

Tinjauan Yuridis pembatasan ekspor bahan baku masker dalam Pandemi Covid-19 di Indonesia dan India berdasarkan Carve-out Method dan Klausula "General Exceptions" dalam General Agreement on Tariffs and Trade 1994 = A Juridical review on the export restriction imposed on the raw materials of masks in Indonesia and India during the Covid-19 Pandemic based on the 1994 General Agreement on Tariffs and Trade

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Abstrak

Kewajiban internasional yang terdapat dalam GATT 1994 dapat menghambat Negara Anggota dalam memerangi Pandemi Covid-19. Mengingat adanya peningkatan permintaan global terhadap produk medis dan alat pelindung diri, Negara-Negara Anggota harus menerapkan kebijakan untuk memastikan bahwa pasokan produk tersebut, serta bahan untuk memproduksinya cukup untuk kebutuhan dalam negeri. Walaupun pembatasan ini merupakan pelanggaran terhadap GATT 1994, kewajiban tersebut dapat dikesampingkan menggunakan klausul general exceptions dan carve-out method. Akan tetapi, perlu diperhatikan bahwa agar dapat dijustifikasi, suatu kebijakan harus memenuhi beberapa elemen atau unsur yang terdapat dalam pasal pengecualian. Penelitian ini bertujuan untuk memaparkan unsur-unsur yang harus dipenuhi dan memberikan analisis tentang kesesuaian kebijakan pembatasan ekspor yang diterapkan Indonesia dan India terhadap bahan baku masker selama Pandemi Covid-19. Menggunakan metode normatif yuridis dan pendekatan kualitatif, penelitian menyimpulkan dua hal. Pertama, terdapat perbedaan antara carve-out method dan general exceptions, seperti objektif dari kebijakan, penggunaan necessity test, dan durasi kebijakan. Akibatnya, kebijakan yang konsisten dengan salah satu pengecualian dapat tidak sesuai dengan pengecualian yang lainnya. Kedua, Indonesia telah memenuhi unsur-unsur dalam kedua pengecualian tersebut, sedangkan India tidak memenuhinya.

.....The international obligations under GATT 1994 could pose as an obstacle to Member States in fighting the Covid-19 Pandemic. Given the rise in the global demand for medical products and personal protective equipment, Member States must take measures to ensure the availability of these products, as well as the factors of production required to manufacture it. As a result, numerous states have imposed export restrictions on the raw materials of masks. Despite the fact that these restrictions may be a violation of GATT 1994, these measures could be exempted from liability through the use of the WTO general exceptions clause and the carve-out method. However, it must be noted that in order to be exempted, the measure in question must fulfill several cumulative criterion or elements. This study aims to elaborate the criterion that must be fulfilled and provide an analysis on the consistency of the measures imposed by Indonesia and India towards the raw materials of masks as a response to the Covid-19 Pandemic. Using a normative-juridical method and a qualitative approach, this study resulted in two conclusions. First, there are several differences between the carve-out method and the general exceptions clause, such as the objective of measure, the use of the necessity test, and the duration of the measure. As a result, a measure that is justifiable using one clause may not be justifiable by the other. Second, Indonesia has fulfilled the elements required in both clauses, while India has failed to do so.