



**Koalisi Masyarakat Sipil  
untuk Keadilan Ekonomi**

**OPEN LETTER  
FROM THE INDONESIAN PEOPLE TO  
PRESIDENT JOKO WIDODO**

**CRITICIZING  
THE INDONESIAN - UE CEPA  
NEGOTIATIONS**





Monday, July 22, 2024

**OPEN LETTER FROM THE INDONESIAN PEOPLE  
TO PRESIDENT JOKO WIDODO**

We, the Indonesian civil society network consisting of farmer organizations, fisherfolks, women, health, human rights activists, environmental activists, workers and students, urge President Joko Widodo to stop the Indonesia - European Union Comprehensive Economic Partnership Agreement (I-EU CEPA) negotiations.

This demand is based on the following things:

First, the negotiation process reflects a crisis of democracy and a violation of the constitution because it takes place behind closed doors, without involving the public and no documents can be accessed even though the impact of the I-EU will be affecting Indonesian people in every aspect of life. Up to the 19th negotiation round, on July 1-5 2024, no information was conveyed to the public, especially in regards with the substance being negotiated. In fact, the Constitution requires the House of Representatives (DPR) of Indonesia to carry out an assessment of the economic, social and human rights impacts of international agreements as follows [Constitutional Court Decision Number 13/PUU-XVI/2018 concerning Law no. 24 of 2000](#).

At least 10 UN Special Rapporteurs stated that all ongoing trade and investment agreement negotiations, both bilateral and multilateral, must be carried out transparently through consultation and participation from all interested parties. Not only that, all draft treaty texts must be made public so that Parliament members and civil society have sufficient time to review and consider the pros and cons democratically. This is due to the potential [negative impact of free trade agreements](#) for the environment, socio-economic conditions and human rights.

Second, President Joko Widodo's term will end in less than three months and be replaced by a new government as a result of the 2024 General Election. The transitional government should not make major decisions, including signing international agreements that will create a burden for the next government. In short, time does not allow for the Parliament members to review and approve or disapprove ratification of the treaty. This is practiced in several countries, such as India and even the European Union itself.

Third, we suspect that there is a conspiracy that is being carried out secretly and will harm the Indonesian people, so this information was deliberately not conveyed. If the agreement to be agreed is in the interests of the people, then the negotiation process should be carried out openly.

**[Medicines are increasingly expensive and difficult to access](#)**

The high price of medicines is not solely due to tax, distribution or governance issues. But

also because of the patent monopoly on medicines by big pharmaceutical corporations. The European Union's proposal in the Intellectual Property Rights (IPR) chapter in I-EU CEPA proposes clauses regarding the extension of the patent protection period, data and market exclusivity, as well as restrictions on parallel imports. Medicines protected by patents are very expensive, while generic versions of the same medicines in other countries cannot enter Indonesia because the originator version is still patented. Through I-EU CEPA, the European Union is fighting for corporate interests to monopolize access to medicines, especially for diseases such as HIV, TB and cancer, which will make things difficult for patient groups while increasing the burden on the state budget.

### **Big Tech to monopolize data and information, while the state is powerless**

When negotiating international agreements, the European Union uses a colonialist strategy of hunting down and extracting data from Global South countries in order to place its own corporations in new global cybernetic value chains. For the sake of Big Tech, the European Union is trying to prevent monopoly prohibitions on control of public and personal data and information, nor are there restrictions and controls through supervision of data collecting and processing companies to the point of generating great power for BigTech. Protection source code enables data management algorithms to use personal data and information unlawfully. This will threaten people's rights to privacy, disrupt public services, government accountability, and even the quality of democracy. Especially in recent times when developments of Artificial Intelligence extends to employment, education and various sectors of daily life. The cyber attack tragedy of public data has shown the capacity of the Indonesian government today *vis-a-vis* Big Tech.

### **Investment protection is above protection for people's rights**

International agreements are now not just export and import regulations, but also a legal framework that benefits investors and large corporations. One of them is maximum protection for investment through the dispute resolution mechanism in the I-EU CEPA agreement. The mechanism known as [Investment Court System \(ICS\)](#) which is claimed to be a form of 'novelty' but basically has the same principle as investor-state dispute settlement (ISDS), that is to protect investment over people's rights. This allows investors from the European Union to sue the Indonesian government in an international tribunal if they believe that government policies will/have harmed their investments. This system prioritizes corporate interests over national sovereignty and democratic decision-making processes. So far, ISDS lawsuits have become an obstacle for the government to implement environmental protection, public health or social welfare policies because they can be sued by foreign companies whose aim is to maximize profits. In addition, ISDS courts also operate with non-transparent procedures outside national legal systems, which tends to favor multinational corporations that have greater resources and legal expertise.

### **The pretext of the energy transition as a trade war trap results in increasingly severe environmental damage**

The green energy transition has increased demand for critical minerals worldwide while generating trade wars to secure supplies of critical minerals. The I-EU CEPA negotiations is a strategy for the European Union to push the agenda Green New Deal. The EU's interest in

gaining access to Indonesian minerals through the Energy and Raw Minerals Chapter in I-EU CEPA will only be deepening and expanding the exploitation of extractive resources, exacerbating environmental damage and increasing the number of human rights violations experienced by affected communities around industrial areas. In addition, the provisions on essential minerals and energy will be used by the EU to deter raw mineral export restrictions implemented by Indonesia.

### **Threat to food sovereignty due to seed monopoly by corporations**

The European Union used I-EU CEPA to force Indonesia to ratify membership of UPOV 1991. If Indonesia joins UPOV 1991, then farmers' sovereignty in storing, exchanging and distributing seeds will be violated. All such knowledge and practices must obtain permission from the competent "authority". UPOV 1991 is not only threatens the traditional seed system that has been owned for generations, farmers are even vulnerable to being criminalized because they are accused of counterfeit breeding techniques, stealing parent seeds, distributing illegal seeds, and others.

[UPOV 1991](#) will hinder the implementation of the Ratification of Law no. 4 of 2006 concerning the Agreement Concerning Plant Genetic Resources for Food and Agriculture (ITPGRFA), especially Article 9 which protects and respects the rights of farmers. Furthermore, UPOV 1991 has clearly contradicted the UN General Assembly regarding UNDROP Resolution. Article 19 of the UNDROP Declaration clearly and firmly recognizes eight fundamental rights of farmers and people working in rural areas over their agriculture. Starting from the right to maintain, control, protect and develop their own seeds and traditional knowledge, and encourage the state to protect the interests of farmers which are included in national policies. If farmers, who in fact are food providers, are deprived of their sovereignty over seeds, then not only will farmers become poor but the danger of starvation will also threaten us.

### **Greenwashing under the pretext of sustainable development**

Unlike other trade agreements, the I-EU CEPA seeks to circumvent potential impacts as previously explained through the Trade and Sustainable Development Chapter. In this chapter EU tries to show that it is aware and concerned about various development issues, especially regarding employment and the environment and climate crisis. This chapter is a form of greenwashing while other chapters such as IP and investment protection mechanisms are actually more legally binding on the state. The application of environmental protection principles is also often carried out with double standards – on the one hand the EU condemns deforestation due to palm oil plantations, but on the other hand they are very aggressive in accessing raw minerals that are extracted by destroying nature. The EU also feels that the TSD chapter is sufficient to raise the standard of protection for workers. It is clear that this is just lip service if you remember that the Indonesian government has implemented the Omnibus Law on Job Creation which lowers the standards for fulfilling and protecting employment rights to a sharp decline. [Gender mainstreaming](#) in EU trade policy is carried out by simply trying to attract women's representation in free trade, instead of looking at the multiple impacts on women in various sectors and there is no visible commitment as long as the I-EU CEPA is being negotiated. It seems that the Indonesian government does not see gender as an important aspect to fight for, even though women have a big



contribution and should not be left out in the commitment to sustainable development and CEDAW which has been ratified by the Indonesian government.

Trade agreements are often claimed by the Government as an effort to improve the Indonesian economy so that it can improve the welfare of the people. However, the potential problems above actually show negative impacts that will worsen people's suffering. Once again, if the Indonesia-EU CEPA was signed for the welfare of the people, why should the process be covered up?

Signatory Organizations:

1. AMAR Law Firm & Public Interest Law Office
2. Bina Desa
3. Ekologi Maritim Indonesia
4. Federasi Serikat Pekerja Pariwisata Reformasi
5. FIAN Indonesia
6. FIELD Indonesia
7. FSP FARKES REFORMASI
8. Gemapetani
9. IHCS
10. Indonesia AIDS Coalition
11. Indonesia for Global Justice
12. International NGO Forum on Indonesian Development (INFID)
13. JPIC OFM Indonesia
14. Kesatuan Perjuangan Rakyat
15. KIBAR Kediri
16. Koalisi Buruh Sawit
17. Koalisi Rakyat untuk Hak Atas Air
18. Koalisi Rakyat untuk Keadilan Perikanan (KIARA)
19. Koalisi Rakyat untuk Kedaulatan Pangan (KRKP)
20. Koperasi Indonesia Baru
21. Program Magister Lingkungan dan Perkotaan, Soegijapranata Catholic University
22. Puanifesto
23. Rhizoma Indonesia
24. Sahita Institute
25. Sanggar Puan
26. Sawit Watch
27. Serikat Pekerja PT PLN (Persero) Indonesia
28. Serikat Petani Indonesia
29. Solidaritas Perempuan
30. Solidaritas Perempuan Palu
31. The Institute for Ecosoc Rights
32. Trend Asia
33. Wahana Lingkungan Hidup Indonesia (WALHI)
34. Yayasan ALIFA

35. Yayasan Hipertensi Paru Indonesia (YHPI)
36. Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI)
37. Yayasan Tananua Flores

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10. Fajar Reza
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**DIGITAL ISSUES**

## Critical Notes on Digital Trade Chapter in Indonesia-EU CEPA

### The Impacts Data Colonization in Digital Trade Chapter to the people

- Developing countries in the Global South, especially Indonesia, are still lagging behind in data protection and digital infrastructure. This situation creates a big opportunity for the Big Tech companies that seek profit from data extraction. Data extraction and control become tools for dominating information, knowledge, markets, and hegemony. This impact is not only economic but also extends to the life of society and the broad needs of the country. In the end, it perpetuates the Global South countries only as markets and supporters of the dominance of large technology companies that lead to global inequality.
- Trade agreements treat data as a commodity that is crucial and affects people's lives. Data protection is left to each developing country and it creates risks from the weakness of regulations. The digital trade chapter in Indonesia-EU CEPA (Comprehensive Economic Partnership Agreement) provides broad and unlimited opportunities for cross-border data flows and gives big techs enjoy more freedom and protection. This freedom is reinforced by restrictions on the requirement to store data locally, process data locally, and protect the software (source code/algorithm) they use.
- The Indonesia-EU CEPA has several problematic clauses that give broad impacts to the people of Indonesia such as *market liberalization through digital means, the threat to the freedom of cross-border data flows, data storage without legal protection, the secrecy of data processing through source code, and tax-free electronic transmissions*. Below are four (4) impacts of digital trade provisions:
- **First, the threats of cross-border data free flow.** The flexibility of data flows also presents a massive opportunity for large-scale data extraction, which is extremely beneficial for Big Tech in shaping their business strategies and dominating economic activities through the digital economies of developing countries. Important and strategic data of nations and countries, which affect the livelihoods of many people, are controlled by a group of companies, leading to the colonization of data. The control of strategic data by Big Tech companies will only lead to development driven exclusively by corporate profits. Corporate hegemony will become even sharper, and the potential for economic failure in developing countries will become a continuous threat that exacerbates global inequalities.
- **Second, Data storage without legal protection.** The debate over data localization emerged from the lack of guarantees regarding data protection and access within the jurisdiction of a specific country. Many developing countries, which are technologically lagging behind, rely on digital and internet facilities located outside their jurisdiction without adequate data protection and access. Another important issue is the implementation of national laws or regulations that face challenges because the location of servers, where data is stored, falls outside the legal jurisdiction of the users. Consequently, if there is a violation or crime, the enforcement and legal sanctions are becoming challenging. The similar condition applies to the enforcement of national regulations or policies such as taxation and other provisions.
- **Third, Secrecy in data processing through source code.** The control over the source code used in digital services is an effort to protect the interests of society and the country, not merely limited to individual privacy protection. There should be rules or provisions that guarantee the prevention of data bias that violates human rights and theft of data, which ultimately harms society or the country. Source code has been protected under trade rules in the chapter on intellectual property rights and trade secrets. It should be removed to ensure the security of society. The lack of access and control over source code allows many things to be hidden, including violations and criminal activities, such as tax evasion, unfair competition, illegal data mining, espionage, and more.
- **Fourth, Electronic transmission without tax collection.** Electronic transmission and electronic transactions without tax collection will harm developing countries. Taxes on electronic

### The Members of Indonesian Coalition for Economic Justice:

Indonesia for Global Justice (IGJ), Indonesia AIDS Coalition (IAC), Serikat Petani Indonesia (SPI), Solidaritas Perempuan (SP), Transnational Institute, Kesatuan Perjuangan Rakyat (KPR), Ekologi Maritim Indonesia (EKOMARIN), KIARA, Koaem Telapak, Sahita Institute (HINTS), FIAN Indonesia

transactions cannot be imposed due to the moratorium on electronic transmission in the WTO, which exempts tax collections. Some advanced countries are taking the initiative to make it permanent. This policy adopted in free trade agreements becomes a pressure point for developing countries. Neoliberal policies that reduce state revenues solely through taxes have resulted in low and weak sources of funds for development in developing countries. Furthermore, the loss of commercial electronic tax collections cannot be overlooked. Meanwhile, the majority of economic activities are shifting or already being conducted through digital means. The lack of tax collection from the digital transmission or digital transactions is leading to the drain of foreign exchange reserves from developing countries.

### **We need Global Data Governance and Not Trade Agreements**

- The clauses of the Indonesia-EU CEPA indicate that the burden of data protection rules is placed on individual countries. There is no provision that guarantees protection for individuals and nations regarding the collection, processing and transmission of their data. Generally, developing and underdeveloped countries also lag behind in providing protection, in terms of anticipating the gap or lag between regulations and the capabilities of digital facilities. Moreover, considering the rapid development and highly adaptive nature of digital technology, both the Indonesian Personal Data Protection (PDP) law and the General Data Protection Regulation (GDPR) in the European Union are still inadequate in providing protection.
- The future will be shaped by rapid and comprehensive learning processes based on the collection of as much data as possible. Unrestricted, uncontrolled, and unselective data extraction only benefits large business groups or Big Tech. The development of Artificial Intelligence (AI), which increasingly determines business development and human behaviour is not just an economic issue but also a humanitarian one.
- Indonesia issued the Personal Data Protection (PDP) law. However, the law alone is not sufficient to provide adequate protection for the people because the focus of the law on personal data protection is not sufficient to protect other data that significantly impacts the lives of many. For example, aggregate data that has been anonymized in its collection and processing would be difficult to include in the PDP regulations. Personal data protection has not freed Indonesia from the threat of data colonialism.
- What is needed now is a rule that can limit the domination and monopoly of big tech companies over data. We need global data governance that provides protection for developing countries against the domination of big tech over economic control. And this cannot be regulated in a free trade agreement. In fact, this agreement is used by Big Techs to protect their interests with strong influence lobbies in the trade negotiating arena. The UNCTAD 2021 report has also emphasized that data movement governance arrangements in international agreements are not the right place because data cannot be equated with trade in goods and services.
- Therefore, the development of an international legal framework regarding global data governance must be discussed and agreed upon in an international institution that is more legitimate and binding on the state, and based on the principles of human rights protection and far from contesting data monopoly by big tech companies.

### **Point of Recommendations:**

1. Remove the digital and data privacy chapter from the Indonesia-EU CEPA as the instrument is not a suitable instrument to regulate data governance;
2. Revoke the moratorium on electronic transmission in the WTO which exempts tax collections.
3. An international legal framework regarding global data governance must be discussed in an appropriate and legitimate international institution based on the principles of protecting human rights.

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4. Public law on the right of data should be pushed to the governments and not only limited to individual data, but also to broader public data that has been controlled by the big tech companies.
5. Developing an alternative digital infrastructure that is owned and controlled by the people is essential to show the sovereignty of data and using it in a collective way.

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**Resources:**

<https://hints.id/2023/07/ancaman-indonesia-eu-cepa-dalam-digital/>

<https://www.tni.org/en/publication/digital-colonialism>

<https://aepf.info/data-colonization-hinders-just-transition/>

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**INVESTMENT**  
**PROTECTION ISSUES**

## Critical Notes on Investment Protection in Indonesia-EU CEPA

- Investor-state dispute settlement – whatever it is called – is undemocratic, dangerous, unfair, and one-sided. We, the civil society in Indonesia, rejects any kinds of investor lawsuit mechanism against the state that have major impacts on the lives of the people Indonesia at large.
- The ISDS Mechanism has put the State sovereignty threatened and held hostage by the interests of investors. Related to claims for compensation for investor losses, the state can force the payment of compensation with the public budget in the host country which in turn has an impact on reducing the budget for subsidies to the public. the ISDS lawsuit can impact the right to regulate through termination or status quo implementation of national policies rather than having to dispute at very high costs. This effect is called "Regulatory Chill". This narrows the people's struggle against the negative impacts caused by corporate business activities on their lives, both related to issues of human rights violations, economic losses, and broader environmental damage.
- Most of countries in the world are aware of the dangers of the Investor to State Dispute Settlement (ISDS) mechanism, especially for countries in the south. In fact, the ISDS Reform discussion process continues to be encouraged. The EU itself has stated that ISDS is not in accordance with its constitution. However, then the EU issued a new approach in this regard by submitting a proposal for an Investment Court System in its Bilateral FTA with third countries. It seems that the EU's proposal for ICS is only a rebranding exercise of the previously existing ISDS mechanism. And, looking at the trend of global competition to secure supplies of critical minerals, for sure, with the resource nationalization agenda under Indonesia's mining law, it will open more potential lawsuits for Indonesia considering its past experienced of ISDS lawsuits. So, we see that incorporating these elements into the Indonesia-EU CEPA is not an option that should be taken by the Government of Indonesia, moreover this is also against the Indonesian Constitution.
- There are Five (5) reasons why the ICS should be rejected due to resulting similar impacts from the old ISDS Mechanism:
  1. The Commission's use of broad, loosely defined concepts such as "manifest arbitrariness" and "Fair and Equitable Treatment" (or FET) provides the same open door for corporations to sue states in arbitration tribunals as under the current ISDS system.
  2. Many of the new limitations and qualifiers in the European Commission's proposal, such as the assertion of a government's right to regulate, are poorly defined and open to interpretation. The burden of proof lies with governments who have to show that the measures they took were "necessary", "non-discriminatory" and aimed to achieve "legitimate" objectives. The corporations in each of the five cases examined have already argued that the government's regulations were illegitimate, arbitrary, excessive and discriminatory (even though there was no discrimination on nationality grounds) and they could make the same case under ICS.
  3. Rather than limit egregious claims, ICS actually creates the potential for more arbitration disputes because, unlike existing treaties, it explicitly introduces the notion of investors' "legitimate expectations". In all five of the cases examined, investors claimed a breach of legitimate expectations. According to the proposal, an investor can only claim

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“legitimate expectations” as the result of “a specific representation” from the state – but this limitation is so poorly defined that it could mean any measure, action or even verbal indication by a government official that, according to the investor, had induced it to make or maintain the investment.

4. The right to compensate investors for loss of (future) profit remains, making cases such as TransCanada’s exorbitant claim for \$15 billion in damages for an unbuilt pipeline more likely. The only exception under ICS that specifically prevents investors from claiming compensation is on matters related to state aid but not on other public policy measures – showing that there was never any real intention to protect other regulatory measures from crippling financial claims.
  5. Under the Investment Court System, the interpretation of the expansive rights afforded to corporations and the ill-defined restrictions will still depend on for-profit adjudicators, and not on public, independent judges. They will be paid by the case and the loopholes in the EU’s proposed conflict of interest requirements will allow the same pool of corporate arbitrators to continue to sit on arbitration panels. European judges have concluded that the ICS proposals do not meet the minimum standards for judicial office as laid down in the European Magna Carta of Judges and other relevant international texts on the independence of judges.
- Indonesia has revised the investment protection treaty model beginning with the BIT Termination Actions since 2013. One of the biggest of Indonesian concerns on International Investment Protection Agreement is the provision of Investor-State Dispute Settlement (ISDS), which has increased Indonesia's exposure towards investor claims in international arbitration. Therefore, the aim of the Investment protection treaty review is to provide more safeguards for the Indonesian government in both substantive and ISDS provisions so that the balancing rights and obligations could be equitably addressed.
  - The government of Indonesia has launched the new model of its alternative provisions on investment treaty with some elements to prevent Indonesia from direct lawsuit of the investors and arbitrary interpretation of investor protection clauses. On the substances part, the new model investment treaty offers several limitations from broad interpretation of definition of investment with certain exceptions and limitation, including to prevent the practices of mailbox company and frivolous claims of investors. Furthermore, the new model limiting the broad interpretation of fair and equitable treatments that clarifies that Host States are not required to afford investors treatment beyond the minimum standard established by customary international law.
  - On the dispute mechanism, the new model of Indonesia’s treaty proposes some measures that shield Indonesia such as requirement on the exhaustion of local remedies, introducing mandatory mediation, and requiring separate written consent for investors to make ISDS claims to international arbitration, including the limitation on the award where the tribunal may not award punitive damages and the limitation of the tribunal cost.
  - Therefore, Indonesia-EU CEPA cannot be used as instruments to force Indonesia limiting its sovereignty and eliminate Indonesia's policy space, which gives priority to the protection of corporate rights over the rights of the people of Indonesia.

#### **Recommendations:**

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1. The EU should not force Indonesia to accept the Investment Court System model under the Indonesia-EU CEPA as the system has failed to prevent and protect Indonesia from investors' arbitrariness.
2. The EU should respect the Indonesia sovereignty and take into account the alternative model of Indonesia.
3. The EU and Indonesia Government should avoid all provisions under the investment chapter of Indonesia-EU CEPA that may give priority to investor protection rather than prioritizing the rights of the Indonesian people.

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# **Note Report** **MKE Coalition Analysis**

## **ENERGY AND RAW MATERIAL ISSUES**

## **Critical Position of Indonesian Civil Society Groups Regarding the Energy and Raw Materials Chapter in the EU-Indonesia CEPA**

*Prepared by:*

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### **Introduction**

The promotion of the 'Green New Deal' has encouraged the expansion of investment and trade in renewable energy and green technologies to address the climate crisis. The EU itself is working to strengthen its position on the critical issue of mineral raw materials that are essential for the green and digital energy transition. In March 2023, the European Commission introduced the Critical Raw Minerals Act (CRMA). The EU CRMA is a package of massive extractivism and privatization schemes imposed by the EU on southern countries under the promise of partnership cooperation. The partnership promises to finance low-carbon infrastructure development under the EU Global Gateway and EU Strategic Partnership to support value-added industries in southern countries, including Indonesia.

However, the low-carbon development agenda is carried out to facilitate the interests of access to critical minerals needed by industry and the expansion of the EU's green energy technology market under privatization schemes, including ensuring energy exports from southern countries to meet EU needs. This is bound by the standard rules that southern countries must comply with in the EU FTA/CEPA, which are specifically regulated in the Energy and Raw Materials Chapter. This chapter specifically regulates the opening of market access and investment in the energy and raw materials sectors, and serves to ensure that there are no barriers to EU trade and investment in these sectors. The chapter also encourages privatization practices by prohibiting monopolistic actions and government intervention in the pricing of energy goods.

Indonesia and the EU have been negotiating CEPA since 2016 and it is expected that by the end of President Joko Widodo's term in 2024 these negotiations will be finalized. However, the liberalization of investment and trade in energy and raw materials in the Indonesia-EU CEPA will potentially have an impact on national interests and the Indonesian people at large. For this reason, below are some critical positions from Indonesian civil society groups on the Indonesia-EU CEPA related to Indonesia's energy and resource sovereignty for a just green economy transition agenda.

### **Indonesia's Loss at the WTO**

- On November 30, 2022, the WTO Dispute Panel ruled that Indonesia's measures to restrict exports and requirements for domestic processing of nickel ore were contrary to WTO rules. Of course, Indonesia's loss has the potential to provide an opportunity for the European Union to pressure Indonesia to reopen raw mineral exports to the European Union.
- The strategy of mandatory domestic processing of raw mineral commodities is a manifestation of the Constitutional mandate for sovereign economic development through Article 33 paragraph 3 of the 1945 Indonesian Constitution. This Constitutional mandate is non-negotiable. Therefore, Indonesia's loss over the EU at the WTO should not be used as a trade-off by the European Union to weaken and narrow the Indonesian Government's policy space over natural resource sovereignty. Surely, this will be the new face of colonization of the northern countries to Indonesia.

### **The Threat on National Interests**

- The Energy and Raw Materials chapter negotiates the scope of the agreement relating to trade and investment in raw materials. However, the EU is pushing for a very broad definition of Raw Materials

that includes substances used in the manufacture of industrial products including base metals, precious metals, and raw ores and processed minerals. This broad definition will harm Indonesia and threaten the implementation of Indonesia's downstream agenda. Therefore, Indonesia must exclude base metals, precious metals, minerals, and ore from the scope of the agreement. This is quite an important position for Indonesia to consistently carry out the Constitutional Mandate on the obligation to process raw minerals.

- This chapter also seeks to ensure that Indonesia opens market access and eliminates discriminatory treatment in the energy and raw materials sectors. This includes provisions prohibiting export restrictions, including the elimination in principle of all export duties or any measure having equivalent effect. However, this provision would certainly conflict with Indonesia's policy of banning raw mineral exports to fulfill domestic processing obligations in line with the Constitutional Mandate.
- This chapter does not clearly regulate the Local content requirements that are needed by Indonesia to build a downstream industry that can provide added value to Indonesian mineral production. Whereas TKDN rules have been implemented by the Ministry of Industry to support the success of Indonesia's downstream. On the other hand, the investment chapter of the Agreement regulates several specific commitments on performance requirements that prohibit the application of local content and technology transfer requirements. This prohibition will conflict with Indonesia's interest in strengthening its downstream agenda.
- Therefore, once again Indonesia's defeat of the EU at the WTO has the potential for trade-offs that will affect Indonesia's bargaining position which will ultimately harm national interests.

#### **The Threat on Social and Environmental Impacts**

- Increasing demand for critical mineral raw materials for the green energy transition has triggered over-exploitation of natural resources that can damage ecosystems, cause ecological disasters and exacerbate the climate crisis. Such is the case of the recent flash floods in Central Weda - North Halmahera, especially in the area around the nickel mining center. Mineral extraction and processing often produce hazardous waste that pollutes the environment and threatens public health. Mining expansion has also led to deforestation in a number of areas resulting in biodiversity loss.
- Indigenous communities living around mining areas are also victims of human rights violations, such as forced evictions and restrictions on access to natural resources. Like the O'hongana Manyawa indigenous women who find it difficult to perform labor and delivery rituals in the forest because the river has become polluted since mining activities.

#### **Green Energy Privatization Impedes Equitable Energy Transition**

- One of the scopes of trade and investment in the energy and raw materials chapter is to cover energy goods such as energy from renewable sources, electrical energy and also hydrocarbons. Some specific energy commodities include natural gas, liquefied natural gas, electricity, crude oil, solid fuels, biogas, and biodiesel.
- This chapter seeks to facilitate the continuation of production and improve the functioning and expansion of infrastructure development in the (renewable) energy sector, including for energy transportation. One of its regulatory targets is to promote transparency in the licensing process and the conditions of license allocation that may be required for trade and investment activities. As mentioned above, in the context of exploration and production of raw materials and energy.
- Furthermore, it prohibits monopolies and government intervention in the pricing of energy goods. It also prohibits discriminatory treatment in the transportation of energy goods, both through natural gas pipelines and electricity networks, and opens third-party access to energy transportation infrastructure as an obligation of the parties.

- However, these two provisions will encourage the potential privatization of the energy sector in Indonesia, especially in the electricity sector, which has so far benefited foreign private actors acting as independent power producers who force the government through PLN to buy electricity at the company's economic price. In the end, this mechanism has been detrimental to state finances.
- Obviously, this privatization provision has harmed the state and has the potential to eliminate people's access to affordable electricity tariffs, as well as hinder the realization of an equitable energy transition.

### **The Value of a Just Energy Transition**

- The narrative of the energy transition through the Green New Deal agenda is driven by the economic interests of industrialized countries and market-based approaches. The International Energy Agency 2021 report shows that the energy transition will largely encourage the expansion of the extraction of important minerals in southern countries for the production of green energy technologies through market approaches. In fact, the International Renewable Energy Agency (IRENA) Report emphasizes that the conditions for accelerating the energy transition can only be achieved by increasing the liberalization of green technology-based goods and services. Indeed, the expansion of resource extraction and the deepening of privatization of the public energy sector in Indonesia will only eliminate the state's control over its sovereignty and strengthen the business of multinational corporations.
- We still see that the Investor-State Dispute Settlement (ISDS) mechanism, which is included in many free trade agreements (FTAs) and bilateral investment treaties (BITs), including the Energy Charter Treaty (ECT), has placed the state as a hostage to the interests of foreign investors. Moreover, in the context of the climate crisis, UNCTAD has also raised awareness of the rise in ISDS lawsuits, which challenge domestic environmental protection policies put in place to prevent and address the socio-environmental impacts of investment projects or regulatory measures related to climate change.
- The Investment Chapter of the Indonesia-EU CEPA contains provisions on the Investment Court System (ICS). It appears that the EU proposal for an ICS is simply a rebranding of the pre-existing ISDS mechanism. Given the global trend of competition to secure critical mineral supplies, and the nationalization agenda of resources under Indonesia's mining law, this will open up more potential lawsuits for Indonesia given Indonesia's past experience in dealing with ISDS claims. Therefore, we see that incorporating such elements into the Indonesia-EU CEPA is not an option that should be taken by the Government of Indonesia, especially since it is also contrary to the Indonesian constitution.
- In addition, the potential environmental impacts of expanding and deepening mineral extraction for the green energy transition are also not definitively answered in the Energy and Raw materials chapter of the Indonesia-EU CEPA. This is because the rules regarding environmental impact assessments do not have legal implications for parties that do not carry them out. Moreover, the regulated mechanism only provides an opportunity for parties to provide comments on the environmental impact assessment of a project to be considered for authorization without clear sanctions and enforcement rules.
- Furthermore, the Omnibus Law in Indonesia that regulates the investment licensing system in One Single Submission (OSS) is formally unconstitutional, and in practice does not solve the problem of overlapping licenses, and has the potential to seize the living space of the Indonesian people both related to the threat of environmental damage and the threat of loss of people's livelihood space on land, coastal and marine waters. This is because, in the context of environmental licenses, the risk-based analysis (RBA) OSS system has criteria for determining risks that are not transparent. For example, disaster-prone areas are not an indicator. Moreover, the EIA Commission does not involve the community in the determination process. Some of the omitted community engagement

processes in the granting of environmental permits still pose new risks to investors if the bank supporting the investment financing requires strict steps related to community engagement.

- Therefore, what we need now is a just energy transition that must go beyond simply switching from fossil fuels to renewable and environmentally friendly energy sources. We need a fundamental conception of a just transition that must build through true democracy towards a system of production and reproduction that focuses on human well-being and ecosystem regeneration. This requires governments that have the ability and accountability to implement policies in the interest of the People.

**Based on the critical explanation above, we, civil society groups in Indonesia, demand:**

1. The Energy and Raw Materials chapter of the Indonesia-EU CEPA should not impose provisions that limit Indonesia's ability to carry out its constitutional mandate, particularly in enforcing the EU's CRMA policy in Indonesia.
2. The energy and raw materials chapter which aims for a just energy transition cannot be done by privatizing public goods, in this case energy, and public control through the state should be strengthened and not weakened by the liberalization agenda of the renewable energy sector.
3. Do not allow the adoption of Omnibus Law on Job Creation into Indonesia-EU CEPA provisions that could worsen human rights and labor protection in Indonesia.
4. The EU and Indonesian governments must stop all forms of extraction in trade and investment activities that have contributed to worsening environmental damage and the rights of women, indigenous peoples, workers, small farmers and fishermen.
5. The EU's Critical Minerals Act should be a binding target to reduce the EU's material footprint itself to stay within planetary boundaries and reduce dependence on resources from other countries, such as Indonesia.

\*\*\*\*\*

***For more detail information, please contact:***

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Rachmi Hertanti: [r.hertanti@tni.org](mailto:r.hertanti@tni.org)



**MKE**

Koalisi Masyarakat Sipil  
Untuk Keadilan Ekonomi

**Note Report**  
**MKE Coalition Analysis**

**FARMER SEED**  
**SOVEREIGNTY ISSUES**

# CIVIL SOCIETY ON EU-INDONESIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

- **Mr. Joko Widodo,**  
*President of the Republic of Indonesia.*
- **Mr. Prof. Dr. Pratikno,**  
*Minister of State Secretary of the Republic of Indonesia*
- **Mr. Dr. H. Zulkifli Hasan, S.E., M.M**  
*Minister of Trade of The Republic of Indonesia*
- **Ms. Retno L.P. Marsudi**  
*Minister of Foreign Affair of The Republic of Indonesia*
- **Mr. Dr H. Syahrul Yasin Limpo, S.H, M.H**  
*Minister of Agriculture of The Republic of Indonesia*
- **Mr. Djatmiko Bris Witjaksono**  
*Director General of International Trade Negotiations, Ministry of Trade*
- **Mr. Prof (Riset) Dr. Ir. Erizal Jamal, M.Si**  
*Head of Center for Plant Variety Protection and Agricultural Licensing Ministry of Agriculture*

**RE :**

***EU-Indonesia CEPA (Comprehensive Economic Partnership Agreement) Must Not Include Obligation to Join or Implement UPOV 1991.***

The undersigned organizations work with and for farmers and on agricultural issues in many different countries. We are aware that Europe Union and Indonesia are negotiating FTA (free trade agreement) or called as CEPA (comprehensive economic partnership agreement). In this regard, we call on the Indonesian government to reject the European Union's proposal that requires Indonesia to join or implement UPOV 1991 or impose any other obligation, and/or limitation in accordance to UPOV 1991.

Agriculture is one of the crucial importances to Indonesia's economy. It is the second biggest source of employment, in particular in the country's rural areas, with around 33% of Indonesia's labor force being employed in the agricultural sector. It accounts for 14% of GDP. 93% percent of Indonesia's total number of farmers is small family farms (i.e. small-holder

farmers). 93% of these farmers have an average land holding of 0.6 hectares.<sup>ii</sup> Seeds are one of the most basic things for farmers and the agricultural sector. In Indonesia most of the seed is supplied by diverse farmer seed systems. The main pillar of this system is the farmer's right to save, use, exchange, and sell farms save seeds as well as the freedom to breed and sell their breeding seeds.

However, the 1991 Act of the UPOV Convention (UPOV 91) deprives farmers of the right to exchange and sell protected seeds or propagating material. Even saving seeds and replanting on their own fields is prohibited for most plant species and restricted for others. Therefore, UPOV 91 not only jeopardizes the right to food and food sovereignty, but is also a threat to agrobiodiversity.

The UPOV system provides a greatly rigid legal framework and is not suitable for small-holders farmers especially in developing countries. This system was developed in the 60s for seed production modalities in developed countries, especially in Europe. Indonesia and other developing countries have never participated in UPOV negotiations. Therefore, many independent experts recommend that developing countries should not join or implement the UPOV system in their country.<sup>iii</sup>

The diversity of varieties saved in gene banks and cultivated in fields and gardens across the world, which is an indispensable resource for breeding new crops, relies on functioning farmers seed systems. If we destroy these systems, we harm humanity as a whole. The dangers of inappropriate plant variety protection laws have been highlighted by many different reports and studies in recent years. The main arguments are also summarised in a briefing paper accompanying this open letter.

The Special Rapporteur on the Right to Food, Michael Fakhri, in its last report *"Seeds, right to life and farmers' rights"* where he recommends that UN "Member States should consider: Not pressuring other Member States to join the International Convention for the Protection of New Varieties of Plants in any way. Being a party to that Convention should no longer be required as part of bilateral or regional agreements.<sup>iiii</sup> Member States are strongly encouraged to remove such requirements from current agreements;" For the reasons aforementioned, we demand the Indonesian government to reject the European Union's proposal in the EU-Indonesia CEPA that requires becoming a member of UPOV 91 and/or Implement UPOV 1991"

Finally, we would like to recall Indonesia's support for the "Declaration on the rights of farmers and people working in rural areas" adopted by the Human Rights Council and the United Nations General Assembly which requires States to "take steps to respect, protect and fulfill the Rights of Farmers and Other People Working in Rural Areas". The implementation of this Declaration requires Indonesia to have full policy space in implementing the relevant measures.

Therefore, in the negotiations for the CEPA of Indonesia and the European Union, no one should influence and limit this freedom. Indonesia must have a policy space to protect farmers' seed systems that are suitable for their agricultural systems, protect farmers' local plant genetic resources, and protect the public interest and enable the government to take steps in implementing the Declaration on the Rights of Farmers and people working in the rural areas.

**Signatories,**

**INDONESIA**

Aliansi Petani Indonesia (API)  
 Bina Desa  
 BITRA Indonesia  
 ELSAKA  
 FIAN Indonesia  
 FIELD Indonesia (YDBN)  
 FLIGHT: Protecting Indonesia's Birds  
 FSBKU  
 Indonesia for Global Justice (IGJ)  
 Indonesian Human Rights Committee for Social Justice (IHCS)  
 JAMTANI  
 Jaringan Advokasi Tambang Sulawesi Tengah  
 JPIC Kalimantan  
 Kaliptra Andalas  
 Koalisi Rakyat untuk Kedaulatan Pangan  
 Komite Nasional Pertanian Keluarga (KNPK)  
 Komodo Indonesia Lestari Foundation (Yakines)  
 KONPHALINDO  
 Konfederasi Pergerakan Rakyat Indonesia (KPRI)  
 Perkumpulan INISIATIF  
 Perkumpulan Kediri Bersama Rakyat (KIBAR)  
 Samawa Islam Transformatif  
 Save Our Borneo  
 Serikat Petani Indonesia  
 Setara Jambi  
 WALHI Jambi  
 WALHI South Sulawesi  
 Yayasan CAPPK Keadilan Ekologi  
 Yayasan Pusaka Bentala Rakyat  
 Yayasan Tananua Flores

**EUROPE**

11.11.11 - *Belgium*  
 Amis de la Terre - *France*  
 ARCHE NOAH - *Austria*  
 Both ENDS - *Netherlands*  
 Confédération Paysanne - *France*  
 Fastenaktion - *Switzerland*  
 FIAN Deutschland - *Germany*  
 FIAN Switzerland - *Switzerland*  
 FNV - *Netherlands*

Fruchtwechsel e. V. - *Germany*  
 Handelskampanjen - *Norway*  
 Hilfswerk der evangelischen Kirche der Schweiz (HEKS) - *Switzerland*  
 Li Mestère ASBL - *Belgium*  
 MISEREOR - *Germany*  
 Naturefriends - *Greece*  
 NOAH - *Denmark*  
 Platform Aarde Boer Consument - *Netherlands*  
 Rettet den Regenwald e.V. - *Germany*  
 SEEDS ACTION NETWORK - *Germany*  
 Sesam - *Sweden*  
 SolidariteitsNetwerk BuurtTuinen - *Netherlands*  
 Stiftung Asienhaus - *Germany*  
 StoereVrouwen - *Netherlands*  
 SWISSAID - *Switzerland*  
 Verein zur Erhaltung der Nutzpflanzenvielfalt e.V. (VEN) - *Germany*  
 Vitale Rassen - *Belgium*  
 Watch Indonesia! e.V. - *Germany*

**International Organisations**

APBREBES  
 CAFOD  
 CIDSE  
 FIAN International  
 GRAIN  
 Rettet den Regenwald

**SOUTHEAST ASIA REGIONAL INITIATIVES FOR COMMUNITY EMPOWERMENT**

Third World Network  
 Transnational Institute  
 Umbrella Association for cultivated plants and livestock diversity conservation in German speaking countries

**AFRICA**

AbibiNsroma Foundation - *Ghana*  
 African Centre for Biodiversity - *South Africa*  
 AVRDC International - *Tchad*  
 Commons for EcoJustice - *Malawi*  
 MELCA-Ethiopia - *Ethiopia*  
 TABIO - *Tanzania*

**LATIN AND NORTH AMERICA**

A Growing Culture - *USA*  
 Acción Ecológica - *Ecuador*  
 Asociación Nacional para el Fomento de la  
 Agricultura Ecológica (ANAFEA) - *Honduras*  
 Aula Verde AC - *Mexico*  
 Grassroots International - *United States*  
 Grupo Semillas - *Colombia*  
 National Farmers Union - *Canada*  
 Red de Coordinación en Biodiversidad - *Costa Rica*  
 Trade Justice Network - *Canada*  
 UDAPT - *Ecuador*

**ASIA**

BARCIK - *Bangladesh*  
 Consumers' Association of Penang - *Malaysia*  
 Office INYAKU - *Japan*  
 Pakistan Fisherfolk Forum - *Pakistan*  
 Participatory Research & Action Network (PRAAN)  
 - *Bangladesh*  
 Sahabat Alam Malaysia (Friends of the Earth  
 Malaysia) - *Malaysia*

**END NOTE**

- i) <http://www.fao.org/3/i8881en/i8881EN.pdf>
- ii) The UPOV Convention, Farmers' Rights and Human Rights - An integrated assessment of potentially conflicting legal frameworks" diterbitkan oleh Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) atas nama the German Federal Ministry for Economic Cooperation and Development" (Juni 2015) tersedia di <https://www.giz.de/fachexpertise/downloads/giz2015-en-upov-convention.pdf>; UNDP (2008) "Towards a Balanced Sui Generis Plant Variety Regime", bisa diunduh di <http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/toward-a-balanced-sui-generis-plant-variety-regime.html>; "Owning Seeds, Accessing Food – A human rights impact assessment of UPOV 1991 based on case studies in Kenya, Peru and the Philippines," Oktober 2014. Tersedia di <https://www.publiceye.ch/en/topics-background/agriculture-and-biodiversity/seeds/owning-seeds-accessing-food/>; Carlos M. Correa et al. (2015), « Plant Variety Protection in Developing Countries: A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991 », APBEBES, bisa diunduh di <http://www.apbrebes.org/news/new-publication-plant-variety-protection-developing-countries-tool-designing-sui-generis-plant>
- iii) Michael Fakhri, "Seeds, right to life and farmers' rights Report of the Special Rapporteur on the right to food", 2022, <://documents-dds-y.un.org/doc/UNDOC/GEN/G21/397/86/PDF/G2139786.pdf?OpenElement>



Jakarta, May 9<sup>th</sup> 2023

Mr. Valdis Dombrovkis Executive Vice-President European Commission

Rue de la Loi / Wetstraat 200 1049 Brussels

Email: [cab-dombrovskis-contact@ec.europa.eu](mailto:cab-dombrovskis-contact@ec.europa.eu)

Dear Commissioner,

## Re: Drop any demand on UPOV and plant variety protection from Indonesia-EU CEPA

In 2022, more than 90 civil society organizations (CSO) from around the world demanded that the European Commission does not impose on Indonesia any request in the EU-Indonesia free trade agreement (FTA) negotiations to implement the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 1991) or to impose any other requirements on Indonesia in relation to plant variety protection. Attached is the mentioned CSO letter.<sup>1</sup>

We the undersigned civil society from Indonesia are writing in advance of the next round of Indonesia- European Union Comprehensive Economic Partnership Agreement (CEPA) to reiterate the abovementioned demand and to request the European Commission to drop all its proposals with respect to plant variety protection.

We stress that the required introduction of UPOV 91 will jeopardise farmer managed seed system and thus food sovereignty, food security and agrobiodiversity in Indonesia.<sup>2</sup> Multiple independent experts including the United Nations Special Rapporteur on the Right to Food have recognized UPOV 1991 to be an inappropriate legal framework for developing countries and have recommended that developing countries should not join or implement UPOV91.<sup>3</sup> In particular “UPOV 91-based PVP laws were found to not advance the realisation of Farmers’ Rights; rather they are effective in the opposite direction”.<sup>4</sup>

EU’s demands erodes the policy space that Indonesia has under the TRIPS Agreement (Article 27.3(b)) to design a sui generis plant variety protection system that is relevant and appropriate to Indonesia’s agricultural system. It also undermines Indonesia’s ability to effectively implement various international instruments such as the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the Convention on Biological Diversity and the Nagoya Protocol on Access and Benefit Sharing, the United Nations Declaration on the right of peasants and other people working in rural areas (UNDROP) and the United Nations Declaration on Rights of Indigenous People ( UNDRIP).

We thus urge the Commission to withdraw the demand for a UPOV 91 compliant plant variety protection law and to refrain from any request concerning plant variety protection rights in the FTA with Indonesia.

### **Signatories**

*Indonesia for Global Justice*

*KRuHA (Koalisi Rakyat untuk Hak Atas Air) The Institute of Ecosoc Rights*

*Sahita Institute (HINTS)*

### **Footnote**

1. *Open Letter to the European Commission concerning plant variety rights in the Free Trade Agreement with Indonesia*, see [https://www.bothends.org/uploaded\\_files/document/220629\\_OpenLetter\\_EU-Indonesia\\_UPOV.pdf](https://www.bothends.org/uploaded_files/document/220629_OpenLetter_EU-Indonesia_UPOV.pdf)
2. See “The reasons why Indonesia should not (be forced) to join UPOV” at [https://www.bothends.org/uploaded\\_files/document/BriefingPaper\\_EN\\_The\\_reasons\\_why\\_Indonesia\\_should\\_n.pdf](https://www.bothends.org/uploaded_files/document/BriefingPaper_EN_The_reasons_why_Indonesia_should_n.pdf)
3. See UN General Assembly Document A/64/170 titled “Seed Policies and the right to food: enhancing agrobiodiversity and encouraging innovation”. <https://digitallibrary.un.org/record/663241>; UNDP (2008) “Towards a Balanced Sui Generis Plant Variety Regime”, available at [www.undp.org/publications/toward-balanced-sui-generis-plant-variety-regime](http://www.undp.org/publications/toward-balanced-sui-generis-plant-variety-regime); Carlos M. Correa et al. (2015), “Plant Variety Protection in Developing Countries: A Tool for Designing a Sui Generis Plant Variety Protection System: An Alternative to UPOV 1991”, APBEBES, available at [www.apbebes.org/news/plant-variety-protection-developing-countries-tool-design-sui-generis-plant-variety-protection](http://www.apbebes.org/news/plant-variety-protection-developing-countries-tool-design-sui-generis-plant-variety-protection)
4. “The UPOV Convention, Farmers’ Rights and Human Rights– An integrated assessment of potentially conflicting legal frameworks” published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Cooperation and Development” (June 2015) available at [https://www.researchgate.net/publication/280234837\\_The\\_UPOV\\_Convention\\_Farmers'\\_Rights\\_and\\_Human\\_Rights\\_An\\_Integrated\\_Assessment\\_of\\_Potentially\\_Conflicting\\_Legal\\_Frameworks](https://www.researchgate.net/publication/280234837_The_UPOV_Convention_Farmers'_Rights_and_Human_Rights_An_Integrated_Assessment_of_Potentially_Conflicting_Legal_Frameworks)



Koalisi Masyarakat Sipil  
Untuk Keadilan Ekonomi

# **Note Report** **MKE Coalition Analysis**

## **THE ISSUE OF ACCESS TO CHEAP MEDICINES**

***Dear Commissioner Valdis Dombrovkis,***

We are extremely concerned about EU's proposals on intellectual property (IP)<sup>1</sup> in the Indonesia-European Union Comprehensive Economic Partnership Agreement (CEPA) that *inter alia* include:

- limiting of parallel importation to national or regional exhaustion of rights;
- patent term extension for medicines for delays in marketing approval, with further extension for pediatrics;
- data and market exclusivity requirements including for new uses of older medicines
- extensive requirements on IP enforcement (such as application of border measures to all IP)

These and other proposals of the EU are TRIPS-plus (i.e. beyond TRIPS requirements of TRIPS) with disastrous consequences for access to medicines in Indonesia. For example in Jordan, data exclusivity (DE) delayed the introduction of cheaper generic alternatives of 79% of medicines between 2002 and 2006, threatening the financial sustainability of government public health programs.<sup>2</sup> Medicine prices in Jordan are also 800% higher than in Egypt<sup>3</sup> due to introduction of DE. In Colombia, as a result of DE, the costs to the public health system increased by US\$396 million between 2003 and 2011.<sup>4</sup> In Guatemala, a study found that as a result of DE medicines that were readily available in most countries at affordable prices were simply not available in Guatemala.<sup>5</sup> Patent term extension has been calculated by the Korean National Health Insurance Corporation to cost US\$757 million for a 4 year extension.<sup>6</sup> Indonesia has a population of 274 million, with a GNI per capita of US\$3,870 compared to EU's US\$35,806 (11 times greater than Indonesia's).<sup>7</sup> Even at purchasing power parity rates, 52% of Indonesia's population lives on less than US\$5.50 per day.<sup>8</sup> Indonesia suffers from multiple communicable and non-communicable disease (NCD) burdens. It has been struggling with the effects of the WTO-TRIPS Agreement for the monopoly conferred by the Agreement has made medicines unaffordable. For example, Hepatitis C affects about 3 million people in Indonesia and yet to date, due to the high prices of medicines has meant that treatment has been limited. Similarly cancer causes 19% of NCD deaths in Indonesia.

In 2018 there were 350,000 cancer cases with 207,000 cancer deaths. Access to cancer treatment is limited due to the exorbitant costs, for instance 12 months of treatment of trastuzumab costs US\$20000.<sup>9</sup> COVID-19 has aggravated the situation in Indonesia. It is

one of the worst hit countries in South East Asia with 142,026 deaths. Access to critical medical products needed to contain the spread the infection has been difficult due to monopolies and high prices. Vaccinating 70% of Indonesia's population is expected to cost 22% of Indonesia's current health expenditure.<sup>10</sup> This is not taking into account boosters and additional vaccinations needed in the coming years. Against this background, the EU's proposals will only further worsen the socio-economic consequences facing Indonesia, exacerbated by COVID-19.

In TRIPS Council discussions, the EU claims to support the use of TRIPS flexibilities and yet IP proposals of the EU in the CEPA negotiations aims to extend IP monopolies and undermine TRIPS flexibilities.

Human rights experts have denounced TRIPS-plus provisions for their impact on access to medicines. The United Nations Special Rapporteur on the Right to Health has recommended that "Developed countries should not encourage developing countries to enter into TRIPS-plus FTAs and should be mindful of actions which may infringe upon the right to health."<sup>11</sup>

The European Parliament (EP) has also repeatedly urged the Commission to reject IP proposals that adversely impact access to medicines in trade negotiations:

- In 2007, an EP Resolution called on "the Council to meet its commitments to the Doha Declaration and to restrict the Commission's mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation on grounds of compulsory licences, within the framework of bilateral and regional agreements with developing countries."<sup>12</sup>
- In 2008 an EP Resolution on EU relations with ASEAN Countries (which Indonesia is a part of), it recalled EU's commitment to support the Doha Declaration and the use of TRIPS flexibility in supporting public health and access to medicines in developing countries; therefore, asks the Commission not to do anything that could undermine the Thai government's efforts to ensure access to medicines for all its citizens. The Resolution also states 'nothing in the agreement should create legal or practical obstacles to the maximum use of flexibilities set out in the Declaration amending the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS agreement) and access to medicines.
- In 2011 in a resolution on EU FTA with India, the EP asked the Commission not to request data exclusivity in the context of negotiations, and to recognise that data exclusivity would have far-reaching consequences for the production of generic

medicines and is therefore detrimental to developing countries' access to medicines and public health policy<sup>13</sup>

- In 2021, an EP Parliament resolution called on the Commission to oppose the inclusion of TRIPS-plus measures in free trade agreements with middle-income developing countries in order to ensure that all HIV antiretroviral treatments are affordable, with full respect for the Doha Declaration on TRIPS and Public Health<sup>14</sup>

Therefore, we strongly urge the EU to ensure that the CEPA does not include any provisions that may in any way hinder access to affordable medicines in Indonesia including any TRIPS-plus provisions as mentioned in this letter.

**Signatories :**

- 11.11.11 – Coalition of International Solidarity – Belgium
- Access to Medicines Ireland – Ireland
- ACV-CSC – Belgium
- AIDS Access Foundation – Thailand
- Aitec – France
- Amis de la Terre France – France
- APN+ – Regional
- Asia Pacific Network of People Living with HIV (APN+) – Regional
- Asia Pacific Network of People Living with HIV/AIDS (APN+) – Asia Pacific Region
- Asociación por un Acceso Justo al Medicamento – Spain
- Association for Proper Internet Governance – Switzerland
- Attac Austria – Austria
- ATTAC España – Spain
- Australian Arts Trust – Australia
- Australian Fair Trade and Investment Network – Australia
- BARAC UK – United Kingdom
- Both ENDS – The Netherlands
- BUKO Pharma-Kampagne – Germany
- Coalition for Health Promotion – Uganda

- Consumer Association the Quality of Life-EKPIZO – Greece
- Corporate Europe Observatory – Europe
- Crisis Home – Malaysia
- Collectif Stop CETA-Mercosur – France
- CSEND – Switzerland
- DNP+, ITPC South-Asia – India
- FARKES REFORMASI – Indonesia
- Federaci6n de Asociaciones para la Defensa de la Sanidad Pt'.blica – Espafia
- Forum Computer Professionals – Germany
- for Peace and Societal Responsibility (Fiff)
- Fresh Eyes – United Kingdom
- Friends of the Earth Europe – Regional
- Frontline Aids – South Africa / United Kingdom
- FTA Watch – Thailand
- Fundaci6n Salud por Derecho – Spain
- Handelskampanjen – Norway
- Health Action International Asia Pacific HAIAP – Regional
- Health GAP (Global Access Project) – International
- Human Initiative – Indonesia
- IFARMA Foundation – Colombia
- Indonesia AIDS Coalition – Indonesia
- Indonesia for Global Justice (IGJ) – Indonesia
- Indonesian Mental Health Association (IMHA) – Indonesia
- Insp!r Indonesia – Indonesia
- Institute for Agriculture and Trade Policy – International
- Institute for Economic Research on Innovation – SouthAfrica, International
- International Treatment Preparedness Coalition (ITPC) – International
- It's Our Future – New Zealand
- Just Treatment – UK
- Komunitas Pasien Cuci Darah Indonesia -Indonesia



- (Indonesian Dialysis Community)
- KPRI (Konfederasi Pergerakan Rakyat Indonesia) – Indonesia
- Madhira Institute – Kenya
- Make them Sign, German Campaign for TRIPS Waiver – Germany
- Malaysian Women’s Action – Malaysia
- for Tobacco Control and Health (MyWATCH)
- medico international – Germany
- medicusmundi – Spain
- Mutualite Chretienne – Belgique
- medicos del mundo – Spain
- NaturFreunde Deutschlands – Germany
- NOOR PAKISTAN – Pakistan
- Oxfam – International
- Pacific Asia Resource Center(PARC) – Japan
- PEAH – Polices for Equitable Access to Health – Italia
- People’s Health Movement – Switzerland
- People’s Health Movement Australia – Australia
- People’s Health Movement Nepal – Nepal
- Peoples Health Movement (PHM) Europe – Regional
- PERHIMPUNAN JIWA SEHAT – INDONESIA
- Perhimpunan Organisasi Pasien TB Indonesia – Indonesia
- personal answerspain – Spain
- “Partnership Network” Association – Kyrgyzstan
- Private – United Kingdom
- Positive Malaysian Treatment Access & Advocacy group (MTAAG+) – Malaysia
- PowerShift e.V.- Germany
- Red de Acceso a Medicamentos – Guatemala
- Salud y Farmacos – United States
- SEATINI (Southern and East African Trade and Negotiations Institute) – South Africa

- Shay Printers and Workwear – South Africa
- Social Watch – International
- Society for International Development – Italy
- SOMO-Centre for Research on Multinational Corporations – The Netherlands
- SP PLN – Indonesia
- The PRAKARSA – Indonesia
- Transnational Institute – International
- Transparency internasional Indonesia Indonesia
- Treatment Preparedness Coalition in Eastern Europe and Central Asia – Regional (EECA)
- Union Africaine des Consommateurs – AFRICA
- Universities Allied for Essential Medicines (UAEM Europe) – Europe
- Vedegylet EgyesUlet – Hungary
- Vietnam Network of People living with HIV (VNP+) – Vietnam
- Viva Salud – Belgium
- WSM – We Social Movements – Belgium
- Wemos – The Netherlands
- Women’s Coalition Against Cancer- WOCACA – Malawi – Africa
- Yayasan Spiritia – Indonesia

#### **Footnote**

<sup>1</sup> EU’s proposals available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1620?>

<sup>2</sup> Malpani, R. All costs, no benefits: how the US-Jordan free trade agreement affects access to medicines, *Journal of Generic Medicines* (2009) 6(3):206-217, Available from: <http://jgm.sagepub.com/content/6/3/206.short>.

<sup>3</sup> *ibid*

<sup>4</sup> Cortes Gamba M, Rossi Buenaventura F, Vasquez Serrano M. *Impacto de 10 Afios de Proteccion de Datos en Medicamentos en Colombia, IFARMA and Fundaci6n Misi6n Salud; Bogota D.C., Colombia (2012), Available from: <http://www.mision-salud.org/wp-content/uploads/2013/02/IMPACTO-DE-10-A%C3%91OS-DE-PROTECCION-DE-DATOS-EN-COLOMBIA.pdf>*

- <sup>5</sup> Shaffer E, Brenner J. A trade agreement's impact on access to generic drugs, *Health Affairs* (2009)28(5):w957-w968. Available from: <https://doi.org/10.1377/hlthaff.28.5.w957>.
- <sup>6</sup> [http://english.hani.co.kr/arti/english\\_edition/e\\_business/165065.html](http://english.hani.co.kr/arti/english_edition/e_business/165065.html)
- <sup>7</sup> <https://data.worldbank.org/indicator/NY.GNP.PCAP.CD>
- <sup>8</sup> <https://data.worldbank.org/indicator/SI.POV.UMIC?view=chart>
- <sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5494230/>
- <sup>10</sup> Cost of vaccinating 70% of population as percent of current health expenditure at \$35, available at <https://data.undp.org/vaccine-equity/affordability/>
- <sup>11</sup> <https://digitallibrary.un.org/record/652915?ln=en>
- <sup>12</sup> [https://www.europarl.europa.eu/doceo/document/TA-6-2007-0353\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-6-2007-0353_EN.html)
- <sup>13</sup> [https://www.europarl.europa.eu/doceo/document/TA-7-2011-0224\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-7-2011-0224_EN.html)
- <sup>14</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0250\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0250_EN.html)



**Koalisi Masyarakat Sipil  
Untuk Keadilan Ekonomi**

**Koalisi Masyarakat Sipil untuk Keadilan Ekonomi (Koalisi MKE) terbentuk pada 2016 yang terdiri dari organisasi masyarakat sipil dan akar rumput yang bergerak pada isu hegemoni korporasi dan ekonomi politik global dalam konteks kesehatan, perikanan, pangan, agrikultur, digital, ketenagakerjaan, dan lingkungan.**

**Organisasi anggotanya terdiri dari Ekologi Maritim Indonesia (Ekomarin), FARKES, Indonesia AIDS Coalition (IAC), Sahita Institute (HINTS) Indonesia for Global Justice (IGJ), FIAN Indonesia, Kesatuan Perjuangan Rakyat (KPR), Koalisi Rakyat untuk Keadilan Perikanan (KIARA), Puanifesto, Sahita Institute (HINTS), Serikat Mahasiswa Indonesia (SMI), Serikat Petani Indonesia (SPI), dan Solidaritas Perempuan (SP).**

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