

Protection of Patent Holders' Rights in Indonesia: Between Theories and Practices

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Abstract

Intellectual property constitutes a vital aspect of rights, with patents being a crucial element of intellectual property rights (IPRs). A patent grants an inventor the exclusive right, recognized by the state, to their technological invention for a specified duration, either for personal implementation or through agreements with others. Patents hold great strategic and economic significance for their owners, offering legal protection under national law. This protection serves to incentivize creators to advance quantity and quality, fostering prosperity and a healthy business environment within society. Indonesia, as an active participant in international trade, ratified



the establishment of the WTO on November 2, 1994, encompassing the TRIPs agreement, which sets international standards for intellectual property rights. Presently, the safeguarding of patent rights in Indonesia is governed by Law No. 13 of 2016, encompassing both patents and simple patents. This legal framework underscores the government's commitment to enforcing intellectual property rights protection. The study adopts a qualitative approach, aiming to explore and optimize the legal protection of patent holders in Indonesia.

KEYWORDS

Intellectual Property, Patent, Legal Protection, Patent Holders' Rights

Introduction

The fourth paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia declares the government's responsibility to safeguard the entire Indonesian nation, advance public welfare, and nurture the nation's development. This declaration finds clearer elaboration in Article 28C, paragraph (1) of the Constitution, which asserts that every individual possesses the right to personal growth by fulfilling their fundamental needs, obtaining education, and accessing knowledge in science, technology, art, and culture. This is aimed at enhancing the overall quality of life for individuals and promoting the well-being of humanity as a whole.¹

¹ Fauzi Iswahyudi, "Konstitusionalitas Masa Perlindungan Hak Cipta dalam Perspektif Prinsip Deklaratif." *Grondwet: Jurnal Hukum Tata Negara dan Hukum Administrasi Negara* 1, No. 2 (2022): 107-118; Charlyna S. Purba, "Inkonsistensi Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta: Studi Peraturan Perundang-Undangan Lain (Horizontal)." *Jurnal Perspektif Administrasi dan Bisnis* 1, No. 1 (2020): 22-30; Abdul Atsar, and Aryo Fadlian. "Perlindungan Hukum Terhadap Pemegang Paten dalam Hubungan Kerja Ditinjau dari Undang-Undang No. 13 Tahun 2016 Tentang Paten dan Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan." *Jurnal Hukum Positum* 7, No. 1 (2022): 150-170. Furthermore, it is also emphasized that Article 28C paragraph (1) of the constitution, which emphasizes the right of every individual to develop themselves through meeting their basic needs, accessing education, and benefiting from science, technology, arts, and culture, has relevance to patent rights. Patents play a vital role in encouraging innovation and technological progress, which

The article is intimately connected to patent regulations as patents represent the tangible outcomes of human intellectual prowess, benefiting from advancements in science and technology, and culminating in inventive creations within various technological domains. These creations find practical applications in the industrial sector. Essentially, a patent is a product of human intellectual labor, constituting an asset with significant economic value.² The patent holder is bestowed with exclusive rights, allowing them to control and utilize the protected intellectual property. In return for their investment in creating these intellectual works, patent holders receive financial rewards.³ Consequently, the patent grants a special privilege to utilize the protected invention while simultaneously preventing

aligns with the constitution's goal of promoting the well-being and development of individuals and society as a whole. By granting patent rights to inventors, the government incentivizes them to invest time, resources, and creativity in developing new and valuable inventions. In turn, this fosters advancements in science and technology, as well as promoting the dissemination of knowledge and expertise. Patents provide inventors with an exclusive right to their inventions for a specified period, allowing them to reap the benefits of their work and receive recognition for their contributions. Moreover, patent protection supports the dissemination of knowledge and technology transfer. Patents require detailed public disclosure of the invention, contributing to the pool of technical knowledge available to others in the industry. This information sharing facilitates further research and development, inspiring others to build upon existing innovations, ultimately leading to more progress and improvements. Additionally, the right to access education and benefit from science and technology, as enshrined in the constitution, can be further realized through patents. Patented technologies and inventions can lead to the creation of new products, processes, and services that enhance the quality of life, create job opportunities, and improve economic prosperity. When these patented innovations are brought to the market, they can positively impact various sectors of society, addressing societal needs and contributing to overall welfare. Article 28C paragraph (1) of the constitution emphasizes the importance of personal development and access to knowledge for the welfare of individuals and humanity. Patents play a crucial role in achieving these goals by fostering innovation, promoting knowledge dissemination, and driving progress in science and technology, all of which contribute to the betterment of society as a whole.

² Lukman Hakim, and Nalom Kurniwan. "Perlindungan Hak Konstitusional Ekonomi Warga Negara Melalui Hak Paten di Indonesia." *Jurnal Konstitusi* 17, No. 3 (2020): 582-604.

³ Lu Sudirman, and Hari Sutra Disemadi. "Comparing patent protection in Indonesia with that in Singapore and Hong Kong." *Legality: Jurnal Ilmiah Hukum* 29, No. 2 (2021): 200-222; Rahmanisa Purnamasari Faujura, Elisatris Gultom, and Sudjana Sudjana. "The Monopoly Practice and Unfair Business Competition in the Technology Transfer Activity Through the Foreign Patent in Indonesia." *UUM Journal of Legal Studies* 12, No. 1 (2021): 69-91; Endang Purwaningsih, "Patent Law and Its Enforcement in Indonesia, Japan and the USA." *Jurnal Media Hukum* 27, No. 1 (2020): 1-22.

third parties from reproducing it without the explicit consent of the patent owner.⁴

Therefore, the patent holders are obliged to check their rights so that they are not violated by other subjects. The birth of a patent also depends on the government that patent also means a privilege, a special gift, as if the rights granted were not human rights but in reality, this right is a human right, nothing but rights by Author. Patents in the field of intellectual property rights (IPR) are the exclusive rights of the inventor over the results of his invention. Patents can be a potential business tool for their owners to gain exclusivity on a new product or process, build a strong market position, and earn additional revenue through licensing. Therefore, it can be said that this patent is a very effective form of intellectual property rights protection because it can prevent the implementation of inventions by other parties without the permission of the patent owner, even if the other party has obtained the technology independently.⁵

Some of research on the legal protection of patent holders, based on Law No. 14 of 2001, demonstrate that this regulation serves as a crucial form of legal safeguard for patent holders. It stands as an improvement over the preceding law, Law No. 6 of 1997, which was deemed inadequate in providing sufficient legal protection.⁶ These previous research bears relevance to our present study, wherein the optimization of legal protection

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- ⁴ Rohmat Rohmat, Wasipiah Wasipiah, and David Chuah Cee Wei. "Simple Patent Protection: A Case of Sarung Tenun Goyor Indonesia and The Comparison to Malaysia Utility Innovation Protection." *Journal of Indonesian Legal Studies* 7, No. 1 (2022): 299-338; Salsabila Khairunnisa, "Patent Legal Protection On Invention (Comparison Study Between Indonesia and Japan)." *Jurnal Hukum Novelty* 9, No. 2 (2018): 183-191.
- ⁵ Peter Mahmud Marzuki, "Luasnya Perlindungan Paten." *Jurnal Hukum IUS QUIA IUSTUM* 6, No. 12 (1999): 17-30; Winner Sitorus, "Kepentingan Umum dalam Perlindungan paten." *Yuridika* 29, No. 1 (2014): 39-60; Sutarman Yodo, "Perlindungan Hak Paten (Studi Komparatif Lingkup Perlindungan di Berbagai Negara)." *Fiat Justitia: Jurnal Ilmu Hukum* 10, No. 4 (2016): 697-714.
- ⁶ B. Erlina, and Melisa Safitri. "Analisis Komparasi Antara Perlindungan Paten Biasa dengan Paten Sederhana Berdasarkan Undang-Undang Paten." *Pranata Hukum* 15, No. 1 (2020): 30-42; Ni Kadek Wedayanti Ari Suputri, and Ida Ayu Sukihana. "Prinsip New and Novelty dalam Perlindungan Paten di Indonesia." *Kertha Semaya: Journal Ilmu Hukum* 8, No. 8 (2020): 1240-1248; Kanti Rahayu, and Eddhie Praptono. "Deregulasi Perlindungan Hak Paten di Indonesia." *Pandecta Research Law Journal* 10, No. 1 (2015): 134-143.

for patent holders is of paramount importance, particularly in light of Law No. 13 of 2016.⁷ This optimization is essential to ensure that the legal guarantees offered align with the current circumstances, as the previous law may no longer be suitable for the present times.⁸ Thus, the study seeks to address these evolving needs and provide effective legal protection for patent holders under the latest regulatory framework.

Method

The research utilizes a qualitative approach, following Moleong's suggested features, which include being grounded in a natural environment, employing humans as research tools, conducting data analysis inductively using qualitative methods, focusing on descriptive nature and process rather than just outcomes, limiting studies with a specific focus, employing criteria to verify data validity, adopting provisional research designs, and ensuring agreement on research results by both the researcher and the subjects.⁹ This study adheres to a naturalistic paradigm, as explained by Muhadjir, aiming to draw meaning from the context of the research.¹⁰ The research's focus is on describing the phenomenon of patent rights and legal protection for patent holders in Indonesia. The author employs a library

⁷ Yoyon M. Darusman, "Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten dalam Kerangka Hukum Nasional Indonesia dan Hukum Internasional." *Yustisia Jurnal Hukum* 5, No. 1 (2016): 202-215; Heliantoro Heliantoro. "UU Paten Berwawasan Nasional dan Internasional." *Jurnal Hukum & Pembangunan* 17, No. 4 (2017): 372-379.

⁸ Alifia Devi Erfamiati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Ditinjau dari UU No 14 Tahun 2001 Tentang Hak Paten." *Ganesha Law Review* 3, No. 2 (2021): 79-84; Endang Purwaningsih, "Paten Sebagai Konstruksi Hukum Sebagai Perlindungan Terhadap Inovasi dalam Bidang Teknologi dan Industri." *Jurnal Hukum Pro Justitia* 24, No. 2 (2006).

⁹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif*. (Bandung: Remaja Rosdakarya, 2007).

¹⁰ Noeng Muhadjir. *Metode Penelitian*. (Yogyakarta: Rake Sarasin, 1996); Muhajirin Muhajirin and Maya Panorama. *Pendekatan Praktis Metode Penelitian Kualitatif dan Kuantitatif*. (Yogyakarta: Idea Press, 2017).

search, collecting relevant books and essays related to the research title to identify the core substance and optimize the legal protection efforts for patent holders in Indonesia, as specified in Law No. 13 of 2016.

Result and Discussions

Why Patents is Matter?

Essentially, a patented innovation becomes public knowledge. As a result, a patent is defined as a distinct type of right conferred by the government. In legal terms, it represents a particular privilege granted by the state to an inventor for their technological invention, granting exclusive rights for a specific period. This allows the inventor to utilize and authorize others to utilize their creation. Under Article 499 of the Civil Code, patent rights are recognized as a component of material law.¹¹

According to article 1 paragraph 1 of the Patent Law No. 13 of 2016, patents are limited special rights granted by the state to inventors for their technological inventions for a certain period of time by giving an agreement to other parties to implement them. For a limited time, the government grants the creator of the patent a technical advance so that he can benefit or at least control the use of his invention.¹² A patent is a very powerful form of intellectual property protection because it can prevent others from using the inventor's work without the permission of the patent owner, even if a third party independently obtains a patentable technology.¹³ Pursuant to the Patent Law No. 14 of 2001 (Patent Law 2001), patent rights are granted for

¹¹ Andi Muhammad Reza Pahlevi Nugraha, "Tinjauan Yuridis Hak Paten di dalam Kerangka Hukum Nasional di Indonesia," *Binamulia Hukum* 11, No. 1 (2022): 1-14.

¹² M. Zulfa Aulia, "Politik Hukum Pembentukan UU Paten di Indonesia: Industrialisasi, Liberalisasi, dan Harmonisasi," *Jurnal Hukum IUS QUIA IUSTUM* 22, No. 2 (2015): 223-237.

¹³ Michael Blackman, "Intellectual Property: A Power Tool for Economic Growth: Kamil Idris. WIPO, 2002. ISBN 92-805-1113-0. Hardback, 377 pages. Price: CH60". *World Patent Information* 25, No. 4 (2003): 359-360.

inventions that meet the novelty requirements, which contain inventive steps and can be used in industry for 20 years. Therefore, both in terms of product patents and process patents, the owner of the patent is an investor, because he is the one who obtains the right, being registered in the Patent Register, and has the right to prohibit others from using his innovation without his authorization.¹⁴

In other words, the patent holder must produce goods or apply methods that encourage technology transfer, investment absorption or labor supply in Indonesia. Therefore, each patent holder or patent license recipient is required to pay an annual fee. This patent system acts as a forum for various interests, is not commercial in nature and protects the original interests of the patent owner. Therefore, the rules governing how the government registers patents must be taken into account in the 2001 Patent Act. In this situation, the government has the option of enforcing the patent itself if deemed important for the defense and Indonesia's security and which is important to the public interest, then the government can exercise the relevant patent on its own. Therefore, this patent is granted on application which can only be filed in writing for a single invention as evidenced by a patent certificate.

Indonesia sometimes makes changes to the law governing patent rights. Before the enactment of Law No. 13 of 2016 amended by law no. 14 of 2001 on patents. In the formulation of Law No. 13 of 2016 The protection of patent rights includes patents and simple patents. These Presidency Regulations are substantially consistent with the previous regulations accompanying Law No. 13 of 1997. Law No. 14 of 2001, as amended by law No. 13 of 2016, provides for more firm and precise provisions. Law No. 14 of 2001 was replaced by Law No. 13 of 2016, which is the latest patent law. The purpose of passing this law is to increase the number of national and

¹⁴ Alif Muhammad Ardani, "Penghapusan Paten Terdaftar di Indonesia: Perkembangan dan Penyebabnya," *Undang: Jurnal Hukum* 2, No. 1 (2019): 147-168.

national patent applications and strengthen the state's ability to use patents to safeguard the well-being and safety of its citizens.

This is governed by the discipline that contains provisions on the implementation of patents by patent holders pursuant to article 20 of law no. 13 of 2016 on Patents which are relatively equal, but exceptions according to Law no. 14 of 2001 abolished. Article 20, paragraph 2, of law no. 13 of 2016 clarifies that its implementation must favor the transfer of technology, the absorption of investments and/or the creation of new jobs. Even if this provision is not adopted, the above provision shows the government's intention to make optimal use of patents no. 13 of 2016 through a complaint mechanism to the Commercial Court by the public prosecutor or other party with national interests, or by the licensee. If there are subjects who do not agree with the provisions of article 20 of law no. 13 of 2016 is certainly quite strange, because in this context the government shows a serious and firm attitude towards patents registered in Indonesia. Therefore, it is very natural to have to provide benefits to the Indonesian people in general.

Furthermore, in Law No. 14 of 2001, patents can be divided into 2 (two) types, namely:

1. The patent is an exclusive right granted by the State to an inventor for the results of his invention in the field of technology which for a certain period of time has been carried out by himself or has given permission to another person to implement it (Article 1 point 1 of Law No. 14 of 2001).
2. The Simple Patent is any invention that can be used to guarantee the intellectual property rights on a new product or tool whose use is of practical utility value due to its shape, configuration, construction or components that can obtain protection legal in the form of a simple patent (Article 6 Law No. 14 of 2001).

In Indonesia, regular patents and simple patents differ in several key aspects. Regular patents involve complex technology and cover inventions

of products and processes, with material requirements including novelty, inventive step, and industrial applicability, excluding those listed in Article 7. The merit examination for regular patents assesses compliance with Articles 2, 3, 5, and 7 of the Patent Law, and obtaining compulsory licenses is possible. Regular patents receive 20 years of protection from the date of receipt. On the other hand, simple patents emphasize practical functions with the simplest technology, focusing on product/invisible inventions. The material conditions for simple patents are novelty and industrial applicability. The merit examination for simple patents solely considers novelty and industrial applicability, which can be done simultaneously with the application or within 6 months from receipt. Compulsory licenses may not be required for simple patents, which are granted 10 years of protection from the date of receipt. These differences delineate the distinct criteria and durations for patent protection in Indonesia.

The duration of patent protection in Indonesia is governed by Law No. 14 of 2001, specifically in Article 8, paragraph 1. Regular patents are granted protection for a fixed period of 20 years from the filing date, and this duration is non-extendable. The start and end dates of the patent period are recorded and publicly announced through electronic and/or non-electronic means. Conversely, for simple patents (Article 6), the protection period is set at 10 years from the filing date, and like regular patents, this period cannot be extended.

If the patent protection period has expired, an event will become public so that other parties can freely produce and sell it. The rules governing the duration of patents are designed to prevent one party from continuing to dominate the entire industry, as this could harm society and the trading system.

In the further context in intellectual property rights, patents become part of the rights themselves. Patent rights are rights that play an important role for an inventor to reinforce an invention or idea that comes from his own thoughts and then poured into a process or product. In Indonesia,

patent rights are regulated by law, which is meant to protect inventors' inventions or ideas from things that can harm them so that patents are important and must be respected. This patent refers to an idea or process of an inventor in the field of technology. The patent document is divided into two functions, namely:¹⁵

1. Protection function, in which this function examines the inventions of inventors to what extent their inventions are protected including exclusive rights, licenses, asking for compensation or compensation. Investors have the right that the protection of their invention with someone or them as the initial inventor ignites a new product or process that did not exist before with a patent, the invention is reinforced by the fraud that patents their invention. Therefore, the inventor to protect his invention must obtain a right called a patent. With this patent, their inventions are protected, and even inventors can sue if they feel harmed by something they do not know with their permission to admit, use, on behalf of their inventions belonging to irresponsible people. The inventor can ask for compensation if it has really harmed him.
2. Information function, which is an unlimited patent monopoly of which the applicant is required to inform the public that his inventions can be used as inspiration and sources of scientific information.

The subject patents are divided into two, namely process patents and product patents. Process patents are statements or claims made by inventors about the invention process. Such processes or uses are covered by process patents, such as processes for making ink. Statement by the inventor about the invention in the form of a product made by the creator. Machines, tools, systems, compositions, product formulations for a process such as writing implements in the form of rubbers and others.¹⁶

¹⁵ A. Bakhtiar et al., "Relationship of Quality Management System Standards to Industrial Property Rights in Indonesia Using Spearman Correlation Analysis Method," *IOP Conference Series: Earth and Environmental Science* 623 (2021): 012092.

¹⁶ Abir Rafa Kamil, "Implementation of Patent and Transfer of Patent Rights According to Indonesian Patent Law," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, No. 1 (2022): 2190-2201.

An invention or invention is the subject of a patent with which the inventor becomes his idea as well as the first inventor of the invention or idea. There are 2 types of patent objects that get protection, including: patents and simple patents. Then there are also two types of patents: product and process patents. However, patents are granted only for certain, not all inventions are granted patent rights, there are conditions that must be met. The subject of the patent will be whether the invention is new, in other words, the first time the invention has been found, without any previously being in the field of technology.¹⁷

Moreover, patents are explicitly regulated by Law No. 14 of 2015, which stipulates the conditions for granting a patent on an invention. To be eligible, the innovation must be novel, incorporating creative or inventive elements, and find applicable use in industry. Importantly, an invention is deemed inventive if it involves a previously unforeseen concept, requiring some level of technical expertise from its creator. The evaluation of the invention also considers the existing expertise to determine its unpredictability. Additionally, if the first application is submitted with priority rights, subsequent applications must take this into account to avoid conflicts or duplication.¹⁸

The application forms the basis for granting a patent. The application is submitted to the General Management for a fee and in writing using the Indonesian language. The submission of an invention application comprises only one or more inventions which together form a single invention. There is a patent certificate which is proof of the patent. The validity of a patent starts from the date of issue or issue of the patent certificate and from the date of receipt it will be retroactive.¹⁹

¹⁷ Gangfeng Wang, et al. "Extraction of principle knowledge from process patents for manufacturing process innovation." *Procedia CIRP* 56 (2016): 193-198.

¹⁸ Ardani, "Penghapusan Paten Terdaftar di Indonesia: Perkembangan dan Penyebabnya."

¹⁹ Darusman, "Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten dalam Kerangka Hukum Nasional Indonesia dan Hukum Internasional"; Miftakhul Huda, "Konsep dan Kedudukan Hak Kekayaan Intelektual dalam Hukum Islam," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 1, No. 1 (2020): 35-48.

The General Directorate of Intellectual Property of Indonesia emphasized the submission procedure, as follows:

1. Nominations for the Directorate General of Intellectual Property (DJKI) can be made online or offline. If you apply online, you have to fill in the form according to the data on the official DJKI website. If it is done offline, you need to prepare the documents.
2. The exam, after submitting the form along with the data, is then reviewed by the DJKI. DJKI handles the processing when the submission is complete. and the document will be returned if incomplete.
3. The publication, once the form has been verified, takes about 18 months for the patent to be filed. The party applying for the patent has the right to appeal against the invasion within this period and must provide compelling or compelling reasons.
4. Merit exam, if you declare that you have passed the exam. Fill in the appropriate form and proof of payment for the inspection required for this step.
5. The patent certificate, after the inspection has been passed and therefore cleaned, is declared passed, for the issue of the patent certificate the applicant must wait.²⁰

The payment of an annual fee part of the cost of maintaining the patent by the inventor is valid until the last year of its term of protection which the inventor is obliged to pay for the inventor for whom the patent was obtained. In the event that the fee is not paid for 3 consecutive years, the patent right is considered legally lost. The maintenance fee for patent rights is determined by the PNPB of the Ministry of Law and Human Rights (Human Rights).²¹

²⁰ Yodo, "Perlindungan Hak Paten (Studi Komparatif Lingkup Perlindungan di Berbagai Negara)"

²¹ Mutia Denti Armala Zuami and Bakti Tresnawati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Akibat Dihapusnya Kepemilikan Hak Paten dari Daftar Umum Paten," *Jurnal Juristic* 1, No. 1 (2020): 95-106.

There are two types of patent registration systems as legal protection, namely the filing system where patent rights are granted to those who meet all the requirements and if they register their new invention first. The first to invent a system where they are the first to find an innovation in order to be granted a patent.²² These two systems show that inventors are protected by their inventions in strengthening their ownership of rights, as well as proof that the invention was patented for the first time because it prevents other inventors from taking the invention without the knowledge and permission of the first inventor. The inventors also believe their rights are respected, as their inventions are safe. This system is different from registration and discovery.

Conditions for Obtaining a Patent and How the Patent's Holders Protected?

As a result, patent holders have a responsibility to diligently protect their rights from potential violations by others. The concept of patent reflects the idea of a privilege or special gift, suggesting that the rights granted go beyond mere human rights and are essentially derived from the author's creation. Within the realm of intellectual property rights (IPR), patents confer exclusive rights upon inventors over the outcomes of their inventions. Patents can serve as powerful business tools, allowing owners to secure exclusivity for new products or processes, establish a strong market presence, and generate additional revenue through licensing. Consequently, patents stand as an immensely effective form of intellectual property rights protection, capable of preventing the utilization of inventions by other parties without the explicit permission of the patent owner, even if those parties have independently acquired the technology.

²² Sadino Sadino and Julia Astuti, "Penerapan Hak Paten di Indonesia," *Jurnal Magister Ilmu Hukum* 3, No. 2 (2021): 41-46.

Patent holders enjoy exclusive rights and privileges over their patented inventions for a specified duration, typically granted by the government, such as:

1. The patent holder has the exclusive right to exercise the patent he owns, and prohibits other persons without authorization:
 - a. In the case of product patents: manufacture, sell, import, rent, deliver, use, supply, sell or rent or deliver the product for which the patent is granted.
 - b. In the case of a process patent: use a production process to which a patent is granted to manufacture the goods and other actions referred to in number 1.²³
2. The patent holder has the right to grant a license to another person on the basis of a license authorization.
3. The owner of the patent has the right to sue for compensation in the local district court, anyone who intentionally and without right commits the act referred to in point 1.
4. The patent owner has the right to sue those who intentionally and without rights violate the rights of the patent owner by carrying out one of the acts referred to in point 1.

When a patent application is filed, it is filed by filling in the appropriate form in Indonesian and typed in 4 (four) copies. The applicant must attach the following:

1. Special power of attorney, if the application is filed through a registered patent attorney as a power of attorney.
2. Letter of transfer of rights, if the application is presented by a person other than the inventor.
3. Description, complaint, summary: 3 (three) copies each.

There are two patent registration systems concerning legal protection: the first to file system and the first to invent system. In the first to file

²³ Khoirul Hidayah, "Perlindungan Hak Paten dalam Kajian Hukum Islam dan Peran Umat Islam dalam Bidang IPTEK," *De Jure: Jurnal Hukum dan Syar'iah* 4, No. 1 (2012): 85-95.

system, patent rights are granted to the first applicant who registers a new invention according to the specified requirements. This mechanism considers the one who submits the application first as the patent holder. Indonesia adopts the first to file system, as stated in Article 34 of the patent law, which declares that if multiple patent applications are filed for the same invention by different applicants, only the application filed first or accepted first will be recognized. On the other hand, the first to invent system grants patents to those who are the original creators of innovations based on established needs. Regarding patents, it is expected that the patent owner must apply for their patent within the territory of Indonesia, which entails producing the patent in Indonesia, including investment, employment, and technology transfer. For the national patent procedure, it is established that:

1. Patent applicants must meet all requirements.
2. The Director General of Intellectual Property Rights will announce 18 months after the date of receipt of the patent implementation.
3. The call has a duration of 6 (six) months to find out if the public is there or not.
4. If the announcement phase is missing and the patent application is received, the patent applicant has the right to obtain his patent for a period of 20 years from the filing date.²⁴

For the inventor, before submitting an application, you need to do the following:

1. Run a search

It is intended to obtain information relating to previous technologies in the field of the invention itself (*state of the art*) which allow to present a relationship with the invention.

²⁴ Ahmad Jazuli, "Penyelesaian Permohonan Pendaftaran Paten dalam Rangka Peningkatan Pelayanan Publik." *Jurnal Ilmiah Kebijakan Hukum* 12, No. 3 (2018): 243-257; Sutri Helfianti, and Iskandar Iskandar. "Manfaat, Prosedur dan Kendala Pendaftaran Hak Milik Intelektual." *Jurnal Tahqiq: Jurnal Ilmiah Pemikiran Hukum Islam* 12, No. 1 (2018): 31-44.

2. Carry out the analysis

It is used to analyze if there are particularities of the invention for which a patent application will be filed with respect to the previous invention.

3. Making decisions

If the resulting invention has technical characteristics over the previous technology, then the invention should be applied for a patent. If there are no particularities in common, it is not necessary to present it as it would be harmful in terms of financing the application.

In patents there are terms that are frequently found, such as invention, which means the idea of the inventor who turns to a problem-solving activity specifically in the field of technology, which can be both in the form of a product and a process. As an improvement and development of a product or process. Then there is the term inventor or patent holder, which is the one who autonomously or among several people creates an idea that produces an invention. The owner of the patent is the inventor as the owner of the patent or the person who receives the right. Intellectual property is a part of the property right owned by individuals. Wealth is essentially derived from ideas, creations, imagination and thoughts. One of the intellectual properties that can be found in the industrial sector. Especially those related to technology in this case are called patents.

In article 499 of the Civil Code, it is formulated on objects. However, the division of objects adopted by the civil code is of material objects. Furthermore, intangible objects such as copyrights, patents, are not governed by the civil code, but by a separate law, namely the law on the protection of intellectual property. Patent rights as immovable property are equated with material rights in general, they can be owned, transferred to third parties and used as fiduciary guarantees. Patent rights are intangible property rights that can be used as collateral with a trustee, so patent rights include material rights that provide security. Patent rights in the field of intellectual property rights are granted by the state only to inventors in the

field of technology who have a strategic and important role in supporting development and promoting public welfare.

The principles and principles that contain and underpin the discipline of Law 13 of 2016 on patents can form the basis for the implementation of patents of public interest. These principles include:

1. The principle of advantage, which means that patent protection offers advantages to inventors, right holders and users of patents.
2. The principle of rationality, which means that patent protection takes into account the economic value of the invention, is based on the nature of the development of human knowledge itself, takes into account national security, social well-being and justice for all levels of society.
3. The principle of sustainability means that the management of rights takes into account technological and sociological advances so that their use can continue in the future.
4. The principle of justice, in the sense that patent protection guarantees the accessibility of information at all levels of society.

The principle of public welfare in patent protection signifies that the underlying goal of granting patents is to benefit society as a whole. The patent system is designed to strike a balance between incentivizing innovation and ensuring that the resulting inventions contribute positively to the well-being and progress of society. In Indonesia, patent law has undergone updates over time, with Law No. 13 of 2016 superseding Law No. 14 of 2001 as the latest iteration. This new law provides the current framework for patent protection in the country.

To be eligible for patenting, inventions in Indonesia must meet several conditions. Firstly, the invention must be novel, meaning it should not have been previously disclosed or publicly known. Secondly, the invention must involve an inventive step, which implies that it should not be obvious to a person skilled in the relevant field of technology. In other words, it must involve a level of innovation and unpredictability. Lastly, the invention

should be applicable in industry, meaning it must have practical utility and be capable of being put to industrial use.

By imposing these requirements, the patent system aims to ensure that only valuable and genuinely innovative inventions are granted patent protection. This serves the public welfare by encouraging and rewarding true innovation while preventing the granting of patents for trivial or obvious inventions that may not contribute significantly to societal progress. Ultimately, the patent system in Indonesia aims to strike a balance between fostering innovation, promoting technological progress, and benefiting society at large.

In a similar context, legal protection for patent holders is viewed as an essential safeguard for their rights, preventing any infringements or violations by others. This protection is extended to the community to ensure that they can fully enjoy the rights granted by the law. Article 2 of Law No. 13 of 2016 encompasses legal protection for both regular patents and simple patents. Regular patents, as specified in Article 2(a), pertain to new inventions with evident industrial applicability. On the other hand, simple patents are granted for new product inventions or improvements of existing products applicable in the industry. Regular patents receive protection for a standard term of 20 years, while simple patents enjoy protection for 10 years. It is important to note that not all inventions are eligible for patents. To qualify, an invention must be genuinely new and not previously disclosed or known in Indonesia or elsewhere, either through written descriptions, oral presentations, demonstrations, or any other means that allow experts to realize the invention before the filing date or priority date if filed with priority rights.

In compliance with the legal protection of patent holders, both doctrinally and legally, exclusive rights are granted that have two types of content, are economic rights to obtain economic advantages by obtaining the recognition of IPRs in the form of transfer and granting permission to use their own IPR by obtaining royalties and moral rights which are always

linked to the owner of the IPR which are permanent and non-transferable. Therefore, the right of priority under patent law is the right of an application to file an application from a country that is a member of the Paris Convention relating to the protection of industrial property or the approval of the establishment of a world organization of patents. trade to obtain recognition that the date of receipt in the country of origin is a priority date in the country of destination which is also a priority date. member of one of the two treaties provided that the application is submitted within the time limit determined on the basis of the international agreement in question. This means that there is legal certainty in the protection of intellectual property rights for those who file patents.

Examples of Indonesian Patent Case: Nokia vs Oppo Case

In this case, Nokia Technologies, a well-known technology company, has accused Oppo, a mobile telecom brand maker, of infringing on one of Nokia's patents. The alleged infringement relates to a patent registered under the number IDP000031183, titled "*slow pace model estimation*." The lawsuit was filed with the Central District Court of Jakarta, Indonesia, and the amount sought in damages is Rp. 689 billion.²⁵

Before resorting to legal action, Nokia claims to have attempted to resolve the matter through negotiations with Oppo. They sought to renew the patent licensing agreement with Oppo, which would allow Oppo to continue using Nokia's patented technology legally. However, Oppo

²⁵ Andi Saputra, "Sengketa Paten, Gugatan Rp 2,3 Triliun Nokia Vs Oppo Kandas", *Detik News*, October 17, 2022). Retrieved from <https://news.detik.com/berita/d-6353023/sengketa-paten-gugatan-rp-23-triliun-nokia-vs-oppo-kandas>; Dythia Novianty, and Dicky Prastya, "Penjelasan Nokia soal Gugatan Hukum ke Oppo Indonesia", *Suara Online*, August 25, 2021. Retrieved from <https://www.suara.com/tekno/2021/08/25/143903/penjelasan-nokia-soal-gugatan-hukum-ke-oppo-indonesia>

reportedly declined the offer to renew the agreement, leading Nokia to take legal action to protect its intellectual property rights.

In the lawsuit, Nokia is asking the court to grant several specific requests. First, they want the court to accept their request in its entirety, indicating that they believe their claims are valid and should be acknowledged by the court. Second, they are seeking the court's confirmation that Oppo indeed infringed on Nokia's patent. Nokia alleges that Oppo produced, sold, and/or offered for sale products that use Nokia's patented technology without proper authorization or licensing.²⁶

To address the alleged infringement, Nokia is requesting the court to issue an order to Oppo, demanding that they stop the production, sale, and/or offer for sale of any products that incorporate Nokia's patented technology. This injunction aims to prevent further unauthorized use of the patented technology by Oppo. Nokia is also seeking compensation for the damages they claim to have suffered as a result of Oppo's patent infringement. They are requesting a substantial sum of Rp. 689 billion, which they believe represents the material losses they have incurred due to Oppo's unauthorized use of their patented technology.

Furthermore, Nokia is asking the court to impose sanctions on Oppo, requiring them to bear all the court costs associated with the lawsuit. This is a common practice in legal proceedings to ensure that the party found liable for infringement bears the financial burden of the legal process.

The case between Nokia and Oppo underscores the importance of patent protection for inventors and companies. Patents provide exclusive rights to inventors, allowing them to protect their innovations from unauthorized use by others. Legal action for patent infringement is a means to enforce these exclusive rights and seek compensation for any damages

²⁶ See also "Nokia v Oppo", Case No. [2022] EWCA Civ 947, July 11, 2022. Available online at <https://caselaw.4ipcouncil.com/english-court-decisions/uk-court-appeal/nokia-v-oppo>; Anisa Ambadar, "Nokia Sues Vivo & Oppo Over Patents in Indonesia", *Conventus Law*, March 23, 2022. Retrieved from <https://conventuslaw.com/report/nokia-sues-vivo-oppo-over-patents-in-indonesia/>

caused by unauthorized use. The outcome of this case will depend on the evidence presented, the court's assessment of the alleged infringement, and the application of relevant patent laws and regulations in Indonesia.

Oppo Indonesia manager Aryo Meidianto disclosed that the lawsuit was directed towards the factory responsible for manufacturing Oppo phones in Indonesia. He highlighted that Nokia has frequently filed lawsuits against Oppo in different countries, including Indonesia, for various factories, and suggested that the cases should be centrally processed. In each of these cases, Nokia sought compensation amounting to Rp. 597.3 billion, making the total compensation claim Rp. 2.38 billion. Ultimately, Nokia emerged victorious in the lawsuit.²⁷

Conclusion

This study highlighted that human beings rely on their intellectual, scientific, and technological abilities to meet their needs and thrive in real-life situations. These intellectual endeavors are the product of human ingenuity, with each individual possessing unique capabilities. Law No. 13 of 2016 comprehensively governs patent-related activities, serving as a reference for inventors and offering them legal protection. This protection aims to create a conducive environment where inventors feel comfortable, fostering their creativity and innovation in technology. Furthermore, it facilitates technology transfer, supporting sustainable technological advancement and overall development. The rationale behind intellectual property rights protection, particularly patents, includes respecting the creative work of others, encouraging inventors, stimulating investments,

²⁷ Lenny Septiani, "Menang di Jerman, Kini Nokia Gugat OPPO di Australia dan Indonesia", *Katadata*, October 14, 2022. Retrieved from <https://katadata.co.id/desyetyowati/digital/634919574d717/menang-di-jerman-kini-nokia-gugat-oppo-di-australia-dan-indonesia>

boosting the nation's economy, curbing fraudulent competition in business, safeguarding natural rights, and preserving reputations.

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“The history of patents includes a wealth of attempts to reward friends of the government and restrict or control dangerous technologies.”

James Boyle

The Public Domain: Enclosing the Commons of the Mind

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