

Analisis compulsory licensing di bidang farmasi dalam hal terjadinya epidemi hiv aids berdasarkan pasal 31 agreement on trade related aspects of intellectual property rights = Analysis of compulsory licensing in the field of pharmaceutical in regards of hiv aids epidemic based on article 31 of agreement on trade related aspects of intellectual property rights

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Abstrak

Compulsory licensing diatur dalam Pasal 31 Agreement on Trade-Related Aspects of Intellectual Property Rights. Di dalam pasal tersebut ada pengecualian compulsory licensing yakni dalam hal terjadinya suatu national emergency or extreme urgency atau untuk public non-commercial use. Tetapi perjanjian internasional tersebut tidak mengatur definisi pengecualian penerapan compulsory licensing. Penelitian ini meninjau penafsiran terkait penerapan compulsory licensing atas paten farmasi, dalam hal terjadinya epidemi HIV/AIDS di Afrika Selatan, Brasil dan Thailand. Dalam penerapannya, masih terdapat perbedaan tafsiran antara negara-negara tersebut dan Amerika Serikat. Perbedaan tafsiran ini menimbulkan konflik yang akhirnya diselesaikan secara bilateral.

*Compulsory licensing is one of patent's flexibilities, that is governed on Art. 31 of Agreement on Trade-Related Aspects of Intellectual Property Rights. There are several exceptions in implementing compulsory licensing such as in case of 'national emergency or extreme urgency' or for 'public non-commercial use'. However, the international law instrument does not give exact definition of such exceptions. Furthermore, it reviews the implementation of compulsory licensing over pharmaceutical patent in regards of HIV/AIDS epidemic in South Africa, Brazil and Thailand. In practice, there are differences in interpretation between these countries with United States. The differences in interpretation raise conflict that eventually settled bilaterally.*