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Effectiveness of Patent License Arrangements in Encouraging Technology Transfer in Indonesia

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Abstract

Patent licensing is an important instrument in promoting technology transfer, especially in developing countries like Indonesia. However, the implementation of patent licensing still faces various challenges, both from the regulatory side and in practice on the ground. This study aims to evaluate the effectiveness of patent licensing legal regulations based on Law Number 13 of 2016, as well as to identify structural and institutional barriers in its implementation. Using a normative legal approach complemented by empirical literature studies, this research found that the lack of detailed regulations regarding the substance of licenses and the weak government oversight are the main obstacles. Derivative regulations and the strengthening of reporting and evaluation mechanisms are needed

so that patent licenses truly function as a means of sustainable and fair technology transfer.

KEYWORDS *Patent License Arrangements, Technology Transfer*

I. Introduction

In many ways, human life has been changed by technology, which has made life easier and fulfilled human needs. Researchers and inventors have strived to create various technologies that will help society. Inventors are able to create technologies that fulfill, answer, and ease the needs of human life thanks to their intellectual abilities and sacrifices. In law, patents are part of intellectual property. The state must protect intellectual property rights (IPR), especially patents, so that inventors can produce as much intellectual work as possible for global progress.[1]

Technology policy in developing countries is based on the country's ability to receive technology and transfer technology from outside, both of which enable the exploration and growth of technology generated by the country. Therefore, it is necessary to increase the coverage of the potential of many countries to estimate technology needs, consider technology transfer options, and align with potential and efficient technology transfer options.[2]

In essence, a patent is a protection granted to an inventor in a particular field of technology. Patents are granted for a certain period of time, and their purpose is to prevent other inventors, including

[1] Muhammad Amirulloh, Helitha Novianty Muchtar, and Ananda Fersa Dharmawan, *Penghapusan Paten Di Indonesia Dan Perbandingan Negara Lain* (Bandung: Keni, 2023).

[2] Nur Aisyah Thalib, Syafrinaldi, and Abd Thalib, "International Conference on Law and Social Sciences," in *Compulsory Patent Implementation In Indonesia According to Law No. 6 of 2023 About Job Creation*, 2024.

independent inventors, from performing similar inventions. The purpose of patent rights is to ensure that the creator or patent holder of the invention obtains monetary benefits. To achieve this goal, the patent holder must provide the public with complete information about the innovation.[3]

It is undeniable that patents are important in relations between countries and between individuals. Patents always follow the development of society, as does the Indonesian society and nation that may or may not be directly involved with issues related to Patents.[4] According to Barthos and Sara, the owner of an innovation has the privilege of prohibiting the use, manufacture, or dissemination of the innovation without its authorization, as well as the manufacture or use of a patent. Our new inventions will not be protected if our patterns are not protected. That means our inventions will be easily recognized by others. Indonesia has a first-in-file patent system, which means that if a patent application is approved, the applicant will have the first right to file for IP rights in the Indonesian jurisdiction.[5]

In patent protection, if protection is given too broadly to the patent holder, the protection system impacts the patent held by the individual. However, technology transfer in the country is difficult as small changes from other parties can still be considered as patent infringement. On the contrary, if protection is given to the patent holder, small changes can still be considered as patent infringement.[6]

Basically, an object is anything that can be owned by people. According to Article 503 of the Civil Code, patent property rights include

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3 Dian Nurfitri and Rani Nuradi, *Pengantar Hukum Paten Indonesia* (Bandung: PT Alumni, 2013).

4 Abdul Atsar, "Implikasi Pembahuruan Hukum Paten Yang Berdasarkan Negara Hukum Pancasila Terhadap Pembangunan Ekonomi Di Indonesia," *Jurnal Yuridis* 10, no. 2 (2023): 23–32.

5 Fitri Rini Ariyesti et al., "The Systematic Review of the Functionality of Intellectual Property Rights in Indonesia," *Journal of Public Affairs* 22, no. 2 (2022).

6 Sutarman Yodo, "Perlindungan Hak Paten (Studi Komparatif Lingkup Perlindungan Di Berbagai Negara)," *Fiat Justisia Jurnal Ilmu Hukum* 10, no. 4 (2016).

intangible objects. Patent rights as intangible movable objects can be owned, transferred, or pledged as fiduciary.[7]

One of the ways a technology owner can provide its technology to a technology recipient is through a patent license agreement. A patent license agreement essentially grants permission to the technology owner to use the legally protected rights in the technology.[8] The license must be in writing and to be effective it must be registered.[9]

This agreement grants the patent holder permission to the other party to do exclusive things, such as making, using, selling, importing, leasing, delivering, or selling the resulting goods or services.[10] Under Articles 76-79 of the Patent Law, a patent holder has the right to grant a license to another party to enforce the patent he owns and prohibit the other party from doing anything without his consent. This includes product patents: making, using, selling, importing, leasing, delivering, or providing products for sale, lease, or delivery; and process patents: making, using, selling, importing, leasing, or delivering.[11]

Undoubtedly, the purpose of a contract is to regulate rights and obligations. A technology transfer contract does not only regulate rights and obligations; further enforcement is required after rights and obligations are assigned because the contract deals with many matters, including the environment and society. As a result, it can affect the economic life of the country, so the government must intervene in the making of technology transfer contracts.

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7 Andi Muhammad Reza Pahlevi Nugraha, "Tinjauan Yuridis Hak Paten Di Dalam Kerangka Hukum Nasional Di Indonesia," *Binamulia Hukum* 11, no. 1 (2022): 1–14.

8 Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis* (Yogyakarta: Thafa Media, 2013).

9 Abd Thalib, "Technology Transfer In Indonesia And China: A Comparative Study," *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 2 (2016): 251–70.

10 Etty Susilowati, *Hak Kekayaan Intelektual Dan Lisensi Pada HKI* (Semarang: Badan Penerbit Universitas Diponegoro, 2013), https://scholar.google.co.id/citations?view_op=view_citation&hl=en&user=qpUCxLgAAAAJ&citation_for_view=qpUCxLgAAAAJ:7PzlFSSx8tAC.

11 Slamet Yuswanto, *Memahami Paten* (Bandung: Keni, 2017).

A license to execute a patent granted by Ministerial Decree on the basis of an application on the grounds that:

1. The Patent Holder does not carry out the obligation to make products, use, sell, import, lease, deliver or make available for sale or lease or delivery the patented product, or use the patented production process to make goods or other acts in Indonesia within a period of 36 (thirty-six) months after being granted the patent;
2. The Licensee or Patent Holder has applied the patent in a way that does not benefit the public; or
3. New Patent Utilization is the utilization of part or all of an Invention protected by others. This mainly occurs when a patent that is the result of refining or developing an invention that has already been protected by an earlier patent.

Theoretically, it can be said that there is a transfer of technology from abroad to within the country if the buyer of the patent technology license is an Indonesian legal entity or individual. In other words, a technology license agreement or technology transfer between a foreign technology owner and an Indonesian legal entity or individual is a very effective tool to improve education and technology in our country.[12] Technology transfer involves several steps, from the development of the technology, its utilization, and its beneficial return.[13]

In most cases, a patent license contract grants the licensor the right to use the intellectual property rights protected by the patent, and licensees receive royalties if they wish to use the technology owned by the licensor. In addition, the licensor also protects the licensee against third parties or competitors.[14]

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[12] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

[13] Puspa Kriselina Asmoro, "TECHNOLOGY TRANSFER IN INDONESIAN STATE UNIVERSITIES: DO IPRS PLAY A SIGNIFICANT ROLE?," *Indonesia Law Review* 7, no. 1 (2017).

[14] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

From the licensor's point of view, technology transfer through licensing is considered beneficial because the license agreement provides:

1. Proper access to acquire or control the technology;
2. Saving time and effort in research and development; and
3. Addition of relevant knowledge resources.

For the licensor itself, technology transfer through licensing is considered very profitable because the licensor will: 1. Receive royalties from a certain amount of sales without having to invest in opening export markets; 2. Develop overseas markets for raw materials and related services; and 3. Receive funds to continue research and development in the same field.

Only large companies have considered incorporating IPR into their strategy. A company may apply for a patent for the technology it owns when it develops or sells its products to other countries, registers its brand in other countries, or does anything else related to technology.[15] In addition, additional provisions regarding license agreements are governed by Government Regulations; unfortunately, such Government Regulations have not been enacted as of yet. Therefore, the basic philosophy of contractual arrangements is ineffective in this case, such as the transfer of technology from foreign companies to Indonesian citizens.[16]

A key challenge, particularly for developing countries, is that technology-owning countries are often reluctant to fully share their technology. On the one hand, developing countries desperately need technology to drive economic growth. On the other hand, developed countries view technology as a valuable asset that must be protected and, if used, must generate financial returns.[17]

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[15] Insan Budi Maulana, *Bianglala HaKI* (Jakarta: Hecca Publishing, 2005).

[16] Abd Thalib, "TECHNOLOGY TRANSFER IN INDONESIA : LEGAL PERSPECTIVE," *UUM Journal of Legal Studies* 5 (2014), https://doi.org/10.32890/uumjls.5.2014.4579.

[17] Agung Sujatmiko, Mochamad Kevin Romadhona, and Yuniar Rizky Saraswati, "Patents at the Crossroads: Legal Pathways for Advancing Technology Transfer in Indonesia," *Law Reform* 21, no. 1 (2025).

Some argue that patents are useful without technology transfer because the ability to exclude can encourage commercialization.[18] Actually, in advanced industrialized countries such as Japan and others, the Intellectual Property Department is responsible for identifying new technologies, licensable patents, or attractive, easy-to-sell brands.[19]

"All agreements legally made shall be valid as laws for those who make them." Consent shall be executed in good faith and shall be irrevocable except with the consent of both parties or for reasons sufficiently stated by law to that effect."[20]

The contract should state that both parties have the right to license the invention to ensure that all inventions made together are joint inventions.[21]

The license grants them the right to assign the monopoly patent rights in whole or in part, for a specific period of time. Therefore, these license clauses are subject to the provisions contained in the law of contract or engagement in the Civil Code.[22] If tools have been created to objectively evaluate the value of the technology, contracts can be created easily during the technology transfer phase. The ability to negotiate with partners is also important.[23]

Regarding this license, it can be seen in Article 69 of the Patent Law which reads as follows:

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[18] Mark A. Lemley and Robin Feldman, "Patent Licensing, Technology Transfer, and Innovation," *American Economic Review* 106, no. 5 (2016), https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.p20161092.

[19] Maulana, *Bianglala HaKI*.

[20] Mariam Darus Badrulzaman, *Hukum Harta Kekayaan Indonesia Didalam Perkembangan* (Bandung: PT Citra Aditya Bakti, 2018).

[21] Agus Sardjono, *Hak Kekayaan Intelektual Dan Pengetahuan Tradisional* (Bandung: PT Alumni, 2006).

[22] Syafrinaldi, *Hukum Perlindungan Paten* (Pekanbaru: UIR Press, 2005).

[23] Youngseong Koo and Keuntae Cho, "The Relationship between Patents, Technology Transfer and Desorptive Capacity in Korean Universities," *Sustainability* 13, no. 9 (2021).

1. The patentee shall have the right to grant a license to any other person to perform the acts as referred to in Article 16 based on a license agreement.
2. Unless otherwise agreed, the scope of the license as referred to in paragraph (1) shall include all acts as referred to in Article 16 performed during the license period and shall cover the entire territory of the Republic of Indonesia.

Unless otherwise agreed, the patentee may continue to perform the acts himself or authorize other third parties to perform the acts referred to in Article 16.[24]

When a new license has been registered at the Office of the Director General of Intellectual Property Rights of the Ministry of Law and Human Rights of the Republic of Indonesia, it has legal consequences for third parties. The Indonesian government pays the licensor for this registration.[25]

It is important to note that technology transfer through patent licensing has the potential to support the country's economic growth, especially for developing countries such as Indonesia. Technology transfer enables the transfer of knowledge and technology from developed countries to Indonesia, which in turn can improve the competitiveness and capacity of domestic industries. Therefore, technology transfer mechanisms should be encouraged to ensure that relevant and useful technologies can be accessed by parties in need, while taking into account national interests and economic efficiency.[26]

The problem that will be raised in this research is about how the patent rules regulate the license agreement in Indonesia and what are the obstacles to patent license agreements in Indonesia.

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[24] Insan Budi Maulana et al., *Pengantar (Akta) Perjanjian Hak Kekayaan Intelektual Untuk Notaris Dan Konsultan HKI* (Bandung: PT Citra Aditya Bakti, 2021).
[25] Maulana et al.
[26] Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)* (Yogyakarta: Liberty, 1988).

This research uses a normative-empirical legal approach. The normative approach is used to analyze laws and regulations governing patent licensing, particularly Law Number 13 Year 2016 on Patents, the Civil Code, as well as related implementing regulations. Meanwhile, the empirical approach is conducted by analyzing secondary data regarding the implementation of patent licensing in Indonesia. The analysis is conducted in a descriptive-qualitative manner to identify the effectiveness of legal arrangements and obstacles in practice.

II. Patent Rules Governing in License Agreements in Indonesia

On February 24, 2016, the Ministry of Law and Human Rights issued Regulation No.8 of 2016 concerning Terms and Procedures for Application for Recording Intellectual Property License Agreements. The purpose of this regulation is to improve services and provide legal security for intellectual property rights owners, rights holders, and licensees, as well as the trade, investment, and industrial sectors that can bind third parties.[27]

General Provisions The recording of license agreements is carried out against :

a) Copyright and Related Rights;
b) Patent;
c) Trademark
d) Industrial Design
e) Integrated Circuit Layout Design; and
f) Trade Secrets.

[27] Juan Matthew Tampi, "Perlindungan Haki Pada Perjanjian Lisensi Bagi Dunia Bisnis Di Indonesia," *Lex Privatum* 8, no. 4 (2020).

Because, patent licenses essentially give permission from the technology owner to the technology recipient to use the legally protected rights to the technology, this allows the transfer of technology from the technology owner to the technology recipient. For the benefit of the host country, Indonesia, patent licenses should be specifically regulated so that local partners (local companies) can conduct technology transfer programs that are consciously supported by foreign partners.[28]

Law No. 13/2016 on Patents, specifically Articles 76-80, regulates patent licenses in Indonesia, but this law does not regulate patent licensing materials. The article is too short and does not cover all aspects, so Article 80 states that "the provisions of patent license agreements will be further regulated by Ministerial Regulation".[29]

As there has been no ministerial regulation governing patent licenses to date, Article 1338 of the Civil Code, paragraph 1, reads as follows: "All agreements legally made shall be valid as law for those who make them." Having fulfilled the requirements mentioned in Article 1320 of the Civil Code, this article serves as the basic legal basis for granting patent licenses.[30]

According to Subekti, Article 1338 of the Civil Code contains the basis of freedom of contract that supports an open system. In other words, the article seems to state to the public that we are allowed to make agreements in the form of and containing anything (or about anything) as long as it does not violate public order or decency.[31]

The following is an explanation of some of the common processes undertaken in a patent license contract. Delivery of production equipment from abroad and design, such as the creation of a formula or the description of a process, are the first steps in the execution of a patent license contract. Next, the foreign party must transfer their capabilities to

[28] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*
[29] Suteki.
[30] Suteki.
[31] Susilowati, *Hak Kekayaan Intelektual Dan Lisensi Pada HKI.*

the local partner. One of the most common methods of transferring capabilities is the training of Indonesian labor by the licensor. The training can be provided in the licensor's country or domestically.

Licensed products can be made quickly, facilitating technology transfer through training. However, in the long run, there is no guarantee that these training programs will result in real technology transfer, i.e. new innovations that allow for new patents. This is because licensing training programs are only used to fulfill formalities. The situation is made worse because there is no specific law governing technology transfer. As a result, there are no obligations that encourage licensors to transfer technology other than those stated in the patent license contract agreed upon under the principle of freedom of contract.[32]

Granting a patent license can serve as the best way to allow a joint venture company to transfer technology. However, a patent license should be followed by other contracts such as engineering assistance contracts, service contracts, brand contracts, and name contracts.[33]

Moreover, the party granting the license and the party receiving the license have the freedom to decide what they want about the patent license contract. This basis cannot be used freely. Public regularity, propriety, and decency limit these principles. Article 78 of Law No. 13/2016 also limits the number of patent licenses granted.

Contract law has several principles that are closely related to the enforcement of patent licenses, such as the principle of good faith. This principle should not only be mentioned in the content of the contract but should also be applied in the agreement. This is a good measure because basically the licensor does not really want to transfer the technology, which can be done for various reasons.[34]

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[32] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*
[33] Suteki.
[34] Suteki.

It should be noted that the license agreement must still follow the provisions stipulated in Articles 1320 and 1338 of the Civil Code. Article 1320 of the Civil Code states that for the validity of an agreement, 4 conditions are required, namely:

1. Agreement of those who bind themselves
2. Capacity to make an agreement
3. A certain thing
4. A halal cause

Agreements that are considered valid or fulfill the requirements stipulated in Article 1320 of the Civil Code will be considered law for the parties who make them. The agreement must also be made in good faith. If the license agreement does not meet the above requirements, the license agreement can be canceled or declared null and void.[35]

Article 76 paragraph (1) of the Patent Law states that a patent holder has the right to grant a license to another party based on a license agreement, either an exclusive or non-exclusive patent license agreement to carry out the acts as referred to in Article 19 paragraph (1) of the Patent Law, namely:

1. "In the case of product patents: making, using, selling, importing, leasing, delivering, or making available for sale or lease or delivery the patented product"
2. "In the case of a process-patent: using the patented production process to make the goods or other acts referred to above".

A license agreement may cover all or part of the acts referred to in number (1) and/or number 2 above.

As stipulated in the applicable legislation, license agreements are prohibited from containing provisions that may harm the country's

[35] Maulana et al., *Pengantar (Akta) Perjanjian Hak Kekayaan Intelektual Untuk Notaris Dan Konsultan HKI*.

economy or interfere with fair business competition. This suggests that the existence of a license requirement can naturally be equated with State privileges, i.e. special treatment given to licensees. This indirectly suggests that economic power tends to be held by licensees.[36]

The definition of an agreement is defined in Volume 3, Chapter 2, Part 1, Article 1313, namely the Article of the Civil Code.

"Agreement is an act by which one or more people are bound to one or more other people".[37]

Specific (exclusive) and non-specific (non-exclusive) license agreements are called voluntary licenses because they are granted on the basis of the freedom of the licensing party. In addition, some agreements are made based on legal authority and not the freedom of the parties making the agreement.[38]

In general, RBP is the use of a party's position to pressure the other party in an effort to gain the most material advantage. In patent licensing contracts, the weaker party is the licensee, so it is not uncommon for such contracts to contain unfavorable prohibitions or restrictions. One of the UNCTAD articles emphasizes the prohibition of RBP as stipulated in Article 4(1), which states: "Transfer of technology arrangements shall not include restrictions that directly have or adverse effect on the national economy of the recipient country".[39]

Article 78 of Law Number 13 of 1997 on the Amendment to Law Number 6 of 1989 on Patents contains the following UNCTAD clause: "Regulations hinder the ability of Indonesian citizens to study and develop technology, and generally relate to certain inventions." [40]

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[36] Atsar, "Implikasi Pembahuruan Hukum Paten Yang Berdasarkan Negara Hukum Pancasila Terhadap Pembangunan Ekonomi Di Indonesia."

[37] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

[38] Dani Amran Hakim, "Perjanjian Lisensi Sebagai Bentuk Pengalihan Hak Kekayaan Intelektual," *Yurisprudentia: Jurnal Hukum Ekonomi* 7, no. 1 (2021).

[39] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

[40] Suteki.

The license agreement requirements are regulated by KPPU in the license agreement. First, the license agreement must be made in writing and signed by both parties. Furthermore, according to Article 79 paragraph (1), the license agreement must be recorded and announced by the Minister, and the costs for recording and announcement are related. Otherwise, the license agreement will have a legal impact on third parties.[41] Although freedom of contract is governed by the Civil Code and Article 50 B of Law No. 5/1999, Article 78 of the Patent Law and similar articles in other IPR Laws ostensibly exclude license agreements in the field of IPR. However, a license agreement must not give rise to fraudulent competition or violate the aforementioned laws. Therefore, one should not regard such "exclusion" provisions as explicit or as an absolute removal of all available prohibitions, as this would be contrary to the principle and purpose of establishing competition laws.[42]

The provisions regarding the obligation to record licenses are contained in Article 79 of the Patent Law:

(1). "License agreements shall be recorded and published for a fee".

(2). "In the event that a license agreement is not recorded at the Directorate General as referred to in paragraph (1), the license agreement shall have no legal effect on third parties".

The law of engagement in Intellectual Property Rights relates to license contracts-written agreements given by IPR owners to IPR users to use certain intellectual property rights, such as copyrights, patents, brands, etc.) in the Third Book of the Civil Code, Articles 1233-1456.[43]

Therefore, an agreement that balances the rights and obligations of each party must be made. According to Article 1320 of the Civil Code on the valid terms of an agreement and Article 1338 on freedom of contract,

[41] Maulana et al., *Pengantar (Akta) Perjanjian Hak Kekayaan Intelektual Untuk Notaris Dan Konsultan HKI*.

[42] Maulana et al.

[43] Susilowati, *Hak Kekayaan Intelektual Dan Lisensi Pada HKI*.

Law No. 13/2016 on Patents does not provide more detailed provisions on what should be included in a patent license agreement.[44]

Therefore, the rights and obligations of the patent owner are only regulated in Patent Law Number 13 Year 2016, and any violation will have legal consequences on the status of the patent. Therefore, the agreement should expressly stipulate the balance of rights and obligations of each party.[45]

III. Obstacles to Patent License Agreements in Indonesia

Normatively, patent license agreements in Indonesia have been regulated in Law No. 13/2016 on Patents, specifically in Article 76 to Article 80. However, in practice, the implementation of patent license agreements does not always run in line with the spirit and purpose of the regulation. One of the main problems is the lack of recording of license agreements to the Directorate General of Intellectual Property (DJKI), which indicates that patent licensing has not yet become a legal habit among industry players.

In some cases, patent licenses are made only as an administrative requirement for investment cooperation, especially in the form of joint ventures between foreign and national companies. License agreements are made to fulfill requirements in licensing, but are not accompanied by monitoring or supervision of their implementation. As a result, the technology transfer that should be the result of such agreements often does not substantially occur. In fact, in a number of joint ventures, foreign licensors continue to control key technologies without transferring them

[44] Mifta Hatul Jannah and Sudjana, "Perlindungan Hukum Terhadap Penerima Paten Pada Perjanjian Lisensi Paten Dalam Rangka Alih Teknologi Di Indonesia (Perjanjian Lisensi Paten Antara Blackberry Limited Dengan PT XL Axiata Tbk)," *Al Amwal* 1, no. 2 (2019).

[45] Jannah and Sudjana.

to domestic licensee, either through training, technical documentation, or production assistance.

Case studies show that the majority of patent license agreements in Indonesia are unilaterally drafted by foreign patent holders, which often include restrictive clauses such as export bans, production restrictions, and technology modification bans. Such clauses have the potential to violate Article 78 of the Patent Law, but in the absence of implementing regulations and a mechanism for substantive assessment of the contents of the contract, the practice continues.

From an institutional perspective, the state's supervision and evaluation functions are still very limited. DJKI only conducts recording, not testing the contents of the agreement. KPPU as an authorized institution in business competition supervision also does not have its own system to audit license contracts that have the potential to cause unfair business practices. This creates room for abuse of dominant position by licensors, and weakens Indonesia's efforts to obtain strategic technology from abroad.

In practice, patent licensing agreements have also not become a major instrument in the national industrialization strategy. Many national businesses prefer to purchase technology directly (purchase of machines) without tying a license contract, because it is considered easier and does not cause long-term contractual burdens. This further strengthens the assumption that patent licensing has not been maximally utilized as a legal tool to encourage innovation, industrial efficiency, and local technology mastery.

In the practice of patent licensing in Indonesia, the gap between law and implementation is very evident. Although Article 78 of Law No. 13/2016 explicitly prohibits license agreements that hinder the acquisition of technology by Indonesian parties, the reality is that restrictive clauses such as restrictive business practices (RBP) are still widely used in contracts between foreign and national companies. This reflects that the law, in this

case the Patent Law, has not yet become a living law that is obeyed consciously and voluntarily by business actors. The absence of substantive supervision of the contents of the license contract makes the norm lose its corrective power.

Furthermore, the function of state institutions in bridging the implementation of the law is also not running optimally. DJKI, as an administrative authority, only records license agreements without the authority to evaluate the substance of the contract. Similarly, KPPU does not yet have an integrated system to assess whether a license contract clause potentially violates the principle of fair business competition. This situation opens up space for licensors to insert provisions that de facto harm the licensee, without any adequate institutional correction.

The above facts show that patent licensing law has not been internalized in industrial practice as a tool of technological transformation and empowerment. License agreements are often understood only as administrative requirements for business cooperation, not as part of a national development strategy. The government also still positions itself more as a registrar than a coach, so that the law loses its thrust in creating justice and equality in technology transfer.

In practice, the understanding of industry players in Indonesia towards patent license agreements is still very diverse, with a strong tendency to view them as mere administrative documents, rather than as strategic instruments in technological capacity building. Many businesses, especially in the MSME and medium manufacturing sectors, do not have sufficient legal awareness regarding the importance of a legal, structured, and officially registered license agreement with the relevant authorities.

As an empirical basis of the developed framework, the author highlights that patent system reforms can encourage increased technology transfer through licensing mechanisms to unaffiliated parties, which then has an impact on increasing exports. A clear example of this phenomenon is seen in East Asia, specifically in South Korea and Taiwan. South Korea

made major reforms to its patent laws between 1988 and 1995, which led to its patent strength index increasing by 47%, from 2.65 to 3.89 in the 1985-1995 period. Meanwhile, Taiwan undertook reforms in 1986 and 1994, which increased its index by 152%, from 1.26 to 3.17. Along with this strengthening of patent protection, there has been a significant increase in license payments from both countries to unaffiliated US companies. In South Korea, license payments rose from US$38 million in 1987 to US$717 million in 1995, and reached US$1.686 billion in 2005. In Taiwan, the amount rose from US$17 million in 1986 to US$267 million in 1996, and reached US$1.165 billion in 2006. In line with this trend, exports of goods from both countries have also increased sharply. South Korea's exports rose from US$28.5 billion in 1985 to US$284.4 billion in 2005, while Taiwan's exports increased from US$33.4 billion to US$223.7 billion over the same period. These data suggest that patent reform can promote cross-border technology flows and contribute to export growth in developing countries.[46]

This trend stems from two things. First, low legal and technological literacy, which makes industry players unable to read the long-term opportunities of mastering technology through licensing. Second, the perception that licensing is only an administrative burden, not a business necessity, especially when business relationships have been established informally or based on trust between parties.

Some industry players even ignore the process of recording licenses to the DGKI, even though such recording has important legal implications related to legal certainty, protection of rights, and supervision of the contents of the agreement. In the context of joint ventures, for example, it is not uncommon for license agreements to be made internally without considering the national legal structure, so that opportunities to obtain legal benefits and protection from the state are simply lost.

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[46] Lei Yang and Keith E. Maskus, "Intellectual Property Rights, Technology Transfer and Exports in Developing Countries," *Journal of Development Economics* 90, no. 2 (2009).

In addition, there is a phenomenon of dependence on foreign licensors, which causes national industry players to be passive in designing the contents of license contracts. Instead of proposing clauses that can guarantee the transfer of know-how or technical training, the licensee tends to accept all the terms offered by the licensor due to the assumption that the foreign party understands the technology better.

Patent license agreements in Indonesia are basically private agreements that are subject to the principle of freedom of contract. As stipulated in Article 1338 of the Civil Code, the parties have the discretion to determine the contents of the contract, including in the context of technology transfer. However, in practice, there is no obligation for the parties to report or disclose the contents of the license agreement to the government, which leads to weak control over the content of the contract.[47]

This condition opens up opportunities for licensors, especially from abroad, to draft one-sided clauses, especially against domestic licensees who have a weaker bargaining position.

This imbalance in contractual relations is often seen in restrictive business practices (RBP) clauses imposed unilaterally by licensors.[48] The licensee, in most cases, has no choice but to accept the terms set by the licensor, given its dependence on foreign technology and the absence of effective protection from the government.[49]

In fact, Article 78 of Law No. 13/2016 on Patents has stated that license agreements must not contain clauses that harm national interests. Unfortunately, this norm is abstract and has no further elaboration, so it is often ignored or misused in practice.[50]

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47 Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

48 Suteki.

49 Insan Budi Maulana, *Kapita Selekta Hak Kekayaan Intelektual I* (Yogyakarta: Pusat Studi FH UI, 2000).

50 Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis.*

Another weakness lies in the lack of supervision over the implementation of license contracts. DJKI as the recording agency only plays an administrative role, without evaluating the substance of the contract. Meanwhile, KPPU's role in overseeing monopolistic practices in license agreements has also not been optimal, due to the absence of an audit system for licenses in circulation.[51] As a result, clauses that potentially inhibit technology transfer can still be inserted and legalized through contractual channels.

In the context of joint venture companies, technology transfer does not necessarily occur even though there has been a license transfer. The case of PT Kubota Indonesia, for example, shows that after operating for 27 years, local technology mastery only reached 30%.[52] This shows that a license alone is not enough; there must be supervision and concrete obligations imposed on foreign investors.

Law No. 1 of 1967 on Foreign Investment and its derivative regulations such as PP No. 20 of 1994 have regulated the obligation of foreign investors to conduct technology transfer. However, in practice, many foreign companies consider the obligation as a formality. They delay the technology transfer process under the pretext that the business license can be extended up to 30 years.[53]

Another root of the problem is the low readiness of the national industry to absorb technology. A number of Indonesian industrialists are still passive and reluctant to develop their technological capabilities independently, and lack confidence in national engineering consultants.[54] In fact, technology transfer does not solely have to be done through formal licenses, but can also be done through training, R&D cooperation, and technical assistance.

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[51] Maulana et al., *Pengantar (Akta) Perjanjian Hak Kekayaan Intelektual Untuk Notaris Dan Konsultan HKI*.

[52] Suteki, *Hukum Dan Alih Teknologi : Sebuah Pergulatan Sosiologis*.

[53] Suteki.

[54] Amir Pamuntjak, *Sistem Paten : Pedoman Praktik Dan Alih Teknologi* (Jakarta: Djambatan, 1994).

In a global context, countries such as India have shown success in managing technology transfer through the active role of the government, such as through the CSIR (Council of Scientific and Industrial Research) which encourages the development of technology from domestic research results.[55]

Meanwhile, in Indonesia, patent licensing agreements have not been maximally utilized as a means of industrialization and national technology mastery.[56] Global market pressures and the need to boost industrial competitiveness should be an incentive for the government and business actors to reorganize the patent licensing system.

In practice, the implementation of patent license agreements in Indonesia faces a number of structural, institutional, and social barriers. Based on secondary data obtained from the report of the Directorate General of Intellectual Property (DJKI), the number of patent license registrations in Indonesia is still relatively low compared to the number of registered patents. This shows that the utilization of patent licenses as an instrument of technology transfer has not been optimal.

One of the main obstacles is the lack of awareness and understanding of industry players, especially small and medium enterprises (SMEs), of the importance of legal protection through licensing. Many business actors use technology without going through a legal license mechanism, so the potential for technology transfer does not occur legally or productively.

In addition, the absence of derivative regulations from Article 80 of Law Number 13 Year 2016 causes a legal vacuum regarding the substance and standard format of the license agreement. As a result, license agreements are drafted by relying on the principle of freedom of contract,

[55] Asia Productivity Organization, "Alih Teknologi Intra-Nasional," Asia Productivity Organization (Jakarta: Lembaga Sarana Informasi Usaha dan Produktivitas, 1987).

[56] Atsar, "Implikasi Pembahuruan Hukum Paten Yang Berdasarkan Negara Hukum Pancasila Terhadap Pembangunan Ekonomi Di Indonesia."

which risks harming licensee parties who are economically weak or have legal knowledge.

In joint venture practices, national licensee is often in an unbalanced position with foreign licensors. Case studies based on the experience of several manufacturing companies show that foreign parties often include restrictive business practices (RBP) clauses that make it difficult for local companies to fully master the technology. This is contrary to the spirit of Article 78 of the Patent Law, which prohibits agreement clauses that may harm national interests.

In addition, weak supervision from government agencies, such as DJKI or KPPU, on the content and implementation of license agreements is also an inhibiting factor. The lack of a periodic evaluation mechanism on the effectiveness of technology transfer makes patent license contracts a mere administrative formality.

Therefore, concrete steps are needed from the government to overcome these obstacles, such as issuing ministerial regulations governing the substance of license agreements, providing technical guidance for industry players, and strengthening the supervisory function of license implementation as part of the national technology transfer strategy.

IV. Conclusion

Based on the results of the research, it can be concluded that the regulation of patent licenses in Indonesia as stipulated in Articles 76 to 80 of Law Number 13 Year 2016 on Patents is still general and limited. Material law that substantially regulates the terms, forms, and prohibitions in license agreements is not yet adequately available. Article 80 has indeed mandated further regulation through a Ministerial Regulation, but until now the regulation has not been issued, resulting in a norm vacuum that has a direct impact on legal uncertainty in practice.

As a result, patent license agreements have been fully subject to the principle of freedom of contract as stipulated in the Civil Code. This provision opens up a very wide space for licensors, especially from abroad, to set one-sided contract terms without any supervision or substantive restrictions from the state. Licensee as the licensee is generally in a weak position and does not have enough bargaining power to draft clauses that protect national interests, especially in terms of technology transfer. This imbalance is exacerbated by the absence of substantive supervision from authorities such as the DJKI and KPPU on the content of the recorded contract.

Thus, it can be said that the legal framework of patent licensing in Indonesia has not been able to provide fair and equal protection for all parties. The existing law has not yet guaranteed the achievement of the strategic goals of patent licensing, namely technology transfer and national industrial independence.

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