

ABSTRACT

Pharmaceutical patents grant exclusive rights to their holders, which can potentially limit public access to essential medicines. As a balancing mechanism, TRIPS provides flexibility in the form of compulsory licensing, which must be implemented into national law to function effectively. Indonesia previously regulated pharmaceutical compulsory licensing through Article 93 of Law No. 13 of 2016 on Patents, which could be activated in both emergency and non-emergency situations. However, this provision was repealed by Law No. 65 of 2024, which simultaneously expanded governmental use through Article 111A and reinforced the TRIPS flexibility instruments previously regulated in Law No. 13 of 2016. This study employs a normative legal methodology with legislative, historical, and conceptual approaches. The data used consists of primary, secondary, and tertiary legal materials obtained through a literature review. Data analysis was conducted using content analysis to examine the legal consequences of the repeal of Article 93 on TRIPS flexibilities and its impact on the fulfillment of the right to health under Article 28H(1) of the 1945 Constitution of the Republic of Indonesia. The research findings indicate that the repeal of Article 93 shifts the system from a dual mechanism to a single mechanism based on governmental use, eliminates non-emergency intervention channels, weakens the state's leverage over patent holders, and impacts the fulfillment of the progressive obligation to realize the right to health.

Keywords: *Compulsory Licensing, TRIPS Flexibilities, Pharmaceutical Patents, Right to Health, Article 93.*