

Jakarta, March 14<sup>th</sup> 2019

**To:**

Mr. H. Bambang Soesatyo, SE., MBA.  
**Chairman House of Representatives Republic of Indonesia**

Mr. Ir. H. Teguh Juwarno, M.Si  
**Chairman House of Representatives Commission VI**

***Subject: Civil Society Coalition for Economic Justice Open Letter to DPR RI to Stop the Ratification Process and FTA Negotiations before the 2019 Election***

Dear Sirs,

We, the undersigned, are the Civil Society Coalition for Economic Justice consisting of a combination of several Indonesian civil society group organizations, namely a coalition that joins to criticize international trade and investment agreements that have the potential to affect the loss of state obligations in order to fulfill economic, political, social and cultural rights for people's of Indonesia.

Through this letter, we would like to convey some of our critical insights to the Chairman House of Representatives Republic of Indonesia and Chairman House of Representatives Commission VI regarding various international trade and investment agreements that are being negotiated and which have been negotiated and are ready to enter the ratification process. The insight that we want to convey is as follows:

**1. Non-Democratic & Non-Transparent Process**

***The Honorable Mr.Bambang and Mr.Teguh,***

On March 11-15<sup>th</sup> 2019, the Government of Indonesia was negotiating the Indonesia-EU Comprehensive Economic Partner Agreement (IEU CEPA). And on February 18-25<sup>th</sup> 2019 the Government of Indonesia held a Regional Comprehensive Economic Agreement (RCEP) negotiation between ASEAN and its 6 (six) economic partner countries. Even on March 4<sup>th</sup> 2019, Indonesia has signed Indonesia-Australia CEPA, and on December 16<sup>th</sup> 2018, Indonesia has signed the Indonesia-Europe FTA or EFTA. Including on October 11<sup>th</sup> 2018 Indonesia signed a bilateral investment agreement with Singapore.

We really hope that you acknowledge about the important aforementioned events for the lives of Indonesian citizen. Including, our hope, is also for you to acknowledge the contents and liberalization commitment made by the Government of Indonesia.

However, it is very unfortunate, that all international trade and investment agreements, both those being negotiated and those that have been concluded, have never been disclosed to the public, especially regarding the content or text of the agreement including the commitment of economic liberalization carried out by the Government. In fact, the consultation process was not opened to the public so that we, as the people, found it difficult to be actively involved in providing input to the policy makers.

We assess that the negotiation process is very undemocratic. Even the Indonesian House of Representatives, as a representative of the people, has never opened or invited civil society to take part in providing an insight into the analysis of the impact that this international trade and investment agreement will have.

*Are we, as the people, does not deserve to give our insight to the people's representatives in the DPR building?* Even though we have sent letters of request several times for hearings both to the Commission VI and 1, but there has never been a response to date<sup>1</sup>.

**2. FTA Will Impact Against the State Sovereignty in Making the National Regulations.**

***The Honorable Mr.Bambang and Mr.Teguh,***

It should be noted that international trade and investment agreements not only regulate export-import matters, but also regulate all aspects of people's lives related to intellectual property rights, agriculture and food, health, education, digital economy, etc.

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<sup>1</sup> Surat permohonan No.027/IGJ.DE/10/2016; Surat Permohonan No.069/IGJ-DE/X/2018; Surat No.002/IGJ-DE/I/2019

For us, FTA does not merely negotiate market access, but the government also negotiates "*Rules*" which contain principles or legal rules regarding how the state carries out its obligations to implement agreements, including what the state can or cannot do in making domestic regulations. .

Provisions of the "**Rules**" in the FTA are also considered to potentially cause social and human rights impacts as well as contrary with the Constitution. For example, the principle of transparency, non-discrimination, regulation coherence (harmonization of national law), dispute resolution mechanisms, Ratchet, Standstill, prohibition on performance requirements, including rules relating to other trade-related agreement chapters such as IPR protection and foreign investment.

Due to its broad impact, trade and investment agreements must be considered as very important agreements so that the DPR RI, as a people's representative, must oversee, criticize, and analyze the long-term impacts that these agreements will have. **Therefore, the role of the DPR RI should be present and active when the Government of Indonesia plans, negotiates and enter the ratification process.**

During this time, the presence of the DPR in the discussion of international trade and investment agreements was only present in the final process prior to ratification, only as a stamp without considering the good and bad for the nation in the long term period. This agreement will also affect the state sovereignty and potentially against the Constitution.

### 3. **Panic on Export Performance Issues, the Solution is not FTA**

#### ***The Honorable Mr. Bambang and Mr. Teguh,***

The global economic turmoil that has an impact on Indonesia's current account deficit often raises panic attack for Government of Indonesia. Even the decline in Indonesia's trade performance continues to put pressure on the national economy. In the end, the urgency to complete various negotiations on trade agreements became the pragmatic choice of the Government in order to improve export performance.

For us, this chosen policy shows that the government mindset is very narrow to see trade cooperation, namely only exports and imports. **Because if the government only pursues the target of increasing the value of exports in the near future, the way is not by signing many FTAs.** But to finish the homework which still hampers Indonesia's competitiveness.

The Coalition noted, there were 3 things that caused the decline in Indonesia's export performance due to Indonesia's low competitiveness: **First**, Indonesia's exports still relied on exports of raw materials and commodities that had no added value; **Second**, Indonesia's leading commodity products are still dominated by low-tech products; and **Third**, trade creation in trade liberalization continues to create a high dependence on imported products.

According to coalition data, evidence that the FTA is not a solution to increase exports is because the average utilization of FTA<sup>2</sup> by Indonesia in driving Indonesia's export performance is still very low, which is only 30% to 35%. **In fact, by more and more FTAs being signed, it has the potential to open the door for Indonesian imports, and not vice versa.**

Critical coalition analysis of Indonesia-Australia CEPA also has the potential to increase imports. This collaboration will only increase imports rather than exports. This is because the significance of opening market access for agricultural products including plantations owned by Indonesia to Australia does not exist. This is because the Fact Sheet released by the Ministry of Trade states that so far Australia has opened tariffs up to 0% for Indonesian agricultural products such as: coffee, rubber, wood, chocolate and paper<sup>3</sup>. the economic powerhouse concept that is promoted will increase the use of raw materials for agricultural products from Australia to be obtained in Indonesia in the processed food industry, rather than using and absorbing local agricultural products that can have an effect on the welfare of local farmers. Of course, the exposure of Australian imported products to Indonesia will be even higher, and the trade deficit between Indonesia and Australia will continue<sup>4</sup>.

Moreover, the extents of the trade aspect which currently also regulates the chapter on the procurement of public goods and services in CEPA (Government Procurement Chapter) will potentially increase the import number in economic cooperation. Moreover, some strategic projects for the procurement of goods and services cannot be limited to using only local products provided only by local business actors. And this will contradict the provisions on TKDN obligations that have been pushed by the government.

<sup>2</sup> ASEAN FTA, ASEAN-China FTA, ASEAN-Korea FTA, Indonesia-Japan EPA

<sup>3</sup> [http://ditjenppi.kemendag.go.id/assets/files/publikasi/doc\\_20181015\\_fact-sheet-indonesia-australia-cepa.pdf](http://ditjenppi.kemendag.go.id/assets/files/publikasi/doc_20181015_fact-sheet-indonesia-australia-cepa.pdf)

<sup>4</sup> Catatan Kritis IGJ Tentang IA CEPA, Jakarta, 4 Maret 2019

#### 4. The Role of DPR RI in Ensuring the Protection of the Interests of the People Mandated in the Constitution

*The Honorable Mr. Bambang and Mr. Teguh,*

Our coalition has won a Judicial Review Law on Law No.24/2000 concerning the International Agreement Against 1945 Republic of Indonesia's Constitution in the Constitutional Court. The Constitutional Court has decided on case No.13 / PUU-XVI / 20185 that the issue of trade, economy, investment, double taxation, and even foreign debt can be part of a broad-based international agreement that requires the approval of the people, in this case through the DPR RI. This is in accordance with Article 11 of 1945 Indonesia Constitution which reads: *"The President in making international agreements that have broad and fundamental consequences for the lives of the people related to state finance burden, and / or requires changes or the formation of laws must be approved by the House of Representatives "*.

Therefore, the Constitutional Court Decision above has reaffirmed the important role of DPR RI in ensuring the protection of rights and people interests which protected in the Constitution. Thus, the logical consequences that must be made by DPR RI regarding international trade and investment agreements are:

- a. **Conduct a comprehensive impact analysis assessment by DPR RI before giving the approval for a trade and investment agreement on its impact of economy, social, environment and human rights.** The results of this impact assessment must be the basis arguments for DPR RI and the Government to ratify an International trade and investment agreement.
- b. **Mandatory to open information or text and involve the people at large in the consultation process** to get people's insights on the impact that this agreement will have on state finances which will burden the public and on the formation of new laws.

Therefore, we urge DPR RI to conduct an active critical study of international trade and investment agreements before giving a decision or approval, especially on several agreements that have been discussed and will enter the ratification stage such as Indonesia-Australia CEPA, Indonesia-Europe FTA (IEFTA), and Indonesia-Singapore Bilateral Investment Treaty (BIT).

#### 5. Suspend the Ratification Process and FTA Negotiations before the 2019 Election

*The Honorable Mr. Bambang and Mr. Teguh,*

We beg to not risk the fate of hundreds of millions of Indonesians in the 2019 election agenda. We are very worried because of your and other members of DPR RI busy schedules in the 2019 Election campaign, eventually forgetting the duties of your work in the office. And in the end the issues discussed in dozens of chapters and hundreds of pages of the agreements will not be able to be seriously discussed, criticized and analyzed its impact comprehensively by members of DPR RI.

Moreover, the survey conducted by IGJ in 2018 to the public regarding the extent of the role of the Indonesian Parliament in protecting community rights in free trade agreements, concluded: *"64.8% of the public assessed that Parliament was less serious in taking a role in overseeing free trade agreements. And 50% of the people assessed that they are doubtful if DPR RI members know the contents of free trade agreement "*.

The Government of Indonesia's ambition to finalize various negotiations on trade and investment agreements, including accelerating the ratification process before the 2019 Election will ignore the rights and fate of the people. This is because, the busy schedule of election 2019 has made the performance of DPR RI members decreased and they are not present at important meetings that discuss people's fate for many times. And this can have an impact on the loss of supervision and guiding the negotiation agreements process.

**We urge the DPR RI to delay the moratorium on all forms of discussion on the ratification process and negotiations on international trade and investment agreements before the election.** This delay was carried out to ensure that the rights and fate people of Indonesia remained protected as mandated by the Constitution.

**Thus our letter to the Chairman House of Representatives Republic of Indonesia and Chairman House of Representatives Commission VI , hopefully that it will be well received and can be followed up immediately.**

Yours respectfully,

<sup>5</sup> <https://igj.or.id/pernyataan-tim-advokasi-keadilan-ekonomi-pasca-putusan-mk-tentang-uu-perjanjian-internasional/>

<sup>6</sup> <https://www.facebook.com/226602074032391/photos/pcb.2830341333658439/2830323736993532/?type=3&theater>

1. Indonesia for Global Justice (IGJ)
2. The Peoples Coalition for Fisheries Justice (KIARA)
3. Indonesian Forum for the Environment (WALHI)
4. Indonesian Peasant Union (SPI)
5. Women Solidarity (SP)
6. People's Coalition for the Rights to Water (KRuHA)
7. The Indonesian Traditional Fishermen's Association (KNTI)
8. The People's Struggle Unity (KPR)
9. Indonesia Aids Coalition (IAC)
10. Indonesian Human Rights Committee for Social Justice (IHCS)
11. Abdul Rosid Indonesian Port Transport Workers Federation
12. The Federation of Reformed Pharmacy and Health Workers' Unions
13. Labor Information Agency of Sedane (LIPS)
14. Confederation of National Unions (KSN)
15. Federation of Populist Workers' Unions (F-SERBUK)
16. Confederation of Indonesian Prosperous Labor Unions (K-SBSI)

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