



IMPLICATIONS OF THE PRINCIPLE OF NON-DISCRIMINATION IN THE INDONESIA-EUROPEAN UNION COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT ON GOVERNMENT PROCUREMENT CHAPTER TOWARD REGULATIONS OF DOMESTIC PRODUCT USE IN INDONESIA

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ABSTRACT

This article aims to explain the differences between regulations on the use of domestic product in Indonesia and the principle of non-discrimination in Indonesia-European Union Comprehensive Economic Partnership Agreement (I-EU CEPA) on Government Procurement Chapter and the legal consequences for domestic regulations in Indonesia. The research method used is a normative juridical method with exploratory specifications. The results of this study indicate that the principle of non-discrimination, which consists of most favored-nation treatment and national treatment in the I-EU CEPA on Government Procurement Chapter, differs from regulations in Indonesia because the use of domestic product is mandatory in the government procurement and discriminatory against foreign suppliers. The difference in these provisions has implications, namely if Indonesia and the European Union agree to the I-EU CEPA, they must adjust the regulations for the use of domestic product in accordance with the principle of non-discrimination in the I-EU CEPA or World Trade Organization Agreement on Government Procurement (WTO GPA) or ratify the I-EU CEPA in the form of a Law and its enforcement is *lex specialis* and it is necessary to make adjustments to the implementing regulations by giving time after entry into force. In addition, Indonesia does not have the obligation to provide equal treatment to third countries because the I-EU CEPA is a bilateral agreement and Indonesia is not yet bound by a multilateral agreement, namely the WTO GPA. In addition, if Indonesia and the European Union agree to an I-EU CEPA, the Indonesian side cannot cancel it on the grounds that it violates the provisions of national law.

Keywords: non-discrimination principles, I-EU CEPA, Domestic Product, GP.

I. INTRODUCTION

The activities of government procurement are an important aspect of international trade and an important part of the government of a country in carrying out various public activities. This is because the procurement market itself is around 10-15% of the Gross Domestic Product (GDP) globally and is also important because it is seen from the benefits obtained by both domestic and foreign stakeholders in increasing transparency, integration and competition.¹ In various developed countries such as the United States and European Union countries, no less than 13-17% of GDP is allocated for government procurement. Meanwhile, procurement transactions around the world account for 7.1% of global GDP.²

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¹ WTO, "WTO and Government Procurement", https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm accessed on December 5, 2020

² OECD stats di <http://stats.oecd.org/>, accessed on December 5, 2020

In Indonesia every year no less than 30% of the State Budget is allocated for government procurement.³ Data from National Public Procurement Agency (NPPA/LKPP) shows that the total expenditure budget for Ministries/Institutions/Regional Governments allocated in the 2019 States Budget/Regional Budget is 2,163.9 Trillion Rupiah, for government procurement an allocation of 1,133.4 Trillion Rupiah or 52.4% of these, as many as 97,998 tender packages with a value of 265 trillion were transacted through electronic procurement (e-tendering), and 314 thousand packages with a value of 54 trillion rupiah were transacted through direct shopping (e-purchasing) through electronic catalogs. The rest is implemented by a procurement scheme that has not been accommodated through an electronic system.⁴

With the large number of allocations and priorities for the government procurement, the government is often faced with problems of market access for government procurement. On the one hand, the government wants goods and services with adequate quality and competitive prices, but on the other hand, domestic suppliers have not been able to provide goods and services with quality that meet the requirements and are also unable to provide competitive prices. This certainly opens up opportunities for foreign entrepreneurs as potential providers to participate in the government procurement in Indonesia.⁵

Although the government is one of the largest buyers of goods and services in each national market, the government procurement market is one of the most protected in the context of international trade. This is because many governments use procurement as an instrument of industrial policy to develop domestic suppliers. On the one hand, the government needs the best quality goods and services at competitive prices, so that efficiency allocations can be achieved from the limited government budget. On the other hand, many domestic suppliers are unable to provide quality goods and services at competitive prices so that they have the potential to be eliminated if the national government procurement market is open to foreign suppliers.⁶

On the other hand, on various international occasions, the Government of Indonesia is often asked to open government procurement market access to partner countries both within the framework of bilateral agreements in the Free Trade Agreement (FTA)/Comprehensive Economic Partnership Agreement (CEPA) scheme as well as in multilateral schemes such as World Trade Organization Agreement on Government Procurement (WTO GPA).⁷ The WTO has an integral function in increasing trade in goods and services that cross national borders.⁸

Then, in response to this request, the Indonesian Government began to consider options to open market access of government procurement in Indonesia through various FTA/CEPAs with partner countries, one of which is the European Union in the Indonesia-European Union Comprehensive Economic Partnership Agreement (I-EU CEPA) scheme. In 2012 the two countries discussed the scoping paper⁹ to determine the scope and depth of commitment to be negotiated, because the change

³ Senator Nur Bahagia, "Sistem Pengadaan Publik dan Cakupannya, *Jurnal Pengadaan Senarai Pengadaan Barang/Jasa Pemerintah*, No. 1, Vol.1, December 2011

⁴ Direktorat Perencanaan, Monitoring dan Evaluasi Pengadaan LKPP, "Profil Pengadaan Nasional Tahun 2019", monev-ng-lkpp.go.id downloaded on December 5, 2020

⁵ Hestuleksono, "Tinjauan Atas Kesiapan Kementerian Pekerjaan Umum Dan Perumahan Rakyat Terkait Keikutsertaan Indonesia Dalam Government Procurement Agreement (GPA)", *Jurnal Veritas et Justicia*, Vol 2, No 2, 2016, p. 443

⁶ Poppy Sulistyaning Winanti, (et.al), *Kajian Kajian Dampak Ekonomi Liberalisasi Pengadaan Barang/Jasa Pemerintah dalam Kerangka I-EU-CEPA Terhadap Industri Domestik*, LKPP RI, 2018, p. 4

⁷ Richo Andi Wibowo, (et.al), *Kajian Dampak Pembukaan Akses Pasar Pengadaan Barang/Jasa Pemerintah Dalam GPA WTO, I-EU CEPA dan IJEPA Terhadap Regulasi Dalam Negeri*, LKPP RI, 2018, p. 4

⁸ Prita Amalia dan Garry Gumelar Pratama, *Hukum Perjanjian Perdagangan Internasional (Kerangka Konseptual dan Ratifikasi di Indonesia)*, Cet. 1, CV. Keni Melia, Bandung, 2020, p. 35

⁹ *Joint Scoping Paper for an EU – Indonesia Comprehensive Partnership Agreement*

of government in Indonesia was just completed and approved by both parties on April 21, 2016. One of the parts in the I-EU CEPA scoping paper is "Improvement in market access on the basis of principles of non-discrimination and national treatment", with commodities to be opened are "goods, services, and public works" for government procurement at the level of "central and sub-central levels, state controlled entities and monopolies, especially utilities sectors". This principle does not allow differences in treatment between domestic products and foreign products, where one of the forms is giving preference to domestic products or domestic products.

Government procurement in the I-EU CEPA proposed by the European Union refers to the WTO GPA. The principles of non-discrimination are listed in Article IV of the Revised WTO GPA and the I-EU CEPA draft for the Government Procurement Chapter. As a consequence, for the I-EU CEPA, Indonesia is not allowed different treatment between domestic producers and products with the European Union in the government procurement.¹⁰

A number of WTO member countries still use their national regulations in carrying out government procurement to achieve domestic policy goals, such as the use of domestic products. This is allowed in multilateral international trade in accordance with the provisions of Article 24 of the GATT related to enabling clauses that allow the giving of trade preferences to developing and underdeveloped countries. This clause is necessary because otherwise such actions would violate the principle of non-discrimination. In paragraph 2 (c) the decision is determined that if a developing country takes preferential action then it is obliged to implement the GATT provisions concerning Most Favored Nation Treatment. In the General Agreement on Trade and Services (GATS) article V also stipulates the freedom to enter into a service trade agreement on the condition that it does not violate the terms and principles stipulated in GATS.

WTO GPA is excluded from multilateral arrangements can also be seen in the GATT provision that national treatment on goods is not applied to government procurement spending¹¹ and GATS which regulates that national treatment and market access are not applied to services¹². Because it is exempted from a multi-dimensional agreement and is only plurilateral in nature, not all countries are obliged to regulate their national provisions in accordance with the WTO GPA, including those relating to non-discrimination so that it becomes a challenge for Indonesia to negotiate these provisions with partner countries such as the European Union because Indonesia is a developing country. has regulated the mandatory use of domestic products for each government for procurement derived from government procurement spending.

Indonesia as a country that is bound by the WTO multilateral agreement but not bound by the WTO GPA plurilateral agreement, has national legal arrangements regarding government procurement, namely Presidential Regulation Number 16 of 2018 concerning Government Procurement. The principle of non-discrimination has different arrangements with Indonesian laws and regulations, including: 1) Law Number 3 of 2014 regarding Industry which requires the use of domestic products for Ministries/ Institutions/Regional Institutions; 2) Government Regulation Number 29 of 2018 regarding Industrial Empowerment about sanctions for government officials who do not use local domestic product; and 3) Presidential Regulation Number 16 of 2018 regarding Government Procurement, which regulates the technical provisions for granting preferences for products that have Domestic Component Level (TKDN); 4). Regulation of the Minister of Industry 02/M-

¹⁰Letter of the Chairman of LKPP to the Minister of Trade Number: 940/KA/01/2021, regarding *Penyampaian Posisi dan Isu Chapter Government Procurement* on January 19, 2021

¹¹GATT Articles III:8 (a)

¹²GATS Article XIII: 1

IND/PER/1/2014 regarding guidelines for the use of domestic product in the domestic products. For this reason, a decision is needed on whether Indonesia will continue to open the government procurement market by applying the principle of non-discrimination, because opening market access will definitely violate statutory regulations or with a solution if it will continue to open the market is to issue I-EU CEPA in the form of a Law with one of the articles explaining that for PBJP which is within the scope of this agreement, Domestic Component Level and preferences do not apply.

I. RESEARCH METHODS

The approach method used in writing this law is to use normative juridical methods with explanative specifications. The choice of this method is because legal writing is a process to find legal rules, legal principles, and legal doctrines in order to answer legal issues at hand.¹³ The juridical aspect in question is in reviewing and viewing and analyzing the problem using legal principles and principles. Meanwhile, from the normative side, this paper refers to the implications of the government procurement principle of non-discrimination in the CEPA between the Republic of Indonesia and the European Union on Regulations for the Use of Domestic products in Indonesia. Exportative means to explore the possibility in the future this will happen, by discovering new knowledge that previously did not exist. The line of thought is an assumption on the principle of non-discrimination that is applied to regulations in Indonesia.

The data analysis was carried out normatively-qualitatively by interpreting the statements contained in the Agreement, the Law, and other related documents. Normative because this writing has a starting point from existing regulations as positive legal norms, while qualitative here is writing which produces data that comes from writing or expressions and behavior that can be observed from humans.

II. DISCUSSION

1. Differences in Regulations Between the Regulations for the Use of Domestic Products in Indonesia and the Principle of Non-Discrimination in the Government Procurement Chapter of the I-EU CEPA

The Indonesian government has begun to consider options to open government procurement market access in Indonesia through various FTA/CEPAs with partner countries, one of which is an agreement with the European Union in the I-EU CEPA scheme. The term agreement tends to be used for bilateral agreements and is limited to multilateral agreements,¹⁴ with a substance that is smaller in scope than the material stipulated in the Treaty or Convention.¹⁵ The term “agreement” is included in an international agreement.¹⁶ CEPA has a meaning as a broad economic cooperation scheme more than a trade issue, CEPA usually has a design that is interconnected to form a triangle, which consists of market access, capacity building and trade and investment facilitation, whether it is done bilaterally or with economic cooperation blocks.¹⁷ The CEPA is different from FTA pact, where if the FTA aims only to eliminate tariff barriers, the CEPA aims not only to reduce trade barriers, but this agreement covers a much wider area of cooperation. CEPA goes beyond the mere form of trade relations, which also

¹³Muhammad Abdulkadir, *Hukum dan Penulisan Hukum*, Citra Aditya Bakti, Bandung, 2004, p. 52

¹⁴Boer Mauna, *Hukum Internasional Pengertian, Peran dan Fungsi dalam Dinamika Global*, Alumni, Bandung, 2000, p. 92

¹⁵Yoyon M Darusman, *Konvensi Internasional Pelaksanaan dan Pengawasannya*, Cet.1, Hers Printing, Tangerang Selatan, 2016, p. 78

¹⁶Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional*, Cet. 1, Edisi Kedua, Alumni, Bandung, 2003, p. 119

¹⁷Kemenkeu, *Laporan Hasil Kajian Free Trade Agreement (FTA) dan Economic Partnership Agreement (EPA), dan Pengaruhnya terhadap Arus Perdagangan dan Investasi dengan Negara Mitra Jilid 2*, BKF Kemenkeu, 2013, p. 20

discusses issues of investment, economic assistance, technology cooperation and renewable energy and so on so that it is comprehensive.

The agreement to negotiate the I-EU CEPA was based on the results of a joint study conducted in 2010 and submitted to the two governments on May 4, 2011. The study entitled “Invigorating the Indonesia-European Union Partnership Towards a Comprehensive Economic Partnership Agreement” was conducted by a team known as The Vision Group, which includes government, academia and business from both parties. This study shows a huge potential if the economic and trade relations between Indonesia and the European Union can be bound in a partnership agreement that is comprehensive and covers current issues.¹⁸

In the study of Invigorating the Indonesia-European Union Partnership Towards a Comprehensive Economic Partnership Agreement, it is stated that one of the factors that hinders foreign trade and investment to Indonesia is the logistics system and infrastructure. The development of logistics and infrastructure in Indonesia is considered slow due to the process of government procurement and the mandatory use of domestic products¹⁹. From this study it is suggested that the CEPA should discuss the government procurement, especially in the infrastructure sector for the energy, transportation, road and port sectors.

The scoping paper that was started in 2012 is the first step taken by Indonesia and the European Union to determine the scope and depth of commitment that the two parties will negotiate. Interspersed with a change of government, both in Indonesia and in the European Union, it has been vacuum for four years. Indonesia and the European Union finally agreed to revive the negotiation of the I-EU CEPA cooperation framework, where the scoping paper discussion was finally completed in April 2016 when Indonesian President Joko Widodo paid a visit to Brussels, Belgium.²⁰ The potential of the IEU CEPA cooperation opportunities will certainly be able to support the improvement of the Indonesian economy and to fulfill national interests for Indonesia and the European Union.

Both Indonesia and the European Union agreed to take advantage of the momentum of President Joko Widodo's visit to Brussels in April 2016 to speed up the I-EU CEPA negotiation process. After July 2016 both parties successfully launched a joint scoping paper. The initiative was formed based on the foreign policy pattern of the two parties which is oriented towards development for Indonesia and the European Union. The benefits of this agreement are enormous for both parties, greater market access to EU member states can improve Indonesia's export performance in the European Union market. Since the agreement of the I-EU CEPA scoping paper, the first I-EU CEPA negotiations have been held that agree on the negotiation architecture, such as the format of the working group and sub-working group, in the CEPA negotiation round. Through a mature scoping paper as a guide in negotiations, the implementation of the CEPA is expected to produce mutually beneficial solutions for both parties. The agreement contained in the scoping paper covers the following issues:

1. Trade in Goods;
2. Customs and Trade Facilitation;
3. Sanitary and Phytosanitary;
4. Technical Barrier to Trade;

¹⁸ Kementerian Luar Negeri, “Putaran ke-2 Perundingan I-EU-CEPA Tentukan Arah Strategis”, <https://www.kemlu.go.id/id/berita/berita-perwakilan/Pages/Putaran-ke-2-Perundingan-I-EU-CEPA-Tentukan-Arah-Strategis.aspx>, accessed on Desember 5, 2020.

¹⁹ *Invigorating the Indonesia-European Union Partnership Towards a Comprehensive Economic Partnership Agreement, Delegation of European Union*, 2011, p. 31.

²⁰ *Ibid.*

5. Trade in Services and Investment;
6. Government Procurement;
7. Intellectual Property Rights;
8. Competition Policy;
9. Transparency of Regulation;
10. Dispute Settlement); and
11. Trade and Sustainable Development.²¹

With the existence of the CEPA, Indonesia has the opportunity to fight for national interests in the global market, especially Europe. Although the IEU-CEPA Scoping Paper is non-binding, it has a strategic function for the negotiation process and for future discussion of the substance. It is hoped that the agreement on the scoping paper will make negotiations easier because there has been a common perception between the two parties. Likewise, in terms of substance, it will help to provide a significant signal for business actors of both parties regarding the seriousness of the Indonesian government and the European Union in building the infrastructure and posture for strategic trade and investment economic cooperation. One part of the scoping paper is Public Procurement which contains the following points:

1. The Agreement will aim to include disciplines on transparency in public procurement, including challenge procedures, and market access opportunities, while taking account of the need for transitional measures.
2. The Agreement should achieve improvements in market access on the basis of the principles of non - discrimination and national treatment.
3. Procurement of goods, services and public works will be included in the negotiations, as well as procurement by central and sub-central levels, state controlled entities and monopolies, especially those operating in the utilities sectors.

Based on the Joint Scoping Paper I-EU CEPA, one of the scopes of this agreement in the government procurement chapter is "Improvement in market access on the basis of principles of non-discrimination and national treatment", with commodities to be opened are "goods, services, and public works "for government procurement at the level of "central and sub-central levels, state controlled entities and monopolies, especially utilities sectors ". This principle does not allow differences in treatment between domestic products and foreign products, where one of the forms is giving preference to domestic products.

Government procurement in the I-EU CEPA proposed by the European Union refers to the WTO GPA. WTO Agreements consist of Multilateral and Plurilateral Agreements.²² For the Multilateral Agreement, all WTO member countries are obliged to ratify it, while for the Plurilateral Agreement it is not obligatory (voluntary-based).²³ There are four Plurilateral Agreements in the WTO that are only signed by a number of member countries, including Trade In Civil Aircraft, Government Procurement, International Dairy Agreement, and International Bovine Meat Agreement.²⁴

²¹*Joint Scoping Paper for an EU – Indonesia Comprehensive Partnership Agreement*

²²Multilateral agreements are contained in annexes 1, 2, and 3 of the WTO Agreement, plurilateral agreements are contained in annex 4 of the WTO Agreement

²³Artikel II ayat 4 *WTO Agreement*

²⁴Kajian Pengadaan Barang/Jasa dalam Pengembangan Iklim Usaha Nasional, Direktorat Pengembangan Iklim Usaha dan Kerjasama Internasional LKPP, 2011

WTO GPA is a plurilateral agreement, which means that this agreement is not mandatory for all WTO members, but only binds the signatory parties. The WTO GPA rules were negotiated through the Uruguay Round in 1994, and came into force on January 1, 1996. However, not all WTO member countries signed or ratified the GPA rules, including Indonesia. Indonesia currently has the status of observer since 2012. The WTO GPA rules have an important role as a legal foundation in various cross-country government procurement issues in either bilateral or multilateral agreement schemes because generally the WTO GPA is the reference for the government procurement text in the free trade agreement between countries in the CEPA or FTA.²⁵

The principle of non-discrimination has a different set of objectives from the government procurement regulated in Article 4 Letter b and d of Presidential Regulation Number 16 of 2018 regarding government procurement, which states that the goal of government procurement is to increase the use of domestic products and increase the role of national business actors. Therefore, the government must maximize the use of domestic product, as stated in Article 96 paragraphs 1 and 2 of the Presidential Regulations Number 16 of 2018 regarding government procurement. This procurement principle is the reference for making government policies in government procurement activities.

Maximizing the use of domestic products in procurement is carried out in line with the contents of Article 96 of Presidential Regulation Number 16 of 2018 regarding government procurement which states that in carrying out the procurement, Ministries/Institutions/Local Government is obliged to maximize the use of goods/services produced in the country, including design and national engineering in government procurement, maximizing the use of national suppliers, and maximizing the provision of work packages for Small Medium Enterprises. Then the Contract must include the requirements for the use of the Indonesian national standard (SNI), domestic production in accordance with the national industrial capacity, and domestic experts and suppliers

The Indonesian government has launched a program to Increase the use of domestic products (P3DN) with the aim that people use domestic products more than imported products. Not only aimed at the community but obliging government agencies to maximize the use of domestic products in the procurement financed by the State Budget/Regional Budget. Increased Use of Domestic Products is a national policy and program launched by the government with the sole aim of increasing the use of domestically made products. The implementation of the Increased Use of Domestic products program is considered to be able to provide space for the national industry to increase production capacity and the quality of goods and services produced, so that they can compete independently in the international market. Meanwhile, in the aspect of reducing dependence on the domestic market on imported products, Increased Use of Domestic products is also an additional protection against potential weakening of the exchange rate.

LKPP as an institution in charge of implementing the development, formulation and determination of the Government's procurement of goods / services policies has been appointed to represent the Indonesian government in negotiating procurement provisions in various FTA / CEPAs. In conducting negotiations, LKPP faced challenges faced by Indonesia when signing an FTA/CEPA agreement that contained provisions related to government procurement such as in the draft articles of I-EU CEPA which were being negotiated because, on the other hand, Indonesia currently has sufficient procurement regulations. These regulations cover International Procurement Value, Domestic Component Level, supplier requirements to technical procurement procedures. For this reason, the

²⁵Richo Andi Wibowo, (et.al), *Kajian Dampak Pembukaan Akses Pasar Pengadaan Barang/Jasa Pemerintah Dalam GPA WTO, I-EU CEPA dan IJEPA Terhadap Regulasi Dalam Negeri*, Op. Cit., p. 12

Government of Indonesia needs to map how far the harmonization must be carried out in the various regulations and mechanisms for implementing procurement procedures in Indonesia with the government procurement rules in the FTA/CEPA. For this reason, it is important to know that the making of international agreements with other countries will bind both parties and will become part of Indonesian national law.²⁶

Until the 9th round of I-EU CEPA negotiations in December 2019, LKPP as the lead negotiator in the GP Chapter has successfully completed 75% of the draft agreement text. However, there are still some issues in the draft text that have not been resolved because they require a decision from the government and the legislature, and not the authority of the LKPP, one of which is non-discrimination.²⁷ The principle of non-discrimination consists of Most Favored-Nation Treatment and National Treatment. In essence, the principle of Most Favored Nation aims that all countries are not allowed to give special treatment to one country or discriminate against other countries against international trade practices and also with this principle it will guarantee and protect the rights of developing countries to get benefits of the best trade conditions negotiated by developing countries. Meanwhile, National Treatment is a principle which states that a country must not differentiate between domestic products and foreign contents/products.²⁸ In essence, the principle of non-discrimination demands equal treatment for international countries that carry out trading activities so as to create fair trade practices.

The principles of non-discrimination listed in Article IV: Revised WTO GPA and draft I-EU CEPA for the GP Chapter are as follows:

General principles

Non-Discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to its own goods, services and suppliers.
2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:
 - (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
 - (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

In Article IV: 1 of the I-EU CEPA draft, it prohibits discriminatory treatment by the parties both for domestic goods/services and suppliers or for goods/services and suppliers from other member countries. Furthermore, Article IV: 2 of the draft I-EU CEPA states that the state parties must also ensure that the procurement organizing entity does not discriminate against domestic suppliers with foreign affiliations or ownership and against domestic providers whose products or services offered come from member countries other. Although this principle is the basic guideline in formulating the

²⁶Jawahir Tantowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer*, Cet. 1, Refika Aditama, Bandung, 2006, p. 93

²⁷Letter of the Chairman of LKPP to the Minister of Trade Number: 362/KA/12/2019, regarding Penyampaian Isu-Isu dalam Perundingan I-EU CEPA GP Chapter, Desember 17, 2019

²⁸Astim Riyanto, *World Trade Organization (Organisasi Perdagangan Dunia)*, Cet. 1, PT Yapemdo Bandung, 2003, p. 54-56

Revised WTO GPA and I-EU CEPA for the government procurement chapter, this principle is not absolutely applied to all policies taken by member countries.²⁹

A number of WTO member countries still use their national regulations in carrying out government procurement to achieve domestic policy goals, such as the use of domestic products. Regulations for the use of domestic products in government procurement in Indonesia are as follows:

Regulations for the Use of Domestic Products in Government Procurement in Indonesia	
Law Number 3 of 2014 regarding Industry	<ol style="list-style-type: none"> 1. Article 86 paragraph (1): states that the obligations of Ministries/Institutions/Regional Governments, State Owned Enterprises/Regional Owned Enterprises to use domestic products for procurement financed by State Budget or Regional Budget as well as foreign loans or grants and public private partnerships; 2. Article 88: states that In the framework of using domestic products as intended in Article 86, the Government may provide facilities at least in the form of: <ol style="list-style-type: none"> a. price preferences and administrative convenience in the government procurement; and b. domestic component level certification.
Government Regulation Number 29 of 2018 regarding Industrial Empowerment	<ol style="list-style-type: none"> a. Article 54: Increased Use of Domestic Products aims to empower domestic industries b. Article 57: Domestic products must be used a) the government in government procurement whose funding is from the State Budget or Regional Budget including loans or grants; and b) State-Owned Enterprises/Regional-Owned Enterprises/ Private Sector, whose financing is from the the State Budget or Regional Budget, Public Private Partnership and/or exploits resources controlled by the state; c. Article 61: In government procurement, it is mandatory to use domestic products if there is domestic products with a total Domestic Component Level value & Company Benefit Weight (BMP) of at least 40% (with a Domestic Component Level value of at least 25%). d. Article 64: Government Facilities: a) Price preference for domestic products with Domestic Component Level value \geq 25%; b) Preference price of goods domestic products is no higher than 25%; c) Preference for the domestic products price of Construction Services by domestic companies is 7.5% maximum (above the lowest bid price of foreign companies).
Presidential Regulation Number 16 of 2018 regarding Government Procurement	<ol style="list-style-type: none"> 1. Article 19 paragraph (1) letters a and b: Obligation to use domestic products and use Indonesian National Standard certified products in compiling specifications. 2. Article 66 paragraph (1) and (2): Obligation to use domestic products, including national design and engineering. 3. Article 67 paragraph (1): Price preference is an incentive for domestic products in selecting Supplier in the form of an acceptable excess price.
Regulation of the Minister of Industry 02/M-IND/PER/1/2014 regarding Guidelines For The Use of Domestic Product In The Government Procurement.	<ol style="list-style-type: none"> 1. Article 3 paragraph (1): The Use of Domestic Products (P3DN) in the government procurement is an effort to stimulate growth and empowerment of industries in Indonesia, by giving awards to users of domestic producers. 2. Article 46: Procurement Officials who deviate from the provisions of this Ministerial Regulation may be subject to administrative sanctions in accordance with statutory regulations.

²⁹ *Ibid*, p. 4

Based on the above regulations, there are differences that the principle of non-discrimination, which consists of most favored-nation treatment and national treatment in the I-EU CEPA on Government Procurement Chapter, differs from regulations in Indonesia because the use of domestic product is mandatory in the government procurement and discriminatory against foreign suppliers.

2. The Legal Consequences of the Non-Discrimination Principles of the Indonesia-European Union Comprehensive Economic Partnership Agreement on Government Procurement Chapter Against Regulations on the Use of Domestic Products in Indonesia

Recognizing that there is a mismatch between the principle of non-discrimination in the I-EU CEPA in the Government Procurement Chapter and the regulations for the use of domestic products in Indonesia, a decision is needed to reject or apply the principle of non-discrimination in I-EU CEPA in accordance with the clauses in the WTO GPA. The positive side of rejecting the principle of non-discrimination is that regulations on the use of domestic products can be protected and Indonesia's position can be maintained as an observer of the WTO GPA, but rejecting the principle of non-discrimination results in no I-EU CEPA because Government Procurement Chapter do not recognize reservations such as other chapters and market access Government Procurement Chapter are one of the main objectives of the European Union. This does not immediately solve the problem because in negotiations there is a single undertaking principle or commonly known as "nothing is agreed until everything is agreed", that all chapters must be agreed upon, although almost all issues in chapters (for example trade in goods, investment and intellectual property rights) have been agreed, however if there is one issue that has not been agreed upon (eg government procurement) then the overall agreement cannot be signed and must wait for the pending issue to be resolved. In this case, if the government procurement is not agreed upon, there will be no I-EU CEPA. The European Union emphasized that the Government Procurement Chapter will not be agreed upon if there is no market access based on the principle of non-discrimination.

On the other hand, there is a positive side to the application of the principle of non-discrimination in the I-EU CEPA in the Government Procurement Chapter, Indonesia can implement a number of impact risk mitigation strategies for not using domestic products, but protection for domestic products is only temporary or an exception is made for Covered Procurement (contract value above threshold and list only applied to agreed government agencies) I-EU CEPA. It should be noted that opening market access does not mean that the use of domestic products and the Domestic Component Level will be completely eliminated. Only procurement that is included in covered procurement I-EU CEPA is exempted from Domestic Component Level. Procurement through other schemes such as construction work is allowed for foreign providers if the threshold is 1 trillion and above, according to Presidential Regulation Number 16 of 2018 regarding government procurement still using the Domestic Component Level. If it does not open market access, Indonesia can still maintain the Domestic Component Level but there is no I-EU CEPA.

Efforts that can be made so that the principle of non-discrimination does not conflict with the laws and regulations in Indonesia if the I-EU CEPA is signed, then Indonesia must ratify the I-EU CEPA in the form of a law and its enforcement is *lex specialis* and adjustments need to be made to the implementing regulations by granting time for entry into force. There is no third option or other options such as agreeing as long as it does not conflict with the law.

Vietnam protects the use of domestic products by applying transitional measures for 18 (eighteen) years in the Vietnam-EU CEPA. The move is not permanent, but it is allowed in negotiating international trade agreements.³⁰ Indonesia can emulate Vietnam by proposing a time after entry into the force to harmonize the use of domestic products according to the principle of non-discrimination.

One of the real implications of this harmonization is the change in regulations governing the mandatory use of domestic products and discriminatory obligations against foreign providers in the implementation of government procurement activities. *First*, Law Number 3 of 2014 regarding Industry requires that all State institutions, both ministries and non-ministerial institutions, both in the central government and regional work units, use domestic products in every government procurement whose source of funding comes from the States Budget/Regional Budget. If Indonesia and the European Union then decide to agree on the principle of non-discrimination, then this Industrial Law is one of the legal products that must undergo amendments, especially in articles 86 and 87 along with the derivative rules of these articles which regulate the mandatory use of domestic products in government procurement carried out by state agencies, because it is a form of discrimination prohibited in the I-EU CEPA on Government Procurement Chapter and Article IV: 1 Revised GPA WTO.

Second, Presidential Regulation Number 18 of 2018 regarding Government Procurement which encourages the use of domestic products. The government is obliged to use domestic products, including national design and engineering. This is expressly regulated in Article 66, namely as follows:

- (1) Ministries/Institutions/Local Governments are required to use domestic products, including national design and engineering.
- (2) The obligation to use domestic products as referred to in paragraph (1) shall be carried out if there are participants who offer goods / services with a Domestic Component Level value plus a Company Benefit Weight (BMP) value of at least 40% (forty percent).
- (3) Calculation of Domestic Component Level and Company Benefit Weight as referred to in paragraph (2) is carried out in accordance with the provisions of laws and regulations.

In addition, Article 67 also regulates the procurement operator to provide incentives for domestic products in the selection of providers in the form of excess prices that can be accepted in the form of price preferences.

If Indonesia agrees and ratifies the I-EU CEPA agreement, the provisions governing the use of domestic products including Price Preferences must be exempted because these arrangements are contrary to the principle of non-discrimination of the I-EU CEPA on Government Procurement Chapter. Member States are prohibited from treating domestically produced goods or services more favorably than goods or services produced abroad (Article IV: 1 Revised GPA WTO).

Third, Regulation of the Minister of Industry number 02/M-IND/PER/1/2014 regarding Guidelines for the Use of Domestic Products in the Government Procurement which specifically regulates the issue of using domestic products which are derivative regulations from the mandate given by Law Number 3 of Year 2014 regarding Industry. This regulation is intended to further clarify the legal framework and is expected to be able to drive growth and empower domestic industries and optimize the use of domestically produced goods or services including those produced by cooperatives, small-medium enterprises, in the government procurement.

³⁰ Letter of the Chairman of LKPP to the Minister of Trade Number: 940/KA/01/2021, perihal Penyampaian Posisi dan -Isu Chapter Government Procurement pada I-EU CEPA GP, Januari 19, 2021.

In Article 3 paragraph (3) Minister of Industry number 02/M-IND /PER/1/2014, in various procurement activities in Article 2 paragraph (2) there are obligations imposed by the procurement organizing entity to provide price preferences and require the use of domestic products starting from the planning stage, the implementation stage, up to the supervision stage in the government procurement.

In addition, Article 7 paragraph (1) Minister of Industry number 02/M-IND/PER/1/2014 also requires all government procurement activities to use domestic products, if in the procurement there are goods or services offered that have the sum of the Domestic Component Level and Company Benefit Weight reaches a minimum of 40% (forty percent).

Based on the review of Permenperin 02/M-IND/PER/1/2014, if Indonesia then agrees to the I-EU CEPA, of course the overall regulations regarding the use domestic products and price preferences in the government procurement include the Domestic Component Level and Company Benefit Weight provisions, it will immediately be removed from the provisions of government procurement that are included in the I-EU CEPA arrangements, because they are considered to deviate from the principle of non-discrimination, which is stated in Article IV: 1 of the WTO Revised GPA.

One of the implications of these regulatory adjustments is the change to all regulations governing the mandatory use of domestic products and discriminatory obligations against foreign suppliers in implementing government procurement activities. To make changes to regulations, the government must comply with procedures regarding changes or proposals for new regulations.

To solve the Government Procurement Chapter problems, a decision is needed regarding the principle of non-discrimination and regulations on the use of domestic products.

For this reason, a decision is needed whether Indonesia will continue to open the government procurement market by applying the principle of non-discrimination, because opening market access will definitely violate statutory regulations. Indonesia's position cannot be half-assed and must choose one because government procurement does not recognize domestic regulatory reservations or with a solution if it will still open the market is to issue I-EU CEPA in the form of a law with one of the articles explaining that for PBJP that is the scope of this agreement, Domestic Component Level and preferences do not apply. In this case, it can be anticipated by ratifying the I-EUCEPA through the Act so that it becomes *lex specialis*.

3. The Principles of Non-Discrimination Indonesia-European Union Comprehensive Economic Partnership Agreement on Government Procurement Chapter and its Relationship to the Articles of the 1969 Vienna Convention on the Law of Treaties

a) Article 34 of the 1969 Vienna Convention on the Law of Treaties regarding *pacta tertiis nec nocent nec prosunt*

The principle of *pacta tertiis nec nocent nec prosunt* means that the agreement only imposes rights and obligations on international treaty rights, not on third parties. The regulation of third countries in the 1969 Vienna Convention on the Law of Treaties (VCLT) is specifically regulated in Chapter III, Part four, Articles 34-38. Article 34 strictly adheres to the principle of *pacta tertiis nec nocent nec prosunt*, which means that agreements cannot give rights and obligations to third parties.³¹

³¹ Aryuni Yuliantiningsih, "Pengaturan Asas Pacta Tertiis Nec Nocent Nec Prosunt Berkaitan Dengan Status Hukum Daerah Dasar Laut Samudra Dalam (Sea Bed)", *Jurnal Dinamika Hukum*, Vol. 10 No. 1 Januari 2010, p. 30.

The obligation of the third party must act in accordance with the terms stipulated in the agreement, and he will remain bound by the agreement as long as he does not express his different wishes. The provisions of Article 34, if linked to the existence of rights and obligations borne by third countries, are not something absolute. The article only explains that the agreement does not create rights and obligations for third countries without consent.³² Automatically, Article 38 stipulates that rights and obligations towards third parties can arise if the provisions of the agreement become international customs.

In practice, in the past, this principle was affirmed in international agreements. This general principle is stated in the Latin proposition "*pacta tertiis nec nocent nec prosunt*" is supported in the practice of countries, in court decisions, for example in German Interest in Polish Upper Silesia. The case, where the Permanent Court of International observes that a treaty only creates law between States parties to the treaty, if there is any doubt, no rights can be inferred from in favor of a third State.³³

In connection with this paper, if Indonesia and the European Union agree on the principle of non-discrimination in the I-EU CEPA on Government Procurement Chapter, then Indonesia has no obligation to provide equal treatment to third countries, even though one of the principles of non-discrimination is the most favored nation, all countries may not give preferential treatment to one country or discriminate against other countries. This is because the I-EU CEPA is a bilateral agreement and Indonesia is not yet bound by a multilateral agreement, namely the WTO GPA.

Indonesia has signed bilateral agreements related to the government procurement with several countries, for example Indonesia and Japan for cooperation in the form of the Indonesia-Japan Economic Partnership Agreement (IJEPA) and Indonesia with EFTA (Iceland, Liechtenstein, Norway and Switzerland) in the form of Indonesia-EFTA CEPA. Both agreements do not include a non-discrimination clause in the agreement. The things that are regulated are related to further negotiations.

AGREEMENT BETWEEN JAPAN AND INDONESIA FOR AN ECONOMIC PARTNERSHIP

Chapter 10

Government Procurement

Article 10.3

Further Negotiation

In the event that, after the entry into force of this [Agreement], a Party offers a non-Party any advantages of access to its government procurement market, the former Party shall, upon request of the other Party, afford adequate opportunity to enter into negotiations with the other Party.

*COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE REPUBLIC OF
INDONESIA AND THE EFTA STATES*

Chapter 6

Government Procurement

Article 6.2

Further Negotiations

³²Malcom N. Shaw QC, "Hukum Internasional", Terjemahan M.N. Shaw, *International Law* (Cambridge University Press 2006), Nusa Media, Bandung, 2013, p. 922

³³Ugo Villani, 'The Security Council's Authorization of Enforcement Action by Regional Organization' (2002) 6 *Max Planck Yearbook of United Nations Law* 535, 538-539

The Parties shall promptly notify each other if they enter into an agreement granting market access for government procurement with a non-party and shall, upon request from another Party, enter into negotiation on market access on government procurement.

Article on Further Negotiations on IJEPA and I-EFTA CEPA above, relates to if one party opens market access government procurement with other trading partner countries or parties (in this case the European Union) it must also provide room for negotiation to other parties in terms of opening market access government procurement. In both bilateral agreements, the Indonesian side did not automatically provide market access to Japan or EFTA, but the Indonesian side provided room for further negotiations to be considered regarding the application of the principle of non-discrimination..

b) Articles 27 and 46 of the 1969 Vienna Convention on the Law of Treaties on the Relationship of National Law and International Law

Bounded agreement of a country through ratification is an external procedure in making international agreements. Furthermore, based on mutual agreement between the parties, proceed with internal procedures, namely, ratification in the national sense (ratification) of the said international agreement. Treaty parties may not present the provisions of its national law as grounds to justify the actions of a country not implementing international treaties.³⁴

For the international community in general or for other participating countries, it would be better if the international agreement itself must take precedence in its application, for the sake of creating an orderly international community in general. It can be imagined that international anarchy will arise, which of course will be detrimental to all parties if each participating country refuses or violates the provisions of an international agreement or fails to carry out international obligations arising from an international treaty, or on the grounds that the agreement is contrary to law or legislation. national. This at the same time will undermine the noble values and goals of international agreements in general.³⁵

Article 27 VCLT states that: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46. an agreement that has been agreed cannot be canceled based on the provisions of the national law of a country. The obligation of a country does not arise because international treaties have been ratified by law. However, this obligation was born because the parties as legal subjects had mutually agreed on an agreement. This is in accordance with the principle of the *pacta sunt servanda*. The provisions in Article 27 further emphasize that states parties which have declared themselves to be bound by means of ratification must respect and implement the contents of the agreement. The state is subject to the agreement in the agreement by taking into account the principles of existing international agreements. This provision should be understandable because if each country is justified in presenting its reasons based on national law, then the result will be very likely that there will be abuse for reasons based on national law, for example, it will create enormous legal uncertainty.

The provisions of Article 27 must be distinguished from the provisions of Article 46 which regulates the invalidity of an international agreement based on national legal reasons. According to Article 46, a country is not allowed to claim that an international treaty is an illegal treaty and therefore

³⁴Juladies H. S. Watupongoh, "Tinjauan Yuridis Atas Persetujuan Pada Perjanjian Internasional Melalui Ratifikasi", *Lex et Societatis*, Vol. IV/No. 2/Feb/2016/Edisi Khusus, p. 128

³⁵Lihat Dissenting Opinion Hakim Hamdan Zoelva, Putusan Mahkamah Konstitusi Nomor 33/PUU-X/2011, mengenai Pengujian Undang-Undang Nomor 38 Tahun 2008 tentang Pengesahan *Charter of the Association of Southeast Asian Nations (Piagam Perhimpunan bangsa-Bangsa Asia Tenggara)*

it must be canceled because its agreement to be bound by an international treaty itself is a violation of the provisions of its national law, the strict national law which regulates the authority to make and declare agreement to be bound (ratify) an international treaty. This article 46 questions the legality of a state's commitment to an international treaty, which at the time of creation until the agreement comes into force or it becomes binding, it turns out to be contrary to or a violation of the provisions of its national law. Whereas Article 27 deals with the failure of the country concerned to implement the provisions of the agreement due to the national laws or regulations of the country itself.³⁶

In connection with the provisions of Articles 27 and 46 of the VCLT linked to the I-EU CEPA, if Indonesia and the European Union agree to the I-EU CEPA, the Indonesian side cannot cancel it on the grounds that it violates the provisions of national law even though according to the previous explanation that the principle of non-discrimination I- The EU CEPA is against the regulations for the use of domestic products in Indonesia.

IV. CONCLUSION

1. The principle of non-discrimination which consists of the most favored-nation treatment and national treatment in the I-EU CEPA on Government Procurement Chapter has different arrangements and if it is agreed between Indonesia and the European Union, it is contrary to Indonesian laws and regulations, including: 1) Law Number 3 of 2014 concerning Industry which requires the use of domestic products for government; 2) Government Regulation Number 29 of 2018 regarding Industrial Empowerment regarding sanctions for government officials who do not use domestic products; and 3) Presidential Regulation Number 16 of 2018 regarding Government Procurement, which regulates the technical provisions for giving preference to products that have Domestic Component Level; 4). Regulation of the Minister of Industry 02/M-IND/PER/1/2014 regarding Guidelines for the Use of Domestic Products in the Government Procurement.
2. The incompatibility between the principle of non-discrimination in the I-EU CEPA on Government Procurement Chapter against the regulations on the use of domestic products in Indonesia has, namely if Indonesia and the European Union agree on the I-EU CEPA then it must adjust the regulations governing the mandatory use of domestic products and discriminatory obligations against foreign suppliers in implementing government procurement activities with domestic legislation by amending in accordance with the principle of non-discrimination in the I-EU CEPA or WTO GPA or ratifying the I-EU CEPA in the form of a Law and its enforcement is *lex specialis* with one of its articles explained that for government procurement which is within the scope of this agreement, Domestic Component Level and preferences do not apply for several years and it is necessary to make adjustments to the implementing regulations by giving a period of several years after entry into force.
3. If Indonesia and the European Union agree on the principle of non-discrimination in the I-EU CEPA on Government Procurement Chapter, then Indonesia has no obligation to provide equal treatment to third countries in accordance with Article 27 of the VCLT, even though one of the principles of non-discrimination is the most favored nation, all countries may not give preferential treatment to one country or discriminate against other countries. This is because the I-EU CEPA is a bilateral agreement and Indonesia is not yet bound by a multilateral agreement, namely the WTO GPA. In addition, according to Articles 27 and 46 this VCLT is linked to the I-EU CEPA, so if Indonesia and

³⁶Dian Utami Mas Bakar, "Penguji Konstitusional Undang-Undang Pengesahan Perjanjian Internasional", *Yuridika* : Volume 29 No 3, September-Desember 2014, p. 281

the European Union agree to an I-EU CEPA, the Indonesian side cannot cancel it because it violates the provisions of national law.

REFERENCES

Books

- Ade Maman Suherman, *Hukum Perdagangan Internasional: Lembaga Penyelesaian Sengketa WTO dan Negara Berkembang*. Cet. 1. Sinar Grafika, Jakarta Timur, 2000
- Astim Riyanto, *World Trade Organization (Organisasi Perdagangan Dunia)*. Cet. 1. PT Yapemdo, Bandung, 2003
- Boer Mauna, *Hukum Internasional Pengertian, Peran dan Fungsi dalam Dinamika Global*, Alumni, Bandung, 2000
- Jawahir Tantowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer*. Cet. 1. Refika Aditama, Bandung, 2006
- John Rawls, "A Theory of Justice, London: Oxford University press", yang sudah diterjemahkan dalam bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, Pustaka Pelajar, Yogyakarta, 2006
- Malcom N. Shaw QC, 2013, "Hukum Internasional", Terjemahan M.N. Shaw, "*International Law*", Cambridge University Press, Nusa Media, Bandung, 2006
- Mochtar Kusumaatmadja dan Etty R. Agoes, *Pengantar Hukum Internasional*, Cet. 1. Edisi Kedua, Alumni, Bandung, 2003
- Prita Amalia dan Garry Gumelar Pratama, *Hukum Perjanjian Perdagangan Internasional (Kerangka Konseptual dan Ratifikasi di Indonesia)*. Cet. 1. CV. Keni Melia, Bandung, 2020
- Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 8. Edisi Revisi. Kencana Prenada Media Group, Jakarta, 2013
- Muhammad Abdulkadir, *Hukum dan Penulisan Hukum*, Citra Aditya Bakti, Bandung, 2004
- Yoyon M Darusman, *Konvensi Internasional Pelaksanaan dan Pengawasannya*, Cet.1, Hers Printing, Tangerang Selatan, 2016

Journals

- Aryuni Yuliantiningsih, "Pengaturan Asas Pacta Tertius Nec Nocent Nec Prosunt Berkaitan Dengan Status Hukum Daerah Dasar Laut Samudra Dalam (Sea Bed)", *Jurnal Dinamika Hukum*, Vol. 10 No. Januari 1, 2010
- Delegation of European Union, Invigorating the Indonesia-European Union Partnership Towards a Comprehensive Economic Partnership Agreement*, 2011
- Dian Utami Mas Bakar, "Pengujian Konstitusional Undang-Undang Pengesahan Perjanjian Internasional", *Yuridika* : Volume 29 No 3, September-December 2014
- Hestuleksono, A. Tinjauan Atas Kesiapan Kementerian Pekerjaan Umum Dan Perumahan Rakyat Terkait Keikutsertaan Indonesia *Dalam Government Procurement Agreement (GPA)*, *Jurnal Veritas et Justicia*, Vol 2, No 2, 2016
- Juladies H. S. Watupongoh, "Tinjauan Yuridis Atas Persetujuan Pada Perjanjian Internasional Melalui Ratifikasi", *Lex et Societatis*, Vol. IV/No. 2/Feb/2016/Edisi Khusus, 2016
- Kemenkeu, *Laporan Hasil Kajian Free Trade Agreement (FTA) dan Economic Partnership Agreement (EPA), dan Pengaruhnya terhadap Arus Perdagangan dan Investasi dengan Negara Mitra Jilid 2*. (Jakarta: BKF Kemenkeu, 2013

- Senator Nur Bahagia, “Sistem Pengadaan Publik dan Cakupannya, *Jurnal Pengadaan Senarai Pengadaan Barang/Jasa Pemerintah*, No. 1, Vol.1, Desember 2011
- Ugo Villani, ‘*The Security Council's Authorization of Enforcement Action by Regional Organization*’, 6 *Max Planck Yearbook of United Nations Law*, 2002

Scientific Study

- Kajian Pengadaan Barang/Jasa dalam Pengembangan Iklim Usaha Nasional, Direktorat Pengembangan Iklim Usaha dan Kerjasama Internasional LKPP, 2011
- Richo Andi Wibowo, (et.al), *Kajian Dampak Pembukaan Akses Pasar Pengadaan Barang/Jasa Pemerintah Dalam GPA WTO, I-EU CEPA dan IJEPA Terhadap Regulasi Dalam Negeri*, LKPP RI, 2018
- Poppy Sulistyoning Winanti, (et.al), *Kajian Kajian Dampak Ekonomi Liberalisasi Pengadaan Barang/Jasa Pemerintah dalam Kerangka I-EUCEPA Terhadap Industri Domestik*, LKPP RI, 2018

Laws and Regulations

- Republik of Indonesia. *Law on Industry*. Law Number 3 of 2014. LNRI Tahun 2004 Nomor 4. TLNRI Nomor 5492.
- _____, *Law regarding Pengesahan Agreement Establishing The World Organization*. Law Number 7 of 1994. LNRI Tahun 2007 Nomor 57. TLNRI Nomor 3556
- _____, *Government Regulation regarding Industrial Empowerment*. PP Number 29 Tahun 2018. LNRI Tahun 2018 Nomor 101. TLNRI Nomor 6220
- _____, *Presidential Regulation regarding Government Procurement*. Perpres Nomor 16 Tahun 2018. LNRI Tahun 2018 Nomor 33

Internasional Instruments

- Agreement Establishing The World Trade Organization*
- Draft Articles of Indonesia-European Union Comprehensive Partnership Agreement*
- Government Procurement Agreement of World Trade Organization*
- Joint Scoping Paper for an EU – Indonesia Comprehensive Partnership Agreement*.

Internet

- Direktorat Perencanaan, Monitoring dan Evaluasi Pengadaan LKPP, “Profil Pengadaan Nasional Tahun 2019”, monev-ng-lkpp.go.id
- Kementerian Luar Negeri, “Putaran ke-2 Perundingan I-EUCEPA Tentukan Arah Strategis”, <https://www.kemlu.go.id/id/berita/berita-perwakilan/Pages/Putaran-ke-2-Perundingan-I-EU-CEPA-Tentukan-Arah-Strategis.aspx>
- OECD stats di <http://stats.oecd.org/>
- WTO, “WTO and Government Procurement”, https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

Others

- Dissenting Opinion* Hakim Hamdan Zoelva, Putusan Mahkamah Konstitusi Nomor 33/PUU-IX/2011, mengenai Pengujian Undang-Undang Nomor 38 Tahun 2008 tentang Pengesahan *Charter of the Association of Southeast Asian Nations (Piagam Perhimpunan bangsa-Bangsa Asia Tenggara)*
- LKPP, Letter of the Chairman of LKPP to the Minister of Trade Number: 362/KA/12/2019, regarding Penyampaian Isu-Isu dalam Perundingan I-EU CEPA GP Chapter, December 17, 2019
- LKPP, Letter of the Chairman of LKPP to the Minister of Trade Number: 940/KA/01/2021, regarding Penyampaian Posisi dan -Isu Chapter Government Procurement pada I-EU CEPA GP, January 19, 2021
- Ministry of Trade, Keputusan Menteri Perdagangan RI Nomor 895 Tahun 2019 tentang Pembentukan Tim Perunding Perdagangan Internasional dan Pengangkatan Tenaga Ahli untuk Persetujuan Kemitraan Ekonomi Komprehensif (*Comprehensive Economic Partnership Agreement*) antara Republik Indonesia dengan Uni Eropa, 2019