



Permanent Mission  
of the Republic of Indonesia to the UN, WTO,  
and Other International Organizations  
in Geneva

No.: 191/Pol-II/XII/2021

Geneva, 30 December 2021

Dear Madame/Sir

With reference to your letter Ref. OL IDN 7/2021 of 14 October 2021, I have the honour to transmit herewith, my Government's response to the Joint Communication of Special Procedures in addressing the unequal access to COVID-19 countermeasures within and between countries.

Indonesia has consistently raised the issues of unequal access to COVID-19 vaccine, medicines, and therapeutics between countries since the beginning of the worldwide effort to tackle the COVID-19 pandemic.

The current state on inequities on access to Covid-19 countermeasures is unacceptable. Therefore Indonesia continues to advance concrete solution for international community to take, such as empowerment action, rather than charity approach. Moreover, Indonesia is of the view that international cooperation should be directed to enhance state's capacity to fulfil its human rights obligation, including on health sector and the right to development.

For example, in 2020 when chairing the Foreign Policy and Global Health Initiative with the theme of "Affordable Health Care for All", Indonesia initiated international community to commit to:

- "Promote the availability of and the equitable access to quality, safe, effective, and affordable essential medicines, vaccines and health technologies, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of all countries to use to the fullest extent the provisions in the TRIPS Agreement regarding flexibilities to protect public health and, in particular, to promote access to medicines for all, while noting the need for appropriate incentives in the development of new health products;

**Mr. Surya Deva**, Chair Rapporteur of the Working Group on issue of human rights and transnational corporations and other business enterprises

**Mr. Saad Alfaragi**, Special Rapporteur on the right to development

**Ms. Tlaleng Mofokeng**, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**Mr. Livingstone Sewanyana**, Independent Expert of the promotion of a democratic and equitable international order

**Mr. Obiora C. Okafor**, Independent Expert of human rights and international solidarity

**Mr. Olivier De Schutter**, Special Rapporteur on extreme poverty and human rights

CC: Coordinating Committee SPMH

- Encourage the establishment of new and use of existing mechanisms, such as the Medicines Patent Pool, for the voluntary pooling of patents or other intellectual property rights and data related to medicines, vaccines, and other health technologies and encourage licensing on reasonable terms”.

Indeed, international protection to intellectual property, particularly to vaccines in the context of pandemic, should not become barriers to the effective enjoyment of fundamental human rights. Further, such protection and incentive should be directed to enhance universal respect of human rights of individuals and communities living in low- and middle-income countries, and to address inequality and discrimination and hindering the realization of a democratic, just, and equitable international order.

Through this letter, I would like to express our appreciation for the Special Rapporteurs' recognition to my Government's efforts in ensuring equitable, affordable, fair, safe, timely, and universal access to COVID-19 vaccines. I would also like to encourage the Special Procedures Mechanism to play a more active role, in accordance with its mandate, in finding solution to tackle the COVID-19 pandemic, especially for low- and middle-income countries, as well as to further recognize and protect health workers as human rights defenders.

The SPMHs needs to continue promoting the human rights approach, encouraging the application of the business and human rights agenda to create equal and fair access. Not only by engaging the Government, but the SPMHs also needs to engage and encourage global pharmaceutical companies to demonstrate their social responsibility and human rights.

Please accept, Special Procedures Mandate Holders, the assurances of my highest consideration.

Yours sincerely,  
  
  
Febran A. Ruddyard  
Ambassador/Permanent Representative

**Indonesian Government Response to the Joint Communication of Special Procedures  
In addressing the Unequal Access to COVID-19 Countermeasures  
within and between Countries**

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**A. Indonesian Government's views on ensuring that intellectual property rights on the vaccines do not become a barrier to the effective enjoyment of fundamental human rights.**

The extent of the current health crisis is unprecedented and, therefore, coordinated global response, including through multilateral institutions, is needed to ensure that corporations' business consideration does not hinder states' ability to prevent, contain, and treat Covid-19.

Given the ongoing absence of sufficient engagement by the pharmaceutical companies to voluntarily and openly allow the use of their intellectual property rights, data, and know-how by all possible manufacturers to address the pandemic, mechanisms are needed to remove existing and potential legal barriers to scale up manufacturing and diversify sources of supply.

Global solidarity is required to ramp up and diversify the global production of vaccines, therapeutics, and diagnostics of Covid-19 and ensure that these products are accessible and affordable for everyone everywhere in the world. Indonesia believes that the WTO Members need to act in global solidarity in response to the Covid-19 pandemic.

Indonesia also strongly believes that there is an overwhelming ethical and economic reason for urgent collective action. Hence the motivation for the TRIPS waiver proposal, in which Indonesia is one of the main proponents.

The TRIPS waiver proposal is a necessary, time-bound, and proportionate legal measure to address intellectual property barriers directly, transparently, and efficiently, consistent with the WTO legal framework.

Adopting this waiver grants companies worldwide, the freedom to produce covered COVID-19 health products and use health technologies without the fear of infringing another party's IP rights and the associated threat of litigation. Furthermore, adopting a TRIPS waiver acts as an essential political, moral, and economic lever towards encouraging global solutions.

**B. Indonesia's national policies, laws, and practices, including the use of compulsory license orders under the TRIPS Agreement to produce, distribute, scale-up production vaccines and treatments against COVID-19**

Up to 13 December 2021, almost 249 million Covid-19 vaccines doses were administered in Indonesia. This number shows the Government's achievement to ensure equal vaccination for all despite Indonesia being unable to manufacture the COVID-19 vaccines. The Government has taken bilateral and multilateral efforts to achieve vaccine procurement target through donation and purchases.

The COVID-19 vaccination program implemented by the Government since January 2021 is provided free of charge to all Indonesians regulated under the Minister of Health Regulation Number 23 of 2021 which guarantees that the COVID-19 vaccination mechanism is offered free of charge to the entire community.

To ensure fair and equal access for the COVID-19 vaccine, the Government works together with local governments, religious organizations, business actors, and social organizations to set up vaccination centers across the country as part of expanding national vaccination coverage to **protect the most vulnerable in the society** accelerate the achievement of herd immunity.

Indonesia has two different rules on compulsory licensing. First relates to third-party compulsory licensing. The second is government licensing or government use that enables the Government of Indonesia to apply a patent themselves due to public interest emergency or security and defense reasons. Both rules are consistent with TRIPS Agreement within the WTO on use without the authorization of the rights-holder(s).

Both rules (compulsory license and government use) are regulated within Law No. 13 of 2016 on Patents.

Based on Law No. 13 of 2016, the implementing regulation on the compulsory license is Ministerial Regulation No. 39 of 2018 on Procedures for Compulsory Patent Licensing and the Presidential Regulation No. 77 of 2020 regarding Procedures of Patent Implementation. These regulations set out a clear structure to compulsory licensing under TRIPS Agreement.

Government licensing based on public interest is directed to products relating to four categories of public emergency, namely public health emergencies of international concern, agriculture products relating to food resilience requirements, animal health emergencies, or environmental or natural disasters.

The Government can appoint third parties to produce the patented product if needed. Such government implementation of a patent does not impair the patent holders' exclusive rights. That means the patent holder can still enforce the patent to manufacture or provide the product themselves and possess the legal rights relating to the patent i.e., sue others for infringement of these rights. Patent holders are required to pay annual maintenance fees as usual.

In regards to Government use, there are two Presidential Regulations have been issued recently, namely:

- a. Presidential Regulation No. 100 of 2021 concerning the Government Use on Remdesivir and
- b. Presidential Regulation No. 101 of 2021 concerning the Government Use on Favipiravir.

It is hoped that by issuing the regulations as mentioned above, Indonesia will be able to provide safe and efficacious therapeutic medicines and be better prepared to anticipate the surge of Covid-19 cases.

### **C. Indonesia's calls for international solidarity to end vaccine hoarding and ensure global vaccine procurement and distribution**

Health diplomacy has become the main priority for the Indonesian Government since the start of the Covid-19 pandemic in early 2020. Without vaccine accessibility and its certainty, no countries will overcome the pandemic.

Therefore, Indonesia believes that international solidarity and cooperation should reassure certainty on the amounts of vaccines, types of vaccines, regulations, delivery schedule, and other related matters to ensure a timely, safe, affordable and equal vaccine distribution.

Indonesia's Minister for Foreign Affairs, H.E. Mrs. Retno Marsudi, together with the Canada's International Cooperation Minister, and Ethiopia's Health Minister have been co-chairing the COVAX AMC Engagement Group for 2021 Through the joint co-chairmanship, Indonesia continues elaborate strategies, policies, and working programs of COVAX to achieve the procurement and distribution targets of COVID-19 vaccines that are free, secure, and effective.

As the Co-Chair of COVAX AMC EG, H.E. Mrs. Retno Marsudi, consistently urged for equitable and equal access to vaccine distribution for developing countries and least developed countries and for the dose-sharing policy made imperative for countries with surplus vaccine supply. International cooperation must also be geared to promote innovation and technology transfer to developing countries and LDCs to develop their national vaccine manufacturing capacity. This is imminent to fulfill the WHO's target of vaccinating at least 40% of each country's population by the end of 2021 and achieving the 70% vaccination rate in all countries by mid-2022.

**On our part, we spare no efforts to fulfil these targets. On the 40% target by 2021, as of 30<sup>th</sup> December 2021, 53.14% of the target population (208,265,720) has been fully vaccinated (2 doses). For transparency purposes, the government of Indonesia has maintained a real-time dashboard that tracks detailed statistics of Indonesia's vaccination programme. The data are disaggregated by regions, demographics and vulnerable targeted population. The dashboard could be accessed at <https://vaksin.kemkes.go.id/#/vaccines>. Indonesia is also determined to support the WHO's target for July 2022 (which is less than 183 days), for all countries.**

Vaccines might not be the panacea, but it provides better immunity and thus offers hope for a better prospect on global recovery. Thus, vaccine nationalism as well as vaccine protectionism, should not be allowed.

To this date, 435 million vaccines have been distributed from COVAX Facility to 144 countries. Per 13 November 2021, Indonesia has received 40.659.680 doses of vaccines for free from COVAX Facility.

As a global community facing a deadly pandemic, our responsibility is to assist those in most need. Outside of the global mechanism, Indonesia continues to aid countries in the region facing various pandemic related challenges. Such assistance is reflected through Indonesia's donation to Fiji, Papua New Guinea, and the Solomon Islands, consisting of medical equipment amounting to USD 200.000 for each country.

Furthermore, Indonesia's effort to strengthen global health security is carried out vaccine research and development cooperation, becoming a member of the Coalition for Epidemic Preparedness Innovations (CEPI) Investors Council (November 2020-December 2021). Indonesia's participation in CEPI will be beneficial for the research and development of vaccines to enhance global preparedness on Emerging Infectious Diseases and other possible pandemics beyond Covid-19.

Indonesia is also actively carrying measures aimed to pave the path and access for long-term domestic healthcare needs. To strengthen Indonesia's health infrastructure, Indonesian diplomacy is geared towards international cooperation to fulfill domestic vaccine manufacturing capability. This is important to supply domestic demands of vaccines and transition Indonesia into

becoming both a global and regional vaccine production and distribution hub. Indonesia has become the candidate of WHO partner vaccine hub in Southeast Asia, South Korea, and India, announced in early 2022.

Within the larger framework of pandemic response and preparedness, Indonesia, together with the United States of America, has co-chaired the WHO Working Group on Pandemic Preparedness and Response. The Working Group has a mandate to consider the findings and recommendations of the various experts bodies on the impact of the COVID-19 pandemics and to assess the benefits of developing an international instrument on pandemic preparedness and response.

Furthermore, the President of Indonesia has called for an international pandemic treaty as part of a co-authored opinion editorial article along with 24 other world leaders. The article reminded that the COVID-19 pandemic should be a reminder that there will be other pandemics and major health emergencies, and that no single government or agency can address the threat alone. The main goal of the treaty would be to foster a comprehensive, multi-sectoral approach to strengthen national, regional and global capacities and resilience to future pandemics. As a follow-up to this call, Indonesia has also joined as a member of the Group of Friends of the Pandemics Treaty that has since been advocating for the instrument.

#### **D. Indonesia's commitment for complete transparency in vaccines purchasing, including all elements of vaccine development, procurement, and provision.**

Through Presidential Regulation No. 99 of 2020 on the Vaccines Procurement and Implementation of Vaccination for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic, the Indonesian Government ensured transparency of Covid-19 vaccines.

This Presidential Regulation governed that the Covid-19 vaccine procurement encompasses (i) the provision of Covid-19 vaccines and supporting equipment and logistics needed; and (ii) the distribution of the Covid-19 vaccines until the delivery point determined by the Minister of Health.

The implementation of the procurement of the Covid-19 vaccines shall be carried out through three options namely (i) the designation of a state-owned enterprise; (ii) a direct appointment to vaccine providers; and/or (iii) the cooperation with international institutions.

Minister of Health also determines the purchase price of the COVID-19 vaccines by taking into consideration the state of emergency and availability of the COVID-19 vaccines.

The procurement contract of Covid-19 vaccines for Indonesia is conducted through Bio Farma – a state-owned enterprise- designated by the Minister of Health under PR No.99/2020. Once vaccines are procured, the Government is tasked to distribute them throughout all parts of Indonesia.

For procurement purpose, Bio Farma may involve its subsidiaries, i.e., PT Kimia Farma Tbk and PT Indonesia Farma Tbk (Article 5 Sub Article (3) of PR 99/2020). Bio Farma may also cooperate with local or foreign business entities and/or institutions for procuring the Covid-19 vaccine (Article 5 Sub Article (4) of PR 99/2020).

Concerning the indemnity clause, under the Presidential Regulation No. 50/2021 concerning

the Second Amendment on the Vaccines Procurement and Implementation of Vaccination for Handling the Corona Virus Disease 2019 Pandemic, the Government takes over the legal responsibility of the COVID-19 Vaccine provider, including concerning safety, quality, and efficacy/immunogenicity. This arrangement applies to situations where vaccine procurement is carried out either through an (i) assignment to state-owned enterprises; (ii) direct appointment to business entities, or (iii) cooperation with international institutions whose vaccine providers require the taking over legal responsibility.

The takeover of legal responsibility as mentioned above can be done as long as the producer has undergone the appropriate manufacturing process assessment carried out by the relevant authorizing body in the producer's country and the Covid-19 vaccine use have obtained emergency use authorization by Indonesia's National Agency for Drug and Food Control.

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