

# Penggunaan klausul security exceptions untuk mengesampingkan kewajiban dalam perjanjian trade-related aspects of intellectual property rights (TRIPS) selama pandemi covid-19 = The use of the security exceptions clause to waive obligations under the agreement on trade-related aspects of intellectual property (TRIPS) during the covid-19 pandemic

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## Abstrak

Komitmen-komitmen WTO, khususnya terkait hak atas kekayaan intelektual dalam Perjanjian TRIPS, berpotensi menghambat peningkatan akses terhadap obat-obatan dan vaksin dalam situasi pandemi Covid-19. Dalam keadaan darurat, komitmen-komitmen tersebut dapat dikesampingkan menggunakan klausul security exceptions WTO. Penelitian ini menjelaskan (i) bagaimana pengaturan security exceptions WTO dibandingkan dengan general exceptions di Pasal XX GATT 1994 dan non-precluded measures di BIT Argentina-AS, BIT India-Jerman, dan BIT India-Mauritius; serta (ii) apakah pandemi Covid-19 merupakan alasan yang sah untuk mengesampingkan kewajiban dalam Perjanjian TRIPS menggunakan klausul security exceptions. Melalui penelitian dengan metode yuridis normatif dan pendekatan kualitatif, dapat disimpulkan bahwa: Pertama, klausul security exceptions WTO memiliki beberapa persamaan dan perbedaan dengan general exceptions dan non-precluded measures; klausul security exceptions WTO memberi ruang gerak yang lebih luas bagi negara dalam mengambil tindakan keamanan yang berpotensi melanggar kewajiban WTO asal dilakukan untuk meresponi sebuah “emergency in international relations”. Kedua, pandemi Covid-19 dapat dijadikan alasan untuk mengesampingkan kewajiban dalam Perjanjian TRIPS, sebab pandemi ini telah mengakibatkan sebuah “emergency in international relations” dan pengesampingan kewajiban-kewajiban dalam Perjanjian TRIPS bagi kesehatan dan keselamatan masyarakat memenuhi syarat sebagai “essential security interests”.

.....WTO commitments, particularly related to intellectual property rights in the TRIPS Agreement, could potentially hinder efforts to increase access to medicines and vaccines during the Covid-19 pandemic. In time of emergency, these commitments can be overridden using the WTO security exceptions clause. This study explains (i) how the WTO security exceptions are compared to general exceptions in Article XX of the GATT 1994 and non-precluded measures in the Argentina-US BIT, India-Germany BIT, and India-Mauritius BIT; and (ii) whether the Covid-19 pandemic is a valid reason to waive the obligations under the TRIPS Agreement using the security exceptions clause. Through research using normative juridical methods and qualitative approach, it can be concluded that: First, the WTO security exceptions clause has several similarities and differences with general exceptions and non-precluded measures clauses; the WTO's security exceptions clause provides wider latitude for countries to take security actions that otherwise would have violated WTO obligations as long as they are carried out in response to an “emergency in international relations”. Second, the Covid-19 pandemic can be used as an excuse to waive obligations under the TRIPS Agreement, because this pandemic has resulted in an “emergency in international relations” and the waiver of obligations in the TRIPS Agreement for public health and safety qualify as “essential security interests”.