Legal Protection for Foreign Patent Holders in Indonesia According to Law No. 13 of 2016

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The purpose of this research is to determine the Protection of Foreign Patent Holders in Law No. 13 of 2016. This is normative legal research, also known as theoretical or dogmatic law, because it does not examine its implementation. According to Johnny Ibrahim, there are seven approaches used in normative law research, namely 1) Statute, 2) Conceptual, 3) Analytical, 4) Comparative, 5) Historical, 6) Philosophical, and 7) Case approaches. Law No. 13/2016 concerning Patents was made to protect inventors in line with Indonesia's involvement in ratifying international agreements, technological developments, industry, and trade. The Patent Law bestows oversight of legal protection for the national patent implementation. Also, it provides supervision as well as legal protection for foreign patent inventors, especially after being revised in the Job Creation Law no. 11 of 2020. This Indonesian law also protects foreign inventors whose inventions are found in Indonesian territory.

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Abstract

The purpose of this research is to determine the Protection of Foreign Patent Holders in Law No. 13 of 2016. This is normative legal research, also known as theoretical or dogmatic law, because it does not examine its implementation. According to Johnny Ibrahim, there are seven approaches used in normative law research, namely 1) Statute, 2) Conceptual, 3) Analytical, 4) Comparative, 5) Historical, 6) Philosophical, and 7) Case approaches[1]. Law No. 13/2016 concerning Patents was made to protect inventors in line with Indonesia's involvement in ratifying international agreements, technological developments, industry, and trade. The Patent Law bestows oversight of legal protection for the national patent implementation. Also, it provides supervision as well as legal protection for foreign patent inventors, especially after being revised in the Job Creation Law no. 11 of 2020. This Indonesian law also protects foreign inventors whose inventions are found in Indonesian territory.

Keywords: *Legal Protection, Foreign Paten, Law No. of 2016.*

INTRODUCTION

The implementation of legal politics is influenced by globalization and technology development, which affects various fields, such as patents. This is due to rapid technological developments recorded daily in the past few decades. These improvements are visible in the telecommunications, electrical and biotechnological sectors and evident in mechanics, chemistry, etc. Furthermore, there is increased public awareness concerning the utilization of simple technology.

In a highly populated country with abundant natural resources, such as Indonesia, this plays an important role in boosting added value and competitiveness in the processing industries. Irrespective of these indisputable facts, these developments have not reached the desired target. This is because it has not been optimally utilized in all fields, thereby failing to strengthen the country's ability to face global competition.[2]

Technological developments aim to improve the quality of mastery and use of technology to support economic transformation and boost competitive advantage. The innovative national system needs to be consistently strengthened by government or private research institutions to ensure natural and human resources proper utilization and empowerment. These include developing and applying information networks in strategic fields, especially scientific publications, technological services, and entrepreneurs.[3]

Technology plays a significant role in responding to national development problems and increasing economic growth in developing countries. Besides, economic and technological policies are increasingly integrated and harmonized to raise national competitiveness. Therefore, one of the policies is to increase the utilization of technology in the production sector to improve the national economy. [4]

Indonesia has several genetic resources, and domestic and foreign inventors generally use traditional knowledge to produce new inventions. Therefore, there are provisions regarding the transparent and honest mention of the materials used to determine their genetic and traditional knowledge.[5]

Irrespective of the smooth implementation of Law Number 14 of 2001 concerning Patents, certain national and international substances are no longer in accordance with legal developments, as well as not yet regulated by the standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights, hereinafter referred to as TRIPs approval, therefore it needs to be replaced.[6]

Based on this regard, Law Number 14 of 2001 concerning Patents needs to be amended. Therefore, in line with the

[1] Johnny Ibrahim, Teori& Metodologi Penelitian Hukum Normatif, (Malang: Bayu Media Publishing, 2008), p. 300.
[2] Explanation of Indonesian Law Number 13 of 2016 Regarding Patents, Paragraph 1.
[3] Ibid Paragraph2
[4] Ibid Paragraph 3
[5] Ibid Paragraph 4
[6] Ibid Paragraph 5

considerations, Law no. 13/2016 concerning Patents was established to protect inventors based on Indonesia's ratification of an international agreement, and the increasingly rapid development of technology, industries, and trade. Moreover, it is necessary to enact a policy that provides reasonable protection for Inventors as well as creates an honest and conducive competitive environment while generally considering public interests.

The meaning of Law no. 13/2016 concerning Patents is contained in Article 2, and its protection covers both foreign and local applicants. It contains applicable inventive steps, as referred to in Article 3. Furthermore, Article 60 of Patent Protection is evidenced by the issuance of a certificate with retroactive effect from the receipt date.

This legal policy is in the form of preventive or repressive protection, and is also applicable to foreigners. The registrants that benefitted from the amended Article 20 of Law No. 13 of 2016 are as follows. Therefore, based on the background, the research was titled “Legal Protection for Foreign Patent Holders in Indonesia According to Law No. 13 of 2016".

THEORETICAL BASIS

Patent Theory

Patents are Industrial Property Rights perceived as an aspect of intellectual property rights. This policy is not only limited to the protection and supervision of intellectual inventions with economic value, rather, it also regulates those privileges that are inherent in humans..

The word was originally derived from the *patere* which means to open up for public examination, and also depicts a decree that gives exclusive rights to certain individuals and businesses. Therefore, from the definition, this concept promotes inventors to use open knowledge for the betterment of society, and in return, they are offered exclusive rights for a certain period. Given that this privilege does not monitor those responsible for carrying out patented invention, it is not perceived as a monopolized system.

Budi Agus Riswandi stated that a patent is a special right that the State grants to inventors for their contribution in the field of technology.[7]

The purpose of granting a patent is to ensure every invention is made known to the public to protect their interest and provide benefits. The knowledge of these new inventions by the public is expected to provide information for those interested in developing further patent research and led to the creation of new innovations.

The World Intellectual Property Organization (WIPO) defines patent as follows "a legally enforceable right exclusively granted by law to a person, for a limited time, based on certain acts concerning the description of new inventions. This is authorized by the government and only those that suit the aforementioned condition are entitled to this privilege".

In accordance with the earlier mentioned definition, patent rights are exclusively granted by the government in terms of making certain discoveries. Furthermore, an invention needs to fulfill the Patent Law requirements, such as the possession of certain substantive principles, namely novelty, which is practiced in the industry (industrial applicability), have valuable inventive steps, and formal conditions. The received certificate indicates that the inventor has the right to use a foreign patent based on the ratification outcome of the Paris Convention in respect to the treaty signed by various countries to regulate industrial inventions. The provisions of this convention include:

1. The principle of national treatment is a national arrangement or assimilation related to industrial property, where each member is mandated to provide the same protection to citizens of other member countries..
2. The use of priority rights based on the first application for registration in a member country, where , the applicant is given a period of 6 to 12 months to apply for protection, tools, products and other items stipulated in the Paris agreement and is registered on the same day as the first individual that applied. The independence principle is applied especially by foreign patents, whereby the granting of these rights needs to be recognized by member countries. In the rules, priority right is the privilege to use the receipt of registration request or filing date

According to Gautama, the principle of "national treatment" basically states that foreigners need to be treated equally. Therefore, it is different from the concept of "most favored nation" or the application of similar conditions as those applied in countries that are considered to have the best facilities.

Conventions concerning other Patents asides Paris include (1) European Convention Relating to the Formalities Required to Patent Application of 1953, (2) European Convention for International Classification of Patents of 1954, (3) Patent Cooperation Treaty in Washington or tat of 1970 and others, such as the Strasbourg Agreement Concerning the International Patent Classification (4) European Patent Convention of 1973, and (5) The Community Patent Convention of 1975.

[7] Budi Agus Riswandi, *Hukum dan Hak Cipta, Bahan Ajar,* Yogyakarta, 2006, p. 11.

Justice Theory

The justice theory was first raised by Socrates and Francois Genny through the theory of natural law, and since then, it has been the main concept in legal science. Natural Law Theory prioritizes "the search for justice", irrespective of the fact that there are several others.

These are related to rights and freedoms, opportunities for power, income and prosperity. However, this also includes Aristotle, John Rawl and Hans Kelsen's theories of social justice in their books entitled “Nicomachean ethics,” “A theory of justice” and “General theory of law and state.”.

John Rawls put forward the justice concept in A Theory of Justice, Political Liberalism, and The Law of Peoples, which considerably influenced its valuable discourse. It was further stated that this attribute is the main virtue associated with the existence of social institutions. However, it does not override or challenge people’s sense of justice, especially the weak. John Rawls specifically developed the justice principles by completely adopting the "original position" and "veil of ignorance."

Rawls positioned the existence of equal and comparable conditions among every individual in society by stating that everyone is equal, and this leads to a certain form of agreement. Rawls's view rests on a reflective equilibrium based on some characteristics such as rationality, freedom, and equality, which aids in regulating the basic structure of the society.

Meanwhile, in the "veil of ignorance" concept, John Rawls stated that everyone is faced with the closure of all facts and circumstances about themselves, including certain social positions and doctrines, therefore this ignorantly led to the development of justice. Rawls was able to propose the fair equality principle according to the theory referred to as "Justice as fairness".

According to John Rawls, the principle of justice is an important attribute, and it is similar to equal liberty, which proposes freedom of religion, politics, speech, and expression. Meanwhile, the second principle of difference is related to equal opportunity.

Furthermore, the enforcement of the principle of justice concerning community welfare is realized through two events, namely, first, ensuring everyone is entitled to equal rights and opportunities, including freedom. The second is reorganizing the existing socio-economic inequalities, thereby providing reciprocal benefits.

This means that the principle of difference is expected to govern the basic societal structure to overcome the gap relating to achieving prosperity by the less fortunate people. Therefore, social justice strives to achieve two attributes. First, improve the inequality condition experienced by the poor and disadvantaged persons by creating empowering social, economic, and political institutions. Second, every regulation serves as a guide for implementing various policies to improve the injustice experienced by the weak and poor.

Legal Protection Theory

Law is not just created because its existence in society is useful for integrating and coordinating conflicting interests. Therefore, it is expected to protect all groups and suppress the agitation. According to the Big Indonesian Dictionary, legal terminology is defined as an officially binding regulation or custom implemented by the government to monitor social life, standards, or rules regarding certain natural events, decisions, considerations, or verdicts passed by judges in a court of law .

Therefore, legal protection functions as a concept that provides justice, order, certainty, benefit, and peace. It is defined as follows:

1. Satjito Rahardjo described it as an effort to protect a person's interests based on Human Rights power.
2. According to Setiono, legal protection is an act or effort to defend the community from arbitrary actions that are not in accordance with the rule of law to ensure peace and order, thereby protecting human dignity.
3. Muchsin described it as an activity to protect individuals by harmonizing valuable relationships or rules as manifested in attitudes and actions to ensure orderliness in society.
4. Philipus M. Hadjon stated that legal protection is always related to government and economic powers. Meanwhile, government power refers to the issue of protecting those governed from their leaders. Concerning economic power, it protects the weak from the strong, for example, the protection of workers from their employers.

METHODS

Normative legal research, also known as theoretical or dogmatic law, was the adopted methodology because it does not examine the implemented policy. Johnny Ibrahim proposed seven approaches used in normative legal research, namely

1) Statute, 2) Conceptual, 3) Analytical, 4) Comparative, 5) Historical, 6) Philosophical, and 7) Case approaches[8].

Meanwhile, Peter Mahmud Marzuki reported that there are 5 approaches in normative legal research, namely 1) Statute, 2) Case, 3) Historical, 4) Comparative, and 5) Conceptual approaches. [9] with their systematical meanings. The statute approach reviews and analyzes all existing laws and regulations related to the legal issues handled.

The case approach is a study of the issue at hand, dependent on the court's decisions with permanent legal force. The main object is the ratio *decidendi* or reasoning, which the court's considerations before passing judgement[10].

A case approach is different from others because it involves the analysis of several circumstances which serve as a reference to legal issues. Conversely, a case study is the investigation of a particular situation from various legal aspects. The historical approach is carried out by reviewing the background and the developmental arrangements regarding the issues at hand. Meanwhile, the comparative approach involves comparing the court decisions or laws implemented in various countries concerning the same matter. The conceptual approach is analyzed from the views and doctrines related to law science.

When using a normative legal approach, the law is positioned as a system of norms. This means that it is perceived as principles, values, rules of statutory regulations, and court decisions. In carrying out this method, a normative case study in a legal, behavioral product reviews the law. The law is conceptualized as a norm or rule that applies in society and serves as a reference. Therefore, normative legal research focuses on an inventory of positive laws, principles, doctrines, discoveries *in concreto*, systems, synchronization levels, comparisons, and histories.[11] [12]

RESULT AND DISCUSSION

Patent Protection in Indonesia

The Intellectual Property Right (IPR) is regulated by Law no. 7 of 1994 concerning the ratification of the WTO (World Trade Organization). IPR is defined as rights to property arising from human intellectual abilities. In this rule, the patent is an aspect of Intellectual Property (IP) that needs to be protected because it is an individual's right to make discoveries in technology. Patents have a strong influence on the business and scientific world as well as boosts profit. The patent functions in line with the national and international economy.

A patent is one of the major concerns in the protection of Intellectual Property, the Paris Convention, and the International Trade Related of Intellectual Property Rights (TRIPS) Agreement. Its inclusion in the TRIPS Agreement indicates that legal protection is an essential strategy in the international trade framework.[13]

The legal basis for international patent regulation includes conventions, the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Right including Trade in Counterfeit Goods), related to intellectual property rights including counterfeit trade, and the Paris Convention. In addition, this is also regulated nationally.

In Indonesia, the practice of implementing foreign patent protection is still experiencing obstacles due to the enforcers' lack of knowledge and understanding, which needs to be improved. This led to frequent violations such as patent piracy and imitation, and the perpetrators were usually individuals, companies, or organizations.

Therefore, the law ensures patent registration protects inventors, provides useful certificates as legal evidence, and also as proof of ownership of the same patent applied by others for the benefit of a product or process. This also serves as a basis for preventing claims by other individuals or organizations using similar technology.

The patent certificate also ensures the smooth running of business transactions in a country, legally protects the individuals and organizations involved, and maintains economic stability, especially in the state and society. The practice of imitation and counterfeiting tend to harm various parties, including entrepreneurs that own the right to product technology and also consumers, therefore, there is a need for legal protection.

Furthermore, patents are an important element of trade and business development, and it is inseparable from technological growth. Inventors in technology need to register their findings to avoid being claimed by other parties.

Patent rights are one of the scopes and objectives of intellectual property rights.[1] Article 503 of the Civil Code states that

[8] Johnny Ibrahim, *Teori& Metodologi Penelitian Hukum Normatif,* (Malang: Bayu Media Publishing, 2008), p. 300.
[9] Peter Mahmud Marzuki, *Penelitian Hukum,* (Jakarta: Kencana, 2009), p. 93.
[10] H. Salim HS, dan Erlies Septiana Nurbaini, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi,* (Jakarta: Raja Grafindo Persada, 2013), pg. 18.
[11] Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. (Cet. 1. Bandung: PT. Citra Aditya Bakti 2004). p. 52
Abdulkadir Muhammad. . *Hukum dan Penelitian Hukum*. (Cet. 1. Bandung: PT. Citra Aditya 2004) p. 52
[13] Carlos Correa. *Trade-related aspects of intellectual property rights: a commentary on the TRIPS agreement*. (Oxford University Press, 2020),h. 1-33. Bandingkan dengan Can Huang. "Recent development of China's intellectual property rights system and challenges ahead." *Management and Organization Review*, Vol.13, No.1 (2017), p. 39-48.

"Every object is bodily and not bodily."[14] Meanwhile, not physical objects are also referred to as intangible, and the bodily ones have the same meaning as tangible. Interestingly, Intellectual Property Rights (IPR) include tangible and intangible objects. Generally, immovable objects are perceived as material rights, either transferred to other parties or used as collateral with a fiduciary.

Article 499 of the Civil Code stated that "property rights control every item or object."[15] According to this law, Patent Right is an aspect of the Intellectual Property Rights that includes material or immovable objects transferred from the patent holder to another party. Therefore, the receiving party benefits economically due to the previously bound license. This is perceived as a counter achievement, where the receiving party pays royalties to the patent holder in accordance with the agreement.

In-Law no. 13 of 2016, the granting of licenses to inventors is contained in Chapter II of the Scope of Patent Protection Article 2 includes simple patents. Article 5 paragraph (1) stated that an invention is considered new, as referred to in article 3 paragraph (1), in accordance with the date on the receipt. However, this is different from paragraph (2). In paragraph (1), the previously disclosed technology was announced inside and outside Indonesia through written, oral and demonstrative description and in ways that allow the invention's execution before the receipt date. Furthermore, the application is filed based on the priority right in some cases. In paragraph (3), the previously disclosed technology in paragraph (1) includes other documents published on or after the receipt date for which a substantive examination is performed. However, in this case, it was issued earlier than the stipulated date.

Article 6 of Law No. 13 of 2016 stated that the excluded persons were based on the provisions in Article 5 paragraph (2). An invention need not be announced, assuming it was discovered within six months before the Receipt Date. Furthermore, it has to be: a.) exhibited or officially recognized, both home and abroad, b.) used by its inventor in the context of experimental research or for developmental purposes, c.) announced by the inventor during a scientific trial in the form of a thesis, or dissertation, and other forums in the context of discussing the analyzed results at educational or research institutes. (2) An Invention does not need to be announced, supposing it was made public within 12 months before the Receipt Date by another party, thereby violating the obligation to maintain confidentiality.

The invention of a product granted a foreign patent in accordance with Law No. 13 of 2016 is applicable to its production, use, transfer, rental, licensing, and importation. Meanwhile, this policy is only applicable to its utilization in circumstances related to a' process'. An exception is in the case of the invention of a 'process' assuming, it is related to a product', and then foreign patents are applicable to its use as well as rental, and importation.

However, not all completed inventions are patented[16], referring to Law No. 13 of 2016 Article 9, several of them are not, including a. the announcement, utilization, and implementation of any process or product contrary to decent or religious regulations, and public order, b. examination, treatment, and differentiation method exhibited on humans and animals, c. science and mathematical theories, d. living things, except micro-organisms, and e. biological processes essential for plants and animal growth, however, non-biological or microbiological procedures are excluded.

Legally, granting a patent certificate simply means validating an invention under the Patent Law. Inventors obtain a certificate after they have fulfilled the necessary requirements in accordance with Article 58. According to this law, (1) the Minister approves the application, after a substantive examination, ensuring the invention satisfies the provisions referred to in Article 54. (2) immediately the application is approved, the Minister notifies the applicants or their proxy in writing that they have been granted a Patent. (3) Within a maximum period of 2 (two) months from that notification, the Minister issues a Patent certificate. (4) The applicant is unable to withdraw the application or make corrections to the descriptions and claims referred to in paragraph (3), within this period. (5) Patents that have been granted are recorded and announced, excluding those related to the interests of state defense and security. (6) The Minister provides excerpts or copies of these documents to parties that need them for a certain amount. Furthermore, Article 59 mandates that (1) a Patent Certificate is proof of the holder's right. (2) This is referred to in paragraph (1) as determined by the scope of protection based on the invention described in the claim. (3) Patent rights, as referred to in paragraphs (1) and (2) are intangible movable objects. After obtaining the minister's approval, the owner obtains a certificate retroactive from the Receipt Date as referred to in Article 60 concerning Patent Protection.

Therefore, an invention has to fulfill the patentable requirements according to the Patent Law no. 13 of 2016 to obtain the patent rights for foreign inventors. Inventors are granted patents when applied in a patented industry because those only used for academic or experimental purposes are not deemed valuable enough to be protected because it was excluded in the aforementioned policy, which is specifically centered on boosting industrial growth. Interestingly, "Industry" in the Patent Law simply means various kinds of enterprises, including non-productive transportation and

[14] Subekti dan R Tjiprosudibio, *Kitab Undang-Undang-Undang Hukum Perdata*, 10th Edition, (Jakarta: Pradnya Paramita, 2003), p. 157
[15] *Ibid,* p.157.
[16] Likewise, patents cannot be granted to know-how because of technical knowledge, data, and other important information useful for creating a product or working on a method. However, both patents and know-how can be the object of a license.

productive establishments such as manufacturing, mining, agricultural firms, etc.

The system grants an exclusive right to someone that has published a new invention with compensation for legal protection within a period, as stipulated in Patent Law no. 13 Article 22 paragraph (1). It was stated that a patent is granted for 20 years based on the receipt date on the application. Meanwhile, going through certain conditions opens up opportunities for third parties to take advantage of the published findings. This also contributes to industrial development by seeking harmonization between persons that have obtained a patent and third parties bound by its rights.

A patented invention needs to be new without previous existence because it tends to be regarded as a bad idea. Furthermore, it is not good for society to grant exclusive rights to a widely known invention. The Patent Law does not cover discoveries that lack certain elements. The missing 'novelty' is determined based on the time the application was filed. In this case, the hours and minutes are as important as the date. Interestingly, when an application is submitted in the afternoon, and another publishes a similar finding at a study meeting held on the morning of the same day, the invention is presumed to lack novelty.

Widely known' is defined as a generally common condition to the public. In the Patent Law, this means that it is accepted by someone that is not familiar with the inventor. Meanwhile, when an invention is presumed to have lost its 'novelty,' it gets exceptional legal assistance under certain conditions. Furthermore, every foreign inventors that wish to apply for an exemption need to submit a patent application within six months from the date when the novelty is lost and a written statement regarding the matter and other documentation to prove the problem occurred within the specified timeframe. Although such an application is eligible for exemption, assuming that someone else filed the same invention. The former inventor is unable to obtain a Patent because their application was filed earlier than the other person.

Law No. 13 of 2016 contains an assessment requirement, namely when an invention is 'easily' made, it is generally evaluated 'because it does not contain inventive steps'. The reverse is reported to be the case by someone that is knowledgeable or an expert in the field of technology. Even when an invention has been successfully made by a genius in the field of science, and it turns out to be difficult for someone else that has an average ability in the related study area, it is not rejected. On the contrary, supposing it is made by a minor that experiences various complications during the discovery, it is bound to be rejected.

When two or three inventions are discovered simultaneously in Japan, and a patent application is submitted to the JPO, at almost the same time, the license is granted to the first person to make the submission. This is in accordance with the purpose of the patent system to protect individuals that wish to publish their invention for the first time. The 'who submits first' and the 'who finds first' systems are certainly different.

In exceptional cases, the granting of a patent in Indonesia is intended to boost public interest, besides, there are two types, namely absolute and limited. Absolute exceptions have definite criteria, as follows:

1. The discovery of a process or product whose announcement, utilization, and implementation are contrary to the prevailing religious and moral regulations, as well as public order,
2. Discoveries about theories or methods adopted in the fields of science and mathematics,
3. Discovery of the examination, treatment, and surgical methods applied to humans and animals,
4. The discovery of all living things, except micro-organisms,
5. Discovery of biological processes which are essential for plants and animal growth, excluding non-biological or microbiological procedures.

Exceptions to patents are described as limited means, such as suspending grants due to public interest. This provision is essentially a postponement, for instance, supposing an invention is deemed important for the successful implementation of a program in a certain field, the government tends to postpone the issuance of the requested patent for a certain period. In Indonesia, this lasts for a maximum of 5 years from the date stipulated by the government. These kinds of exemptions are determined in various countries based on their discretion.

For instance, supposing an inventor wishes to obtain a Patent in another country, the application needs to submit in their language and in accordance with the Patent system. The trend of filing for registration in several countries is based on important inventions. Besides, such patents are related to one another and are considered as family. However, when searching to get information from various sources, it is easier to get a classification of a given Patent according to the field of invention.

The general principles in the Patent Law include (1) territorial, (2) a certificate is granted based on application, (3) the obligation to disclose inventions, and (4) the period of protection. The application needs to be accompanied by a specification and complete description of an invention, and when found worthy, it is then granted by the state. This causes the holder to feel protected, thereby spurring industrial development. Due to the fact that the granting of patents lasts for only 20 years when the period expires, the invention is regarded as a public domain, and exploitation is

perceived as a violation of the law. In other words, the issuance of this certificate also acts as an incentive for industrial development.

Baxter stated that *"Although Patent laws vary in many countries, there are certain common features, namely, the granting of Patent rights for a new invention capable of industrial application."*[17] Articles 2 and 3 of the Indonesian Patent Law also stipulated that inventive, applicable, and novelty steps are required to obtain a Patent. Its application is filed for either one or several inventions, and an integral part is a payment of fees to the Directorate General of Patents, provided that it contains (1) date, including the month and year, (2) complete identity, (3) title of the invention, (4) claim, (5) description, (6) pictures, and (7) the abstract of the invention. Foreign patent applications registered in Indonesia also use Priority Rights as stipulated in the Paris Convention for the Protection of Industrial Property or members of the Agreement Establishing the World Trade Organization.

In accordance with the aforementioned opinions, granting a patent is specifically based on developing science and technology. It is also issued due to the following purposes (1) awarding work in the form of a new invention (rewarding). The Patent System is the main legal basis that plays an important role in a country's economy. Therefore through certain policies that regulate industrial technology and trade, rapid economic development tends to be obtained, (2) providing incentives for an invention or innovative work. Based on this right, profit is made, supposing the invention is commercially produced, sold, or licensed in exchange for royalties, (3) Patents are a source of information published to enable the public to gain new knowledge and stimulate further discoveries. Immediately, the term expires, everyone is free to use the invention (public domain). It is also improved and adopted by others and serves as a basis for new and sophisticated discoveries, used for technological and economic development.

Purpose of Protection and Supervision on Foreign Patent Implementation in Indonesia

Patent rights are the scope of Intellectual Property Rights only granted by the state to inventors in technology that play a strategic and important role in supporting the development and promoting public welfare. These works are regarded as assets that are enjoyed, transferred, and utilized, by other parties, thereby deriving economic benefits from the patent rights bound by a licensing agreement.

Legal protection for foreign patent holders aims to motivate local inventors to improve the quality of their work, thereby boosting the welfare of the nation and state and creating a healthy business climate. Patents are granted protection not only for inventions in the field of technology, however, it also covers the holder's exclusive rights. Therefore, the other party needs a license to enjoy the economic benefits.[18]
Law No. 13 of 2016, Article 2 covers foreign and local applicants. Patents granted for new discoveries contain inventive steps that are applicable to the industry as referred to in Article 3. According to the provisions referred to in Article 59 paragraph 1, concerning Patent Certificates as evidence of Patent Rights and in paragraph 2, applications that have obtained protection are determined based on the invention described in the claim. Article 60 is evidenced by the issuance of a patent certificate which is retroactive from the receipt date.

Patent protection protects both national and foreign inventors in Indonesia. It also motivates others to produce works in technology to advance society and the nation. Presently, many people depend on technological means, which provides convenience and speed in obtaining information to meet their needs.

Patent rights not only have economic value it also offers certain benefits for those that use them based on an agreement with the holder. Therefore, these legal terms also apply to this policy. The Indonesian patent law provides legal protection for both national and foreign inventors registered in the country.

This is important because its various natural resources need to be properly utilized for the people's welfare. Therefore, through Law No. 13 of 2016, the government protects foreign and national inventors to boost new discoveries.

The Patent Law No. 13 of 2016 has new regulations regarding the protection of simple patents. Although it was not clearly regulated, the government also encourages foreign inventors to obtain Priority Rights, as stated in the provisions of Law no. 13 of 2016 Article 1 Point 10. An applicant from any of the member states of the Paris Convention for The Protection of Industrial Property or the Agreement Establishing The World Trade Organization to receive the recognition and submit an application that the Receipt Date in the country of origin is prioritized at the destination as long as the submission is made within the stipulated period. Article 20 of Law No. 13 of 2016 paragraph (1) mandate Patent Holders to manufacture products or use processes in Indonesia. Furthermore, Paragraph (2) stipulates that paragraph (1) needs to support technology transfer, investment absorption, and job creation. This depicts the provision of legal protection to

[17] Baxter, JW. *World Patent Law and Practice.* (London, Sweet & Maxwell: 1973) p. 24.
[18] Abdulkadir Muhammad, *Kajian Hukum Ekonomi Hak Kekayaan Intelektual*, (Bandung: PT Citra Aditya Bakti 2007), p. 3.

inventors in various technology fields. The policy in question is Law Number 13 of 2016 concerning Patents[19].

Furthermore, the Patent Law of 2016 itself was established not only to protect local and foreign inventors, rather it is also a form of commitment to implement the Indonesia Agreement Establishing the World Trade Organization in 1994.

It contains the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which regulates patent issues. With the ratification of TRIPs, this country is also obliged to harmonize its national laws.

Data from the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights shows that Indonesia's number of applications registered was only 1663, consisting of 1315 patent and 348 simple patent applications.[20]

Amendments to Article 20 as well as Its Impact on Patent Protection and Control in Indonesia

Irrespective that many foreign patent cases are registered in Indonesia, they are not operational. However, when viewed from the economic side, it is detrimental to the country because the registrant is unable to invest. Foreigners experience several problems during application, firstly, not all foreign patent holders are large companies. Secondly, they do not necessarily want to apply for their patents in circumstances when they have only one product, judging from the investment feasibility point of view, because this can be detrimental to foreign patent holders. Meanwhile, when thoroughly examined the problems faced by foreign holders in exercising their patent in Indonesia, it is referred to as discriminatory as regulated in Article 27.1 of the TRIPs Agreement.

The revision of Article 20 of the Patent Law in Article 110 of the Omnibus Law on Job Creation motivates foreigners to apply for their patents. One advantage of this policy is that asides from technology transfer realized through licensing, foreign patent holders are able to carry out import activities even when they do not have sufficient budget to carry out the obligations stipulated in article 20 paragraph 1, which has been revised, in respect to the implementation of these patents in the country.

The revision of article 20 of Law No. 13 2016 creates opportunities for foreign patent registrants or owners to invest in Indonesia and allows them to use their license to import pharmaceutical products, which has a long-term impact on the fulfillment of health insurance for all Indonesians.

Article 20 of Law no. 13 of 2016 paragraph (1) states that "Patent holders are required to manufacture products or use processes in Indonesia," paragraph (2) "Manufacturing the product or using the process as referred to in paragraph (1) needs to support technology transfer, absorption of investment and the provision of employment." Furthermore, paragraph (1) was amended to "Patents needs to be implemented in Indonesia" while in that of (2) its implementation as referred to in paragraph (1) are as follows:

1. Application of a product-Patent includes manufacturing, importing, or licensing an item that has been granted a Patent.
2. The application of a Patent-process involves the manufacturing, licensing, or importation of the resultant item, or
3. Application of methods, systems, and usage of the manufactured, imported, or licensed products that have been granted patent.

“The revision of Article 20 allows the government to overcome the scarcity of drugs due to lack of raw materials and tend to easily access them through Product Patents, Process Patents, and Indonesian Method Patents. This is because foreign patent holders are under no obligation in accordance with article 20 revised in the Job Creation Law no. 11 of 2020. It, therefore, enables foreign pharmaceutical companies to make importation before manufacturing and selling their products in Indonesia.”

The government's decision to amend Article 20 of the Law on Patent is balanced or aligns with the obligations of foreign registrants or holders while still requiring them to carry out technology transfer and investments after this policy was revised. Amendment of the provisions stipulated in Article 20 of Law No. 13 of 2016 and the Omnibus law states that the government prioritizes the community's interests, especially the need for chemical and pharmaceutical raw materials to strengthen and extend the country's resilience in the health sector.

Regarding the amendment of Article 20 of Law No. 13 of 2016, referring to the Academic Paper of the Job Creation Bill, there are seven reasons the government wants to revoke this regulation. First, product manufacturing obligations concerning patents and technology transfer need to be flexible. Second, Article 20 of the Patent Law violates the TRIPs Agreement. Third, its violation results in the revocation of the patent. Fourth, the provisions of Article 20 of the Patent Law are not applicable to all types of technology. Fifth, technology transfer obligations and patent processes reduce

[19] Law Number 13 of 2016 concerning Patents
[20] Patent Statistics Report of the Directorate General of Intellectual Property Rights

investment. Sixth, in practice, it is difficult to implement. Seventh, technology transfer is difficult to practice domestically.

Based on the government's reasons in preparing the Bill on Job Creation, Article 20 of Law no. 13 of 2016 concerning Patents was amended. It was suspected that an in-depth study, was carried out to understand the urgency of the article, which from the beginning of its enactment, these provisions were regulated. The implementation of Patents in Indonesia, the Transfer of Technology, and Investment aims to provide jobs for domestic workers using local working requirements. Therefore, Article 20 paragraphs (1) and (2) need to be amended. These certainly have limitations, although it is also beneficial to the state. It is appropriate for the government to revise this section by strengthening paragraph (2) Article 20 of Law no. 13 of 2016 (2) regarding the implementation of the patent referred to in paragraph (1) due to the following reasons.

1. Patent-product implementation includes manufacturing, importing, or licensing the patented item.
2. Patent-processing involves the manufacturing, licensing, or importing of products resulting from the patented process, or
3. Implementation of patents - methods, systems, and usage, including the manufacturing, importing or licensing of products granted a patent.

Article 20 of Law No. 13 of 2016 aims to educate the nation through technology transfer, and the patent obtained by the registrant is in accordance with the norms contained in the Preamble of the 1945 Indonesian Constitution, related to the goals and the foundation of the state philosophy (Filosofische Grondslag). The abolition of Article 20 of Law no. 13 of 2016 was carried out through an in-depth study based on the social and economic conditions of the community.

Furthermore, the amendments to Article 20 paragraphs (1) and (2) of Law No. 13 of 2016 do not conflict with TRIPS Article 27 paragraph 1. TRIPS regulates the protection of industrial works in accordance with the minimum norms and standards stipulated in the Trade-Related Aspects of Intellectual Property Rights / TRIPS (Bambang Kesawo, 1999). This includes the secured subject matter, terms of protection, exceptions, licensing, etc.

Justice According to Patent Law No. 13 of 2016

In the letter (a), a patent is an intellectual property granted by the state to an inventor in the field of technology that plays a strategic role in supporting the nation's development and advancing the general welfare. Furthermore, this is also validated based on the principle of justice. Explanation of letter (c) refers to the fact that increasing patent protection is essential because it motivates inventors, thereby promoting the nation and state's welfare and creating a healthy business climate. The regulation on patent protection in point c provides a sense of fairness because it creates a balance between the individuals' interests and that of the society. Therefore, a common thread is drawn in this context mandating the need for these provisions to strike an equilibrium to achieve justice.

Meanwhile, the foreign and straightforward patent also needs to ensure fairness in the distribution and use of technology, especially by parties with limited ability. In line with that, John Rawls' principle of justice serves as a justification.

This principle must be applied to the basic structure of society, regulate the transfer of rights and obligations, and distribute economic benefits. John introduced the theory of fairness, which involves the concept of distributive justice, and later put forward 2 other principles. First is the greatest equal liberty principle, which states that everyone has an equal right to freedom. Second, it is necessary to regulate social and economic inequalities to benefit members of the society that are less fortunate (the difference principle), and every position is open to all parties (principle of equal opportunity).

Rawls also prioritized these principles with the greatest equal liberty taking precedence over the demands of equal opportunities and the distribution of resources for all parties. In terms of the second principle, where there are two demands, equal opportunity is prioritized over the difference principle. Similarly, inequality tends to be carried out, supposing it benefits everyone, especially the less fortunate.

This principle justifies the relevance of equal opportunities in terms of obtaining foreign patents. It concerns the first proposition made by John Rawls. However, in today's context, patents are a commercial tool used by both individuals, and institutions, as an asset in achieving maximum economic benefits. Furthermore, John Rawls' second principle serves as a basis to justify the public interest in protecting patients. Law No. 13 of 2016 guarantees the freedom of every individual, including foreigners, in obtaining this right, which protects the interests of the community at all levels by providing equal justice, including the disadvantaged ones that are unlikely to survive without special treatment. Referring to this theory, standardization and harmonization of Patent Law No. 13 of 2016 is based on "one size fit all" principle without considering social and economic imbalances perceived as an act of injustice. Furthermore, Rawls' theory of distributive justice is often equated with the social one. In this context, direct state involvement is required to

provide a sense of justice in society. Law No. 13/2016 concerning public interest in the protection of intellectual property rights, including patents, has received strong normative, constitutional, and philosophical justifications.

Abolition of Article 20 of the Patent Law paragraph (1) states that “Patent holders are required to manufacture products or use processes in Indonesia," while (2) mandates that "Manufacturing the product or adopting the process referred to in paragraph (1) needs to support technology transfer, absorption of investment and employment opportunities," thereby creating a sense of justice which emphasizes on public interest. This policy was amended, and paragraph (1) states that "Patents needs to be implemented in Indonesia," and in (2) its implementation as referred to in paragraph (1) is reported as follows:

1. Application of a product-Patent includes manufacturing, importing, or licensing an item granted a Patent.
2. The application of a Patent-process involves the manufacturing, licensing, or importation of goods resulting from the procedure, or
3. The application of methods, systems, and usage, including the manufacturing, importation, or licensing of the resultant products

Articles 1 and 20 of Patent Law no. 13 of 2016 before its revision stated that foreign patent holders are usually reluctant to make new inventions in the country. Moreover, in practice, many companies register their patents in many countries. According to this research, it is impractical to set up a factory at a high cost with only a particular patent in several nations, and most of those that take advantage of the supply and distributive chains are sophisticated firms that serve their customers worldwide.

This obligation also contradicts the principle of non-discrimination as stipulated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Article 27 paragraph (1) states that "Patents need to be available and the rights enjoyed without discrimination concerning the place of invention, the field of technology and whether the product is imported or produced locally." Therefore, the revision of Article 20 through the Copyright Law No. 11 of 2020 stated that licensed or imported products from patent holders are also allowed.

The revision of Articles 20 and 2 on the Implementation of Patents is as referred to in paragraph (1) letters a, b, c. The enactment of patents-products involving the manufacturing, importation, and licensing of granted goods also causes the government to create technology transfers and expertise training for Indonesian workers. According to Aristotle, justice is essentially granting equal rights and not equality. Aristotle further reported that it is perceived as a unit, therefore, legally, every citizen is equal. Proportional equality gives everyone the right according to their abilities and achievements. Regarding importing raw materials, Indonesia also has the advantage of supporting the production of the generic version of drugs needed by the public, especially during emergencies, using mandatory licenses. On the import aspect, it was also reported that apart from the community, employees also benefit from this procedure, by running the production process effectively, in addition, it also provides job opportunities. This is certainly in accordance with John Rawls' theory, that justice is the main virtue of social institutions. However, it is unable to override or challenge everyone’s sense of fairness, especially the weaker communities.

Another advantage of the amended policy is ensuring the articles are also functional, especially for unimplemented foreign patents due to constraints on their financial capacity. For example, it is related to article 82 concerning compulsory licenses and that of 109 regarding the revision regulated in Patent Law No. 13 of 2016, especially concerning imported raw materials. The first is related to state defense and security, and the second is regarding the urgent need for community benefit.

The government's decision to revise Article 20 of paragraphs 1 and 2 is balanced between the obligations of foreign registrants and patent holders as well as mandates them to carry out technology transfer through licensing and investment in Indonesia. Law No. 11 of 2020, concerning job creation as stipulated in article 20, which was clearly amended in accordance with the following statements (1) Patents need to be implemented in Indonesia. (2) Its implementation, as referred to in paragraph (1) are a.) exercising patents including the manufacturing, importation, or licensing of items that are granted a patent. b.) Execution of Patents-processes which include manufacturing, licensing, or importation of patented products, and c.) Application of a method, system, and usage, including the manufacturing, importation, or licensing of the patented products. Amendment of the provisions stipulated in Article 20 of Law No. 13 of 2016 and the Omnibus law concerning job creation enacted in Law No. 11 of 2020 shows that the government understands the interests of the community and protects foreign patent owners of pharmaceutical companies as well as provide opportunities for them to be able to import raw materials, especially in the health sector and other industries. Fortunately, the government has no conflicting issues with John Rawls' principle, whereas when viewed from the theory of distributive justice, everyone is given a portion according to their achievements. However, when linked to Law No. 13, it is perceived as fair. In cases related to the exchange of goods and services, commutative justice offers the same amount to everyone without discriminating against their achievements. Relating to Article 1 of Law No. 13 of 2016, a patent is an exclusive right granted by the state to an inventor for the discoveries made in the field of technology for a certain period. The invention is either implemented by them or approval is given to other parties, therefore, this law is

perceived as unfair. However, with the amendment of Article 20 of Law No. 13 of 2016, it is evident that this is a fair regulation because the government understands the community's interests and the tendency to provide chemicals and raw materials for pharmaceutical companies to strengthen and prevent society as well as the state from scarcity of drugs, medical devices and other strategic industries.

The revision encourages investors and foreign patent holders to carry out their activities in the country. Therefore, it is used by those that have exclusive rights, and to some extent, it has not been used due to regulatory obstacles in article 20. Another factor that makes it easier for patent holders is the revision of article 20 of Law No. 13 of 2016. This is due to the high-cost burden, specifically for the patented product. These are chemicals or pharmaceutical ingredients, certainly imported for the benefit of supporting drug production, besides, it is also applicable to any method.

In process patents, owners are issued license or authorized to import patented products. This condition motivates foreign patent holders to be able to make new discoveries because, according to the provisions of Article 20 of Law No. 13 of 2016, there was no obligation before it was revised.

The amended law indirectly improves community welfare as a result of providing opportunities for foreign patent holders relating to the granting of licenses or investing in the legal justice system. Those granted licenses have indirectly transferred technology and created jobs in this context. On the contrary, foreign inventors usually apply for patents and benefit from licensing, thereby fulfilling legal justice.

The government realizes this through the Ministry of Law and Human Rights mandating foreign patent holders to submit proof of license agreements and product sales. In addition, this is accompanied by a statement that proves the patent has been used in Indonesia. Another obligation that needs to be fulfilled is appointing an Indonesian representative as part of the license agreement.

The representative has the obligation to register the Ministry of Law and Human Rights or Cq with the Director-General of Intellectual Property Rights regarding compulsory licenses. Therefore, when there is a legal problem in the country, they do not have to present the right holder. The compulsory license to exercise a patent is in accordance with the ministerial decision, regardless of whether it was not implemented, as referred to in Article 20. Meanwhile, after 36 months of being granted a patent can be avoided because the foreign holder has exercised responsibility through the license that has been granted.

The holder or licensee exercises the patent under certain conditions that are detrimental to the public interests. The outcome of those previously granted were not implemented without using one that is under legal protection. However, the implementation implies a transfer of technology and the creation of jobs for the Indonesian community.

Relation of Justice Law No. 13 2016 with the 1945 Constitution

The 1945 Constitution does not mention the protection of objects belonging to individuals or legal entities. However, this does not imply that property rights do not receive positive legal protection. In the body of the Constitution, only Article 33, paragraphs (2) and (3) refer to objects. Although literally, paragraph (2) does not explicitly mention these items, and it stated that "The state controls branches of production that affect the people's livelihood." According to Paragraph (3) "earth and water and the natural resources contained therein and are controlled by the state as well as used for the greatest prosperity of the people." Paragraphs (2) and (3) have a close relationship with these objects, especially regarding material rights, because these provisions provide legal justification for the state and the government to carry out social functions that benefit the public interest at the national and community levels.

Interestingly, when linked to the 1945 Constitution, it is evident that a close relationship exists between them. This is proven by Articles 27, 28, and 33 of paragraphs (2) and (3).

Article 27 paragraph (2) 19 of the 1945 Constitution states, "Every citizen has the right to work and earn a decent living for humanity." In fact, the work or activity to reproduce a product called copyright is the right of every individual and is guaranteed and protected by the 1945 Constitution. Moreover, artists' work, such as painters, sculptors, batik makers, music composers, and singers, are clearly jobs engaged in to earn a living.

For example, the work of an artist like Basuki Abdullah offers a lot of sustenance when it is valued in terms of money as well as honor and good name.[21] Therefore, the outcome of the creator to produce copyrighted works is perceived as a right to decent living as stipulated in Article 27 paragraph (2).[22] According to the 1945 Constitution Article 28 M

[21] Syafrinaldi, *Hukum Tentang Perlindungan Hak Milik Intelektual* Dalam Menghada*pi Era* Globalisasi, *(*Pekan Baru : UIR Press, 2017). pg. 29
[22] Compare also the income earned by J.K Rowling, the author of the very famous Harry Potter book, reaching trillions of rupiah from the sale of several books.

"Freedom of association and assembly, verbal and written expression of thoughts are stipulated by law." This research also clearly shows a close relationship with intellectual property. Producing creative work such as writing a book, composing a song, or painting is a form of freedom of expression. In addition, speeches, lectures, and certain audio materials are also a form of protected freedom of verbal expression.

Copyright work is one of the manifestations of freedom of expression guaranteed by the 1945 Constitution. Therefore, its notion is not interpreted only in the form of demonstrations such as speech delivery. In the field of intellectual property, the law is one of the channels to realize the freedom of expression, as mandated by Article 28 of the 1945 Constitution.

After the Second Amendment of the 1945 Constitution, Article 28 had the most additions and developments, namely the issuance of Articles 28A to J. Moreover, Article 29E paragraph (2) states that "Everyone has the right to freedom of belief, as well as expression of thoughts and attitudes, according to one's conscience." Furthermore, in Paragraph (3) "Everyone has the right to freedom of association, assembly, and expression."

Furthermore, Article 28G Paragraph (1) states that Everyone has the right to protect themselves, their families, honor, dignity, and property under their authority, as well as a sense of security and the threat of fear to either or not to execute a certain activity which is a human right."

Article 28H paragraph (4) states that "everyone has the right to possess private property and these need not be taken over arbitrarily by anyone". Furthermore, Article 28J paragraph (2) stated that "In exercising the right to freedom, everyone is obliged to comply with the restrictions established by law with the sole purpose of guaranteeing recognition as well as respect for the rights and freedoms of others." They also fulfill the demands of justice in accordance with considerations of morality, religious values, security, and public order in a democratic society.

As earlier described, article 33 paragraphs (2) and (3) also have a close correlation with intellectual property. These provide a legal basis for the social function of intellectual property, which has a similar stance as other objects, such as land.[23]

Legal provisions regarding intellectual property are not found in the BW which generally regulates the law on objects. Due to its unique and special nature, intellectual property is regulated by a separate policy, such as the Law on Copyrights, Patents, Marks, PVP, Trade Secrets, Industrial, and Layout Designs of Integrated Circuits. Of the 3 laws, only the provisions in Article 3 paragraph (1) of Law Number 6 of 1982 clearly states that copyright is included in the group of movable objects, even though by nature they are intangible and transferable.

Theoretically, it is assumed that Article 3 of the Copyright Law is based on Articles 503, 504, and 509 because the provisions regarding objects in the second book of the BW are generally applied. Moreover, intellectual property is a branch of law that is relatively new in Indonesia and other developing countries. Even the super developed countries on the European continent, such as Germany, are still considered young.

The intellectual property assets of 80% of companies, such as Walt Disney and Microsoft, add economic value. Microsoft, for example, has a standard value of $90 billion USD with an asset value capitalization of relatively USD 270 billion. A large part of the capitalized value is estimated at USD 180 billion, which includes trademarks, patents, trade secrets, and *know-how*[24].

CONCLUSION

The Patent Law provides oversight of legal protection and supervises the implementation of national and foreign patent inventors. It also protects inventions made in the Indonesian territory. To some extent, the Patent Law No. 13 of 2016 has benefited in the supervision of foreign inventors and is quite effective in monitoring these registrants to support technological developments in the production process and to convert raw materials into finished goods, as well as investment, absorb workforce, in the welfare of the community and increase the skilled workforce.

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[23] In the Japanese Constitution of 1946, this question of social function is included in Article 29:*The right to own or to hold property is inviolable. 2)Property rights shall be defined by law in conformity with the public welfare. 3)Private property may be taken for public use upon just compensation, therefore"*
[24] Kamil Idris, *Intellectual Property A Power Toll For Economic Growth*, WIPO, pg. 63.

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