

## Development of Patent License in the Post Issuance of Law No. 11/2020 on Job Creation

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### ABSTRACT

*Patent license has a great effects on a country's advancement since it included technological creation which can increase its economic condition. In a patent lisencc contract, Article 7 of the TRIP's Agreement states that HKI protection and enforcement should be provide the contribution to technological transfer deployment by paying attention to balanced interest. Besides that, one of their benefits is for the nation's advancement. However, Law No. 11/2020 on Job Creation has eliminated the obligation to transfer technology in giving the patent license in Indonesia. The research problems are as follows: how about the legal comparison of the obligation of technological transfer in the patent license according to TRIP's Agreement, Law No. 13/2016 on Patent, and Law No. 11/2020 on Job Creation with the implementation of Patent License agreement in Indonesia, and how about the development of the patent license from the issuance of Law No. 13/2016 on patent until the issuance of Law No. 11/2020 on Job Creation. The research employs juridical normative method with descriptive analytical approach. Secondary date are collected by conducting library research. They are analyzed qualitatively by using deductive method. The result of the research shows that amendment of Article 20 of law on Job Creation in giving the patent has eliminated the regulation on the obligation to transfer technology in giving the patent which has the implication on the human resource development in Indonesia. The technological transfer has given great advantages of the advancement of economic development, the increase in domestic and foreign investments, the advancement of social development.*

**Keywords :** Patent, Invention, License, Technological Transfer

### INTRODUCTION

One type of Intellectual Property Rights that has a major role in improving a country's economic development is patents, related to inventions in the field of technology that eventually produce patents, Indonesia is still very far behind when compared to other countries, therefore as a means of accelerating technology transfer the licensing mechanism is one of the most important means. In the implementation of patent licensing agreements, patent protection is very important for inventors and patent holders because it can motivate inventors to increase their work, improve state welfare and create a healthy business climate. The law is needed to ensure that the exclusive rights of one's intellectual property are not harmed by other parties, so that protection can create a healthy competitive climate and encourage intellectual property rights owners to invest and transfer technology.

The implementation of the patent license agreement refers to Law Number 13 of 2016 concerning Patents and as is known that the Patent Law has amended Article 20 regarding the provisions for patent implementation in terms of technology transfer after the birth of Law Number 11 of 2020 concerning Job Creation. The process of forming laws and regulations and changes in such a way is a form of embodiment of the concept of the welfare law state, this is in line with what Satjipto Raharjo said that the law should make happy. The provisions on the basis for granting licenses exist and are regulated in legislation intended to provide a regulatory basis for licensing practices, and will provide protection and certainty for parties entering into

license agreements. In this case, the state has a role in the implementation of license agreements that do not conflict and threaten the administration of the state through statutory provisions. The role must reach the stage that the license agreement will be able to stimulate Indonesia's economic growth.

With the enactment of the Job Creation Law, it states that the implementation of patents is divided into 3 (three) activities, namely the implementation of product patents, process patents and method patents whose implementation includes making, importing, or licensing patented products. It can be seen from the provisions of Article 20 of the Job Creation Law that the implementation of patents no longer has to support the absorption of investment, and/or the provision of employment as stated in Law Number 13 of 2016 concerning Patents. Changes to Article 20 of the Job Creation Law that eliminate technology transfer provisions in the future will have implications for the implementation of patent licensing agreements in Indonesia, as it is known that technology transfer has enormous benefits in efforts to improve the ability of human resources, so that existing regulations are expected to be the basis for implementing and enforcing IPR, which can contribute to the direction that can bring Maximum benefits for progress and common prosperity.

## METHODS

This type of research is normative juridical which refers to legal norms contained in laws and regulations. The nature of research is descriptive analytical that seeks to tell the solution of existing problems based on data. The technique used to collect data in this study is the library research method, which is research carried out using literature, both in the form of books, notes, and reports on the results of previous research. The data analysis used in this study is qualitative data analysis to obtain previously unexpected discoveries and to form new theoretical frameworks, and the data helps researchers to move ahead of the initial preconceived notions and frameworks.

## RESULTS AND DISCUSSION

### Results

#### **Legal comparison of technology transfer obligations in patent licenses according to TRIP's Agreement, law number 13 of 2016 concerning patents and law number 11 of 2020 concerning job creation**

Dirdjosisworo said that legal comparison is a method of legal study, which studies the differences in legal systems between one country and another. or compare the positive legal systems of one nation with another. R. Soeroso concluded that comparative law is a branch of legal science that uses the comparison method in order to find the right answers to concrete legal problems. Several regulations regarding patent licensing both nationally and internationally generally have the aim that the implementation of patents runs according to their proper purpose.

Patents are closely related to industrial production and economic growth in developing countries including Indonesia. In practice patent demand in Indonesia quantitatively, it can be explained that only a few patent requests come from within the country, other than the largest number come from abroad so that Indonesia has become a marketing area for technology that has been developed in industrial countries. Article 7 of TRIP's Agreement confirms this by

stating that the protection and enforcement of IPR should contribute to technology transfer and technology dissemination by taking into account the balanced interests between technology knowledge producers and technology users, and in a way that supports social and economic welfare and balances rights and obligations. Notwithstanding that everything must be done in accordance with TRIP's other provisions, it is an unequivocal recognition of the rights of each member state of the World Trade Organization to protect the public interest in national intellectual property rights arrangements.

Law Number 13 of 2016 concerning Patents in Article 20 states that the implementation of patents must make products or use processes in Indonesia by supporting technology transfer, investment absorption and/or employment provision. The provisions regarding the implementation of these patents have changed after the birth of Law Number 11 of 2020 concerning Job Creation through Article 107 has eliminated the provision of technology transfer obligations in terms of granting patents in Indonesia, Article 20 of the Job Creation Law essentially states that the implementation of product patents and process patents must be carried out in Indonesia including, making, importing or licensing patented products. As stipulated in Article 74 of Law Number 13 of 2016 concerning Patents. Patent licensing agreements are one form of technology transfer that can be done to cover the unavailability of technology needed in the country.

### **Implications of Changes in Patent License Regulations in the Job Creation Law**

Technology transfer serves to systematically evaluate technology that can encourage the growth of innovation and competitiveness of domestic industries. Technology transfer is one way to acquire technological capabilities. When viewed from the point of view of expediency, the presence of technology transfer in the obligations of patent holders is one of the bridges for Indonesia to improve the ability of existing human resources. Apart from that, one of the benefits of technology transfer is currently considered as one of the determinants of the progress of a nation.

The main role of expediency is to realize what is a goal that has been aspired by humans, which is then poured into applicable legal norms so that in this case it can be seen that the purpose of implementing technology transfer is to improve the ability and competence of local workers to be equal to foreign workers. Technology transfer is regulated in investment in Indonesia with the aim of creating accelerated growth in innovation and competitiveness of the national economy as a whole. Thus, technology transfer is needed to support and improve the ability of the nation's children, especially in terms of patents. With the encouragement of increasingly rapid technological advances that occur today, the country must also have a strategy to help improve the ability of the nation's children. This is in line with the view of utilitarianism that the existence of law is not only a written rule but also has a role to provide benefits to as many people as possible.

The birth of the Cipta Kerja Law is expected to accelerate economic recovery starting in 2021 and be able to streamline hyper-regulation which has been an obstacle to Indonesia's investment growth so far. Not only that, through the Job Creation Law, it is hoped that a conducive investment climate will be created. Thus, it will encourage the entry of investment, both domestic and foreign so that it will indirectly create new businesses and jobs. However, if further studied through Indonesia's membership as a member of the WTO, it has consequences

for implementing what has become the provisions of TRIP's Agreement.

The amendment of Article 20 after the birth of the Job Creation Law has the potential to create new problems where patent holders are required to carry out patents in Indonesia but are not burdened with the obligation to support technology transfer, investment absorption, and/or employment provision. In such conditions, Indonesia will certainly be disadvantaged, because investors come but do not provide maximum benefits. Changes to Article 20 by not requiring technology transfer in the implementation of patents directly cause MSMEs to be not affected by technology transfer. As is known that the digital era 4.0 has provided benefits to technological developments in various human lives, MSMEs are no exception. From the positive side, of course for foreign investors is the ease of making foreign investments and the ease of doing business without having to make their products in Indonesia.

### **The development of patent licenses since the issuance of Law Number 13 of 2016 concerning Patents until the issuance of Law Number 11 of 2020 concerning Job Creation**

The enactment of the Job Creation Law has made the provisions of this law applicable and binding for all Indonesian citizens. One of them affected is Law No. 13 of 2016 concerning Patents, where this law has undergone various changes. The form of change is formulated in 3 (three) patterns, namely the removal of substance, the refinement of substance, and the addition of substance. From these changes, one of the articles that has undergone changes is Article 20 of the Patent Law related to the obligation of patent holders to make products or use processes in Indonesia and the obligations of patent holders in terms of technology transfer, investment absorption, and/or employment provision.

Based on data in the Annual Report of the Directorate General of Intellectual Property, the development of the number of patent registrations in the territory of Indonesia is as follows:

1. In 2015 foreign patent applications in Indonesia reached 2,502 applications including patent applications and simple patents as many as 595 applications and 1,907 applications for registration through PCT, while domestic patents amounted to 226 applications;
2. In 2016 foreign patent applications in Indonesia reached 3304 applications including patent applications and simple patents as many as 1,059 applications and 2,245 applications for registration through PCT, while domestic patents amounted to 405 applications;
3. In 2017 foreign patent registrations in Indonesia in 2017 reached 4,725 applications including patent applications and simple patents as many as 1,537 applications and 3,188 applications for registration through PCT, while domestic patents amounted to 574 applications;
4. In 2018 foreign patent registrations in Indonesia in 2018 reached 5,905 of which were patent applications and simple patents as many as 1,867 applications and 4038 applications for registration through PCT, while domestic patents amounted to 794 applications;
5. In 2019 foreign patent registrations in Indonesia in 2019 reached 9,903 of which were patent applications and simple patents as many as 1,556 applications and 8,347 applications for registration through PCT, while domestic patents amounted to 1,298 applications;

6. In 2020 Foreign patent registrations in Indonesia in 2020 reached 7,420 of which were patent applications and simple patents as many as 890 applications and 6530 applications for registration through PCT, while domestic patents amounted to 1,216 applications

## **Discussion**

Soerjono Soekanto suggested that the usefulness of the application of comparative law is, among others, that the research will provide knowledge about the similarities and differences between various fields of legal system and basic understanding of the legal system. With this knowledge, it is easier to carry out unification, legal certainty and legal simplification. Departing from the above views or opinions, it can be affirmed that the function of comparative law is no longer merely to understand national law or certain foreign laws but can also be used to find solutions in legal problems involving concrete legal events or in the formation of national law.

The Indonesian nation in carrying out national development has currently placed development priorities in the economic sector which focuses on strengthening and deepening industrial structures that support technological capabilities. This aims to make the Indonesian nation more motivated to realize national development goals on the basis of its own strength, so that Indonesia is able to enter the era of globalization. Looking at the development goals, especially those related to efforts to build industrial strength, the factor that needs to be considered is the need in the field of technology. This factor is important, because technology is a determining factor in the growth and development of the industry.

Technology transition can be taken in two ways, namely, through investment, and through patent licensing agreements. However, the transfer of technology through licensing is seen as preferable, because the licensee can learn to exercise the Intellectual Property Rights themselves in the form of the licensed technology. To achieve development priorities in the field of technology, a country needs to establish foreign policies to regulate its country to be more focused in conducting an international relationship. Technology transfer is the transfer of technology from the technology owner to the recipient of the technology to adapt the technology which can be done through a patent license agreement and regulated in Law Number 13 of 2016 concerning Patents. Indonesia's participation as a member of the WTO has consequences for implementing the provisions of the Agreement On Trade Related Aspects Of Intellectual Property Rights (TRIP's Agreement). The Agreement Establishing The World Trade Organization has been ratified by the Government of Indonesia with Law Number 7 of 1994 so that all World Trade Organization (WTO) agreements are binding on Indonesia including agreements on Intellectual Property Rights as contained in the TRIP's. Indonesia's participation in agreeing to the Agreement On Trade Related Aspects Of Intellectual Property Rights automatically has consequences for implementing the provisions of the TRIP's agreement.

If examined further, TRIP's Agreement has provided an opportunity for developing countries to regulate themselves in their national patent law norms by utilizing TRIP's Flexibility and making TRIP's Agreement a minimum standard reference. In its implementation, there is a conflict between Law Number 13 of 2016 concerning Patents and the principle of non-discrimination in TRIP's Agreement, namely in the substance of Article 20 of Law Number 13 of 2016 concerning Patents which requires patent holders to make products or use processes



in Indonesia, the substance of the article violates the provisions of Article 27 of TRIP's Agreement, namely "patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced Indonesian." or in Indonesian i.e. that the patent must be available and the patent right can be enjoyed without any discrimination relating to the invention, in the field of technology and whether the product is imported or produced at the local level. Thus, it is expected that the government will revise Article 20 of Law Number 13 of 2016 concerning Patents to encourage the improvement and development of domestic industries and not conflict with the principle of non-discrimination contained in TRIP's Agreement.

As stated in the Omnibus Law Academic Paper, there are 7 reasons why Article 20 of Law Number 13 of 2016 concerning Patents is revoked, because Indonesia needs flexibility in terms of manufacturing product obligations or patent processes. The article is considered discriminatory and violates Article 27 of the TRIP's Agreement. The Patent will be revoked if the Patent holder does not implement the provisions of Article 20. The obligations in Article 20 are impossible to apply to every technology due to cost, technological know-how, human resources, and so on. This is considered to reduce the entry of foreign investors in Indonesia. Because of this polemic, the Job Creation Law was born as an effort to respond to the need for legal certainty in the investment sector in Indonesia. The presence of the Job Creation Law in the investment sector is an effort to overhaul articles in various laws through 1 (one) law, with the ability to reach cross-sector regulations under the affairs of various agencies or ministries. This concept or method is known as omnibus law. The purpose of the omnibus law concept or method through the Job Creation Law is to accelerate the consolidation of conflicting rules simultaneously, and become a reference for all rules for related sectors.

Based on the description above, changes in the obligations of patent holders are considered to encourage ease of doing business. Because the community, especially international, finds it difficult to do business in Indonesia, this is as stated in the omnibus law academic text. With the amendment of Article 20 of the Patent Law in the Job Creation Law, it is expected to solve these problems. The government in this case states that it prioritizes the principles of expediency, the principle does not conflict with higher laws or regulations and the equivalent of cooperation between Indonesia and other countries is considered to be better established with changes in the obligations of patent holders. But on the other hand, by eliminating the provision of technology transfer obligations in the Job Creation Law is considered detrimental to the Indonesian nation, substantially replacing the obligation to "make or use into carry out indirectly will put the obligation to implement patents to be looser. In addition, eliminating the obligation to make or use patents that are registered and given protection in Indonesia, will only make the status of patent rights holders like just selling products. Changes in patents in the Job Creation Law also have the potential to cause new problems where patent holders are required to carry out patents in Indonesia but are not burdened with the obligation to support technology transfer, investment absorption, and/or employment provision.

In such conditions, Indonesia will certainly be disadvantaged, because investors come but do not provide maximum benefits. In fact, if studied further, through this transfer of technology, the state can increase independence, national competitiveness, and national attractiveness in order to advance national civilization through international association. Apart

from the consequences of changes to Article 20 of the Patent Law, revisions to the Patent Law and also its derivative rules are considered very necessary in order to create legal certainty. The theory of legal certainty proposed by Gustav Radburch says that the law must contain 3 (three) identity values, namely legal certainty (*rechtmatigheid*), legal justice (*gerechtigheit*), and legal expediency (*doelmatigheid*). As the bearer of the value of justice, law becomes a measure of whether or not the legal system is fair. Indonesia's membership as a member of the World Trade Organization (WTO) has consequences for implementing the provisions of the TRIP's agreement, including the provisions in Article 7 which states that the implementation of IPR must contribute to technology transfer. If the provisions in Article 20 of the Job Creation Law are implemented.

Thus, it can be concluded that patent licenses are closely related to improving a country's economy, thus the regulations applied must be in accordance with the national interest. In this regard, Roesner argues that technology transfer defines the concept as "the movement of know-how, technical knowledge, or technology from one organizational setting to another". Can be interpreted as a movement or movement of knowledge from one place to another so that the knowledge can develop, elaborate and sharpen. Although the material changes to Article 20 of the Patent Law are believed to be able to bring investors quickly and easily, the loss of technology transfer provisions can then have a negative impact on human resources in Indonesia, on the other hand the importance of technology transfer and the resulting benefits should have a positive impact on human resources in Indonesia.

## CONCLUSION

Based on the discussion of the three problems in this study, it is concluded as follows:

1. Legal comparison of technology transfer obligations in patent licenses according to TRIP's Agreement, Law Number 13 of 2016 concerning Patents and Law Number 11 of 2020 concerning Job Creation that the Patent Law, especially Article 20 is not in line with the provisions contained in Article 7 of TRIP's Agreement, so that based on Article 107 of the Job Creation Law has eliminated the provision of technology transfer obligations in terms of granting Indonesian patents. Changes to Article 20 of the Patent Law do not necessarily relax parties who carry out patents in Indonesia, but there will also be sanctions given to parties who violate the provisions of laws and regulations.
2. The consequences of changes in technology transfer obligation regulations contained in Law Number 11 of 2020 concerning Job Creation on the implementation of patent license agreements in Indonesia are a manifestation of the concept of regulatory reform through the establishment of laws with the omnibus law method to revise laws and regulations that hinder investment, one of which is Law Number 13 of 2016 concerning Patents and as a consequence causes problems due to by removing the obligation of patent holders to make products or use processes in Indonesia will indirectly eliminate technology transfer, investment absorption and/or employment provision.
3. The development of invention registration at the Directorate General of Intellectual Property in the period 2015 to 2020, namely in 2016 increased by 32% from 2015, in 2017 patent registration increased by 43% from 2016, in 2018 patent registration

increased by 25% from 2017, in 2019 patent registration increased by 68% from 2018, Meanwhile, in 2020 patent registration decreased by 25% from 2019. The decline in patent registration in 2020 does not indicate any legal uncertainty contained in the Patent Law in Indonesia, but because there are still frequent violations of business ethics and piracy crimes against Intellectual Property Rights in Indonesia where these violations have been accommodated by the Patent Law contained in the Criminal Provisions. In addition, the Covid-19 pandemic situation experienced by the whole world also has an impact on active patent holders in Indonesia.

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