TRADE UNION POSITION ON THE COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT (CEPA)

AN APPEAL BY INDONESIAN AND EUROPEAN TRADE UNIONS

This statement is supported by

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INTRODUCTION

In July 2016, the EU and Indonesia initiated negotiations for an EU-Indonesia Free Trade Agreement (FTA) with the 19th negotiation round taking place in 2024. Both parties seem eager to move towards concluding the trade deal. Given the increased commitments of the EU to Sustainable Development[1] provisions within FTAs, the spotlight remains on Indonesia's poor track record on labour rights.

This is even more important since controversial legislative changes have moved the country away from alignment with ILO fundamental Conventions. Central in this move is the highly contested Omnibus Law, Act 11 of 2020 on Job Creation Act, passed in October 2020. This law significantly decreases fundamental labour rights protections in the country and undermines working conditions, contrary to both the letter and spirit of core international labour standards.

Context

A cornerstone in the EU's trade policy is its ambition to strengthen Trade and Sustainable Development (TSD) Chapters, as set out in its new approach outlined in its recent Communication, the Power of Trade Partnerships. The EU aspires for more transparency, better involvement of civil society and effective enforceability of labour rights. From now on, stakeholders will be involved in all stages (including negotiations)[2], there will be a specific gaps analysis[3], more detail through roadmaps[4] and the possibility of trade sanctions, as a matter of last resort, in instances of serious violations of ILO fundamental principles and rights at work[5].

A signpost of future FTAs is the recently concluded FTA with New Zealand, making transparency throughout the negotiation process a key priority. Civil society was informed throughout the process and will have a role in its implementation. Indeed, the agreement foresees stakeholder involvement at the national level as well as through a dedicated Joint Forum to oversee monitoring, including the trade elements of the agreement[6].

Considering the increasing aspirations of the EU in terms of Trade and Sustainable Development, the CEPA negotiations face increased challenges to deliver. On the one hand, the current negotiations have so far been characterized by an opaque process and limited stakeholder involvement. On the other hand, the adoption of the Omnibus Law by Indonesia makes it more difficult to achieve the TSD objectives. In addition, other trade-related issues also remain, such as Indonesia's unilateral ban on the export of nickel, restricting Europe's access to critical raw materials and greatly affecting production in the EU, such as on steel. At the request of European Trade unions, the EU took the issue to the WTO, which in turn stated that Indonesia's export ban was in violation to WTO rules.

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[1] European Commission (2022), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions. The power of trade partnerships: together for green and just economic growth. 22 june 2022 COM(2022) 409 final. Hereafter: "The power of trade partnerships". This in turn builds on the15-point Action Plan and a TSD in-depth review

[2] European Commission (2022). The power of trade partnerships: Action point (5)

[3] European Commission (2022). The power of trade partnerships: Action point (12)

[4] European Commission (2022). The power of trade partnerships: Ibid 3

[5] European Commission (2022). The power of trade partnerships: Action point (19)

[6] https://policy.trade.ec.europa.eu/news/key-elements-eu-new-zealand-trade-agreement-2022-06-30_en

The Omnibus Law, a flawed process

In October 2020, the Government and the House of Representatives of Indonesia passed an Omnibus Law, Act 11 of 2020 on Job Creation. This law replaces various existing laws touching upon different aspects of doing business in Indonesia, including employment, investment, immigration, environmental standards, business licensing, and building permits[7]. However, this law is contested by Indonesian civil society and trade unions both on the process as well as on substance.

In developing the law, the government of Indonesia failed to consult and inform trade unions. Only in April 2020, the government invited trade unions to a tripartite consultation forum, but trade unions felt this action merely served to add legitimacy rather than conducting earnest dialogue in good faith.

Further to the lack of formal consultation on the Omnibus Law itself, the ETUC is concerned about the deteriorating political space for civil society and the right of freedom of speech following the intimidation, unlawful arrests and detentions, and excessive use of force by the police during the different peaceful assemblies and protests against the Job Creation Act in 2020[8]. Equally, after the defeat of the law in the constitutional court[9] and the re-introduction of the law[10] protests emerged[11].

The 2023 version of the law was equally challenged at the constitutional court[12], which concluded in its ruling of October 31 2024 that the law needs to be revised within 2 years to address critical issues surrounding unskilled foreign workers, fixed-term contracts, outsourcing, leave entitlements, wages, layoffs, and severance pay. Also, the Court ruling orders lawmakers to remove the employment cluster from the Omnibus and embed it into a separate legal instrument.

Deteriorating labour rights resulting from the Omnibus Law

Content-wise, the Omnibus Law weakens working conditions, and the more precarious conditions undermine workers' right to freedom of association and collective bargaining as laid out by ILO Conventions 87 and 98, both ratified by Indonesia. The 2023 ILO Committee of Application of Standards has expressed its deep concerns over the Omnibus Law. It urged the government of Indonesia to review the law in consultation with social partners in order to address issues related to freedom of association and collective bargaining.[13] The Omnibus law has several flaws, which the Constitutional Court ruling addresses partially:

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[7] The Law on Job Creation revised articles in several laws, namely Law No. 13/2003 on Manpower, Law No. 18/2017 on Foreign Workers, Law No. 40/2004 on National Social Security, Law No. 24/2011 on Social Security Agency, and enacted 4 implementing regulations, namely: Government Regulation 34/2021 on Foreign Workers, Government Regulation 35/2021 on Specified Time Work Agreement, Outsourcing, Working Hour and Rest, and Termination of Work, Government Regulation 36/2021 on Wages and Government Regulation 37/2021 on Job Loss Security

[8] https://www.thejakartapost.com/news/2020/10/10/protests-clashes-arrests-continue-amid-jobs-law-outrage.html, https://www.cnnindonesia.com/nasional/20210312093515-12-616572/ketua-kasbi-nining-elitos-dipanggil-polisi-usai-gelar-aks, https://voi.id/en/news/38531/next-week-the-head-of-kasbi-will-be-examined-about-the-labor-demonstration and https://kantorberitaburuh.com/buruh-dipenjara-ksbsi-berencana-bawa-kasus-pemberangusan-serikat-buruh-ke-internasional/?doing_wp_cron=1670320789.3871669769287109375000

[9] The Indonesian Constitutional Court (Mahkamah Konstitusi), in case No. 91/PUU-XVIII/2020 dated 25 November 2021

[10] Earlier, the government was criticised for not conducting adequate "public consultations" before passing the law Recent legislation would change the definition of what constitutes a "public consultation" for passing of bills and also change procedures for passing omnibus-style bills in the parliament allowing it to include sections unrelated to the main framework of the bill (https://peoplesdispatch.org/2022/06/17/indonesians-prepare-for-struggle-amid-re-introduction-of-anti-worker-omnibus-law/)

[11] https://tirto.id/brutalitas-polisi-tangani-demonstran-may-day-geL6

12 The judicial review was filed by the Labour party, the Indonesian Trade Union Confederation (KSPI), the Confederation of All Indonesian Workers' Union (KSPSI-AGN), the Confederation of United Indonesian Workers (KPBI) and the Federation of Indonesian Metal Workers' Union (FSPMI)

13 Individual Case (CAS) - Discussion: 2023, Publication: 111st ILC session (2023) *Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Indonesia (Ratification: 1957)*

- The Omnibus Law allows and stimulates the prolonged **use of fixed-term contracts**. Under the new Law,[14] fixed-term contracts may last up to five years instead of two before. In addition, these contracts can be extended with another fixed-term contract, increasing the total possible term for fixed-term to ten years. Finally, the law eliminates the automatic transition from a fixed duration to a permanent contract and instead automatically terminates the contract at the end of the term, without prior notice by the employer. The verdict of the constitutional court requires that the government scrap the possibility of extending these fixed-term contracts up to 10 years.

- The Omnibus clears the way for **outsourcing workers** in both core and non-core activities, whereas this was previously only possible in non-core activities. The ILO's international supervisory mechanisms and national courts have found repeatedly that such practice can lead to precarious working conditions, weakened associational rights, and can lead to exploitative labour conditions. The verdict of the constitutional court requires the government to re-introduce some limits in the use of outsourcing agreements. Roles and responsibilities need to be specified.

- Moreover, the Omnibus increases the number of the maximum permitted **overtime** hours from three to four hours per day and from 14 to 18 hours per week. This new provision makes it possible for weekly working hours to exceed 58 hours, clearly going beyond the international standard set by the ILO.

- In terms of **minimum wages**, the Omnibus significantly reduces the role of the Wage Council, resulting in a weakening of collective bargaining and, consequently contrary to the ILO Minimum Wage Fixing Convention No. 131, 1970, which Indonesia has not yet ratified. Next to the weakening of the wage fixing mechanism at the country level, the Omnibus also limits the possibility of lower bargaining at the district or sector level to set a higher wage than the provincial government. Finally, under the law, small and micro businesses are exempt, thus effectively removing minimum wage coverage of 93% of those engaged in wage employment.[15] Consequently, the universality of a minimum wage is removed. Finally, the Omnibus Law decriminalizes the non-payment of minimum wage, thus significantly weakening enforcement. The ruling of the constitutional court partially addresses this by requiring the government to mandate that the regional wage councils set minimum wage standards in line with the local costs and economic conditions.

[14] And Government Regulation No. 35 of 2021

[15] https://www.ilo.org/jakarta/whatwedo/projects/WCMS_444105/lang--en/index.htm

CONCLUSION

The Omnibus Law significantly redesigned the rights of workers in Indonesia. According to the Government of Indonesia, the Law is essential to enlarge domestic employment, accelerate the development of Micro, Small, and Medium Enterprises (MSME), and eradicate corruption through simplifying and electronically integrating the permit system. However, in practice, the Omnibus Law violates International Labour Standards in several instances. Indeed, the law paves the way for excessive working hours, lower and unenforced minimum wages and fixed-term contracts and outsourcing becoming the new standard, thus undermining unionization, collective bargaining and social dialogue.

Trade Union position

The EU's ambitions to uphold labour rights are in contradiction with the current developments in Indonesia regarding labour rights, leaving workers in a more precarious situation. It becomes questionable when a trade agreement is being negotiated all the while severe deteriorations on international labour standards, especially ILO fundamental Conventions 87 and 98, social dialogue, freedom of speech and transparency are observable. The EU strives to secure the promotion of sustainability concerns through its trade policy. However, the Omnibus Law potentially undermines these commitments, weakening the CEPA. The EU trade policy must ensure full respect of human rights, including trade union and workers' rights and serve as a lever to foster decent wages and working conditions and not fortify the deterioration of these respective rights.

Trade Union demands

1. ETUC, therefore, calls on the European Commission to ensure the alignment of the CEPA with the ambitions of the new approach to Trade and Sustainable Development, to ensure the respect of international labour standards, especially the right of freedom of association and to collective bargaining.

2. The protection of freedom of association, freedom of expression and peaceful assembly must be guaranteed. Here, the ETUC especially calls on the Commission to address the shrinking political space, including the protection of freedom of expression, of peaceful assembly and the safety of labour union leaders and other human rights defenders as a matter of concern in the negotiations.

3. The continuous transparency of the CEPA negotiation process is crucial. The ETUC calls to involve relevant stakeholders such as trade unions to be consulted during the CEPA negotiations[16], also on the Indonesian side. Specifically, the ETUC calls to establish an EU-Indonesia Civil Society Dialogue to encourage bipartite/tripartite) social dialogue (workers, employers, governments), to promote decent work through closer cooperation, exchange of best practices and mutual learning as well as provide input into the negotiation process.

4. The required Sustainability Impact Assessments (SIA) and Human Rights Impact Assessments (HRIA) must be updated as soon as possible. Indeed, CEPA is a good test case to ensure the gaps analysis should lead to an action-oriented, practical and accountable roadmap. This ensures the non-regression of the agreement and it will address identified gaps.

[16] As foreseen in Action Point (12) of the The power of trade partnerships

5 Indonesia needs to ratify and respect in law and practice all ILO fundamental conventions before the signature of CEPA by the European Institutions. The CEPA agreement's contents must further support the implementation and enforcement of International Conventions, including fundamental ILO Conventions. And give follow up to the conclusions of the 2023 ILO Committee of Application of Standards. CEPA should include clear and binding obligations to respect existing international labour norms, strengthen national labour legislation and foresee sanctions in the case of violations. Any lowering of ILO standards or regression in domestic legislation is unacceptable and should result in enforcement actions.

6 In particular, Indonesia should revise the Omnibus Law in light of the recent decision of the constitutional court and address the different issues identified by both the constitutional court and the ILO supervisory mechanisms.

7 Indonesia needs to improve their environmental and working standards throughout the global supply chain to ensure fair and sustainable trade, even when these relate to critical raw materials. The ETUC opposes any dumping of Indonesian products at artificially low prices on the EU open market, especially if the products are made in substandard environmental or social conditions. The ETUC insists that Free Trade Agreements should only be granted to third countries that respect high environmental and employment standards.