

Epistemology of the Free: A Post-Feminist Approach on the Case of Developing Countries in World Trade Organization

Willa Nurul Utami

*Alumnus Program Studi S1 Ilmu Hubungan Internasional
Universitas Airlangga*

ABSTRACT

Pembentukan organisasi internasional oleh negara-negara telah memunculkan persaingan kepentingan dan upaya kerjasama di antara mereka. Dalam sebuah sistem dimana negara-negara berkembang tampak lemah di hadapan negara-negara maju, negara-negara berkembang didominasi dan ditekan oleh negara-negara maju dalam lembaga tersebut. Tulisan ini membuka sebuah pemikiran alternatif yang bermanfaat bagi negara berkembang, yakni pendekatan post-feminism. Sebagai bagian dari teori reflektif, post-feminism menilai kembali pemikiran opresif yang memberikan kontribusi besar dalam Ilmu Hubungan Internasional dan merefleksikannya pada negara berkembang. Studi kasus tulisan ini adalah World Trade Organization (WTO) dan pertarungan antara Amerika Serikat sebagai simbol kekuatan negara maju dengan negara-negara berkembang.

Kata-Kata Kunci: *lembaga internasional, WTO, negara berkembang, Amerika Serikat, sengketa, post-feminism.*

The establishment of international institutions creates competition of interest or effort for cooperation among states on those institutions. In a system where exist developing states lacking in tangible power, they are dominated and even repressed from their own will. Due this reasoning, this article opens up an alternative thinking that could benefit for developing countries in times like this; a post-feminist approach. Post-feminism as a part of reflective theories contemplates upon the oppressive thinking that has major contributed in International Relations and reflect it back for developing countries on how to go about thinking in times of oppression, repression, and domination. The case study in this article is World Trade Organization and the dispute between one power symbols in the organization, the United States against many developing countries.

Keywords: *international institution, World Trade Organization, developing countries, the United States, dispute, post-feminism.*

World Trade Organization (WTO) is the leading institution in maintaining peace and order in the scope of international trade. It is achieved by creating laws and norms agreed by its member to pursue a healthy competition between states in the form of free trade. Consisting of almost 200 members and prominent issues such as trading law and dispute settlement, it is not surprising that WTO becomes a very influential body in international trade. WTO rules and law include prohibition on national treatment, trade barriers, tariffs, etc will enhance free trade (Shah 2007). Thus, the question that comes to mind concerns the existence of developing countries, which are less powerful in terms of tangible power and as members of these institutions, is how do they belong in the group?

The fact of the matter is many cases show that these countries are often at a disadvantage in the interaction in international institutions (Gilpin 2001). Due to the development of WTO, post-Uruguay round in 1999, WTO launched new reform which will further strengthen the free trade system regime. Rules such as further reduction of trade barriers, reduction of high tariffs in less developed countries, are among them. This much more expanded trade system become more scrutinizing as these rules are brushing off with national barrier or matters. Many issues such as labor standards, human rights, and environment are used by certain states to get the upper hand in trade dispute settlement over the other states, in which unfortunately are mostly developing countries. For instance, the anti-HIV generic drugs produced by Thailand and South Africa, both hard hit by AIDS, were in conflict with pharmacy industries from United States that produce much more expensive drugs. United States-based Pfizer used to charge \$14 for a daily dose of fluconazole, an antibiotic that can fight off meningitis contracted by AIDS sufferers in Thailand (Mander and Barker 2002). Three Thai companies began making the drug at a cost of just over \$1 per daily dose. United States (US) threatened Thailand with trade sanctions under the WTO. In the dispute settlement, Thailand's drugs were ruled by WTO as a national treatment; meaning it violates WTO free trade law. Thus, Thailand must concede to the rule as she is one of the members of WTO. Thai government then banned compulsory licensing even though it has a genuine health emergency.

In another case, India's law in 1998 deliberately excludes plants and animals from patenting in order to maintain local control over these life forms (Mander and Barker 2002). This helps maintain low prices for some products such as pharmaceutical. However, under the current Agreement on Trade Related Intellectual Property Rights (TRIPS), developing countries, must by the year of 2005, allow foreign companies the right to patent local plant varieties. US complained to WTO stating that India has violated TRIPS by not complying with the rules. WTO

agreed even though the time frame for complying is 2005. As a result, India was forced to grant market monopolies to corporations on the basis of patents given by other countries.

In September 1997, a WTO panel ruled that the European Union (EU) was giving preferential access to bananas produced by former colonies in the Caribbean (Mander and Barker 2002, and Jhamtani 2005). This arrangement had been previously negotiated between the EU and its former African and Caribbean colonies under the Lomé Treaty. US sees this a violation of WTO principle; Most Favored Nation. US, who does not produce bananas, brought this case on behalf of US Banana Company in Chiquita, South America. US even almost gave trade sanction of 500 million dollars to EU if it does not renegotiate its banana trade deals. WTO ruled against EU. Now, even though this seems as a case between two bigger powers in economy, the impact is worse felt by Caribbean banana growers. Now, they must compete with United States promoted banana from South America. Another case shows how Malaysia with its automobile industry being in dispute with other WTO members including WTO for the same reason with Thailand's case, which is national treatment. Malaysia must concede to the rulings of WTO (Siew-Yean 2004, 14). And many more cases showing the disadvantages felt by developing countries in cases of interaction in WTO.

Indeed, we feel that there should be a re-reading on this phenomenon in the favor of developing countries. In trying to re-read this problematic phenomenon, we propose to view it from an alternative point of view. In this paper, the thinking cap that is used is the post-feminist point of view. Post-feminism as a part of reflective theories contemplates upon the oppressive thinking that has major contributed in IR and reflects it back for developing countries readers, or interested readers in general, on how to go about thinking in times of oppression, repression, and domination.

International Relations and Post-Feminism

International Relations (IR) should not be understood as some kind of non-theoretical current affairs journalism but it should be understood in theoretical terms. The appeal of International Relations is its theoretical underpinning; that events in the international system have considerable theoretical relevance. We choose certain facts or events or data in our analysis of key events because we think them important while keeping in mind that those facts fit particular concepts and concepts fit particular theories which themselves explain our underlying view of the international system. Based on this thinking, therefore in this particular

problem of the research, we feel that there should be a particular concept to explain this particular problem. An alternative perspective in understanding the world is necessary especially when we feel that the current ideas available do not give justice to the repressed, which are the developing countries. This is where post-feminism comes in.

The key concern for all types of feminist theory is to explain women's subordination or unjustified asymmetry between men and women's social and economic position and to seek prescription for ending it (Tickner 2005). The goal of feminist theory is to understand how the existing social order came into being and how this knowledge can be used to work towards its transformation (Tickner 2005). Post-feminist approach has a different perspective on this matter, where they identify the problem comes from the identity of men and women itself, and this can be traced back since the birth of human (Tong 2004). For this, post-feminist approach is based on two discourses of psychoanalysis and postmodernism. The focus of this approach is looking at how this world became to be as it is; an ideological strained world based on the symbolism of the phallus. The phallus is the male genital symbolising how this world became to be patriarchal and this defines many things in our world including our own identity. This proves to be a problem as humans are faced with problems which are imposed on them because of their basic identity. Post-feminist or post-modern feminist essentially refuse any labeling which in any way refer to phallogocentrism. Phallogocentrism is the signifying of sign relating it to the symbolization of the Phallus or the Father. Inherent with its postmodernism root, they refuse labels such as feminism or postmodernism that refers to any universal truths which have been taken for granted or accept blindly or even imposed by the production of knowledge from the modernism thoughts.

One of the most prominent post-feminist thinkers is Julia Kristeva. Seen as one of the radical thinkers of post-feminism, Julia Kristeva brings the revolution of women into a higher level. Kristeva acknowledges that fundamentally there is a sexual difference between men and women. However, this identity is not manifested the same for each "women" or "men". She argues that the concept of "women" does not have a meaning on the ontological level, but it only has meaning in the political. Here, we must emphasize on how identity does not have its meaning in the ontological level but it has meaning on the political. The identity of states should also be seen at how it becomes identified in the political level. Kristeva offers the term of subjectivity as an alternative to the conventional understanding of self. Self is the language that signifies being, a body that is fully aware of its purpose, have complete autonomy of itself, and guided by reasons and the ability to think, *cogito ergo sum*. Self, ideally, is the master of its own being. However, for Kristeva, the

term of subjectivity has a very different meaning; the authority of one's self is a misunderstanding on how the human becomes, because one does not fully know one's self. Thus, for Kristeva, subject is always a subject-in-process (Moi 1986).

Another prominent thinker of post-feminism is Luce Irigaray. If we remember correctly on the three phases of psychosexual development laid out by Lacan, before a child enters symbolic realm, they must go through the imaginary phase. In this imaginary phase, then the identity of a child is determined. Now, because women cannot achieve it righteous path of psychosexual development (according to Freud and Lacan), they are left behind in the imaginary phase in the Oedipus complex drama. However, as stated in one of her key book, *Aku, Kamu, Kita: Belajar Berbeda* (translated version) for Irigaray, this is in fact a blessing in disguise (Irigaray 2005). Because, when women are in fact left behind in the imaginary phase, thus women have the ability and benefits of having any role she wants. This means that women's or a girl, in a subject case, does not have an anchored identity. They are free to roam this imaginary phase, and hence to roam any identity which they want. For Irigaray, it means the benefit of being able to be auto-erotic, to achieve pleasure with oneself, as the limitation is identity seems less in the imaginary. To achieve its will, interest or pleasure, could developing countries also benefit from the being auto-erotic?

In another way, Judith Butler works critiques on the very definition of men and women. For Butler, the very subject of women is no longer understood in stable or abiding terms. Politics and representation which constitutes the development of language does not fully or give adequate representation and legitimacy of women as political subject. Hence, Butler argues that feminism had made a mistake by trying to define "women" as a group with common characteristics and interest. This grouping of "women" by feminist theory has reinforced a binary of gender relations where human are divided into women and men. Rather than opening up possibilities for a person to form and choose their own individual destiny, therefore, feminism has closed the options down. Butler then prefers a perspective where gender is viewed as relation. In other words, rather than being a fixed attribute in a person, gender should be seen as a fluid variable which shifts and changes in different contexts and at different times. In *Gender Trouble*, Butler states that "*there is not gender identity behind the expressions of gender; ... identity is performatively constituted by the very "expressions" that are said to be its results*" (Butler 1990). In other words, gender is a performance; it is what you *do* at particular times, rather than a universal term about who you are. This is one of the key thinking that we believe could be applied in IR study, on how identities are not judged universally but based on performance. Therefore, by thinking differently

about the conception of men and women, and states in particular, and choosing to be different about it, Butler believes that is the way or the approach for a revolutionary politics, which is work to change gender norms and the binary understanding of masculinity and femininity.

Post-feminist theory offers to women the most fundamental freedom; the freedom from oppressive thinking. This oppressive thinking has conditioned men as a more superior being than women, manifested in the patriarchal culture in our lives. Then binary opposition between men and women is not something natural because all these times, women has been seen as the Other of men that ensures masculinity, rationality and all other manliness of men. The difference between men and women is a political construction. Therefore, post-feminist tries to uncover this construction especially in the condition of a system such as the cases of states in international institutions such as the World Trade Organization. Synthesizing the postmodernist and psychoanalysis background, we come out with a few prepositions that become the foundation for post-feminist theory. First of all, post-feminism relates to terms brought in by psychoanalysis such as psychosexual development and the other. The concept of other is very significant in explaining the position of one pole relating to another pole in a certain system. Secondly, the postmodernism non-belief of existing truth and also how look at something in a different light. The combination of coming into being and what to do when in being in an existing society makes up the foundation of post-feminist theory.

World Trade Organization and Post-Feminism

Indeed, with its application in psychological and sociological field, post-feminist theory have given a new perspective on the ongoing problems of the human society. In those two fields, the contributions that post-feminist theory makes have enlightened many grey areas. It is the area of identity and relationship between subjects of these identities in a system. To put it simply in this case, let us lay it out piece by piece. We have the identity of superpower and developing countries, we have the system of WTO, in particular the Dispute Settlement body, and we have the relationship between these subjects in international trade and dispute settlement. We have all the players, so it is time to play it out through the eyes of post-feminism. In this section, the concept of power and the problem of dominance or repression within international institution are analyzed through one entry point. World Trade Organization (WTO), as one of the largest international institution, represents this thesis fundamental background about the importance of institution in international system. The importance of institution is based on the assumption of how this institution is being ridden by certain power

symbol in the shape of states. This power symbol manifests its power through one of the most influential body in WTO; Dispute Settlement Body. The power symbol here is United States which has been seen to play a major role in World Trade Organization.

During times of disagreement, when a WTO member states feels disadvantaged by a policy or trade activity of another member state, then the first state can file a complaint to the Dispute Settlement Body (DSB). The WTO's dispute settlement agreement is formally known as the Understanding on Rules and Procedures Governing the Settlement of Disputes. This body provides the primary legal means of settling trade related conflicts in the WTO. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling (Institute for Trade and Commercial Diplomacy 2009).

Therefore, the struggle for power between states usually happen in this body as with this DSB mechanism, any states can pursue the wrongdoings of other states (if we think optimistically) or even any states can pursue its interest of other states through this mechanism (thinking in the frame of state's personal interest). Below are three cases of importance as an entry point for post-feminism in IR. Firstly, Case of United States Regulations on Reformulated Gasoline Cleanliness Challenge by Venezuela and Brazil against the United States. The WTO's first ruling dealt a direct blow to a 1993 U.S. Environmental Protection Agency (EPA) rule which required gasoline refineries to make cleaner gas in an effort to reduce air pollution. However, some domestic and foreign producers were treated identically; some domestic producers were held to higher standards than foreign suppliers, and some to a lower one. The rule was set to expire in 1998, giving refiners five years to bring baseline standards up to a single cleanliness target. However, in 1996 a WTO dispute panel, and later an appellate body, decided US rules could be "discriminatory" because the gradual phase-in violated GATT's National Treatment rule, despite the fact that the EPA rule was being applied equally to some U.S. producers. As a result, the EPA, which administers the Clean Air Act, has been forced to rewrite its standards to allow dirtier gasoline.

Secondly, Case of The Shrimp-Turtle Case Challenge by India, Malaysia, Pakistan and Thailand against the U.S. United States Endangered Species Act (ESA) or Section 609 requires domestic and foreign shrimp fishers to catch shrimp by methods that do not kill endangered sea turtles. ESA bans shrimp products from countries that do not use "turtle excluder devices" (TEDs). The US-imposed trade embargo was expanded in May 1996 to include all shrimp-exporting countries, and currently affects some 40 nations. India, Pakistan, Malaysia, and Thailand lodged

complaints at the WTO in early 1997, claiming that Section 609 violated a number of WTO rules which violated international trade law by barring the importation of their shrimp and shrimp products. WTO ruled that US laws created to protect turtles violated WTO rules, including the principle of National Treatment. Among the findings: The United States was discriminating by giving Asian countries only four months to comply with the Turtle Shrimp Law, but giving Caribbean Basin nations three years. The WTO ruled in 1998 against the United State arguing that it represented the kind of unilateral measure that insofar as it could jeopardize the multilateral trading system.

Thirdly, Byrd Agreement case –the case of US continued dumping and subsidy offset act against 11 WTO members (Indonesia, Brazil, Australia, India, Japan, etc) - which concerning the protection act by the US government on coal and steel imports. This law provides for the distribution of import duties collected as a result of antidumping (AD) or countervailing duty (CVD) orders to petitioners and other interested parties in the investigations that resulted in the orders. The CDSOA was successfully challenged in a World Trade Organization (WTO) dispute proceeding brought by 11 WTO Members including Indonesia, Canada, the European Union, and Japan; and in late 2004 most of the complaining parties were authorized to “suspend concessions” (retaliate) until the United States complies, most readily by repealing the law. World Trade Organization stated that the Byrd Amendment protected US steel industry unnaturally. If by the end of the year US government does not pull out the regulation, Japan, European Union and six other countries have the right to impose sanction on the US government as much as 116 million US dollar.

The cases shown here have two similarities. Firstly, it is a dispute settlement cases between United States versus the many developing countries. Secondly, in this cases United States (US) are the defendant states with the developing countries as the plaintiff. What can post-feminist say about this?

Post-Feminist Interpretation

The political is not only of subjectivity where subject relates to the external other, the states, the international institutions, or the public domain. The political, for Kristeva, rather remains within the subject itself, where the external, the foreign, the real, always emerge in the field of the intimate, the lived experience of the subject, and its articulation is a form of return to a space that is somehow prior to the symbolic outside. This means that the politics of identity is not only about how a subject relates to the outside but also how the outside is inside the

subject. In other words, the identity of a state is not only because its relations to others but also because the other which are inside the states. States become known as developing countries not only because there is a category of developed countries, but also because the way they act upon this identity of developing countries where they continue to keep in mind that there are other states much superior to them. For example, financial aids have been given by states such as United States and West European states for Pacific Island countries which need the aids. This feeling of need does not only come from the developed countries who sees these Pacific Island countries as an aid beneficiary, but also from the Pacific Islands countries themselves that asks for help.

From the three dispute settlement cases, the rift between United States as developed countries versus many developing countries is interesting to see. If we continue by the categorization of developed and developing countries and what each are capable of, hence it would seem impossible that the politics of these two poles are facilitated by WTO even through its Dispute Settlement Mechanism. Because, the categorization of each subject means that one is acknowledged as much more superior above the other. As most cases in WTO do show that this superiority does prevail in many agreements such as mentioned in the background of the problem. Maybe for some, the winning of developing countries in three cases against United States is only a small minor victory. However, as we understand the subject is always in process, is always in the process of becoming I, then we see that the categorization of developed and developing countries should not be assumed as something natural because the politics of identity of states is ever changing. Butler, on the politics of identity, states that, it is about thinking differently beyond the conception of just developed and developing countries. The performance of each state, what they do in each particular time is what becomes their subjectivity, rather than the universal identity what each state is; developed or developing. It is on the political of each states to play their part in international institutions through the identity, the I, they explicate onto themselves and onto other actors of international relations.

For Foucault, subject is the effect of power (Mansfield 2000, 7). Traditionally speaking, power is often understood in a negative meaning and as a judgment mechanism; which is to restraint, obstruct, prevent, refuse, censor anything based on the law. To be in power means to be able to prohibit or forbid those not in powers. However, Foucault sees that modern power does not work in the form of capacity or ownership of power. Power, now, is not something that abides or serves economic interest (Sarup 1993, 112). Power is no longer understood as a commodity that can be attained or reached. For Foucault, power is a network that spreads everywhere. Thus, Foucault shifts the question

from who owns the power into the processes that creates subjects as the effect of power.

What this means is that power is not static but it flows. The flow of power relies on the acknowledgement of the states themselves. If we understand power in the traditional meaning, as a capacity, we would be saying that, Yes, United States is one of the most powerful states in the world. However, in the relational terms, it completely depends on the states as subjects themselves. For instance in case of where Thailand and South Africa made generic drugs to protect their citizens, United States sues them on basis of TRIPs. But, if we look at the cases in the case study, same thing could happen to United States as well. In the case where United States wanted to protect the domestic air quality by maintaining the quality of oil, developing countries such as Brazil and Venezuela can attack back through with the discriminatory reasoning. Also the same with the trade embargo of the Shrimp and Turtle case was met head on by the developing countries such as India, Pakistan, Malaysia, and Thailand. Rather than acknowledging and conforming the unilateral action of US, these states brought in on to the Dispute Settlement cases. Power relation is about who acknowledges who is powerful. To be intimidated by United States due to its traditional power is fine, however in a closed system such as WTO, it gives a place for developing countries to play a role and perform under certain situations with this knowledge of power relation.

WTO as a symbolic order means that member states must be submitted to the language of WTO, which is rule on international trade. On the other hand, the semiotic is the aspect where meanings are created that allows us to express feelings, which urges the signifying process in the semiotic. Here in this element, we see expressions that may break the rules of language. This element can be used through the Dispute Settlement Mechanism, where states can break the rules of domination and repression with other rules that express them. To be a free subject is a subject that can play on both the maternal pre-Oedipal of the semiotic and the patriarchic Symbolic and the dialectic of creation of meaning between semiotic and symbolic element in the Symbolic Order (Tong 2004, 300). In other words, a free or an emancipated subject is the one who can move freely between chaos and order, revolution and status quo, feminine and masculine; or simply put, to be free in the system.

Thus, to be free in the WTO system is for states to in one hand abide by the rules but also to express their feelings in the best way available. From case studies we learn that the best way available for states to express their feelings is to use the symbolic element of Dispute Settlement Body to express our feeling by the semiotic ways. There are many ways for this sort of thinking. Firstly, to use our identity that has been given to us in

the most possible way. If they think that we are states who careless about environment, then let it be. Use it as our advantage to pursue our interest. Secondly, is strategically we can build coalition to pursue this interest. All three cases from the case study taught us that there is nothing wrong in pursuing interest via coalition. It even gives us that extra strength to face the power symbol that has dominated our lives for so many times.

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