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PROTECTION OF THE RIGHT TO IMPLEMENT PATENTS IN THE TECHNOLOGY AND INVESTMENTS IN INDONESIA

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Abstract

Today, businesses in industry and technology are faced with increasingly keen competition challenges. Business in industry and technology can be done by way of technology transfer, which is expected to increase on the absorption of investment and the provision of employment. For that very necessary regulation that can support the investment climate and technology transfer such as Patent law. Not only oriented inward with the spirit of nationalism but also must globalize or in accordance with international regulations in order to avoid clash with other countries. The purpose of this study is to examine the protection of patent application rights in Technology Transfer and Investment Absorption in Indonesia. This research method is normative juridical. This approach is the legal, conceptual and historical approach. This research includes descriptive research, Data used in this research is primary data and secondary data source. Data analysis techniques, which use is qualitative normative descriptive analysis. The results of this study can be seen that there are several Articles in the Law No.13 Year 2016 on Patents that have a high spirit of nationalism that is expected to improve technological progress and increase investment in Indonesia but it is contrary to international law or agreement TRIPs, among them is Article 20, Article 4, Article 78 and Article 120. The Articles are contradictory to Article 27 TRIPs, it is necessary to amend the rules of Patent through the Act and the implementing regulations under it and to make qualification and classification of the products are required to make or use the process in Indonesia so as to appeal to domestic and foreign investors from abroad to invest their capital and bring patent technology to Indonesia.

Keywords: investation; patent rights; protection; transfer of technology

Abstrak

Saat ini, bisnis di industri dan teknologi dihadapkan pada tantangan persaingan yang semakin tajam. Bisnis dalam industri dan teknologi dapat dilakukan dengan cara transfer teknologi, yang diharapkan dapat meningkatkan penyerapan investasi dan penyediaan lapangan kerja. Untuk itu sangat diperlukan regulasi yang dapat mendukung iklim investasi dan alih teknologi seperti hukum paten. Tidak hanya berorientasi ke dalam dengan semangat nasionalisme tetapi juga harus mengglobal atau sesuai dengan peraturan internasional untuk menghindari bentrokan dengan negara lain. Tujuan dari penelitian ini adalah untuk menguji perlindungan hak paten dalam transfer teknologi dan

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penyerapan investasi di Indonesia. Metode penelitian ini adalah yuridis normatif. Pendekatan ini adalah pendekatan hukum, konseptual, dan historis. Penelitian ini termasuk penelitian deskriptif, data yang digunakan dalam penelitian ini adalah data primer dan sumber data sekunder. Teknik analisis data, yang digunakan adalah analisis deskriptif normatif kualitatif. Hasil penelitian ini dapat dilihat bahwa ada beberapa Pasal dalam UU No.13 Tahun 2016 tentang Paten yang memiliki semangat nasionalisme tinggi yang diharapkan dapat meningkatkan kemajuan teknologi dan meningkatkan investasi di Indonesia tetapi bertentangan dengan hukum internasional atau perjanjian TRIPs, di antaranya adalah Pasal 20, Pasal 4, Pasal 78 dan Pasal 120. Pasal-pasal tersebut bertentangan dengan Pasal 27 TRIPs, perlu untuk mengubah aturan paten melalui Undang-Undang dan peraturan pelaksanaan di bawahnya dan untuk membuat kualifikasi dan klasifikasi produk diperlukan untuk membuat atau menggunakan proses di Indonesia untuk menarik investor domestik dan asing dari luar negeri untuk menginvestasikan modalnya dan membawa teknologi paten ke Indonesia.

Kata Kunci: hak paten; investasi; proteksi; transfer teknologi

I. Introduction

Globalization and trade liberalization, faced with the challenges of increasingly high competition. For that to compete in free trade, we increase the ability of the nation to develop the nation's creativity. Business in industry and technology can be done by transferring technology. Technology transfer is not a simple matter but must first understand the scope that encompasses the transfer of technology, among others, regarding technological limitations, linkages with industry and technology itself, methods of transfer, identification of existing technologies to be transferred, agreements and technological negotiations, technological links with various the right related to, among others, Patents, assessments of technology, how to trade and how markets are sold and buyers of technology and the relationship between understanding technology as an intangible business capital.[2]

Development based on technology is absolutely necessary to support the success of development in the economic sector. Technology plays a very important role in everyday life. Almost all fields of life have used advanced technology, both domestic and foreign technologies. In relation to the use of this technology there is a term known as Patent rights. Patent rights are a special right owned by an inventor or another person who is given the right by the inventor to carry out, carry out an invention himself or

[2] Sumantoro.1993. *Masalah Pengaturan Alih Teknologi, Edisi Pertama,* Cetakan I. Bandung: Penerbit Alumni, p. 10.

give permission to another person to carry out the discovery. To support success in technology. It is necessary to have a legal field that regulates the legal protection of inventors on the application of patents in the transfer of technology in order to absorb investment in Indonesia, if an invention in the field of technology is misused by someone who is not entitled to use it.

In the process of technology transfer, there are aspects of regulating foreign investment and selection of appropriate and necessary technology in Indonesia, our country faces problems such as an assessment of the technology being transferred, the transfer of obsolete technology or the expiration of the Patent period, conditions - conditions and conditions that are very burdensome to technology recipients. Arrangements regarding technology transfer need to be considered in the framework for the entry of new technologies in Indonesia, including through licensing cooperation, patent rights holders have the right to give licenses to other parties based on license agreement letters.

Transfer of technology from a country to another country, generally from developed countries to developing countries can be done in various ways depending on the kind of technological assistance needed. Technology can be transferred by employing individual experts, providing sup lies from machines and other equipment. This supply can be done with a separate contract and the licensing agreement in the technology of the technology owner can facilitate technology by giving the right to each person / body to implement the technology with a license.

Government policy to issue statutory provisions concerning patents is the first step for Indonesia to cooperate with foreign parties including the transfer of technology. Technology transfer in fact must be bought at high prices. Technology has essentially become an expensive and rare commodity because many are asked, the situation is increasingly displayed because the transfer of foreign investment technology is always associated with the field of intellectual property rights (IPR). IPR has been dissolved in the technology selection stage used, at the production stage and also when the product is marketed. In fact, it was alleged that the Intellectual Property Right (IPR) had become a commercial commodity itself.

Based on this background, the problem in this study is how is the protection of the right to apply the patent in transferring technology and absorbing investment in Indonesia?

II. Method

This research method uses normative juridical methods. This research approach uses a statute approach, a conceptual approach and a historical approach. This type of research includes qualitative descriptive research. Data sources used in this study are primary data and secondary data. Data analysis techniques used are qualitative normative descriptive analysis techniques.

This type of research is doctrinal or normative legal research, which examines law as the norm. While viewed from the data source is a doctrinal or normative research, that is research by searching and researching library materials which are secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are arranged systematically, reviewed, and then drawn a conclusion in relation to the problem written. Legal research like this, does not recognize field research because what is examined is legal material so that it can be said as a library based, focusing on reading and analysis of the primary and secondary materials or often called literature study research.[3]

The approach used in this study is the statute approach and conceptual approach. In the legislative approach the researcher needs to understand the hierarchy, and the principles in the legislation, while the conceptual approach is carried out when the researcher does not move from the existing legal rules [4] and historical approach.

Based on the type of legal research used is normative legal research, the research data that is the reference in this study is secondary data in the form of primary legal material is legal material that is authoritative that has authority, which includes legislation, official records or treatises in the making of legislation and decisions of judges. [5] And secondary legal materials, namely legal and non-legal opinions from the

[3] Johnny Ibrahim. 2006. *Teori & Metodologi Penelitian Hukum Normatif.* Malang: Batu Media Publishing, p.46.
[4] Peter Mahmud. 2000. *Penelitian Hukum.* Jakarta: Kencana, p. 137.
[5] *Ibid*, p. 141.

literature, the results of research relating to information obtained from the speakers. The use of secondary legal materials is to give researchers a kind of "guidance" towards where research is going.[6]

In this study the author uses data collection techniques with literature study or documentary study, namely data collection carried out with the categorization and classification of written materials related to research problems, both in the form of books, newspapers, documents, archives, writings, papers, theories legal theory and legal arguments.

Data analysis techniques used are qualitative normative descriptive analysis techniques. This analysis technique focuses on all secondary data obtained. After obtaining the required data, it is analyzed logically, systematically and juridically.

III. Analysis and discussion

TRIP's agreement contains norms and standards for protection of human intellectual property and places international agreements in the field of intellectual property rights as the basis for legal regulation in the field of technology transfer both relating to licenses. Law as a means of social renewal must be able to provide arrangements for new developments, therefore, technology transfer must be regulated by Indonesia, as developing countries realize that science and technology have an important role in accelerating national socio-economic development, especially in facilitating increased production of goods and services in the industrial sector and incorporating suitable foreign technology that is appropriate from abroad to the country with provisions, terms and prices that benefit the national interest means that it will enlarge the role.[7]

TRIPS (Trade Related aspects of Intellectual Property Rights) is an international agreement in the field of IPR related to trade. This agreement is one of the agreements under the world trade organization or WTO (World Trade Organization) which aims to uniform the IPR system in all WTO member countries. IPR is a new trade issue that was discussed in the

[6] *Ibid.*, p. 155.

[7] Ita Gembiro. 1978. *Pemindahan Teknologi dan Pengaturannya Dalam Peraturan Perundang Kompilasi Dalam Aspek-aspek Hukum dari Pengaruh Teknologi*. Menado: PT Nn, p.1.

Uruguay Round trade negotiations. TRIPS is an IPR regulation regime with the most extensive and most stringent object of protection. Because it is part of the WTO, TRIPS implementation is complemented by a law enforcement system and dispute resolution.

In negotiations on TRIPS, developed countries said that more effective IPR protection would provide three benefits, namely: (1) increasing the amount of direct investment or FDI (foreign direct investment); (2) increase technology transfer or transfer; and (3) increasing research activities and developing innovation at the local level.

To comply with TRIPS provisions, Indonesia must harmonize laws and regulations in the KI field. Indonesia has issued a new law for the protection of Patent Rights, namely Law Number 13 of 2016 concerning Patents. The government provides a legal umbrella that protects the property rights of industrial patents.

Patent protection from an invention can encourage development acceleration and productive work ethic. In the micro, protection and law enforcement of patent rights can be a motivation for all parties in accordance with their respective fields of duty and profession to grow and develop as creative and innovative people. The Patent concept encourages inventors to open knowledge for the betterment of society and instead, inventors get exclusive rights for a certain period.

The purpose of protecting the right to apply Patents generally includes: First, providing legal clarity regarding the relationship between wealth and inventors, creators, designers, owners, users, intermediaries who use them, the working area of their utilization and those who receive due to the use of patent rights for a certain period of time; Second, give an appreciation for a success of an effort or an effort to create an invention in the form of a product or process; Third, to promote the publication of inventions or creations in the form of patent documents that are open to the public; Fourth, stimulate the creation of information transfer efforts through intellectual property rights and technology transfer through Patents; Fifth, provide protection against the possibility of being imitated because of a guarantee from the state that the implementation of intellectual works is only given to those who are

entitled. [8] The purpose of Patent rights, namely: 1) provide legal protection for every intellectual work in the field of technology, so that the ownership rights of the Patent holder are guaranteed; 2) Creating a better climate for invention activities in the field of technology, because technology has a very important role in national development in general and especially in the industrial sector; 3) Providing incentives for inventors in carrying out new innovations through exclusive rights to inventions produced; 4) Means of open disclosure regarding the latest patented technology information, so that the public can use it for further technology development and development.

There are several mechanisms and forms of legal protection provided by the state if a simple Patent and Patent is violated by a person who is not entitled to use a Patent. The form of legal protection, among others: 1) through Patent registration efforts at the Patent office; 2) through the licensing agreement effort; 3) through efforts to cancel and claim; 4) efforts to demand and attempt to impose criminal penalties and fines that can be carried out by the state through its apparatus if proven a Patent is used by another person without the permission of the owner. Thus a civil suit made by the Patent holder to request compensation from the Patent violator, does not reduce the criminal effort that can be carried out by the state if it is proven that someone is violating another person's Patent.

Patent giving is basically based on certain motivations, for example to develop science and technology. Besides that it is intended to:

1) Award for a work in the form of a new invention. The basis for giving a patent to an inventor is based on a sense of justice and worthiness for his efforts, so he should get a patent.
2) Providing incentives for innovative inventions and works. There are fair and reasonable incentives for research and development activities to enable rapid development of technology. This incentive can be given to the inventor with a guarantee of granting rights that cannot be challenged against an invention and the right to withdraw the

[8] Mastur. 2012."Perlindungan Hukum Kekayaan Intelektual di bidang Paten", *Jurnal Ilmiah Ilmu Hukum QISTI*, 6 (1): 80.

benefits of real compensation if the invention is utilized in commercial production.

3) Patents as sources of information. The Patent System not only maintains the interests of your employees. Patents and their statements are publicly issued, so that it becomes general knowledge that can stimulate subsequent discoveries.

There are 4 (four) benefits of the Patent system if it is associated with its role in improving technological and economic development, namely:

1) Patents help promote the technological and economic development of a country;
2) Patents help create an atmosphere conducive to the growth of local industries
3) Patents assist the development of science and technology and the economy of other countries with licensing facilities;
4) Patents help achieve technology transfer from developed countries to developing countries.

There are a number of Patent losses which are related to the relatively expensive Patent cost and relatively short period of time and protection period, which is 20 years for ordinary Patents and 10 years for Simple Patents. In addition, not all inventions can be patented according to the applicable Patent Law. The Patent System is a meeting point of various interests, namely: 1) The interests of Patent leaders; 2) The interests of investors and rivals; 3) The interests of consumers; 4) The interests of the general public

The benefits of granting Patent rights are exclusive rights, legal certainty, incentives for a technological creation, strong market position, increasing competitiveness, licensing opportunities, encouraging investment (FDI), catalysts for technology transfer and trade and industrial planning strategies.

The existence of patent rights is intended to provide protection to inventors or patent holders so that their patents are not violated arbitrarily by other unauthorized persons. In this case an inventor automatically becomes a Patent holder, but does not rule out the possibility that another person who is not the inventor is also a Patent holder, namely by asking for a license from the inventor of the Patent holder so that the person is also given the same rights as the

inventor of the Patent holder to be able to carry out a Patent.

Law No. 13 Year 2016 concerning Patents contains several basic principles aimed at increasing the number of Patent rights in Indonesia. One of the provisions that become a catalyst for boosting national patents is the expansion of simple patent protection objects into product and process development. The meaning of this expansion is simple patent rights can be registered not only limited to the product, but also the development of existing processes, including the composition, methods, formulas, and so forth.

Patent is an exclusive right granted by the state to the inventor for the results of his invention in the field of technology for a certain period of time to carry out the invention himself or give approval to another party to implement it (Article 1 Number 1 of Act No. 13 of 2016). Not all inventions can be protected by Patents. Only inventions that meet the requirements can be requested for protection by a Patent. The essence of a patent is a 'monopoly' right granted by the state to an investor as a reward or incentive for him to disclose the invention to the public (at the time of announcement) through a Patent description / specification. The aim is for the community to gain new knowledge in encouraging the community to conduct research and development activities. On the other hand, for inventors, patents give economic rights to exploit their findings, among others, through licensing agreements with royalties. Besides that, the inventor has a moral right so that his name as an inventor remains included in the Patent certificate, even though the Patent has been transferred to another party, for example the company as a Patent holder. In order to obtain Patent protection, an invention must meet the requirements as stipulated in Article 3 paragraph (1) jo. Article 2 letter a Law No. 13 Year 2016 concerning Patents:

1) A new invention; What is meant by a new invention is not from nothing to exist, but if on the Filing Date, the invention is not the same as the technology that has been disclosed or registered before. "Not the same" is not just a difference, but must be seen as the same or not the same as the function of the technical characteristics (features) of the Invention compared to the technical functions of the previous Invention. The equivalent of the technology term disclosed

previously is state of the art or prior art, which includes Patent literature and not Patent literature.

2) Contains inventive steps; The invention contains an inventive step if the invention is for someone who has certain expertise in the technical field that is unpredictable. What is meant by "things that can not be foreseen (non-obvious), for example a patent application for toothbrush with the brush head can be removed so that it can be installed with a razor head so that it can be used to shave. This invention cannot be predicted by someone skilled in the field .
3) Can be applied in industry. Inventions can be applied in industry if the invention can be carried out in the industry as described in the application. Inventions in the form of products that can be applied in industry must be able to be made repeatedly (in bulk) with the same quality, whereas if the invention is in the form of a process then the process must be able to be run or used in practice. A technology is considered new if the technology is not the same as 'prior art' (the latest technology at that time being the comparison). 'Prior art' in the language of law is called "technology that has been previously disclosed or announced". In this case the intended announcement can be in the form of an article; oral description or through demonstration or other methods that result in an expert (imitating) carrying out the same invention. The size of the novelty is also based on a maximum period of 6 (six) months after the invention must be immediately registered, if not, the novelty value will be dropped. An invention is considered to contain inventive steps. If the invention for someone who has certain expertise in the field of engineering is 'non-obvious'. Inventions can be applied in industry if the invention can be carried out according to the description in the statement.

In addition to the above three conditions which are 'world wide', for Patent requests in Indonesia must pay attention to Article 7 of Law No. 14 Year 2001 Jo. Article 9 of Law No. 13 Year 2016 that Patents cannot be granted for inventions about:

1) Process or product whose announcement and use or

implementation are contrary to the prevailing laws and regulations, religious morality, public order or literature.

2) Methods of examination, treatment, treatment and / or surgery applied to humans and/or animals.
3) Theories of methods in the field of science and mathematics, or
4) All living things except microorganisms
5) Biological processes that are essential for producing plants or animals, except for nonbiological processes or microbiological processes.

In essence, the Patent Holder is obliged to make a product or use a process that is granted a Patent in Indonesia unless it is only feasible to be carried out regionally, provided that it is accompanied by a written request to the authorized person. This provision is intended to make technology transfer (especially if the Patent holder is a foreign inventor). Technology transfer from one country to another country, generally from developing developed countries can be done in various ways depending on the kind of technological assistance needed for a project. Technology can be moved through the following methods:

1) Foreign Direct Investment, which is a long-term investment invested by a foreign company. Investors are in control of asset and production management. An example of Foreign Direct Investment is that Dunkin'Donuts first entered Indonesia through its Direct Foreign Investment by opening its first company in Jakarta.
2) Joint Ventures, namely partnerships between companies originating from different countries for the purpose of obtaining profits. In a model like this, ownership is calculated based on shares owned. This type of technology transfer is interesting because foreign companies can avoid the nationalization of companies. It should be noted that in the Foreign Direct Investment (FDI) model the risk of sudden nationalization is quite high. Besides that foreign investors also feel risky if they have to do joint ventures with national companies of Third World Countries. Examples of Joint Ventures, namely PT Krakatau Posco is a joint venture between

PT Krakatau Steel (Persero) Tbk, Indonesia and POSCO Korea.

3) Licensing Agreements, namely permission from a company to other companies to use their trade name (brand name), brand, technology, patent, copyright, or other skills. The license holder must operate under certain conditions and conditions, including in the case of payment of wages and royalties. Usually this method is used by foreign companies with partners of Third World countries. This method is the most likely to be the transfer of payments or the escape of capital from Third World Countries to foreign companies. Examples of Licensing Agreements, namely PT Fast Food Indonesia Tbk as the sole franchise holder for the KFC brand in Indonesia.
4) Turnkey Projects, which is to build infrastructure and construction needed by foreign companies to carry out production processes in Third World Countries. If all facilities are ready to operate, foreign companies hand over 'keys' to domestic companies or other organizations. Foreign companies also hold training for domestic workers so that one day they can take over all the necessary production processes. It is unlikely that technology transfer will occur because domestic companies can only operate without understanding the importance of developing the technology. Domestic companies also cannot build it, so their role is simply to be slaves of command. Example of Turnkey Project, namely PT. Excelindo Chandra Mulia (ECM) is a contractor.

Technology transfer (transfer of technology) is important for the third world, especially with the globalization of the world. The globalization of the world that occurred after the second world war, which began in Bretton Woods has become the forerunner of the birth of a world organization of the World Trade Organization in 1994.[9] The transfer of technology was carried out by developing countries since a few decades ago which is a major issue in foreign investment. Conflicts that arise between foreign and domestic companies are focused on differences in interests. Developing

[9] Gunawan Widjaja. 2001. *Seri Hukum Bisnis Lisensi*. Jakarta: PT Raja Grafindo Prasada, p. 95

countries hope that with the entry of foreign capital as well as the success of economic development. Meanwhile, foreign companies want to make as much profit as possible from developing countries.[10]

One way to transfer technology is through a license agreement. Patent license agreement is a written agreement made jointly by Licensee and Licencor. [11] Patent licensing contracts are one channel for technology transfer from technology owners to technology recipients, because patent licensing contracts are basically a license to use the right to technology protected by law by technology owners to technology recipients.[12]

In Article 71 of Law No. 14 Year 2001 stated that licensing agreements are prohibited: (a) contain provisions that can directly or indirectly harm the Indonesian economy or (b) contain restrictions that hinder the ability of the Indonesian people to master and develop technology in general and that are related to innovations that are given Patents in particular. Article 78 Year Law No. 13 Year 2016, the license agreement is prohibited to contain provisions that could harm Indonesia's national interests or contain restrictions that hamper the ability of the Indonesian people to transfer, control and develop technology.

In Article 79 of Law No. 13 Year 2016 stipulated: "Each license agreement must be recorded and announced with a fee. In the event that the license agreement is not recorded at the Director General of KI, it does not have legal consequences for third parties ". Recording the license agreement is a form of interference permitted in Article 40 of the TRIPs Agreement to protect licensee positions which are generally suspected of having a weak position. This provision prevents misuse of patent rights by licensor (especially foreign licensor) and all of that for the contribution of the national economy. In addition, recording functions to determine the number and form of inventions that have been licensed so that they can be projected by future technology.

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[10]Endang Purwaningsih. 2005. *Perkembangan Hukum Intellectual Property Rights.* Bogor: Ghalia Indonesia, p. 141.

[11] Suteki. 2013. *Hukum dan Alih Teknologi : Sebuah Pergulatan Sosiologis.* Semarang: Thafa Media, p. 51.

[12] Amir Pamunntjak. 1994. *Sistem Paten-Pedoman Praktik dan Alih Teknologi,* Jakarta: Djambatan, p.11.

In addition to voluntary licenses, the problem of technology transfer can also be through a mandatory license agreement contained in Articles 81 to 107 of Law No. 13 Year 2016. The reason for compulsory licenses is 3 (three):

1) Patent Holders do not carry out the obligation to make products or use processes in Indonesia by a Patent holder within 36 (thirty six months) after being granted a Patent.
2) Patents have been carried out by the Patent Holder or Licensee in the form and manner that is detrimental to the interests of the community; or
3) Patents resulting from the development of patents that have been previously granted cannot be implemented without using another party's patent that is still under protection.

A compulsory license is a license based on government official arrangements this form of license is rarely used. A license must be regulated to carry out a Patent granted based on a ministerial decree based on an application. The reason for the application was given, inter alia, based on the reason the Patent holder did not carry out the obligation to make the product or use the process in Indonesia within 36 months after the Patent was granted. However, the existence of a compulsory license can end with several reasons. First, due to the completion of the period stipulated in the minister's mandatory licensing decision. Secondly, in addition to the expiration of compulsory licenses, it can also be caused by a commercial court decision that has permanent legal force, essentially canceling the minister's decision regarding granting a compulsory license. Apart from the completion of the period of compulsory license and commercial court decision, other causes due to cancellation based on ministerial decree based on the request of the Patent holder. This is because there are no more reasons that can be used as a basis for granting compulsory licenses. The licensee is obliged not to carry out his obligations, at least not making appropriate preparatory efforts to carry out the compulsory license. Licensee must not comply with other terms and conditions. Third, the application for cancellation of the decision to grant a compulsory license on the grounds of not carrying out the obligation and proper preparation can be carried out after the compulsory licensee does not carry out the Patent

within a 24 hour period. As of the date of the decision to grant a compulsory license. Fourth, other terms and conditions that must be obeyed by the recipient of a compulsory license can be in the form of payment of benefits. Then also because of adherence to the scope of the licenses stipulated in the licensing decision. The Minister granted authority must notify the decision to cancel the compulsory license to the Patent holder or his attorney, or the recipient of the compulsory license or his proxy. Notification of ministerial decree related to the cancellation of the license must be carried out within a maximum period of 14 days. As from the date of stipulation of the ministerial decree concerning the cancellation of the compulsory license. The Minister must record the expiration of the compulsory license in the General Register of Patents. In addition, the cancellation must be announced by the minister through electronic media and or non-electronic media. Law No. 13 Year 2016 concerning Patents states that the recording of the end of a license must be carried out within 14 days from the date of expiry of the compulsory license.

In the event that a Compulsory License is submitted based on the reason that the Patent resulting from the development of a Patent previously granted cannot be implemented without using another party's Patent that is still under protection, the Patent Holder has the right to give a License to use another party's Patent based on reasonable requirements and the use of Patents by The licensee is not transferable unless transferred together with another Patent.

In making and processing products, the patent holder must support the transfer of technology, the absorption of investment and / or the provision of employment. An inventor who has obtained a license as a patent holder has the obligation to pay an annual fee. With respect to annual fees not yet paid by the Patent holder until the specified period, the Patent is declared deleted. While the payment of annual fees made after submitting a letter of application for postponement of payment is subject to a hundred percent surcharge calculated from the total payment of annual fees.

Law No. 13 Year 2016 concerning Patents regulating the payment mechanism and the period of time for those holders of Patents. Although not in detail how much the cost must be paid, but the Law

regulates the timeframe of obligations that must be carried out by the Patent holder. There are 3 articles that regulate the issue of payment in the Law No. 13 Year 2016 concerning Patents, from Article 126 to Article 129. Each Patent holder or Patent licensee is obliged to pay an annual fee. Patents are granted within a period of 20 years, starting from the date of receipt of the request of the Patent holder after meeting the minimum requirements. The period of time for 20 years is apparently not renewable. While the date of start and end of the Patent period is recorded in the General Register of Patents and announced through electronic media and / or non-electronic media. The Patent Law regulates, a simple patent is given its tenure for 10 years. As of the date of receipt of applications that have met the minimum requirements. As with a 20-year period, the 10-year term cannot be extended.

The first annual payment of fees is made no later than six months, starting from the date the Patent certificate is issued to those whose Patent applications are approved by the relevant minister. Whereas the payment of annual fees includes simple Patents and Patents. Annual fees are paid for the first year from the date of receipt until the year the patent is granted. Then, it is added to the annual fee that is allocated one year later. Payment of the next annual fee is carried out no later than one month, before the same date as the date of receipt in the next year protection period. However, Law No. 13 Year 2016 concerning Patents regulates the exclusion of annual payments for simple Patents and Patents in the first year from the date of receipt until the year is granted a Patent, then added the annual fee for the following year. Exceptions to this clause are regulated through government regulations which are the implementing rules of Law No. 13 Year 2016 concerning Patents.

Patent protection is evidenced by the issuance of a Patent certificate that applies retroactively from the date of receipt (Article 60 of the Patent Law). In relation to the refusal of a Patent application, the examiner reports that the invention requested by the Patent does not meet the stipulated provisions. Then, the minister informs the rejection information in writing to the applicant or his attorney. Notification of refusal includes the conditions that must be fulfilled and the reasons and

references used in the substantive examination.

The applicant must also respond to the funds or fulfill the conditions as stated in the notification letter. Duration, no later than three months from the date of the notification letter. This period can be extended for a maximum of two months. An extension can still be given for one month ahead at a cost. While the application for the extension period, the applicant must submit a written application to the ministry before the expiration deadline expires.

In the event of an emergency, the applicant can submit an application for renewal in writing accompanied by supporting evidence submitted to the ministry. The Minister can also provide an extension of the period of time for applicants who experience emergency conditions for a maximum of six months. If the applicant gives a response, but does not meet the requirements as stated in the notice within two months to six months, the minister notifies the applicant in writing of the request within two months. For the applicant who does not give a response within the time limit specified in the notification letter, the minister gives written notice to the applicant. The contents, the notification of the applicant's application is deemed withdrawn within a period of no later than two months. With respect to the rejected application, the minister notifies the written rejection. Of course with a variety of reasons and considerations that become the basis for rejection to the applicant and his attorney.

Patent holder, or at least his proxy can submit a written repair request to the relevant minister. Improvement in the event of a data error in the Patent certificate, and / or attachment. Regarding data errors contained in the Patent certificate, it is the applicant's mistake, the request for repairs is charged. While the data error in the Patent certificate is not due to the applicant's fault, the repair request is not charged, or free. Data changes in the form of an improvement in the name and / or address of the Patent holder recorded and announced by the minister. Regarding the terms and procedures for recording data changes, it is further stipulated in the ministerial regulation. Erroneous data on a Patent certificate that is not due to the applicant's fault, the repair request is not charged, or free. Data changes in the form of an improvement in the name and / or

address of the Patent holder recorded and announced by the minister. Regarding the terms and procedures for recording data changes, it is further stipulated in the ministerial regulation.

The Patent Holder has the right to give a license to another party based on an exclusive or non-exclusive License agreement to carry out his patent and to prohibit carrying out his patent and to prohibit other parties without patent approval to use, sell, import, rent , submit, or provide for sale or lease or deliver a product that is granted a patent and in the case of patent-process: using the production process that is granted a Patent to make goods or other actions.[13] In the case of education, research, experiment or analysis, the prohibition above can be excluded to the extent that it does not adversely affect the reasonable interests of the Patent Holder and is not commercial.

Law No. 13 Year 2016 regarding Patents regulating the prohibition on using the Patented production process only applies to the import of products resulting from the use of products that are granted Patent protection. In the explanation of the Patent Law mentioned when a product is imported into Indonesia, but the process of making the product has been protected by a Patent, then the Patent holder can take legal remedies against the imported product. With a note, the product has been produced in Indonesia with a process protected by a Patent. Whereas the prohibition on using a production process that is granted a patent can be exempted in terms of the interests of education, research, experimentation, or analysis as long as it does not adversely affect the interests of the patent holder and is not commercial. This is important so that the implementation and use of patented works (inventions) are not used for purposes that lead to exploitation of commercial interests. So that it can be detrimental, maybe even become a competitor for Patent holders. Patent holders are obliged to make products. Even using product processes within Indonesian territory. Not only that, Patent holders in making and processing products must support technology transfer, absorption of investment and / or providing employment.

The TRIPS Agreement is an international agreement relating to aspects of intellectual property rights.

[13] Slamet Yuswanto. 2017. *Memahami Paten.* Bandung: Keni, p. 64.

This agreement has been ratified by the Indonesian government through Law Number 7 Year 1994. TRIPS provisions are deemed violated by Law No. 13 Year 2016 concerning Patents is Article 27. Article 20 of the Patent Law which requires holders of Patents to make products in Indonesia. Article 20 of Law Number 13 Year 2016 concerning Patents which requires Patent holders to make products or use processes in Indonesia violates the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Article 27 TRIPS states that there should be no discrimination, whether it is made locally or imported. In full, Article 27 paragraph (1) of the TRIPS Agreement reads, "Patents must be available and Patent rights are enjoyed without discrimination in relation to the place of discovery, in the field of technology and whether the product is imported or produced at the local level."

TRIPS rules can also protect Indonesians who have Patents. Article 20 is too discriminatory. If it is interpreted lexically, it means that the person who has a patent list is definitely an overseas person, even though many domestic people can register a patent even though there are only a few in number, but this contradicts the principle of equality of law. The law does not only protect the majority in this case foreign inventors that produce lots of patents, but the law must also be able to protect minorities (domestic inventors).

Article 20 Act No. 13 Year 2016 concerning Patents is still born with arguments for national interests. The initial Article 20 was formulated to make it easier for foreign investors to enter but the government could not force people to invest. Foreign investors or foreign Patent applicants feel that Article 20 is not in accordance with TRIPS and is not realistic to implement. The reason is First: related to the provisions of the obligation to implement Patents in Indonesia as stipulated in Article 20 above. While the second reason, allows the occurrence of cross-licensing that is mutually beneficial between the owner of the patent with the recipient of the mandatory license. The third reason is to protect the interests of patent holders or inventors. There are some who argue that the application of Article 20 is considered to be contrary to Article 27 TRIPs, stating that :

1) By paying attention to the provisions stated in paragraphs 2

and 3 of this Article, Patents are granted for all inventions, whether in the form of products or processes, in all fields of technology, as long as the invention is new, involves inventive steps and can be applied in industry (with provisions this, the meaning of "inventive step" and "can be applied in industry" can be interpreted in the same sense as "non obvious" and "useful". By paying attention to Article 65 paragraph 4, Article 70 paragraph 8 and paragraph 3 of this Article, Patents are granted fairly without questioning the place of discovery, technology, and whether the goods are produced domestically or imported.

2) Members may determine discoveries which are not granted by Patents, prevent exploitation of commercial discoveries within their territories if they are necessary for reasons to protect moral or public order, including to protect living humans, animals or plants or health or to prevent destruction. fatal to the environment, as long as the exception is not carried out only on the grounds that national law prohibits the exploitation of the invention concerned.
3) Members may also specify that the following are not granted Patents:
   (a) methods of examination/analysis, treatment/healing and surgery to deal with humans and animals;
   (b) plants and animals other than microorganisms, and biological processes for producing plants or animals other than non-biological and microbiological processes. However, Members must provide protection for plant varieties in the form of Patents or effective sui generis systems or a combination of both forms the protection.

Patent holders are obliged to make products or use processes in Indonesia, unless they are only feasible to be carried out regionally, provided that they are accompanied by a written request to the authorities. Making a product or using the process must support technology transfer, investment absorption and / or employment provision. Article 20

contains controversy in WTO countries that have signed TRIPs, the editorial of the Article is considered to be contrary to Article 27 TRIPs. Developed countries also object to the sound of Article 4 concerning Inventions that Patents cannot provide, considering that in developed countries many computer programs have been protected even business methods can be granted Patents. Article 78 concerning a licensing agreement contains provisions that could harm Indonesia's national interests or contain restrictions that hamper the ability of the Indonesian people to transfer, control and develop technology.

IV. Conclusion

There are several Articles in Law No.13 Year 2016 concerning Patents that have a high spirit of nationalism which is expected to improve technological progress and increase investment in Indonesia, but it is contrary to international law or TRIPs agreement, among them is Article 20, Article 4, Article 78 and Article 120. These Articles are contrary to Article 27 TRIPs, it is necessary to improve the rules on Patents through the Acts and implementing regulations below and make qualifications and classifications about products that are required to be made or use the process in Indonesia so that it can attract domestic and foreign investors from abroad to invest their capital and bring Patent technology to Indonesia.

The improvement of the rules regarding Patents through the revision of the Patent Law and implementing regulations under the law (for example provisions in PP, Perpu, Keppes and others) can also attract domestic and foreign investors from abroad to invest their capital and bring Patent technology to Indonesia, at the same time we can receive technology transfer through training carried out in the company by investors as an investment provider.

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