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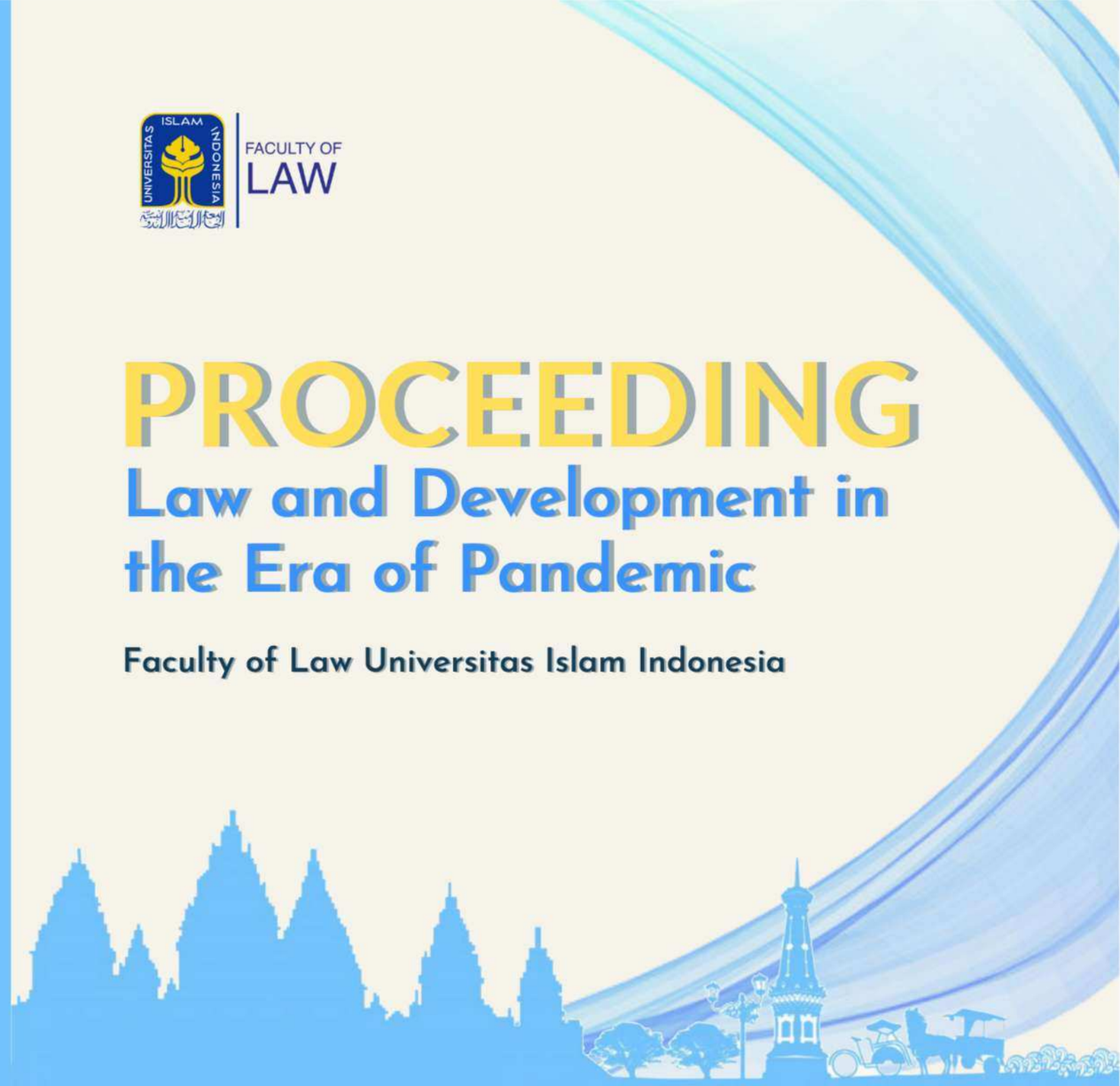
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Foreword

Assalamualaikum, wr., wb.,

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Wassalamualaikum wr. wb.

Editor in Chief,

Dodik Setiawan Nur Heriyanto, S.H., M.H., L.LM., Ph.D.

ISC

The Need for Cooperation in International Trade Law to Face the Unique Circumstances of the COVID-19 Pandemic

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Abstract

The Coronavirus outbreak has caused significant and multidimensional changes to our lives. In terms of international trade relations, the uncoordinated and non-uniformity state policies become one of obstacles to provide a trading climate responsive to global needs. A very detrimental impact is the existence of restrictions on trade traffic as part of the efforts of each country to mitigate international trade. On the other hand, international trade can also be an opportunity to develop technology and information sharing facilities, especially in the distribution of medical supplies. Using a normative research methodology, this study analyzes the impact of the COVID-19 pandemic on international trade relations. In addition, this study also analyzes the need of responsive trade measures in overcoming trade issues to respond to the global need for access to medical supplies.

Keywords: *COVID-19, Trade Law, Accessibility*

1. INTRODUCTION

The World Health Organization has officially announced that the mitigating the spread of the coronavirus needs to be carried out through various health protocols, which include physical distancing, wearing at least double layered masks, and even lockdowns.[1] Based on the policies issued by the WHO, each country has implemented domestic public health measures to reduce the spread of the virus.[2] These state policies include trade restrictions, especially on the inflow of goods from China.[3] Indonesia temporarily closed the import of animals from China through the Minister of Trade Regulation No. 10 of 2020.[4]

The Coronavirus spread suddenly, forcing every country to set policies with little preparation. As the number of virus sufferers rises sharply, every country faces a shortage of medical needs.[5] In terms of preventive measures, the distribution of vaccines is uneven

[1] Wee Chian Koh, Lin Naing and Justin Wong, "Estimating the Impact of Physical Distancing Measures in Containing COVID-19: An Empirical Analysis" (2020) 100 International Journal of Infectious Diseases 42.

[2] Kelley Lee and others, "Global Coordination on Cross-Border Travel and Trade Measures Crucial to COVID-19 Response" (2020) 395 The Lancet 1593.

[3] Linfeng Zhang and others, "Measuring Imported Case Risk of COVID-19 from Inbound International Flights - A Case Study on China" (2020) 89 Journal of Air Transport Management 101918.

[4] Minister of Trade Regulation No.10 of 2020 concerning the Temporary Prohibition of Importing Live Animals.

[5] Don Eliseo Lucero-Prisno and others, "Drug Shortage Crisis in Sudan in Times of COVID-19" (2020) 1 Public Health in Practice 100060; Marti Pons-Òdena and others, "COVID-19 and Respiratory Support Devices" (2020) 35 Paediatric Respiratory Reviews 61.

because of the high costs that must be allocated. The flow of international trade that should provide convenience is detrimental to some countries. Moreover, restrictive trade policies have also hampered the rate of dissemination of medical supplies.

This study examines the impact of the COVID-19 pandemic on international trade relations. In addition, this study also analyzes the need for responsive and flexible trade policies to ensure that there is a balance in terms of meeting the global need for medical supplies.

2. METHODOLOGY

This study applies normative legal research which examines policies and regulations related to the relevance of international trade law and policies during the COVID-19 pandemic. The approach used in this research is a statutory approach and a conceptual approach. A statutory approach is applied to analyze international trade regulations and policies during a pandemic. This analysis is intended to determine the extent of the influence of the pandemic on the international trade law regime which has been well-established and maintained. A conceptual approach explains responsive legal concepts in relation to responding to today's global challenges.

3. THE IMPACT OF COVID-19 ON WORLD TRADE

COVID-19 has now become a problem in the international world. This has greatly affected the world economy and has an impact on all sectors, especially international trade. Restrictions on the entry and exit of goods from and/or to a country as well as the number of businesses or factories that are closed due to the coronavirus outbreak have disrupted the country's economy.

Restrictive trade policies greatly affect the availability of goods in all countries.[6] Most of them rely on the supply of goods that exist in the country even though the number is very limited. Exporting countries are also affected due to the accumulation of goods, decreased supply due to lack of manpower, hampered distribution of production facilities and limited imports. Product distribution has been uneven or hampered because demand is highly volatile and difficult to predict.[7] At the same time, export restrictions will lower domestic and international prices for the related goods which will reduce the incentives to produce the related goods and increase the potential for smuggling of the related goods.

Approximately eighty-five nations and territories, including 76 WTO members and 9 non-WTO members from all global regions, have implemented various types of restrictions and bans on the export of items relating to COVID-19 as of May 2020.[8] Although the state's efforts take many forms, such as export bans and non-automatic export licensing procedures, they all have one thing in common: they restrict things from being exported. Most of these measures have banned the export of face and eye protection, protective gear, and gloves, sometimes known as Personal Protective Equipment (PPE) or Personal Protection Items, since the types of products affected by export restrictions vary (PPP).

Indonesia is still experiencing a shortage of medical supplies such as respirators, medical masks, personal protective equipment, and medicines. The scarcity was also

[6] Angela Acosta and others, "Medicine Shortages: Gaps Between Countries and Global Perspectives" (2019) 0 Frontiers in Pharmacology 763.

[7] Chad P Bown, "How COVID-19 Medical Supply Shortages Led to Extraordinary Trade and Industrial Policy" (2022) 17 Asian Economic Policy Review 114 <https://onlinelibrary.wiley.com/doi/full/10.1111/aepr.12359> accessed January 5, 2022.

[8] The Committee for the Coordination of Statistical Activities, "How COVID-19 Is Changing the World: A Statistical Perspective" <https://www.wto.org/english/tratop_e/covid19_e/ccsa_publication_vol2_e.pdf> accessed January 5, 2022.

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triggered by panic buying that occurred in the community. In mid-2021, there was a shortage of oxygen supply which then caused as many as 63 people to die due to oxygen crisis at Sardjito Public Hospital, Yogyakarta.[9] Moreover, there is also an illicit trade on medicines and medical products. Approximately half a million sets of personal protective equipment have been supplied to 47 countries by the WHO.[10] Doctors, nurses, and other frontline workers, on the other hand, are severely underprepared to care for COVID-19 patients due to shortages.[11]

To avoid a shortage of medical supplies, each country responded by implementing various trade relaxation policies. The Indonesian government issued several policies including: the temporary ban on exports of antiseptic products, raw materials for masks, Personal Protective Equipment (PPE), masks, and ethyl alcohol. The Ministry of Trade issued Minister of Trade Regulation No. 34 of 2020 concerning the Second Amendment to Minister of Trade Regulation No. 23 of 2020 concerning the Temporary Prohibition of Exports of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks[12] which were valid until 30 June 2020.

Other actions taken by Indonesian Government were the temporary release of Surveyor Reports (LS) for the import of masks and PPE products as well as the needs and equipment of medical devices until June 30, 2020, in accordance with Minister of Trade Regulation No. 28 of 2020 concerning the Eighth Amendment to the Regulation of the Minister of Trade No. 87 of 2015 concerning Provisions for the Import of Certain Products.[13] Medical devices included in the temporary LS exemption include medical protective clothing, protective clothing from chemicals or radiation, surgical gowns, examination gowns made of artificial fibers, surgical masks, other masks made of nonwoven materials, infrared thermometers, and other items. in the form of sanitary towels, sanitary tampons, baby diapers and similar articles of materials other than textiles, paper, or paper pulp for single use.

4. LIMITED GLOBAL ACCESSIBILITY TO MEDICAL SUPPLIES

a. Provisions for Exceptions to Trade Restrictions in Extraordinary Circumstances

In the provisions of GATT Article XI paragraph (1) on General Elimination of Quantitative Restriction, it is stipulated that member states are prohibited from applying any form of prohibition or restriction on product import and product export apart from duties, taxes, or other fees. The form of non-tariff restrictions and restrictions can be carried out in various ways, such as the application of quotas and import/export licenses.[14]

However, Article XI paragraph (2) provides further information that there are certain exceptions that provide an opportunity for member states to be able to implement a non-

[9] "Indonesian Hospital Loses 63 COVID Patients in Oxygen Shortage" (2021) <https://www.voanews.com/a/COVID-19-pandemic_indonesian-hospital-loses-63-covid-patients-oxygen-shortage/6207834.html> accessed June 6, 2021.

[10] WHO, "Shortage of Personal Protective Equipment Endangering Health Workers Worldwide" (2020) <https://www.who.int/news/item/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide> accessed May 5, 2020.

[11] Interpol, "Global Operation Sees a Rise in Fake Medical Products Related to COVID-19" (2020) <https://www.interpol.int/en/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19> accessed April 5, 2020.

[12] Minister of Trade Regulation No. 34 of 2020 concerning the Second Amendment to Minister of Trade Regulation No. 23 of 2020 concerning the Temporary Prohibition of Exports of Antiseptics, Mask Raw Materials, Personal Protective Equipment and Masks.

[13] Minister of Trade Regulation No. 28 of 2020 concerning the Eighth Amendment to the Regulation of the Minister of Trade No. 87 of 2015 concerning Provisions for the Import of Certain Products.

[14] General Agreement on Tariffs and Trade 1994 Art. XI par. (1).

tariff barrier policy.[15] Article XI paragraph (2) (a) provides a stipulation that Article XI paragraph (1) cannot apply if the implementation of the export prohibition or restriction policy is carried out temporarily as an effort to prevent or relieve the scarcity of food and other basic necessities for the exporting country. This allows exporting countries to overcome shortages of essential or essential materials such as but not limited to food in times of crisis.

In addition, the provisions in Articles XX[16] and XXI[17] of the GATT provide an opportunity for member states to be able to implement export restriction policies. Article XX of the GATT stipulates that the policies applied are not justifiable methods of discrimination and covert restrictions on international trade. The most appropriate exception to the implementation of the export restriction policy carried out in response to the current COVID-19 pandemic crisis is related to the interest to protect human, animal, plant or health life as stipulated in Article XX GATT. Article XXI also provides equal opportunity to impose export restrictions necessary to protect essential security interests in times of war or other emergencies such as this pandemic crisis.

Under the rules in international trade, what all the countries did in restricting trade connections due to preventative measures of COVID-19 could be justified. States have the authority to enact regulations that are essential to safeguard their citizens from threats to human, animal, and plant life and health. This pandemic situation could be classified as an emergency by WTO members. As a result, it is justifiable for any WTO member to take any measures that they deem appropriate to relieve the emergency situation.

b. The Need for a Global Accessibility and Information Sharing System

To respond to the scarcity of medical supplies in each country, it is very important to build an information sharing system both at the domestic and international levels. At the domestic level, it is very necessary to have information related to the presence of medical supplies in each region so that the supplies can reach all health services. Moreover, countries like Indonesia really need this integrated information system in coordinating the supply of medical supplies.

The Indonesian Ministry of Health mandated to establish the national health information system National Health/SIKNAS that links to district-level health information systems (SIKDA) through Minister of Health Decree No. 511/Menkes/SK/V/2002. Health services, health funding, health workforce, pharmaceuticals and medical equipment, community empowerment, and health management are the six subsystems of the SIKNAS design. However, due to decentralization, each hospital, district/municipality, and province tends to develop its own SIKDA, resulting in a variety of formats, software, and datasets, even within the same district/municipality. This not only causes redundancy and duplication, but it also makes it difficult to replicate at the provincial and national levels, as each has its own format and program. Data integration is needed to monitor the existing information for further steps to establish effective national health measures.[18]

For a comparison, from 2005 to 2010, the Korean government designed and created a Web-based integrated public healthcare information system (PHIS), which is now used

[15] ibid Art. XI par. (2).
[16] ibid Art. XX.
[17] ibid Art. XXI.
[18] Yodi Mahendradhata and others, "The Republic of Indonesia Health System," vol 7 (2017) <https://apps.who.int/iris/bitstream/handle/10665/254716/9789290225164-eng.pdf> accessed February 9, 2020 p.37-38.

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by 3,501 regional health organizations.[19] The PHIS information strategy was developed in 1994, based on the national master plan for health and welfare information. The existing data is up to date and provides real time reports that can be used by the government agencies to establish public health measures.[20] South Korea has also employed data and artificial intelligence (AI) to improve the speed with which it responds to pandemics and the efficacy with which it coordinates response efforts. South Korea employs artificial intelligence (AI) for large data analytics, culminating in the COVID-19 epidemiologic investigation support system.[21] With all of these advanced and well-planned resources, South Korea's remedies to the coronavirus illness 2019 (COVID-19) have considerably halted the pandemic without requiring regional lockdowns.

At the global level, WHO and WTO need to work together to ensure the existence of an integrated and up-to-date information sharing system to ensure that there are no obstacles in meeting the availability of medical supplies in each country. WHO and WTO member countries must also play a very important role in providing information related to the problems faced in each country (of course by providing the latest report on the development of the situation in their country). Each government must be shared the information without delayed. Political commitment in each country is needed to support the existence of an effective information sharing system.[22]

5. CONCLUSION

The outbreak of COVID-19 that occurred suddenly has caused every country to take preventive measures sporadically, without preparation, and quickly. When the pandemic was originally proclaimed, it caused a massive surge in worldwide demand for medical goods. Furthermore, these items rely heavily on international commerce and global supply chains, which can disrupt global production and transportation networks. As a result, in order to avoid a domestic scarcity of medical supplies, most states have strived to deal with the epidemic by enacting policies that influence trade in commodities and services. Export prohibitions and limitations implemented by certain members to alleviate acute shortages at the national level, the situation is deteriorating.

Restrictions on international trade by countries in a pandemic situation are basically allowed if they are in accordance with the provisions of GATT. The WTO basically provides space for countries to take appropriate steps in providing health protection for their citizens. Even though the steps taken by these countries may conflict with the principle of non-discrimination in accordance with the GATT rules.

In order to overcome the global shortage in medical supplies, the WTO and WHO need integrated coordination, especially in encouraging the creation of an information sharing system, both at the domestic level of its member countries and at the global level. The existence of medical supplies including pharmaceuticals is very important in responding to urgent global needs. Countries that already have an effective and sophisticated system such as South Korea need to share experiences and transfer technology in order to create world order, especially in dealing with global problems.

[19] Seewon Ryu and others, "Web-Based Integrated Public Healthcare Information System of Korea: Development and Performance" (2013) 19 Healthcare Informatics Research 314 </pmc/articles/PMC3920045/> accessed January 5, 2022.

[20] Issues related medical supplies shortage will never been happened in South Korea due to the real time response to the medical problem. Ja Hyun Kang and others, "South Korea's Responses to Stop the COVID-19 Pandemic" (2020) 48 American Journal of Infection Control 1080.

[21] Jongeun You, "Lessons From South Korea's COVID-19 Policy Response:" (2020) 50 The American Review of Public Administration 801.

[22] Dodik Setiawan Nur Heriyanto, "Mereformasi WHO" *Koran Kedaulatan Rakyat* (2020).

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