

Analysis of Local Content Requirements of Presidential Regulation No. 55/2019 and Their Consistency with the GATT and the TRIMs Agreement within the WTO Framework

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ABSTRACT

This article discusses the analysis of local content requirements for the electric vehicle industry in Presidential Regulation Number 55 Year 2019 regarding the Acceleration of Battery-Based Electric Vehicles Program for Road Transportation in terms of its compliance with the regulations in the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs Agreement). The research in this undergraduate thesis is juridical normative. The results of this research conclude that the provisions of local content requirements in Presidential Regulation Number 55 Year 2019 Regarding Acceleration of Battery-Based Electric Vehicles Program for Road Transportation are not in accordance with the regulations of the GATT and the TRIMs Agreement. Article 17 states that companies that meet the requirements of Local Content Value (TKDN) as mentioned in Article 8 can receive fiscal and non-fiscal incentives from the government. This is inconsistent with the provisions of the TRIMs agreement as well as Article III:2 and Article III:4 of the GATT. Therefore, the Indonesian government must make adjustments to the local content requirements for electric vehicles in Presidential Regulation Number 55 Year 2019 so that it is more consistent with its obligations as a member country of the World Trade Organization (WTO).

Keywords: *Agreement; Electric; Trade; Inverstment; Local content requirement, Local Content Value (TKDN)*

Introduction

President Joko Widodo had set five main directives that would act as a strategy for Indonesia to become an advanced, fair, and prosperous nation, which consists of the Development of Human Resources, Infrastructure Development, Regulation Simplification, Bureaucratic Simplification, and Economic Transformation. Focusing on the point of Economic Transformation, what is meant by Economic Transformation is the transformation of the Indonesian economy that is still largely dependent on natural resources to become a more competitive economy based on manufacturing and modern services that would provide high added value for the prosperity of the nation in the name of social justice for all

Indonesians.¹ This transformation from an agrarian or natural resources based economy to a manufacturing and services based economy is often referred to as industrialization.

Industrialization is the transformation of an economy from a largely agrarian economy into an industrial one, which involves extensive organization of an economy for the purpose of industrialization.² However, the other side of industrialization is its environmental impact. Indeed, since the industrial revolution, the amount of carbon dioxide and other greenhouse gasses released by human activities has significantly increased, and has continued to increase. Greenhouse gasses cause the greenhouse effect, which is an effect in which these greenhouse gasses in the atmosphere absorb and trap energy, preventing the earth's heat from being lost into space, causing the earth's temperature to rise.³ This increase in temperature is predicted, and has indeed been proven, to have significant impacts on the environment. The impacts include rising sea levels, and changes in weather such as increased rainfall intensity, and longer growing seasons for crops.⁴

To reconcile the need for industrialization and its destructive effects on the environment, many countries have sought ways to develop their economies in a more sustainable manner. One of the ways in which the Indonesian government is doing this is by promoting electric vehicles. Indeed, in order to increase energy efficiency, resilience, and conservation in the transportation sector, and also to fulfill Indonesia's commitment to reducing greenhouse gas emissions, the Indonesian government has deemed it necessary to support the acceleration of its battery-based electric vehicle program for road transportation.⁵

To support electric vehicle development, the Indonesian government issued Presidential Regulation Number 55 Year 2019 Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation (hereinafter referred to as Presidential Regulation No. 55/2019). Article 3 of this regulation provides the way in which the acceleration of the battery-based electric vehicle (hereinafter referred to as BBEV) program is implemented, which reads as follows:

¹ Indonesia, *Peraturan Presiden Tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2020-2024 (Presidential Regulation Regarding 2020-2024 Medium Term National Development Plan)*, Perpres No. 18 Tahun 2020, LN.2020/NO.10, Appendix I, Pg. I.5

² Arthur O'Sullivan and Steven M. Sheffrin, *Economics: Principles in Action*, (Boston: Prentice Hall, 2007), Pg. 472

³ U.S. Environmental Protection Agency, "Causes of Climate Change," <https://www.epa.gov/climatechange-science/causes-climate-change>, Accessed June 19, 2022.

⁴ A. Barrie Pittock, *Climate Change: Turning Up the Heat*, (London: Earthscan, 2005), Pg. 14

⁵ Indonesia, *Peraturan Presiden Tentang Percepatan Program Kendaraan Bermotor Listrik Berbasis Baterai untuk Transportasi Jalan (Presidential Regulation Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation)*, Perpres No. 55 Tahun 2019, LN.2019/NO.146, consideration

“The acceleration of battery-based electric vehicle program for road transportation is done through:

- a) acceleration of local battery-based electric vehicles industry;*
- b) incentives;*
- c) provision of electric charging infrastructure and regulation on electricity tariffs for electric vehicles; and*
- d) environmental protection.”⁶*

From this article, it can be understood that one of the ways in which the development of BBEVs would be accelerated is through the development of industry and introduction of incentives. One of the ways this is done in this Presidential Regulation is local content requirements. Article 8 of Presidential Regulation No. 55/2019 states that the BBEV industry as well as its components industry must prioritize the growth of local content value. From 2019 until 2023, the minimum local content value required for two and three wheeled BBEVs is 40%, and this is increased in two other stages until 2026 when the minimum local content value is set at 80%. For four wheeled BBEVs, from 2019 until 2021, the required local content value is at least 25%. This is then increased in three other stages until 2030 when the minimum required local content value is also set at 80%.⁷ According to Article 17 paragraph (3), the fulfillment of these local content requirements may entitle companies to fiscal and non-fiscal incentives from the government.⁸

Local Content Requirements are requirements that require investors to purchase a certain amount of local materials to be incorporated into the investors' product.⁹ By instituting such requirements, local industries are guaranteed sales from investors, which allows them to build up the capabilities necessary to compete with international competitors. However, Local Content Requirements are also considered to be barriers to trade and are against certain WTO rules such as the General Agreement on Tariffs and Trade (GATT) and the Agreement on Trade-Related Investment Measures (TRIMs Agreement).

As a WTO member, Indonesia must make sure that its policies are not inconsistent with its obligations. In crafting its policies, Indonesia must make sure that they are in line with the obligations stipulated by the WTO agreements, including those obligations found in the GATT and the TRIMs Agreement. Given that the BBEV industry is relatively new in Indonesia, there must be a legal analysis on Indonesia's current regulations regarding electric

⁶ *Ibid*, Art. 3

⁷ *Ibid*, Art. 8

⁸ *Ibid*, Art. 17

⁹ World Trade Organization, “Glossary - Local Content Measure,” World Trade Organization, https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm, Accessed October 4, 2021.

vehicles, particularly on the use of local content requirements, and their conformity with Indonesia's WTO obligations. This analysis focuses on how Indonesia regulates local content requirements in the BBEV industry under Presidential Regulation No. 55/2019 and other related regulations, and also whether or not those local content requirements are consistent with the GATT and the TRIMs Agreement.

Methods

This research is descriptive research, which is research that is aimed at describing the characteristics of a certain individual, condition, event or group, or to determine the frequency of a phenomenon.¹⁰ The author describes and analyzes Presidential Regulation No. 55/2019 and other related regulations, and whether or not they are in compliance with Indonesia's commitments under the GATT and the TRIMs Agreement.

Juridical-normative method of research is employed in this research. Juridical-normative research is research focused on studying the application of principles or norms of positive law that is done through library research.¹¹ In this research the author uses academic resources, such as books, journals, Indonesian rules and regulations, and also WTO agreements and cases related to the topic of this research.

The type of data used in this research is secondary data. Secondary data is data that is obtained from academic sources, which include books, official documents, and research results.¹² This secondary data in this research consists of primary legal material, secondary legal material, and tertiary legal material. Primary legal materials are legal materials that have binding legal power, such as laws and regulations. The primary legal materials used in this research include, but are not limited to, Presidential Regulation Number 55 Year 2019 Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation, General Agreement on Tariffs and Trade 1994, and Agreement on Trade-Related Investment Measures.

Results and Analysis

Presidential Regulation No. 55/2019 was enacted for the purpose of providing legal guidance and certainty for the government's plan to accelerate its BBEV program for road transportation. This is deemed necessary to achieve Indonesia's environmental goals, to push for a higher mastery of vehicle industrial technology and designs, and also to turn Indonesia

¹⁰Sri Mamudji, *et al.*, *Metode Penelitian dan Penulisan Hukum*, (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005), Pg. 4.

¹¹Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2005), Pg. 295

¹² Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press, 1986), Pg. 12.

into a base for motor vehicle production and export. According to Article 3, this acceleration is implemented through, among other things, the acceleration of local BBEV industry development. Local content requirements in the BBEV industry are introduced in this regulation as part of this industry development. Article 8 requires the BBEV and BBEV component industry to prioritize the use of local content, with an expected minimum local content value that gradually increases from 2019 until 2030. According to Article 17, companies that fulfill the local content requirement stipulated by Article 8 may be provided with incentives by the government. These incentives consist of fiscal and non-fiscal incentives. The incentives include, among other things, incentives in import duties for the importation of BBEVs in both completely knocked down and incompletely knocked down states or main components for a certain amount and period of time, incentives for luxury goods sales tax, central/regional tax exemptions or reductions, suspension of import duties for export purposes, export financing incentives, and transfer of production rights over BBEV technology patents held by the government and/or regional government.

How the local content value stipulated by Presidential Regulation No. 55/2019 is calculated is further elaborated in Minister of Industry Regulation No. 6/2022. According to Article 6 of this Minister of Industry regulation, the calculation of BBEV local content value is divided into four different aspects: manufacturing of main components; manufacturing of supporting components; assembly; and development. Each of these aspects make up different percentages of local content value if they are sufficiently fulfilled with enough local content. The manufacturing of main components and manufacturing of supporting components aspects are divided up between different components, such as chassis, batteries, and electric motor propulsion system, in which different components make up a certain percentage of local content value themselves.

Local content requirements are regulations in which businesses or producers are required, or at least incentivised to incorporate a specific amount of local materials, components, and/or content into their products. As such, they treat products that contain locally produced components differently from those that do not. Therefore, the principle of non-discrimination, and more specifically the national treatment principle is the principle that is most relevant to the local content requirements stipulated by Presidential Regulation No. 55/2019. Based on the principle of non-discrimination, every member country that has granted to another country a more favorable treatment, such as in the form of reductions to customs duties and charges imposed in connection with the importation or exportation of

certain goods, must grant that same favorable treatment to other member countries. This same treatment must be granted immediately and unconditionally for products coming from or exported to all member countries. Therefore, no member country can grant special privileges to other countries or enact any discriminatory policies against another country. If a country has provided any sort of convenience or facility in trade to a second country, then that exact same convenience or facility must be granted to the third country, the fourth country, the fifth country, and so on. In other words, any advantage that a country grants to another country must also be spread around to other countries.

The national treatment principle can be found in Article III of the GATT. Article III is concerned with the national treatment principle, in which discrimination between local and imported products through the use of internal measures is prohibited.¹³ Article III:2 is concerned specifically with internal taxes, and states the following:

*“The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.”*¹⁴

There are two different non-discrimination obligations established by each of the two sentences in this provision. The first sentence applies the non-discrimination obligation to “like products”, and the second sentence applies it also to “directly competitive or substitutable products”.¹⁵ The Appellate Body in the “*Japan - Taxes on Alcoholic Beverages*” (hereinafter referred to as “*Japan - Alcoholic Beverages II*”) case opined that the second sentence applies to a broader category of products than the first sentence, that is products that are not “like products”.¹⁶ Therefore, the second sentence of Article III:2 is only applied if the measure being examined is not consistent with the first sentence. The first sentence is applied first, and if the measure at issue is found to be inconsistent with it, then there is no need to apply the second sentence. If the measure at issue is found to not be consistent with the first sentence, then the second sentence can be applied.¹⁷

¹³ World Trade Organization, *General Agreement on Tariffs and Trade*, Article III:1

¹⁴ *Ibid*, Article III:2

¹⁵ United Nations Conference on Trade and Development, *Dispute Settlement: World Trade Organization - Dispute Settlement*, (New York and Geneva: UNCTAD, 2003), Pg. 21

¹⁶ World Trade Organization, *Report of the Appellate Body: Japan - Taxes on Alcoholic Beverages*, (WT/DS8/AB/R: 4 October 1996), Pg. 19

¹⁷ United Nations Conference on Trade and Development, *Dispute Settlement: World Trade Organization - Dispute Settlement*, (New York and Geneva: UNCTAD, 2003), Pg. 28

Therefore, the first sentence of Article III:2 must be analyzed first separately from the second sentence. There are a few core elements that can be discerned from the first sentence, which are as follows:

- 1) “*shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind*”

First is to determine whether the regulations in question constitute “internal taxes or other internal charges of any kind”. Article 19 Paragraph (1) of Presidential Regulation No. 55/2019 lists the fiscal incentives that the government may provide to support the acceleration of the BBEV program for road transportation, which includes, among other things, incentives in luxury items sales tax, and also exemptions or reductions to central and regional taxes.¹⁸ Article 17 elaborates that these incentives may be provided by the government to several parties that in different ways contribute to the development of the BBEV program, one of which is companies that fulfill the Local Content Requirements stipulated by Article 8 of this regulation.¹⁹ Taken together, it can be understood that companies using local content as stipulated by the local content requirements in Article 8 may be entitled to reduced internal taxes compared to those companies that do not.

- 2) “*like domestic products*”

As for the element of “like products”, the products that are the subject of Presidential Regulation No. 55/2019 are BBEVs. Article 1 of the Presidential Regulation also clarifies on what is meant by BBEVs in this regulation, which are vehicles that are propelled by electric motors and receive electric energy from a battery, both internally or externally.²⁰ As stated in Japan - Alcoholic Beverages II, tariff classification of products can also be used to determine the likeness of products.²¹ Ministry of Industry Regulation Number 28 Year 2020, as amended by Ministry of Regulation Number 7 Year 2022, lists the codes for Harmonized Commodity Description and Coding System (hereinafter referred to as HS Code) for specific BBEV products. In Article 11, BBEV for the transport of 10 or more people

¹⁸ Indonesia, *Peraturan Presiden Tentang Percepatan Program Kendaraan Bermotor Listrik Berbasis Baterai untuk Transportasi Jalan (Presidential Regulation Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation)*, Perpres No. 55 Tahun 2019, LN.2019/NO.146, Art. 19

¹⁹ *Ibid*, Art. 17

²⁰ *Ibid*, Art. 1

²¹ World Trade Organization, *Report of the Appellate Body: Japan - Taxes on Alcoholic Beverages*, (WT/DS8/AB/R: 4 October 1996), pg. 21

including the driver is listed as 8702.40, BBEV for personal transport is listed as 8703.80, motor vehicles for the transport of goods are listed as 8704.90, and chassis fitted with engines is listed as 87.06.²² Therefore, products imported with these same HS Codes can be considered to be “like products”.

3) “*in excess of*”

The Appellate Body in Japan - Alcoholic Beverages II noted, “any amount of excess is too much”. As stipulated by Article 17 and Article 19 of Presidential Regulation No. 55/2019, companies that fulfill the set local content requirements may be provided with reduced taxes or even be exempt from some taxes. This would mean that in the BBEV market, the companies that manufacture their BBEVs with higher local content may be more competitive in their pricing, as they only have to take into account a reduced amount of taxes in their pricing. This is enough to fulfill this element.

With these factors taken together, it can be concluded that the incentives related to taxes provided to companies that fulfill local content requirements as stipulated by Article 17 jo. Article 19 of Presidential Regulation No. 55/2019 Year 2019 is inconsistent with Article III:2 of the GATT.

Article III:4 of the GATT specifically discusses internal laws and regulations. Like Article III:2, there are a few core elements in this provision that may be discerned, and these elements must also be analyzed to determine the consistency of the local content requirements stipulated by Presidential Regulation No. 55/2019 with this provision and also the national treatment principle in general as stipulated by the GATT.

1) “*in respect of all laws, regulations and requirements*”

Presidential Regulation No. 55/2019 as well as its derivative regulations, such as Ministry of Industry Regulation Number 6 Year 2022 and Ministry of Industry Regulation Number 28 Year 2020, are regulations issued by the President of Indonesia and the Ministry of Industry respectively. Presidential Regulations are included in Article 7 of Law Number 12 Year 2011 as one of the binding laws and regulations in Indonesia.²³ As stipulated by Article 8 of Law Number 12 Year 2011,

²² Indonesia, Ministry of Industry, *Peraturan Menteri Perindustrian Tentang Perubahan Atas Peraturan Menteri Perindustrian Nomor 28 Tahun 2020 (Ministry of Industry Regulation Regarding Amendments to Ministry of Industry Regulation Number 28 Year 2020)*, Permenperin No. 7 Tahun 2022, LN.2022/NO.271, Art. 1

²³ Indonesia, *Undang-Undang Tentang Pembentukan Perundang-Undangan (Law Regarding Formulation of Laws and Regulations)*, UU No. 12 Tahun 2011, LN.2011/NO.82, TLN NO. 5234, Art. 7

Ministerial Regulations are also considered to be binding laws and regulation.²⁴ Therefore, Presidential Regulation No. 55/2019, as well as its derivative regulations in the form of Ministry of Industry Regulation Number 6 Year 2022 and Ministry of Industry Regulation Number 28 Year 2020 are included as “laws, regulations, and requirements” within the scope of Article III:4 of the GATT.

- 2) *“affecting their internal sale, offering for sale, purchase, transportation, distribution or use”*

As stipulated by Article 17 jo. Article 19 of Presidential Regulation No. 55/2019, companies that fulfill the local content requirement stipulated by Article 8 may be provided with fiscal and non-fiscal incentives, which include, among other things, import duty incentives, incentives in luxury items sales tax, tax exemptions and reductions, and export financing incentives. In other words, companies that fulfill local content requirements might be entitled to advantages over companies that do not fulfill local content requirements in the form of these incentives. The incentive in the form of tax reductions, for instance, may allow companies to institute more competitive prices, as they have to take into account fewer amounts of taxes. Therefore, the provisions of local content requirement in Presidential Regulation No. 55/2019 can be considered to be “affecting internal sale, offering for sale, purchase, transportation, distribution or use” of imported products.

- 3) *“accorded to like products of national origin”*

For the element of “like products”, Presidential Regulation No. 55/2019 provided a definition of the BBEVs meant in this regulation, which are vehicles propelled by electric motors and receive electric energy from a battery, both internally or externally.²⁵ For a more specific determination of specific BBEV products, the categories provided by the Appellate Body in EC - Asbestos can be used, in which one of the categories is “the international classification of the products for tariff purposes”.²⁶ Ministry of Industry Regulation Number 28 Year 2020, as amended by Ministry of Regulation Number 7 Year 2022, lists the codes for Harmonized Commodity Description and Coding System (hereinafter referred to as HS Code) for specific BBEV products. In Article 11, BBEV for the transport of 10 or more people

²⁴ *Ibid*, Art. 8

²⁵ *Ibid*, Art. 1

²⁶ World Trade Organization, *Report of the Appellate Body: European Communities - Measures Affecting Asbestos and Asbestos-Containing Products*, (WT/DS135/AB/R: 5 April 2001), para. 101

including the driver is listed as 8702.40, BBEV for personal transport is listed as 8703.80, motor vehicles for the transport of goods are listed as 8704.90, and chassis fitted with engines is listed as 87.06.²⁷ Therefore, products imported with these same HS Codes can be considered to be “like products”.

4) “*treatment no less favorable*”

The incentives provided by Article 17 jo. Article 19 of Presidential Regulation No. 55/2019 may provide advantages for companies that fulfill the local content requirements. This may give them an advantage in the market, and as such, the companies that do not fulfill the local content requirements are “treated less favorably” than the companies that do. Therefore, the element of “treatment no less favorable” in Article III:4 of the GATT is also fulfilled by Presidential Regulation No. 55/2019.

With all these elements taken together, it can be concluded that the local content requirements in Presidential Regulation No. 55/2019, as stipulated by Article 17 jo. Article 19, is inconsistent with Article III:4 of the GATT.

As for the TRIMs Agreement, local content requirements are generally not allowed under the rules of this agreement, as stipulated by Point (a) Paragraph 1 of the Illustrative List of the TRIMs Agreement. Based on Article 1 of the TRIMs Agreement, it can be understood that the TRIMs Agreement is only applicable to trade-related investment measures (TRIMs) related to trade in goods.²⁸ Therefore, to determine the consistency of Indonesia’s BBEV local content requirements with the TRIMs Agreement, whether or not they are related to goods should be determined first.

Local content requirements in the Indonesian BBEV industry are established in Article 8 of Presidential Regulation No. 55/2019, in which it is stated that the BBEV and BBEV components industry are required to prioritize the use of local components, with gradually increasing criteria of local content demanded from 2019 until 2030.²⁹ The way in which this local content is calculated is regulated in Ministry of Industry Regulation Number 27 Year

²⁷Indonesia, Ministry of Industry, *Peraturan Menteri Perindustrian Tentang Perubahan Atas Peraturan Menteri Perindustrian Nomor 28 Tahun 2020 (Ministry of Industry Regulation Regarding Amendments to Ministry of Industry Regulation Number 28 Year 2020)*, Permenperin No. 7 Tahun 2022, LN.2022/NO.271, Art. 1

²⁸ World Trade Organization, *Agreement on Trade-Related Investment Measures*, Art. 1

²⁹ Indonesia, *Peraturan Presiden Tentang Percepatan Program Kendaraan Bermotor Listrik Berbasis Baterai untuk Transportasi Jalan (Presidential Regulation Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation)*, Perpres No. 55 Tahun 2019, LN.2019/NO.146, Art. 8

2020, which has been replaced by Ministry of Industry Regulation Number 6 Year 2022.³⁰ According to Article 7 of Ministry of Industry Regulation Number 6 Year 2022, the calculation of local content for BBEVs include the manufacturing of main components and supporting components, which are calculated as 50%-58% and 10% respectively.³¹ In Article 10 and 11, the calculation of local content in BBEVs is broken down into different specific components, such as the chassis, battery, tires, and brake system.³² Main components and supporting components are defined as components required for the functioning of BBEVs, and BBEVs themselves are defined as vehicles propelled by electricity supplied by batteries.³³ Accordingly, BBEVs and the components that make up BBEVs are goods. Therefore, the local content requirements pertaining to BBEVs and their components as stipulated by Presidential Regulation No. 55/2019 and Ministry of Industry Regulation Number 6 Year 2022 are related to trade in goods.

The next step is to determine whether or not Indonesia's BBEV local content requirements can be considered as TRIMs. Based on Article 2.1 of the TRIMs Agreement, it can be understood that there are two elements needed to prove a breach of the TRIMs Agreement; the existence of a TRIM, and the inconsistency of that TRIM with Article III or Article XI of the GATT.³⁴

It can be understood from Paragraph c of the consideration of Presidential Regulation No. 55/2019 that one of the objectives of Presidential Regulation No. 55/2019 is to encourage the development of the motor vehicle industry in Indonesia through the acceleration of the BBEV program so that Indonesia may become "a base for the production and export of motor vehicles".³⁵ Article 3 of the presidential regulation also states that one of the ways in which the acceleration of the BBEV program is implemented is by providing incentives.³⁶ Based on Article 17 and Article 19, these incentives, which include reductions and exemptions in taxes,

³⁰Indonesia, Ministry of Industry, *Peraturan Menteri Perindustrian Tentang Spesifikasi, Peta Jalan Pengembangan, dan Ketentuan Penghitungan Nilai Tingkat Komponen Dalam Negeri Kendaraan Bermotor Listrik Berbasis Baterai (Ministry of Industry Regulation Regarding Specification, Development Roadmap, and Calculation of Local Content Value (TKDN) for Battery-based Electric Vehicles)*, Permenperin No. 6 Tahun 2022, LN.2022/NO.270, consideration

³¹ *Ibid*, Art. 7

³² *Ibid*, Art. 10-11

³³ *Ibid*, Art. 1

³⁴ World Trade Organization, *Report of the Panel: Indonesia - Certain Measures Affecting the Automobile Industry*, (WT/DS54/R: 2 July 1998), para. 14.64

³⁵ Indonesia, *Peraturan Presiden Tentang Percepatan Program Kendaraan Bermotor Listrik Berbasis Baterai untuk Transportasi Jalan (Presidential Regulation Regarding Acceleration of Battery-Based Electric Vehicle Program for Road Transportation)*, Perpres No. 55 Tahun 2019, LN.2019/NO.146, consideration

³⁶ *Ibid*, Art. 3

can be provided to companies that fulfill local content requirements.³⁷ This requirement to include a certain amount of local content in BBEV products would certainly significantly affect investment activities. Therefore, it is reasonable to consider the local content requirement policies stipulated by Presidential Regulation No. 55/2019 to be investment measures. As explained previously, the local content requirements of Presidential Regulation No. 55/2019 are also inconsistent with Article III of the GATT. As the local content requirements in the presidential regulation may also be considered to be TRIMs, the two elements of Article 2.1 of the TRIMs Agreement are fulfilled and it can be concluded that the local content requirements of Presidential Regulation No. 55/2019 are inconsistent with the TRIMs Agreement.

Conclusion

Article 8 of Presidential Regulation No. 55/2019 requires the BBEV and BBEV component industry to prioritize the use of local content, with an expected minimum local content value that gradually increases from 2019 until 2030. According to Article 17, companies that fulfill the local content requirement stipulated by Article 8 may be provided with incentives by the government. The findings of this research conclude that local content requirements in Indonesia's BBEV industry, as stipulated by Presidential Regulation No. 55/2019, are inconsistent with Article III:2, Article III:4 of the GATT and also Article 2.1 of the TRIMs Agreement because of the provision of fiscal and non-fiscal incentives contingent on the fulfillment of local content requirements that can potentially distort BBEV market competition.

However, it must be noted that the terminology used in Article 8 implies that the local content requirements in said article are not mandatory in nature, rather they are intended to encourage or entice the use of local content. Nevertheless, the potential consequences of the incentives provided for companies that fulfill Article 8's local content requirements towards the BBEV market means that they still have market-distorting effects and are thus potentially inconsistent with Article III of the GATT and the TRIMs Agreement. The provisions of the WTO Agreement oblige all WTO members to ensure that all their laws and regulations are in line with the agreements of the WTO, including the GATT and the TRIMs Agreement. As a WTO member, Indonesia must review and revise its local content requirements stipulated by Presidential Regulation No. 55/2019 so that it may be in line with its obligations. Nevertheless, Indonesia must still consider its national interest in developing its industry and

³⁷ *Ibid*, Art. 17 jo. 19

infrastructure to prepare for the transition from fossil fuels to renewable energy. Indonesia must find a way to advance its national interests while also fulfilling its commitments in international organizations.

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