

LAW OF THE REPUBLIC OF INDONESIA  
NUMBER 13 OF 2016  
ON  
PATENT

BY THE BLESSINGS OF ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering :
- a. that patent is an intellectual property granted by the State to the inventor for his/her invention in the field of technology entailing strategic roles to support the development of the nation and improving public welfare;
  - b. that development of technology in various fields has been so rapid that it is necessary to have stronger protection for inventors and patent holders;
  - c. that stronger patent protection is paramount for inventors and patent holders to motivate inventors to generate more inventions in terms of quantity and quality to improve national welfare as well as create fair business competition;
  - c. that Law Number 14 of 2001 on Patent is unduly compatible with the legal developments, both nationally and internationally, so it is necessary to be revised;
  - d. that based on considerations as referred to in point a to point d, it is necessary to make Law on Patent;

Observing : Article 5 section (1), Article 20, Article 28C section (1), and Article 33 of the 1945 Constitution of the Republic of Indonesia;

With the Joint Approval of  
THE HOUSE OF REPRESENTATIVES  
and  
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To enact : LAW ON PATENT.

CHAPTER I  
GENERAL PROVISIONS

Article 1

In this Law:

1. Patent means an exclusive right granted to the inventors by the State as the result of his/her invention in the field of technology for a definite period of time to exclusively implement his/her given invention or to give consent to other party.
2. Invention means an idea of an inventor embodied into a specific problem solving activity in the field of technology in the form of product or process, or refining and developing product or process.
3. Inventor means the person or persons collectively executing an idea in an activity to produce an Invention.
4. Application means an application of Patent or simple Patent addressed to the Minister.
5. Applicant means party filing a Patent Application.
6. Patent Holder means the Inventor as the owner of Patent, recipient of such right from the owner of Patent or a subsequent recipient of Patent from the person mentioned above who is registered in the general register of Patents.
7. Proxy means an intellectual property consultant residing or having a permanent domicile in territory of the Unitary States of the Republic of Indonesia.

8. Patent Examiner, hereinafter referred to as Examiner, means a functional officer of Civil Servant or expert who is appointed by the Minister and assigned as well as given authority to conduct substantive examination to Applications.
9. Filing Date means a date of receipt of Application that has satisfied minimum requirement.
10. Priority Right means the Applicant's right to file an Application of which the country of origin is a member of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization to be acknowledged that the Filing Date of the country of origin is the priority date in the designated country which is also a member State of both agreements, provided that the application is submitted within the period defined based on such treaties.
11. License means any permit granted by the Patent Holder, either exclusively or non-exclusively, to licensee based on a written agreement to exploit a protected Patent for a certain period of time and certain requirements.
12. Patent Appeal Commission means an independent commission within the ministry administering government affairs in the legal field.
13. Person means a natural person or legal entity.
14. Royalty means a remuneration awarded for the utilization of right on Patent.
15. Remuneration means a compensation received by a party entitled to Patent in respect to an Invention resulted in a work relationship or an Invention resulted by an employee or a worker who uses data and/or facilities existing during his/her employment despite the fact that the agreement does not compel him/her to generate Invention or Patent Holder of Invention resulted during employment or Patent Holder from the Recipient of a Compulsory License or Patent Holder for the Government Use.
16. Day means a work day.

17. Minister means the minister administering government affairs in the legal field.

## CHAPTER II SCOPE OF PATENT PROTECTION

### Part One General

#### Article 2

Patent protection includes:

- a. Patent; and
- b. simple Patent.

#### Article 3

- (1) Patent as referred to in Article 2 point a is granted for a new invention, involving inventive steps, and susceptible to industrial application.
- (2) Simple Patent as referred to in Article 2 point b is granted for a new invention, an improvement from existing product or process, and susceptible to industrial application.

#### Article 4

Inventions do not include:

- a. esthetical creation;
- b. scheme;
- c. rules and methods in conducting activity of:
  1. involving mental activity;
  2. games; and
  2. business.
- d. rules and methods containing only computer program;
- e. presentation of information; and
- f. discovery in the form of:
  1. new use of existing and/or known product; and/or
  2. new forms from existing compound which does not generate significantly enhanced efficacy and contains different relevant known chemical structures to compound.

Part Two  
Inventions

Paragraph 1  
Patentable Inventions

Article 5

- (1) An Invention is deemed to be novel as referred to in Article 3 section (1) given that on the Filing Date, pertinent Invention is not similar to any previously disclosed technology.
- (2) Previously disclosed technology as referred to in section (1) is one which has been published in Indonesia or outside Indonesia in writing, by a verbal description, or by a demonstration, by usage, or in other ways which enable a skilled expert to implement the Invention before:
  - a. Filing Date; or
  - b. priority date for Application filing with Priority Right.
- (3) The previously disclosed technology as referred to in section (1) includes technology in other documents of Applications filed in Indonesia and have been published on or after the Filing Date for applications being substantively examined but the Filing Date of other application documents filed in Indonesia is prior to the Filing Date or priority date of Application.

Article 6

- (1) Exempted from the provisions as referred to in Article 5 section (2), the Invention is not deemed to have been published provided that within period of 6 (six) month prior to the Filing Date, the Invention has been:
  - a. displayed in an official exhibition or officially recognized exhibition, both organized in Indonesia or overseas;
  - b. used by the Inventor in Indonesia or abroad to serve the purpose of experimenting for research and development; and/or
  - c. published by the Inventor in:

1. academic assembly in the form of examination and/or steps of examination of thesis, dissertation, or other scientific works; and/or
  2. other academic forums to discuss the result of research in universities or research institutions.
- (2) The Invention is also not deemed to have been published given that within 12 (twelve) months prior to the Filing Date other parties are performing the publication by violating the confidentiality of the Invention.

#### Article 7

- (1) The Invention involves inventive steps if the said Invention to a person skilled in the technical field constitutes to be non-obvious.
- (2) The evaluation of obviousness of an Invention as referred to in section (1) must take into account the state of the art at the time the application filed or which has existed at the time the first Application was filed using Priority Right.

#### Article 8

The Invention may be industrially applicable if the Invention can be implemented in the industry as described in the Application.

#### Paragraph 2

#### Non Patentable Invention

#### Article 9

Inventions which cannot be granted Patent include:

- a. any process or product of which its publication, usage or implementation contravenes the prevailing legislation, morality, public order, or decency;
- b. any method of examination, treatment, medication, and/or surgery applied to humans and/or animals;
- b. any theory and method in the field of science and mathematics;
- c. all living organisms, except microorganism; or

- d. any biological process which is essential to produce plant or animal, except non-biological process or microbiological process.

Part Three  
Patentable Subject Matter

Article 10

- (1) The party entitled to Patent is the Inventor or Person who get his/her assigns.
- (2) If the Invention is produced jointly by several persons, the right of the Invention is jointly owned by all relevant Inventors.

Article 11

Unless proven otherwise, party deemed to be the Inventor is a person or persons firstly declared as the Inventor of the Application.

Article 12

- (1) Patent Holder of the Invention produced by the Inventor in a work relation is the Party who has commissioned the work, unless agreed otherwise.
- (2) The provision as referred to in section (1) is also applicable to the Invention produced by an employee or worker using data and/or facilities available in his/her work.
- (2) The Inventor as referred to in section (1) and section (2) is entitled to Remuneration in accordance with the concluded agreement between employer and Inventor, by taking into account the economic benefit generated from the Invention.
- (3) The Remuneration as referred to in section (3) may be paid on the basis of:
  - a. a certain amount and a lump sum;
  - b. a percentage;
  - b. a combination of certain amount and lump sum together with gift or bonus; or
  - c. any other forms agreed by the parties.

- (4) In the event that no agreement can be reached on how to calculate and decide the amount of Remuneration, relevant parties may file a lawsuit to the Commercial Court.
- (5) The provisions as referred to in section (1), section (2), and section (3) do not deprive the right of Inventor to have his/her name mentioned in the certificate of Patent.

#### Article 13

- (1) The Patent Holder of the Invention produced by an Inventor in an official relation with government institution is the government institution and the Inventor, unless agreed otherwise.
- (2) Following the commercialization of Patent, the Inventor as referred to in section (1) is entitled to Remuneration on his/her generated Patent from State non-tax revenue.
- (2) In the event that a government institution as the Patent Holder is incapable to implement its Patent, the Inventor pursuant to approval from the Patent Holder may implement its Patent with a third party.
- (3) The Patent implementation as referred to in section (3), besides the Patent Holder, Inventor receives Royalty from the third party obtaining economic benefits out of the commercialization of the Patent.
- (4) The provisions as referred to in section (1) and section (2) do not deprive the right of Inventor to have his/her name mentioned in the certificate of Patent.
- (5) Further provisions on Remuneration as referred to in section (2) are regulated by a Regulation of the Minister administering government affairs in finances.

#### Part Four Prior User

#### Article 14

- (1) A party who exploits an Invention at the same time that Invention is filed for a patent is still entitled to exploit the Invention even though that similar Invention is then granted the Patent.



- (2) The party who exploits the Invention as referred to in section (1) is recognized as the prior user.
- (3) The provisions as referred to in section (1) are not applicable when the party who exploits the Invention as the prior user uses the knowledge about the Invention from the description, drawings, samples, or claims from the Invention for which the Patent is requested.

#### Article 15

- (1) The party who exploits an Invention as referred to in Article 14 is only recognized as the prior user if after the Patent has been granted for a similar Invention, he/she files an application as the prior user to the Minister.
- (2) Recognition as the prior user is issued by the Minister in the form of a letter of statement as the prior user upon fulfillment of requirements and payment of a fee.
- (2) The right of prior user expires at the same time as the expiry of the Patent for the same invention.

#### Article 16

- (1) Prior user cannot transfer his/her right as the prior user to other party, by Licensing or transfer of right, except because of inheritance.
- (2) Prior user may only use his/her right to exploit the Invention.
- (3) Prior user is not entitled to prohibit other parties from exploiting the Invention.

#### Article 17

In the event that a prior user violates provisions as referred to in Article 16 section (1), the Minister may revoke the letter of statement as a prior user.

#### Article 18

Further provisions regarding prior user are regulated by a Ministerial Regulation.

Part Five  
Rights and Obligations of Patent Holders

Article 19

- (1) A Patent Holder has exclusive rights to exploit his/her Patent and prohibit other party(s) without his/her approval from:
  - a. making, using, selling, importing, renting out, delivering, or supplying for sale or rental or delivery of the patented product in the event of product-Patent;
  - b. in the event that process-Patent: uses the patented production process to make products or conducts other activities as referred to in point a.
- (2) Prohibition from using the patented production process as referred to in section (1) point b only applies to imported products solely produced from the use of patented process.
- (3) In the event of educational, research, experimental, or analytical purposes, the prohibition as referred to in section (1) and section (2) may be exempted as long as it does not prejudice the proper interests of the patent holder and is non-commercial.

Article 20

- (1) A Patent holder is required to make the products or to use the process in Indonesia.
- (2) Making product manufactures or using process as referred to in section (1) must encourage technology transfer, investment absorption and/or job vacancy provision.

Article 21

Every Patent Holder or Licensee is required to pay annual fee.

Part Six  
Duration of Patent Protection

Article 22

- (1) A Patent is granted for a period of 20 (twenty) years as from the Filing Date.

- (2) The duration as referred to in section (1) cannot be extendable.
- (3) The date of filing and expiry is recorded and published in electronic media and/or non-electronic media.

#### Article 23

- (1) A Simple Patent is granted for a period of 10 (ten) years as from the Filing Date.
- (2) The duration as referred to in section (1) cannot be extendable.
- (2) The date of filing and expiry is recorded and published in electronic media and/or non-electronic media.

### CHAPTER III PATENT APPLICATION

#### Part One Terms and Procedures of Application

#### Article 24

- (1) A patent is granted on the basis of an Application.
- (2) The Application as referred to in section (1) is filed by the Applicant or his/her Proxy to the Minister in writing in Indonesian language and with a payment of fee.
- (2) Every Application is filed for one Invention or a group of Inventions which are linked to each other.
- (3) The Application as referred to in section (2) may be filed electronically -or non-electronically.

#### Article 25

- (1) The Application as referred to in Article 24, must at least contain:
  - a. the date, month, and year of application;
  - b. name, full address, and nationality of the Inventor;
  - c. name, full address, and nationality of the Applicant in the event that the Applicant is not a legal entity;

- d. name and full address of the Applicant in the event that the Applicant is a legal entity;
  - e. name and full address of the Proxy in the event that the Application is filed by a Proxy; and
  - f. Country and the first Filing Date of the Application in the event that the Application is filed with Priority Right.
- (2) The Application as referred to in section (1) must be attached by the following requirements:
- a. the title of Invention;
  - b. the description of Invention;
  - b. claim(s) of Invention;
  - c. an abstract of Invention;
  - d. drawings mentioned in the description which are required to clarify the Invention, if the Application is attached with drawings
  - e. a power of attorney, in the event that the Application is filed by a Proxy;
  - f. statement of ownership of the Invention by Inventor;
  - g. letter of transferring Invention ownership right in the event that an Application is filed by an Applicant who is not an Inventor; and
  - h. letter of evidence on storing microorganism in the event that an Application is related to microorganism.
- (3) The description of an Invention as referred to in section (2) point b must clearly and completely describe how an Invention may be implemented by a person skilled in the art.
- (4) The claim(s) of Invention as referred to in section (2) point c must disclose clearly and consistently the field of technical Invention and be supported by the description as referred to in section (3).

#### Article 26

- (1) If an Invention is related to and/or derived from genetic resources and/or traditional knowledge, it must be clearly and correctly mentioned the origin of the genetic resources and/or traditional knowledge in the description.

- (2) Information regarding genetic resources and/or traditional knowledge as referred to in section (1) is determined by an official institution authorized by the government.
- (3) Benefit sharing and/or access to the utilization of genetic resources and/or traditional knowledge as referred to in section (1) is exercised in accordance to the provisions of legislation and treaties on genetic resources and traditional knowledge.

#### Article 27

In the event that an Application is filed by a Proxy, the address of the Proxy as referred to in Article 25 section (1) point e is the domicile of the Applicant.

#### Article 28

An Application filed by an Applicant who does not reside or does not have permanent domicile in the territory of the State Unitary of the Republic of Indonesia must be filed by his/her Proxy in Indonesia.

#### Article 29

Further provisions regarding terms and procedures on Application are regulated in a Ministerial Regulation.

### Part Two

#### Application with Priority Rights

#### Article 30

- (1) An Application with Priority Rights must be filed within a period of not later than 12 (twelve) months as from the priority date.
- (2) Apart from having to comply with the provisions as referred to in Article 25, the Application with Priority Rights as referred to in section (1) must be supplemented with priority document validated by an authorized official in the pertinent country.

- (3) The priority document that has been validated by an authorized official in the pertinent country as referred to in section (2) must be submitted to the Minister not later than 16 (sixteen) months as from the priority date.
- (4) If the terms as referred to in section (1), section (2), and section (3) are not fulfilled by the Applicant, the Application is deemed to be filed without Priority Right.

#### Article 31

The provisions as referred to in Article 24 to Article 28 apply *mutatis mutandis* to an Application with Priority Right.

#### Article 32

Further provisions regarding Application with Priority Right are regulated by a Ministerial Regulation.

### Part Three

#### Application under Patent Cooperation Treaty

#### Article 33

- (1) An Application may be filed under the Patent Cooperation Treaty.
- (2) The provisions as referred to in Article 24 to Article 28 apply *mutatis mutandis* to an Application filed under the Patent Cooperation Treaty.
- (3) Further provisions regarding an Application filed under the Patent Cooperation Treaty are regulated in a Ministerial Regulation.

### Part Four

#### Administrative Examination

#### Article 34

- (1) An Application which has fulfilled minimum requirements is given a Filing Date and recorded by the Minister.
- (2) The minimum requirements as referred to in section (1) include:

- a. the Application data as referred to in Article 25 section (1);
  - b. the Application data as referred to in Article 25 section (2) point a to point e; and
  - c. receipt of payment of Application fee.
- (3) In the event that the description of Invention as referred to in Article 25 section (2) point b is written in foreign language, the description must be supplemented with its translation in Indonesian Language and must be submitted not later than 30 (thirty) days as from the Filing Date as referred to in section (1).
- (4) If the description of Invention written in foreign language is not supplemented with its translation in Indonesian language within time limit as referred to in section (3), the Application is deemed to be withdrawn.

#### Article 35

- (1) In the event that the requirements and administrations of Application as referred to in Article 25 have not been completed, the Minister notifies the Applicant in written to complete the requirements within a period of not later than 3 (three) months as from the date of the notification by the Minister.
- (2) The period as referred to in section (1) may be extended not later than 2 (two) months.
- (3) The extension as referred to in section (2) may be extended not later than 1 (one) month after the expiry with subject to fee.
- (4) In order to obtain extension as referred to in section (2) and section (3), an Applicant must submit a request in writing to the Minister with reasons before the time limit as referred to in section (1) or section (2) expires.
- (5) In the event of an emergency, an Applicant may request for extension apart from those as referred to in section (2) and section (3) to the Minister in writing accompanied by supporting evidence.

- (6) The Minister may grant the extension as referred to in section (5), a maximum of 6 (six) months after the expiry as referred to in section (3).

#### Article 36

If an Applicant does not complete the requirements and administrations of Application within a period as referred to in Article 35 section (1), section (2), section (3), and/or section (6), the Minister notifies the Applicant in writing that the Application is deemed to be withdrawn.

#### Article 37

- (1) If one similar Invention is filed in more than one Application by different Applicants and on different dates, the Application with earlier Filing Date is considered to be granted a Patent.
- (2) If several Applications for similar Invention as referred to in section (1) have the same Filing Date, the Minister notifies in writing and instructs the Applicant to compromise to decide Application which is considered to be granted a Patent.
- (3) The Applicants as referred to in section (2) are required to compromise and submit the result to the Minister not later than 6 (six) months as from the date of notification of the Minister.
- (4) In the event that agreement or decision is not made among the Applicants, they cannot compromise or submit the result of compromise within the period as referred to in section (3), the Minister rejects the Application which is filed by several Applicants having the same Filing Date as referred to in section (2).
- (5) The Minister notifies the rejection as referred to in section (4) in writing to the Applicant.



Part Five  
Amendment of Application and Divisional Application

Paragraph 1  
General

Article 38

- (1) Application may be amended or divided upon initiative from the Applicant and/or suggestion from the Minister.
- (2) The amendment or division as referred to in section (1) may be conducted before the Application is granted Patent.

Paragraph 2  
Amendment of Application

Article 39

- (1) Application may be amended to:
  - a. the Application data as referred to in Article 25 section (1) point b, point e, and/or point f; and/or
  - b. the Application data as referred to in Article 25 section (2) point a to point e.
- (2) The amendment to description concerning Invention and/or claim or several claims of Invention as referred to in Article 25 section (2) point b and point c may be carried out provided that the amendment does not extend the scope of Invention which has been applied for in the original Application.
- (3) In the event that amendment is carried out by adding a number of claim to Application as filed into more than 10 (ten) claims, the excess claims are subject to fees.
- (4) If the Applicant does not pay the fees as referred to in section (3), excess claims are deemed to be withdrawn.

Article 40

- (1) In addition to the amendment to Application data as referred to in Article 39 section (1), the Application may also be changed from Patent into simple Patent or vice versa.

- (2) The request for change as referred to in section (1), satisfying the requirements as referred to in Article 25, is deemed to have been filed on the same date as the original Filing Date.

Paragraph 3  
Divisional Application

Article 41

- (1) If an Application contains a group of Inventions which are not linked as referred to in Article 24 section (3), the Applicant may file for a divisional Application
- (2) The divisional Application as referred to in section (1) may be filed separately in one Application or more provided that the scope of protection requested in each Application does not extend beyond the scope of protection that has been requested in the Application as filed
- (3) The divisional Application as referred to in section (1) and section (2), in compliance with requirement as referred to in Article 25, is deemed to have been filed on the same date as the Filing Date of original Application.
- (4) In the event that Applicant does not request for the divisional Application within a definite time limit as referred to in Article 38 section (2), Substantive Examination of the Application is only conducted to the Invention which constitute a unity of Invention.

Article 42

Further provisions regarding procedures of amendment or change of Application and divisional Application are regulated in a Ministerial Regulation.

Part Six  
Withdrawal of Application

Article 43

- (1) Application may only be withdrawn by Applicant before the Minister decides to grant or refuse the Application.

- (2) The withdrawal of Application as referred to in section (1) is filed in writing to the Minister.
- (3) Provisions on procedures for the withdrawal of Application are regulated by a Ministerial Regulation.

#### Part Seven

#### Ineligible Applications and Obligations to Preserve Confidentiality

#### Article 44

- (1) The Minister cannot accept Application filed by an employee of the Directorate General of Intellectual Property or a person who due to his/her assignment has been working for or on behalf of the Directorate General of Intellectual Property, or his/her Proxy to 1 (one) year after ceasing to work for any reasons at the Directorate General of Intellectual Property.
- (2) Any acquisition of Patent or rights related to Patent is declared invalid for an employee of the Directorate General of Intellectual Property or a person who due to his/her assignment has been working for or on behalf of the Directorate General of Intellectual Property for 1 (one) year after ceasing to work at the Directorate General of Intellectual Property on any reason, unless the ownership of the Patent is due to inheritance.

#### Article 45

- (1) All Application documents, as from the Filing Date to the announcement date of the Application are confidential, except for Inventor who does not act as the Applicant.
- (2) Any Person is required to preserve the confidentiality of all Application documents as referred to in section (1).
- (3) The Inventor as referred to in section (1) may request for a copy of the entire Application documents as referred to in section (1) and subject to fees.

- (4) The inventor who does not act as Applicant as referred to in section (1) must attach a declaration with sufficient evidence stated that the person is the Inventor of the applied Invention.

CHAPTER IV  
ANNOUNCEMENT AND SUBSTANTIVE EXAMINATION

Part One  
Announcement

Article 46

- (1) The Minister announces the Applications that have fulfilled the requirements as referred to in Article 25.
- (2) The announcement as referred to in section (1) is carried out not later than 7 (seven) Days after the period of 18 (eighteen) months since:
  - a. the Filing Date; or
  - b. the priority date in the event that the Application is filed with a Priority Right.
- (3) In certain circumstances in accordance with the prevailing legislation, the announcement as referred to in section (2) may be carried out at the earliest of 6 (six) months as from the Filing Date upon a request from the Applicant with reason and subject to fees.

Article 47

- (1) The announcement is carried out by electronic media and/or non-electronic media.
- (2) The date commencing the Application announcement is recorded by the Minister.
- (3) The announcement as referred to in section (1) must be visible and accessible for any Person.

Article 48

- (1) The announcement lasts for 6 (six) months as from the date of the announcement of Application.

- (2) The announcement mentions the following information:
  - a. name and nationality of the Inventor;
  - b. name and complete address of the Applicant and Proxy in the event that an Application is filed through a Proxy;
  - c. title of the Invention;
  - d. Filing Date or the priority date, number, and country where the application was first filed if the Application is filed with a Priority Right;
  - e. abstract of Invention;
  - f. classification of Invention;
  - g. drawing, for Application which is supplemented by drawing;
  - h. number of announcement; and
  - i. number of Application.

#### Article 49

- (1) Any Person may file his/her opinion and/or opposition in writing to the Minister by stating the reasons against the Application being announced.
- (2) The opinion and/or opposition as referred to in section (1) must have been received by the Minister within the period of announcement.
- (3) In the event that there are opinion and/or opposition as referred to in section (1), the Minister communicates the opinion and/or opposition to the Applicant not later than 7 (seven) Days as from the date the opinion and/or opposition is received.
- (4) The Applicant may file explanation, and/or responses in writing against such opinion and/or objection as referred to in section (1) to the Minister not later than 30 (thirty) Days as from the date of the notification letter as referred to in section (3).
- (5) The Minister uses the opinion and/or objection, explanation and/or response as referred to in section (1) and section (4) as additional information for consideration during the substantive examination stage.

#### Article 50

- (1) If an Invention concerns to the interest of the defense and security of the State, the Minister may decide not to announce the Invention upon consultation with relevant institutions administering government affairs in defense and security of the State.
- (2) The Minister notifies the Applicant or his/her Proxy in writing concerning the decision on the Application that is not announced as referred to section (1).
- (3) The document of the Application that is not announced consulted with Government institutions as referred to in section (1) is exempted from the provisions as referred to in Article 45 section (1).
- (4) The government institutions as referred to in section (1) are required to preserve the confidentiality of the Inventions and Application documents being consulted.

#### Part Two

#### Substantive Examination

#### Article 51

- (1) A request for the substantive examination is submitted in writing to the Minister and subject to a fee.
- (2) The request for substantive examination as referred to in section (1) is filed not later than 36 (thirty six) months as from the Filing Date.
- (3) If the request for substantive examination has not been filed within a period of time as referred to in section (1) or the prescribed fee has not been paid, the Application is deemed to be withdrawn.
- (4) The Minister notifies the Applicant or his/her Proxy regarding the withdrawal of the Application as referred to in section (2).
- (5) If the request for substantive examination as referred to in section (1) is filed before the end of the announcement period as referred to in Article 48 section (1), the substantive examination is conducted after the expiry of the announcement period.

- (6) If the request for substantive examination as referred to in section (1) is filed after the expiry of the announcement period as referred to in Article 48 section (1), substantive examination is conducted after the date of receipt of the request for substantive examination.
- (7) The request for substantive examination of divisional Application or amendment of Application from Patent to simple Patent or vice versa is filed together with the request for divisional Application or amendment of Application from Patent to simple Patent or vice versa.
- (8) If the request for substantive examination is not filed together with divisional Application or amendment of Application from Patent to simple Patent or vice versa as referred to in section (7), divisional Application or amendment of Application from Patent to simple Patent or vice versa is deemed to be withdrawn.

#### Article 52

- (1) The substantive examination for Application that is not announced as referred to in Article 50 is conducted for not later than 6 (six) months as from the date the Minister decides that the Application is not announced.
- (2) The substantive examination as referred to in section (1) is not subject to a fee.

#### Article 53

- (1) Substantive examinations are conducted by Examiners.
- (2) The Minister may request for assistance from experts and/or use required facilities from other institutions for the purpose of conducting substantive examinations.
- (3) The experts as referred to in section (2) are appointed and dismissed by the Minister.
- (4) Results of substantive examination conducted by the experts as referred to in section (3) are considered same as examination results conducted by the Examiners.
- (5) The results of examination as referred to section (4) must obtain approval from the Minister.

- (6) Further provisions regarding terms and procedures for appointing and dismissing the experts as referred to section (3) are regulated by a Ministerial Regulation.

#### Article 54

Substantive examinations are conducted in accordance with the provisions in Article 3 section (1), Article 4, Article 5, Article 7, Article 8, Article 9, Article 25 section (3) and section (4), Article 26, Article 39 section (2), Article 40, and Article 41.

#### Article 55

- (1) In the event that the substantive examination is conducted to an Application with a Priority Right, the Minister may request required documents to the Applicant and/or origin Patent office of the Priority Right or in other countries as follows:
  - a. certified copies of letters relevant to the results of substantive examination conducted at the first time to the Patent application in other countries;
  - b. certified copies of Patent documents which have been granted in respect to the origin of Patent application in other countries;
  - c. certified copies of decision for refusal that the origin of Patent application in other countries in the event that an application of patent is refused;
  - d. certified copies of decision for a relevant Patent invalidation which has been issued in other country in the event that a patent has been invalidated; and or
  - e. other prescribed documents.
- (2) Submission of those document copies as referred to in section (1) may be supplemented separately with additional explanation by an Applicant.
- (3) The documents as referred to in section (1) may be used as the grounds for granting or refusing an Application with a Priority Right.



Article 56

Further provisions regarding terms and procedures for substantive examination are regulated by a Ministerial Regulation.

CHAPTER V

GRANTING OR REFUSAL OF APPLICATION

Part One

General

Article 57

The Minister decides to grant or refuse an Application not later than 30 (thirty) months as from:

- a. the date of receipt of the request for substantive examination if the request for substantive examination is submitted after the expiry of the announcement period; or
- b. the expiry of announcement period as referred to in Article 48 section (1) if a request for substantive examination is filed before the expiry of announcement period.

Part Two

Granting

Article 58

- (1) The Minister grants an Application, if based on the result of substantive examination, the Invention being requested for a Patent complies with the provisions as referred to in Article 54.
- (2) In the event that an Application is granted, the Minister notifies the Applicant or his/her Proxy in writing that the Application is granted a Patent.
- (3) Within not later than 2 (two) months as from the notification for granting a Patent, the Minister issues a Patent certificate.
- (4) An Applicant may not withdraw the Application or modify the description and claim within the period of time as referred to in section (3).

- (5) A Patent that has been granted is recorded and published, except for Patent which concerns the defense and security of the State.
- (6) The Minister may provide excerpt or copies of Patent documents to parties in need to be subject to fees.

#### Article 59

- (1) A Patent Certificate is a proof of right on Patent.
- (2) The right of Patent as referred to in section (1) is determined its scope of protection based on Invention described in claims.
- (3) The right of Patent as referred to in section (1) and section (2) is intangible liquid object.

#### Article 60

Patent protection is proven by the issuance of a Patent certificate which is valid retroactively as of the Filing Date.

#### Article 61

- (1) Patent holder or his/her Proxy may file for correction in writing to the Minister in the event that there is a data error on Patent certificate and/or its attachment.
- (2) In the event that errors on Patent certificate are constituted as Applicant's mistakes, the request for correction of Patent certificate as referred to in section (1) is subject to fees.
- (3) In the event that data errors on a Patent certificate do not constitute as Applicant's mistakes, the request for correction of Patent certificate as referred to section (1) is not subject to fees.
- (4) The data modification as referred to in section (1) in the form of modification on name and/or address of the Patent Holder is recorded and published by the Minister.
- (5) Provisions regarding terms and procedures concerning recording data modification as referred to in section (1) are regulated by a Ministerial Regulation.

Part Three  
Refusal

Article 62

- (1) In the event that Examiner indicates that the Invention being requested for a Patent has not fulfilled the provisions as referred to in Article 54, the Minister notifies the Applicant or his/her Proxy in writing to comply with the provisions.
- (2) The notification as referred to in section (1) mentions:
  - a. the provisions to be fulfilled; and
  - b. the reasons and references used in substantive examination.
- (3) The Applicant must provide response and/or fulfill the provisions as stated in the notification not later than 3 (three) months as from the date of notification.
- (4) The period of time as referred to in section (3) may be extended for not later than 2 (two) months.
- (5) The extension of period as referred to in section (4) may be extended for not later than 1 (one) month after the end of the period and subject to fees.
- (6) To obtain period extension as referred to in section (4) and section (5), the Applicant must submit a request to the Minister in writing before the period extension as referred to in section (3) and section (4) is expired.
- (7) In the event of emergencies, the Applicant may request for extension in another way than as referred to in section (4) and section (5) in writing furnished by supporting evidence to the Minister.
- (8) The Minister may give period extension as referred to in section (7) not later than 6 (six) months after the end of the period as referred to in section (6).
- (9) If the Applicant's response does not in conformity with the provisions as stated in the notification letter within a period of time as referred to in section (3), section (4), section (5), and/or section (8), the Minister notifies the Applicant in writing that the Application is refused within the period of not later than 2 (two) months.

- (10) If the Applicant does not provide response as stated in the notification letter within a period of time as referred to in section (3), section (4), section (5), and/or section (8), the Minister notifies the Applicant in writing that the Application is deemed to be withdrawn within the period of not later than 2 (two) months.

#### Article 63

- (1) In the event that the Application is divisional, the Minister refuses:
  - a. a divisional Application that is filed elapsing the duration as referred to in Article 38 section (2);
  - b. a claim or claims expanding the scope of protection in a divisional Application as referred to in Article 41 section (2); and/or
    - a. An invention which is not a unity of the original Application.
    - c. Invention which is not a unity of Inventions from the Application as filed.
- (2) In the event that Application is refused, the Minister notifies the refusal in writing with reason and consideration to the Applicant or his/her Proxy.

### CHAPTER VI

#### PATENT APPEAL COMMISSION AND APPEAL PETITION

##### Part One

##### Patent Appeal Commission

#### Article 64

- (1) The Patent Appeal Commission holds the duties to receive, examine, and make a decision on:
  - a. an appeal petition against refused Application;
  - b. an appeal petition against correction of description, claim, and/or drawings after the Application is granted a Patent; and
  - c. an appeal petition against the decision to grant a Patent.

- (2) Structure of Patent Appeal Commission comprises of:
  - a. 1 (one) chairman also acting as a member;
  - b. 1 (one) vice chairman also acting as a member; and
  - c. at the most 30 (thirty) members from:
    1. 15 (fifteen) Patent experts; and
    2. 15 (fifteen) Examiners.
- (3) The members of Patent Appeal Commission as referred to in section (2) are appointed and dismissed by the Minister for a period of 3 (three) years and may be re-appointed for 1 (one) subsequent period of time.
- (4) Chairman and vice chairman are elected from and by the members of Patent Appeal Commission.

#### Article 65

- (1) To examine an appeal petition, the Patent Appeal Commission establishes a panel consisting odd number of a minimum of 3 (three) persons and maximum of 5 (five) persons, who one of which is appointed as the Chairman.
- (2) The panel as referred to in section (1) is chosen from members of Patent Appeal Commission which one of members is an Examiner with minimum rank is Third Level Examiner who does not conduct an examination to said Application.
- (3) In the event that the panel consists of more than 3 (three) persons, the Examiners as referred to in section (1) are less than the total number of panel other than Examiners.

#### Article 66

Further provisions regarding membership, duties, functions, and authorities of Patent Appeal Commission are regulated by a Ministerial Regulation.

#### Part Two

#### Appeal Petition

#### Paragraph 1

#### General

#### Article 67

- (1) An appeal petition may be filed with respect to:

- a. Application refusal;
  - b. correction of description, claim(s) and/or drawing(s) after the Application is granted a Patent; and/or
  - c. decision to grant a Patent.
- (2) Appeal petition is filed in writing by the Applicant or his/her Proxy to Patent Appeal Commission with a copy to the Minister subject to fees.

## Paragraph 2

### Appeal Petition with Respect to Application Refusal

#### Article 68

- (1) Appeal petition with respect to Application refusal is filed not later than 3 (three) months as from the mailing date of the notification for Application refusal.
- (2) If the Applicant or his/her Proxy files the petition after the period as referred to in section (1) has elapsed, the Applicant cannot re-file the appeal petition.
- (3) Patent Appeal Commission starts conducting examination to an appeal petition not later than 1 (one) month as from the date of receipt of said petition.
- (4) The appeal petition as referred to in section (1), objection and grounds against the Application refusal must be described in detail.
- (5) The grounds as referred to in section (4) do not constitute new reasons or explanations that expand the scope of the Invention.
- (6) The decision of Patent Appeal Commission is made not later than 9 (nine) months as from the date when the examination begins as referred to in section (3).
- (7) In the event that the Patent Appeal Commission decides to accept the appeal petition with respect to the Application refusal, the Minister follows up by issuing Patent certificate.
- (8) In the event that the appeal petition with respect to Application refusal is accepted as referred to in section (7), the Minister records and publishes it in the electronic media and/or non-electronic media.

Paragraph 3

Appeal Petition with Respect to Correction on the Description,  
Claim(s), and/or Drawing(s) after Granting Application of Patent

Article 69

- (1) Appeal petition with respect to correction of the description, claim(s), and/or drawing(s) after granting the Application of Patent is filed within 3 (three) months as from the mailing date of notification to grant a Patent.
- (2) If the Applicant or his/her Proxy files a petition after the period of time as referred to in section (1) has elapsed, the Applicant cannot re-file the appeal petition.
- (3) Patent Appeal Commission starts conducting examination to an appeal petition with respect to correction of the description, claim(s), and/or drawing(s) after granting the Application of Patent not later than 1 (one) month as from the date of receipt of said petition.
- (4) The correction as referred to in section (1) must be limited to the following matters:
  - a. limitation on the scope of claim(s);
  - b. correction for mistranslation of the description; and/or
  - c. clarification on the unclear and ambiguous content of the description.
- (5) Correction as referred to in section (4) is not beyond the scope of Invention as filed.
- (6) The decision of the Patent Appeal Commission is decided for not later than 6 (six) months as from the commencing date of the examination over the appeal petition as referred to in section (3).
- (7) In the event that the Patent Appeal Commission decides to accept an appeal petition with respect to correction of the description, claim(s), and/or drawing(s) after granting the Application of Patent, the Minister responds by amending the certificate attachment.
- (8) In the event that the Appeal Petition with respect to correction on the description, claim(s), and/or drawing(s) is accepted as referred to in section (7), the Minister records and publishes it in electronic media and/or non-electronic media.

Paragraph 4

Appeal Petition with Respect to the Decision to Grant A Patent

Article 70

- (1) An appeal petition with respect to the decision to grant a Patent is filed in writing by respected parties or their Proxies to the Patent Appeal Commission with a copy to the Minister and subject to fees.
- (2) An appeal petition with respect to the decision to grant a Patent is filed not later than 9 (nine) months as from the date of the notification for granting a Patent.
- (3) If an appeal petition with respect to the decision to grant a Patent to a Patent Holder has elapsed the period as referred to in section (2), the respected parties or their Proxies may precede further legal remedy by filing lawsuit to the Commercial Court.
- (4) The Patent Appeal Commission starts conducting examination against the appeal petition with respect to the decision to grant a Patent not later than 1 (one) month as from the date of receipt of said petition.
- (5) Patent appeal petition with respect to the decision to grant a Patent as referred to in section (1) provides complete details of the objection with the reasons with supporting evidence.
- (6) The decision of Patent Appeal Commission is issued not later than 9 (nine) months as from the date commencing of appeal examination as referred to in section (4).
- (7) In the event of the Patent Appeal Commission, in its decision, grants the appeal petition in part with respect to the decision to grant a Patent, the Minister responds by amending the attachment of the certificate.
- (8) In the event of the Patent Appeal Commission, in its decision, grant all the appeal petition with respect to the grant of a Patent, the Minister responds by revoking the certificate.
- (9) To the decision of the Patent Appeal Commission as referred to in section (7) or section (8), the Minister records and publishes it in electronic media and/or non-electronic media.



Article 71

The Patent Appeal Commission is required to send notification letter within a period of 14 (fourteen) Days as from the date of the decision to accept or to refuse:

- a. appeal petition with respect to Application refusal;
- b. appeal petition for correction of description, claim(s), and/or drawing(s) after granting the Application of Patent;  
and
- c. appeal petition with respect to the decision to grant a Patent.

Part Three  
Legal Effort

Article 72

- (1) Appellant or his/her Proxy may file a lawsuit against the decision to refuse Patent Appeal Commission to the Commercial Court not later than 3 (three) months as from the mailing date of notification for refusal.
- (2) The notification for refusal as referred to in section (1) consists of refusal against Patent appeal petition with respect to:
  - a. Application refusal;
  - b. correction of description, claim(s), and/or drawing(s);  
and
  - c. decision to grant a Patent.
- (3) To the decision of the Commercial Court as referred to in section (1), it may only file an appeal to the Supreme Court.

Article 73

Further provisions on the procedures for application, examination, and decision of Patent appeal petition as well as appeal petition with respect to grant a Patent are regulated by a Ministerial Regulation.

CHAPTER VII  
TRANSFER OF RIGHTS, LICENSING, AND PATENT AS  
COLLATERAL OBJECT OF FIDUCIA

Part One  
Transfer of Rights

Article 74

- (1) Rights on a Patent may transfer or be transferred in whole or in part due to:
  - a. inheritance;
  - b. donation;
  - c. testament;
  - d. waqf;
  - e. written agreement; or
  - f. other recognized reasons in accordance with the prevailing legislation.
- (2) The transfer of rights of Patent as referred to in section (1) must be supplemented by the original Patent documents together with other rights pertaining to the relevant Patent.
- (3) All forms of transfer of rights of Patent as referred to in section (1) must be recorded and published subject to fees.
- (4) Any transfer of rights of Patent which is not in accordance with the provisions as referred to in section (1), section (2), and section (3), all rights and obligations still remain on the Patent Holder.
- (5) Provisions on terms and procedures of recording of transfer of Patent are regulated by a Government Regulation.

Article 75

Transfer of rights does not nullify the right of Inventor to have his/her name and identity included in the Patent certificate.

Part Two  
Licensing

Article 76

- (1) A Patent Holder is entitled to give a License to another party pursuant to either an exclusive or non-exclusive Licensing agreement to perform any acts as referred to in Article 19.

- (2) Licensing Agreement as referred to in section (1) may cover all or in parts of acts as referred to in Article 19.
- (3) Licensing Agreement as referred to in section (2) is valid for the term of the License granted and is effective in the entire territory of the Unitary State of the Republic of Indonesia.

#### Article 77

The Patent Holder as referred to in Article 76 is entitled to exclusively exploit his/her Patent, unless agreed otherwise.

#### Article 78

A Licensing Agreement is prohibited from containing provisions that may damage the Indonesian national interest or to contain restrictions which obstruct the abilities of Indonesian people to transfer, master and develop technology.

#### Article 79

- (1) A Licensing Agreement must be recorded and published by the Minister and subject to fees.
- (2) If a Licensing Agreement is not recorded and published as referred to in section (1), the Licensing agreement does not have legal effects on the third party.
- (3) The Minister refuses a request for recording of Licensing agreement containing provisions as referred to in Article 78.

#### Article 80

Further provisions regarding recording of Licensing agreement are regulated by a Ministerial Regulation.

### Part Three

#### Compulsory Licensing

##### Paragraph 1

##### General

#### Article 81

A compulsory License is non-exclusive.

Article 82

- (1) A compulsory License is a License to implement a Patent that is granted based on a Decision of the Minister upon request on the following grounds:
  - a. Patent Holder has not fulfilled his/her obligation to make products or use the process in Indonesia as referred to in Article 20 section (1) within a period of 36 (thirty six) months after the granting of a Patent;
  - b. Patent has been implemented by the Patent Holder or the Licensee in any forms and by any manners that harm the public interest; or
  - c. a Patent as the result of development from a Patent that has been granted earlier cannot be exploited without infringing other protected Patent.
- (2) A request for compulsory License as referred to in section (1) is subject to fees.

Paragraph 2

Request for a Compulsory Licensing

Article 83

- (1) A request for a compulsory License on the ground as referred to in Article 82 section (1) point a may be filed after the period of 36 (thirty six) months as from the date of granting of a Patent.
- (2) A request for a compulsory License on the ground as referred to in Article 82 section (1) point b and point c may be submitted at any time after a Patent is granted.
- (3) The request for a compulsory License as referred to in Article 82 section (1) point c may only be granted if the Patent to be implemented contains novelty that is more advanced than existing Patent.

Article 84

- (1) A compulsory License as referred to in Article 82 section (1) may only be granted by the Minister provided that:

- a. the applicant or his/her Proxy can show evidence that he/she has the capability to personally and fully implement the relevant Patent and has facilities to readily implement the relevant Patent;
  - b. the applicant or his/her Proxy has made efforts in a period for not later than 12 (twelve) months to acquire a License from the Patent Holder on the basis of normal terms and conditions but did not succeed; and
  - c. the Minister has the opinion that the relevant Patent may be implemented in Indonesia on a feasible economic scale and can be benefit to the public.
- (2) The evidence as referred to in section (1) point a must be completed with a statement from competent institution upon request from the applicant or his/her Proxy.

#### Article 85

In the event that a compulsory License is filed on the grounds as referred to in Article 82 section (1) point c, thus:

- a. the Patent Holder is entitled to mutual Licensing to use the other parties' Patent under reasonable terms; and
- b. the implementation of Patent by Licensee cannot be transferred unless it is transferred together with assignment of the other Patent.

#### Article 86

- (1) Examination on a request for a compulsory License is conducted by an ad-hoc expert team appointed by the Minister in accordance with the relevant Patent field.
- (2) In conducting the examination as referred to in section (1), the expert team invites the Patent Holder to have his/her opinion heard.
- (3) The Patent Holder is required to express his/her opinion not later than 30 (thirty) Days as from the date of notification.
- (4) If the Patent Holder does not express his/her opinion in period of time as referred to in section (3), the Patent Holder is deemed to approve the granting of a compulsory License.

Paragraph 3  
Issuance, Suspension, or Refusal of Request  
for Compulsory License

Article 87

- (1) The Minister notifies the decision to grant, suspend, or refuse a request for compulsory License to:
  - a. the applicant or his/her Proxy; and
  - b. the Patent Holder or his/her Proxy.
- (2) The notification as referred to in section (1) is communicated not later than 7 (seven) Days as from the date of the decision to grant, suspend, or refuse a request for compulsory License.

Article 88

- (1) In the event that the Minister grants a request for a compulsory License as referred to in Article 87, the Minister stipulates a Ministerial Decision on granting a compulsory License to the applicant or his/her Proxy, including the amount of Remuneration and method of payment.
- (2) The stipulation of decision on granting a compulsory License as referred to in section (1) is carried out not later than 90 (ninety) Days as from the requesting date for compulsory License.
- (3) A period of time as referred to in section (2) excludes the period of suspension to not later than 12 (twelve) months as from the date of notification of suspension by the Minister.
- (4) Decision on granting a compulsory License as referred to in section (1) mentions:
  - a. that the compulsory License is non-exclusive;
  - b. the reasons for granting the compulsory License;
  - c. evidence, including statement or explanations, which form the basis for granting the compulsory License;
  - d. the period of compulsory License;
  - e. the amount of Remuneration payable by the compulsory Licensee to the Patent Holder and the method of payment;

- f. the conditions for termination of compulsory License and matters which may cancel the compulsory License;
  - g. scope of compulsory License for entire or partial Patent requested for a compulsory License; and
  - h. other matters necessary to protect the interests of concerned parties in a fair manner.
- (5) Further provisions on the format of decision of granting a compulsory License as referred to in section (1) are regulated by a Ministerial Regulation.

#### Article 89

Decision of the Minister on the granting of a compulsory License as referred to in Article 88 section (1) may be a subject of a lawsuit to the Commercial Court.

#### Article 90

- (1) The Minister may suspend or refuse the granting of compulsory License on the grounds provided by a recommendation from expert team and declaration from Patent Holder, the prevailing Patent requires time longer than 36 (thirty six) months to be commercially implemented in Indonesia.
- (2) Pertinent declaration of Patent Holder as referred to in section (1) must be supplemented with evidence that a period of 36 (thirty six) months is not sufficient to implement the Patent commercially in Indonesia.

#### Article 91

- (1) The suspension of granting a compulsory License as referred to in Article 90 section (1) is provided for a period of 12 (months) as from the date of notification to suspend granting of Compulsory License by the Minister.
- (2) The Minister stipulates a decision to grant or refuse a request for compulsory License within a period of 14 (fourteen) Days as from the end of date of suspension period.

Article 92

- (1) Compulsory Licensee must provide Remuneration to the Patent Holder.
- (2) Provisions regarding the amount of Remuneration and method of payment as referred to in section (1) are regulated by a Ministerial Regulation.

Article 93

- (1) The Minister may grant a compulsory License to make pharmaceutical products patented in Indonesia to serve a purpose of medication of human diseases.
- (2) The Minister may grant a compulsory License to import supply of pharmaceutical products patented in Indonesia yet has not been feasible to be made in Indonesia to serve a purpose of medication of human diseases.
- (3) The Minister may grant a compulsory License to export pharmaceutical products patented and made in Indonesia to serve a purpose of medication of human diseases upon request from developing or least developed countries.

Paragraph 4

Recording of Compulsory License

Article 94

- (1) The Minister is obligated to record the granting of compulsory License in the Patent database and publish it in electronic media and/or non-electronic media.
- (2) Recording and publishing granting of compulsory License as referred to in section (1) are carried out not later than 30 (thirty) Days as from the date of stipulation of granting of compulsory License by the Minister.

Article 95

- (1) The Minister sends the copy of decision on granting compulsory License to:
  - a. applicant of compulsory License or his/her Proxy;
  - b. Patent Holder or his/her Proxy.



- (2) The sending of decision as referred to in section (1) is carried out not later than 30 (thirty) Days as from the date of the decision of granting a compulsory License as referred to in Article 88 section (1).

#### Article 96

- (1) Every Person may file a request for an excerpt of decision to grant a compulsory License.
- (2) A request for an excerpt of decision to grant a compulsory License as referred to in section (1) must be submitted in writing either electronically or non-electronically to the Directorate General of Intellectual Property subject to fees.

#### Paragraph 5

#### Implementation of Compulsory License

#### Article 97

Compulsory License is granted to a Licensee for a period of time without exceeding the Patent protection period requested by the Compulsory License.

#### Article 98

Implementation of Compulsory License by the Licensee is deemed as implementation of a Patent requested on said Compulsory License.

#### Article 99

The granting of a compulsory License does not release a Patent Holder from the obligation to pay annual fee in accordance with the prevailing legislation.

#### Article 100

In the event that a compulsory License is related to technology of semi-conductor, the holder of compulsory License may only uses compulsory License for:

- a. non-commercial public interest; or

- b. action based on court order or decision of relevant agency stating that the implementation of said Patent constitutes a monopoly or unfair competition.

#### Article 101

In the event of implementing compulsory License, the holder of compulsory License may cooperate with other parties both nationally and internationally.

#### Paragraph 6

#### Transfer of Compulsory License

#### Article 102

- (1) A compulsory License is not transferrable, except due to inheritance.
- (2) In the event that a compulsory License is transferred by inheritance, the Ministerial Decision on granting Compulsory License remains in effect to the beneficiary.
- (3) A compulsory License which is transferred from inheritance as referred to in section (1) must be reported to the Minister to be recorded in the patent database and published in an electronic media and/or non-electronic media.
- (1) A compulsory license which is transferred from inheritance as referred to in section (1) remains bound to the requirements and conditions particularly on the period as set out in the decision of granting compulsory license as referred to in Article 86 section (4).
- (4) A compulsory License which is transferred from inheritance as referred to in section (1) remains bound to the requirements and conditions particularly on the period as regulated in the decision of granting compulsory License as referred to in Article 88 section (4).
- (5) If the beneficiary does not report the transfer of compulsory License as referred to in section (3) to the Minister, the Ministerial Decision on granting a compulsory License is invalid.

Paragraph 7  
Termination of Compulsory License

Article 103

- (1) A compulsory License is terminated because of the expiry of period set forth on the decision to grant a compulsory License by the Minister or due to a decision of the Commercial Court with a permanent legal power to nullify the Ministerial Decision regarding the granting of a compulsory License.
- (2) Other than the expiry of period of time of a compulsory License and a decision of the Commercial Court to nullify the decision to grant a compulsory License as referred to in section (1), a compulsory License may also be terminated because of nullification based on the Ministerial Decision upon request of Patent Holder provided that:
  - a. the grounds that formed the basis for granting a compulsory License is no longer exist;
  - b. the compulsory Licensee has evidently not implemented the compulsory License or has not made appropriate preparations for immediate implementation; or
  - c. the compulsory Licensee is no longer complying with other terms and conditions.
- (3) A request for nullification of compulsory License on the grounds as referred to in section (2) point b may be carried out after compulsory Licensee does not implement compulsory License Patent within 24 (twenty-four) months since the date of decision of granting a compulsory License.
- (4) Other terms and conditions which must be complied by the compulsory Licensee as referred to in section (2) point c may be:
  - a. payment of Remuneration; or
  - b. compliance to the scope of License, set forth in the decision to grant a Compulsory License.

Article 104

- (1) The Minister is required to notify the decision on nullification of a compulsory License as referred to in Article 103 section (2) to:
  - a. Patent Holder or his/her Proxy; and
  - b. Compulsory Licensee or his/her Proxy.
- (2) Notification of the Ministerial Decision on nullification of compulsory License as referred to in section (1) is communicated not later than 14 (fourteen) Days as from the issuance date of the Ministerial Decision on nullification of compulsory License.

Article 105

- (1) The Minister is required to record the termination of compulsory License as referred to in Article 103 section (1) and section (2) in the Patent database and publish it on electronic media and/or non-electronic media.
- (2) The record of the termination of compulsory License as referred to in section (1) is done not later than 14 (fourteen) Days as from the date of terminated compulsory License.

Article 106

Termination of a compulsory License results in the restoration of the right of Patent Holder to the relevant Patent as from the date of recording as referred to in Article 105 section (1).

Article 107

Further provisions regarding terms and procedures on granting a compulsory License are regulated by a Ministerial Regulation.

Part Three

Patent as Collateral Object of Fiducia

Article 108

- (1) Patent rights may be used as collateral object of fiducia.
- (2) Provisions on terms and conditions to use Patent as collateral object of fiducia are regulated by a Government Regulation.

CHAPTER VIII  
GOVERNMENT USE OF PATENT

Article 109

- (1) Government may use a Patent in Indonesia on the following grounds:
  - a. related to national defense and security; or
  - b. extreme urgency for the interest of the public.
- (2) The Government use of a Patent as referred to in section (1) is undertaken restrictively, to satisfy national needs, and non-commercially.
- (3) The Government use of a Patent as referred to in section (1) is regulated by a Presidential Regulation.
- (4) The Government use of a Patent as referred to in section (3) is conducted for a definite period and may be extended after hearing consideration from the Minister and relevant ministers and/or heads of relevant institutions.

Article 110

The Government use of a Patent as referred to in Article 109 section (1) point a includes:

- a. firearms;
- b. ammunition;
- c. military explosives;
- d. interception;
- e. wiretapping;
- f. surveillance;
- g. encrypting device and encryption analysis device; and/or
- h. other processes and/or apparatus for the defense and security of the State.

Article 111

The Government use of a Patent as referred to in Article 109 section (1) point b includes:

- a. pharmaceutical and/or biotechnologies products that are expensive and/or necessary for treating epidemic diseases, diseases which cause significant permanent disability, and

diseases which constituted as Public Health Emergency of International Concern (PHEIC).

- b. chemical and/or biotechnologies agricultural products needed for food security;
- c. veterinary drugs needed to handle pests and endemic animal diseases; and/or
- d. processes and/or products to overcome natural disaster and/or environmental disaster.

#### Article 112

- (1) In the event that the Government use of a Patent concerns the defense and security of the State as referred to in Article 109 section (1) point a and Article 110, a Patent Holder cannot exercise his/her exclusive right as referred to in Article 19.
- (2) In the event that the Government use of a Patent is for urgent needs for the public interest as referred to in Article 109 section (1) point b and Article 111, does not prejudice the right of Patent Holder to exercise his/her exclusive right as referred to in Article 19.

#### Article 113

- (1) A Patent deemed to be disruption or contravene to the State interest on defense and security is only used by the Government.
- (2) In the event that the Government does not intend or has not intended to self-use a Patent as referred to in section (1), the use of Patent is only conducted by the Patent Holder upon approval from Government.
- (3) The Patent Holder of which Patent is used by the Government as referred to in section (1) is exempted from the obligation to pay annual fee.
- (4) The Patent Holder as referred to in section (2) is exempted from the obligation to pay annual fee until the relevant Patent is exploited.

Article 114

- (1) In the event that the Government intends to use a Patent that is important to the defense and security of the State or for an urgent need for the public interest as referred to in Article 109 section (1) and Patent that is disruptive and contravened to the interest of defense and security as referred to in Article 113 section (1), the Government notifies the Patent Holder of this fact in writing.
- (2) Copy of Presidential Regulation on approval to the Government use of Patent as referred to in Article 109 section (3) is sent by the Minister to the Patent Holder.
- (3) The use of Patent by the Government is recorded in the Patent database and published in electronic media and/or non-electronic media.
- (4) A decision of a Government to self-exploit a Patent as referred to in Article 109 section (1) is final and binding.

Article 115

- (1) The Government use of a Patent as referred to in Article 109 section (1) and Article 113 section (1) is carried out by providing reasonable Remuneration to the Patent Holder.
- (2) The Government provides reasonable Remuneration to the Patent Holder as a compensation for Government use of a Patent as referred to in Article 109 section (1).

Article 116

- (1) In the event that the Government is incapable of self-exploiting a Patent as referred to in Article 109 section (1), the Government may appoint the third party to carry out the exploitation.
- (2) The third party as referred to in section (1) must:
  - a. own facilities and capabilities to implement the relevant Patent;
  - b. not transfer the implementation of Patent to other parties; and
  - c. have method of good production, distribution, and monitoring in accordance with the provisions of legislation.

- (3) The provision of Remuneration on behalf of Government as referred to in Article 115 is carried out by the third party appointed as referred to in section (1).

#### Article 117

- (1) In the event that the Patent Holder does not agree with the amount of Remuneration given by the Government as referred to in Article 115, the Patent Holder may file a lawsuit to the Commercial Court.
- (2) The lawsuit as referred to in section (1) may be submitted within the period of 90 (ninety) Days as from the date that a copy of Presidential Regulation as referred to in Article 109 section (3) is sent.
- (3) In the event that the Patent Holder does not file lawsuit as referred to in section (1), the Patent Holder is deemed to agree on the amount of Remuneration.
- (4) The process in examining the lawsuit as referred to in section (1) does not cease the Government use of Patent.

#### Article 118

- (1) A Patent Holder is exempted from the obligation of paying annual fee for a Patent used by the Government on the ground as referred to in Article 109 section (1) point a.
- (2) The Patent Holder is required to pay annual fee for a Patent used by the Government on the ground as referred to in Article 109 section (1) point b.

#### Article 119

The fees in Government use of Patent as referred to in Article 109 section (1) is charged to State Budget.

#### Article 120

Further provisions regarding terms and procedures of the Government use of Patent are regulated by Presidential Regulation.



CHAPTER IX  
SIMPLE PATENT

Article 121

All provisions regulated in this Law apply *mutatis mutandis* for simple Patent, except the provisions of Article 3 section (1), Article 7, and stipulated otherwise in this Chapter.

Article 122

- (1) Simple Patent is only granted for one Invention.
- (2) A request for substantive examination on simple Patent may be submitted together with the filing of simple Patent Application or not later than 6 (six) months as from the simple Patent Application Filing Date and subject to fees.
- (3) If a request for substantive examination of simple Patent has not been submitted within a period of time as referred to in section (2) or the definite fee has not been paid, the simple Patent Application is deemed to be withdrawn.

Article 123

- (1) Announcement of simple Patent Application is carried out not later than 7 (seven) Days after 3 (three) months as from the Filing Date of simple Patent Application.
- (2) The announcement as referred to in section (1) is carried out for 2 (two) months as from the date of announcement of simple Patent Application.
- (3) The substantive examination of simple Patent Application is conducted after the expiry of announcement period as referred to in section (2).

Article 124

- (1) The Minister is required to decide whether to grant or refuse a simple Patent Application not later than 12 (twelve) months as from the Filing Date of simple Patent Application.
- (2) The simple Patent that is granted by the Minister is recorded and published in electronic media and/or non-electronic media.

- (3) The Minister grants Certificate of simple Patent to the simple Patent Holder as a proof of right ownership.

## CHAPTER X

### PATENT DOCUMENTATION AND INFORMATION SERVICE

#### Article 125

- (1) The Minister performs Patent documentation and information service.
- (2) In performing Patent documentation and information service as referred to in section (1), the Minister sets up national system for Patent documentation and information network.

## CHAPTER XI

### FEEES

#### Article 126

- (1) Annual fee for the first time must be paid not later than 6 (six) months as from the date of issuance of Patent certificate.
- (2) Payment of annual fee as referred to in section (1) for Patent and simple Patent, comprises of annual fee for the first year which is payable as from the Filing Date to the year when a Patent is granted plus annual fee for the following year.
- (3) Subsequent annual fee is paid not later than 1 (one) month before the same date of the Filing Date in the following year of the protection period.
- (4) Exception for the annual fee as referred to in section (2) is regulated by a Government Regulation.

#### Article 127

- (1) The annual fee may be paid by the Patent Holder or his/her Proxy.
- (2) In the event that a Patent Holder does not reside or have permanent domicile in the territory of the Unitary State of the Republic of Indonesia, the annual fee must be paid by his/her Proxy in Indonesia.

- (3) The Proxy notifies the Patent Holder regarding the amount of annual fee and make payment of annual fee as referred to in section (2) on behalf of the Patent Holder.

#### Article 128

- (1) In the event that annual fee as referred to in Article 126 has not been paid during the definite period, the Patent is declared to be invalid.
- (2) Suspension of annual fee payment may be requested by the Patent Holder upon filing an inquiry to use a grace period mechanism to the Minister.
- (3) An inquiry as referred to in section (2) is to be filed not later than 7 (seven) Days before the due date of annual fee.
- (4) The Patent Holder filing an inquiry as referred to in section (2) is to pay annual fee during the grace period not later than 12 (twelve) months as from the date of expiry for Patent annual fee payment is due.
- (5) Annual fee payment as referred to in section (3) is to be charged 100% (a hundred percent) of the total annual fee payment.
- (6) As long as the Patent Holder has not paid annual fee within grace period as referred to in section (4):
  - a. Patent Holder may not forbid a third party to commit any act as referred to in Article 19 and license as well as transfer the Patent to a third party;
  - b. the third party may not commit any act as referred to in Article 19; and
  - c. Patent Holder may not file a civil lawsuit or criminal lawsuit.

#### Article 129

- (1) All incomes received under this Law, are State non-tax revenue.
- (2) The Minister by the approval from the minister administering government affairs in financial field may use the revenue resulted from the fee as referred to in section (1) in accordance with the provisions of the prevailing legislation.

- (3) Further provisions on the fee as referred to in section (1) are regulated by a Government Regulation.

## CHAPTER XII INVALIDATION OF PATENT

### Article 130

Patent may be invalidated partially or entirely on the following grounds:

- a. a request for invalidation from a Patent Holder has been approved by the Minister;
- b. court decision which invalidates the Patent is final and binding;
- c. decision to invalidate a Patent which is released by the Patent Appeal Commission; or
- d. Patent Holder does not fulfill his obligation to pay the annual fees.

### Article 131

- (1) Patent invalidation on the grounds as referred to in Article 130 point a is carried out upon a written request filed by the Patent Holder for entire or partial claim to the Minister.
- (2) In the event of request for invalidation of partial claim as referred to in section (1), the concerned partial claim is adjusted without expanding the scope of the claim.
- (3) Patent invalidation as referred to in section (1) is not carried out if the Licensee does not provide written approval supplemented to the request for Patent invalidation.
- (4) The decision to invalid a Patent as referred to in section (1) is communicated in writing by the Minister to:
  - a. Patent holder or his/her Proxy; and
  - b. Licensee or his/her Proxy.
- (5) Decision to invalidate a Patent as referred to in section (1) is recorded and published in electronic or non-electronic media by the Minister
- (6) The Patent invalidation as referred to in section (1) takes into effect as from the date of the decision of the Minister on the Patent invalidation.

Article 132

- (1) Invalidation of a Patent based on a lawsuit as referred to in Article 130 point b is carried out if:
  - a. a Patent according to provisions as referred to in Article 3, Article 4, or Article 9 should not have been granted;
  - b. a Patent which comes from genetic resources and/or traditional knowledge does not comply with the provisions in Article 26;
  - c. the pertinent Patent is the same as other Patent that has been granted to other party for the same Invention;
  - d. the granting of a compulsory License is incapable to prevent the exploitation of a Patent in a form and way that harm the public interest within 2 (two) years as from the date of the grant of compulsory License or as from the date of the grant of first compulsory License in regards to several compulsory Licenses; or
  - e. the Patent Holder violates the provisions as referred to in Article 20.
- (2) A lawsuit for invalidation on the grounds as referred to in section (1) point a and point b is filed by the third party to the Patent Holder through the Commercial Court.
- (3) A lawsuit for invalidation on the grounds as referred to in section (1) point c may be filed by a Patent Holder or a Licensee to Commercial Court so that the same Patent is invalidated.
- (4) A lawsuit for invalidation as referred to in section (1) point d and point e is filed by a public attorney or other party representing national interests against the Patent Holder or the compulsory Licensee to Commercial Court.

Article 133

If a lawsuit for Patent invalidation as referred to in Article 132 regards only one or several claims or parts of claims, invalidation is granted only with respect to one or several claims or parts of claims for which invalidation is sued.

Article 134

- (1) A Patent may be invalidated on the grounds as referred to in Article 130 point d, if the Patent Holder does not fulfill his/her obligation to pay annual fee in a definite period as referred to in Article 126 or Article 128 section (1).
- (2) The Minister is required to notify the Patent Holder within a period of 30 (thirty) Days before a Patent is declared invalid on the grounds as referred to in section (1).
- (3) A notification which is not received by the Patent Holder as referred to in section (2) does not prejudice to the provisions as referred to in section (1).

Article 135

- (1) In the event that a Patent is declared to be invalid as referred to in Article 130, the Minister notifies a Patent Holder in writing in electronic or non-electronic media concerning pertinent invalidation to:
  - a. Patent Holder or his/her Proxy; and
  - b. Licensee or his/her Proxy.
- (2) A Patent declared to be invalid as referred to in section (1) is recorded and published.

Article 136

Patent Holder or Licensee of invalid Patent, is not obligated to pay annual fee.

Article 137

Invalidation of a Patent removes all legal effects related to the Patent and other matters of which from the Patent.

Article 138

- (1) Unless decided otherwise in Commercial Court decision, an invalid Patent is entirely or partially as from the date of the order for invalidation is final and binding.
- (2) In the event that a request for invalidation of partial claim or the Commercial Court invalidates parts of claim of Patent, the claim is modified without expanding the scope of claim.

Article 139

- (1) The Licensee of an invalid Patent on the grounds as referred to in Article 132 section (1) point c continues to be entitled to implement his/her License until the expiry stipulated in the License agreement.
- (2) The Licensee as referred to in section (1) does not continue the payment of Royalty which is supposed to be paid to the Patent Holder of which Patent is invalid.
- (3) In the event that the Patent Holder has received whole Royalty from the Licensee, the Patent Holder is required to return the amount of Royalty in accordance to the remaining License period to the entitled Patent Holder.

Article 140

- (1) A License of a Patent which is declared to be invalid due to the grounds as referred to in Article 132 section (1) point c but acquire in good faith before the filing of lawsuit for Patent invalidation remains effective in respect to other Patent.
- (2) The License as referred to in section (1) remains effective provided that the Licensee continues to pay Royalty to the Patent Holder of which Patent is valid in the same amount as previously agreed to the Patent Holder of which Patent was invalid.

Article 141

The Patent that has been invalidated cannot be revived, unless by decision from the Commercial Court.

CHAPTER XIII  
DISPUTE SETTLEMENT

Part One  
General

Article 142

Party that is entitled to obtain a Patent as referred to in Article 10, Article 11, Article 12, and Article 13 may bring a lawsuit to

the Commercial Court if the Patent is granted to other parties other than the person so entitled to.

#### Article 143

- (1) The Patent Holder or Licensee is entitled to file a lawsuit for damages through the Commercial Court against any Person who deliberately and without authorization performs any acts as referred to in Article 19 section (1).
- (2) The lawsuit for damages filed against any acts as referred to in section (1) may only be accepted if the product or process is proven to have been produced by using the Patented Invention.

#### Part Two

#### Procedures on Lawsuit

#### Article 144

- (1) A lawsuit is filed to the Commercial Court within the jurisdiction of resident or domicile of the defendant.
- (2) In the event that one of the parties resides outside the territory of the Republic of Indonesia, the lawsuit is filed to the Commercial Court of Central Jakarta.
- (3) The Chief Justice of the Commercial Court determines the date of hearing not later than 14 (fourteen) days as from the date of which lawsuit is filed.
- (4) Examination of lawsuit is commenced not later than 60 (sixty) days as from the date of which lawsuit is filed.
- (5) The bailiff summons all parties not later than 14 (fourteen) days before the first examination takes place.

#### Article 145

- (1) During the examination of lawsuit against Patented process, the burden of proof lies on the defendant if:
  - a. a product resulted from the Patented process is a new product; or
  - b. a product is suspected to be a result of Patented process, even though sufficient vindication has been displayed, the Patent Holder cannot determine the process used to produce the product.



- (2) In conducting examination a lawsuit as referred to in section (1), the Commercial Court is authorized to:
  - a. order the Patent Holder to deliver in advance a copy of Patent certificate of relevant process and *prima facie* evidence of which become the ground for the allegation; and
  - b. order the defendant to proof that the product resulted does not use the Patented process.
- (3) In conducting examination of a lawsuit as referred to in section (1) and section (2), the judge is obligated to consider the interest of defendant to get protection on the process he described for in the court session.
- (4) In conducting examination of a lawsuit as referred to in section (1) and section (2), the judge declares that the trial is closed from public upon request by all parties.

#### Article 146

- (1) A decision on the lawsuit is made not later than 180 (a hundred and eighty) days as from the date of which the lawsuit is filed.
- (2) The decision of a lawsuit as referred to in section (1) must be made in publicly open court.
- (3) The Commercial Court is required to deliver the copies of decision to relevant parties that are absent not later than 14 (fourteen) days as from the date of decision is made in a court session which is open to public.
- (4) The Commercial Court is required to deliver the copy of Patent invalidation decision which is final and binding to the Directorate General of Intellectual Property not later than 14 (fourteen) days as from the date of decision is made.
- (5) The Minister records and announces the verdict which is final and binding after receiving a copy of the decision from the Commercial Court.
- (6) In the event that the decision as referred to in section (1) has not been forwarded by the Chief Justice of the Commercial Court, the Minister does not have the

obligation to record and announce the verdict which is final and binding.

Article 147

Procedures of filing a lawsuit as referred to in Chapter XIII of this Law apply *mutatis mutandis* for Article 132 and Article 133.

Article 148

Upon the decision of the Commercial Court as referred to in Article 146 section (1), may only be filed an appeal to the Supreme Court.

Part Three

Appeal to the Supreme Court

Article 149

- (1) A request for appeal to the Supreme Court as referred to in Article 148 is filed to the Commercial Court which has decided the lawsuit not later than 14 (fourteen) days as from the date of decision is mentioned or received.
- (2) The Commercial Court provides receipt which is signed by the clerk on the same date as the date of receipt of submission.

Article 150

- (1) The plaintiff for an appeal to the Supreme Court is required to submit the brief for an appeal to the Supreme Court to the clerk not later than 14 (fourteen) days as from the date of appeal to the Supreme Court is filed as referred to Article 149 section (1).
- (2) The clerk of the court is required to deliver appeal to the Supreme Court and the brief for an appeal to the Supreme Court as referred to in section (1) to defendant of appeal to the Supreme Court not later than 2 (two) days as from the date of the brief is received.
- (3) The defendant of appeal to the Supreme Court submits a counter against the brief for appeal to the Supreme Court to

the clerk of the court not later than 14 (fourteen) days as from the date of defendant received the brief for an appeal to the Supreme Court as referred to in section (2).

- (4) The clerk is obligated to deliver a counter against the brief for appeal to the Supreme Court to the plaintiff for an appeal to the Supreme Court not later than 7 (seven) days as from the date of a counter against the brief for appeal to the Supreme Court received.

#### Article 151

- (1) The clerk of court is obligated to deliver the documents to the Supreme Court not later than 7 (seven) days after a period as referred to in Article 150 section (3).
- (2) The Supreme Court decides the date of trial not later than 7 (seven) days as from the date of appeal to the Supreme Court document is received.
- (3) Examination trial of appeal to the Supreme Court document takes place not later than 60 (sixty) days as from the date that document of appeal to the Supreme Court is received.

#### Article 152

- (1) A decision on an appeal to the Supreme Court is made not later than 180 (one hundred and eighty) days as from the date of the documents are received by the Supreme Court.
- (2) The decision on an appeal to the Supreme Court as referred to in section (1) is made in a court session that is open to public.
- (3) The clerk of the Supreme Court is obligated to deliver the copies of decision on an appeal to the Supreme Court to the clerk of the Commercial Court not later than 7 (seven) days as from the date of appeal to the Supreme Court decision is made.
- (4) The Commercial Court, through bailiff, at the period of not later than 7 (seven) days after receiving copy of the verdict, is required to deliver it to:
  - a. the plaintiff;
  - b. the defendant; and
  - c. the Minister,

- (5) The Minister records and announces the verdict that is final and binding after receiving copy of the decision from the Commercial Court.

Part Four  
Alternative Dispute Settlement

Article 153

- (1) Besides dispute settlement as referred to in Article 143, the parties may settle a dispute through arbitration or alternative dispute settlement.
- (2) Dispute settlement using arbitration or alternative dispute settlement is performed in accordance with the provisions of prevailing legislation.

Article 154

In the event of criminal prosecution against Patent or simple Patent infringement, all parties must beforehand take mediation.

CHAPTER XIV  
INTERLOCUTORY INJUNCTION

Article 155

Upon request of a party who suffered from the implementation of a Patent, the Commercial Court may issue interlocutory injunction that is effective to:

- a. prevent the entry of products allegedly infringing the Patent and/or the rights pertaining to the Patent;
- b. secure and prevent the elimination of evidence by infringer; and/or
- c. stop the infringement to prevent bigger damage.

Article 156

A request for an interlocutory injunction is submitted to Commercial Court in writing within the jurisdiction where the Patent infringement taken place by supplementing the following requirements:

- a. proof of Patent ownership;
- b. proof of early indication that Patent infringement has taken place;
- c. clear statement concerning the goods and/or document requested, looked for, gathered, and secured for evidence; and
- d. deposit cash and/or bank guarantee as much as the value of the products to which is subject to an interlocutory injunction.

#### Article 157

- (1) If a request for an interlocutory injunction has fulfilled the requirements as referred to in Article 156, the clerk of the Commercial Court registers the request for an interlocutory injunction and is required to forward the request to the Chief Justice of Commercial Court not later than 1 x 24 (one time twenty four).
- (2) At the period of not later than 2 (two) days as from the date of the request of an interlocutory injunction received as referred to in section (1), the Chief Justice of the Commercial Court assigns a judge of Commercial Court to examine the request for an interlocutory injunction.
- (3) At the period of not later than 2 (two) days as from the date of assignment as referred to in section (2), a judge must decide to grant or refuse the request for an interlocutory injunction.
- (4) In the event that a request for an interlocutory injunction is granted, a judge issues an interlocutory injunction.
- (5) An interlocutory injunction as referred to in section (4) is notified to the parties affected by the decision not later than 1x24 (one time twenty four) hours.
- (6) In the event that a request for an interlocutory injunction is refused, a judge notifies the refusal to the party requesting an interlocutory injunction with reasons thereof.

#### Article 158

- (1) In the event that the Commercial Court issues an interlocutory injunction as referred to in Article 157 section (4), the

Commercial Court summons the parties affected by the interlocutory injunction not later than 7 (seven) days as from the date of issuance of the interlocutory injunction to seek information.

- (2) Parties affected by the interlocutory injunction may submit statement and evidence concerning the Patent not later than 7 (seven) days as from the date that the subpoena is received as referred to in section (1).
- (3) At the period of not later than 30 (thirty) days as from the date of issuance of an interlocutory injunction, a judge of the Commercial Court must decide to reaffirm or cancel an interlocutory injunction.
- (4) In the event that an interlocutory injunction is reaffirmed, thus:
  - a. cash deposit that has been paid must be returned to the plaintiff of the interlocutory injunction;
  - b. a plaintiff of interlocutory injunction may request for compensation of damages due to Patent infringement; and/or
  - c. plaintiff of interlocutory injunction may report Patent infringement to the State Police investigator officers of the Republic of Indonesia or civil servant investigators.
- (5) In the event that an interlocutory injunction is cancelled, the cash deposit that has been paid must immediately be forwarded to the party affected by the interlocutory injunction as compensation for damages of the issuance of the interlocutory injunction.

## CHAPTER XV INVESTIGATION

### Article 159

- (1) In addition to of the State Police investigator officers of the Republic of Indonesia, certain civil servant investigators in a ministry administering government affairs in the legal field are vested with special authority as investigators as referred to in legislation on criminal proceedings, to investigate criminal offences in the field of Patent.
- (2) The investigators as referred to in section(1) are authorized to:

- a. examine the truth of the reports or statement relating to criminal offences in Patent;
  - b. examine alleged Persons committing criminal offences in Patent.
  - c. collect information and evidence from Person related to criminal offences in Patent;
  - d. examine bookkeeping, records, and other documents related to criminal offences in Patent;
  - e. search and examine where evidence, bookkeeping, records, and other documents related to criminal offences in Patent are allegedly located;
  - f. confiscate materials and product resulting from infringement which may be used as evidence in the criminal offences in Patent;
  - g. request expert statement in carrying out the duties of investigation of criminal offences in Patent;
  - h. request assistance from related institution to arrest, seize, set the list of wanted person, prevent and repress a person who commits criminal offense in Patent; and
  - i. terminate investigation where no sufficient evidence of criminal offense in Patent is recovered.
- (3) In conducting investigation, civil servant investigators may request assistance from the State Police investigator officers of the Republic of Indonesia for the purpose of investigation.
- (4) Civil servant investigators inform the initiating of investigation to the public prosecutor with copies to State Police investigator officers of the Republic of Indonesia.
- (5) The results of investigation conducted by civil servant investigators are forwarded to the public prosecutor through the State Police investigator officers of the Republic of Indonesia.

## CHAPTER XVI PROHIBITED ACTIONS

### Article 160

Any Person without authorization from the Patent Holder is prohibited from:

- a. producing, using, selling, importing, renting, handing over, or make it available to sell, leased, or handed over patented product in the event of Patent product; and/or
- b. using Patented production process to produce goods or any other acts as referred to in point a in the event of Patent process.

## CHAPTER XVII CRIMINAL PROVISIONS

### Article 161

Any Person who deliberately and without rights commits one of the acts as referred to in Article 160 for Patent, is sentenced to imprisonment for a maximum of 4 (four) years and/or fine for a maximum of Rp1,000,000,000.00 (one billion rupiahs).

### Article 162

Any Person who deliberately and without rights commits one of the acts as referred to in Article 160 for simple Patent, is sentenced to imprisonment for a maximum of 2 (two) years and/or fine for a maximum of Rp500,000,000.00 (five hundred million rupiahs).

### Article 163

- (1) Any Person violating the provisions as referred to in Article 161 and/or Article 162, that causes disruption in health and/or environment, is sentenced to imprisonment for a maximum of 7 (seven) years and/or fine for a maximum of Rp2,000,000,000.00 (two billion rupiahs).
- (2) Any Person violating the provisions as referred to in Article 161 and/or Article 162, that causes human death, is sentenced to imprisonment for a maximum of 10 (ten) years and/or a fine a maximum of Rp3,500,000,000.00 (three billion five hundred million rupiahs).



Article 164

Any Person who deliberately and without rights breaks confidentiality of an Application document as referred to in Article 45 section (1) is sentenced to imprisonment for a maximum of 2 (two) years.

Article 165

Criminal offences as referred to in Article 161, Article 162, and Article 164 are warrants complaints.

Article 166

In the event that an infringement on Patent is proven, a judge may order that the goods resulted from the Patent infringement are confiscated by the State to be destroyed.

CHAPTER XVIII

MISCELLANEOUS PROVISIONS

Article 167

Except from the criminal provisions as referred to in Chapter XVII and civil lawsuit against:

- a. importation of Patented pharmaceutical product in Indonesia and the product has been legally marketed in a country provided that the product is imported in accordance with the provisions of legislation; and
- b. production of Patented pharmaceutical product in Indonesia within a period of 5 ( five ) years before the termination of the Patent protection with the purpose to process the permit and to do marketing after the termination of concerned Patent protection.

Article 168

- (1) Intellectual property consultant means a person who has special skill in the field of intellectual property and specifically provides services in filing application and administration of intellectual property.
- (2) Intellectual property consultant as referred to in section (1) is appointed and dismissed by the Minister.

- (3) Provisions regarding terms and procedures on appointment and dismissal of intellectual property consultant are regulated by a Ministerial Regulation.

## CHAPTER XIX TRANSITIONAL PROVISIONS

### Article 169

At the time when this Law comes into force:

- a. Patent Applications which have been filed and processed but have not finished, continue to be completed based on previous legislation on Patent before this Law comes into force;
- b. simple Patent Applications which are filed under Law Number 6 of 1989 on Patent as amended by Law Number 13 of 1997 on Amendment to Law Number 6 of 1989 on Patent, is accounted its term of Patent protection as from the date of granting;
- c. Patent which has been granted under:
  1. Law Number 6 of 1989 on Patent as amended by Law Number 13 of 1997 on Amendment to Law Number 6 of 1989 on Patent; and
  2. Law Number 14 of 2001 on Patent, is declared effective until the termination of its period of effectiveness.

## CHAPTER XX CLOSING PROVISIONS

### Article 170

At the time when this Law comes into force:

1. all prevailing legislation constituting as implementing regulations on Patent before this Law comes into force, remain effective insofar they are not contradictory to the provisions in this Law.
2. Law Number 14 of 2001 (State Gazette of the Republic of Indonesia Number 109 of 2001, Supplement to the State

Gazette of the Republic of Indonesia Number 4130), is repealed and declared ineffective.

Article 171

Implementing regulation of this Law is stipulated not later than 2 (two) years as from the date of promulgation of this Law.

Article 172

This Law comes into force on the date of its promulgation.

In order that every person may know hereof, it is ordered to promulgate this Law by its placement in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta  
on 26 August 2016  
PRESIDENT OF  
THE REPUBLIC OF INDONESIA,

signed

JOKO WIDODO

Promulgated in Jakarta  
on 26 August 2016  
MINISTER OF LAW AND HUMAN RIGHTS  
OF THE REPUBLIC OF INDONESIA,

signed

YASONNA H. LAOLY

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2016 NUMBER 176

Jakarta, 28 August 2018  
Has been translated as an Official Translation  
on behalf of Minister of Law and Human Rights  
of the Republic of Indonesia  
DIRECTOR GENERAL OF LEGISLATION,



WIDODO EKATJAHJANA

ELUCIDATION  
OF  
LAW OF THE REPUBLIC OF INDONESIA  
NUMBER 13 OF 2016  
ON  
PATENT

I. GENERAL

For Indonesia as a country with great number of population and abundant natural resources, the role of technology is essential to enhance added value and competitiveness in taking advantage from those resources. Such fact is not questionable. However, the development of technology has not reached desired result, meaning that the technological development has not been effectively utilized in performing economy, social and cultural activities. Consequently, it has not strengthened Indonesia's capacity in facing global competition.

The development of technology aims to improve the quality of acquiring and utilizing technology in order to encourage the transformation of national economy into competitive excellence based economy. In order to ensure that support of technological development for national development is sustainable and consistent, national innovation system needs to be supported by establishing public or private research institution, exploitation of natural resources, empowerment of human resources, and information technology network system, civilizing research, development and application of technology in strategic fields in scientific publication, and technology entrepreneurship.

The role of technology becomes the main concern of developed countries to answer the problems in nation building and increase economic growth. In many developed countries, economic and technology

policies are more integrated and synchronized to enhance national competitiveness. Consequently, one of the policy aims to improve the technology utilization in productive sector to support national economy and recognition of national technology.

Indonesia is a country of which genetic resources and traditional knowledge is frequently exploited by national or foreign Inventor to create new Invention. Therefore, this Law provides provisions on mentioning clearly and truthfully the materials used in the Invention if it is related to and/or comes from genetic resources and/or traditional knowledge in the description.

Despite the fact that by Law Number 14 of 2001 on Patent implementation of Patent has performed, yet some substantial matters are no longer suitable to the legal development of the society, whether nationally or internationally and are not regulated in accordance to the standard of the Agreement on Trade-Related Aspects of Intellectual Property Rights, hereinafter referred to as TRIPs; thus needs to be replaced. The following approaches are used in the amendment of Law on Patent:

1. optimizing the role of the State in providing government best service in the field of intellectual property;
2. favouring the interest of Indonesia without contravene international principles;
3. achieving economy independency by moving the strategic sectors to domestic economic by encouraging national invention in the field of technology to establish technology enhancement; and
4. building the foundation of national Patent through systemic pragmatic Legal Realism approach.

Urgency for amendment of Law of Patent:

1. adjustment to the intellectual property automation system due to the mechanism of Patent registration to be filed electronically;
2. refinement in the provisions of Patent implementation by the Government;
3. exemption to criminal and civil prosecution for parallel import and bolar provision;
4. prohibition to invention in second use or second medical use over expired Patent (public domain);

5. Remuneration for Civil State Apparatus researcher as inventor in official relation from his/her result of Patent commercialization;
6. refinement in the provisions related to new Invention and inventive step for publication in Universities or national scientific institution;
7. Patent may be used as collateral object of fiducia;
8. extending authorities of the Patent Appeal Commission in examining application for correction of description, claim, or drawings after an application is granted a Patent;
9. Patent may be transferred by waqf;
10. provisions on appointing and dismissal of experts by the Minister as the Examiner;
11. providing grace period mechanism in relation to Patent annual fee;
12. regulation on *force majeure* in administrative and substantive examination of Application;
13. regulation on export and import related to Compulsory Licensing;
14. availability of mediation mechanism preceding criminal prosecution;
15. broadening access and opportunities to national industries to utilize Patents of which protection have been expired and regardless of prosecution and obligation in paying royalty; and
16. granting a Compulsory License upon request from developing country or least developed country requiring pharmaceutical products granted a Patent in Indonesia for medication of endemic diseases, and pharmaceutical products is feasible to be manufactured in Indonesia to be exported to concerned country. On the other hand, granting a Compulsory License to import supply of pharmaceutical product granted a Patent in Indonesia but it is not yet feasible to be manufactured in Indonesia for medication of endemic diseases.

## II. ARTICLE BY ARTICLE

### Article 1

Sufficiently clear.

### Article 2

Sufficiently clear.

### Article 3

#### Section (1)

Sufficiently clear.

#### Section (2)

Simple Patent is only granted for an Invention in the form of a product which is not only distinctive in terms of technical features, but also retains more practical functions than previous invention as a result from its shape, configuration, construction, or components comprising of tools, goods, machine, composition, formula, substance, or system.

Simple Patent is also granted for an Invention in the form of new process or method.

### Article 4

#### Point a

Sufficiently clear.

#### Point b

Sufficiently clear.

#### Point c

##### Point 1

Sufficiently clear.

##### Point 2

The term “games” means rules or method related to human physical acts or activities to play.

##### Point 3

The term “business” means method of business which does not have character and technical effect.

#### Point d

The term “rules and methods containing only computer program” means computer program that only contains program without character, technical effect and problem solving; however, if the computer program has characters (instructions) having technical effects and function to produce problem solving whether tangible or intangible constitutes patentable Inventions.

Examples of patentable Inventions:

1. Algorithm means an effective method expressed as a restricted series of instructions from well defined instructions to calculate a function. Started from a pre



condition and initial input (might be zero), the instructions define a computation that if executed, processed through a definite number of a well defined states, which eventually produce “output” and terminate at final state. The transition from one state to next one is not necessarily deterministic; some algorithms known as randomized algorithm, incorporate random input.

2. Encrypting information by coding and decoding to shuffle information so that cannot be read by other party.

Point e

Sufficiently clear.

Point f

Point 1

The term “existing and/or known product” comprises of tools, goods, machine, composition, formula, method, usage, substance, and system whether its Patent protected or has already falls in the public domain.

Point 2

The term “significantly” is generally used in the field of pharmaceutical, which means the difference in relevant substance chemical structure, such as Invention on antibiotics of phenicyline, amphyciline, and amoxiciline. Differences in one of the H (hydrogen) cluster in amphyciline and cluster OH (hydroxile) in amoxiciline have caused efficacy in exterminate microbes with extensive spectrum of anti-microbes and higher level of stability in comparison to amphyciline, thus it can be said that amoxiciline has meaningful improved efficacy compared to amphyciline.

Article 5

Section (1)

The term “not similar” does not only mean different, but also it must be viewed similar or not similar from the function of technical features of the Invention in comparison with the function of technical features of existing Invention.

Equivalent terms for disclosed technology are state of the art or prior art, which covers Patent literature and non Patent literature.

Section (2)

In this Law, provisions on verbal description or simulation or other ways are not only performed in Indonesia but also abroad provided that written evidence must also be submitted.

Priority right of Application comes into effect provided that all administrative and substantive requirements are fulfilled. For substantive requirement if claimed element in the application is disclosed in the priority document.

Section (3)

The term “substantive examination” in this section and in proceeding articles excluding articles regulating simple Patent means examination to an Invention stated in the Application to determine the compliance of requirements: novelty, inventive steps and industrially applicable, as well as unity of invention, clearly disclosed, and not categorized as unpatentable Invention. This provision is intended to solve rising problems from the same Invention applied by different applicants in inflecting time (conflicting application).

The Application has priority date if it is filed using Priority Right.

Article 6

Section (1)

Point a

The term “official exhibition” means exhibition organized by the Government.

The term “officially recognized exhibition” means exhibition organized by public but recognized and acquired government approval.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Section (2)

Sufficiently clear.

Article 7

Section (1)

The term “non-obvious” such as Patent Application of toothbrush with a detachable head brush that can be replaced

with head of razor to be functioned to shave. Such invention is not obvious to a person of such expertise.

#### Section (2)

The term “first Application was filed using Priority Right” means an Application which has been filed for the first time in other country which is a member of Paris Convention for the Protection of Industrial Property or a member of World Trade Organization. Priority Right on application comes into effect if all administrative and substantive requirements have been satisfied. For substantive requirement if claimed element in the Application is disclosed in priority document.

#### Article 8

Invention in the form of product that is industrially applicable must be able to be produced continuously (mass production) with the equal quality, whereas if an Invention is a process then the process must be able to be performed or used in practice.

#### Article 9

##### Point a

Sufficiently clear.

##### Point b

The term “method of examination” means method of diagnose.

The term “method of treatment” means treatment method in medical circumstances.

In the event that examination, treatment, medication, and surgery used health equipment, this provision is only effective to Invention of method, whereas health equipment including tools, materials, drugs, are excluded in this provision.

##### Point c

Sufficiently clear.

##### Point d

Living organisms include human, animal, or plant, whereas microorganisms are tiny organism and not visible to human eyes unless using microscope, such as amoeba, fungus, virus, and bacteria.

Point e

The term “biological process which is essential to produce plant or animal” means conventional or natural propagation process, such techniques as cuttings, layering, or natural pollination.

The term “non-biological process or microbiological process to produce plant or animal” means process in producing plant or animal which is usually transgenic/genetic engineering by including chemical, physics, microorganism or other forms of genetic engineering.

Article 10

Section (1)

The term “Person who gets the Inventor’s assigns” such as children of the Patent Holder through inheritance.

Section (2)

Sufficiently clear.

Article 11

Sufficiently clear.

Article 12

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Section (6)

Mentioning name of the Inventor in the certificate is basically common. Such matter is known as moral rights.

Section (7)

Sufficiently clear.

Article 13

Section (1)

The term “Inventor in an official relation” means Civil State Apparatus (*Aparatur Sipil Negara*, ASN).

The term “government institution” means central and local government institutions.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 14

Section (1)

This provision is intended to provide protection to previous user who has good faith but did not apply for an Application.

Section (2)

Sufficiently clear.

Section (3)

An Invention must be genuinely a result of activity carried out in good faith by the first person who uses the Invention.

Article 15

Sufficiently clear.

Article 16

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Prior user is not an exclusive right holder.

Article 17

Sufficiently clear.

Article 18

Sufficiently clear.

Article 19

Section (1)

The term “exclusive rights” means a right which is only granted to a Patent Holder for a definite period to personally implement commercially or authorize further right to other person. In doing so, exclude other person from implementing the Patent without authorization from the Patent Holder.

The term “product” includes tools, machine, composition, formula, product by process, system et cetera. For example stationary, eraser, drug composition, and ink.

The term “process” includes process, method or usage. For example: process in making ink, and process in making tissue paper.

The term “party” means a person or persons collectively or legal entities in accordance with context of respective case.

Section (2)

In the event that a product is imported to Indonesia and the process to make such product has been Patented, the relevant Holder of patent-process is entitled to seek legal remedies against imported products, provided that the product has been produced in Indonesia using Patented process.

Section (3)

This provision is intended to provide opportunity for parties really in need to use the invention merely for the sake of research and education.

The term “of educational, research, experimental, or analytical purposes” covers act of bioequivalence test or other forms of test. The term “does not prejudice the proper interests of the Patent Holder” means the implementation or usage of Invention does not lead to commercial exploitation that could damage or even become competitor for Patent Holder.

Article 20

Sufficiently clear.

Article 21

The term “annual fee” means fee that is payable by Patent Holder periodically each year. This term is also known in several countries as maintenance fee.

Article 22

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “recorded” means recorded in the Patent database.

The term “electronic media” means any media use electronic or mechanical electronic energy to access its content, such as internet sites.

The term “non-electronic media” means portion in the Patent gazette published periodically by the Minister, portion in special media that can be easily and clearly seen by the public, such as periodical publication by the Directorate General of Intellectual Property and/or publication board in the Minister’s office.

Article 23

Section (1)

Generally protected product or equipment obtained in a relatively short time, in simple manner and relatively low cost and technologically simple; thereby, protection period for 10 (ten) years is regarded to be sufficient to acquire reasonable economic benefits.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 24

Section (1)

Sufficiently clear.

Section (2)

Patent application from small medium enterprise, educational institution, and government research and development may apply for registration through intellectual property clinic or intellectual property center.

Section (3)

The term “linked each other” means several new Inventions and has strong related inventive steps such as an Invention of new pen with new ink. In mentioned example it is clear that ink is a unity of Invention to use the stationary which is a new invention thereby pen and ink may be filed in one Application.

Another example, an Invention of a new product and a process to produce the product.

Section (4)

Electronic application uses IPAS System (Industrial Property Automation System).

Article 25

Section (1)

Sufficiently clear.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Claim is part of Application describing the subject matter of Invention sought legal protection that needs to clearly elaborated and supported by description.

Point d

The term “abstract of Invention” means summary of description describing the subject matter of an Invention.

Point e

The term “drawing” means technical drawing.



Point f

Sufficiently clear.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

## Article 26

Section (1)

Reason to mention the origin of which the genetic resources and/or traditional knowledge in the description to ensure that the genetic resources and/or traditional knowledge are not claimed by other country and to encourage Access Benefit Sharing (ABS).

Section (2)

Sufficiently clear.

Section (3)

The term “International Agreement” means ratified international agreement.

## Article 27

Sufficiently clear.

## Article 28

This provision is intended to facilitate the process of filing Application from Inventor or entitled person who domicile outside the territory of the Republic of Indonesia due to the compliance of language and fulfillment of required requirements.

## Article 29

Sufficiently clear.

Article 30

Section (1)

Sufficiently clear.

Section (2)

Priority document means application document which was first filed in a country which is a member of Paris Convention or World Trade Organization which is used to claim for priority date of an application to designated country which is also a member of those agreements and authorized by official of Patent office where the Patent application was first filed. Authorized party authorizing the copy of application for the first time is the official of Patent Office in the country where the Patent application is first filed. If the application is filed through Patent Cooperation Treaty (PCT), authorized party is the official of World Intellectual Property Organization (WIPO) which is a body of the United Nation administering international agreement regarding intellectual property.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 31

Sufficiently clear.

Article 32

Sufficiently clear.

Article 33

Section (1)

*Traktat kerjasama Paten* is a translation of Patent Cooperation Treaty (PCT). This provision is intended to provide convenience and rapidity for an Applicant in Indonesia to apply Patent Application to several other countries (which are also members of Patent Cooperation Treaty (PCT)), and on the contrary, Applicant from other country which is also a member of PCT may easily and rapidly apply his/her Application to Indonesia.

Indonesia has ratified PCT by the Presidential Decree Number 16 of 1997.

Section (2)

Sufficiently clear.

Section (3)

Subject matters which will be covered in the Ministerial Regulation among others:

- a. additional administrative requirement that needs to be fulfilled by Applicant such as: possible use of foreign language, appointing Patent office in charge of international search authority and international preliminary examination authority by Applicant, and so forth;
- b. obligation of Directorate General as receiving office or designated office of the system, and so forth.

Article 34

Section (1)

This provision is intended to facilitate Applicant in obtaining Filing Date which is very important for the status of Application because of the system used is first to file. Furthermore, it is also intended to give certainty on Filing Date.

It is also intended to improve the service and convenience to the public by taking cautious and confirming the minimum requirement of Filing Date for Application filed using Patent Cooperation Treaty.

For an invention that has been filed and had Filing Date, the Applicant may produce concerned Invention but the Invention has not obtained legal protection until the Application is granted a Patent.

Section (2)

Sufficiently clear.

Section (3)

The term “description” means written explanation on how to implement Invention to be understood by a person having expertise in the field of Invention.

Section (4)

Sufficiently clear.

Article 35

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Cost being charged is fine for the overdue of Applicant in completing requirements and formalities.

Section (4)

Sufficiently clear.

Section (5)

The term “emergency” means *force majeure* such as condition of war, revolution, riot, strike, natural disaster, or other emergencies preventing Applicant to submit the application requirement and formalities.

Section (6)

Sufficiently clear.

Article 36

Sufficiently clear.

Article 37

Sufficiently clear.

Article 38

Sufficiently clear.

Article 39

Section (1)

Sufficiently clear.

Section (2)

The term “extend the scope of invention” means adding essence/subject, new information or taking off technical feature of Invention, either in the description, drawing, or claim which cause the extension of the scope of Invention.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 40

Sufficiently clear.

Article 41

Section (1)

The term “which are not linked” means invention or inventions other than one received invention.

For example:

If one application contains 15 claims consisting of:

1. Invention A mentioned in claim 1 until 5 comprised of one invention;
2. Invention B mentioned in claim 6 to 10 is not a unity of Invention A;
3. Invention C mentioned in claim 11 to 15 which is not a unity of Invention A and Invention B.

Out of three inventions, rejected invention is Invention B and Invention C.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 42

Sufficiently clear.

Article 43

Sufficiently clear.

Article 44

Sufficiently clear.

Article 45

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “sufficient evidence” means convincing evidence to the Minister that the Person is an Inventor of an Invention, for example: affidavit of an agreement between Applicant and the Person claimed to be an Inventor.

This provision is intended to protect Inventor from damaging possibilities.

Article 46

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

This provision is made to give chance to the Applicant due to his/her interest, an Application is desired to be published earlier.

The term “certain circumstances” means to fulfill the requirements of credit point for researcher as an Inventor or as a requirement to place a bid in a tender.

Article 47

Section (1)

The term “electronic media” means any media use electronic or mechanical electronic energy to access its content, such as internet sites.

The term “non-electronic media” means portion in the Patent Gazette published periodically by the Minister, portion in special media that can be easily and clearly seen by the public, such as periodical publication by the Directorate General of Intellectual Property and/or announcement board in the Minister’s office.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 48

Section (1)

During the period, the announcement is carried out continuously.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Classification of Invention is intended to categorize Invention in application in accordance to relevant field of technology. In doing so, search for required similar invention (to find comparative document) in substantive examination will be easier and fast. Eventhough Indonesia has not ratified International Patent Classification, in practice Indonesian uses IPC as applied by numerous countries.

Point g

Sufficiently clear.

Point h

Sufficiently clear.

Point i

Sufficiently clear.

Article 49

Section (1)

The term “opinion” means any information from a person

without any request. Information may be in the form of written evidence from verbal elaboration or simulation or other ways taken place in Indonesia and/or abroad.

The term “opposition” means any information conveyed by a person following a request not to grant a Patent or Simple Patent on a relevant announced Invention.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 50

Section (1)

The term “invention concerns to the interest of security and defense of the State” means inventions constitute inventions in the main equipment of defense system, firearms, ammunition, military explosives, interception, wiretapping, surveillance, and/or encryption.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 51

Sufficiently clear.

Article 52

Sufficiently clear.

Article 53

Sufficiently clear.



Article 54

Sufficiently clear.

Article 55

Section (1)

Point a

Sufficiently clear.

Point b

Document under this provision is required to facilitate the assessment that the Invention being requested for a Patent constitutes as a new Invention and really contain inventive steps and is susceptible to industrial application.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

The term “other prescribed document” such as comparative document, search report, correspondence regarding the result of examination conducted in the country of origin of Priority Rights or in other countries that conducting prior examination.

Section (2)

The term “additional explanation” may be information on the amendment by Applicant to Patent application document based on search result or preliminary examination and serves as additional information that might be necessary for examination.

Section (3)

Sufficiently clear.

Article 56

Sufficiently clear.

Article 57

The Decision is issued not later than 30 (thirty) months since examination needs to be communicated several times with the Applicant.

Article 58

Sufficiently clear.

Article 59

Sufficiently clear.

Article 60

Sufficiently clear.

Article 61

Section (1)

Attachment on Patent certificate is an integral part of a Patent certificate.

The term "data" means data in certificate and attachment.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 62

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Fee Payable is a fine for late submission of response and/or fulfilling requirements as mentioned in the notification.

Section (6)

Sufficiently clear.

Section (7)

The term “emergencies” means *force majeure*, such as in war, revolution, riot, strike, natural disaster or other similar emergencies that disable the Applicant to provide response and/or fulfilling requirements as mentioned in the notification for the results of substantive examination.

Section (8)

Sufficiently clear.

Section (9)

Sufficiently clear.

Section (10)

Sufficiently clear.

Article 63

Sufficiently clear.

Article 64

Sufficiently clear.

Article 65

Section (1)

Sufficiently clear.

Section (2)

The provision is intended to secure independency of the results of examination from the board conducting appeal petition.

Section (3)

If the board consists of 3 (three) persons, it will comprise of 1 (one) examiner and 2 (two) experts. If the board consists of 5 (five) persons, it will comprise of 2 (two) examiners and 3 (three) experts.

Article 66

Sufficiently clear.

Article 67

Sufficiently clear.

Article 68

Sufficiently clear.

Article 69

Sufficiently clear.

Article 70

Sufficiently clear.

Article 71

Sufficiently clear.

Article 72

Sufficiently clear.

Article 73

Sufficiently clear.

Article 74

Section (1)

As an exclusive right, a Patent may be transferred by the Inventor or an authorized person to a person or entities.

The term “may transfer or be transferred” is only for economic rights, whereas moral rights remain intact to the Inventor. Transfer of rights over a Patent must be conducted before the notary (authentic deed).

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

The term “other recognized reasons in accordance with the prevailing legislation” is such as Patent ownership because of dismissal of legal entity as a previous Patent Holder.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 75

The term “right” means moral rights.

Article 76

Section (1)

Unlike Patent transfer of which ownership of rights is also transferred, Licensing on the basis of an agreement is basically giving rights to enjoy economic benefits from a Patent within a definite period and under certain circumstances.

The term “exclusive Licensing agreement” means an agreement to give a license to only one Licensee, and/or in certain territory.

The term “non-exclusive Licensing agreement” means an agreement that can be given to several Licensees and/or in several territories.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 77

Sufficiently clear.

Article 78

The term “national interest” means certain matter or act concerning ideology, politic, economy, social, and culture, defense and security,

energy, technology and other interests to achieve Indonesian national goals as mentioned in the 1945 Constitution of the Republic of Indonesia.

Article 79

Sufficiently clear.

Article 80

Sufficiently clear.

Article 81

The term “non-exclusive” means Licensing an exploitation of a Patent to one particular Licensee, nonetheless it will not prevent from giving the same License to other parties.

Article 82

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Such circumstance is usually taken place during the implementation of a Patent as a result of improvement or development of existing protected Invention. Therefore, the implementation of that new Patent means implementation of partial or entire protected Invention owned by other parties.

If previous Patent Holder issues a License to the next Patent Holder enabling the implementation of that Patent, then it does not constitute Patent infringement.

However, if a License is not issued, this Law should provide solution.

This provision is intended to enable the implementation of the later Patent without infringing earlier Patent by issuing a compulsory License by the Minister.

Section (2)

Sufficiently clear.

Article 83

Sufficiently clear.

Article 84

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

The term “feasible economic scale” means that the Patent being manufactured can be sold in reasonable price for the public without disregarding the rights of Patent Holder.

Section (2)

The term “competent institution” means an institution which is competent in terms of relevant field of Patent being requested for a compulsory License.

Article 85

Point a

The term “mutual Licensing” means a Patent Holder of Invention A gives a License to a Licensee who has a Patent over Invention A+1, and the Licensee gives a license to a Patent Holder of Invention A to use a Patent of Invention A+1.

Point b

Sufficiently clear.

Article 86

Section (1)

Sufficiently clear.

Section (2)

The invitation aims to hear opinion from Patent Holder including the reason not to give a License to the Applicant of compulsory License.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Article 87

Sufficiently clear.

Article 88

Sufficiently clear.

Article 89

Sufficiently clear.

Article 90

Sufficiently clear.

Article 91

Sufficiently clear.

Article 92

Section (1)

The term “Remuneration” may be money or other forms agreed on by all parties.

Section (2)

Sufficiently clear.

Article 93

Section (1)

The term “pharmaceutical products” comprises of ingredients or equipment to diagnose diseases.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.



Article 94

Sufficiently clear.

Article 95

Sufficiently clear.

Article 96

Sufficiently clear.

Article 97

Sufficiently clear.

Article 98

Sufficiently clear.

Article 99

Sufficiently clear.

Article 100

Point a

Sufficiently clear.

Point b

The term “relevant agency” means an agency which is established and assigned to supervise business competition as regulated in the legislation.

Article 101

Sufficiently clear.

Article 102

Sufficiently clear.

Article 103

Sufficiently clear.

Article 104

Sufficiently clear.

Article 105

Sufficiently clear.

Article 106

Sufficiently clear.

Article 107

Sufficiently clear.

Article 108

Sufficiently clear.

Article 109

Section (1)

Point a

Examples of Invention related to defense and security of the State, such as explosives, firearms, and ammunition.

Point b

The term “extreme urgency for the interest of the public” among others in the health sector such as Patented medicines in Indonesia that are necessary to treat endemic diseases, in agriculture sector such as pesticide that is required to prevent crop failure nationally due to pests, any process and/or products to handle natural disaster and/or environmental disaster.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “relevant ministers or heads of relevant institutions” means the minister or heads of institutions of which their duties and authorities related to Government use of Patent. Such as in pharmaceutical Patent, then the relevant minister would be the minister of which his/her duties and authorities are in health sector.

Article 110

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

The term “interception” means turning, altering, and/or obstructing transmission of electronic information and/or unpublished electronic document, whether through wire or wireless communication network, such as electromagnetic emission or radio frequency wave.

Point e

The term “wiretapping” means Patent related to equipment to tap or process in manufacturing equipment for tapping used to listen and record unpublished electronic information transmission and/or electronic document, both using communication cable network or wireless network, such as electromagnetic emission or radio frequency wave.

Point f

The term “surveillance” means activity to obtain information, data, or image on meteorology characteristics, hydrography, and/or geografic of certain area, whether through visual observation or other method of sensing.

Point g

The term “encrypting devices” means any device used to conducting alteration, scrambling, and/or hiding information into irreadable or illogical format.

The term “encryption analysis device” means any device used to obtain meaning from encrypted information by applying concept, theory, art or any technique systematically, methodologically, and consistently.

Point h

Sufficiently clear.

Article 111

Sufficiently clear.

Article 112

Sufficiently clear.

Article 113

Sufficiently clear.

Article 114

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

The term “final” means that Government decision to use a Patent cannot be pursued further legal action of civil, criminal, State administration, or others.

The term “binding” means the Government decision to use a Patent by the Government is applicable to all parties.

Article 115

Section (1)

The term “reasonable Remuneration” means the balance between economic benefit that is possibly obtained by a Patent Holder and the capability of State finance to pay.

Section (2)

Sufficiently clear.

Article 116

Sufficiently clear.

Article 117

Sufficiently clear.

Article 118

Section (1)

Patent Holder cannot exercise his/her exclusive rights; thus, he/she is exempted from the obligation to pay annual fees for his/her Patent that is used by the Government.

Section (2)

Government use of Patent does not diminish his/her exclusive rights as a Patent Holder; the Patent Holder remains holding his/her obligation to pay annual fees.

Article 119

Sufficiently clear.

Article 120

Sufficiently clear.

Article 121

Sufficiently clear.

Article 122

Section (1)

The term “one Invention” means a simple Patent is filed only for one independent product claim or one independent process claim, yet it may consist of several dependent claims.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 123

Sufficiently clear.

Article 124

Sufficiently clear.

Article 125

Section (1)

The term “documentation” means compilation of archives of history of Patent from Application to final decision to grant a Patent, Application refusal, or Application abandonment in electronic and/or non-electronic document.

Section (2)

Establishment of a national system of documentation and Patent information network is to provide extensive information to the public regarding Patent related technology to enable the public to utilize technology development.

Article 126

Section (1)

Date of Patent certificate is the granting date of a Patent.

Example of how to calculate annual fee:

An application filed on 1 April 2010 and granted a Patent on 5 January 2013. The obligation of Patent Holder to pay first annual fee falls on 4 July 2013 at the latest.

Section (2)

The amount of annual fees to pay for the first time will be as follows:

Year	Period	Fees (rupiah)
I	(1 April 2010 – 31 March 2011)	A
II	(1 April 2011 – 31 March 2012)	B
III	(1 April 2012 – 31 March 2013)	C
IV	(1 April 2013 – 31 March 2014)	D
V	(1 April 2014 – 31 March 2015)	E
VI	(1 April 2015 – 31 March 2016)	F

5 January 2013 is in Year III period 1 April 2012 – 31 March 2013. First payment method is: annual fee for the first year since the Filing Date to the year a Patent is granted plus annual fee for the following year. So the total payment of first year Patent annual fee is: A+B+C+D should be paid not later than 4 July 2013.

Section (3)

Second payment of annual fee is made not later than 1 (one) month before the same date with the Filing Date within the protection period of subsequent year. In the example the obligation to second payment of annual fee (E) falls on 2 March 2014.

Section (4)

Sufficiently clear.

Article 127

Section (1)

For a Patent Holder residing or having permanent domicile in the territory of the Unitary State of the Republic of Indonesia, annual fee payment may be carried out by the Patent Holder or his/her Proxy who in this case is the Intellectual Property Consultant.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 128

Sufficiently clear.

Article 129

Sufficiently clear.

Article 130

Sufficiently clear.

Article 131

Sufficiently clear.

Article 132

Section (1)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

The term “incapable to prevent the exploitation of a Patent in a form and way that harm the public interest” means although a compulsory License has been issued, it is not followed by its implementation or the compulsory License is implemented ineffectively that the products required by the public are not fulfilled and the aim of issuing compulsory License cannot be achieved, such as compulsory Licensing to produce medicines that is not implemented effectively that the number of products remains insufficient and the price of medicines continues to be expensive.

Point e

Sufficiently clear.

Section (2)

The term “third party” means a party who holds interest in the Patent which is being claimed for invalidation and must be proven in the Commercial Court.

Section (3)

Sufficiently clear.

Section (4)

The term “other parties representing national interest” means any persons filing a lawsuit merely for the interest of the public and/or the Unitary State of the Republic of Indonesia.

Article 133

Sufficiently clear.

Article 134

Sufficiently clear.

Article 135

Sufficiently clear.



Article 136

Sufficiently clear.

Article 137

Exclusive rights of Patent Holder are removed since the decision of the Commercial Court has legal binding to invalidate a Patent owned by the Patent Holder.

If a Patent has been licensed by a Patent Holder to other parties, Licensee is not obligated to pay royalty to the Patent Holder whose Patent has been invalidated.

Article 138

Section (1)

Sufficiently clear.

Section (2)

A Patent Holder whose his/her claim(s) has been invalidated partially upon request or court order with legal binding will have to file a request to the Minister to have his/her partial valid claim(s) adjusted.

Adjustment of claim(s) to partial invalidated claim(s) is carried out by re-tracing the number of Patent claim(s) that is not invalidated. The re-tracing that number of Patent claim(s) does not extend the scope of the claim(s).

Article 139

Section (1)

Licensee of invalid Patent, basically may remain to implement his/her rights. That License becomes a License for another Patent which is not invalidated.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 140

Sufficiently clear.

Article 141

Sufficiently clear.

Article 142

Sufficiently clear.

Article 143

Sufficiently clear.

Article 144

Section (1)

Sufficiently clear.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Section (5)

The term “days” means calendar days.

Article 145

Section (1)

Reversed vindication is applied considering the difficulty in handling disputes in Patented process.

Point a

Definition of patented Process or Patent for process, basically refers to similar term, which is process patent.

Point b

Sufficiently clear.

Section (2)

In order to keep the equality of reasonable interests between parties, judge remains to be authorized to order Patent holder to submit affidavit of copy of Patent Certificate of respected process beforehand, and preliminary evidence corroborating that allegation. More over, judge is also required to consider the interest of defendant to obtain protection on confidentiality of the process elaborated for the sake of vindication before court.

Section (3)

Sufficiently clear.

Section (4)

Protection to the confidentiality is very important considering the nature of a process which is generally very easy to be manipulated or improved by an ordinary-skilled person in engineering or certain technology. Thus, upon request of the parties, the judge may decide that the court is declared closed for public.

Article 146

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Article 147

Sufficiently clear.

Article 148

Sufficiently clear.

Article 149

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Article 150

Section (1)

The term “days” means calendar days.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Article 151

Section (1)

The term “documents” in this Article means a request for an appeal to the supreme court, brief for an appeal to the supreme court, and/or counter against the brief for an appeal to the supreme court along with other documents.

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

Sufficiently clear.

Article 152

Section (1)

The term “days” means calendar days.

Section (2)

Sufficiently clear.

Section (3)

The term “days” means calendar days.

Section (4)

The term “days” means calendar days.

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Particularly for lawsuit for Patent invalidation, even though the Minister does not constitute as the Parties in the lawsuit, copy of court decision which has legal binding must be submitted to the Minister by the Commercial Court.

Section (5)

Sufficiently clear.

Article 153

Section (1)

The term “alternative dispute resolution” constitutes negotiation, mediation, consiliation, and other methods chosen by all parties.

Section (2)

Sufficiently clear.

Article 154

Sufficiently clear.

Article 155

Sufficiently clear.

Article 156

Sufficiently clear.

Article 157

Section (1)

Sufficiently clear.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Section (6)

Sufficiently clear.

Article 158

Section (1)

The term “days” means calendar days.

Section (2)

The term “days” means calendar days.

Section (3)

The term “days” means calendar days.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 159

Section (1)

The term “certain civil servant investigators in a ministry administering government affairs in the legal field” means civil servant investigators of Intellectual Property.

Section (2)

Point a

Sufficiently clear.

Point b

Sufficiently clear.

Point c

Sufficiently clear.

Point d

Sufficiently clear.

Point e

Sufficiently clear.

Point f

Confiscating materials used to manufacture infringing goods which can be used as evidence in criminal acts in Patent. Being confiscated by the Investigators, the materials cannot be used by the suspect to manufacture infringing goods.

Confiscating infringing goods for evidence does not include confiscate the machine to produce the goods provided that

the Suspect can prove that the machine can be used to produce other goods that do not constitute as infringing goods.

Point g

Sufficiently clear.

Point h

Civil servant investigator is entitled to arrest, detent, set a wanted list, prohibited exit and entry against criminal acts of Patent by requesting assistance from the Police including Interpol, Immigration, Detention center, and other relevant institutions.

Point i

Sufficiently clear.

Section (3)

Sufficiently clear.

Section (4)

Sufficiently clear.

Section (5)

Sufficiently clear.

Article 160

Sufficiently clear.

Article 161

Sufficiently clear.

Article 162

Sufficiently clear.

Article 163

Sufficiently clear.

Article 164

Sufficiently clear.

Article 165

Sufficiently clear.

Article 166

Sufficiently clear.

Article 167

Action of parallel import and bolar provision are exempted from criminal provisions and civil lawsuit so that no hesitation for the parties that are going to commit such action.

Point a

Exception of importation of pharmaceutical products as referred to in point a in this Article is to ensure reasonable price and satisfy equality of pharmaceutical products that are essential for human health. This provision may be used when the price of a product in Indonesia is more expensive than official price circulated in international market.

Point b

Exception as referred to in point b in this Article is to guarantee the availability of pharmaceutical products by other parties after the expiry of the Patent protection period. In doing so, reasonable price of pharmaceutical products may be achieved. The term “permit process” means the process to process a marketing authorization and production permit of certain pharmaceutical product in related institution.

Article 168

Sufficiently clear.

Article 169

Sufficiently clear.

Article 170

Sufficiently clear.

Article 171

Sufficiently clear.

Article 172

Sufficiently clear.



Article 173

Sufficiently clear.

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