THE PHARMACEUTICAL PATENT PROTECTION IMPACT ON INDONESIA DRUGS PRICE*

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Abstract
This paper examines the pharmaceutical patent protection impact on Indonesian drugs price. As patent owner, companies could set high price for their drugs. However, such condition limits the access of the poor from patented drugs. Therefore, balance between patent protection, public welfare, and compliance to TRIPs agreement must be ensured.

Abstrak

Keywords: pharmaceutical, patent protection, patented drugs.

A. Introduction
In the post TRIPS era, patent protection for medicines has been a concern amongst WTO members because TRIPS requires members to provide patent protection for processes and products relating to pharmaceuticals.¹ These include protection for pharmaceutical compositions, therapeutic uses, polymorphs, active ingredients related forms and pharmaceutical processes.²

Many developing countries have objected to the inclusion of patent protection for pharmaceuticals within the WTO framework for three primary reasons. First, some developing countries believe that access to medicines is a human right.³ They

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1 The legal foundation of this obligation is from article 27 of TRIPS which states “… patent shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application”.


worry that protection will restrict access to essential medicines. Second, some view protection for pharmaceutical patents as unfair. Some developing countries noted that many developed countries refused to protect intellectual property rights sufficiently when protection was not in their best economic interests - such as when Netherlands did not provide patent protection during the 19th century. Third, it is often argued that protection will hamper the development of local pharmaceutical companies in developing countries upon which increasing access to medicines. These concerns are understandable because a number of studies have shown that patent protection for pharmaceuticals increases the price of drugs in developing countries. Higher prices limit the access of the public, particularly the poor, to cheaper drugs. Reduced access to important medicines has caused much conflict in many developing countries, including Indonesia.

For the Indonesian government, protection for pharmaceutical patents constitutes a serious public health issue. It must balance its policy of protecting pharmaceutical patents according to the TRIPS Agreement (international standards) and its goal of providing cheaper drugs (domestic developmental policy). Unless the government provides sufficient protection for pharma-

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9 Pharmaceutical patents cover both products and processes. However, this dissertation focuses more on pharmaceutical products. Graham Dukes defines pharmaceutical products as “a substance or a complex of substances which is administered to man or to animals in order to prevent, diagnose, alleviate or cure a disease, to relieve a symptom, or to modify bodily function in some way”. Graham Dukes, supra note 4, at 3. For the purpose of this paper, the discussion about pharmaceutical products is limited to a substance which is administered to human beings.

10 Pharmaceutical patents (both process and product patents) were given limited protection in Indonesia for the first time under the Indonesian Patent Act of 1989.
maceutical patents, it faces sanctions from the WTO for violating the principles of international trade.

On the other hand, Indonesians’ need to reduce the cost of medicines is pressing for four reasons. First, government budget for medications is limited. Second, the rate of generic drugs sale is low. Third, the burden of chronic diseases and emerging problems, such as HIV/AIDS, is increasing at alarming levels. Fourth, the price of drugs due to pharmaceutical patent protection has increased. This situation was caused in the past by the Indonesian government’s failure to maximize a number of safeguards included within the TRIPS Agreement. This is attributable to government inaction and the unclear and flexible nature of those safeguards.

11 The tension is more evident after the Indonesian government complied with the TRIPS Agreement in 1997.
12 Indonesia’s public health expenditure on health (0.6% of GDP or US$7.6 per capita annual) is significantly less than other ASEAN countries such as Thailand (1.9% of GDP or US$35.5 per capita annual) and Philippines (1.6% of GDP or US$16.4 per capita annual). BPS-Statistic, Bappenas and UNDP Indonesia, “The Economics of Democracy: Financing Human Development in Indonesia”, at http://www.undp.or.id/pubs/ihdr2004_full.pdf. The estimated data for Indonesia is from 1996-1997 and for Malaysia and Thailand is between 1995 and 1999.
13 Furthermore, Indonesian sale of generic drugs, which would be an effective strategy of providing cheaper drugs to the public, is only 10% of drug sales. This is lower than other countries in Asia, such as Thailand (23%), Singapore (22%) and Taiwan (70%). Media Indonesia Online, “Tarif RS Tidak Standar, Askes Sulit Berkembang (Hospital Fees Are Not Standard; Health Insurance Cannot Grow)”, at http://mediaindo.i2.co.id/cetak/berita.asp?action=cetak&id=2003042923442560, April 30th, 2003. Compared to developed countries, such as Germany, USA and Japan, generic drug sales in Indonesia are lower than those countries where the sales comprise more than 30% of drug sales. Kompas Newspaper, “Dana Masyarakat Dihemat Rp. 1 Trilyun, Jika 30 Persen Dokter Gunakan Obat Generik (Public Funds Can be Saved Rp. 1 Trillion, If 30% of Indonesian Doctors Use Generic Drugs)”, at http://www.kompas.com/kompas-cetak/0105/23/iptek/dana10.htm, May 23rd, 200).
14 Relating to HIV prevalence, there is a significant increase number, particularly in the regions of Kalimantan, Papua and Riau. UNAIDS and WHO, 2003, AIDS Epidemic Update, Switzerland, UNAIDS, p. 5, 20-21. Nowadays, it is predicted that 90,000 – 130,000 Indonesians are infected by HIV. UNDP, “Laporan Perkembangan Pencapaian Tujuan Pembangunan Millennium Indonesia/A Progress Report of How to Realize the Indonesian Millennium Development”, at http://www.undp.or.id/pubs/imdg2004_BI/Indonesia MDG_BI_Goal6.pdf. In Papua, HIV prevalence reached 17% in 2002. Even though this number is not as high as in Africa or other Asian countries, the government should anticipate the steady growth of HIV due to the fast spread of this disease. In the near future, it is not impossible that the growth will be a national epidemic. Similarly, from 1987 to 2002 the number of AIDS sufferers in Indonesia was also significantly increasing. Up to the end of September 2003, there were 1,239 reported AIDS cases in Indonesia.
15 See some studies done by researchers in developing countries (supra note 7).
16 Regarding the public health issues, the TRIPS agreement did provide the safeguards, such as bolar provision, parallel imports, compulsory license and government use for every member of the WTO to handle the impact of pharmaceutical patent on public health. But, the Indonesian government has not yet used those safeguards effectively in its national patent law. Even though those safeguards were included in patent law, those cannot be applied due to lack of detailed implementing regulations. Besides that, the government tries to act carefully in implementing the safeguard because the TRIPS Agreement consists of minimum standards only but not a uniform law. Through these minimum standards, the TRIPS Agreement allows its members to “have considerable room to develop their own patent”. Consequently, each member of the WTO has a different patent law standard including how to interpret the safeguards and to what extent those safeguards applications are consistent with the TRIPS Agreement. In practice, the different interpretation of the TRIPS safeguards creates a conflict mainly between developed countries and developing countries which needs to be solved at the dispute settlement body of the WTO. If one country is proved to be applying the safeguards inconsistently with the TRIPS Agreement, the country will face sanctions from the WTO for violating the principles of international trade. Not surprisingly, most developing countries hesitate to apply the safeguards on the ground of avoiding sanctions.
This paper examines the impact of pharmaceutical patent protection on the price of drugs in Indonesia. It focuses on two issues: (1) how does pharmaceutical patent protection affect drug prices in Indonesia? (2) Is patent law the only factor affecting drug prices in Indonesia?

B. Does Pharmaceutical Patent Protection Increase Drug Prices in Indonesia?

Attaran notes that only 1.4% of the WHO Essential Medicines List (EML) is patented so that the large majority of essential drugs should be accessible. He draws attention to poverty, lack of donor funding, and health system infrastructure as barriers to access.17

The International Federation of Pharmaceutical Manufacturers Association (IFPMA) makes a similar argument. This association states that patent protection affects only very small proportion of drugs in developing countries because over 95% of the WHO’s list of essential drugs, those are most needed for treatment in developing countries, are non-patented drugs.18 The protection of pharmaceutical products, therefore, does not impact the drug prices listed in the WHO’s essential medicines.19

A large majority of articles disagree and argue that patent laws create barriers to access to affordable drugs. These studies show that pharmaceutical patent protection increases the price of drugs in developing countries.20 Since the literature shows a debate about patents and prices, with the majority indicating patents are associated with higher prices, Attaran’s paper and the research pharmaceutical companies’ opinion challenge us to ask: what essential drugs are affected by patents?

In Indonesia only 55% of Essential Medicines List or DOEN are generic drugs. Therefore, an analysis of the relation between pharmaceutical patent and the price of drugs is relevant for Indonesia and other countries where patented drugs constitute a significant market share. There are three factors influencing the impact of patented drugs in Indonesia; a) government’s limited ability to finance all of the generic drugs listed in DOEN b) low generic drug prescribing pattern and c) a weak commitment by local authorities in prescribing generic drugs under health decentralization. These factors are discussed below:

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18 IFPMA (I), 1998, the Question of Patents the Key to Medical Progress and Industrial Development, p. 10.

19 ibid.

1. Government’s Limited Ability in Producing Generic Drugs Listed in DOEN

Since DOEN was implemented in Indonesia in 1980, the Indonesian government has not been able to provide 100% of generic drugs listed in DOEN to its people. In 2005, 220 generic drugs (55%) are listed among 400 essential drugs of DOEN. The Decree of the Indonesian Health Minister No. 12/MENKES/SK/I/2005 on the Price of Generic Drugs directs that 153 of the generic drugs (70%) listed in DOEN must be available in basic and public health facilities in Indonesia. The rest are excluded because the Indonesian government has limited financial ability for purchasing all the generic drugs listed in DOEN. These “essential” generic drugs are appropriate, given the majority of disease problems confronted in public facilities, staff qualifications, and available equipment. For example, most generic drugs in DOEN are for tropical diseases, such as diarrhea, dengue fever, malaria, tuberculosis. Meanwhile the number of generic drugs for non-tropical diseases, such as high cholesterol, high blood pressures and cancer is very limited. Only one of the 19 drugs listed in DOEN for Sitotoxic (cancer) is included among the 153 essential generic drugs. Attaran’s argument that pharmaceutical patent does not affect overall drug expenditure since 96% of the WHO essential drug list are generics is not applicable to Indonesia. This is because only half of Indonesia’s DOEN list is comprised of generic drugs.

Furthermore, the government’s limited ability in providing all generic medicines listed in DOEN may increase the use of patented drugs making them still relevant to increased prices in Indonesia.

2. Low Percentage of Generic Drug Prescription in Certain Areas

In 2003, number of drug prescriptions by province in Indonesia was 28,389,959. This total included 20,810,557 prescriptions of generic drugs or 73.30%. This data shows that in general a majority of drug prescriptions in Indonesia are dominated by generic drugs. It might seem that Attaran’s argument is supported with this data. However, the discussion about pharmaceutical patent protection to access to essential medicines is still relevant. There are wide variations in drug prescribing patterns. First, using the same data above, it is evident that generic drug prescribing in some provinces is very low. Examples of this are East Kalimantan (26.53%), West Java (31.33%), West Kalimantan (38.42%), Yogyakarta (35.91%) and South East Sulawesi (47.32%).

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22 Interview with an anonymous respondent (a) on 2nd of May 2006 in Jakarta.
23 See Daftar Obat Essensial Nasional (DOEN) or the Indonesian Essential Medicines List 2002.
24 This data did not cover number and percentage of prescription of generic drugs in Banten, Bangka Belitung Islands, and South Kalimantan, Gorontalo, Maluku and Papua provinces. Result of Data Collection and Processing of Minimum Service Standard Performance Indicator in the Health Sector from 325 Districts/Municipals, 10/10/04 in Ministry of Health of Republic of Indonesia, 2003, Indonesia Health Profile, p. 175.
25 Result of Data Collection and Processing of Minimum Service Standard Performance Indicator in the health sector from 325 Districts/Municipals, 10/10/04 in Ministry of Health of Republic of Indonesia, ibid.
explanation is that populations which live in those areas have higher medicine expectations due to a lot of educated people (Bandung, the capital city of West Java and Yogyakarta are well known as student cities) and there are rapidly developing areas (East Kalimantan, West Kalimantan and South East Sulawesi).

Second, the use of generic drugs in basic health centers is high (73.30%) but lower in public hospitals. In a public hospital of a province in Indonesia, the use of generic drugs in 2004 was 3.358 (29%) and the use of non-generic drugs was 8.079 (71%). In 2005, the use of generic drugs was still lower where the number was 5.925 (14%) compared to non generic which was 35.102 (86%).

This variation may be related to sicker patients at a hospital compared to a health center, since people may bypass a facility where they feel they cannot get effective care. Hospitals have other attributes that affect drug prescribing, including contacts with pharmaceutical representatives and a staff with more specialists.

According to data in 2004 collected from 4 state owned pharmacies in Yogya, it was found that total drug prescription was about 94.325. Among these, there were only 7.762 or 8.2% generic drug prescriptions of total drug prescription in 12 months. These data show that the use of non-generic drugs in some provinces is dominant and that the relationship between pharmaceutical patents and the increase drug expenditures is still a relevant issue in Indonesia.

3. A Weak Commitment of Using Generic Drugs in Basic Health Centers and Public Health Facilities Under Health Decentralization

Before health decentralization (before 2002), the availability of generic drugs was 100% in PUSKESMAS (basic health centers). This is because central government procured and distributed generic drugs to basic health centers. If basic health centers need patented drugs, the government usually subsidizes the drug purchase. However, after health decentralization, local governments expected that basic health centers and public health facilities would generate revenue through fees and drug purchases. Consequently, there is a tendency that under health decentralization basic health centers and public health facilities provide more non-generic drugs than before because of better revenues.

Survey in several hospitals in Central Kalimantan in April 2006 showed that drug prescribing pattern for respiratory infection (non pneumonia) was dominated by non-generic antibiotics that constituted 60%-90% of total drug prescriptions, raising costs.

An optimal use of generic drugs has fallen under health decentralization. This is because the decision about drug purchasing

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26 This data was collected from field research in a province in Indonesia in June 2006.
27 This data was obtained from Depkes, 2005, Data Profil Kesehatan Kota Yogyakarta Tahun 2005, p. 81.
28 Interview with an anonymous respondent (b) on 26th of May 2006 in Jakarta.
29 Interview with an anonymous respondent (a), supra note 22.
is influenced by their weak commitments to the health sector. This situation could worsen if pharmaceutical companies use their aggressive promotion to sell patented drugs to health providers. This expanded use of patent drugs in health centers and public health facilities make pharmaceutical patent protection more significant for the price of drugs in Indonesia.

C. The Impact of Pharmaceutical Patent Protection on Drug Prices in Indonesia

An exclusive right owned by patent holders significantly influences the price of drugs in Indonesia. Price control is an important factor. In Indonesia some branded generic drugs, outside the government price control, are almost as expensive as the patented drug making them unaffordable for many. An example is the price of Ketamin Injection which is 511% of international price references. These finding accords to the drug price compared to patent drug price which is performed by all pharmaceutical companies in Indonesia as shown by table 1. All types of drugs in Indonesia have a different price factor.

### Table 1

<table>
<thead>
<tr>
<th>No.</th>
<th>Types of Drugs</th>
<th>Price Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Patented Drugs</td>
<td>100 %</td>
</tr>
<tr>
<td>2.</td>
<td>Original Off-Patent</td>
<td>100% (the same as patented drug price)</td>
</tr>
<tr>
<td>3.</td>
<td>Branded Generic</td>
<td>40-80 % (of patented drug price)</td>
</tr>
<tr>
<td>4.</td>
<td>Low-Priced Branded Generic</td>
<td>30 % (of patented drug price)</td>
</tr>
<tr>
<td>5.</td>
<td>Obat Generik Berlogo</td>
<td>10-30% (of patented drug price)</td>
</tr>
<tr>
<td>6.</td>
<td>Obat Essential (DOEN)/PKD</td>
<td>10-25 % (of patented drug price)</td>
</tr>
</tbody>
</table>

Source: GP Farmasi Indonesia or the Indonesian Pharmaceutical Association, 2006, *Pengantar Pemahaman Komoditi Obat* (the Introduction to Commodity Drugs), Jakarta, at p. 3.

There are several possibilities that can explain the high price of generic drugs, particularly branded generic drugs in Indonesia. One is the absence of competition in the market. Frank and Salkever (1997), well-known economists concluded that competition among generic producers is important to lower the price of generic drugs. Another interesting issue from table 3-3 is that the price of an original off-patent, which lost patent protection, can be as expensive as patent drugs in Indonesia. Frank and Salkever (1992 and 1997) found that the price of branded patented drugs may not lower after patent expiration. Grabowski and Vernon (1992) explained...
that the price of off-patent drugs is still high if market demand persists. For example, after patent expiration due to brand loyalty among physicians who prescribe those drugs to their patients.\(^{35}\) Furthermore, if originator companies claim new use patent based on clinical data test of off-patent drugs and use data exclusivity on it, they will retain the clinical data test from generic drug producers. Consequently, this will inhibit generic entry (this is discussed in detail on subchapter 2).\(^{36}\)

The correlation between pharmaceutical patent and the increased price of drug is related to the fact that exclusive rights create a monopoly to patent holders (e.g. multinational pharmaceutical companies).\(^{37}\) According to pharmaceutical companies the market price must cover production and marketing expenditures, plus a profit for shareholders. Patent protection is an important means for recouping the capital used for drugs production.\(^{38}\) From patented drug producers’ perspective, there should be a difference between the price of generic and patented drugs. International Federation of Pharmaceutical Manufacturers Associations (IFPMA) argues that getting a new drug from the laboratory to the patient takes time and is costly.\(^{39}\) For examples, pharmaceutical companies may need 12 years and an average expenditure of $500 million before a pharmaceutical invention reaches the market.\(^{40}\) The pharmaceutical business has economic risks because only “one of every 5000 new chemical entities discovered makes it to the market as a new drug.”\(^{41}\) However, many scholars argue that pharmaceutical companies take the excessive profits from an exclusive right given by the patent system.\(^{42}\)

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They believe that the absence of competition during the patent protection give huge profits to pharmaceutical companies. They believe that the absence of competition during the patent protection give huge profits to pharmaceutical companies. The expensiveness of patent drugs derives from the promotion cost, advertising cost and incentives to physicians or pharmacists who assist them to promote their products. These promotional costs are passed on to consumers. In practice, the structure of drug price in Indonesia consists of several components, including raw material cost, manufacturing cost, marketing cost, distribution cost, taxation and discount to pharmacies (see table 2 below).

### Table 2
The Price Components of Amoxicillin in Indonesia

<table>
<thead>
<tr>
<th>No</th>
<th>Price components of Amoxicillin</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Raw Material Cost</td>
<td>5%</td>
</tr>
<tr>
<td>2.</td>
<td>Manufacture Cost</td>
<td>9%</td>
</tr>
<tr>
<td>3.</td>
<td>Marketing</td>
<td>50-80%</td>
</tr>
<tr>
<td>4.</td>
<td>Distribution Cost</td>
<td>6-15%</td>
</tr>
<tr>
<td>5.</td>
<td>Taxation</td>
<td>10%</td>
</tr>
<tr>
<td>6.</td>
<td>Net price rate at pharmacy</td>
<td>100%</td>
</tr>
<tr>
<td>7.</td>
<td>Price rate for consumers</td>
<td>135%</td>
</tr>
</tbody>
</table>

Source: Martuti Budiharto, et. al., 2004, at 25.

Table 2 shows marketing budget of Amoxicillin is the biggest component of drug price (50-80%). This is because pharmaceutical industries set a large budget for marketing their products toward physicians (drug promotion) and consumers (drug advertising). The pharmaceutical industry expenditure for marketing may exceed that for research and development. Another interesting fact is the different price between net pharmacies rate and consumer rate. In Indonesia, the price of drug controlled by the government is divided into two prices; net pharmacy price and the highest retail price. Pharmacies have two sources of profits: from discount provided

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47 Suara Pembaruan Daily, supra note 45.
by pharmaceutical companies at net price and from the consumers (35%) at the highest retail price. This practice has been criticized as excessive profits gained by unreasonable costs for consumers.\(^{48}\)

These results show a relationship between pharmaceutical patent protection and a higher drug prices compared to those available for multisource drugs. These findings, that the protection of pharmaceutical patents affected the price of drugs before and after the TRIPS Agreement, concur with other studies. For example, in 1990 Nogues argued that patent protection for pharmaceutical drugs favours the pharmaceutical industry. He also concluded that pharmaceutical patents increase the price of drugs in developing countries. However, competition between brand names and the generic drug producers can minimize this impact if the generic drugs are promoted as effective and are acceptable to consumers.\(^{49}\) In 1993, Nogues concluded that the introduction of pharmaceutical patent “would entail significant welfare losses and income gains to patent owners.”\(^{50}\)

In 1991, Challu found similar results in Argentina. After analyzing the Argentine pharmaceutical markets, Challu stated that patent protection resulted in “a 273 per cent price increase and a 45.4 per cent decrease in quantity demanded.”\(^{51}\) In 1994, Kim \textit{et al.} found that Intellectual Property Rights (IPR) policy change in the Republic of Korea affected pharmaceutical firm market. Pharmaceutical companies with more technological capability will gain benefit while those with less technological capacity experienced loss of their market.\(^{52}\)

In the post TRIPS period, Subramanian conducted research on the likely impact of pharmaceutical patent products in small and large countries in 1995. He concluded that “either a perfectly competitive market or Nash-Cournot duopolistic market becomes a monopoly under patents.”\(^{53}\)

In the same year, Subramanian applied this research in five countries to India, Indonesia, Pakistan, the Philippines and Thailand. He found that annual price, welfare and profit effects were negative in all five of the countries (drug prices and profits rose, while fewer consumers could afford to pay).\(^{54}\)

In 1995, Chambouleyron concluded that there were “significant price increases”

\(^{48}\) \textit{ibid.}

\(^{49}\) Julio Nogues, “Patents and Pharmaceutical Drugs: Understanding the Pressures on Developing Countries”, 1990, 24 (6) \textit{J. World Trade}, p. 81-104.


\(^{51}\) Pablo Challu, 1991, \textit{The Consequences of Pharmaceutical Product Patenting}, 15 (2) World Competition, p. 110. However, this study was criticized by Rozek because it is “fatally flawed in its conceptual and empirical analyses”. See Richard P. Rozek, 1993, \textit{the Consequences of Pharmaceutical Product Patenting: A Critique}, 16 (3) World Competition L. & Econ Rev., p. 91. UNCTAD, \textit{ibid}.


and a fall of consumption in Argentina due to monopoly. Watal in 1996 reported a similar result in India, in which the introduction of product patents in pharmaceuticals would increase 52 per cent and welfare losses to about US$ 33 million. In mid-1999, K. Balla and Kiran Sagoo reported a survey conducted by Consumers International and Health Action International (CI/HAI) on the likely impact of patent on the retail prices of 16 drugs in 36 countries (ten developed countries, 25 developing countries, including Indonesia and one Commonwealth of Independent States/CIS). This survey concluded that there was a significant impact of pharmaceutical patent protection on the retail price of drugs in those countries and that the introduction of generic drugs could lower the price of originator’s drug.

D. Relevant Factors outside Pharmaceutical Patent Protection Which Affect the Increase Price of Drugs in Indonesia

This paper found that pharmaceutical patent protection is not the only factor affecting drug prices. High price of drugs in Indonesia is influenced by pharmaceutical policy that results in weak control of drug distribution and an absence of price controls. Local pharmaceutical companies depend upon raw materials from abroad may encounter problems and health insurance organizations have failed to use volume purchases to negotiate the price of drugs.

Non-patent drug factors may also raise the price of generic drugs. In 1997 and 1998 a shortage of imported raw materials was associated with higher generic drug prices. The Department of Health reported that the highest price of generic drugs in Indonesia was in January 1998. It amounted 112.9%. Fluctuating international monetary exchange is another factor. In February 1998 and in March 1998, the generic drugs price increased about 50% and continued to rise to 63.19% in June 1998. The increase of the prices was caused by economic crisis which appeared at the end of 1997 where the Indonesian currency (rupiah) to US$ 1 was depreciated from Rp.2000 to Rp.5000. In June 1998, there was the highest depreciation of the Indonesian currency to US dollar which reached almost Rp.15,000 per US dollar.

Another factor related to price is a large number of pharmaceutical companies and pharmaceutical distributors. Pharmaceutical companies are only 198 but the number of pharmaceutical distributors is about 2,645. 

58 See also Carlos Correa, supra note 16, at p. 2.
60 ibid, at p. 19.
This unbalance proportion cannot help the distributors to reach an efficient scale which brings about the increased distribution fee in Indonesia. The limited opportunities to reach profit margin from small number of pharmaceutical companies as drug producers encourage the distributors to mark up the distribution fee in Indonesia. This fee will be the profit for them. Then, the increased distribution fee increases the drug prices.

E. Conclusion

Patent law is not the only factor increasing the price of drugs in Indonesia. This paper acknowledges the importance of additional factors (e.g. public health policy, drug pricing, distribution system, and surveillance of prescribing patterns) besides patent law that affects access to medicines. Although these factors are outside the scope of this paper, they illustrate the need to involve a multi-sectoral group of policymakers and stakeholders to improve access to medicines in Indonesia.

Therefore, Indonesia should seek a balance between pharmaceutical patent protection and use of policies and strategies that are essential for its public welfare. It must also assess a set of non-patent issues affecting the use of available drugs, particularly generic drugs.

Finally, Indonesia will need to tailor its approach to local needs and opportunities. Variations in economic level, national goal, legislative experience, and pharmaceutical industry development will influence policy options and priorities.

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