable subsidies*, often referred to as *yellow-light subsidies*, are not inherently banned but can potentially be subject to corrective actions if they result in detrimental consequences, such as causing significant harm 'serious prejudice' to other countries.<sup>67</sup> A member can initiate a dispute against another member's subsidies based on three types of adverse effects, including serious prejudice, injury, and nullification or impairment of benefits.<sup>68</sup>

c. Subsidies that are neither prohibited nor subject to countervailing measures, identified as "*green-light subsidies*."<sup>69</sup>

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<sup>64</sup> Rajeev Ahuja. *Export Incentive in India within WTO Framework*. ICRIER. 2001. Working paper No. 72. Pg 15.

<sup>65</sup> *Ibid*, Pg 8.

<sup>66</sup> SCM Agreement § 7

<sup>67</sup> *Ibid*; *Export Incentive in India within WTO Framework*. *Loc.cit*

<sup>68</sup> WTO E-learning, *Op.cit* Pg 86.

<sup>69</sup> SCM Agreement § 8 & § 9.

*Non-actionable subsidies*, commonly known as *green-light subsidies*, encompass non-specific subsidies and certain specific subsidies that satisfy particular conditions outlined below:<sup>70</sup>

1) Research and Development Subsidies

Government support for research conducted by firms or educational/research institutions, when performed under a contract with firms, is considered *non-actionable* if the assistance covers no more than 75% of the total eligible cost of industrial research.<sup>71</sup>

2) Regional Development Subsidies

These subsidies should lack specificity within the region,<sup>72</sup> adhering to neutral and objectively defined eligibility criteria, which encompass an evaluation of economic development. Such evaluation considers factors like income or per capita GDP, ensuring they do not exceed 85% of the national average, and unemployment rates should be at least 110% of the national average, calculated over a three-year duration.<sup>73</sup>

3) Environmental Conservation Subsidies

Government assistance becomes admissible when it facilitates the adjustment of operational facilities, which have been in operation for a minimum of two years, to comply with newly established environmental regulations mandated by law.

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<sup>70</sup> WTO E-learning, *Loc.cit*

<sup>71</sup> URAA. *Agreement on Subsidies and Countervailing Measures*. <https://enforcement.trade.gov/regs/uraa/saa-cv.html>. Accessed on October 28<sup>th</sup> 2023.

<sup>72</sup> WTO E-learning, *Op.cit* Pg 87; SCM Agreement § 8 (a).

<sup>73</sup> URAA. *Loc.cit*; SCM Agreement § 8 (b).

Nevertheless, particular *green-light subsidies* could potentially become eligible for remedial actions under the provisions governing *green-light subsidies*<sup>74</sup> if they inflict substantial harm that is challenging to rectify on the domestic industry of a member.<sup>75</sup>

## G. Research Methods

Research is a systematic and scientific method used to obtain information, solve problems, answer research questions, and generate new knowledge. This involves a structured and organized process of collecting, analysing, and arranging data with the aim of making it useful for decision-making purposes.<sup>76</sup>

### 1. Type of Research

Research in this writing uses normative legal research methods, which refer to legal norms contained in conventions, international customs, general principles of law, jurisprudence, and doctrine. Normative legal research has a tendency to image law as a prescriptive discipline where it only views law from the perspective of its norms, which is certainly prescriptive.<sup>77</sup>

The purpose of normative legal research is to find solutions to the legal problems under discussion. The information found from the research is in the form of oral facts or written statements.<sup>78</sup>

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<sup>74</sup> Asian Development Bank & International Institute for Trade and Development. *Trade Remedies: A Tool Kit*. Philippines 2009. Pg 265.

<sup>75</sup> SCM Agreement § 9.

<sup>76</sup> Syed Muhammad Sajjad Kabir. "Measurement Concepts: Variable, Reliability, Validity, and Norm." *Basic Guidelines for Research: An Introductory Approach for All Disciplines*, no. July 2016: 72–110.

<sup>77</sup> Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada. 2001. Pg 14.

<sup>78</sup> Soerjono Soekanto. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2010, Pg.10; Emzir, *Metodologi penelitian pendidikan : Kuantitatif & kualitatif*,. Jakarta: PT Raja Grafindo Persada, 2008, Pg. 174.

## 2. Description of Research Focus

In this research perspective, it focuses on two main things, namely:

- a. Whether Indonesia's legal framework concerning the electric vehicle subsidy is consistent with the WTO regulations?
- b. What are the potential legal consequences for Indonesia arising from its Electric Vehicle Subsidy Rules within the framework of WTO regulations?

## 3. Research Approach

In this research, the author employs a statute approach, conceptual approach, and comparative approach to assess the implementation of subsidies for battery-based electric vehicles in Indonesia with other countries. This assessment conducted through an analysis of relevant Indonesian electric vehicle subsidy rules, such as Presidential Regulation Number 79 Year 2023 and various ministerial-level derivative regulations, including Minister of Energy and Mineral Resources Regulation Number 3 Year 2023 on the *General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based Electric Motorcycles*; Minister of Finance Regulation Number 38 Year 2023 concerning *Value Added Tax on the Delivery of Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023*; Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on *Guidelines for Government Assistance for the Purchase of Two-Wheeled Battery Electric Motor*

*Vehicles*; and Minister of Investment/Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning *Guidelines and Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration*, against the *General Agreement on Tariffs and Trade* (GATT) Year 1994 and the *Subsidies and Countervailing Measures Agreement* (SCM Agreement). In this context, each article related to subsidies and their exceptions is examined to assess the alignment between the content of Indonesian electric vehicle subsidy rules and WTO regulations.

#### **4. Sources and Types of Legal Material**

Data used in legal research according to the type and the level, namely: primary source, secondary source, and tertiary source.<sup>79</sup> While the source of this research refers to three types of data, specifically: primary legal materials, secondary legal materials, and tertiary legal materials:

##### **a. Primary legal materials**

The primary legal material, that is, all written rules enforced by the state, can be found in court decisions, have permanent legal force and are applied by parliament. The sources of primary legal materials used by the authors in this research includes:

1. Law Number 7 Year 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization;

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<sup>79</sup> Depri Liber Sonata (2014). *Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum*. *Fiat Justisia Journal of Legal Studies*, 8 (1), 15–35. Pg. 31-32.

2. Presidential Regulations Number 79 Year 2023 regarding Amendments to Presidential Regulations Number 55 Year 2019 concerning the Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation;
3. Minister of Energy and Mineral Resources Regulation Number 3 Year 2023 on the General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based Electric Motorcycles;
4. Minister of Finance Regulation Number 38 Year 2023 concerning Value Added Tax on the Delivery of Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023;
5. Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on Guidelines for Government Assistance for the Purchase of Two-Wheeled Battery Electric Motor Vehicles;
6. Minister of Investment/Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning Guidelines and Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration;
7. The General Agreement on Tariffs and Trade (GATT) 1994;
8. Subsidies and Countervailing Measures (SCM Agreement).

b. Secondary legal material

Secondary legal materials, legal materials that provide explanations of primary legal materials, consisting of literature, books, journals, scientific papers, relevant research results and related to the research topic material.

c. Tertiary legal materials

Tertiary legal materials are legal materials that are complementary in nature to provide additional instructions or explanations to primary and secondary legal materials. Tertiary legal materials contained in research include legal dictionaries, large Indonesian dictionaries, encyclopedias, book journal searches on websites and others.<sup>80</sup>

## 5. Data Collection Techniques

The collection of legal materials in this research is carried out through library research methods aimed at obtaining legal materials and secondary information needed and relevant to research sourced from books, journals, papers, and other sources of information such as legal materials documented through relevant internet sites.

This literature study method is used to obtain scientific information about literature review, discussion of relevant theories and concepts in this study, namely those related to subsidies regulations under the World Trade Organization (WTO).

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<sup>80</sup> Bagong Suyanto and Sutinah, *Method Research Social: Various Alternative Approach*. Jakarta Gold Prestone Media Group, 2005, pg. 55.

## **6. Data Analysis Techniques**

Legal material obtained or collected in research in the form of qualitative descriptive material or data, namely proposing, describing matters related to the problem, where the data processing process is after the legal material is collected and considered sufficient then the data is processed and analyzed deductively, namely based on the basics of general knowledge then researching specific problems and then draw a conclusion.

## **H. Systematic of Writing**

In writing this thesis, the author divides into 4 (four) parts called chapters. Then, each chapter has a subchapter which explains the problems raised. The parts in question are as follows:

### **i. Chapter I Introduction**

This chapter elucidates the contextual backdrop of the issue, articulates the formulation of the problem, delineates the research objectives, expounds upon the novelty of the research, conducts a comprehensive review of pertinent literature, outlines the employed research methods, and establishes the framework for the thesis.

### **ii. Chapter II General Overview of Subsidy Rules under WTO**

In this chapter, the author will examine the theoretical framework guiding their approach to addressing the specified problem. This chapter consists of four subsections. Subsection A explores the foundational concepts of international trade law, encompassing its origins, subjects, objectives, and limitations. Subsection B provides a comprehensive review of the historical evolution of the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT),



offering insights into their scope, principles, and functions. Subsection C delves into the historical background of subsidy regulations, encompassing the definition of subsidies, subsidy notifications, specificity, and countervailing measures. Finally, Subsection D scrutinizes international trade law from the perspective of Islamic legal philosophy.

### **iii. Chapter III Assessment of Indonesian Electric Vehicle Subsidy under The WTO Regulations**

This chapter provides an examination of the alignment between the regulations governing subsidies for electric vehicles in Indonesia and the guidelines established by the WTO. It also explores the potential legal consequences that may arise from these Indonesian electric vehicle subsidy rules under the purview of WTO regulations. Additionally, this chapter examines past cases involving electric vehicle subsidy rules implemented by other countries and considers alternative legal strategies aimed at promoting the adoption of electric vehicles.

### **iv. Chapter IV Closing Remarks**

This last chapter contains conclusions and recommendations.

## CHAPTER II

### GENERAL OVERVIEW OF SUBSIDY RULES UNDER THE WTO

#### A. General Overview of World Trade Organization (WTO) and General Agreement on Tariffs and Trade (GATT 1947)

According to an economist, Ricardo (1817), fundamentally, international trade adopts the '*theory of comparative advantage*,' defined as an approach to maximize production by leveraging the relative advantages held by each nation or community. In this context, production focuses on the expertise or specific resources possessed by an entity, which are then utilized efficiently.<sup>81</sup> To enhance global market efficiency, the government's role in this theory should ideally concentrate on efforts to reduce barriers that may impede the optimal functioning of the market.<sup>82</sup>

In the pursuit of achieving the objectives of free trade and optimal international trade liberalization, a pivotal role is played by international organizations such as the *World Trade Organization* (WTO).<sup>83</sup> Essentially, the WTO is an international body that specifically involves member states in formulating international trade regulations, known as *WTO Agreements*. Within the framework of the *WTO Agreements*, there exist regulations encompassing the principle of non-discrimination, procedures for market access, provisions for fair trade, regulations pertaining to the interplay between trade liberalization and social values, and other interests, as well as norms guiding the harmonization of national

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<sup>81</sup> David Ricardo (2015). *The Principles of Political Economy and Taxation*, (first published 1817) UK: Dover Publications, as cited in Kalim Siddiqui. *David Ricardo's Comparative Advantage and Developing Countries: Myth and Reality*. International Critical Thought, Vol 8, issue 3. Pg 1.

<sup>82</sup> Meria Utama. *Op.cit* Pg 37.

<sup>83</sup> *Ibid*. Pg 38.

legal frameworks in specific domains.<sup>84</sup> These rules must prioritize the principles of liberalism and refrain from distorting the course of the global market.

## 1. The History of GATT and WTO

The decade of the 1930s, commonly known as an era of disintegration, transpired amidst World War II, constituting an indelible chapter in the history of global trade. This era marked the collapse of the global economic system, a widespread imposition of high import tariffs by numerous nations, and a tendency toward protectionism in international trade.<sup>85</sup> For instance, the United States implemented the controversial 'Smoot-Hawley Act', aiming to raise import duty rates from 39% to 53%.<sup>86</sup> Additionally, during this time, Britain also increased trade tariffs and departed from the principle of free trade through its 'Imperial Preference' policy, seeking to unify the empire by applying lower tariffs on imports from colonies compared to other countries.<sup>87</sup>

Consequently, during that period, the international community encountered challenges in reaching agreements concerning the reduction and elimination of various quantitative restrictions and trade discrimination. Distortive policies further directed economies towards activities that disregarded market mechanisms,

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<sup>84</sup> Peter van den Bossche, Daniar Natakusumah, dan Joseph Wira Koesnaidi. *Pengantar Hukum WTO (World Trade Organization)*, Jakarta: Yayasan Obor Indonesia. 2010. Pg. 3.

<sup>85</sup> Muhammad Irsan. *Sejarah GATT/WTO, Asas Most Favoured Nation dan National Treatment, Forum Penyelesaian Sengketa dan Pembentukan Dispute Settlement Body. Sejarah GATT WTO Asas Most Favoured Nati.pdf* (kemendag.go.id). Kemendag. Pg 13.

<sup>86</sup> Britannica, The Editors of Encyclopaedia. *Smoot-Hawley Tariff Act*. Encyclopedia Britannica, 10 Jun. 2023, <https://www.britannica.com/topic/Smoot-Hawley-Tariff-Act>. Accessed 15 November 2023; Munir Fuady. *Hukum Dagang Internasional (Aspek Hukum dari WTO)*, Jakarta, Citra Aditya Bakti, 2004

<sup>87</sup> Mace, Brice M., and T. Ritchie Adam. "Imperial Preference in the British Empire." *The Annals of the American Academy of Political and Social Science*, vol. 168, 1933, pp. 226–34. Pg 227-229 JSTOR, <http://www.jstor.org/stable/1019057>. Accessed 15 Nov. 2023.

conflicting with liberal principles.<sup>88</sup> In the face of the global trade turmoil stemming from protectionist practices in the 1930s, awareness regarding the significance of a multilateral institution as a legal intermediary to articulate the stances, will, and actions among nations taking into account the advantages of the *Comparative Advantage* principle in trade has escalated within the global community.<sup>89</sup>

The Bretton Woods Conference in 1944 marked the seminal genesis of international regulations and organizations in the economic sphere.<sup>90</sup> This conference was primarily centered on establishing the International Bank for Reconstruction and Development, commonly known as the World Bank, and the International Monetary Fund (IMF). Additionally, it laid the groundwork for initiating the formation of a global trade organization then recognized as the International Trade Organization (ITO). The United Nations (UN), specifically the ECOSOC, supported the execution of this conference entrusted with crafting the ITO Charter, famously known as the Havana Charter, formulated by the United States and the United Kingdom. The outcome of this conference culminated in the signing of the Havana Charter in 1948. Regrettably, the ratification of the Havana Charter was obstructed by the United States Congress, as it was perceived to pose a threat to the economic sovereignty of the United States.<sup>91</sup> Consequently, the

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<sup>88</sup> I Gusti Ngurah Parikesit Widiatedja. *Op.cit*, Pg 15-16.

<sup>89</sup> *Ibid.* Pg 46.

<sup>90</sup> Eko Prilianto Sudrajat. *Analisis Hubungan antara WTO, IMF dan World Bank serta Dampaknya dalam Ekonomi Negara Berkembang*. [https://jdih.kemendag.go.id/pdf/Buku-Jurnal/ANALISIS\\_HUBUNGAN\\_ANTARA\\_WORLD\\_TRADE\\_ORG.pdf](https://jdih.kemendag.go.id/pdf/Buku-Jurnal/ANALISIS_HUBUNGAN_ANTARA_WORLD_TRADE_ORG.pdf). Kemendag. Pg 2. Accessed on November 19<sup>th</sup> 2023.

<sup>91</sup> Jacques Berthelot. *The Havana Charter is not the model to reform the WTO*. [https://www.wto.org/english/forums\\_e/ngo\\_e/the\\_havana\\_charter\\_is\\_not\\_the\\_model\\_to\\_reform\\_the\\_wto\\_sol\\_4\\_january\\_2019\\_e.pdf](https://www.wto.org/english/forums_e/ngo_e/the_havana_charter_is_not_the_model_to_reform_the_wto_sol_4_january_2019_e.pdf). SOL. January 4<sup>th</sup> 2019. Accessed on November 19<sup>th</sup> 2023.

Havana Charter did not come into effect, leading to the failure of the establishment of the ITO.

To safeguard the negotiation process and prevent legal vacuum, the establishment of the General Agreement on Trade and Tariffs (GATT) was agreed upon in 1947. This was intended as an interim arrangement through the Protocol of Provisional Application of the General Agreement on Tariffs and Trade (1947), enforced until the implementation of the Havana Charter to establish the ITO.<sup>92</sup> Although the agreements within GATT held binding force, in reality, GATT did not meet the criteria as a comprehensive organization at that time. Notably, GATT lacked a constitution governing its organizational structure or consistent procedural legal regulations to become a structured international institution.

Throughout its evolutionary journey, GATT has conducted a series of significant negotiations. Commencing in Geneva, Switzerland (1947), followed by Annency, France (1948), Torguay, Switzerland (1950), and subsequently back in Geneva, Switzerland in 1956. This sequence of negotiations persisted through the Dillon Round in Geneva (1960-1961), the Kenedy Round in Geneva (1964-1967), the Tokyo Round in Geneva (1973-1979), and culminated in the final stage, the Uruguay Round in Marrakesh (1986-1994). This latter round is considered a pivotal determinant in the future development of GATT. The Uruguay Round is acknowledged as the lengthiest negotiation round encompassing diverse aspects of broader regulatory frameworks.

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<sup>92</sup> T. N. Srinivasan. *The Future of the Global Trading System: Doha Round Cancún Ministerial, and Beyond Connecticut*. Paper presented at the conference on The Future of Globalization, Yale University, New Haven, CT during October 10<sup>th</sup>-11<sup>th</sup> 2004. Pg. 4

Around 123 member countries engaged in the Uruguay Round, deliberating on the establishment of the World Trade Organization and addressing issues spanning tariff reduction, agriculture, tariffs, non-tariff barriers, sanitary and phytosanitary measures, textiles and apparel, safeguards, antidumping, *Subsidies and Countervailing Measures* (SCM Agreement), *Trade-Related Investment Measures* (TRIMs), *Trade-Related Aspects of Intellectual Property Rights* (TRIPS), *General Agreement on Trade in Services* (GATS), dispute settlement, government procurement, trade provisions, environment, and labor rights.<sup>93</sup>

Following over seven years of negotiations during the Uruguay Round, the Final Act of the Uruguay Round within this multilateral trade agreement was endorsed by national delegates on December 15, 1993, and subsequently signed on April 15, 1994. One of the pivotal agreements established was the formation of the Agreement Establishing the *World Trade Organization* (WTO).<sup>94</sup> On January 1, 1995, the World Trade Organization commenced its operations as an international organization. Recognized as a significant proponent in bolstering global economic cooperation, the WTO is considered one of the primary entities in the field of international economics, on par with other international institutions.<sup>95</sup> At present, the WTO boasts a membership of roughly 164 countries, of which two-thirds are

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<sup>93</sup> Clara Megantari. *Pengaturan Subsidi Pertanian Berdasarkan Perjanjian WTO dalam Hukum Nasional dan Praktek di Indonesia*. Undergraduate thesis, Universitas Islam Indonesia, Yogyakarta. 2017. Pg. 30.

<sup>94</sup> Hata. *Aspek – Aspek Hukum dan Non Hukum Perdagangan Internasional dalam Sistem GATT dan WTO: Implikasinya bagi Negara – Negara Berkembang*. Artikel Utama. *Jurnal Hukum Bisnis*. <http://library.stik-ptik.ac.id/file?file=digital/37381-Jhb%2027-08-005.pdf>. Pg. 49. Accessed on November 19<sup>th</sup> 2023.

<sup>95</sup> Eko Prilianto Sudrajat. *Op.cit* Pg 10.

categorized as developing nations.<sup>96</sup> Indonesia's inclusion in the WTO, signified by the ratification of the Agreement Establishing the WTO under Law Number 7 Year 1994, denotes its status as a developing country participating in this global trade organization.

## 2. The Scope of WTO

The WTO functions as the global trade regulations system and assists developing nations in enhancing their trade capabilities. Additionally, it furnishes a platform for its member states to engage in negotiations regarding trade accords and resolve trade-related issues encountered among themselves.<sup>97</sup>

The conclusion of the Uruguay Round, identified as The Legal Text, comprises roughly 60 agreements, annexes, resolutions, and treaties.<sup>98</sup> Within the World Trade Organization's (WTO) scope, there are various fundamental agreement structures, exemplified by the following:<sup>99</sup>

- a) Multilateral Agreement on Trade in Goods;
- b) Goods (General Agreement on Tariffs and Trade) 1994;
- c) Services (General Agreement on Trade in Services);

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<sup>96</sup> WTO. *Understanding the WTO: Developing Countries*. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/dev1\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm). Accessed on November 21<sup>st</sup> 2023.

<sup>97</sup> WTO. *Understanding the WTO: Who we are?*. [https://www.wto.org/english/thewto\\_e/whatis\\_e/who\\_we\\_are\\_e.htm#:~:text=The%20WTO%20operates%20the%20global,they%20face%20with%20each%20other](https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm#:~:text=The%20WTO%20operates%20the%20global,they%20face%20with%20each%20other). Accessed on November 21<sup>st</sup> 2023.

<sup>98</sup> Nin Yasmine Lisasih. *Asas Pacta Sunt Servanda Dikaitkan dengan Penyelenggaraan Jasa Pendidikan Asing di Indonesia oleh Monash University*. Lex Jurnalica Volume 15 Nomor 1, April 2018. Pg 68.

<sup>99</sup> Agreement Establishing the World Trade Organization, § II and List of Annexes Pg 19.

- d) Intellectual Property (Agreement on Trade-Related Aspects of Intellectual Property Rights);
- e) Dispute Settlement Mechanism;
- f) Trade Policy Review Mechanism;
- g) Plurilateral Trade Agreement.

### 3. Basic Principles of The WTO Agreement

As previously elucidated, fundamentally, the World Trade Organization (WTO) functions as a facilitator for fostering equitable and well-regulated international free trade. Therefore, the WTO enforces various foundational principles that underpin its operations. These fundamental principles are enshrined under the General Agreement on Tariffs and Trade (GATT), comprising:<sup>100</sup>

- a. Most-Favoured Nation (MFN): Treating All Countries Equally

The importance of the most-favoured nation principle is clear from its incorporation within Article I of GATT.<sup>101</sup> This principle asserts that trade policies should be executed in a manner devoid of discrimination. It obliges all member nations to afford equal treatment to other countries concerning their export, import policies and associated costs. In this regard, within the framework of the WTO, a member nation is prohibited from offering disparate treatment to trade partners based on their origin, like providing import advantages to goods from one country that are more favorable than those from

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<sup>100</sup> Meti Government of Japan. *Part II Overview of the WTO Agreements*. <https://www.meti.go.jp/english/report/downloadfiles/2011WTO/2-0Overview.pdf>. Pg 312. Accessed on November 26<sup>th</sup> 2023.

<sup>101</sup> GATT 1994, § I.



another country seeking access to the same market.<sup>102</sup> However, there exist various exemptions to this principle, certain exemptions are delineated within the GATT articles, while others are established through resolutions adopted during GATT conferences via a waiver and GATT principles pursuant to Article XXIV.<sup>103</sup>

b. National Treatment: ~~Treating all Goods Equally~~ within a Given Market

The National Treatment (NT) principle is outlined under Article III of the GATT 1947, prohibits discrimination between domestic and foreign products of a similar kind.<sup>104</sup> Essentially, it mandates that imported goods upon entry into a nation must be treated equivalently to comparable domestic products in terms of the government's policies and regulations.<sup>105</sup> This principle is applicable to various forms of taxation and additional levies. In essence, when an imported item has crossed the borders into the domestic market of a member nation and completed customs procedures while paying applicable tariffs, it should be accorded the same treatment as domestic goods.<sup>106</sup>

c. Prohibition of Quantitative Restriction

The principle of prohibiting quantitative restrictions is specified within Article IX of the GATT<sup>107</sup>, mandating transparency and the elimination of quantitative barriers in international trade activities. Quantitative obstacles, as

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<sup>102</sup> Huala Adolf. *Op.cit* Pg 45.

<sup>103</sup> GATT 1994, § XXIV; Evita Isretno Israhadi. *Op.cit* Pg 29.

<sup>104</sup> *Ibid*, § III

<sup>105</sup>. Gofar Bain..*Uruguay Round dan Sistem Perdagangan Masa Depan*. Jakarta: Djambatan. 2001. Pg 142.

<sup>106</sup> Stanford Law School & American University of Iraq, Sulaimani. *Introduction to the Laws of Kurdistan, Iraq Working Paper Series International Trade Law*. Stanford Law School: US. 2016. Pg. 19.

<sup>107</sup> GATT 1994, § IX

per the GATT/WTO agreements, constitute trade impediments beyond tariffs or import duties and also encompass quotas and voluntary export limitations.<sup>108</sup> Quantitative restrictions, deemed to exert a more substantial protective influence than tariff measures, are more inclined to disrupt the unrestricted movement of trade.<sup>109</sup>

However, the broadening of the exception outlined in Article XVII now encompasses developing nations. This extension empowers these countries to impose quantitative restrictions in situations where it prevents the depletion of their foreign exchange reserves due to essential import demands for payment or expansion of domestic production. Despite the allowance of quantitative restrictions as per Article XIII, their implementation should avoid any form of discrimination.<sup>110</sup>

#### d. Binding Tariffs

The principle of binding tariff is stipulated under Article II Section (2) of GATT 1994.<sup>111</sup> This principle necessitates those safeguarding domestic industries is solely permissible through the imposition of tariffs.<sup>112</sup> GATT acknowledges tariffs as the solitary means of regulating trade and strives to incrementally decrease tariff levels for each commodity during tariff negotiations.<sup>113</sup> The safeguard provided by tariffs distinctly illustrates the level of protection granted, while simultaneously allowing for the possibility of

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<sup>108</sup> Gofar Bain. *Loc.cit*

<sup>109</sup> Meti Government of Japan. *Loc.cit*

<sup>110</sup> Serlika Aprita dan Rio Adhitya. *Op.cit* Pg 199-200.

<sup>111</sup> GATT 1994, § II (2)

<sup>112</sup> World Trade Organization Information and External Relations Division. *Op.cit* Pg 12

<sup>113</sup> Meti Government of Japan. *Loc.cit*

fostering fair competition.<sup>114</sup> While permitted, employing tariffs is bound by GATT stipulations. Specifically, the imposition or implementation of tariffs should not entail discriminatory practices and is contingent upon tariff commitments within the GATT/WTO framework.<sup>115</sup>

e. Exceptions to the Basic Principles

The WTO Agreements aim to reconcile practicality and principles by delineating the criteria for permitting exceptions under specific circumstances. Article XX governs general exceptions, allowing exemptions that enable the derogation of rules or obligations of a state under GATT, specifically concerning actions necessary to protect human, animal, and plant health; the import of goods contrary to morality; forest conservation; preventing trade in heritage or culturally valuable goods, as well as trade in gold.<sup>116</sup> Furthermore, member states possess the entitlement to exempt themselves from their duties as stated in the GATT on grounds of security.<sup>117</sup> Exceptions are instituted due to the complexities inherent in implementing the principles of the multilateral system within the actual framework of the international trade.<sup>118</sup>

#### 4. The Roles of WTO in International Trade

The WTO's principal aim is to ensure trade flows as smoothly and predictably as possible and to assist its members in utilizing trade as a means to

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<sup>114</sup> Olivier Long. *Law and Its Limitations in the GATT Multilateral Trade System*. Martinus Nijhoff Publishers. 1987. Pg 10.

<sup>115</sup> Huala Adolf. *Op.cit* Pg 51

<sup>116</sup> GATT 1994, § XX.

<sup>117</sup> *Ibid*, § XXI

<sup>118</sup> Meti Government of Japan. *Op.cit* pg 313.

elevate living standards.<sup>119</sup> The WTO holds a significant role in stabilizing the trajectory of international trade, the global economy, and addressing the legal and political issues that arise from global trade. This objective is pursued by:<sup>120</sup>

a) Orchestra Conductor

The WTO functions as a conductor to ensure compliance with regulations while also facilitating the implementation, administration, and smooth operation of trade agreements among its members.

b) Tribunal

The WTO plays a crucial role as a forum for resolving disputes and providing negotiation space within the realm of international trade.<sup>121</sup>

c) Monitor

The WTO also holds a crucial role in monitoring international trade practices by consistently reviewing the trade policies of its member nations and employing notification procedures.<sup>122</sup>

d) Trainer

The WTO offers educational initiatives for officials from developing nations, such as those from ministries or customs departments. Additionally, the

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<sup>119</sup> WTO. *WTO In Brief*. [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.pdf](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.pdf). Accessed on November 27<sup>th</sup> 2023. Pg 11.

<sup>120</sup> WTO OMC. *The Four Roles of the WTO*. [https://wto.org/english/news\\_e/infocenter\\_e/brief\\_roles\\_e.doc](https://wto.org/english/news_e/infocenter_e/brief_roles_e.doc). Accessed on November 27<sup>th</sup> 2023. Pg 1-2.

<sup>121</sup> Rubiyanto. *Peran World Trade Organization (WTO) dalam Menyelesaikan Sengketa Perdagangan Internasional*. *Jurnal Hukum dan Dinamika Masyarakat*. Volume 17 No 1, Oktober 2019. Pg 13-19. Pg 14.

<sup>122</sup> *Ibid*

WTO collaborates with the *International Monetary Fund* (IMF) and World Bank to ensure coherence in shaping global economic policies.<sup>123</sup>

## **B. General Overview of Subsidy Rules under the WTO**

### **1. The History of Subsidy Rules**

The stipulations within the Agreement on the Establishment of the WTO Agreement are structured across 4 Annexes. Annex 1 is subdivided into 3 sections: Annex 1A, Annex 1B, and Annex 1C. Annex 1A comprises 13 Accords pertaining to trade in goods, Annex 1B delineates provisions concerning trade in services (GATS), and Annex 1C encompasses regulations concerning intellectual property rights associated with trade (TRIPS). Annex 2 encompasses all regulations governing dispute settlement, commonly known as the understanding on rules and procedures governing the settlement of disputes (DSU). Concurrently, Annex 3 governs the *Trade Policy Review Mechanism*, while Annex 4 encompasses provisions relating to *Plurilateral Trade Agreements*.<sup>124</sup>

The provisions regarding subsidies and trade subsidies have been regulated within the WTO's regulations, particularly in Articles VI and XVI of the GATT 1994. Primarily, these provisions on subsidies and trade subsidies are extensively enshrined under the WTO Agreement on Subsidies and Countervailing Measures, commonly known as the SCM Agreement. The goal of implementing subsidy regulations within the WTO is to address situations where subsidies cause a

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<sup>123</sup> Padmavathi Roy. *Role of WTO in International Business*. <https://www.linkedin.com/pulse/role-wto-international-business-dr-padmavathi-bhamidipati>. LinkedIn. Accessed on November 28<sup>th</sup> 2023.

<sup>124</sup> Peter Van den Boosche. *World Trade Organization: 3.1 Overview* as cited in Maudy Kiranayanti. *Subsidi Perikanan Dalam Kerangka WTO: Suatu Tinjauan terhadap Proposal Indonesia dan Kepentingan Nasional*. Postgraduate Thesis, 2009. University of Indonesia. Pg. 16.

company to gain sales over a more efficient competitor. These rules aim to control subsidies that disrupt how resources are allocated in the market and reduce the benefits of specialization based on comparative advantage and trade.<sup>125</sup>

Previously, within the GATT 1947, provisions concerning subsidies were not detailed and comprehensive. In fact, in Article XVI addressing 'Subsidies', the definition of 'subsidies' was not specified. Furthermore, concerning subsidies in general, Article XVI merely required Contracting Parties within the GATT to notify subsidies impacting trade and be prepared to discuss limiting such subsidies if they resulted in significant adverse effects on the interests of other Contracting Parties.<sup>126</sup>

However, during the Tokyo Round (1973- 1979), the GATT Contracting Parties engaged in negotiations to solidify *the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement*. This agreement, commonly referred to as the *Tokyo Round Subsidies Code*, aimed to provide greater clarity and consistency in implementing the GATT regulations pertaining to subsidies and countervailing duties.<sup>127</sup> Regrettably, only a few of the 25 Contracting Parties, such as the European Union and the United States, accepted this *Plurilateral Agreement* because, in reality, the Tokyo Round Subsidies Code did not fully govern the provisions concerning *Subsidies* and *Countervailing Duties* as desired by other Contracting Parties.

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<sup>125</sup> Warren F. Schwartz and Eugene W. Harper, Jr. *The Regulation of Subsidies Affecting International Trade*. Michigan Law Review, Vol. 70, No. 5. April, 1972. 831-858. Pg 840.

<sup>126</sup> Peter Van den Bossche. *The Law and Policy of the World Trade Organization*. 3<sup>rd</sup> Edition. Cambridge: Cambridge University Press. 2005. Pg. 746.

<sup>127</sup> *Ibid.*

As a result, during the 1980s, numerous disputes and conflicts arose between the Contracting Parties and GATT due to the lack of legal certainty concerning subsidies and countervailing duties therein. In response, in 1986, the Punta del Este Ministerial Declaration on the *Uruguay Round* instructed negotiators to review Articles VI and XVI of the GATT 1947 as well as the Tokyo Round Subsidies Code.<sup>128</sup> The mandate is stated as below:

“...Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues...”<sup>129</sup>

Ultimately, the *Uruguay Round on Subsidies and Countervailing Measures* is generally regarded as a significant advancement from the preceding system. This is due to the agreement reached during this round, which, for the first time, provided a clear definition of 'subsidy', established detailed standards for conducting countervailing duty investigations, and introduced a multilateral discipline applicable to subsidies.<sup>130</sup> In this regard, the rules pertaining to subsidies are outlined in Articles VI and XVI of the GATT 1994, with further detailed attention given in the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).<sup>131</sup>

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<sup>128</sup> Maudy Kiranayanti. *Op.cit* Pg 18.

<sup>129</sup> US Congress House. *Results of the GATT Ministerial Meeting Held in Punta Del Este, Uruguay: Hearing Before the Subcommittee on Trade of the Committee on Ways and Means*. House of Representatives. Ninety-ninth Congress. Second Session. September 25<sup>th</sup>. 1986. Volume 4. Pg. 21. ¶ 3.

<sup>130</sup> UN Conference on Trade and Development. *Dispute Settlement: WTO 3.7 Subsidies and Countervailing Measures*. [https://unctad.org/system/files/official-document/edmmisc232add15\\_en.pdf](https://unctad.org/system/files/official-document/edmmisc232add15_en.pdf). UNCTAD. Accessed on December, 3<sup>rd</sup> 2023. Pg 3.

<sup>131</sup> Darmawan Febri Padmono. *Analysis of Subsidy Arrangements in Indonesia in View of the SCM Agreement (Agreement on Subsidies and Countervailing Measures)*. Indonesian Journal of Advanced Research (IJAR) Vol. 2, No. 4, 2023: 301 – 314. Pg 303.

## 2. The Definition of Subsidy

The regulations concerning subsidies and their specificity are outlined in Part I of the SCM Agreement. The term "subsidy" as per Article 1 of the SCM Agreement comprises three fundamental elements, as follows:<sup>132</sup>

- i. financial assistance;
- ii. from a government or any other public entity;
- iii. conferring a benefit.

All three elements must be present to categorize something as a subsidy. The first component denotes financial aid and includes various instances such as grants, loans, or equity contributions. To qualify as a subsidy, financial assistance must originate from a government or a public entity within the member's territory. Furthermore, if financial assistance from the government does not confer a benefit, it does not constitute a subsidy. Occasionally, as in the case of cash transfers, the presence of a benefit is evident. However, the issue of benefit can sometimes be more intricate in certain situations.<sup>133</sup>

During the initial five years of its enactment, the SCM Agreement encompassed three subsidy classifications: prohibited, actionable, and non-actionable subsidies stipulated within Articles 8 and 9.<sup>134</sup> However, the provisions concerning non-actionable subsidies were temporary and remained in effect for a five-year duration, lapsing by the conclusion of 1999.<sup>135</sup> Hence, the current SCM

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<sup>132</sup> SCM Agreement, § 1.

<sup>133</sup> Jan Jakub Michalek. *Subsidies in the Context of the World Trade Organization*. Deboeck Superieur. Reflets et Perspectives, XLIII, 2004/1. 25-38. Pg 27.

<sup>134</sup> SCM Agreement, § 8 and § 9.

<sup>135</sup> WTO E-learning. *Op.cit.* Pg 14.



Agreement governs solely two fundamental subsidy categories and adopts ‘traffic light’ approach that are prohibited subsidies (red light subsidies) and actionable subsidies (yellow light subsidies).<sup>136</sup> The SCM Agreement categorizes subsidies into three groups based on their specificity, inherent characteristic and objectives,<sup>137</sup> as follows:

1) Prohibited subsidies (Red light subsidies)

Prohibited Subsidies, also known as red light subsidies, is regulated within Article 3 of the SCM Agreement as stipulated in the first paragraph which states:<sup>138</sup>

“...Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I,
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic products...”

Article 3 of the SCM Agreement above provides guidelines regarding two types of prohibited subsidies, namely, export subsidies and substantial import subsidies. These particular subsidies are forbidden because they are deliberately designed to have a direct influence on trade, potentially resulting in negative effects on the interests of other member parties.<sup>139</sup>

a) Export Subsidies

Export subsidies are financial assistance directly linked to export performance, either formally or effectively, which may be the sole condition

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<sup>136</sup> *Ibid*; Jan Jakub Michalek. *Loc.cit*

<sup>137</sup> Meti Government of Japan. Chapter 6 *Subsidies and Countervailing Measures*.*Loc.cit*.

<sup>138</sup> SCM Agreement, § 3 (1)

<sup>139</sup> Jan Jakub Michalek. *Loc.cit*

or one of several other conditions.<sup>140</sup> Annex I of the ASCM provides for a non-exhaustive ‘Illustrative List’ of eleven measures falling within export subsidies.<sup>141</sup> Consequently, complainants can establish the existence of export subsidies in two ways:<sup>142</sup>

- a) by proving the presence of a subsidy in accordance with Article 1, combined with Article 3.1 addressing export subsidies; or
- b) by pinpointing the particular measure within the Illustrative List (if provided). This alternative method permits complainants to circumvent the export contingency assessment stated in Article 3.1 (a) and the subsidy assessment outlined in Article 1.

b) Import Substitution Subsidies

The regulations concerning import substitution subsidies are outlined in Article 3.1 (b) of the SCM Agreement. These subsidies, known as incentives for utilizing local goods, hinge on the utilization of domestic products rather than those originating from foreign products.<sup>143</sup> Despite the SCM Agreement explicitly mentioning legal dependency, court rulings have validated its application to factual dependency, resembling export subsidies.<sup>144</sup>

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<sup>140</sup> Meti Government of Japan. Chapter 6 *Subsidies and Countervailing Measures*. Loc.cit.

<sup>141</sup> SCM Agreement, *Annex I: Illustrative List of Export Subsidies*.

<sup>142</sup> Coppens, Dominic. *WTO Disciplines on Subsidies and Countervailing Measures*. [edition unavailable]. Cambridge University Press, 2014. Pg 118 as cited in Cleo Verkuijl, et al. *Disciplining Subsidies under the WTO. Tackling Fossil Fuel Subsidies through International Trade Agreements*. Climate Strategies. 2017. pp. 14–22. JSTOR, <http://www.jstor.org/stable/resrep16315.7>. Accessed 6 Dec. 2023. Pg 19.

<sup>143</sup> Cleo Verkuijl, et al. *Loc.cit.*

<sup>144</sup> *Ibid.*

Meanwhile, Article 4 of the SCM Agreement is established to safeguard the trade interests of member states by outlining legal measures against prohibited subsidies.<sup>145</sup> One of the initial steps includes non-litigious procedure such as consultations. Subsequently, if consultations fail, the dispute may be brought before the *Dispute Settlement Body* (DSB) panel within the WTO for further action. If prohibited subsidies are found within a member country's policies, the DSB panel will mandate the subsidizing member to withdraw such subsidy measures. Should they refuse, the affected country is authorized to undertake countervailing measures, as elucidated in Article 4.7 of the SCM Agreement:<sup>146</sup>

“If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.”

## 2) Actionable subsidies (Yellow light subsidies)

Actionable subsidies, commonly referred to as yellow-light subsidies, are a specific subset of subsidies categorized as unprohibited subsidies but could potentially become subject to remedies and countervailing duty if they lead to adverse effects, such as significant harm to other members.<sup>147</sup> The term adverse effects, as outlined in Article 5 of the SCM Agreement, is defined as:

- a) Injury to industries in other member states.

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<sup>145</sup> Maudy Kiranayanti. *Op.cit* Pg 32.

<sup>146</sup> SCM Agreement, § 4.7

<sup>147</sup> *Ibid.* § 7.

This injury as it enshrined under Article 5 (a) pertains to the concept of 'like product', indicating goods resembling those imported by a country and subsidized by the exporting country, thereby leading to substantial effects on the importing country. This is basically elucidated in footnote 46 of the SCM Agreement:

“...like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration...”<sup>148</sup>

b) Nullification or Impairment

Stipulated under Article 5 (b), it occurs when the enhanced access to a market presumed to result from a reduction in bound tariffs is constrained by the presence of subsidies in that market. This could serve as a basis for complaints related to harm to the export interests of members in the importing country's market.<sup>149</sup>

c) Serious Prejudice

At the outset, the SCM Agreement held an assumable belief that significant harm was present in four instances. This mandated the plaintiff to only establish the existence of this particular form of subsidy, while it was the responsibility of the defendant to prove the absence of substantial harm as defined by the Agreement.<sup>150</sup> Nevertheless, this classification of

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<sup>148</sup> SCM Agreement, footnote 46 § 15.

<sup>149</sup> Shailja Singh. *WTO Agreement on Subsidies and Countervailing Measures: Subsidy Rules and WTO Jurisprudence*. [https://wtocentre.iift.ac.in/CBP/Subsidy%20Presentation\\_%20Shailja.pdf](https://wtocentre.iift.ac.in/CBP/Subsidy%20Presentation_%20Shailja.pdf) Centre for WTO Studies IIFT. PPT. 40<sup>th</sup> slide. Accessed on December 6<sup>th</sup> 2023.

<sup>150</sup> SCM Agreement, § 6.1 and § 6.2.

subsidies lapsed in 2000, concurrently with the 'green' category' of non-actionable subsidies.<sup>151</sup> According to Article 6.3 of the ASCM, serious prejudice does not only arise when specific tariffs or other commitments are nullified or impaired. It also occurs even in the absence of tariffs or other commitments, if the impact of the subsidy is to displace or impede imports of similar products from other Members.

Substantial price cuts by subsidized products resulting in decreased prices from non-subsidized suppliers, or notable price suppression, can prompt action not solely within the market of the complaining country, but also within the subsidizing country and third-country markets. This extends to primary goods or commodities, involving not just the displacement or obstruction in individual third-country markets but also the elevation of global market share for subsidized exports.<sup>152</sup>

### 3. Subsidy Notifications

The Subsidies Agreement contains comprehensive regulations concerning the obligation of members to notify specific subsidies with the aim of enhancing transparency.<sup>153</sup> The required notification encompasses the nature of the aid, the allocated amount, policy objectives, program duration, and statistical data facilitating an evaluation of the trade impact resulting from a specific policy.<sup>154</sup>

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<sup>151</sup> Cleo Verkuijl, et al. *Loc.cit.*

<sup>152</sup> Anwarul Hoda & Rajeev Ahuja. *Agreement on Subsidies and Countervailing Measures: Need for Clarification and Improvement*. ICRIER. Working Paper No. 101. May 2003. Pg 11.

<sup>153</sup> SCM Agreement, § 25

<sup>154</sup> Tristan Irschlinger and Alice Tipping. *The WTO Agreement on Fisheries Subsidies: A Reader's Guide*. Canada: International Institute for Sustainable Development. March 2023. Pg 19.

However, these regulations do not interfere with the provisions outlined in paragraph 1 of Article XVI of GATT 1994. As part of this process, a committee will review the reported subsidies.<sup>155</sup>

The Agreement also establishes procedures related to countervailing measures, encompassing the reporting of actions, preparation of semi-annual reports, and notification of domestic procedures.<sup>156</sup> Furthermore, member states must also notify their domestic authorities empowered to initiate and conduct investigations regarding the imposition of countervailing duties, in addition to the aforementioned responsibilities.<sup>157</sup>

#### 4. Specificity

Article 2 of the SCM Agreement elaborated four categories of specificity:

- a) Enterprise specificity, denoting a scenario where a government directs subsidization towards a particular company or companies;<sup>158</sup>
- b) Industry specificity, indicating a situation where a government focuses on subsidizing specific sectors or industries;<sup>159</sup>
- c) Regional specificity, referring to a scenario where a government targets producers in specified regions within its territory for subsidization;<sup>160</sup>

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<sup>155</sup>SCM Agreement, § 26

<sup>156</sup> Meti Government of Japan. Chapter 6 *Subsidies and Countervailing Measures*. *Op.cit.* Pg 88.

<sup>157</sup> WTO. *Agreement on Subsidies and Countervailing Measures: Overview*. [https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm). Accessed on December 9<sup>th</sup> 2023.

<sup>158</sup> SCM Agreement, § 2.1

<sup>159</sup> *Ibid*

<sup>160</sup> SCM Agreement, § 2.2

- d) Specificity of prohibited subsidies, signifying a situation where a government aims to subsidize export goods or products utilizing domestic inputs.<sup>161</sup>

Subsidies falling outside the prohibited category are considered specific under Article 2 only if the support is explicitly targeted at an individual enterprise, an industry, or a group of enterprises or industries. Article 2 also stipulates that specificity can arise either legally (*de jure*) or in practice (*de facto*).<sup>162</sup> *De jure* specificity arises when the entity providing the subsidy or the governing regulations explicitly confines access to the subsidy to specific industries. However, the precise definition of ‘specific industries’ remains unclear. Conversely, *de jure* specificity doesn’t occur when a measure isn’t limited to specific industries. This encompasses scenarios where eligibility for the subsidy and the subsidy amount depend on fair and evenly applied criteria, without favoring any particular industries.<sup>163</sup>

Despite not meeting specific criteria, subsidies could still be deemed *de facto* specific. This designation applies when a subsidy program is exclusively used by a limited number of industries, widely utilized by certain industries, or disproportionately allocates substantial amounts to specific industries.<sup>164</sup> Upon identifying whether a subsidy, despite its initial appearance of non-specificity, exhibits characteristics warranting classification as specific, numerous factors come into consideration. This includes investigating its usage among a restricted cluster

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<sup>161</sup> SCM Agreement, § 2.3.

<sup>162</sup> Alan O. Sykes. *The Questionable Case: For Subsidies Regulations: A Comparative Perspective*. Journal of Legal Analysis. Fall 2010: Volume 2, Number 2. Pg 482.

<sup>163</sup> *Ibid.*

<sup>164</sup> UN Conference on Trade and Development. *Dispute Settlement: WTO 3.7 Subsidies and Countervailing Measures*. *Op.cit* Pg 14.

of specific industries and the predominant advantage it provides to certain industries; Assessing the disproportionate allotment to specific industries; And understanding the discretion exercised by the granting authority in allocating the subsidy holds pivotal significance.<sup>165</sup>

## 5. Countervailing Measures

Subsidies that fall within the prohibited category or result in adverse impacts on the local industry can be brought directly to the WTO for dispute resolution or mitigated by implementing countervailing measures. Member states whose domestic industries suffer from subsidized imports can either collectively addressing the subsidy concerns following the regulations outlined in Article 4 or 7 of the SCM Agreement or independently enforcing countervailing tariffs on subsidized imports, contingent upon an investigative process conducted by domestic investigative authorities adhering to the specifications detailed in Part V of the SCM Agreement.<sup>166</sup>

According to the Article VI of the GATT 1994 and footnote 36 in the SCM Agreement, countervailing duty is a specific tariff imposed to offset any subsidy provided, whether directly or indirectly, for the manufacturing, production, or export of goods.<sup>167</sup> Additionally, in accordance with the SCM Agreement, countervailing measures apply to all types of goods, including agricultural

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<sup>165</sup> WTO E-Learning, *Op.cit* Pg 11.

<sup>166</sup> Peter Van den Bossche. *The Law and Policy of the World Trade Organization. Op.cit* Pg 814.

<sup>167</sup> WTO E-learning. *Op.cit* Pg 20.



products.<sup>168</sup> WTO member states can impose countervailing measures after conducting an investigation and meeting the criteria specified in Article 10 of the SCM Agreement, as follows:<sup>169</sup>

“... Members shall take all necessary steps to ensure that the imposition of a countervailing duty on any product of the territory of any Member imported into the territory of another Member is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture...”

In order to institute countervailing tariffs, a member states must substantiate three elements, such as:

- a) the provision of subsidies to imported goods;<sup>170</sup>
- b) the detriment experienced by the domestic industry;<sup>171</sup> and
- c) the existence of a causal nexus between the subsidised imports and the resultant harm.<sup>172</sup>

The SCM Agreement contains detailed provisions governing the initiation and conduct of countervailing investigations by the competent authorities of the member states imposing countervailing duties on subsidized imports.<sup>173</sup> Their primary objectives are to ensure that:<sup>174</sup>

- a) investigations are conducted transparently;
- b) all interested parties have the opportunity to defend themselves; and

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<sup>168</sup> UN Conference on Trade and Development. *Dispute Settlement: WTO 3.7 Subsidies and Countervailing Measures Op.cit* Pg 7.

<sup>169</sup> SCM Agreement, § 10.

<sup>170</sup> ‘Specific subsidies’ as defined in § 1, 2, and 14 of the SCM Agreement.

<sup>171</sup> ‘The like products’ as defined under § 15 and 16 of the SCM Agreement.

<sup>172</sup> SCM Agreement, § 10.

<sup>173</sup> Detail provisions delineated under § 11 to 13 of the SCM Agreement.

<sup>174</sup> Peter Van den Bossche. *The Law and Policy of the World Trade Organization. Op.cit*

- c) the investigating authorities provide clear explanations regarding the basis for their determinations.

Non-compliance with either the substantive or procedural requisites could lead to legal contestation and serve as grounds for invalidation of the measures implemented.<sup>175</sup> Countervailing duties typically have a duration of up to five years.<sup>176</sup> However, in the event of changes either in the subsidy level or their impact on the domestic industry, there is a provision for reviewing these duties within a reasonable period. Failure to conduct a review within the stipulated five-year period results in the automatic cessation of all countervailing duties. Should the need for such duties persist, a new case justifying the imposition of countervailing duties must be initiated from the beginning.<sup>177</sup>

### **C. International Trade Law based on Islamic Legal Philosophy**

From a linguistic perspective, the terms trade or buying and selling trace their etymological roots to the Arabic expressions "*albai*", *at-tijāroh*, *al-mubādalah*," denoting the concepts of 'acquiring, providing something, or engaging in exchange'.<sup>178</sup> Trade is one of the facets of transactions (*muamalah*) in Islam, specifically addressing matters related to horizontal relationships in human life. However, this receives particular attention and emphasis within Islamic economics, as commercial activities must adhere to the stipulations outlined by the religious doctrines, thereby attaining a status of worship. This signifies that, in the course of

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<sup>175</sup> Rajeev Ahuja. *Export Incentive in India within WTO Framework*. *Op.cit* Pg 12

<sup>176</sup> Nandang Sutrisno. *Memperkuat Sistem Hukum Remedi Perdagangan, Melindungi Industri Dalam Negeri*. *Jurnal Hukum* No. 2 Vol. 14 April 2007: 230-246. Pg 236.

<sup>177</sup> Rajeev Ahuja. *Export Incentive in India within WTO Framework*. *Loc.cit*.

<sup>178</sup> Ismain Nawawi. *Fikih Muamalah Klasik Dan Kontemporer*. Bogor: Ghalia Indonesia, 2012. Pg. 45.

engaging in commerce, individuals not only seek material gains but also have the opportunity to draw closer to Allah SWT by conducting transactions in accordance with prescribed religious guidelines.<sup>179</sup> Therefore, in Islam, trade is regulated as a method to fulfill needs without resorting to coercion or solicitation. Through the exchange of goods, the principal aim is to foster happiness (*sa'adah*) and equilibrium among individuals.<sup>180</sup>

As mentioned in QS. Al Jumua'h verse 10 and QS. Al Mulk verse 15, Allah SWT commands His servants to seek sustenance, both within their locality and to other regions/countries, extending even to all corners of the world, as stated below:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا  
اللَّهُ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ ﴿١٠﴾

“When the Friday prayer has concluded, disperse through the land and seek from the bounty of Allah, and remember Allah much that you may succeed.”<sup>181</sup>

هُوَ الَّذِي جَعَلَ لَكُمُ الْأَرْضَ ذَلُولًا فَامْشُوا فِي مَنَاكِبِهَا وَكُلُوا مِنْ رِزْقِهِ وَإِلَيْهِ  
النُّشُورُ ﴿١٥﴾

"He it is who made the earth tame for you, so walk among its slopes and eat of His provision. And to Him is the resurrection."<sup>182</sup>

Those verses convey that international trade crossing national boundaries is something significant. Such trade falls within the realm of day-to-day transactions,

<sup>179</sup> Kaslam & Jumrah. *Perdagangan Internasional Perspektif Islam: studi Kasus Dilema Pengembangan Ekspor Rumput Laut di Kabupaten Bulukumba*. Jurnal Usluhuddin Volume 24 Nomor 2 Tahun 2022. Pg 238.

<sup>180</sup> Teungku Muhammad Hasbi Ash-Shiddieqy. *Memahami Syari'at Islam*, Semarang: Pustaka Rizki Putra. Ed: Cet 1. 2000. Pg 411.

<sup>181</sup> QS. Al Jumua'h verse 10.

<sup>182</sup> QS. Al Mulk verse 15.

where generally it is permissible unless specifically prohibited by regulations (legality principle).<sup>183</sup>

Additionally, QS. Fushilat verse 10 also explains that international trade becomes a necessity as Allah SWT has created advantages and limitations in each region and country. Therefore, it is impossible for a nation to fulfill its needs directly without engaging in trade, as mentioned below:

وَجَعَلَ فِيهَا رُوسِيَّ مِّنْ فَوْقِهَا وَبَرَكَ فِيهَا وَقَدَّرَ فِيهَا أَقْوَتَهَا فِي أَرْبَعَةِ أَيَّامٍ  
سَوَاءً لِّلسَّائِلِينَ ۝ ١٠

"And He placed firmly embedded mountains on the earth, above it, and He blessed it and determined therein its [creatures'] sustenance in four days without distinction - for [the information] of those who ask."<sup>184</sup>

Al-Qurtubi, in his commentary on the verse, outlines the perspectives of two notable Tabi'in scholars, 'Ikrimah and Al Dahâk. They express that the phrase "He determined its sustenance" signifies Allah's provision of sustenance to the inhabitants, encompassing elements conducive to their livelihoods like commerce, flora, and unique benefits existing in each locality crafted solely by Allah SWT. This is designed to foster inter-regional cooperation through trade and movement between different geographical areas.<sup>185</sup>

According to Hendri Tanjung, Islam had implemented concepts of international trade before the theories of international trade were developed in the

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<sup>183</sup> Jaih Mubarak. *Kaidah Fiqh: Sejarah dan Kaidah-Kaidah Asasi*. Jakarta: Raja Grafindo Persada. 2002. Pg 135 as cited in Marsam, et al. *Tinjauan Ekonomi Islam Terhadap Ekspor-Import Sebagai Pendapatan Negara Indonesia*. Freakonomics: Journal of Islamic Economics and Finance. Vol. 1 No. 01. 2020. Pg 3.

<sup>184</sup> QS. Fushilat verse 10.

<sup>185</sup> Atep Hendang Waluya. *Perdagangan Internasional dalam Islam*. Majalah Tabligh No. 4/XIV, Syaban 1437 H, Mei 2016. Pg 55.

West.<sup>186</sup> Furthermore, international trade has been a common practice among humankind and nations since ancient times. This is evidenced by one of the examples of international trade found in the Quran, particularly in QS. Al Quraisy, which describes the trade conducted by the Quraysh tribe. Despite limitations in their natural resources, they successfully became major players in international trade. They frequently engaged in international trade activities during the winter (*Al syita*) and summer (*Al shaif*) seasons, heading to Yemen during winter and the Syam region during summer.<sup>187</sup> Moreover, in the annals of Islamic history, international trade is considered an unparalleled and remarkable achievement. The known practice of international trade among the Islamic community in the past can even be traced back to the actions of Prophet Muhammad, peace be upon him, during his youth, transporting trade goods across vast regions. International trade within the framework of Islam encompasses aspects of *muamalah* and *maqasid* aimed at advancing human welfare.<sup>188</sup>

Abû 'Ubaid bin Salâm bin Miskîn bin Zaid Al Azdi, born in 774 AD and deceased in 838 AD, conducted research on international trade practices, particularly focusing on imports and exports. He stands as the pioneer in delineating the economy during the era of Prophet Muhammad, the righteous leaders, the companions, and subsequent generations. His ideas are recorded in his work, *Al Amwâl*, written nearly 1000 years before Adam Smith (1723-1790) developed the

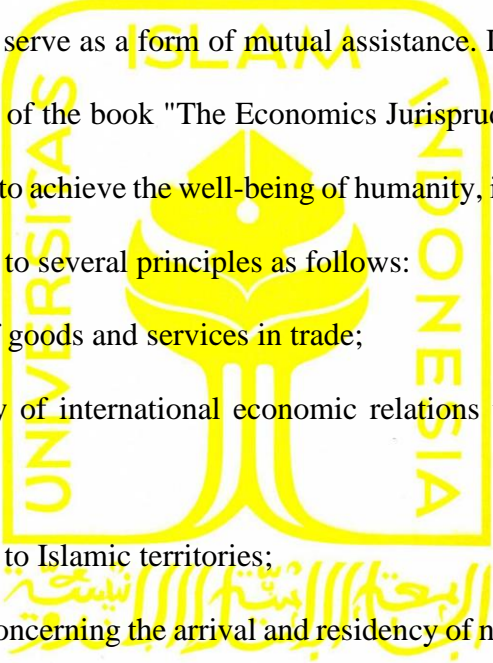
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<sup>186</sup> Hendri Tanjung. *Abu Ubaid dan Perdagangan Internasional*. Jurnal Ekonomi Islam Republika Iqtishodia. September 2010. Pg 6.

<sup>187</sup> Atep Hendang Waluya. *Loc.cit*.

<sup>188</sup> Kaslam & Jumrah. *Op.cit* Pg 239.

theory of absolute advantage.<sup>189</sup> Some relevance of Abu Ubaid's thoughts to modern economics encompasses the concept of international trade crossing national boundaries, which was implemented within Islam before Western theories of international trade emerged. Abu Ubaid specifically discussed this, particularly concerning imports and exports, including his ideas on tariffs in international trade, the availability of more affordable taxes on staple foods, and limitations imposed in taxation.<sup>190</sup> In Islam, the objective of International Trade is to foster prosperity among humanity and serve as a form of mutual assistance. Dr. Jaribah bin Ahmad Al Haritsi, the author of the book "The Economics Jurisprudence of Umar ibn Al-Khattab," asserts that to achieve the well-being of humanity, international economic relations must adhere to several principles as follows:

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- a) Legitimacy of goods and services in trade;
  - b) The capability of international economic relations to benefit the Muslim community;
  - c) Priority given to Islamic territories;
  - d) Regulations concerning the arrival and residency of non-Muslims in Islamic regions;
  - e) Establishment of trade agreements;
  - f) Islamic nations should have control in regulating and overseeing foreign economic relations;

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<sup>189</sup> Hendri Tanjung. *Loc it.*

<sup>190</sup> *Ibid.*

g) Leadership by a Muslim in economic affairs involving the participation of non-Muslims.<sup>191</sup>

Furthermore, Surah An-Nisa', verse 29, elucidates the prohibitions in conducting transactions that Muslims ought to avoid, stating:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَن

تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves. Indeed, Allah is to you ever Merciful."<sup>192</sup>

The verse highlights that as Muslims, it's crucial to steer clear of things that are misleading or harmful. 'Falsehood' here essentially refers to actions or practices that are futile and detrimental. In the context of trade within Islamic teachings, Allah SWT prohibits obtaining wealth through dishonest means. This prohibition by Allah SWT against wrongful use of wealth is also categorized as 'falsehood' by Al-Syaukani in his work Fath Al-Qadir, representing actions that are not morally right. This concept covers various unethical practices. In the context of this verse, something is deemed as 'falsehood' in trade if it's forbidden by Sharia law. For instance, trade is considered 'falsehood' if it involves elements like gambling (*maisir*), deceit (*gharar*), interest (*riba*), or other wrongful acts (*bathil*). Additionally, actions contrary to Sharia rules, such as theft or corruption, are also considered as 'falsehood'.<sup>193</sup>

<sup>191</sup> Atep Hendang Waluya. *Op.cit* Pg. 56.

<sup>192</sup> QS. An Nisa' verse 29.

<sup>193</sup> Kaslam & Jumrah. *Op.cit* Pg 240; Adi Mursalin. *Manajemen Pemasaran Islam*. Bantul: Jejak Pustaka. 2023. Pg 10.

**CHAPTER III**  
**ASSESSMENT OF INDONESIAN ELECTRIC VEHICLE SUBSIDY**  
**UNDER THE WTO REGULATIONS**

**A. The Validity of Indonesian Electric Vehicle Subsidy Rules under the WTO Regulations**

**1. The Background of Enactment Indonesian Electric Vehicle Subsidy Rules**

Climate change has emerged as a compelling issue within the global community, bearing significant ramifications for the planet and its inhabitants.<sup>194</sup> The observed 1°C rise in average global temperatures has demonstrably impacted the escalating frequency of natural disasters.<sup>195</sup> Greenhouse Gas (GHG) emissions stand as the primary catalyst for global warming, prompting nations committed to the Paris Agreement to curtail GHG emissions in line with agreed-upon targets. As a contracting party to the Paris Agreement, Indonesia is resolute in reducing its greenhouse gas emissions by 29% independently and up to 41% with international support by the year 2030.<sup>196</sup>

The development of battery-based electric vehicles is considered a solution to mitigate GHG emissions and alleviate the impacts of climate change. Indonesia

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<sup>194</sup> Muliana Mursalim & Agung Susanto. *Ambivalence of Renewable Energy: Electric Vehicles for Reducing Carbon Emissions and Its Impact on Environmental Damage in Indonesia*. *Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*. Sinta 4| Vol 7, No 2 (2022). Pg 307.

<sup>195</sup> Hans Nicholas Jong. *Indonesia Won't Sacrifice Economy for More Ambitious Emissions Cuts*. <https://news.mongabay.com/2020/04/indonesia-emissions-reduction-climate-carbon-economy-growth/>. Accessed on February 2<sup>nd</sup> 2021, as cited in Asrul Ibrahim & Andrian Dwi Kurniawan. *Proyeksi Masa Depan Kendaraan Listrik di Indonesia: Analisis Perspektif Regulasi dan Pengendalian Dampak Perubahan Iklim yang Berkelanjutan*. *Jurnal Hukum Lingkungan Indonesia*, Vol. 7, No. 2, 2021. Pg 197 – 220. Pg 198.

<sup>196</sup> Cantika Adinda Putri. *Turunkan Emisi Karbon 41% di 2030, Jokowi Rilis Aturan Baru!*. <https://www.cnbcindonesia.com/news/20211102115709-4-288375/turunkan-emisi-karbon-41-di-2030-jokowi-rilis-aturan-baru>. CNBC. Accessed on December 22<sup>nd</sup> 2023.



is currently endeavoring to promote the production and utilization of such vehicles as part of its strategy to mitigate the effects of climate change within the nation. This initiative is also anticipated to foster sustainable policies in the implementation and advancement of this technology.<sup>197</sup> Moreover, in a bid to bolster the development of the electric vehicle infrastructure in Indonesia, the Government has enacted Presidential Regulations Number 79 Year 2023. These amendments to the prior Presidential Regulations, specifically Number 55 Year 2019, pertain to the *Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation*. This legal framework serves as the overarching authority governing battery-based electric vehicles within the Indonesian context.<sup>198</sup>

However, prioritizing the use of electric vehicles in Indonesia faces numerous challenges. Complex challenges related to environmental, regulatory, cultural, economic, and even psychological aspects serve as hurdles in this regard.<sup>199</sup> The price of electric vehicles remains higher compared to conventional internal combustion engine cars due to the necessity of purchasing them through general importers. Most types of electric vehicles are not yet available through regular dealers, thus contributing to the increased cost of electric vehicles.<sup>200</sup>

Henceforth, in order to accelerate the domestic production and utilization of

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<sup>197</sup> Asrul Ibrahim & Andrian Dwi Kurniawan. *Proyeksi Masa Depan Kendaraan Listrik di Indonesia: Analisis Perspektif Regulasi dan Pengendalian Dampak Perubahan Iklim yang Berkelanjutan*. Jurnal Hukum Lingkungan Indonesia, Vol. 7, No. 2, 2021. Pg 197 – 220. Pg 200.

<sup>198</sup> Benediktus Krisna Yogatama. *Dorong Investasi, Pemerintah Keluarkan Insentif Baru Kendaraan Listrik*. <https://www.kompas.id/baca/ekonomi/2023/12/15/dorong-investasi-ekosistem-kendaraan-listrik-pemerintah-keluarkan-insentif-baru>. Kompas. Accessed on December, 22<sup>nd</sup> 2023.

<sup>199</sup> Asrul Ibrahim & Andrian Dwi Kurniawan, *Loc.cit*.

<sup>200</sup> Kiki Safitri & Aprilia Ika. *Penyebab Harga Motor dan Mobil Listrik di Indonesia Mahal, dari soal Baterai, Jaringan Bengkel, hingga "Charging Station"*. <https://money.kompas.com/read/2022/09/20/162000026/penyebab-harga-motor-dan-mobil-listrik-di-indonesia-mahal-dari-soal-baterai>. Kompas. Accessed on December 22<sup>nd</sup> 2023.

battery-powered electric vehicles in Indonesia, the Indonesian Government, under Presidential Regulation Number 79 Year 2023, has introduced a policy to offer fiscal and non-fiscal subsidies or incentives for the acquisition of electric vehicles.

The subsidies provided serve several essential purposes. Firstly, they aim to stimulate public interest in transitioning from fossil fuel-based vehicles to battery-powered electric vehicles. Secondly, these incentives are expected to attract manufacturers of electric cars and motorcycles to accelerate their investments in Indonesia. Thirdly, by increasing the use of electric vehicles, it is anticipated to yield positive fiscal implications for the country by reducing subsidies allocated for fossil fuels;<sup>201</sup> Lastly, considering Indonesia holds the world's largest nickel reserves, this policy also intends to utilize nickel as a raw material in the development of electric vehicle batteries.<sup>202</sup>

However, there are several conditions related to granting subsidies to electric vehicle manufacturing plants intending to invest in Indonesia. Subsidies will only be provided if these electric vehicle investors meet the *Local Content Requirements* (LCR) percentages as stipulated by the law.<sup>203</sup> The determination of LCR values in each stage of the battery-based electric vehicle procurement tender

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<sup>201</sup> Seksi Informasi Hukum – Ditama Binbangkum. *Mobil Listrik akan Disubsidi Rp 80 Juta, Akan Bebani Keuangan Negara?* JDIH BPK RI. <https://jdih.bpk.go.id/File/Download/542424ce-6858-4633-90ef-145c5b264f7b/Mobil%20Listrik%20akan%20Disubsidi%20Rp80%20Juta.pdf>. Accessed on December 23<sup>rd</sup> 2023.

<sup>202</sup> Press Release from the Ministry of Energy and Mineral Resources of the Republic of Indonesia on Monday, September 19, 2019. *Nickel Ore Prohibition on Exports Starting January 2020*. Kementerian ESDM RI - Media Center - Arsip Berita - Bijih Nikel Tidak Boleh Diekspor Lagi per Januari 2020. Accessed on December 22<sup>nd</sup> 2023.

<sup>203</sup> Raynard Kristian Bonanio Pardede. *Subsidi Kendaraan Listrik Perlu Perhatikan Proporsi Komponen Lokal*. <https://www.kompas.id/baca/ekonomi/2023/03/23/subsidi-kendaraan-listrik-perlu-perhatikan-proporsi-komponen-lokal>. Kompas. Accessed on December 23<sup>rd</sup> 2023.

aims to support the government's program in enhancing the domestic industry. Through this LCR policy, the government seeks to encourage investments that ideally involve leading brands not only as consumers and markets in Indonesia but also as investors in the country.<sup>204</sup> Quantitative restrictions or discriminatory actions against foreign products imposed by members of the WTO may potentially contravene the regulations set forth by the WTO under multilateral trade agreements.<sup>205</sup> This potential breach arises from the possibility of creating unfair competition among vehicle manufacturers looking to sell their products in Indonesia due to the rigid binding of subsidy regulations.

Presidential Regulation Number 79 Year 2023 serves as the foundation for accelerating the development of electric vehicles in Indonesia. Guidelines regarding actions to be taken by implementers refer to the legal basis for expediting the development of Battery-Based Electric Vehicles (BBEVs).<sup>206</sup> A number of derivative regulations were released a year after the enactment of Presidential Regulation Number 55 Year 2019, prior to its amendment by Presidential Regulation Number 79 Year 2023 concerning the development of battery-based electric vehicles (BBEVs) that might pose a challenge to the WTO's Agreement, as specified in the following details:

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<sup>204</sup> (\_\_\_). *Gambaran Umum Tingkat Kandungan Dalam Negeri (TKDN) di Indonesia*. [https://erepository.uwks.ac.id/11071/1/Local%20Content%20Requirements%20\(LCR\)%2014062021.pdf](https://erepository.uwks.ac.id/11071/1/Local%20Content%20Requirements%20(LCR)%2014062021.pdf). University of Wijaya Kusuma, Surabaya. Accessed on December 23<sup>rd</sup> 2023.

<sup>205</sup> Michelle Limenta & Lili Yang Ing. *Indonesia's Local Content Requirements: Assessment with WTO Rules*. ERIA Discussion Paper Series No 414. ERIA-DP-2021-47. January 2022. Pg 2.

<sup>206</sup> Irza Utami, et al. *The Implementation of Battery-Based Electric Motor Vehicle Policies to Support National Energy Security*. *Jurnal Ketahanan Energi* | Volume 8 Nomor 1 Tahun 2022. Pg 49 – 65. Pg 54.

- a) Presidential Regulations Number 79 Year 2023 regarding Amendments to Presidential Regulations Number 55 Year 2019 concerning the Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation, which governs the requirement to produce BEVs with a minimum percentage of local content within a specified period;
- b) Minister of Energy and Mineral Resources Regulation Number 3 Year 2023 on the General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based Electric Motorcycles. This Ministerial Regulation encompasses general rules, recipient eligibility criteria, conversion cost estimation, evaluation processes, recipient responsibilities, verification procedures, funding sources, and assistance governance arrangements;
- c) Minister of Finance Regulation Number 38 Year 2023 concerning Value Added Tax on the Delivery of Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023. This Ministerial Regulation regulates the value-added tax policy for the delivery of specific goods, such as battery-based electric four-wheeled vehicles and electric battery-based buses, supported by the government in the fiscal year 2023;
- d) Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on Guidelines for Government Assistance for the Purchase of Two-Wheeled Battery Electric Motor Vehicles. This Ministerial Regulation establishes guidelines for

government assistance in the purchase of battery-based electric motorcycles, regulating the terms used within its provisions. It serves as a guideline in the implementation and allocation of the Assistance Program with a high degree of transparency and accountability;

- e) Minister of Investment/Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning Guidelines and Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration. This regulation provides guidelines and governance regarding the provision of incentives for the import of four-wheeled battery-based electric vehicles with the aim of promoting investment and accelerating the development of the electric vehicle ecosystem in Indonesia. The policies outlined in this regulation involve incentives such as customs duty exemptions and luxury goods sales tax reductions for the import or delivery of four-wheeled battery-based electric vehicles under specific conditions and quantities, particularly for the industry of four-wheeled battery-based electric vehicles.

## **2. Indonesian Electric Vehicle Subsidy Rules based on SCM Agreement**

According to the Article 29 *Vienna Convention on the Law of Treaties*, every party involved in an agreement is expected to adhere to and execute it in good faith.<sup>207</sup> This notion is further corroborated by the *Pacta Sunt Servanda* principle that asserts the binding force of international trade law and international agreements, a concept reinforced by Anzilotti's teachings, aligning with the

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<sup>207</sup> *Vienna Convention on the Law of Treaties* 1969 (hereinafter, VCLT), § 29.

provisions recognized in the 1871 *London Conference Declaration*.<sup>208</sup> There are three pivotal conditions need to be highlighted, such as: the existence of a treaty foundation, the involvement of the international community in the treaty, and the provision of enforcement guarantees or sanctions.<sup>209</sup> The SCM Agreement inherently includes provisions outlining sanctions for non-compliance. Hence, as a WTO member evidenced by the ratification through Law Number 7 Year 1994, Indonesia is obliged to comply with the WTO regulations, including the SCM Agreement.

Nonetheless, in the pursuit of preserving welfare and attaining national goals, Indonesia occasionally adopts policies that inadvertently breach WTO regulations, thereby potentially exposing it to sanctions from the organization. As an example, previously, in 1996, Indonesia faced a lawsuit by several WTO members such as Japan, European Union, and United States concerning its national car policy, which was deemed to violate WTO rules due to lack of transparency and alleged discrimination. The WTO's DSB Panel upheld the lawsuit and issued a binding decision requiring Indonesia to repeal all policies related to national cars.<sup>210</sup> Consequently, Indonesia complied with the WTO DSB Panel decision by enacting Presidential Decree 20/1998, which revoked Presidential Decree 42/1996 on National Car Manufacture.<sup>211</sup>

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<sup>208</sup>Sugeng Istanto. *Hukum Internasional*. Yogyakarta: Universitas Atma Jaya, 2010. Pg. 91.

<sup>209</sup> *Ibid*, Pg 91-104.

<sup>210</sup> Aurora Jillena Meliala. *International Trade Dispute Settlement: Dispute Studies Toward Indonesia versus the United States, Europe and Japan Concerning the National Car*. Undergraduate Thesis. University of Indonesia. 2011. Pg 119-121.

<sup>211</sup> Saila Rezcan. *Biro Advokasi Selenggarakan Webinar Sengketa Perdagangan Internasional WTO*. Setjen Kemenkeu. <https://setjen.kemenkeu.go.id/in/post/biro-advokasi->

To avert similar occurrences, within this framework, the study addressed by the author involves assessing Indonesian regulations regarding subsidy policies for battery-based electric vehicles upon the provisions under WTO regulations. The government's policy on subsidies for battery-based electric vehicles is aimed at accelerating the ecosystem of electric vehicles in Indonesia and fostering domestic economic growth. Therefore, this section focuses on analyzing regulations related to subsidies for battery-based electric vehicles that may potentially breach the subsidy provisions outlined in the WTO regulations, especially SCM Agreement. However, detailed discussion of rules regarding the calculation of local component percentages will not be provided due to the lack of specific provisions or benefits. Here is a list of subsidy rules potentially violating provisions within the SCM Agreement as outlined in Table 2:

Table 2

List of Indonesian Electric Vehicle Subsidy Rules Inconsistent to the SCM Agreement

No	Regulation	Article	Benefits Granted
1.	Presidential Regulations Number 79 Year 2023 regarding Amendments to Presidential	<b>Article 8</b> (1) Battery-Based Vehicle Industry and Battery-Based Vehicle Component industries are obligated to prioritize the use of Local Component Requirement (LCR) with the following criteria: a. For 2- to 3- wheeled BEV, the LCR percentages are as follows:	Fiscal and non-fiscal incentives for compliance as outlined

[selenggarakan-webinar-sengketa-perdagangan-internasional-wto](#). Accessed on December 29<sup>th</sup> 2023.

No	Regulation	Article	Benefits Granted
	Regulations Number 55 Year 2019 concerning the Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation	<ol style="list-style-type: none"> <li>1) 2019 -2026, a minimum LCR of 40%;</li> <li>2) 2027 -2029, a minimum LCR of 60%; and</li> <li>3) From 2030 - onwards, a minimum LCR of 80%.</li> </ol> <p>b. 4-wheeled or more BEV, the local component percentages are as follows:</p> <ol style="list-style-type: none"> <li>1) 2019 -2021, a minimum LCR of 35%;</li> <li>2) 2022 -2026, a minimum LCR of 40%;</li> <li>3) 2027 -2029, a minimum LCR of 60%; and</li> <li>4) From 2030 - onwards, a minimum LCR of 80%.</li> </ol> <p>(2) The obligation to prioritize the utilization of LCR as stipulated in paragraph (1) does not apply to Battery-Based Vehicles resulting from Conversion Workshops.</p> <p>(3) The procedures for calculating LCR as referred to in paragraph (1) shall be determined by the minister responsible for industrial affairs, involving non-ministerial government agencies and/or relevant stakeholders.</p> <p><b>Article 12 (1)</b></p>	in Article 19 and Article 19 A.



No	Regulation	Article	Benefits Granted
		<p>(1) In order to expedite the implementation of the Battery-Based Vehicle (BEV) program, Battery-Based Vehicle industrial companies meeting the following criteria:</p> <ul style="list-style-type: none"> <li>a. Intending to establish Battery-Based Vehicle manufacturing facilities domestically as referred to in Article 6;</li> <li>b. Having invested in domestic Battery-Based Vehicle manufacturing facilities for the introduction of new products; and/or</li> <li>c. Planning to increase production capacity for Battery-Based Vehicles for the introduction of new products,</li> </ul> <p>may procure BEV originating from imports in complete built-up (CBU) condition in specific quantities, considering the realization of construction, investments, and/or production capacity enhancement for Battery-Based Vehicles until the end of 2025, following approval from the minister responsible for investment matters in the government.</p> <p><b>Article 17</b></p> <p>(1) The Central Government and Regional Governments provide incentives to expedite the Battery-Based Vehicle (BEV) program for road transportation;</p>	

No	Regulation	Article	Benefits Granted
		<p>(2) The incentives as referred to in paragraph (1) consist of fiscal and non-fiscal incentives;</p> <p>(3) The incentives as mentioned in paragraph (2) are granted to:</p> <ul style="list-style-type: none"> <li>a. Industrial companies, universities, and/or research and development institutions as referred to in Article 7 paragraph (1) engaging in research, development, and technological innovation as well as vocational skills in Battery-Based Vehicle industrial technology;</li> <li>b. Industrial companies prioritizing the use of prototypes and/or components sourced from industrial companies and/or research and development institutions engaged in research, development, and technological innovation as well as vocational skills in domestic Battery-Based Vehicle industrial technology;</li> <li>c. Industrial companies meeting Local Component Requirement (LCR) as referred to in Article 8 and engaged in domestic production of Battery-Based Vehicles as specified in Article 9;</li> <li>d. Battery-Based Vehicle component industrial</li> </ul>	

No	Regulation	Article	Benefits Granted
		<p>companies as referred to in Article 10;</p> <ul style="list-style-type: none"> <li>e. National Brand Battery-Based Vehicle industrial companies as referred to in Article 14;</li> <li>f. Companies providing Electric Motorcycle Battery leasing (battery swap);</li> <li>g. Industrial companies accelerating production and preparing infrastructure for the use of Battery-Based Vehicles;</li> <li>h. Companies managing battery waste;</li> <li>i. Companies providing Electric Vehicle Charging Stations (EVCS), Battery Charging and Exchange Stations (BCES), and/or institutions or residences using private electrical installations for charging Battery-Based Vehicles;</li> <li>j. Public transportation companies using Battery-Based Vehicles;</li> <li>k. Individuals using Battery-Based Vehicles.</li> </ul> <p><b>Article 18</b></p> <p>(1) Battery-Based Vehicle industrial companies that procure Battery-Based Vehicles originating from imports in a completely built-up (CBU) condition, as referred to in Article 12, may be eligible for incentives;</p>	

No	Regulation	Article	Benefits Granted
		<p>(2) Battery-Based Vehicle industrial companies capable of expediting the assembly process domestically within the importation period in a completely built-up (CBU) condition until the end of 2025, as specified in Article 12, may be eligible for incentives.</p> <p><b>Article 19</b></p> <p>(1) Fiscal incentives as referred to in Article 17 paragraph (2) may include:</p> <ol style="list-style-type: none"> <li>a. Import duty incentives on Battery-Based Vehicles imported in completely dismantled conditions (Completely Knocked Down - CKD), Battery-Based Vehicles imported in incompletely dismantled conditions (Incomplete Knocked Down - IKD), or main components for a specified quantity and period;</li> <li>b. Luxury goods sales tax incentives;</li> <li>c. Central tax exemption or reduction incentives;</li> <li>d. Regional tax exemption or reduction incentives;</li> <li>e. Import duty incentives for machinery, goods, and materials for investment purposes;</li> <li>f. Government-borne import duty incentives on imported raw materials and/or auxiliary materials</li> </ol>	

No	Regulation	Article	Benefits Granted
		<p>used in the production process;</p> <ul style="list-style-type: none"> <li>g. Manufacturing incentives for Electric Vehicle Charging Station (EVCS) and Battery Charging and Exchange Station (BCES) equipment;</li> <li>h. Export financing incentives;</li> <li>i. Fiscal incentives for research, development, technological innovation, and vocational skills in Battery-Based Vehicle component industries;</li> <li>j. Parking fee tariffs at locations determined by Regional Governments;</li> <li>k. Electricity charging fee concessions at Electric Vehicle Charging Stations (EVCS);</li> <li>l. Infrastructure development financing support for Electric Vehicle Charging Stations (EVCS);</li> <li>m. Professional competency certification for human resources in the Battery-Based Vehicle industry; and</li> <li>n. Product certification and/or technical standards for Battery-Based Vehicle industrial companies and Battery-Based Vehicle component industries.</li> </ul> <p>(2) In addition to the fiscal incentives as referred to in paragraph (1), for two-wheeled Battery-Based</p>	

No	Regulation	Article	Benefits Granted
		<p>Vehicles, the government may provide purchasing assistance and conversion aid for a specified period;</p> <p>(3) The provision of fiscal incentives as mentioned in paragraph (1) and purchasing assistance and conversion aid as mentioned in paragraph (2) shall be in accordance with the provisions of the legislation;</p> <p>(4) The provision of regional tax exemption or reduction incentives as referred to in paragraph (1) letter d shall be in the form of Motor Vehicle Tax (PKB) and Motor Vehicle Transfer Fee (BBNKB);</p> <p>(5) The provision of regional tax exemption or reduction incentives in the form of Motor Vehicle Tax (PKB) and Motor Vehicle Transfer Fee (BBNKB) as referred to in paragraph (4) shall be further regulated in the ministerial regulation responsible for domestic governance affairs.</p> <p><b>Article 19 A</b></p> <p>(1) Incentives as referred to in Article 18 paragraph (1) may consist of:</p> <p>a. Import duty incentives on Battery-Based Vehicles imported in a completely built-up (CBU) condition or government-borne import duty incentives on Battery-Based Vehicles imported in a completely built-up (CBU) condition;</p>	

No	Regulation	Article	Benefits Granted
		<p>b. Luxury goods sales tax incentives for completely built-up (CBU) Battery-Based Vehicles or government-borne luxury goods sales tax incentives for completely built-up (CBU) Battery-Based Vehicles; and/or</p> <p>c. Regional tax exemption or reduction incentives for completely built-up (CBU) Battery-Based Vehicles.</p> <p>(2) Incentives as referred to in Article 18 paragraph (2) may include:</p> <p>a. Import duty incentives on domestically manufactured Battery-Based Vehicles or government-borne import duty incentives on domestically manufactured Battery-Based Vehicles;</p> <p>b. Luxury goods sales tax incentives for domestically manufactured Battery-Based Vehicles or government-borne luxury goods sales tax incentives for domestically manufactured Battery-Based Vehicles;</p> <p>c. Regional tax exemption or reduction incentives for completely knocked-down (CKD) Battery-Based Vehicles produced domestically;</p>	

No	Regulation	Article	Benefits Granted
		<p>d. Import duty incentives for machinery, goods, and materials for investment purposes; and/or</p> <p>e. Import duty incentives for raw materials and/or auxiliary materials used in the production process.</p> <p>(3) The incentives as mentioned in paragraph (1) and paragraph (2) are granted on the condition that Battery-Based Vehicle industrial companies:</p> <p>a. Commit to producing a certain quantity of Battery-Based Vehicles domestically within a specific timeframe with the Local Component Requirement (LCR) as referred to in Article 8; and</p> <p>b. Must provide guarantees equivalent to the incentives received.</p> <p>(4) In the event that the commitment as mentioned in paragraph (3) point a is not fulfilled, Battery-Based Vehicle industries will be subject to sanctions proportionate to the received incentives corresponding to unmet production commitments;</p> <p>(5) Further provisions regarding the provision of incentives as mentioned in paragraph (1) and paragraph (2), conditions as mentioned in paragraph (3), and sanctions as mentioned in paragraph (4) are regulated in ministerial regulations under their respective authorities responsible</p>	



No	Regulation	Article	Benefits Granted
		for investment governance, industrial governance, trade governance, and national finance governance.	
2.	Minister of Energy and Mineral Resources Regulation Number 3 Year 2023 on the General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based	<p><b>Article 2</b></p> <p>(1) The Aid Recipient is an individual.</p> <p>(2) The Aid Recipient as mentioned in paragraph (1) receives assistance through the Conversion Workshop.</p> <p><b>Article 3</b></p> <p>(1) Assistance is provided in the form of Conversion Cost reductions.</p> <p>(2) Conversion Costs as referred to in paragraph (1) shall include at least the costs for the battery pack, brushless DC (BLDC) motor, and controller adjusted according to the electric energy capacity details in the Battery and Electric Motor power.</p> <p>(3) Conversion Costs as referred to in paragraph (1) shall be set at a maximum of Rp 17,000,000 (seventeen million rupiah) for motorcycles with engine capacities ranging from 110 cc to 150 cc.</p> <p>(4) The value of Conversion Cost reductions as mentioned in paragraph (1) shall be granted at Rp 7,000,000 (seven million rupiah) for each converted motorcycle.</p> <p>(5) The provision of Assistance as referred to in paragraph (4) shall be carried out periodically based on the disbursement and</p>	Each converted motorcycle receives a reduction valued at Rp 7,000,000, and the support is available for up to 50,000 units in fiscal year 2023 and 150,000 units in fiscal year

No	Regulation	Article	Benefits Granted
	Electric Motorcycles	<p>distribution governance of the Assistance funds.</p> <p>(6) Assistance as referred to in paragraph (1) shall be provided for the following periods:</p> <ul style="list-style-type: none"> <li>a. fiscal year 2023, up to a maximum of 50,000 (fifty thousand) units of Electric Motorcycles; and</li> <li>b. fiscal year 2024, up to a maximum of 150,000 (one hundred fifty thousand) units of Electric Motorcycles.</li> </ul> <p>(7) The number of converted Electric Motorcycle units as referred to in paragraph (6) may be evaluated based on government policies related to the Conversion program.</p> <p>(8) The evaluation of the number of Electric Motorcycle units as referred to in paragraph (7) shall be conducted and determined by the Minister through the Director-General.</p>	2024, as specified in Article 3.
3.	Minister of Finance Regulation Number 38 Year 2023 concerning Value Added Tax on the Delivery of	<p><b>Article 3</b></p> <p>(1) Specific Four-Wheeled Battery-Based Vehicles and Specific Battery-Based Buses as referred to in Article 2 must meet the Local Component Requirement (LCR) criteria.</p> <p>(2) The LCR criteria as referred to in paragraph (1) are as follows:</p> <ul style="list-style-type: none"> <li>a. Specific Four-Wheeled Battery-Based Vehicles with a minimum LCR value of 40%;</li> <li>b. Specific Battery-Based Buses with a minimum LCR value of 40%; and</li> </ul>	Compliant parties will get a reduction in taxation, usually set at 11%, which will

No	Regulation	Article	Benefits Granted
	<p>Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023</p>	<p>c. Specific Battery-Based Buses with a LCR value ranging from 20% up to less than 40%.</p> <p>(3) Specific Four-Wheeled Battery-Based Vehicles and Specific Battery-Based Buses meeting the LCR value criteria as referred to in paragraph (2) shall be determined by the minister responsible for industrial affairs.</p> <p><b>Article 4</b></p> <p>(1) The Value-Added Tax (VAT) payable on the delivery of Specific Four-Wheeled Battery-Based Vehicles and Specific Battery-Based Buses is 11% of the Selling Price.</p> <p>(2) The Government-borne Value-Added Tax (VAT) on the delivery of Specific Four-Wheeled Battery-Based Vehicles and Specific Battery-Based Buses meeting the LCR criteria as referred to in Article 3 paragraph (2) sub-paragraphs a and b is 10% of the Selling Price.</p> <p>(3) The Government-borne Value-Added Tax (VAT) on the delivery of Specific Battery-Based Buses meeting the LCR criteria as referred to in Article 3 paragraph (2) sub-paragraph c is 5% of the Selling Price.</p> <p><b>Article 5</b></p> <p>The Government-borne Value-Added Tax (VAT) as mentioned in Article 4 paragraphs (2) and (3) is provided for the Tax Period from April 2023 to December 2023.</p>	<p>decrease to either 10% or 5% for those meeting the specified criteria.</p> <p>These tax reductions are effective from April to December 2023, providing a temporary fiscal benefit to vehicle purchasers,</p>

No	Regulation	Article	Benefits Granted
			as outlined in both Article 4 and Article 5.
4.	Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on Guidelines for Government Assistance for the Purchase of Two-Wheeled	<p><b>Article 3</b></p> <p>(1) The Assistance Program is provided for a one-time purchase of Two-Wheeled Battery-Based Vehicles (BEV) made by individuals with the same unique population registration number (NIK).</p> <p>(2) Individuals as mentioned in paragraph (1) must meet the following requirements:</p> <ol style="list-style-type: none"> <li>a. Indonesian citizens;</li> <li>b. aged at least 17 years old; and</li> <li>c. possess an electronic identity card.</li> </ol> <p>(3) The population registration number data as referred to in paragraph (1) is obtained from/registered in the population and civil registration system managed by the ministry responsible for domestic governance affairs.</p> <p>(4) The Government pays for the discounted price reimbursement for the purchase of Two-Wheeled Battery-Based Vehicles by individuals to the Industrial Company.</p> <p>(5) The discount as mentioned in paragraph (5) is provided at Rp</p>	Each qualifying individual will receive a Rp 7,000,000,- discount for purchasing one unit of electric vehicles, as detailed in Article 3, paragraph (5).

No	Regulation	Article	Benefits Granted
	Battery Electric Motor Vehicles	<p>7,000,000.00 (seven million rupiah) for the purchase of 1 (one) unit of Two-Wheeled Battery-Based Vehicles.</p> <p><b>Article 13</b></p> <p>(1) In the process of purchasing the registered Two-Wheeled Battery-Based Vehicles as stipulated in Article 5 paragraph (1) by individuals, dealers conduct an examination of the buyer's data compliance with the provisions as mentioned in Article 3 paragraphs (1) and (2) based on the Information System.</p> <p>(2) If the buyer's data complies with the provisions as mentioned in Article 3 paragraphs (1) and (2), the buyer receives a discount for the Two-Wheeled Battery-Based Vehicle.</p>	
5.	Minister of Investment/Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning Guidelines and	<p><b>Article 2</b></p> <p>(1) Business entities may be granted incentives for the import of Four-Wheeled Completely Built-Up (CBU) Battery-Based Electric Vehicles (KBL) with a specified quantity, within the incentive utilization period, in the form of:</p> <ol style="list-style-type: none"> <li>a. 0% tariff on import duties; and</li> <li>b. Government-borne Value Added Tax on Luxury Goods (PPnBM).</li> </ol> <p>(2) Business entities may be granted incentives for Four-Wheeled Completely Knocked Down (CKD) Battery-Based Electric Vehicles (KBL), with a specified quantity to be assembled in Indonesia with a minimum Local</p>	Electric battery-based four-wheeled vehicles, both Completely Built-Up (CBU) and Completely

No	Regulation	Article	Benefits Granted
	<p>Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration.</p>	<p>Component Requirement (TKDN) of 20% and a maximum of less than 40%, within the incentive utilization period, in the form of:</p> <ul style="list-style-type: none"> <li>a. 0% tariff on import duties for Four-Wheeled Completely Knocked Down (CKD) Battery-Based Electric Vehicles; and</li> <li>b. Government-borne Value Added Tax on Luxury Goods (PPnBM) on the delivery of Four-Wheeled Battery-Based Electric Vehicles produced from the Four-Wheeled Completely Knocked Down (CKD) Battery-Based Electric Vehicles granted incentives as referred to in point a.</li> </ul> <p>(3) Incentives as referred to in paragraphs (1) and (2) shall be implemented in accordance with the regulations of the minister responsible for financial affairs of the state.</p> <p>(4) To obtain incentives as referred to in paragraphs (1) and (2), Business Entities must commit to producing Four-Wheeled Battery-Based Electric Vehicles in Indonesia that meet the technical specifications as regulated by the minister responsible for industrial affairs.</p> <p>(5) Business Entities as referred to in paragraphs (1) and (2) must meet the following investment criteria:</p>	<p>Knocked Down (CKD), that meet the criteria as stipulated in Article 2, will be eligible for exemptions from import duties and luxury goods sales tax (PPnBM).</p>

No	Regulation	Article	Benefits Granted
		<p>a. Industrial companies that will build manufacturing facilities for Four-Wheeled Battery-Based Electric Vehicles in Indonesia;</p> <p>b. Industrial companies that have invested in manufacturing facilities for four-wheeled internal combustion engine vehicles in Indonesia that will undergo a production transfer to become Four-Wheeled Battery-Based Electric Vehicles, either partially or wholly; and/or;</p> <p>c. Industrial companies that have invested in manufacturing facilities for Four-Wheeled Battery-Based Electric Vehicles in Indonesia for the introduction of new products through increased production plans and/or capacity, excluding product diversification without increased production plans and/or capacity.</p> <p>(6) The incentive utilization period as referred to in paragraphs (1) and (2) shall be valid from the date this regulation is enacted until December 31<sup>st</sup>, 2025.</p>	

Based on the data outlined in the table above, the subsequent discussion will delve into various sections concerning the subsidy rules concerning battery-based

electric vehicles in Indonesia, posing potential violations against the provisions of the GATT and the SCM Agreement.

a) Consistency with General Agreement on Tariffs and Trade

1) The Principle of Eliminating Quantitative Barriers (Non-Tariff Barriers/Non-Tariff Measures)

Essentially, GATT only permits nations to protect domestic industries through tariffs. These tariffs provide a clear indication of the extent of protection offered and ensure fair and healthy competition.<sup>212</sup> However, this raises substantial concerns regarding LCR policies that prioritize domestic goods over imported ones.<sup>213</sup> The local content requirements found in Article 8 of Presidential Regulation Number 79 Year 2023 and Article 3 of Minister of Finance Regulation Number 38 Year 2023 may be deemed inconsistent with Article XI, paragraph 1 of the GATT, as stated below:<sup>214</sup>

“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.”

This GATT provision prohibits any contracting party from imposing restrictions other than duties or taxes on imported products or exported goods intended for another contracting party. The subsidy rules regarding

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<sup>212</sup> The WTO Agreement Series 2. *General Agreement on Tariffs and Trade*. Geneva: WTO. 1998. [https://www.wto.org/english/res\\_e/booksp\\_e/agrmtseries2\\_gatt\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmtseries2_gatt_e.pdf). Pg 3-4. Accessed on December 31<sup>st</sup> 2023.

<sup>213</sup> Oscar Fernando & Lili Yan Ing. *Indonesia's Local Content Requirements: An Assessment on Consistency with Free Trade Agreement Commitments*. ERIA Discussion Paper Series, No. 420. 2021. Pg 13.

<sup>214</sup> GATT 1994, § XI (1)



local content requirement are an investment policy that mandates the use of raw materials, semi-finished goods, components, and domestically produced parts by investors in the process of manufacturing domestic battery-based electric vehicles.<sup>215</sup> This policy within the automotive industry could impede the principle of freer trade in international trade and falls under the category of non-tariff trade barriers that are inconsistent with GATT provisions.<sup>216</sup>

Therefore, the Indonesian government's subsidy policy, imposing local content requirements on foreign investors, is perceived as a measure to create non-tariff trade barriers to protect the domestic market from foreign market pressures. Such subsidy instruments are likely to adversely impact other foreign battery-based electric vehicle manufacturers unable to comply with local content demands, potentially fostering an unhealthy competitive environment.

## 2) National Treatment Principle

Article III of the GATT mandates that imported goods must be treated equally with domestic ones, specifically concerning laws and regulations governing their sale or usage, in accordance with the principle of national

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<sup>215</sup> UNCTAD. *Non-Tariff Measures to Trade: Economic and Policy Issues for Developing Countries in International Trade Studies*. UN Publications 2013. [https://unctad.org/system/files/official-document/ditctab20121\\_en.pdf](https://unctad.org/system/files/official-document/ditctab20121_en.pdf). Pg 3. Accessed on December 31<sup>st</sup> 2023.

<sup>216</sup> Mochtar Kusuma Atmadja. *Investasi di Indonesia dalam Kaitannya dengan Pelaksanaan Perjanjian Hasil Putaran Uruguay*. Tema Utama Jurnal Hukum No. 5 Vol 3 1996. Pg 6-7; Garuda Wiko & Fatma Muthia Kinanti. *Elimination of Non-Tariff Barriers of Trade in Goods in the ASEAN Region: Will it ever work?* Jurnal Hukum & Pembangunan, Vol. 51: No. 2, Article 9. Pg 415 – 432. Pg 419.

treatment.<sup>217</sup> The principle of national treatment stands as a primary principle within the WTO system, prohibiting any form of discrimination against imported products. Article III of GATT 1994 identifies several prohibitions related to investment regulations that may disrupt the flow of free trade among WTO members. Indonesia, in implementing subsidy policies for battery-based electric vehicles, may potentially violate provisions within Article III. Several aspects to be considered in the implementation of this policy are outlined as follows:

i. Tax Discrimination

The provision of fiscal incentives such as customs duties, luxury goods sales tax incentives, central tax exemptions or reductions, and regional tax exemptions or reductions stipulated in Article 18, 19, and 19A of Presidential Regulation Number 79 Year 2023; Article 2 and Article 3 of Minister of Energy and Mineral Resources Regulation Number 3 Year 2023; Article 4 and Article 5 of Minister of Finance Regulation Number 38 Year 2023; and Article 2 of Minister of Investment/ Head of Coordinating Board Regulation Number 6 Year 2023, presents inconsistencies with Article III (1) and (2) of the GATT 1994.

These provisions established that battery-based electric vehicle companies failing to meet local component requirements do not receive the same incentives as companies meeting these local criteria. Consequently, it can be concluded that fiscal incentive facilities are provided only to certain

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<sup>217</sup> GATT 1994, § III (4); Oscar Fernando & Lili Yan Ing. *Loc.cit*

specific electric vehicle companies<sup>218</sup>, which demonstrates a discriminatory nature toward other electric vehicle companies.<sup>219</sup>

ii. Local Content Requirement in BEVs Production

Basically, once imported products enter the domestic market, they should not be subject to less favorable treatment compared to domestic products (for instance, after going through customs clearance).<sup>220</sup> Policies favoring the use of local products often conflict with Article III due to their inherent discriminatory nature based on product origin.<sup>221</sup> Article III (4) of GATT 1994 states that domestic regulations should not be utilized to confer benefits.<sup>222</sup> To be considered consistent with Article III (4), a regulation must fulfill three criteria:<sup>223</sup>

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<sup>218</sup> GATT 1994, § III (1), as mentioned below:

The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

<sup>219</sup> GATT 1994, § III (2) as stated below:

The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

<sup>220</sup> Michelle Limenta & Lili Yan Ing. *Op.cit* Pg 14.

<sup>221</sup> Holger P Hestermeyer & Laura Nielsen. *The Legality of Local Content Measures under WTO Law*. Journal of World Trade 48, no. 3 (2014): 553–592. Pg 581

<sup>222</sup> Michelle Limenta & Lili Yang Ing. *Op.cit* Pg 15.

<sup>223</sup> GATT 1994, § III (4) as stated below:

The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

- (i) the questioned regulation must originate domestically;
- (ii) imported and domestic products must be alike; and
- (iii) like imported products should not receive less favorable treatment than similar domestic products.

However, there are requirements set forth in Article 8 of Presidential Regulation Number 79 Year 2023; Article 3 of Minister of Finance Regulation Number 38 Year 2023; and Article 2 of Minister of Investment/Head of Coordinating Board Regulation Number 6 Year 2023, mandating that a minimum percentage of local components must be met for companies to qualify for the government-provided subsidy facilities.

Furthermore, in the *Turkey-Rice* case, highlighted that under Article III (4) of GATT 1994, the measure in question, known as the domestic purchase requirement, is considered a 'requirement' since importers have the option to voluntarily accept it to gain an 'advantage' from the government.<sup>224</sup> Consequently, these regulations being considered inconsistent with Indonesia's commitment to Article III (4) of the GATT 1994. Considering that the principle of National Treatment is often incorporated in a similar manner within the GATT framework, the same legal analysis can be applied, leading to similar conclusions.<sup>225</sup>

### iii. Stamp and Duties Benefit

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<sup>224</sup> Panel Report. *Turkey – Measures Affecting the Importation of Rice [Turkey – Rice]*. WT/DS334/R. WTO. 21 September 2007. ¶ 7241

<sup>225</sup> Oscar Fernando & Lili Yan Ing. *Op.cit* Pg 20.

The tax benefits provided by the government to investors and companies involved in battery-based electric vehicle manufacturing, such as exemptions or reductions in import duties and luxury sales tax facilities outlined in Articles 19 and 19A of Presidential Regulation Number 79 Year 2023; Articles 4 and 5 of Minister of Finance Regulation Number 38 Year 2023; and Article 2 of Minister of Investment/ Head of Coordinating Board Regulation Number 6 Year 2023, appear to favor only those investors and companies that import specific components for assembling electric vehicles domestically. This policy could potentially violate the most-favored-nation principle under Article I (1) of GATT<sup>226</sup>, particularly by referring to:

"...with respect to all matters referred to in paragraphs 2 and 4 of Article III..."

Consequently, the government regulations concerning electric-based vehicle subsidies could be construed as violations within the context of Articles III (2) and (4), representing a discriminatory practice that contravenes Article I (1) of GATT 1994.

b) Consistency with Subsidies and Countervailing Measures Agreement

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<sup>226</sup> GATT 1994, § I (1) as stated below:

With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,\* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

In this context, the principle of *generalia specialibus*<sup>227</sup> does not significantly clash with the more detailed regulations within the SCM Agreement. Gerald Fitzmaurice clarifies that *lex specialis* provisions represent intricate alternatives to general provisions, emphasizing specific subjects or topics within a particular category. Hence, the legal essence found in Article III of GATT 1994 aligns with the principles outlined in the SCM Agreement, displaying harmony rather than contradiction between the two.<sup>228</sup>

The measures or policies to be contested under the SCM Agreement must meet the criteria as subsidies. SCM Agreement defines 'subsidy' based on three elements:<sup>229</sup>

- (i) financial contribution;
- (ii) by a government or public body within the territory of a WTO member;
- and
- (iii) conferring a benefit to its recipient.

Moreover, only 'specific' subsidies are subject to disciplines under the SCM Agreement.<sup>230</sup> Unless specifically allocated to an enterprise, industry, or a group of enterprises or industries, a subsidy will not fall under the purview of the SCM

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<sup>227</sup> Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi. *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*. Document A/CN.4/L.682 and Add.1 Incorporating document A/CN.4/L.682/Corr.1. 58<sup>th</sup> Session. 2006. ¶ 69-70. Pg 21.

<sup>228</sup> Aurora Jilena Meliala. *Op.cit* Pg 94.

<sup>229</sup> SCM Agreement, § 1

<sup>230</sup> WTO. *Exploring the links between subsidies, trade and the WTO*. World Trade Report. 2006. [wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report06\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report06_e.pdf). Pg 190. Accessed on January 2<sup>nd</sup> 2024.

Agreement.<sup>231</sup> The criteria for specificity within the SCM Agreement context encompass:<sup>232</sup>

- (i) enterprise specificity;
- (ii) industry specificity;
- (iii) regional specificity; and
- (iv) prohibited subsidies, such as government subsidies aimed at export goods or goods using domestic inputs.

The Indonesian subsidy policy related to battery-based electric vehicles, governed by several regulations including Presidential Regulation Number 79 Year 2023, Minister of Energy and Mineral Resources Regulation Number 3 Year 2023, Minister of Finance Regulation Number 38 Year 2023, Minister of Industry Regulation Number 21 Year 2023, and Minister of Investment/ Head of Coordinating Board Regulation Number 6 Year 2023 stipulates that investors and electric vehicle companies must comply with local component requirements and establish manufacturing facilities within Indonesia to access government subsidies or fiscal and non-fiscal incentives. This policy also aims to promote the domestic electric vehicle industry ecosystem. However, there is a potential that this policy may violate provisions within the SCM Agreement.

Export subsidies and import substitution subsidies are the two types of prohibited subsidies outlined in Article 3 of the SCM Agreement.<sup>233</sup> Article 3.1

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<sup>231</sup> WTO. *Agreement on Subsidies and Countervailing Measures* (“SCM Agreement”). WTO | [Subsidies and Countervailing Measures overview](#). Accessed on January 2<sup>nd</sup> 2024.

<sup>232</sup> SCM Agreement, § 2.2

<sup>233</sup> SCM Agreement, § 3 as stated below:

Except as provided in the Agreement on Agriculture, the following subsidies, within the

(b) prohibits subsidies related to the use of domestic goods over imported goods. This type of subsidy often takes the form of requiring a minimum local content requirement.<sup>234</sup> In the case of the *US - Tax Incentives*, the Appellate Body (AB) noted that "over" in Article 3.1(b) refers to "using domestic goods as a substitute or alternative to imported goods."<sup>235</sup> The AB also emphasized that "goods" could encompass various types of items used by the subsidy recipient, such as parts or components integrated into other products.<sup>236</sup>

This situation could raise legal concerns under Article 3.1 (b) of the SCM Agreement because the Indonesian government offers fiscal and non-fiscal incentives to investors and companies that meet local content requirements<sup>237</sup> and use domestic raw materials, including Indonesian consumers willing to purchase battery-based electric vehicles from companies investing in Indonesia.

## **B. Potential Legal Consequences of Indonesian Electric Vehicle Subsidy Rules under the WTO Regulations**

As outlined in Chapter I, each WTO member state is expected to conduct international trade in accordance with the principles established by the WTO. These principles are implicitly articulated within the provisions of the GATT,

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meaning of Article 1, shall be prohibited:

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

<sup>234</sup> Michelle Limenta & Lili Yang Ing. *Op.cit* Pg 20

<sup>235</sup> Appellate Body Report. *United States – Conditional Tax Incentives for Large Civil Aircraft [US – Tax Incentives]*. WT/DS487/AB/R. 4 September 2017. ¶ 5.11

<sup>236</sup> *Ibid.*

<sup>237</sup> Reuters. *Indonesia relaxes tax rules on EV imports to attract investment*. <https://www.reuters.com/business/autos-transportation/indonesia-relaxes-tax-rules-ev-imports-attract-investment-2023-12-13/>. Accessed on January 2<sup>nd</sup>, 2024.



encompassing various agreements aimed at creating a more transparent, accountable, equitable, and sustainable global trade system.

Multiple subsidy regulations in Indonesia regarding electric battery-based vehicles are considered to contravene various provisions outlined in the WTO agreement. Aspects associated with this measure encompass both fiscal and non-fiscal incentives, mandates specifying the minimal proportion of local content requirements, and grants directed at consumers of electric vehicles in Indonesia. The regulations governing subsidies for Indonesian electric battery-based vehicles are appraised to encompass particular forms of financial aid (specific subsidies) that possess the potential to instigate substantial discrimination against the WTO members.<sup>238</sup> In principle, specific subsidies are considered prohibited subsidies under WTO provisions that inherently disadvantage WTO member countries.

However, within this framework, the subsidy regulations for Indonesian electric battery-based vehicles could fall under the classification of actionable subsidies, commonly referred to as '*yellow-light subsidies*'.<sup>239</sup> Unlike prohibited subsidies that do not necessitate proof, actionable subsidies require prior substantiation<sup>240</sup> to establish that a specific subsidy falls under this category. Conversely, this classification implies that these subsidies are permissible provided they do not disrupt the interests of other WTO member nations or lead to adverse

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<sup>238</sup> SCM Agreement, Annex 1 A Results of the Uruguay Round of Multilateral Trade Negotiations.

<sup>239</sup> WTO E-learning. *Op.cit.* Pg 14.

<sup>240</sup> Usually referred to as the 'adverse effect test', this evidentiary action pertains to Article 5 of the SCM Agreement, which defines adverse effect as evidence of injury to the domestic industry of other member countries, nullification or impairment, and serious prejudice.

effects<sup>241</sup> due to the Indonesian regulations governing subsidies for battery-based electric vehicles.

The judge in the US on *Upland Cotton case* believed that "the adverse effects determined to exist" refers to the Panel/ AB's conclusions about adverse effects in the original case.<sup>242</sup> Article 5 of the SCM Agreement outlines three types of 'adverse effects' on the interests of other members' that 'no member should cause by utilizing any subsidy mentioned in paragraphs 1 and 2 of Article 1',<sup>243</sup> as follows:<sup>244</sup>

- a) injury to the domestic industry of another Member;
- b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994;
- c) serious prejudice to the interests of another Member.

Therefore, if the WTO Dispute Settlement Body (DSB) panel determines that "adverse effects found to exist" from a subsidy action harming the local industry of a member, causing cancellation or damage, or significantly harming the interests of another member, then the subsidizing country must:

“...subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy...”<sup>245</sup>

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<sup>241</sup> Peter Van den Bossche. *The Law and Policy of the World Trade Organization*. Op.cit Pg 779.

<sup>242</sup> Citing the decision by US Arbitrator – *Upland Cotton Case* (Article 22.6 – US II), ¶ 4.35-4.39).

<sup>243</sup> WTO. *WTO Analytical Index: SCM Agreement – Article 7 (DS Reports)*. [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/subsidies\\_art7\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/subsidies_art7_jur.pdf). Pg 18. Accessed on January 3<sup>rd</sup> 2024.

<sup>244</sup> SCM Agreement, § 5.

<sup>245</sup> SCM Agreement, § 7.8 as stated below:

Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

According to Article 7.8 of the SCM Agreement, the subsidizing country is obligated to take specific measures to eliminate the adverse effects experienced by other WTO member countries. Besides withdrawing the subsidy or eliminating the adverse effects already experienced by other WTO member countries, the affected WTO member may take countermeasures by requesting compensation through the imposition of Countervailing Duties (CVD).<sup>246</sup>

The Arbitrator's findings in the *US – Upland Cotton* case highlight a parallel purpose between countermeasures described in Article 7.9, those within Article 4.10 of the SCM Agreement, and retaliatory measures specified in Article 22.4 of the DSU.<sup>247</sup> Deliberations in cases such as *EC – Bananas III (US)* reaffirm the temporary nature of compensation or concession suspensions as measures available if compliance with recommendations or rulings is delayed. However, these measures are secondary to the primary goal of complete alignment with covered agreements, emphasizing that compensation, if granted, must align voluntarily and consistently with these agreements.<sup>248</sup>

In this regard, the subsidy regulations implemented by Indonesia concerning electric battery-based vehicles may potentially lead to adverse effects on WTO member countries. This likelihood arises from the possibility that these rules could inflict harm upon the domestic industries of other WTO members, causing substantial damage, nullification, or impairment, thereby significantly prejudicing the interests of those member nations. Such adverse impacts, if established, might

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<sup>246</sup> Nandang Sutrisno. *Loc.cit*; SCM Agreement, § 7.9.

<sup>247</sup> WTO. *WTO Analytical Index: SCM Agreement – § 7 (DS Reports) Op.cit* Pg 22.

<sup>248</sup> The arbitrator on *EC – Bananas III (US)* (Article 22.6 – EC), ¶ 22.6.

align with the circumstances warranting countermeasures pursuant to Article 7.9 of the SCM Agreement.

Upon the enforcement of the DSB decision or compensation obligation, it triggers the final stage in WTO dispute resolution known as the surveillance phase. This phase aims to scrutinize the implementation of panel recommendations forwarded to the DSB. Within 30 days of the DSB's approval of the decision, Indonesia is required to formally declare its intention to comply with the DSB's recommendations.<sup>249</sup> Article 22 paragraph (2) of the Dispute Settlement Understanding (hereinafter, DSU) asserts that if Indonesia fails to adhere to the panel's recommendations or the DSB decision and doesn't appeal within the set timeframe, the complaining country can request permission from the DSB to implement retaliatory measures or other actions stipulated in the relevant agreements (covered agreements).<sup>250</sup> The DSB authorization occurs automatically, unless there is a consensus against it or if an arbitration request is made by the protesting violating country.<sup>251</sup>

Retaliation among countries within the WTO framework are undertaken by a country as an *ultimatum remedium* resulting from the failure to reach an agreement in the dispute settlement process.<sup>252</sup> An arbiter evaluates if the retaliation

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<sup>249</sup> WTO. *Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereinafter, DSU). § 21 (3).

<sup>250</sup> *Ibid*, § 22 (3)

<sup>251</sup> *Ibid*, § 22 (6).

<sup>252</sup> *Ibid*, § 22 (3)

Retaliation stands as the ultimate and most significant outcome for a member who doesn't comply in the WTO dispute resolution system (mentioned in Article 3.7 of the DSU). While the DSB's approval is necessary beforehand, these countermeasures are chosen and implemented by one member against another selectively.

level matches the incurred losses. Arbitration decisions are conclusive, and the DSB will accept and promptly execute concession suspensions or retaliation unless there's an agreement to decline it.<sup>253</sup> The implementation of retaliation typically involves a significant increase in tariffs on specific products, adversely affecting the export interests of the violating country.<sup>254</sup>

### **C. Precedent Cases Regarding Electric Vehicle Subsidy Rules Implemented by Other Nations**

The provision of subsidies to expedite the adoption of battery-based electric vehicles is not confined solely to Indonesia but is also prevalent in various other countries that have undertaken similar measures. Nations such as Norway (1990), Colombia (2019), the United States (2008), and China (2014) have implemented fiscal incentives to encourage electric vehicle usage and bolster the growth of the battery manufacturing industry. These measures encompass purchase subsidies, tax reductions, and registration fee reductions, aiming to mitigate the price differential between electric and conventional vehicles.<sup>255</sup> However, according to research from NEOMA Business School Paris and Harvard Law School, the policy of subsidizing electric vehicles has yet to prove its effectiveness in supporting the decarbonization of the automotive sector. In fact, several countries have suffered significant losses due to decreased tax revenues resulting from this subsidy policy.<sup>256</sup> Moreover, some

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<sup>253</sup> Peter Van den Bossche. *The Law and Policy of the World Trade Organization*. Op.cit. Pg 222.

<sup>254</sup> *Ibid*, Pg 223.

<sup>255</sup> International Energy Agency. *Global EV Outlook 2021: Policies to promote electric vehicle deployment*. <https://www.iea.org/reports/global-ev-outlook-2021/policies-to-promote-electric-vehicle-deployment>. Accessed on January 6<sup>th</sup> 2024.

<sup>256</sup> Yiping Ami Song et al. *Subsidies for electric vehicles: not such a good idea after all!*. <https://neoma-bs.com/news/subsidies-for-electric-vehicles-not-such-a-good-idea-after-all/>. Neoma's world. Accessed on January 6<sup>th</sup> 2023; Rachel Reed. *Current electric vehicles subsidies fail to reduce overall emissions, says Harvard Law study*. <https://hls.harvard.edu/today/current-electric->

have almost been embroiled in WTO disputes due to the implemented subsidy policy.<sup>257</sup> In this context, the author will examine countries that have implemented electric vehicle subsidy rules deemed ineffective. This aims to offer insights to Indonesia in reevaluating its regulations concerning subsidies for battery-based electric vehicles.

### 1. Norway

Norway, considered the happiest country globally, has implemented emission-free vehicle policies since the 1990s. All electric vehicles are exempt from purchase taxes and a 25% VAT. This policy has incentivized competitive pricing for electric vehicles compared to conventional ones. Since July 2013, reductions have also been applied to plug-in hybrid cars. The target of 50,000 electric vehicles on Norwegian roads was achieved by April 2015, maintaining incentives until 2017. However, in 2018, parliament reduced and eliminated some incentives. Local authorities gained control over parking policies and transportation lanes for electric vehicles. Norway's National Transport Plan for 2018-2029 aims for all new vehicles, including buses and commercial vehicles, to be emission-free by 2025.<sup>258</sup>

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[vehicles-subsidies-fail-to-reduce-overall-emissions-says-harvard-law-study/](#). Harvard Law Today. Accessed on January 6<sup>th</sup> 2024.

<sup>257</sup> Gisela Grieger. *EU anti-subsidy probe into electric vehicle imports from China*. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/754553/EPRS\\_ATA\(2023\)754553\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/754553/EPRS_ATA(2023)754553_EN.pdf). European Parliamentary Research Service. PE 754.553-October 2023. Accessed on January 6<sup>th</sup> 2024; Simon Lester. *Electric Vehicle Tax Credits and Non-Discrimination under the Inflation Reduction Act*. <https://ielp.worldtradelaw.net/2022/08/electric-vehicle-tax-credits-and-non-discrimination-the-inflation-reduction-act.html>. International Economic and Policy Blog. Accessed on January 6<sup>th</sup> 2024.

<sup>258</sup> Ananda Bintang. *Sukses Norwegia Kembangkan Mobil Listrik*. [https://electricmotorshow.id/sukses-norwegia-kembangkan-mobil-listrik\\_211.htm](https://electricmotorshow.id/sukses-norwegia-kembangkan-mobil-listrik_211.htm). Indonesia Electric Motor Show. Accessed on January 6<sup>th</sup> 2024.

Below is a breakdown of the subsidies provided by the Norwegian government for electric vehicles:

a) Tax exemptions

(1) No purchase or import tax was applied to Electric Vehicles (EVs) from 1990 to 2022. However, starting in 2023, a purchase tax tied to the weight of newly acquired EVs will be introduced.

(2) An exemption from a 25% Value Added Tax (VAT) on purchases was in effect from 2001 to 2022. Nonetheless, beginning in 2023, a 25% VAT on the purchase price of vehicles exceeding 500,000 Norwegian Kroner will be enforced.

b) Road and Transport Charges

(1) The annual road tax exemption was applicable from 1996 to 2021, gradually reducing and fully implemented by 2022.

(2) Toll road charges were waived from 1997 to 2017, as were ferry charges from 2009 to 2017. However, a 50% discount on ferry fares and toll roads was provided for electric vehicles in 2018, decreasing to 70% for toll roads from 2023 onwards.

c) Parking and Lane Access

Free municipal parking for EVs was available from 1999 to 2017, along with access to bus lanes from 2005 onwards. However, as of 2016, local authorities were granted the power to restrict bus lane access solely to EVs carrying one or more passengers.

d) Company Car Tax Reduction

Company car tax reductions were initially set at 25% from 2000 to 2008, increased to 50% from 2009 to 2017. This reduction gradually decreased to 40% from 2018 to 2021 and was further reduced to 20% from 2022.

e) Leasing Exemption

Leasing of EVs was exempt from the 25% VAT from 2015 onwards.

f) National Objective and Public Procurement

(1) The Norwegian Parliament established a national objective in 2017, aiming for all newly sold cars by 2025 to be zero-emission (electric or hydrogen-based) and a "charging right" was established for residents of apartment buildings in 2017.

(2) From 2022, all cars procured in public sectors must be Zero-Emission Vehicles (ZEVs), extending to city buses from 2025.<sup>259</sup>

So far, Norway's phased policy in developing electric vehicles has resulted in a significant increase in the number of electric cars on its roads. Norway stands as the only country globally to have successfully achieved the decarbonization of its transportation sector. With an estimated count of around 470,000 Zero-Emission Vehicles (ZEVs), Norway holds the largest market share in Europe and encompasses 16% of the total electric vehicle fleet worldwide.<sup>260</sup>

Unfortunately, the policy measures implemented by the Norwegian Government have resulted in a significant decline in excise tax revenue, with an

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<sup>259</sup> (\_\_\_), *Norwegian EV Policy: Norway is leading the way for a transition to zero emission in transport.* <https://elbil.no/english/norwegian-ev-policy/>. Norsk elbilforening. Accessed on January 6<sup>th</sup> 2024.

<sup>260</sup> Nanda Fahriza Batubara. *Waspada Konsekuensi Tak Terduga dari Insentif Kendaraan Listrik.* <https://tirto.id/waspada-konsekuensi-tak-terduga-dari-insentif-kendaraan-listrik-gDNS>. Tirto.Id. Accessed on January 6<sup>th</sup> 2024.



estimated loss amounting to nearly one-third of the total environmental tax revenue. The VAT exemption in 2021 led to a tax expenditure of around NOK 11.3 billion (\$1.3 billion). Overall, the benefits derived from electric vehicles, encompassing both fully battery-powered and plug-in hybrid models, were estimated to reach NOK 30 billion (\$3.5 billion) during the same year.<sup>261</sup> Furthermore, the Reuters report also conveys that Norway's efforts to reduce emissions must be balanced with losses amounting to 39.4 billion kroner or approximately Rp56.7 trillion in 2022 (based on the assumption of an exchange rate of Rp1,439.4/kroner).<sup>262</sup>

## 2. Colombia

The adoption of electric vehicles in Colombia began in July 2019 through the law known as "*Por Medio De La Cual Se Promueve El Uso De Vehiculos Electricos En Colombia Y Dictan Otras Disposiciones*," also identified as Law Number 1964 Year 2019. The issuance of this law underscores the commitment of the Colombian Government to implement the 2015 Paris Agreement, aiming for sustainable mobility and reducing greenhouse gas emissions. While this law regulates the use of electric vehicles for both light and heavy vehicles, it sets adoption targets only for heavy-duty fleets. Colombia aims to register 6,600 electric

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<sup>261</sup> (\_\_\_), *Norway's Evolving Incentives for Zero-Emission Vehicles*. <https://www.oecd.org/climate-action/ipac/webbooks-practices/dynamic/ipac-case-studies/22d2485b/pdf/norway-s-evolving-incentives-for-zero-emission-vehicles.pdf>. International Programme for Action on Climate Change. OECD December 2022. Pg 2. Accessed on January 6<sup>th</sup> 2024.

<sup>262</sup> Victoria Klesty. *Tesla in pole position in Norway's race to EV goal*. <https://www.reuters.com/business/autos-transportation/hitting-record-electric-cars-sales-norway-near-80-2022-2023-01-02/>. Reuters. Accessed on January 6<sup>th</sup> 2024.

vehicles by the end of 2022 and 600,000 units by 2030. Law Number 1964 Year 2019 serves as a foundation for increasing passenger electric vehicle use.<sup>263</sup>

Colombia has established tax rates for private vehicles through amendments to Law Number 4888 Year 1998. Under this regulation, electric vehicles cannot be taxed at a rate exceeding 1% of their commercial value. Conversely, private vehicles with internal combustion engines (ICE) are taxed between 1.5% to 3.5% depending on their value, in accordance with this Law.<sup>264</sup> The incentives for the purchase of electric vehicles include:<sup>265</sup>

- a) Incentives outlined in the law encompass emission test discounts, insurance rate reductions, and designated parking spaces for electric vehicles. Public entities are mandated to allocate a minimum of 2% of parking spaces for electric vehicles;
- b) Electric vehicles are exempted from local traffic restriction policies, such as the "*pico y placa*" program that limits access to vehicles with specific license plate numbers during certain hours;<sup>266</sup>
- c) Local governments are empowered to offer incentives such as discounted registration fees and parking rates for electric vehicles;

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<sup>263</sup> Samantha Pettigrew & Oscar Delgado. *¿Puede Colombia Convertirse En El Líder De Transporte Limpio De América Latina?*. <https://theicct.org/latam-colombia-transporte-limpio-feb22/>. The International Council on Clean Transportation. Accessed on January 6<sup>th</sup> 2024.

<sup>264</sup> Gobierno de Colombia. *Acelerar La Implementación Para Una Recuperación Sostenible*. [https://downloads.ctfassets.net/27p71vvbl4bs/5QHMJWk16oeBIbmAuhlkaO/346d94400d11453bc9523ee63be7cacd/VNR\\_2021\\_Colombia.pdf](https://downloads.ctfassets.net/27p71vvbl4bs/5QHMJWk16oeBIbmAuhlkaO/346d94400d11453bc9523ee63be7cacd/VNR_2021_Colombia.pdf). Reporte Nacional Voluntario 2021, as cited on (\_\_\_), *Colombia: ZEV*. <https://www.transportpolicy.net/standard/colombia-zev/>. TransportPolicy.net. Accessed on January 6<sup>th</sup> 2024.

<sup>265</sup> (\_\_\_), *Colombia: ZEV*. <https://www.transportpolicy.net/standard/colombia-zev/>. TransportPolicy.net. Accessed on January 6<sup>th</sup> 2024.

<sup>266</sup> Office of the Secretary of Mobility, Bogota. *Pico Y Plata*. [https://www.movilidadbogota.gov.co/web/Pico\\_y\\_placa](https://www.movilidadbogota.gov.co/web/Pico_y_placa). Accessed on January 6<sup>th</sup> 2024.

- d) The law regulates targets for the purchase of electric vehicles in the public transportation sector and local government. These targets include the percentage of new vehicle purchases that must be electric vehicles;
- e) The law governs electric vehicle charging infrastructure, including the obligation for certain cities to provide a specified number of charging stations within specified time periods.

However, similar to the situation in Norway, Colombia, as the fourth-largest automobile market in Latin America in mid-2022, experienced the negative impact of electric vehicle subsidies. Although Colombia's tax incentives successfully boosted sales, the policy also incurred significant costs. Estimated fiscal costs ranged from \$350 to \$510 per metric ton of avoided carbon dioxide emissions, while the average private welfare cost reached \$40 to \$48 per ton of carbon dioxide. This implies a paradox that the policy encouraging consumers to switch from gasoline-powered vehicles to electric ones could decrease individual welfare.<sup>267</sup>

### 3. United States

Since 2010, the federal government in the United States has introduced financial incentives for electric vehicles. These incentives include a \$7500 federal tax credit for battery electric vehicles (BEVs) operating solely on electric power and a similar \$7500 subsidy for plug-in hybrid electric vehicles (PHEVs) that use both electric motors and internal combustion engines powered by gasoline and

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<sup>267</sup> Jeronimo Callejas, Joshua Linn, & Jevgenijs Steinbuks. *Getting electric vehicle tax incentives right: Why market power distortions matter.* <https://blogs.worldbank.org/transport/getting-electric-vehicle-tax-incentives-right-why-market-power-distortions-matter>. World Bank Blogs. Accessed on January 6<sup>th</sup> 2024.

electricity. The subsidy amount for PHEVs is adjusted based on their battery capacity. The average federal subsidy value for BEV sales has remained constant at \$7500, while for PHEVs, it may fluctuate due to the introduction of new models with varying battery capacities.<sup>268</sup>

Below are the details of the electric vehicle subsidies provided by the United States Government:<sup>269</sup>

a) Policy

- (1) Average Fuel Economy (CAFÉ) standards;
- (2) Corporate Emission credit trading;
- (3) Target of 1 million vehicles by 2015;
- (4) Fiscal incentives: Tax credit (USD 7500);
- (5) Fiscal incentives: Tax credit, registration fee;
- (6) Non-fiscal incentives: Access to high occupancy vehicle lanes, free parking;
- (7) Zero Emission Vehicle (ZEV) program initiated by California.<sup>270</sup>

b) Infrastructure

- (1) Funding for Electric Vehicle Charging Infrastructure (EVCI) by the federal government ( $\pm$  IDR 1.4 trillion) and 18 states (total  $\pm$  IDR 7.4 trillion);

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<sup>268</sup> Tamara L. Sheldon, Rubal Dua, Omar Abdullah Alharbi. *Electric vehicle subsidies: Time to accelerate or pump the brakes*. Energy Economics. Volume 120 2023, 106641, ISSN 0140-9883. <https://doi.org/10.1016/j.eneco.2023.106641>. Pg 3.

<sup>269</sup> Idoan Marciano. *Mengembangkan Ekosistem Kendaraan Listrik: Pelajaran dari Pengalaman Amerika Serikat, Norwegia, dan Cina*. Loc.cit.

<sup>270</sup> International Energy Agency. *Global EV Outlook 2021: Policies to promote electric vehicle deployment*. Loc.cit.

- (2) Incentives for loans/subsidies for private EVCI developers;
  - (3) Electric vehicle ratio: EVCI = 20:1.
- c) Electric Vehicle Supply
- (1) Research and Development (R&D) funding for electric vehicle manufacturers (ARRA 2009 ± IDR 34 trillion);
  - (2) Increasing availability of diverse electric vehicle models (28 models) in 2019.
- d) Industry and Supply Chain
- (1) Tax credits, regulatory standards, and public procurement;
  - (2) Production increases up to 40% of the global total capacity (2015);
  - (3) R&D funding for batteries (part of the ARRA program).
- e) Public Awareness
- (1) Providing access to electric vehicle information;
  - (2) High interest in technology and advanced vehicle performance;
  - (3) Promotion of electric vehicles through various media outlets.

However, the electric vehicle (EV) subsidy policy in America seems to have yielded suboptimal results or is even considered a failure. Instead of effectively reducing carbon emissions, the subsidy policy aimed at boosting EV sales has led to an increase in greenhouse gas emissions in the US.<sup>271</sup> The problem lies in the uneven and misdirected nature of the subsidy policy. Washington's elite provides

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<sup>271</sup> Rachel Reed. *Current electric vehicles subsidies fail to reduce overall emissions, says Harvard Law study. Loc.cit.*

incentives or subsidies of \$7,500 or approximately Rp 115 million for individuals seeking to purchase new electric vehicles.<sup>272</sup>

The price range of electric vehicles (EVs) in the US spans from \$26,750 to \$119,990 with government subsidies,<sup>273</sup> making them affordable primarily for the upper-middle class. Consumers in this bracket tend to use EVs as secondary vehicles, rarely utilizing them for daily activities, while their everyday mobility relies on gasoline or diesel-powered cars. This situation highlights an imbalance where used EVs offer advantages to the upper-middle class, while access remains limited for the lower-middle class.<sup>274</sup>

Recently, the United States enacted *The Inflation Reduction Act* (IRA) of 2022 aimed at reducing domestic inflation, particularly stemming from the global energy crisis, while simultaneously addressing climate change issues. Furthermore, this legislation provides a Clean Vehicle Credit of \$7,500 per vehicle to incentivize and expedite the adoption of electric vehicles.<sup>275</sup> Electric vehicles meeting the

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<sup>272</sup> Ashley Nunes, Lucas Woodley, & Philip Rossetti. *Re-thinking procurement incentives for electric vehicles to achieve net-zero emissions*. Nature Sustainability, VOL 5 June 2022. 527–532. <https://doi.org/10.1038/s41893-022-00862-3>. Pg 527.

<sup>273</sup> Find My Electric E-commerce. <https://www.findmyelectric.com/>. Accessed on January 6<sup>th</sup> 2024; M Fakhriansyah. *RI Harus Belajar! Subsidi Mobil Listrik Gagal di Negara Ini*. <https://www.cnbcindonesia.com/news/20230306060627-4-419047/ri-harus-belajar-subsidi-mobil-listrik-gagal-di-negara-ini>. CNBC. Accessed on January 6<sup>th</sup> 2024.

<sup>274</sup> Ashley Nunes, et al. *Op.cit* pg. 528-530.

<sup>275</sup> Leo Banks. *How Inflation Reduction Act Electric Vehicle Incentives Are Driving a U.S. Manufacturing Renaissance*. <https://www.americanprogress.org/article/how-inflation-reduction-act-electric-vehicle-incentives-are-driving-a-u-s-manufacturing-renaissance/#:~:text=The%2030D%20new%20clean%20vehicle%20credit%2C%20newly%20revamped%20by%20the,and%20other%20requirements%20are%20met>. CAP 20. Accessed on January 6<sup>th</sup> 2024.

stipulated Critical Battery Component and Mineral Criteria have the following requirements:<sup>276</sup>

- a) First, the percentage of critical mineral value within the electric vehicle battery must meet extraction or processing standards in the United States, a free trade partner, or undergo recycling in North America. The baseline percentage begins at 40% for vehicles in operation before January 1<sup>st</sup>, 2024, escalating to 80% after December 3<sup>rd</sup>, 2026;
- b) Second, the percentage value of components within the electric vehicle battery produced or assembled in North America starts at 50% for vehicles in operation before January 1<sup>st</sup>, 2024, reaching 100% after December 31<sup>st</sup>, 2028.

Nonetheless, the *Inflation Reduction Act*, encompassing tax incentives and subsidies for electric vehicles, has generated tension in international trade. Examining the tax credit under the *Inflation Reduction Act*, it's apparent that it conflicts with GATT rules by using the tax system to protect domestic production and mandating local components for the tax credit. The Act amends existing clean energy tax credits in Sections 45 and 48 of the Internal Revenue Code by introducing "bonuses" for domestic content.<sup>277</sup> Some WTO members, such as the

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<sup>276</sup> International Energy Agency. *Inflation Reduction Act 2022: Sec. 13401 Clean Vehicle Credit*. <https://www.iea.org/policies/16277-inflation-reduction-act-2022-sec-13401-clean-vehicle-credit>. Accessed on January 6<sup>th</sup> 2024.

<sup>277</sup> Charles Benoit. *The Inflation Reduction Act Sparks Trade Disputes: What Next?* <https://americanaffairsjournal.org/2022/11/the-inflation-reduction-act-sparks-trade-disputes-what-next/>. American Affairs Journal. Volume VI, Number 4 (Winter 2022): 68–80. Accessed on January 6<sup>th</sup> 2024.

European Union,<sup>278</sup> Germany,<sup>279</sup> and China<sup>280</sup> which do not have free trade agreements with the United States, are pressuring the U.S. to revoke this policy or face potential retaliatory measures, deeming it unfair and a violation of WTO rules, especially the National Treatment Principle.<sup>281</sup>

#### 4. China

In September 2020, President of China, Xi Jinping announced the nation's commitment to reach carbon peak by 2030 and carbon neutrality by 2060 during the 75<sup>th</sup> United Nations General Assembly.<sup>282</sup> To accomplish these objectives, the Chinese government has implemented a series of policy incentives to support the adoption of electric vehicles. The China New Energy Vehicle <sup>283</sup> Industry Development Plan (2021-2035) underscores the importance of shifting focus from quantity to quality within the automotive sector,<sup>284</sup> emphasizing strategic initiatives to combat climate change and foster sustainable development.

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<sup>278</sup> Andy Bounds. *EU accuses US of breaking WTO rules with green energy incentives*. <https://www.ft.com/content/de1ec769-a76c-474a-927c-b7e5aeff7d9e>. Financial Times. Accessed on January 6<sup>th</sup> 2024.

<sup>279</sup> Jonathan Packroff. *German top adviser cautious about possible WTO case against US*. <https://www.euractiv.com/section/politics/news/german-top-adviser-cautious-about-possible-wto-case-against-us/>. Euractiv.de. Accessed on January 6<sup>th</sup> 2024.

<sup>280</sup> Aqsa Younas Rana. *China Slams US 'Inflation Reduction Act' as Discriminatory, Violating WTO Principles*. <https://bnnbreaking.com/world/china/china-slams-us-inflation-reduction-act-as-discriminatory-violating-wto-principles/>. BNN. Accessed on January 6<sup>th</sup> 2024.

<sup>281</sup> Charles Benoit. *Loc.cit.*

<sup>282</sup> United Nations. *China headed towards carbon neutrality by 2060; President Xi Jinping vows to halt new coal plants abroad*. <https://news.un.org/en/story/2021/09/1100642>. UN News. Accessed on January 6<sup>th</sup> 2024.

<sup>283</sup> International Council on Clean Transportation. *China's New Energy Vehicle Industrial Development Plan for 2021 to 2035*. Policy Update, June 2021. <https://theicct.org/sites/default/files/publications/China-new-vehicle-industrial-dev-plan-jun2021.pdf>. Accessed on January 6<sup>th</sup> 2024.

<sup>284</sup> Sebastian Ibold, Xia Yun & Xiao Shuyue. *NEV Development Plan 2035*. <https://transition-china.org/wp-content/uploads/2021/10/New-Energy-Vehicle-Industry-Development-Plan-2021-2035.pdf>. Transition China. Opening Page. Accessed on January 6<sup>th</sup> 2024.



Since 2009, the Chinese government has employed various incentives, including monetary incentives, privileges, demonstrations, and charging facilities, to expedite the adoption of electric vehicles in the market. By the end of 2020, the development of electric vehicles in China achieved remarkable global milestones. Recent data from CAAM indicates a surge in electric vehicle sales from 5.209 units in 2009 to 1.367 million units in 2020, representing an increase of 970,000 units more than Germany, the world's second-largest seller.<sup>285</sup> Below is a detailed overview of the subsidies policies provided by the Chinese Government for electric vehicles:<sup>286</sup>

a) Policy

- (1) Prohibition of conventional motor usage in 30 cities;
- (2) 50% subsidy (equivalent to approximately IDR ± 140 million per unit) with conditional schemes;
- (3) Fiscal incentives from the central government in the form of vehicle tax exemptions;
- (4) Non-fiscal incentives from local governments offering license plate fee reductions and license fee waivers;
- (5) Dual credit program.

b) Infrastructure

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<sup>285</sup> Yiran Liu, Xiaolei Zhao, Dan Lu & Xiaomin Li. *Impact of policy incentives on the adoption of electric vehicle in China. Transportation Research Part A: Policy and Practice*. Volume 176, 2023. <https://www.sciencedirect.com/science/article/abs/pii/S0965856423002215>. Accessed on January 6th 2024.

<sup>286</sup> Idoan Marciano. *Mengembangkan Ekosistem Kendaraan Listrik: Pelajaran dari Pengalaman Amerika Serikat, Norwegia, dan Cina*. *Loc.cit.*

- (1) Subsidies for SPKLU developers, both from the central government (around IDR ± 250 billion) and locally (up to 30% of total investment);
  - (2) The electric vehicle ratio to SPKLU stands at 6.5:1.
- c) Electric Vehicle Supply
- (1) Availability of a diverse range of electric vehicle models (approximately 160 models);
  - (2) Incentives like tax exemptions provided to manufacturers;
  - (3) Public procurement.
- d) Industry and Supply Chain
- (1) Electric vehicle and four-wheel battery R&D between 2001-2005 (863 Program) (around IDR ± 35 trillion);
  - (2) Requirement for local manufacturers to own core technology patent rights.
- e) Public Awareness
- (1) Demonstration programs for electric vehicles in urban areas;
  - (2) Electric vehicles are considered an economical choice.

The positive impact of financial incentives on the adoption of electric vehicles in China is highly significant. According to recent research, the availability of incentives has been a pivotal factor in enhancing the adoption of electric vehicles in the country. This is evidenced by the incentives leading to an approximate 15-20% increase in electric vehicle sales in China. Furthermore, the accessibility of

incentives has facilitated consumers in purchasing electric vehicles, subsequently reducing the average purchase price of electric vehicles by approximately 8-13%.<sup>287</sup>

However, China's success in implementing the electric vehicle subsidy policy has not been entirely smooth. On October 4<sup>th</sup>, 2023, the European Commission formally initiated an anti-subsidy investigation into the import of electric vehicles (BEVs) from China.<sup>288</sup> This investigation aims to assess whether the competitive advantage of Chinese electric vehicle exporters is natural or artificial, and whether the importation of electric vehicles from China has caused harm or posed a threat to the development of the new electric vehicle industry in the European Union. The investigation alleges a sharp increase in the importation of electric vehicles, reportedly priced 20% lower than similar products in the European Union. These low-priced electric vehicles, associated with intense price competition in the Chinese electric vehicle market, might indicate an oversupply of batteries and excessive production capacity in China. According to Allianz estimates, the potential loss in net profits for the European Union's automotive industry due to competition from China is estimated to exceed €7 billion by 2030.<sup>289</sup>

In light of these circumstances, China's subsidization policy for electric vehicles raises concerns regarding its compliance with the anti-subsidy regulations outlined in the WTO framework and the SCM Agreement. This policy poses a risk

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<sup>287</sup> (\_\_\_), *Examining the Impact of Financial Incentives on Electric Car Adoption in China*. <https://energy5.com/examining-the-impact-of-financial-incentives-on-electric-car-adoption-in-china>. Energy5 your way Blog. Accessed on January 6<sup>th</sup> 2024.

<sup>288</sup> Alberto Nardelli & Katharina Roskopf. *EU Formally Opens Subsidies Probe Into EVs Made in China*. <https://www.bloomberg.com/news/articles/2023-10-04/eu-formally-opens-anti-subsidies-probe-into-evs-made-in-china>. Bloomberg. Accessed on January 6<sup>th</sup> 2024.

<sup>289</sup> Gisela Grieger. *EU anti-subsidy probe into electric vehicle imports from China*. *Loc.cit*.

of causing ‘adverse effect’ to other WTO members, notably the European Union. Additionally, this policy might introduce market distortions due to unfair competition.

#### **D. Alternative Legal Approaches to Encourage Electric Vehicle Deployment**

The escalation of electric vehicle usage has been a primary focus in endeavors aimed at reducing CO<sub>2</sub> emissions and addressing the impacts of climate change. Despite being regarded as an environmentally friendly alternative due to its reduction of air pollution through the use of electric power in lieu of fossil fuel combustion, this approach has not ensured swift changes to avoid the serious consequences of climate change. Subsidies, currently the primary solution to incentivize the adoption of electric vehicles, have been found to be unevenly distributed, inefficient, and have ramifications on economic imbalances and accessibility within international trade.<sup>290</sup>

In the Indonesian context, a predicament has emerged from the research conducted by Aditya Mahalana *et al* in 2023. The study findings indicate an inability to achieve cost parity over a six-year ownership period between two popular vehicles within the same market segment, namely the Hyundai Kona EV and Honda HR-V. This discrepancy is attributed to the taxation system in place within the country. The elevated baseline price of the Hyundai Kona EV stands out as a primary factor contributing to this imbalance. Despite incentives such as luxury tax exemptions and exemptions on transfer taxes, these efforts have not

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<sup>290</sup> Alissa Huntington & Sebastian Castellanos. *Feebates: Looking Beyond Subsidies to Incentivize Electric Vehicle Adoption*. <https://thecityfix.com/blog/feebates-looking-beyond-subsidies-to-incentivize-electric-vehicle-adoption/>. The City Fix. Accessed on January 7<sup>th</sup> 2024.

substantially mitigated the cost differential directly. Furthermore, even direct subsidy initiatives proposed by the government have proven inadequate in bridging the price gap between conventional and electric vehicles. In Jakarta, the showroom price of the Hyundai Kona EV stands at approximately \$51,000, while the Honda HR-V is priced around \$26,500. The proposed subsidy of approximately \$5,130 might potentially reduce the price of the electric vehicle by 10%, yet it only covers about 1/5 of the purchasing price disparity between the two vehicles.<sup>291</sup>

Instead of providing direct purchase subsidies for battery-powered electric vehicles, there exists a more effective approach to foster the adoption of battery-based electric vehicles. One alternative program is the 'Feebate EV Policy', a market-based financial policy approach. This program imposes charges on more environmentally polluting vehicles to assist in covering costs for models that are more eco-friendly.<sup>292</sup> With such a structure, the Feebate policy can be financially neutral. Additionally, it can stimulate the production and consumer uptake of zero-emission vehicles while respecting consumer preferences.<sup>293</sup> Characteristics that remain income-neutral allow such programs to be sustainable in the long term, addressing impediments from direct monetary subsidy schemes, and complying

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<sup>291</sup> Aditya Mahalana, Zifei Yang & Fransisco Posada. *The consumer cost of ownership of electric passenger cars in Indonesia*. <https://theicct.org/wp-content/uploads/2023/01/asia-pacific-evs-cco-evs-indonesia-jan23.pdf>. International Council on Clean Transportation. Working Paper 2023-06. January 2023. Pg 6-9. Accessed on January 7<sup>th</sup> 2024.

<sup>292</sup> Patrick Eilert, Amanda Stevens, Heidi Hauenstein & Jonathan McHugh. *Innovative Approaches for Reducing GHG Emissions: Feebates for Appliances and Buildings*. <https://www.aceee.org/files/proceedings/2010/data/papers/2179.pdf>. ACEEE Summer Study on Energy Efficiency in Buildings. 2010. Accessed on January 7<sup>th</sup> 2024.

<sup>293</sup> Alissa Huntington & Sebastian Castellanos. *Feebates: Looking Beyond Subsidies to Incentivize Electric Vehicle Adoption*. *Loc.cit.*

with non-discriminatory taxation regulations,<sup>294</sup> thereby not violating the *World Trade Organization* (WTO) provisions.

Several countries that have implemented the Feebate EV policy include France, Singapore, Sweden, and New Zealand. France's experience of running this program for over 14 years has stimulated the electric vehicle market, leading to a significant increase in vehicle registrations after the policy implementation. Singapore has also employed feebates for over a decade with varying incentives for vehicles based on CO<sub>2</sub> emissions. The adoption of this program has heightened consumer interest in eco-friendly vehicles within Singapore's automotive market. Sweden, which initiated the program in 2018, successfully altered consumer purchasing preferences towards environmentally friendly vehicles. Meanwhile, New Zealand, after launching a similar program in 2021, effectively increased consumer interest in this eco-friendly technology.<sup>295</sup>

To encourage more effective use of electric vehicles, the government can reinforce environmentally friendly regulations by implementing a carbon tax. This tax is levied on carbon emissions that negatively impact the environment. The implementation of this policy is expected to encompass all sectors of the economy in order to reduce national greenhouse gas emissions. A carbon tax associated with fuel prices could elevate fuel costs, thereby reducing vehicle travel and promoting the use of clean vehicles, including electric vehicles.<sup>296</sup>

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<sup>294</sup> Sandra Wappelhorst. *Incentivizing Zero and Low-Emission Vehicles: The Magic of Feebate Programs*. <https://theicct.org/magic-of-feebate-programs-jun22/>. ICCT. Accessed on January 7<sup>th</sup> 2024.

<sup>295</sup> *Ibid.*

<sup>296</sup> Aditya Mahalana, Zifei Yang & Fransisco Posada. *Loc.cit.*

Moreover, a large-scale information campaign needs to be launched to expound upon the benefits of environmentally-friendly technology.<sup>297</sup> Green campaigns and sustainable advertisements yield a positive and significant impact on the intention to purchase green products and environmentally-conscious shopping behaviors. Additionally, eco-friendly packaging or labeling solely holds a positive and significant influence on the intention to purchase green products, which has been proven to directly affect environmentally-friendly shopping behaviors, particularly concerning electric vehicles.<sup>298</sup> The promotion of electric vehicle use should also be accompanied by a transition of power plants to renewable energy sources, not reliant on fossil fuels. If the majority of electric energy derives from fossil fuel-powered plants, electric vehicles won't be significantly environmentally friendly.<sup>299</sup> However, should many nations shift to renewable energy sources, electric vehicles could be considered more environmentally friendly than conventional vehicles.<sup>300</sup>

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<sup>297</sup> Yiping Ami Song et al. *Subsidies for electric vehicles: not such a good idea after all!*. *Loc.cit.*

<sup>298</sup> Hermanto Yaputra, Kurniawati, Renny Risqiani, Nico Lukito & Krisna P. Sukarno. *The Effect of Green Marketing, Sustainable Advertising, Eco Packaging/Labeling Towards Green Purchasing Behavior (Study on Electric Vehicle in Indonesia)*. [http://www.karyailmiah.trisakti.ac.id/uploads/kilmiah/dosen/Green\\_Marketing-aip-conference-proceedings.pdf](http://www.karyailmiah.trisakti.ac.id/uploads/kilmiah/dosen/Green_Marketing-aip-conference-proceedings.pdf). Pg 6-7. Accessed on January 7<sup>th</sup> 2024.

<sup>299</sup> Envihsa FKM UI. *Mobil Listrik: Persoalan atau Pemecahan Masalah?*. <https://envihsa.fkm.ui.ac.id/2022/11/25/mobil-listrik-persoalan-atau-pemecahan-masalah/>. Accessed on January 7<sup>th</sup> 2024.

<sup>300</sup> Dida S. N. Hilman. *Polemik Kendaraan Bermotor Listrik dan Upaya Mengurangi Emisi Karbon*. <https://fst.unair.ac.id/polemik-kendaraan-bermotor-listrik-dan-upaya-mengurangi-emisi-karbon/>. FST UNAIR. Accessed on January 7<sup>th</sup> 2024.

## CHAPTER IV CLOSING REMARKS

### A. Conclusion

Based on the discussion outcomes of this study, it can be concluded that:

1. There are several regulations concerning battery-based electric vehicle subsidies in Indonesia that potentially violate the provisions of GATT 1994 and the SCM Agreement, specifically regarding the prohibition of quantitative restrictions, the principle of national treatment, and the anti-subsidy provisions. The policies within Indonesia's positive law concerning subsidies for battery-based electric vehicles that are considered to breach these provisions include:

- a. Presidential Regulations Number 79 Year 2023 regarding Amendments to Presidential Regulations Number 55 Year 2019 concerning the Acceleration of the Battery Electric Vehicle (BEV) Programs for Road Transportation;
- b. Minister of Energy and Mineral Resources Regulation Number 3 Year 2023 on the General Guidelines for Government Assistance in the Motorcycle Conversion Program from Internal Combustion Engine Motorcycles to Battery-Based Electric Motorcycles;
- c. Minister of Finance Regulation Number 38 Year 2023 concerning Value Added Tax on the Delivery of Specific Four-Wheeled Battery Electric Motor Vehicles and Specific Battery Electric Bus Motor Vehicles Subsidized by the Government for the Fiscal Year 2023;



- d. Minister of Industry Regulation Number 21 Year 2023 Amendment to Minister of Industry Regulation Number 6 Year 2023 on Guidelines for Government Assistance for the Purchase of Two-Wheeled Battery Electric Motor Vehicles;
  - e. Minister of Investment/ Head of the Investment Coordinating Board Regulation Number 6 Year 2023 concerning Guidelines and Governance of Import Incentives and/or Delivery of Four-Wheeled Battery-Based Electric Motor Vehicles in the Framework of Investment Acceleration.
2. The regulations concerning battery-based electric vehicle subsidies in Indonesia may potentially lead to legal consequences under WTO regulations. These repercussions arise if these rules detrimentally affect the domestic industries of other WTO member states, resulting in the cancellation or impairment of industries or significantly disrupting the interests of other member states. Under Article 7.8 of the SCM Agreement, if the DSB decision establishes adverse impacts from these subsidy actions, the subsidizing country may be called upon to take countermeasures. Moreover, affected countries can resort to retaliatory measures or impose countervailing duties pursuant to Article 7.9 of the SCM Agreement.

### **B. Recommendation**

According to the Author's perspective, the recommendations that can be suggested by Indonesia are as follows:

1. From the lessons learned from Norway, Colombia, the United States, and China, it is imperative for the Indonesian government to conduct a comprehensive evaluation of subsidy programs to prevent potential market distortions. This encompasses a re-examination of the scope and types of subsidies offered, including an analysis of the tax structure and its impact on vehicle pricing. The objective of this review is to ensure that the subsidies provided are both effective and equitable. Moreover, to reduce reliance solely on incentives, governmental structural initiatives are required, alongside exploration of alternative methods to effectively promote the use of battery-based electric vehicles without inciting conflicts in international trade.
2. Several options that Indonesia can take to promote the deployment of battery-based electric vehicles apart from subsidy include:
  - a. Implementing the 'Feebate EV Policy,' which imposes costs on environmentally harmful vehicles while supporting costs for eco-friendly models. This approach encourages the use of electric vehicles without providing direct subsidies, creating a more balanced and sustainable market;
  - b. Tightening environmental regulations, particularly concerning carbon taxation, to reduce carbon emissions and promote the use of clean vehicles, including electric ones. If applied to fuel prices, this taxation strategy could reduce the use of conventional vehicles;

- c. Conducting extensive awareness campaigns to elucidate the benefits of environmentally friendly technology. Previous studies have shown that such campaigns significantly impact consumers' intentions to purchase environmentally friendly products, including electric vehicles;
- d. In line with promoting electric vehicles, focusing on transitioning power plants to renewable energy sources. Emphasizing the reduction of reliance on fossil fuel-powered plants to enhance the overall environmental sustainability of electric vehicles.



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Judul karya ilmiah : **ASSESSING THE VALIDITY OF INDONESIAN  
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