

BAB IV

KESIMPULAN DAN SARAN

4.1 Kesimpulan

Dengan berdasarkan pertanyaan riset “Mengapa Nigeria tidak berhasil menggunakan *Compulsory Licensing* TRIPS dalam krisis HIV/AIDS pada tahun 2008?”, penelitian ini menemukan bahwa penangkapan oleh pihak Belanda pada bandar udara *Schipol* menggagalkan perolehan obat untuk Nigeria. 49kg Abacavir yang ditangkap pada akhirnya harus dihancurkan, walaupun Abacavir yang dibeli sudah legal diproduksi secara generik di India dan melalui proses yang legal pula.

Terbentuknya Perjanjian TRIPS ternyata tidak menguntungkan untuk beberapa negara berkembang. Sistem *compulsory licensing* yang ditujukan untuk memudahkan negara-negara berkembang pun tidak sepenuhnya didukung oleh industri-industri farmasi itu sendiri, dikarenakan profit mereka dapat berkurang. Dalam WTO dan khususnya Perjanjian TRIPS ini sendiri, negara-negara maju masih mendominasi. Kekuatan politik suatu negara menjadi faktor utama dalam pengambilan keputusan di suatu organisasi internasional. Terkadang kekuatan-kekuatan yang dimiliki oleh negara adikuasa membuat mereka tidak mematuhi aturan hukum yang sudah tertulis. Dan memang benar adanya ketika kepentingan negara-negara besar mempengaruhi keputusan bersama.

Dalam hal ini, Nigeria dipandang sebagai negara berkembang dengan mayoritas penduduknya miskin, yang memiliki *bargaining power* lemah sehingga tidak memiliki pengaruh yang kuat dalam tatanan internasional. Kasus kegagalan Nigeria dalam mengakses obat menggunakan *compulsory licensing* ini tidak seharusnya terjadi, karena pada *Doha Declaration* tahun 2001 semuanya sudah jelas tertulis bahwa setiap negara yang mengalami keadaan darurat terkait penyakit, dalam hal ini HIV/AIDS, berhak menggunakan *compulsory licensing* ini untuk mendapatkan akses terhadap obat-obatan yang dipatenkan, terlepas dari negara itu besar atau kecil, maju ataupun berkembang. Sehingga, apa yang dilakukan oleh Nigeria itu legal.

Melihat kasus lain dan menjadikannya sebagai pembandingan dapat memperjelas akar permasalahan ini. Pada tahun 2007, Thailand gagal mengakses obat-obatan HIV/AIDS dengan menggunakan *compulsory licensing* untuk program pemerintah karena dimasukkan kedalam *Priority Watch List Section 301* oleh Amerika Serikat. Sedangkan Amerika Serikat, yang memiliki titel sebagai negara maju, pada tahun 2001 berhasil mengancam industri farmasi Bayer untuk memberikan antibiotik khusus Anthrax dengan harga lebih rendah, dan Amerika Serikat berhasil.

Hal ini bagaimana pun tidak dapat dibenarkan karena seluruhnya berkaitan langsung dengan kesehatan manusia, hidup dan matinya. Masih banyak juga kepentingan negara-negara maju yang menghambat pemberian obat kepada negara-negara berkembang yang sangat membutuhkan. Melalui kasus ini, hukum internasional dilihat tumpul ke atas dan tajam ke bawah.

4.2 Saran

Penulis menyarankan bagi pembaca yang ingin meneliti kasus serupa dapat menggunakan teori Realisme untuk menganalisis dari sudut pandang yang berbeda. Dengan menggunakan *power politics* untuk menganalisis tingkah laku negara-negara adikuasa seperti pada penelitian ini, hasil penelitian yang didapat nantinya memungkinkan untuk lebih akurat. Teori Neoliberal Institutionalism dirasa kurang tepat untuk menganalisis studi kasus yang diteliti dikarenakan teori terlalu jauh dengan realita yang dipaparkan. Tindakan negara-negara maju di seperti yang dijabarkan dalam penelitian di atas memperlihatkan bagaimana kekuatan politik yang mereka punya dapat mempermudah mereka untuk mencapai kepentingannya masing-masing, sehingga teori Realisme dapat menjadikan hasil penelitian lebih baik lagi.

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