



### THE URGENCY OF ANTI-CIRCUMVENTION ARRANGEMENTS IN INDONESIA: A COMPARATIVE ANALYSIS WITH THE UNITED STATES AND ISLAMIC LAW PERSPECTIVES

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**Abstract:** This study examines the urgency of anti-circumvention regulations in Indonesia to address the practice of circumvention that harms the domestic industry and state revenue. Circumvention, or avoidance of anti-dumping import duties in Indonesia, often occurs through diverting export routes through third countries. For example, H&I Section steel from China has entered Indonesia via Thailand. Similarly, after anti-dumping was imposed on Chinese HRC Alloy products, imports from Japan, Taiwan, and Vietnam surged. As a result, the domestic industry experienced significant sales volume and profits declines, while the country lost potential revenue. The broader impact includes reduced anti-dumping policy effectiveness, increased risk of layoffs, and factory closures due to unfair competition resulting from circumvention. This study employs qualitative normative research methods through a literature review, examining primary legal materials (such as laws and regulations from Indonesia and the U.S.), secondary sources (literature, journals, previous research results), and tertiary sources (legal dictionaries, encyclopedias). The analysis uses a comparative approach between the Indonesian and United States legal systems and examines Islamic law's perspective on these practices. The study's findings indicate that Indonesia lacks specific regulations to address circumvention, unlike the United States, which already has a structured system. Concrete recommendations include: first, there is a need for a clear operational definition of circumvention. Second, an integrated monitoring system should be developed based on national trade data and community involvement through complaint channels. Third, the investigation procedure should allow initiation by both the authorities and external parties, with field verification and a deadline for completion. Fourth, progressive sanctions should be enforced, such as expanding anti-dumping import duties, suspending import permits, and imposing retroactive fines. Regulations can be further strengthened by adopting best practices from countries such as the United States and integrating the principles of *maqashid sharia* (justice, protection of property, and public welfare) so that regulations are technically effective, fair, and socially sustainable. With these measures, Indonesia can close the regulatory gap regarding circumvention, protect the domestic industry, and optimize state revenues from the international trade sector.

**Keywords:** *anti-circumvention regulation, anti-dumping import duty, circumvention.*

## **A. Introduction**

The practice of circumvention or evasion of anti-dumping import duty in Indonesia can pose a serious threat to the country, such as reducing the effectiveness of anti-dumping policies and weakening the competitiveness of the domestic industry (KADI, 2023). Despite this, Indonesia does not have specific regulations to counteract circumvention practices and remains weak in addressing this issue (Primadista & Runturambi, 2022). Therefore, Indonesia needs to strengthen its policy to address this issue. The preparation of this regulation can begin with a study of practices implemented by several other countries. Some countries with anti-circumvention regulations include the United States, the European Union, India, and Australia. In addition, the principles of trade in Islamic law can also be incorporated into its formulation to ensure that the resulting regulations align with the principles of justice and achieve sustainable economic goals.

Trade activities between countries have become a crucial aspect of the global economy. Countries can no longer survive independently without engaging in trade with other nations (Manik, 2022). All economic activities in the world are now interconnected through trade that crosses national borders. Export data issued by the Central Statistics Agency (BPS) for 2019 to 2023 indicates a positive trend. It can be seen from export activities that in 2019, Indonesia's exports amounted to US\$167,683 million, increasing to US\$258,774.3 million in 2023 (BPS, 2024). In addition, an upward trend is also observed in import activities, where in 2019, the value of imports to Indonesia reached US\$171,275.7 million, increasing to US\$221,885.7 million in 2023 (BPS, 2024). The data demonstrates Indonesia's significant presence in international trade. The increase in export and import activities or trade between countries shows that the global economy is becoming increasingly integrated. There are several reasons why countries need to participate in trade with one another. First, each country possesses different natural resources. Second, the capabilities of human resources and technological advancement vary from country to country. Furthermore, not all goods a country needs can be produced domestically, making it necessary to import from other nations. These factors drive countries to exchange goods and services to meet their respective needs (CNN Indonesia, 2021).

In practice, international trade does not always run fairly. One of the detrimental practices is dumping. The General Agreement on Tariff and Trade (GATT) defines dumping as selling products to foreign markets at a lower price than the price in the domestic market itself (Ulum, 2025). Dumping or selling products below regular prices in Indonesia can harm local producers (Tobing, 2024). For instance, the invasion of imported textiles, apparel, ceramics, electronics, cosmetics, and footwear at very low prices has led to layoffs and factory closures in these sectors (CNBC Indonesia, 2024). Recognizing the adverse impacts of dumping practices, the World Trade Organization (WTO), which oversees global trade activities, permits member countries to implement anti-dumping policies to protect domestic industries from losses due to unhealthy trade practices (WTO, 1994). To address these challenges, the Government of Indonesia has enacted various regulations related to anti-dumping practices, such as Law No. 10 of 1995 on Customs (Law No. 10 of 1995), Law No. 17 of 2006 amending Law No. 10 of 1995 on Customs (Law No. 17 of 2006), and Government Regulation No. 34 of 2011 on Anti-Dumping Measures, and Safeguard Measures (PP No.34 of 2011), which serves as the

implementing regulation for Law Number 10 of 1995 as amended by Law Number 17 of 2006.

In addition, Indonesia has established a specialized body called the Indonesian Anti-Dumping Committee (KADI), which operates under the Regulation of the Minister of Trade Number 14 of 2024 concerning the Organization and Work Procedures of the Indonesian Anti-Dumping Committee (Permendag No. 14 of 2024). This institution was created to address cases of unfair trade practices originating from abroad (Kemendag, 2024). As an organization focusing on dumping issues, KADI protects domestic producers from dumping practices that can harm the domestic market, including efforts to evade anti-dumping import duties. However, anti-dumping policies have not effectively addressed circumvention practices or anti-dumping import duties evasion (KADI, 2023).

Business actors have taken advantage of the weaknesses of the regulation in various ways. One notable example is a case of the practice of circumvention involving H&I section steel products from China, which entered Indonesia via Thailand (a third country) (KADI, 2022). The imposition of anti-dumping import duties on H&I section products from December 23, 2015, to March 18, 2024, triggered a significant shift in import patterns. Thailand emerged as the dominant exporter by controlling 71.88% of the total imports of these products in 2021. Data shows a drastic increase in import volume from Thailand, reaching 60.43% during 2019-2021. Indications of circumvention practices are even more substantial when it was found that the price of H&I Section imports from Thailand in 2021 was below the import prices from other countries, even lower than the price of products from China (KADI, 2022). By diverting trade routes, importers avoided the imposition of anti-dumping import duties.

A similar case also occurred with Hot Rolled Coil of Other Alloy (HRC Alloy) products from China, which have been subject to anti-dumping import duties from March 15, 2022, to March 14, 2027 (KADI, 2023). Due to the implementation of the anti-dumping import duties, the import volume decreased by 27% from July 2020 to July 2022. However, import diversion has occurred in other countries, especially Japan, Taiwan, and Vietnam, which substantially increased imports after implementing anti-dumping import duties on Chinese products (KADI, 2023). This shift in import patterns indicates the existence of circumvention practices that could undermine the effectiveness of anti-dumping import duties in efforts to support the recovery of the domestic industry. Although anti-dumping import duties were initially intended to create a healthy competitive environment and support the growth of national HRC Alloy producers in meeting domestic market demand, the redirection of imports to alternative countries creates new challenges. This situation makes it difficult for national HRC Alloy producers to regain their market position as they face increasing competition from imports rerouted from China to Taiwan, Japan, and Vietnam.

The domestic industry strongly feels the impact of this practice. PT Krakatau Steel (KS) has experienced significant net losses due to the influx of imported products sold at unreasonable prices (Kholfi & Primadista, 2021). Another national steel producer, PT Gunung Raja Paksi (GRP), has also faced a similar situation, reporting a significant decline in sales volume and value due to the flood of imported products sold at unfair prices (KADI, 2022).

On the other hand, the losses incurred by state revenue are also significant. In the case of Cold Rolled Coil (CRC) products alone, the potential loss, according to the Ministry of Trade, is estimated to range from US\$ 130.4 million to US\$ 151.3 million, with an import

volume of 173,900 tons. This figure excludes losses from other sectors similarly affected by such practices (Primadista & Runturambi, 2022). Furthermore, the systemic impact of these regulatory limitations has led to a decline in the overall effectiveness of anti-dumping policies. An even more concerning situation is the potential for a wave of layoffs and factory closures due to the inability of domestic industries to compete under unhealthy trade conditions (Pradnyawati, 2024).

It highlights the urgent need for comprehensive regulatory updates, including institutional strengthening and enhanced supervisory capacity, to safeguard national interests in international trade. Without significant regulatory improvements, circumvention practices will continue to harm the national economy and jeopardize the sustainability of the domestic industry. A strong stakeholder commitment is essential to establish a more effective legal framework to address this circumvention practice.

Numerous studies have explored the key challenges associated with circumvention practices in international trade. Primadista & Runturambi point out that Indonesia faces significant risks from trade circumvention, particularly when the country is used as a transit point or third-party location and as a target in order to bypass anti-dumping import duties (Primadista & Runturambi, 2022). Moreover, Crochet and Zhou discuss how broadening the definition of circumvention could impede legitimate industries (Crochet & Zhou, 2023). Sezgin then draws attention to the intricate nature of circumvention investigations, emphasizing the necessity for reforms in both the legal framework and investigative procedures to address issues that commonly arise during such inquiries (Sezgin, 2024). Meanwhile, Lihawa et al. note that Indonesia's lack of specific legal instruments to address circumvention makes it challenging to effectively respond to and combat these avoidance practices (Lihawa, Mustika, Kasim, & Kadir, 2024).

Based on the authors' review of the available literature, only a little literature specifically discusses the ideal regulation for Indonesia by combining a comparative analysis of the Indonesian-US legal system with the perspective of Islamic law. Therefore, the authors combine a comparative analysis of the Indonesian-US legal system with an Islamic perspective. The result is a conceptual framework that combines modern legal instruments with Islamic economic ethics and policy recommendations to strengthen anti-circumvention regulations in Indonesia. Thus, this research enriches academic discourse and offers holistic solutions considering Indonesia's unique socio-legal context.

A review of the available literature reveals that only a limited number of studies address what would constitute an ideal regulatory framework for Indonesia to address the issue of circumvention. In response to this gap, the authors seek to synthesize a comparative approach that integrates the Indonesian and U.S. legal systems with the perspective of Islamic law. This effort results in a conceptual model that merges contemporary legal mechanisms with the ethical principles of Islamic economics and is accompanied by policy recommendations to enhance Indonesia's anti-circumvention regulations. Consequently, this research contributes to the academic discourse and proposes comprehensive solutions that reflect Indonesia's distinctive socio-legal landscape.

## **B. Method**

The research method used in this study is normative or doctrinal legal research employing qualitative methods through collecting and analyzing various literature sources (literature study). Normative legal research is a method that focuses on the study

of written legal materials, such as laws and regulations, doctrines, court decisions, and relevant legal literature (Armia, 2022). In this context, the research utilizes secondary data sources, including primary legal materials (e.g., Law No. 10 of 1995 and its amendments, PP No. 34 of 2011 in Indonesia and 19 U.S. Code § 1677j and 19 C.F.R. § 351.226 in the United States), secondary legal materials (such as literature, journals, and previous research results), and tertiary legal materials such as legal dictionaries and encyclopedias. The author conducts an in-depth examination of data and information to understand the challenges in implementing anti-dumping import duties in Indonesia.

This study uses a comparative approach, namely comparing anti-circumvention regulations in Indonesia and the United States. This approach aims to identify the similarities and differences between the two countries' legal systems regarding legal substance, enforcement mechanisms, and the effectiveness of legal protection against anti-circumvention violations (Armia, 2022). In addition, this research also integrates the perspective of Islamic law by examining the principles of *maqashid sharia*, particularly those related to the protection of domestic industries.

### C. Result and Discussion

In the dynamics of international trade, there is a practice known as circumvention, which refers to a series of efforts to bypass various trade protection policies. When a country enacts policies to secure domestic industries, such as import duties and anti-dumping measures, business actors often seek loopholes to circumvent these policies.

Primadista and Runturambi define circumvention as an effort undertaken to circumvent provisions or to avoid restrictions on the number of incoming goods (quotas) imposed by a country (Primadista & Runturambi, 2022). A more comprehensive definition describes circumvention as a series of activities carried out by exporters to evade quota restrictions and various trade barriers. These activities include avoiding the imposition of import duties, either partially or entirely, by employing strategies such as altering the product's country of origin (Primadista & Runturambi, 2022). This practice represents a form of manipulation in international trade, executed through structured measures aimed at minimizing or entirely avoiding obligations arising from the application of trade protection instruments. Such policies foster fair competition and protect local producers from unfair practices in international markets.

In Indonesia, the practice of circumvention began to be detected in the 2010s. One of the earliest documented cases was when anti-dumping duties were imposed on steel products from China in 2010. After this policy was implemented, there was a surge in imports of similar products from third countries such as Singapore, which was strongly suspected of being a circumvention route to avoid anti-dumping import duties in Indonesia (Kholfi & Primadista, 2021).

Although circumvention practices began to be detected in Indonesia around 2010, the regulations related to anti-dumping in Indonesia (PP No. 34 of 2011) do not specifically regulate anti-circumvention. This is due to several interrelated factors. When PP No. 34 of 2011 was drafted, the government's main focus was building a basic trade protection framework per Indonesia's commitments under the WTO Anti-Dumping Agreement. The issue of circumvention itself was not considered urgent because cases were still relatively limited, and understanding of its forms and impacts among regulators and domestic business actors was minimal (Primadista & Runturambi, 2022). In addition, circumvention is a complex practice involving minor product modifications or export

diversion through third countries, thus creating challenges in terms of definition and law enforcement (Primadista & Runturambi, 2022). The WTO does not provide a standard definition of circumvention, so member countries must formulate rules carefully to avoid conflict with international provisions (Tomohiko, 2021).

At that time, KADI still prioritized handling dumping cases directly and did not have adequate resources or capacity to conduct more complex circumvention investigations. Legislative responses also tended to be slow because harmonizing with international practices required comparative studies and cross-sectoral consultations, which took a long time. On the other hand, pressure from the domestic industry to encourage the creation of specific regulations was also not optimal, as awareness of the impact of circumvention only increased after several years, when data showed a significant surge in imports of similar products from third countries following the imposition of anti-dumping tariffs. Thus, although circumvention practices had begun to be detected in 2010, specific regulations addressing them were not a priority in PP No. 34 of 2011.

Consequently, Indonesia's weak regulations regarding anti-circumvention measures make the country vulnerable to becoming a destination for products utilizing circumvention schemes from its trading partners (Primadista & Runturambi, 2022). To date, the Indonesian government has not established specific regulations addressing anti-circumvention (Kholfi & Primadista, 2021), leaving KADI, as the responsible authority, unable to conduct investigations or prevent such practices (Syahyu, Pandamdari, & Asror, 2022). The absence of these regulations creates loopholes that businesses can exploit for their benefit. This situation contrasts with the United States and other countries that have established comprehensive frameworks. For example, The United States has implemented 19 U.S. Code § 1677j - Prevention of circumvention of antidumping and countervailing duty orders and C.F.R. § 351.226, which provide clear guidelines for investigating and addressing circumvention practices.

In addition, economic motivation can also drive circumvention practices (Ufere & Gaskin, 2021). When a country implements anti-dumping import duties, exporters often seek ways to avoid these additional costs. It can be observed in the case of alleged circumvention practices in the sugar trade involving Thailand as the leading exporter. To evade the imposition of anti-dumping duties, Thailand is suspected of redirecting its sugar export routes through several Southeast Asian countries. These intermediary countries included Indonesia, Malaysia, Laos, Cambodia, and Myanmar before the sugar products finally entered the Vietnamese market (Lihawa, Mustika, Kasim, & Kadir, 2024). This strategy was employed as a response to trade barriers in the form of anti-dumping duties imposed on Thai sugar, with Indonesia serving as one of the transit countries in this export diversion chain.

In a study conducted at Lund University, Henrik Olsson identified four main categories of circumvention practices in international trade. The first category involves minor modifications, including changes to a product's composition or shape. The second category is assembly operations, which can be conducted in third or importing countries. The third category is transshipment, where goods are routed through countries that are not subject to anti-dumping measures. It differs from assembly operations, as transshipment does not involve any production process in third countries. The final category pertains to the alteration of customs documents, where business actors provide inaccurate information about the origin of goods, tariff classifications, or the value of

imported goods (Kholfi & Primadista, 2021). These four practices are commonly employed strategies to circumvent anti-dumping import duties obligations.

## **1. Comparison of Anti-circumvention Regulations in Indonesia and the United States**

Indonesia's legal framework for addressing circumvention practices still has significant limitations (Primadista & Runturambi, 2022). Law No. 10 of 1995 and its amendments, which serve as the primary basis for anti-dumping import duties regulation, do not yet include specific provisions regarding circumvention. Similarly, PP No. 34 of 2011 primarily focuses more on conventional dumping investigation procedures without giving adequate attention to the increasingly complex practices of circumvention or avoidance.

Likewise, KADI plays a central role in handling dumping cases. However, as outlined in Permendag No. 14 of 2024, KADI's authority in addressing circumvention remains unclear. The lack of specific regulation creates a gap in handling cases involving anti-dumping import duties avoidance practices. This legal loophole provides opportunities for business actors to engage in various forms of import duty avoidance, ultimately harming multiple parties, especially the domestic industry (KADI, 2023).

In contrast to Indonesia, the United States has established regulations to address the circumvention or avoidance of anti-dumping and countervailing duty (CVD) orders through two key provisions. The first regulation is outlined in 19 U.S. Code § 1677j - Prevention of circumvention of anti-dumping and countervailing duty orders. This law governs the prevention of circumvention related to anti-dumping and CVD orders and grants authority to the U.S. Department of Commerce (DOC) to address such practices. The second regulation is found in 19 C.F.R. § 351.226, a part of the Code of Federal Regulations, specifically addressing circumvention investigations. This provision empowers the Secretary of Commerce to enforce anti-dumping and CVD orders in a manner that prevents circumvention. Additionally, the law authorizes U.S. Customs and Border Protection (CBP) to collaborate with the DOC in enforcing these regulations, including collecting import duties and implementing anti-dumping orders effectively.

The DOC primarily focuses on investigating and implementing anti-dumping policies. Additionally, the DOC examines whether exporters or producers engage in circumvention practices to evade the anti-dumping duties imposed. Meanwhile, the CBP is responsible for enforcing measures in the field, particularly addressing attempts to avoid import duties by manipulating product origin or minor product modifications. CBP plays a critical role in law enforcement at the border, ensuring that imported products comply with applicable regulations. Typical forms of circumvention in the United States include the following (U.S. Congress. (1930). 19 U.S.C. § 1677j):

- a. The assembly or completion of a product in the United States or a third country, where the product is shipped as a component to be assembled or finished in the United States or another country before being resold to the United States market.
- b. Minor modifications to a product, made specifically to avoid the imposition of anti-dumping duties, are also classified as circumvention in the United States.
- c. Later-developed merchandise refers to new products developed after the implementation of anti-dumping duties, which can also be considered circumvention if they meet specific criteria. In this context, "later-developed merchandise" includes products that may have been newly developed or modified

after an anti-dumping or CVD order was enforced. This provision ensures that new or modified products are not used to evade pre-established duties.

The circumvention investigation process in the United States is carried out through a legal framework involving DOC and CBP. There are two ways to initiate an investigation: first, through self-initiation, and second, based on a request from interested parties. If the U.S. Secretary of Commerce determines sufficient information to warrant a circumvention investigation, they can independently initiate it (U.S. Congress. (2021). 19 C.F.R. § 351.226b). This process is known as self-initiation. If the Secretary has reason to believe that the elements required to determine the existence of circumvention align with existing regulations, they may initiate such an investigation.

If the initiation of the investigation comes from an external source, the process begins with submitting an investigation request by interested parties (U.S. Congress. (2021). 19 C.F.R. § 351.226c). Interested parties may submit a circumvention investigation request to the DOC, which includes supporting information for the circumvention allegations. This information typically includes detailed product descriptions, physical characteristics, import and export data, and trade patterns. Upon receiving the request, the DOC will review it to ensure completeness. If deficiencies are identified, the request may be rejected with a written explanation, allowing the applicant to resubmit after addressing the issues (U.S. Congress. (2021). 19 C.F.R. § 351.226d.1.i). If the request satisfies all requirements, the DOC will initiate a circumvention investigation (U.S. Congress. (2021). 19 C.F.R. § 351.226d.1.iii).

The investigation process includes an analysis of trade patterns, any affiliations between the manufacturer or exporter and the party that completes or assembles the product in a third country, and any import increase following the initiation of an anti-dumping investigation. Once the investigation is concluded, the DOC will issue a final determination on whether circumvention has occurred. If circumvention is confirmed, the products involved will be included within the anti-dumping order or CVD scope. This determination is published in the Federal Register and communicated to all relevant parties (U.S. Congress. (2021). 19 C.F.R. § 351.226e,g).

Suppose the final investigation determines that circumvention has occurred, the Secretary will instruct the CBP to continue the suspension of liquidation of previously suspended product entries and apply the applicable cash deposit rate until the appropriate liquidation instructions are issued (U.S. Congress. (2021). 19 C.F.R. § 351.226l.3.i). Additionally, the CBP will be required to initiate a suspension of liquidation and request a cash deposit at the applicable rate for any product entries that have not yet been liquidated or suspended. It applies to products that enter or are withdrawn from the warehouse for consumption on or after the date of publication of the notice initiating the investigation, up until the issuance of liquidation instructions (U.S. Congress. (2021). 19 C.F.R. § 351.226l.3.ii).

By continuing or initiating a suspension of liquidation, the United States government ensures that products involved in circumvention cannot evade anti-dumping or CVD tariffs during the investigation. This action also enables the proper application of duties on products proven to be involved in circumvention, thereby protecting the domestic industry from the adverse effects of unfair trade practices. Through these measures, the United States aims to maintain the effectiveness of its trade policies in addressing

circumvention practices and safeguarding domestic industries from their negative impacts.

**Table 1:** Table Headings

Conditions	Indonesia	United States
Regulation	<ol style="list-style-type: none"> <li>1. Law No. 10 of 1995</li> <li>2. Law No. 17 of 2006</li> <li>3. PP No. 34 of 2011</li> </ol>	<ol style="list-style-type: none"> <li>1. 19 U.S. Code § 1677j</li> <li>2. CFR § 351.226</li> </ol>
Circumvention Definitions	none	There is no specific definition, but it describes the various forms of circumvention.
Circumvention Form	none	<ol style="list-style-type: none"> <li>1. Assembly or completion of products in the United States or third countries;</li> <li>2. Minor modifications to the product;</li> <li>3. Later-developed merchandise.</li> </ol>
Initiation of Investigation	none	<ol style="list-style-type: none"> <li>1. Own initiation (<i>Secretary of Commerce</i>);</li> <li>2. Requests from interested parties.</li> </ol>
Criteria for Submission of Investigation	none	<p>The investigation request must include information supporting <i>circumvention allegations</i> such as:</p> <ol style="list-style-type: none"> <li>1. detailed description of the product;</li> <li>2. physical characteristics;</li> <li>3. import and export data; and</li> <li>4. related trading patterns.</li> </ol>
Investigation Stages	none	<ol style="list-style-type: none"> <li>1. Submission of requests;</li> <li>2. Eligibility assessment;</li> <li>3. Initiation of investigation;</li> <li>4. Examination of evidence;</li> <li>5. Provisional determination; and</li> <li>6. Final determination.</li> </ol>
penalty	none	<ol style="list-style-type: none"> <li>1. Include products within the scope of import duty obligations;</li> <li>2. Cessation of the release of goods;</li> <li>3. Imposition of import duty deposit/guarantee;</li> <li>4. Manufacturer/exporter-specific investigation.</li> </ol>
Duration of Investigation	none	<ol style="list-style-type: none"> <li>1. Preliminary investigation: Maximum 150 days;</li> <li>2. Final investigation: Maximum 300 days. Can be extended under certain conditions</li> </ol>

Data Source: Law No. 10 of 1995, Law No. 17 of 2006, PP No. 34 of 2011, 19 U.S. Code, C.F.R. § 351.226

A comparison of regulations between Indonesia and the United States, as shown in Table 1 above, reveals a significant gap in their legal and regulatory approaches. Indonesia currently has a limited legal framework for addressing circumvention practices. Existing regulations, such as Law No. 10 of 1995, Law No. 17 of 2006, and PP No. 34 of 2011, do not provide a comprehensive mechanism for detecting and addressing circumvention practices. This is in line with the findings of Primadista and Runturambi, who stated that Indonesia's anti-circumvention regulations are still weak, leaving legal loopholes still wide open and prone to being used by international trade actors (Primadista & Runturambi, 2022). The case of anti-dumping duty evasion by China through Thailand (KADI, 2022) demonstrates how regulatory loopholes are exploited for circumvention practices. Primadista and Runturambi also identified that the weak anti-circumvention legal instruments in Indonesia cause potential losses in state revenue, losses to domestic companies, and the imposition of Safeguard Duty from Indonesia's trading partner countries (Primadista & Runturambi, 2022).

In contrast, the United States has already established a more structured and effective system. The fundamental difference lies in the depth of the regulation. The United States defines circumvention and identifies three primary forms of the practice: product assembly in the Americas or third countries, minor modification to products, and development of new products as strategies to avoid import duty. The investigation mechanism in the United States is also highly detailed. The process begins either through initiation by the DOC (self-initiation) or based on a submission from interested parties. Each investigation requires comprehensive documentation, including product descriptions, physical characteristics, and trade patterns. The stages of the investigation are systematic, starting with submission, feasibility assessment, initiation of the investigation, examination of evidence, and concluding with a final determination. The time limits for investigations in the United States are also strictly regulated. Preliminary investigations are up to 150 days, while final investigations can last up to 300 days, with the possibility of extension under certain conditions.

Meanwhile, the situation in Indonesia is markedly different. There is no specific mechanism for detecting circumvention, which creates a significant gap regarding the protection of domestic industries. As a result, practices such as product transfer can occur without adequate legal consequences. Therefore, establishing regulations to address circumvention in Indonesia is crucial, as this legal vacuum could cause economic losses, weaken the competitiveness of domestic industries, and enable unfair trade practices. Transforming the legal framework is not merely an option but a necessity in addressing the complexities of global trade. Indonesia risks falling behind in safeguarding its national economic interests without proactive measures.

## **2. Circumvention in the Perspective of Islamic Law**

Based on the facts outlined earlier, circumvention or avoidance of anti-dumping import duties in international trade contradicts Islam's principles of justice, honesty, and property protection. This practice harms the local economy and violates Islamic trade ethics, emphasizing transaction fairness (Nuraeni & Nada, 2023). This principle is reflected in the provisions of the Qur'an in Surah An-Nisa (29), which explicitly emphasizes the importance of justice in all business transactions. The verse highlights that Muslims should not take or acquire the wealth of others improperly but must do so through consensual trade. It implies that every transaction must be conducted honestly

and transparently, without manipulation or fraud. The circumvention of anti-dumping import duties can be considered unjust because it disregards regulations designed to protect local business actors from unfair trade practices. Such evasion contradicts the principles of Islamic justice, as it undermines rules intended to create balance and protection for all parties involved.

Circumvention practices intended to evade anti-dumping import duties can be considered actions that harm other parties, especially domestic industries protected by anti-dumping policies (Primadista & Runturambi, 2022). In verse 25 of the chapter (*surah*) *Al-Hadid*, Allah SWT instructs that every buying and selling activity must be conducted honestly and fairly, without any trace of fraud. Harmful practices, such as *riba* (usury) and fraud, are prohibited in Islam because they lead to injustice in the distribution of wealth. It serves as a reminder that running a business should not solely focus on pursuing personal profits but must also contribute to realizing justice and shared prosperity within the community (Munandar & Ridwan, 2022).

One of the principles of Islamic law applied in trade is the principle of *maqashid sharia*. This principle acts as a moral guideline for the community in conducting trade, including international trade. In the context of dumping and circumvention, such practices contradict several principles of *maqashid sharia*, namely the protection of property (*Hifz al-Mal*), the protection of life (*Hifz al-Nafs*), and the protection of intellect (*Hifz al-'Aql*) (Ulum, 2025). Circumvention involves an attempt to circumvent anti-dumping rules through methods such as manipulating the origin of goods or exploiting legal loopholes. This practice exacerbates the negative impact of dumping on local producers by creating economic injustice and destabilizing markets. Moreover, circumvention violates the principles of honesty and transparency in trade, which are essential values in Islamic law.

Wahbah Zuhaili is of the view that the fundamental purpose of Islamic *sharia* is not only to serve individual interests but also to achieve public welfare, thereby contributing to the perfection of human life (Farikhin, Ridwan, & Mulyasari, 2022). Similarly, Al-Syatibi emphasized that public welfare (*maslahah*) is a fundamental principle in determining the legal status of *muamalah* activities (Rois & Salahuddin, 2021). Activities that bring significant benefits are considered in line with *sharia*, while those that cause harm are prohibited. In other words, this principle underscores that *muamalah* activities must prioritize public welfare and avoid detriment, embodying the concept of rejecting *mafsadat* (harm) and promoting *maslahah* (public welfare) as central tenets of Islamic law.

Based on the views of Wahbah Zuhaili and Al-Syatibi, the practice of circumvention contradicts these principles because, as previously described, it causes losses to domestic industries and the state, creates unfairness in business competition, and disrupts the overall welfare of the community. According to Imam Al-Juwaini, the state must protect society against economic injustice (Arif & Al Amin, 2021). The state must ensure fairness in trade, including improving regulations such as PP No. 34 of 2011 by incorporating anti-circumvention provisions. It would provide legal certainty and strengthen protection for local industries.

In *fiqh*, to protect the public interest, the government has the right to make policies (*Siyasah Syar'iyah*) (Maimun & Hakim, 2023), including the application of anti-circumvention. Implementing Islamic principles such as justice (*'adl*) and honesty (*sidq*) in international trade can be achieved, among other ways, by strengthening regulations

and supervision to prevent circumvention practices. According to Imam Al-Juwaini's view, the state must actively protect society from economic injustice (Arif & Al Amin, 2021) by improving regulations, such as adding anti-circumvention provisions in trade regulations. One concrete example is its implementation of a strict origin verification system of goods, supply chain audits, and international cooperation in data exchange and law enforcement to ensure that imported goods come from registered countries and are not routed through third countries to avoid anti-dumping import duties. This practice aligns with the principle of transparency (*shafafiyyah*) in Islam, which requires all parties to provide clear and correct information regarding the products being traded (Merdiana & Sukti, 2025).

In addition, education and the internalization of Islamic business ethics values among business actors are also important so that they understand that profits gained by violating rules, such as circumvention, are not only detrimental to other parties but also contrary to the *maqashid of sharia*, especially the protection of property (*hifz al-mal*) and the public welfare (*maslahah*). For example, a company that wants to import goods must ensure that all documents and the origin of the goods comply with the provisions and report honestly to the customs authorities. Suppose an attempt is found to falsify the origin of the goods to avoid anti-dumping import duties. In that case, the company must be given strict sanctions to enforce the principles of justice and protect the local industry. Thus, applying Islamic trade principles in international trade policies and practices can strengthen circumvention prevention efforts and create a fair, transparent, and benefit-oriented trading system, thereby maintaining national economic trust and stability.

One example of an Islamic country implementing anti-circumvention regulations is Saudi Arabia. Saudi Arabia explicitly makes Islamic sharia the main source of its national legislation (Alharthi, 2023), which is also reflected in its trade policies and domestic industrial protection. Based on the latest regulations issued by the General Authority for Foreign Trade (GAFT), Saudi Arabia has a legal system that details efforts to circumvent trade remedies policies, including anti-dumping, anti-subsidies, and safeguard measures. These regulations grant GAFT the power to conduct investigations, reviews, and make decisions regarding the application, amendment, or termination of trade remedies based on the results of investigations (GAFT, 2024).

In detail, anti-circumvention regulations in Saudi Arabia set out the mechanisms for receiving complaints, initiating investigations, and conducting reviews. During the investigation, the authorities are authorized to collect evidence, verify data, and request clarification from related parties, including domestic business actors and importers. This regulation also clearly defines the rights and obligations of the parties, including protecting the public interest and the confidentiality of information during the investigation process. Suppose circumvention is found through a change in the country of origin of the goods or minor modifications of the product to avoid anti-dumping duties. In that case, the authorities may extend the scope of trade remedies to include the product, the exporter, or the third country involved in the evasion practice. In addition, this regulation provides for appeal and dispute resolution mechanisms in the competent courts. It ensures no overlap with regional trade laws such as GCC Common Law (GAFT, 2024).

The relationship between these regulations and Sharia principles is reflected in the emphasis on justice, protection of property rights, and public welfare (*maslahah*), which are at the core of the *maqashid of sharia*. Thus, anti-circumvention regulations in Saudi

Arabia serve not only as a technical instrument of trade but also as an implementation of the principles of Islamic law in maintaining justice and protecting the national economy from adverse trade practices.

### 3. The Appropriate Anti-Circumvention Regulation Model in Indonesia

The description above indicates that Indonesia lacks regulations that effectively address circumvention practices. This regulatory gap makes Indonesia highly vulnerable to becoming a destination country for products entering through circumvention schemes (Primadista & Runturambi, 2022). Therefore, the government must amend PP No. 34 of 2011 or draft a specific regulation to handle anti-circumvention cases.

Regulations implemented by the United States can serve as a reference in formulating appropriate policies. However, it is essential to adapt these regulations to align with the values upheld within Indonesian society. One of these values is the principles of Islamic teachings, as most of Indonesia's population is Muslim. Based on the regulations applied in the United States and the principles of Islamic values discussed above, the following key points may serve as references for addressing circumvention practices in Indonesia:

#### a. Purpose

For the regulatory model to be developed, lawmakers must establish a clear and well-defined goal. Clarity of purpose ensures that every law created has a specific objective and can be implemented effectively and efficiently (Asdiqi, 2024). The purpose of the regulation should reflect the collective will and needs of the community as a whole (Sulthon, 2023). It aligns with the principle of public welfare (*mashlahah*) in Islamic law, which prioritizes the common good. When drafting a regulation, it is essential to consider its broader social impact and long-term benefits for society. This principle should serve as the primary foundation in the planning process for implementing regulations.

#### b. Definition and Identification of Circumvention Forms

The government needs to clearly define circumvention to avoid differences in interpretation during its application (Frontier Economics, 2022). A precise and well-crafted definition will enable authorities to identify and implement effective measures against circumvention practices. The element of intent or deliberate action by the perpetrator should also be included as a critical component, considering that circumvention often involves intentional efforts to evade certain obligations (Sezgin, 2024).

Furthermore, the proposed regulations must include comprehensive and detailed provisions addressing various aspects of circumvention observed in practice. These provisions should account for a comprehensive scope of avoidance techniques and methods, such as product modification and diversion through third countries. For instance, regarding product modification, existing regulations in the United States lack detailed guidelines on thresholds for added value. Therefore, Indonesia needs to establish specific criteria or limits (thresholds) for the level of added value introduced during the assembly process. For example, if a company from country A that is subject to anti-dumping import duty then assembles its products in country B with components that are primarily (more than 60%) still from country A, and this assembly is carried out to avoid anti-dumping import duty, such practices can be

classified as circumvention. By including clear definitions and detailed provisions, Indonesia can create robust regulations to ensure effective measures against circumvention practices.

A clear and objective definition of circumvention, establishing a threshold of 60% of components originating from countries affected by anti-dumping duties, is in line with the principle of justice (*al-'adl*) from the perspective of Islamic law. Clear criteria help prevent subjectivity in law enforcement and reflect the concept of intentionality in Islamic law, which emphasizes the perpetrator's intention as the basis for accountability (Rianda, Anggraini, Fitri, & Wismanto, 2024).

### c. Monitoring Mechanism

The mechanism for monitoring circumvention practices in Indonesia requires a comprehensive and systematic approach. The experiences of various countries, particularly the United States, demonstrate that the success of circumvention surveillance depends on an integrated system and strong coordination among agencies. Consequently, the role of KADI as a supervisory institution must be strengthened with broader authority to include actions against circumvention practices. KADI must be empowered to conduct investigations independently and efficiently, with a precise time limit for completing such investigations. The government must establish a robust early detection system to support this mandate. The integration of international trade data, such as One Trade Data ([satudata.kemendag.go.id](http://satudata.kemendag.go.id)) managed by the Ministry of Trade, can be utilized as a critical tool for identifying anomalies in trade patterns. This system should be capable of issuing early warnings to KADI or other relevant authorities whenever significant changes in trading volume or patterns are detected, enabling timely and appropriate action.

In addition, supervision can also be enhanced by involving external parties or the community. Within this mechanism, the community is not merely the object of regulation but also an active subject that plays a role in oversight. To facilitate this role, the government needs to develop accessible reporting facilities to the public, such as online portals, mobile applications, and conventional complaint channels. The diversity of these facilities is essential to ensure that all levels of society can participate in monitoring circumvention practices.

A critical aspect of this public complaint system is the guarantee of security for whistleblowers. Similar to the protection provided to whistleblowers in criminal cases (Law Number 31 of 2014, 2014, p. (5.(1))), the government must ensure the confidentiality of their identities and provide legal protection for whistleblowers acting in good faith. This mechanism is crucial for building public trust and encouraging active participation in supervision efforts.

In Islamic law, the protection of witnesses and whistleblowers is grounded in two main principles: justice (*al-'adl*) and the protection of life and property (*hifz al-nafs wa al-mal*). These principles are integral to the objectives of Islamic *sharia* (*maqashid al-shariah*), which mandate security guarantees for all parties involved in the law enforcement process, protecting them from threats and intimidation (Hasbi & Lubis, 2024). With this comprehensive approach, the scope of supervision will be broader

while simultaneously fostering collective awareness about preventing circumvention practices in international trade.

#### **d. Investigation Procedure**

Circumvention investigations can be initiated through two main channels. First, they may be commenced by the authorities themselves when there is sufficient information to suspect the occurrence of circumvention practices. Second, investigations can be triggered based on requests from interested parties as long as sufficient supporting evidence is submitted. Once initiated, the competent authority must conduct a preliminary examination to determine whether there is enough evidence to proceed with a full investigation. If the evidence is deemed insufficient, the process will be terminated. However, if the evidence is sufficient, the process will advance to the investigation stage.

The competent authorities must collect evidence in greater depth at the investigation stage. It includes examining documents and trade data and conducting field verification of the companies allegedly involved to ensure consistency between the submitted documents and actual conditions. The results of these steps are then analyzed to identify anomalies or suspicious changes in trade practices, such as a sudden surge in exports from specific countries, unusual shifts in distribution channels, or the emergence of new intermediaries in the trade chain. Authorities must also assess whether the production processes involved constitute substantial transformation or merely minor modifications to circumvent anti-dumping import duties. All findings from this evidence-gathering process are then compiled into an investigation report, which serves as the basis for determining whether circumvention practices have occurred and what actions should be taken in response.

From the perspective of Islamic law, particularly *fiqh muamalah*, this investigative process reflects several fundamental principles. The principle of justice (*al-'adl*) is paramount, requiring every stage of examination and evidence collection to be conducted objectively, transparently, and impartially. It aligns with the Islamic legal demand for fairness, equal treatment, and protection of the rights of all parties involved in economic transactions (Rusdan, 2022). Furthermore, the principle of clarity and transparency-intended to avoid uncertainty (*gharar*)-is emphasized, as all data, documents, and information gathered during the investigation must be clear, valid, and verifiable to prevent ambiguity or harm. The mechanism allowing interested parties to request investigations, provided they submit sufficient evidence, also reflects the principle of mutual consent (*ridha*) and avoiding coercion or manipulation in economic dealings.

Additionally, the overarching principle of public welfare (*maslahah*) guides the entire process, ensuring that regulations and law enforcement against circumvention genuinely protect national economic interests and the broader community while preventing fraudulent practices that could undermine a just market order. Thus, the investigation process should be grounded in honesty, transparency, and justice, as mandated in contemporary *fiqh muamalah*, to foster an ethical, healthy, and sharia-compliant trading system.

#### e. Imposition of Sanctions

The imposition of sanctions is based on the findings of the investigation process that confirm the existence of circumvention practices. It is important to uphold the principle of justice (*al-'adl*), ensuring that it is the foundation for determining and implementing sanctions. Sanctions in the form of duties can be justified as a means of state protection for domestic industry against unfair trade practices and as an effort to recover losses for domestic industry. From the perspective of *maqashid sharia*, this includes property protection (*hifz al-mal*) as a basic necessity (*dharuriyah*).

The primary sanction involves extending the application of anti-dumping import duties to products proven to be involved in circumvention. This extension includes products modified or assembled in a third country, with a duty rate equivalent to the original products subject to initial anti-dumping measures. Sanctions may also be applied retroactively if a significant import surge is detected during the investigation, indicating large-scale circumvention efforts. In addition to enforcing anti-dumping import duties, supplementary sanctions may include the temporary suspension of import permits and special monitoring of subsequent imports. Each sanction must be officially announced, detailing the basis for its imposition, the type and extent of sanctions, the duration of enforcement, and the procedure for filing objections or appeals. Authorities must also periodically evaluate the sanctions to assess their effectiveness, impact on legitimate trade, and whether adjustment or termination is necessary. The sanctions framework should create a strong deterrent effect while ensuring fairness for all parties involved. Its implementation must be consistent and transparent to ensure the prevention and resolution of circumvention practices in international trade.

The successful implementation of anti-circumvention policies depends on two key factors that complement and strengthen each other. First, a strong commitment from the government (Crochet & Zhou, 2023) should be demonstrated through sustained political support from the highest level of leadership down to implementers on the ground. This commitment must be translated into consistent leadership, the mobilization of support from various stakeholders, and the provision of sufficient resources to ensure effective policy implementation. Second, the availability of a robust support system is essential. It includes an integrated monitoring and evaluation system, reliable information technology infrastructure, and effective inter-agency coordination (Primadista & Runturambi, 2022). Together, these elements form the foundation for effectively implementing anti-circumvention measures.

Periodic evaluation and continuous improvement ensure the system's sustained effectiveness. This process involves regular assessments of policy effectiveness, strategic adjustments based on evaluation findings, and continuous efforts to strengthen institutional capacity. Lessons learned from implementation experiences serve as valuable inputs for refining the system, ensuring that anti-circumvention policies remain relevant and effective in addressing increasingly complex practices.

#### D. Conclusion

Based on the discussions presented in this study, Indonesia still faces significant challenges in addressing circumvention practices. The current legal framework remains highly limited, as demonstrated by the absence of specific regulations defining

circumvention, its various forms, and mechanisms for handling such practices. This regulatory gap has resulted in substantial economic losses, factory closures, and job layoffs, as illustrated by high-profile cases in the steel industry and other manufacturing sectors. In contrast, the United States has made significant progress with comprehensive regulations, as outlined in 19 U.S. Code § 1677j and 19 C.F.R. § 351.226. These regulations provide detailed descriptions of the forms of circumvention, investigative mechanisms, and enforcement measures.

From the perspective of Islamic law, circumvention is fundamentally incompatible with the principles of justice, honesty, and public welfare (*maslahah*), as it undermines fair competition and harms the broader community. The study emphasizes that effective anti-circumvention regulations should draw on international best practices and integrate Islamic economic ethics to ensure that trade policies align with Indonesia's socio-legal context and values.

Therefore, Indonesia needs anti-circumvention regulations that encompass at least five key components. First, clear objectives and a comprehensive definition of circumvention must be established. Second, the supervision mechanism should be integrated, involving the Indonesian Anti-Dumping Commission (KADI) collaboration and active community participation. Third, investigation procedures should be systematically designed, allowing for both self-initiation by authorities and complaints from the public. Fourth, the sanctioning system must be practical and capable of creating a strong deterrent effect for violators. Finally, a robust support system, including technological infrastructure and strong inter-institutional coordination, is essential to ensure the successful implementation of these regulations.

Several recommendations for further research on anti-circumvention can be proposed. First, an in-depth comparison between Indonesia's anti-circumvention regulations and those of countries that have successfully implemented such policies, such as the European Union and Australia, would provide valuable insights into best practices that Indonesia could adopt. Research focusing on enhancing technologies to detect and prevent circumvention practices is also highly relevant. It could include collaboration with relevant institutions to design a more effective monitoring system in international trade.

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