



Monitoring of IGJ / OKTOBER 2018

POSITION OF INDONESIAN CIVIL SOCIETY TOWARDS PROTECTION OF INTELLECTUAL PROPERTY RIGHTS ISSUE IN THE 6TH ROUND OF INDONESIA-EU CEPA NEGOTIATION,

Palembang, October 16th, 2018.

Indonesia-EU Comprehensive Economic Partnership Agreement negotiation - since being launched in 2016 until the 6th round of negotiation in October 2018 – we only focus on trade liberalization and deregulation and investment flows as the main objectives. In the meantime, a lot of evidences point out the failure of neoliberal policies of company-led globalization that contribute to climate changes, environmental degradation and spreading inequality around the world. Trade and investment agreements continue to ignore enormous social and environmental costs. The CEPA IEU negotiation agenda largely reflected the interests of transnational corporations without considering the interests of the Indonesian people extensively.

Civil society from Indonesia and Europe share the same concerns about the potential social costs, human rights and environmental impacts of the Indonesia-EU CEPA agreement, including the issue of Intellectual Property Rights (IPR) protection.

The IPR chapter in the EIU CEPA Proposal shows how big the corporate interest is. An article (article X.46) in the IPR chapter for example obliges the state to become members of UPOV 1991. UPOV 1991 is an international agreement for plants that encourages the commercialization and privatization of plant varieties. This can lead to a monopoly on seeds and eliminate farmers' rights to seeds. Plant breeders who claim intellectual property rights (IPR) on plant varieties are a threat to farmers' livelihoods and human rights to food.

A handful of seed companies such as Monsanto, DuPont, Syngenta, Dow, BASF and Bayer have dominated the seed market, even controlling more than 75 percent of the world seed market and further market concentration processes are underway with various mergers conducted by these companies. IPR in agriculture makes farmers more vulnerable to market fluctuations. A number of studies conducted to see the impact of UPOV membership show that being a member of UPOV has the potential to increase the price of seeds between 200 to 600 percent.¹

The extension of IPR will also increase the criminalization of farmers and have an impact on the protection of human rights and ecological sustainability. The Indonesia-EU CEPA will also contribute to further concentration of the seed market which further marginalizes the role of women in rural areas who have contributed to protecting and preserving local seeds. Seeds must be placed or identified as public goods. Farmers should have the freedom and protection to cultivate, distribute and store important seeds to ensure sustainable food production. The IPR chapter also provides data protection exclusivity for agricultural inputs such as fertilizers and pesticides. Monopoly on agro-chemicals (fertilizers, pesticides) is closely related to monoculture farming, environmental degradation and loss of biodiversity.

The existing rules will prevent the supply of generic chemical inputs, even though the prices of generic agricultural materials can be two-thirds cheaper than the same products that have data exclusivity. Currently, it is undeniable that the use of chemical inputs such as fertilizers and pesticides is still needed by farmers in Indonesia.²

Another TRIPS plus proposal offered by the EU is a patent extension for plant protection products. This refers to chemical products such as pesticides and fertilizers. This extension was requested due to the authorization process to obtain marketing permits. The extension of the patent was also due to the process of granting a patent. This is unacceptable, because plant protection products are substances that are usually dangerous and poisonous. So that any means to speed up the process of security checks in the marketing permit process can endanger consumers, producers and the environment as well. On the other hand, the extension of the patent due to the patent inspection process will slow down the generic version of chemicals entering the market, thus it will increase the prices.

Furthermore, data exclusivity and patent extension due to the process of marketing authorization and patent processes will lengthen monopoly, inhibit access and increase the price of generic chemicals. This will increase the "mixing system" in the use of pesticides on agricultural lands because of high prices. This will increase the risk of environmental damage, resistance to plant pests, chemical poisoning as well.

Another issue that becomes a major concern for Civil Society is the impact of the Indonesia-EU CEPA agreement on the availability of affordable drugs. In the CEPA negotiations, the European Union demanded an extension of patent protection for big pharmaceutical companies. This will disrupt Indonesia's policy to improve public health by ensuring the availability of cheaper generic drugs. CEPA Indonesia-EU should have regulated the

¹ Public Eye. Owing seeds, Accessing Food . A human rights impact assessment of UPOV 1991. Based on case studied in Kenya, Peru and the Philippines. October 2014.

https://www.publiceye.ch/fileadmin/files/documents/Saatgut/2014_07_10_Owning_Seed_-_Accessing_Food_report_def.pdf#page=1&zoom=auto,-158,449

² Sanya Reid Smith. Intellectual Property in Free Trade Agreements. 2008. TWN (ISBN: 978-983-2729-57-0)

pharmaceutical sector so that the commercial interests of 'large pharmaceuticals' were placed second to human rights to health.

The TRIPs plus proposal made by the EU in the CEPA negotiations with Indonesia includes:

1. Extension of patent protection for drugs, due to the process in the marketing agreement, with a second patent extension period if there is pediatric research.
2. The data exclusivity and markets in drugs, with a period of exclusivity for new uses of old drugs that are perceived to be significant to possess clinical value when compared to existing therapies

Additional monopoly on drugs proposed by the EU will make these drugs remain unreachable in Indonesia. This is because patented drugs have a price that is more expensive than the generic version. For example, the patent version of a cure for AIDS costs US \$ 15,000 / patient / year, but the generic version only costs US \$ 67 / patient / year.

Indonesia's Gross National Income per capita is US \$ 3,540 compared to EU US \$ 32,778 (9 times greater than Indonesia). Even at the level of purchasing power balance, 62% of Indonesia's population lives on less than US \$ 5.50 / day, so they have problems in fulfilling drugs, not to mention the TRIPS level of intellectual property protection (patent for 20 years and no data exclusivity / market for drugs). For example, with the treatment expenses of US \$ 15,000 / patient / year using patent drugs for HIV / AIDS, it takes at least 62% of the Indonesian population for 7 years to be able to pay the drug for 1 year, if all their money is used for this medicine. If Indonesia is forced to approve the RTRIPS + EU proposal above, there will be many Indonesians living with HIV dying from actual treatable diseases, because the prices of drugs are too expensive.

Observing IEU CEPA negotiations as Indonesian civil society, we urged the Indonesian government not to accept TRIPS plus rules in agreements with the European Union. This is because it will violate the right to health, to get access for cheap and affordable drugs. In addition, this agreement will violate the right of food and the peasant rights to store, exchange, develop and trade seeds. The domestic food production system will be invaded by imports from the European Union, which rob small food producers including rural women from their livelihoods. Indonesia should reconsider various negotiations on free trade agreements such as the CEPA with the European Union that have potential to narrow policy space in the development process, especially reducing poverty, and improving the welfare of food producers and ensure affordable health protection for all Indonesians.