

# Regulatory Framework on IPR in Indonesia: Overview and Preliminary Assessment on the RCEP-IP Chapter

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## ABSTRACT

*In respect to the Regional Comprehensive Economic Partnership (RCEP) talks, Indonesia, the ASEAN coordinator for what will be the world's largest free trade pact, has acclaimed the substantial progress in negotiations, which has seen leaders agree to complete the deal this year. On the 33rd ASEAN Summit held in 2018, President Joko Widodo had stressed the importance of a mandate to agree on the RCEP. However, one question needs to bring to light is whether Indonesia's determination has been supported by adequate preparedness to comply with various binding provisions, especially the IPR regime designed to go beyond WTO TRIPs. In an effort to answer that question, this article will be focused on examining the IPR regulatory framework in Indonesia and to what extent it is compatible with the anticipated IPR provision based on [the leaked draft of RCEP IP Chapter](#).*

**Keywords:** RCEP, TRIPs Plus, Intellectual Property Right, ASEAN, Indonesia

*Sehubungan dengan pembicaraan Kemitraan Ekonomi Komprehensif Regional (RCEP), Indonesia, koordinator ASEAN untuk apa yang akan menjadi pakta perdagangan bebas terbesar di dunia, telah mengakui kemajuan substansial dalam negosiasi, yang telah membuat para pemimpin sepakat untuk menyelesaikan kesepakatan tahun ini. Pada KTT ASEAN ke-33 yang diadakan pada tahun 2018, Presiden Joko Widodo telah menekankan pentingnya mandat untuk menyetujui RCEP. Namun, satu pertanyaan yang perlu diangkat adalah apakah tekad Indonesia telah didukung oleh kesiapan yang memadai untuk mematuhi berbagai ketentuan yang mengikat, terutama rezim HKI yang dirancang untuk melampaui TRIP WTO. Dalam upaya menjawab pertanyaan itu, artikel ini akan difokuskan pada pemeriksaan kerangka kerja pengaturan HKI di Indonesia dan sejauh mana itu sesuai dengan ketentuan HKI yang diantisipasi berdasarkan rancangan bagian-bagian RCEP IP yang bocor.*

**Kata Kunci:** RCEP, TRIPs Plus, Hak Kekayaan Intelektual, ASEAN, Indonesia

## Introduction

The Regional Comprehensive Economic Partnership (RCEP) which was launched in November 2012, is currently under negotiation between ASEAN member states and their trading partners: Indonesia, Malaysia, Singapore, Brunei, Thailand, the Philippines, Myanmar, Cambodia, Vietnam, Laos, China, India, Japan, South Korea, Australia and New Zealand. This mega regional trade agreements which covers around 40% of global GDP (Ribka & Yulisman, 2016) and a two-thirds of world trade, is regarded as “beyond WTO trade deals”.

The RCEP is not merely about greater market access and trade liberalization since trade liberalization is perceived as already part of the existing trade agreements

including NAFTA and ASEAN Economic Community (AEC). The RCEP, in this regard, does not only cover market access for trade agendas that have also been negotiating under the current Doha Round trade negotiations but it has even higher standard for those aspects. In addition to that, some controversial trade agendas, which were postponed for indefinite period in the WTO trade negotiations, such as government procurement, state-owned enterprises, intellectual property rights, e-commerce, competition policy and also investment, managed to find their ways to be part of the RCEP talks. Furthermore, the RCEP negotiations also integrate non-WTO trade agendas such as provisions regarding small-medium enterprises, state-owned enterprises and also Investor-State Dispute Settlement (ISDS) (ICTSD, 2018).

This paper, however, only focuses on one of the trade aspects under negotiated chapters in the RCEP on Intellectual Property (IP) (hereafter the RCEP-IP) and its compatibility with IPR regulatory framework in Indonesia, which shows its intention to join the club. This report will be divided into two main parts; the first part is an overview and evaluation of Indonesia's domestic situation on IPRs. This part focuses on the existing conditions of IPR protection in Indonesia. This section essentially argues that IPR protection in Indonesia is still unsatisfactory. The second part provides an evaluation of domestic situation on IPRs in the context of each TPP obligations. In doing so, this part begins with interpreting the RCEP-IP by comparing it with the TRIPs Agreement under the WTO. This part also analyses the compatibility of the Indonesian legal framework on IPR issues both under the RCEP-IP and the TRIPs Agreement

### **Overview of Indonesia's Domestic Situation on IPRs**

Intellectual property rights (IPR) protection was essentially an alien concept in Indonesia's national laws prior to the TRIPs Agreement, due to its conflicting nature with Indonesia's traditions and norms. Despite the fact that intellectual property (IP) legislation existed in Indonesia as early as 1844, those laws, which were introduced under the Dutch colonial rule, did not apply to native Indonesians. Under the Dutch colonial rule, the legal system for the indigenous Indonesians was adat (an extensive system of Indonesian customary norms), which did not recognize IPR protection. Under unwritten adat law, individual ownership in intellectual works or inventions is not recognized because knowledge is regarded as public property, and its main function is to serve the public benefit. In this regard, it is not surprising if IPR protection has no strong roots in Indonesian society and there was no robust Indonesian legal tradition of protecting IPR. A meaningful IP policy reform was then taken by the Indonesian government only after the Indonesian government has become a member of the WTO and obliged to implement the TRIPs Agreement.

The lack of IPR protection acceptance in Indonesian society seems has not changed much even after more than a decade of IP policy reform was taken as part of the Indonesian obligations under the TRIPs Agreement. This is most evident from the fact that the number of residents' patent application in Indonesia is considerably low as compared to non-residents' patent application. As can be seen from the [WIPO statistical database](#) from 2008 to 2017, more than 75% out of a total of 9,352 of patent applications in Indonesia is by non-resident. In addition, as compared to the other RCEP countries, Indonesia's performance based on [Property Rights Index in 2018](#) is also relatively poor. Indonesia with an average score of 5.3 is still behind New Zealand (8.6), Singapore (8.4), Australia

(8.3), Japan (8.2), Malaysia (6.49), South Korea (6.47), China (5.9), India (5.6), and mere slightly performs better than Thailand (5.3), Philippines (5.2), and Vietnam (5.07). Furthermore, Indonesia's relatively poor performance based on Property Rights Index has also supported by the fact that Indonesia along with India and China have always been on the [USTR Priority Watch List](#) in between 2010 and 2019. Based on the [USTR Special 301 Report 2019](#), one of the main reasons why Indonesia has remained in the USTR Priority Watch List is that widespread piracy and counterfeiting dangerous products. Indonesia also still suffers from lack of effective system for protecting against the unfair commercial use for pharmaceutical and agricultural chemical products. In addition, there are some concerns regarding market access barriers related to the importation of motion pictures and import medicines particularly on technology transfer requirements (USTR, 2019).

Based on previous explanation, it is clear that IPR protection in Indonesia still needs to be improved and has become the concern of the US government as one of Indonesia's leading trading partners. This existing condition also shows that if Indonesia intends to join the TPP, there are many aspects on IPR protection that need to be enhanced.

### **Indonesia's IPR national laws and RCEP-IP Obligations**

This section evaluates Indonesia's domestic situation on IPRs in the context of each RCEP obligations. The first part of this section explains the obligations under the RCEP by comparing the RCEP-IP Chapter with the TRIPs Agreement under the WTO. This part also analyses the compatibility of the Indonesian legal framework on IPR issues both under the RCEP-IP Chapter and the TRIPs Agreement.

#### **1. Understanding the RCEP-IP protection**

The RCEP-IP Chapter rules the protection for patents, trademarks, copyrights, industrial designs, geographical indications, trade secrets, other forms of intellectual property, and enforcement of intellectual property rights. The RCEP-IP protection consists of 11 Sections, 83 Articles, and 6 Annexes. It is regarded as "beyond the TRIPs Agreement" or "TRIPs Plus". It does not only adopt the basic principles of the TRIPs Agreement on National Treatment (Article 18.8) but also provides more tight stringent protection for IPR. Interestingly, however, the RCEP-IP does not include the other non-discrimination principle under the TRIPs, i.e. Most Favoured Nations (MFN). In addition, the RCEP also incorporates several new aspects that are not part of the TRIPs Agreement.

There are some additional clauses related to IPR protection that are not available under the TRIPs Agreement but they are included in the RCEP. The RCEP has specific clause on transparency, which requires each Party to make available its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights. More specifically, the RCEP also requires its Parties to make available on the Internet, any information concerning applications for, registered and granted trademarks, geographical indications, designs, patents and plant variety rights (Article 18.9). These requirements on the availability of the information in the Internet are not part of the TRIPs Agreement.

The RCEP includes a clause on the cooperation in the area of traditional knowledge (Article 18.16). While the TRIPs Agreement does not have specific clause on traditional knowledge, the RCEP “...recognize(s) the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems” (Article 18.16.1). In this regard, the RCEP also emphasizes the importance of documented information and the use of databases or digital libraries, which related to traditional knowledge associated with genetic resources.

As for trademarks protection, the RCEP has higher protection for trademarks as compared to the TRIPs Agreement. The RCEP protects sound and scent marks (Article 18.19). The RCEP requires its Parties to provide terms of protection for trademarks no less than 10 years while the TRIPs Agreement only requires the protection for trademarks no less than 7 years. The RCEP-IP also introduces a new mechanism called electronic trademark system, as system for the electronic application for and maintenance of trademarks (Article 18.24). In addition, the RCEP is also beyond the TRIPs Agreement in regard to the well-known trademarks, as it specifies the exclusive rights of well-known trademark owners and the obligations of each party to provide appropriate measures to protect them (Article 18.22).

The RCEP specifically addresses the inappropriate use of country names (Section D). Article 18.29 states that “each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good”. The TRIPs Agreement does not have a specific clause on the prevention of commercial use of the country name.

Under the RCEP, there are several clauses to ensure prevention of the excessive use of geographical indications (Article 18.32) especially on Grounds of Opposition and Cancellation. Under these provisions, the RCEP provides safeguard in order to ensure that the protection of Geographical Indication will not cause confusion with pre-existing trademark. Furthermore, the GI is considered as not legitimate if it uses common name for relevant good. These provisions clearly benefit countries that usually use common names to export their products and also for countries that do not protect the generic terms of the product like in the US. In addition, Article 18.35 of RCEP also rules the date of protection of a GI, which is no earlier than the filing date or registration date. These specific provisions on GI are beyond the TRIPs Agreement.

Regarding patents, the RCEP adds some clauses and more detailed explanations, which are not available under the TRIPs Agreement. Article 18.37 for example provides a detailed explanation on defining inventions that have to meet one of the following conditions: new uses of a known product, new methods of using a known product, or new process of using a known product. The RCEP also declares first-to-file principle (Article 18.42), while under the TRIPs Agreement the Members are able to choose their own patent filing principles, first-to-file or first-to-invent. In addition, the RCEP-IP also has a provision on patent term adjustment in order to compensate unreasonable granting authority delays (Article 18.46). Such a provision is unavailable under the TRIPs Agreement. The RCEP-IP provides a broad definition on new pharmaceutical product as does not contain a chemical entity that has been previously approved (18.52). This

obviously will benefit pharmaceutical companies. Interestingly, some provisions under the TRIPs Agreement that are designed to protect the needs of developing countries are not specifically addressed, such as parallel importation and compulsory licensing. Under the RCEP, no specific clause on compulsory licensing other than permitted under the TRIPs Agreement as reflected under Article 18.6, which recognises the adoption of Doha Declaration.

The RCEP also includes new clauses on the protection of undisclosed test data submitted for marketing approvals. In the case of agricultural chemicals it provides protection at least 10 years and 5 to 8 years in the case of pharmaceuticals (Article 18.50). The TRIPs Agreement does not have such a requirement. Furthermore, the RCEP specifically addresses the protections for new pharmaceutical products that are or contain a biologic and provides minimum terms of protection of 8 years (Article 18.51). This has made the RCEP as the first trade agreement to include such a provision.

As regard to industrial design, the RCEP has a specific clause on improving industrial design system particularly to facilitate the process of the cross-border acquisition of rights (Article 18.56). The TRIPs Agreement does not specify the cross-border acquisition of rights in the Parties' respective industrial design systems.

In copyrights, the RCEP extends the duration of copyrights protection. Under the TRIPs Agreement the duration of copyrights protection is the life of the author and 50 years after the author's death. Under the RCEP, the protection is extended to the minimum of 70 years after the author's death (Article 18.63). In addition, the RCEP also incorporates new provisions on Technological Protection Measures (TPMs) Article 18.68; Rights Management Information (RMI) Article 18.69; and Collective Management (Article 18.70). Under the Collective Management clause, the RCEP allows the recognition of the important role of collective management societies for copyright and related rights in collecting and distributing royalties. Based on previous explanation, it is clear that the RCEP-IP can be regarded as beyond the TRIPs Agreement or "TRIPs Plus". According to Braga (2016), the RCEP-IP provides higher standards for IPR protection in line with the US law and reflects the existing FTAs that signed and negotiated by the US.

## **2. Compatibility of the Indonesian legal framework on IPR**

This part discusses the compatibility of the Indonesian legal framework on IPR issues both under the RCEP-IP and the TRIPs Agreement. As explained previously, the RCEP has higher protection for trademarks as compared to the TRIPs Agreement. While Indonesia's trademark legislation can be categorized as TRIPs Plus, Indonesia's trademarks legislation in general is also compatible with the RCEP-IP. As will be discussed below, there are some aspects, however, that still need to be adjusted in order for Indonesia to be fully RCEP-IP compliance. In terms of the scope, the RCEP protects sound and scent marks (Article 18.19). The Indonesia's existing law on trademarks does not recognize non-traditional visible and non-visible marks such as sound and scent marks. Indonesia needs to amend these aspects. Nevertheless, whether the protection of these types of marks is compatible or not with the current development in Indonesia or this will only serve the interest of foreign trademarks owners is still questionable.

The RCEP is also beyond the TRIPs Agreement in regard to the well-known trademarks, as it specifies the exclusive rights of well-known trademark owners and the obligations of each party to provide appropriate measures to protect them (Article 18.22). These include an obligation to the Parties to refuse the application or cancel the registration and prohibit the use of a trademark that is identical to a well-known trademark and also to prohibit the Parties to require a registration for a well-known trademark that has been registered in the Party or in another jurisdiction. The existing Indonesia's trademark law has met this obligation including to prevent the registration of identical or similar trademark to a well-known trademark.

The RCEP-IP also introduces a new mechanism called electronic trademark system, as system for the electronic application for and maintenance of trademarks (Article 18.24). To date, Indonesia does not have online trademark registration, as a consequence infrastructure for this purpose needs to be established. In the long run it will be beneficial for trademark owners in Indonesia since it is more efficient and cost-effective system. In the short term, however, it requires massive investment to establish sufficient infrastructure nation wide.

The RCEP requires its Parties to provide terms of protection for trademarks no less than 10 years while the TRIPs Agreement only requires the protection for trademarks no less than 7 years. There is no problem with this requirement since the existing Indonesia's national law on trademarks has met this obligation. This can be understood, as explained in the previous part, considering that trademark, as one of the forms of intellectual property rights historically is more acceptable in Indonesian society due to its nature to protect the need of society to have a better quality of the products.

To conclude, in terms of trademark protection, the Indonesia's domestic situation and the Indonesia's current law in general can be regarded as RCEP-IP compliance. Nevertheless, there are two main aspects that still need to be adjusted, i.e. expanding the scope of trademark to include non-traditional visible and also non-visible marks as protected trademarks as well as establishing electronic trademark registration system. Despite the fact, only these two aspects that have not met the minimum requirement of the RCEP-IP, adjusting the Indonesian law to accommodate these two aspects can be problematic considering the current Indonesia's domestic situation.

As discussed in previous part, under the RCEP, there are several clauses to ensure prevention of the excessive use of geographical indications (Article 18.32) especially on Grounds of Opposition and Cancellation. Under these provisions, the RCEP provides safeguard in order to ensure that the protection of Geographical Indication will not cause confusion with pre-existing trademark. Furthermore, the GI is considered as not legitimate if it uses common name for relevant good. The RCEP-IP also requires the Parties to ensure transparency, publicly available information, and mechanism for cancellation (Article 18.31 & 18.32). In this regard, Indonesia needs to improve its administration procedure and cancellation and makes these publicly available as required by the RCEP-IP. Improving its administration procedure for GI protection will be beneficial for Indonesia and this may also encourage the utilization of GI protection to protect Indonesia's rich cultural heritage.

Previous section has shown that the RCEP-IP is beyond the TRIPs Agreement for patents protection. The RCEP adds some clauses and more detailed explanations, which are not available under the TRIPs Agreement (see table 8). Article 18.37 for example provides a detailed explanation on defining inventions that have to meet one of the following conditions: new uses of a known product, new methods of using a known product, or new process of using a known product. Under the TRIPs Agreement, a new invention can be granted a patent if it can be proven as new and involve an inventive step and capable of industrial application. The Indonesia's patent law adopts the definition of invention of the TRIPs Agreement. Furthermore, not all patents can be granted under the Indonesian patent law. The obligation under Article 18.37.2 is in conflict with the interest of the Indonesian government especially to provide more affordable medicines for its people. The Indonesian government does not recognize the new definition of inventions under the RCEP-IP. Recognizing these aspects to be patentable will expand the opportunity of pharmaceutical companies to protect their privileges.

The RCEP also declares first-to-file principle (Article 18.42), while under the TRIPs Agreement the Members are able to choose their own patent filing principles, first-to-file or first-to-invent. Since Indonesia adopts first-to-file principle, this is in line with the RCEP's requirement.

In addition, the RCEP-IP also has a provision on patent term adjustment in order to compensate unreasonable granting authority delays (Article 18.46). Such a provision is unavailable under the TRIPs Agreement. Indonesia's patent legislation does not have procedure to expedite the examination of patent applications. Furthermore, there is no clause regarding compensation for unreasonable granting authority delays. The procedure to expedite the examination process can be beneficial since it can encourage more patent applications. However, on the other hand the compensation mechanism for authority delays may also be regarded as extending the protection of patented products, which in turn benefiting the existing patents owners.

The RCEP also includes new clauses on the protection of undisclosed test data submitted for marketing approvals. In the case of agricultural chemicals it provides protection at least 10 years and 5 to 8 years in the case of pharmaceuticals (Article 18.50). The TRIPs Agreement does not have such a requirement. This will harm society's interests since even after the end of patent protection, other companies cannot use "the undisclosed test or other data" that suppose to be freely available and can be used to produce generic medicine. This is because under the RCEP-IP, it has to wait for at least 5 (or 8) years after the end of its patents protection for the undisclosed test or other data to be freely used. This can also be regarded as a way to lengthen the monopoly of pharmaceutical industries.

Furthermore, the RCEP specifically addresses the protections for new pharmaceutical products that are or contain a biologic and provides minimum terms of protection of 8 years (Article 18.51). This has made the RCEP as the first trade agreement to include such a provision. In this context, Indonesia's patent law needs to be adjusted to accommodate this new clause. An important issue to discuss further is that how granting protection for new pharmaceutical products that contain biological element will be beneficial for Indonesian society. How far the capacity of domestic pharmaceutical industries is able to utilize this and to

what extent this clause will not only provide another privilege for foreign pharmaceutical industries.

The RCEP provides a broad definition on new pharmaceutical product as does not contain a chemical entity that has been previously approved (18.52). This obviously will benefit pharmaceutical companies. Indonesia's legal law on patent acknowledges the novelty of an invention to be patented. The clause under the RCEP-IP requires the amendment of definition of new pharmaceutical product and expanding the definition, which does not necessarily reflect any novelty. This will provide a greater chance for pharmaceutical industries to also extend their monopoly.

As regard to industrial design, the RCEP has a specific clause on improving industrial design system particularly on facilitating the process of the cross-border acquisition of rights (Article 18.56). The TRIPs Agreement does not specify the cross-border acquisition of rights in the Parties' respective industrial design systems. Indonesia's industrial design law does not have specific provisions on this issue. In this regard, the Indonesian government needs to improve the infrastructure and enhance its human resource to facilitate the process of the cross-border acquisition of rights.

In copyrights, the RCEP extends the duration of copyrights protection. Under the TRIPs Agreement the duration of copyrights protection is the life of the author and 50 years after the author's death. Under the RCEP, the protection is extended to the minimum of 70 years after the author's death (Article 18.63). In addition, the RCEP also incorporates new provisions on Technological Protection Measures (TPMs) Article 18.68; Rights Management Information (RMI) Article 18.69; and Collective Management (Article 18.70). Under the Collective Management clause, the RCEP allows the recognition of the important role of collective management societies for copyright and related rights in collecting and distributing royalties. For all those aspects, Indonesia's current copyright law has already complied with the RCEP-IP.

As regard to trade secret protection, the Indonesian law to some extent has met the minimum requirements under the RCEP's IP (see table 11). Indonesian current law on trade secret provides specific criminal provisions to prevent misappropriation of trade secrets. However, the Indonesian national legislation does not have specific clause on preventing misappropriation of trade secrets conducted by state-owned enterprises (SOEs).

Based on previous discussion, it can be concluded that there are three categories of Indonesian laws compatibility with the RCEP's IP. First category is fully comply with the RCEP's IP, i.e. copyrights; the second category is RCEP's minus with only minor revision and the revision will be beneficial for Indonesia; the third category is RCEP's minus with major revisions and whether the adjustment taken will be beneficial or not for Indonesia is still questionable so requires more comprehensive assessment, which beyond the main objective of this report.

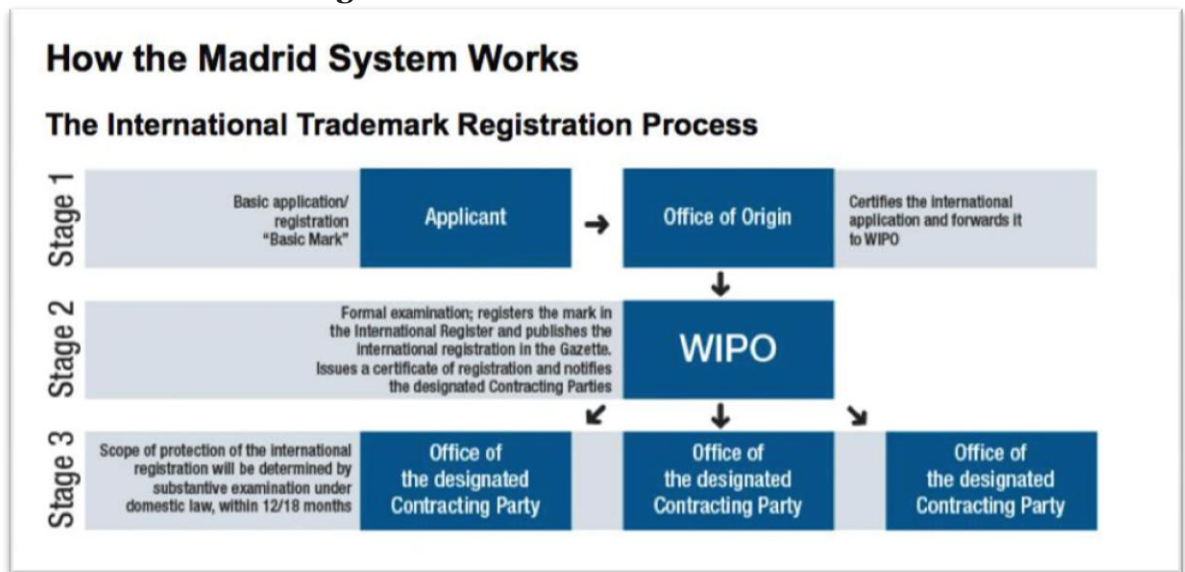
In addition to ensure the compatibility of national laws on IPRs, the TPP members are also required to ratify some other international agreements on IPR other than the TRIPs Agreement. These include Patent Cooperation Treaty, Paris Convention, Berne Convention, Madrid Protocol, Budapest Treaty, Singapore Treaty, UPOV, WIPO Copyright Treaty, WIPO Performance and Phonogram



Treaty. Among these agreements, Indonesia only ratifies some of them: Paris Convention, WIPO Copyright Treaty and WIPO Performance and Phonogram Treaty and accedes to Patent Cooperation Treaty and Berne Convention. There are four main international IP agreements that have not been ratified or accessed by the Indonesian government, i.e. Madrid Madrid, Budapest Treaty, Singapore Treaty, and UPOV. This means, if Indonesia intends to join the TPP, Indonesia will be required to ratify or accede to the rest of international IP agreements.

Madrid Protocol governs the international trademark system. It provides a one stop mechanism for registering and managing marks worldwide (WIPO, n.d). It means that any trademark once it is registered at national or regional IP office can also be submitted for international application through the same IP office which will certify and forward it to WIPO. After formal examination and approved by WIPO, the trademark will be recorded in the international register and published in the WIPO Gazette of International Marks. However, even though the trademark has been approved by the WIPO, the national or regional IP offices also still need to conduct substantive examination and made final decisions regarding the protection of the trademark according to their legislation. In this regard, this system will simply the mechanism for international registration yet the national government still has the right to acknowledge or not to acknowledge the registered trademark. This system will be benefiting domestic trademark owners to be recognised and gained international protection (see diagram 1).

**Diagram 1. The Madrid Protocol**



Source: WIPO (n.d).

The Budapest Treaty of 1980 rules international patents process related to inventions involving microorganisms. Under the Budapest system, all states party to the treaty are obliged to recognise microorganisms deposited as a part of the patent disclosure procedure with an international Depository Authority (IDA). In this regard, there is no requirement for the patent applicants to submit microorganisms to national authority (WIPO, n.d). This system offers an efficient and cost-effective means for the applicants in meeting the disclosure requirements for patenting microorganisms. However, on the other hand,

national government will not have the authority to examine the inventions involving microorganisms.

The Singapore Treaty on the Law of Trademarks was adopted in 2006. Its main objective is to create a modern and dynamic international framework for the harmonisation of administrative trademark registration procedures especially expanding the scope in order to accommodate more recent developments in the field of communication technologies (WIPO, n.d). The Singapore Treaty in this regard is the first international instrument on trademark, which includes non-traditional visible marks, such as holograms, three-dimensional marks, colour, position and movement marks, as well as, non-visible marks such as sound, olfactory or taste and feel marks (WIPO, n.d). The current Indonesia's national law on trademark does not recognise non-traditional visible marks and non-visible marks. There should be a comprehensive assessment to evaluate as to whether expanding the scope of trademarks will be beneficial for Indonesian economic actors. Otherwise, expanding the scope of trademarks will provide protection and only be benefiting foreign trademarks owners.

The International Union for the Protection of New Varieties of Plants (UPOV) was initially adopted in Paris in 1961 and then revised several times in 1972, 1978 and 1991. The main purpose of this convention is to provide and promote an effective system of plant variety protection with the aim of encouraging the development of new varieties plants. Furthermore, the UPOV convention also encourages plant breeding by granting breeders of new plant varieties as an intellectual property right (UPOV, n.d). New varieties plants issue is governed under the Indonesia's legal system UU No. 29/2000 on Protection of Plant Varieties. The main purpose of this law is to protect Indonesia's interest as agricultural country and to ensure the availability of plant varieties for agricultural development. Interestingly, the legislation is not designed to grant patent protection for the new plant varieties. Ratifying the UPOV convention will change the nature of the protection in Indonesia as the Convention grants breeders of new plant varieties an intellectual property right.

### **Conclusion**

Based on previous explanation, it can be concluded that The RCEP-IP Chapter can be regarded as beyond the TRIPs Agreement or "TRIPs Plus". The RCEP-IP Chapter provides higher standards for IPRs protection in line with the US law and reflects the existing FTAs that signed and negotiated by the US (Braga, 2016). Despite the fact that the Indonesia's existing IP legislation is TRIPs compliance, some aspects under the Indonesia's existing legal framework, however, are incompatible with the RCEP-IP. In this regard, if Indonesia intends to join the RCEP, it is crucial to ensure Indonesian legal framework compatibilities with the RCEP and also to ratify other international agreements on IP that have not been ratified by the Indonesian government. This may not be easy since the process for amending national laws and also ratifying international agreements under the current legislation process cannot be done in short period of time.

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