

CHAPTER IV

CLOSURE

A. Conclusion

With the continuous rise of States implementing data localization requirement, a parallel threat occurs in the free flow of data within the international community. The constant changes and degrees of data localization requirement seen in sector specific regulations creating compliance increasingly more difficult, further corroding the efficiency of the advancing technology, and hindering their impact.⁶⁶ As has been discussed above, the writer further concludes that:

1. The extent of data localization being implementation by States differ in terms of the level of strictness. This differing degree of localization requirement effects the international digital trade differently. As seen through State practices, the higher the strictness of data localization requirement the higher the effects. The entity that is mostly affected are foreign service providers or companies. The overly strict regulation creates an overbearing burden for foreign service providers to expand its markets towards other States. Given these struggles that are seen towards foreign companies it may equate as a digital trade barrier. Within the GATS, the articles that are mostly affected are the market access and national treatment

⁶⁶ Data Localization: Costs, Trade-offs, and Impacts Across the Economy (Institute of International Finance, 2020)
https://www.iif.com/portals/0/Files/content/Innovation/12_22_2020_data_localization.pdf, accessed on 14 February 2024.

requirements. The burden localization creates towards foreign companies are generally justified with the general exception and security exception rule. However, due to the existence of other less intrusive means, the exceptions are not fulfilled. Therefore, it can be concluded that data localization requirements are implemented by States differently, and depending on the extent of its strictness could amount to an impermissible trade barrier under the GATS.

2. As it has been established that data localization may amount to an impermissible trade barrier, it is of great importance for States to pay close attention on how they regulate data localization within their State. Through the discussion above, it can be concluded that States must create a balance in its national interest as well as the international community's interest. Putting into consideration the free flow of data and the protection of their citizen's data to overcome data localization law as an impermissible trade barrier with the WTO trade restrictions. Lastly, applying the requirements within the GATS would further encourage a consistent application of data localization requirement that is just and fair for all foreign service providers.

B. Recommendation

With the understanding of violations that might occur in the application of data localization by States. The writer of this thesis further recommends the following:

1. States must take great care in applying data localization requirements, given ability to affect digital trade. Understanding the different degrees of data

localization is the first step to understand that strict data localization requirement may affect the free flow of data, which effects the overall international digital trade. Understanding that there are a variety of measures that may be implemented to achieve the goals intended in applying data localization. Indonesia is a great example for a State that is continuously updating its data localization requirement to be more just for all service providers.

2. In overcoming data localization requirements that amounts to an impermissible trade, States must put into consideration all interests at stake. States must acknowledge that the GATS is applicable towards the digital trade, which encompasses data localization. In applying the GATS towards data localization, it can help States in applying a fairer and more just requirement that is both beneficial and not overly burdensome towards certain service providers. Furthermore, States can create agreements, such as digital trade agreements or free trade agreements, whether bilateral or multilateral agreements for the purpose of creating a free and just environment within digital trade. This way, States can overcome impermissible data localizations between States.