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# Indonesian Patent Law Reform for Simple Patent Innovations on Achieving Welfare State Objectives

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## ABSTRACT

The main focus of this research is to examine the legal protection of simple patent innovations within the Indonesian patent system, considering their substance, structure, and legal culture. The objective is to advocate for the reformulation of regulations concerning the social and economic utilization of intellectual property, specifically simple patents, in order to address their impact on public interest from a welfare state perspective. The current regulations governing simple patents demonstrate monopolistic and individualistic tendencies. This study utilizes a normative juridical research method and employs a statute-based approach to critically analyze the

provisions of Law No. 13 of 2016, commonly known as the Patent Law. The research findings indicate that the current regulation fails to adequately support inventors of simple patents. The existing first-to-file registration system, resembling that of regular patents, has resulted in low rates of acquisition and registration for simple patents. Consequently, it can be concluded that the regulation of simple patents under the Patent Law does not favor inventors of such patents. In order to rectify this issue, it is crucial to reformulate the legal protection of simple patent innovations based on the principles of the welfare state. The ideal formulation of the Patent Law should take into account the norms and values prevalent within the inventor community, thereby necessitating a reformulation of the legal protection system rooted in the substance, structure, and legal culture in Indonesia.

**Keywords:** Invention, Legal Protection, Reformulation, Simple Patent, Welfare State

# INTRODUCTION

The development of intellectual property rights (IPR) has been a significant and ongoing process, influenced by various international agreements, national laws, and the advancement of technology. On the legal context, Intellectual property rights (IPR) are derived from a framework of international agreements and treaties that aim to establish minimum standards for the protection and enforcement of intellectual property globally. These international agreements play a vital role in shaping and harmonizing IPR laws across different

countries. They provide a foundation for the development and recognition of intellectual property rights on an international scale.[1]

One of the most influential agreements in this regard is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which is administered by the World Trade Organization (WTO). The TRIPS Agreement sets out a comprehensive framework for the protection of various forms of intellectual property, including patents, copyrights, trademarks, geographical indications, industrial designs, and trade secrets. It establishes minimum standards that member countries are required to implement within their domestic legal systems. Furthermore, other international agreements and conventions have contributed to the development of IPR. The Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works are prominent examples of such agreements. These conventions provide guidelines and standards for the protection of industrial property rights (such as patents and trademarks) and copyright respectively.[2]

These international agreements facilitate cooperation and mutual recognition of intellectual property rights among nations, ensuring that creators and innovators receive adequate protection for their intellectual endeavors. They also promote fair trade and encourage technological innovation and creative expression by

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1 Christopher May, and Susan K. Sell. *Intellectual Property Rights: A Critical History*. (Boulder: Lynne Rienner Publishers, 2006). *See also* Jane E. Anderson, "Indigenous Knowledge and Intellectual Property Rights." *International Encyclopedia of the Social & Behavioral Sciences* 2 (2015): 769–778

2 Ha-Joon Chang, "Intellectual Property Rights and Economic Development: Historical Lessons and Emerging Issues." *Journal of Human Development* 2, No. 2 (2001): 287-309. *See also* Paul S. Atkins, and Bradley J. Bondi. "Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program." *Fordham Journal of Corporate and Financial Law* 13 (2008): 367–417; Stephen M. Bainbridge, "Kokesh Footnote Three Notwithstanding: The Future of the Disgorgement Penalty in SEC Cases." *Washington University Journal of Law & Policy* 56, No. 1 (2018): 18–30

providing a framework for the secure and enforceable exchange of intellectual property across borders.

According to the World Intellectual Property Organization (WIPO), Intellectual Property Rights (IPR) are internationally recognized legal rights that protect creations of the human mind. Intellectual property encompasses various forms, such as works of literature, art, symbols, images, trade designs, names, and other inventive concepts. These creations are the result of human thought and are afforded legal protection to encourage innovation, creativity, and the fair utilization of intellectual assets.[3] IPR is divided into two, namely copyright and industrial property rights which include patents, brands, integrated circuit layout designs, trade secrets, industrial designs, and countering unfair competition practices.[4]

In IPR, Simple Patent is an important part that contains simple technological innovations to help solve everyday problems. This topic is interesting to research, especially because many simple patents are issued by the Indonesian people. However, simple patented innovations are often not protected by Law Number 13 of 2016 concerning Patents, also known as the Patent Law, due to the requirement for registration by inventors, which is related to the culture of the Indonesian people, especially the inventor community.[5].

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[3] Filippo Mezzanotti and Timothy Simcoe, "Patent Policy and American Innovation after EBay: An Empirical Examination," *Research Policy* 48, No. 5 (2019), https://doi.org/10.1016/j.respol.2019.01.004; Mincheol Choi and Chang Yang Lee, "Power-Law Distributions of Corporate Innovative Output: Evidence from U.S. Patent Data," *Scientometrics* 122, No. 1 (2020), https://doi.org/10.1007/s11192-019-03304-8; A. Bakhtiar et al., "Relationship of Quality Management System Standards to Industrial Property Rights in Indonesia Using Spearman Correlation Analysis Method," in *IOP Conference Series: Earth and Environmental Science*, Vol. 623, 2021, https://doi.org/10.1088/1755-1315/623/1/012092.

[4] Lily Karuna Dewi and Putu Tuni Cakabawa Landra, "Perlindungan Produk-Produk Berpotensi Hak Kekayaan Intelektual Melalui Indikasi Geografis," *Kertha Semaya : Journal Ilmu Hukum* 7, No. 3 (2019), https://doi.org/10.24843/km.2019.v07.i03.p02.

[5] Republik Indonesia, "Undang-Undang No 13 Tahun 2016 Tentang Paten," (Jakarta: Sekretariat Negara, 2016); Reh Bungana Beru Perangin-angin, Ramsul Nababan, and

Simple patent registration in Indonesia is still relatively low and only a few simple patent innovations have been registered with the Ministry of Law and Human Rights during 2010-2018, many of which have even been withdrawn. This reflects the legal awareness of the Indonesian people that is still lacking in relation to simple patents. This problem can be related to the provisions in the law and the legal awareness of the community itself. Previously, research related to simple patent innovations had identified similar problems with registration by inventors. This is related to the theory of the enactment of law according to Lawrence M. Friedman, who argued that the legal system consists of a set of legal structures (legal institutions), legal substance (statutory regulations), and legal culture or culture.[6] The legal culture of the Indonesian people regarding simple patents can be an important factor influencing the low number of simple patent registrations in Indonesia. In general, Indonesian people tend to prioritize values such as mutual cooperation, shame, and avoiding conflict in interactions. This may affect the legal awareness of the community regarding the importance of legal protection for simple patent innovations.

In order to increase simple patent registration in Indonesia, there are several actions that can be taken. The government needs to clarify the provisions in the law and provide clearer and more accessible legal protection.[7] The government can also provide incentives and

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Parlaungan G. Siahaan, "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional di Indonesia," *Jurnal Konstitusi* 17, No. 1 (2020), https://doi.org/10.31078/jk1718.

6 Sudjana, "Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000," *Al Amwal (Hukum Ekonomi Syariah)* 2, No. 1 (2019): 78–94.

7 Mochammad Bambang Ribowo and Kholis Raisah, "Perlindungan Hukum Terhadap Paten Sederhana dalam Sistem Hukum Paten di Indonesia (Studi Komparasi Dengan Sistem Hukum Paten di Negara China)," *NOTARIUS* 12, No. 1 (2019), https://doi.org/10.14710/nts.v12i1.23761; Erlina B and Melisa Safitri, "Analisis Komparasi

financial assistance for inventors who wish to apply for simple patents. In addition, socialization and education regarding simple patents needs to be carried out widely among Indonesian people to increase legal awareness and the importance of legal protection for simple patent innovations. and legal institutions. By increasing legal awareness and providing adequate legal protection, it is hoped that Indonesian people will better understand the importance of legal protection for simple patents and improve simple patent registration in the future.

Lawrence M. Friedman's legal theory explains that the legal system consists of three main elements, namely legal structure (legal institutions), legal substance (legislation), and legal culture or community legal culture. Formation of law and supervision of its implementation is the responsibility of all three elements.[8] Therefore, the success of law enforcement depends on the interaction and coordination between these three elements to achieve the state's goal of justice through law enforcement. To achieve the goal of justice through law enforcement, it cannot be separated from its relation to the Welfare State Perspective, in this case related to patents, patent law protection must prioritize the interests of society and common welfare.

In this case, the state has the role of being the mandate holder to ensure that the patent law system not only strengthens the protection of the right to innovation, but also ensures that people's rights are not disturbed and protected. The Welfare State perspective aims to optimize the protection of the rights to innovation for patent holders and at the same time ensure that society benefits from these

Antara Perlindungan Paten Biasa dengan Paten Sederhana Berdasarkan Undang-Undang Paten," *PRANATA HUKUM* 15, No. 1 (2020), https://doi.org/10.36448/pranatahukum.v15i1.216.

[8] Lawrence M. Friedman, *The Legal System: A Social Science Perspective*. (Russell Sage Foundation, 1975).

innovations. One of the main concerns in this reform is the protection of patent innovation rights. Simple patent innovation is often seen as an important source of innovation for improving people's welfare. Therefore, legal protection for simple patent innovations must be a priority in and also pay attention to issues related to patents, such as fairness, transparency and accountability. In this case, the State must ensure that the patent law system complies with the principles of justice and provides fair protection for all patent holders. In addition, the State must also ensure that the patent application process is transparent and accountable, so that there is no fraud or discrimination in the patent application process. The state must ensure that the rights of the public are not disturbed by patent holders, such as the right to information, the right to traditional knowledge, and the right to use natural resources.

In order to increase simple patent registration in Indonesia, there are several actions that can be taken. The government needs to clarify the provisions in the Patent Law and provide clearer and more accessible legal protection. The government can also provide incentives and financial assistance for inventors who wish to apply for simple patents.[9] In addition, socialization and education regarding simple patents needs to be carried out widely among Indonesian people to increase legal awareness and the importance of legal protection for simple patent innovations. In order to change the legal culture of the Indonesian people regarding simple patents, it is necessary to make collaborative efforts between the government, society and legal institutions. By increasing legal awareness and providing adequate legal protection, it is hoped that Indonesian

[9] 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), https://doi.org/10.36312/jisip.v6i1.2801.

people will better understand the importance of legal protection for simple patents and improve simple patent registration in the future.

In line with the recognition and protection of patent rights that are universally applicable, the government of the Republic of Indonesia is obliged to provide protection for patents that are validly registered in Indonesia. Despite the guarantee of patent protection under the national legal system of Indonesia based on the Patent Law, there are still provisions within the Patent Law that do not align with international standards. This has led to a lack of international trust in patent protection and has the potential to hinder investment and innovation.[10] One of the problematic issues in the regulation of the Patent Law is the provision of Article 20 concerning the obligation to manufacture products/use processes in Indonesia, which is strictly enforced through Article 132 paragraph (1) letter e of the Patent Law. This provision is considered by patent holders, particularly those from foreign countries, to allow discriminatory treatment of patent applications originating from abroad within the Indonesian patent system.

Considering the aforementioned concerns, the author's research focuses on investigating and analyzing the existing challenges within the Patent Law that require attention in light of contemporary developments. The aim is to identify specific issues that necessitate remedial measures, while also incorporating the principles of the welfare state and ensuring fairness and non-discrimination towards foreign investment.

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[10] Waspiah Waspiah et al., "Technological Advancement on Patent Registration in Indonesia," in *AIP Conference Proceedings*, Vol. 2573, 2022, https://doi.org/10.1063/5.0104090. *See also* Seokbeom Kwon, and Alan C. Marco. "Can Antitrust Law Enforcement Spur Innovation? Antitrust Regulation of Patent Consolidation and Its Impact on Follow-on Innovations." *Research Policy* 50, No. 9 (2021): 104295

By conducting this research, the author intends to shed light on areas where the current Patent Law may be inadequate or lacking, taking into consideration the evolving dynamics of the legal and economic landscape. This analysis will be guided by the principles of the welfare state, which emphasize social welfare, equity, and inclusivity in the formulation of legal provisions. Additionally, the research will aim to address any discriminatory aspects that may affect foreign investment, ensuring a level playing field and fostering a favorable environment for international participation in the patent system. Through this research endeavor, the author aims to contribute to the understanding of necessary reforms and propose recommendations to enhance the effectiveness, fairness, and compatibility of the Patent Law with prevailing societal and economic developments.

## LEGAL PROTECTION GAP FOR SIMPLE PATENT: BETWEEN REGULATION PRATICES & INDUSTRIAL REQUIREMENT

The interconnection between simple patents and Micro, Small, and Medium Enterprises (MSMEs) in Indonesia is significant. MSMEs are the primary generators of simple patents across the country. To fully realize the empowerment of MSMEs, as emphasized in the preamble of Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (subsequently amended by Law No. 6 of 2023 on Job Creation), it is crucial to implement comprehensive and sustainable measures that cultivate a supportive environment. These measures should include

providing entrepreneurial opportunities, support, protection, and fostering extensive business development.[11]

By undertaking such efforts, the position, role, and potential of MSMEs can be enhanced, thereby contributing to economic growth, income equality, job creation, and poverty alleviation. In this context, patent registration becomes mandatory to assess whether the patent meets the predetermined criteria. According to Law No. 13 of 2016 on Patents, inventions eligible for patent protection must possess the following characteristics:

1. Novelty: an invention is deemed novel if, at the time of acceptance, it is not the same as any technology previously disclosed (prior art or the state of the art). Disclosure can be in the form of oral description, demonstration, or any other means that enable an expert to implement the invention.
2. Inventive Step: an invention demonstrates an inventive step when it is not obvious to a person with specific technical expertise in the field, considering the existing knowledge at the time of application.
3. Industrial Applicability: an invention is considered industrially applicable if it can be applied in the industry as described in the patent application. If the invention is intended as a product, it must be capable of being produced repeatedly (mass-produced) with consistent quality. Conversely, if the invention is a process, the process should be operable or practicable.

The protection of simple patents through registration is crucial for MSMEs in Indonesia. By fulfilling the criteria of novelty, inventive

[11] *See* Waspiah, "The Acceleration of Simple Patent: How We Optimize Technology on Indonesian Intellectual and Property Rights Law (Study on Central Java, Indonesia)." *1st International Conference on Indonesian Legal Studies (ICILS 2018)*. Atlantis Press, 2018; Waspiah, "Model Percepatan Komersialisasi Paten Sederhana pada Dunia Industri." *Pandecta Research Law Journal* 12, No. 2 (2017): 183-202.

step, and industrial applicability, these patents can contribute to the overall growth and development of MSMEs. Therefore, creating a supportive and conducive environment, along with providing ample opportunities, support, and protection, is essential for empowering MSMEs in their pursuit of innovation, economic progress, and poverty reduction.

Explained that to obtain protection, a patent must be registered and be applicable in the industry. Industrial applicability refers to the ability of an invention to be implemented in the industry according to the description provided in the application. However, there are instances where simple patents generated by MSMEs may face challenges in gaining acceptance from the industrial world. Industrial development is a primary priority in economic development without neglecting development in other sectors. The industrial sector is categorized into large and medium-scale industries, as well as small-scale and household industries. Based on the definition used by the Central Bureau of Statistics (BPS), large-scale industries are companies that employ 100 or more workers, medium-scale industries employ 20 to 99 workers, small-scale and household industries employ 5 to 19 workers, and household industries employ 1 to 4 workers.

The development of the industrial sector plays a crucial role in economic progress by creating job opportunities, increasing production capacity, and driving overall growth. However, it is important to note that while simple patents may not always receive immediate acceptance from the industrial sector, they still hold value in terms of promoting innovation, supporting MSMEs, and contributing to economic diversity. Efforts should be made to bridge the gap between MSMEs and the industrial sector, fostering collaboration, knowledge exchange, and technology transfer to ensure that simple patents from MSMEs can be effectively

implemented and integrated into the industrial landscape. This can be achieved through strategic partnerships, supportive policies, and targeted programs aimed at enhancing the capacity and competitiveness of MSMEs in adapting their inventions to meet the requirements and standards of the industrial sector. By promoting the integration of MSMEs and their simple patents into the industrial ecosystem, Indonesia can leverage the potential of its diverse entrepreneurial landscape and foster sustainable economic development.

In Indonesia, patents especially simple patents, are predominantly generated by MSMEs. However, a challenge arises regarding how these simple patents can be applied and utilized in the industrial world, especially when comparing with China, which is one of the countries with the highest number of patents worldwide as of 2021. China managed to increase its patent count due to the Economic Reform in China in 1979, which introduced the "open door" policy. With this policy, the government established four special economic zones along the southern coast of Guangdong and Fujian provinces to attract foreign investors. The argument was that the presence of foreign investors would create new job opportunities, bring in new technologies, and serve as a "*school*" for learning how to operate in a market economy. This policy was followed by a series of other measures in 1983 to stimulate more foreign direct investment by removing restrictions that limited foreign investors from partnering with domestic investors and to facilitate foreign ownership. The "open door" economic system required China to harmonize its regulations with the internationally recognized system of trade. One of the impacts of this harmonization was the enactment of the Patent Law in China on April 1, 1985, which has undergone several amendments. The 1993 amendment to the Chinese patent law included expanding the scope of patent protection, the duration of patent protection, and

tightening regulations against patent infringements. The revisions made by the Chinese government to the patent law have resulted in a significant increase in the number of patent applications in China.

This experience highlights the importance of policy measures and legal frameworks that foster an environment conducive to patent generation and utilization. The "*open door*" policy implemented by China allowed for the influx of foreign investment and technology transfer, creating a favorable ecosystem for innovation and patent development. Furthermore, the subsequent amendments to the Chinese patent law aimed to strengthen patent protection and enforceability, providing incentives for inventors and companies to seek patent protection. These measures have contributed to the sharp increase in patent applications in China over the years.

To enhance the utilization of simple patents in the industrial sector in Indonesia, similar approaches can be considered. The government can formulate policies that attract domestic and foreign investments, facilitate technology transfer, and encourage collaboration between MSMEs and larger industrial enterprises. Additionally, revisiting and refining the patent laws and regulations can provide stronger protection for inventors and their inventions, instilling confidence in the patent system and encouraging more MSMEs to register their patents. Moreover, promoting awareness and providing support programs for MSMEs to bridge the gap between patent creation and industrial implementation can play a significant role. These initiatives should be coupled with efforts to improve the business environment, provide adequate infrastructure, enhance access to financing, and promote research and development activities. By adopting a comprehensive approach that addresses legal, economic, and institutional aspects, Indonesia can create an environment that fosters the application and utilization of simple

patents in the industrial sector, contributing to economic growth, job creation, and technological advancement.[12]

Based on data from WIPO Lex, domestic patent filings in China amounted to 3,410,000 patents, with an annual increase of 5.9% from 2020 to 2021. The significant number of protected simple patents in China has become the backbone of the country's industrial resurgence. Many new industries have grown and developed rapidly in China by applying these simple patents. Various new products and tools developed based on these patents have generated significant economic value for the country. According to data from the United States Department of Commerce, several provinces in China are experiencing industrial growth due to the adoption of simple patents. This strategy has proven to stimulate innovation and new economic growth based on simple patents. China's remarkable ability to generate new industries based on simple patents can be seen in the export of tools and products to various countries.

Indonesia faces several challenges in implementing the patent system, including the low number of domestic patent applications. This is primarily due to ineffective patent awareness campaigns, limited understanding, and awareness of the significance of patents and the legal system among researchers, both in government and private research institutions, including universities. As a result, research findings by scientists and researchers are not being patented.

Secondly, economic factors play a role, as researchers often have limited funds to cover the expenses of filing a patent application. This is further exacerbated by economic crises, and a lack of understanding regarding the economic benefits of patents, particularly when

[12] Chih Hai Yang, Yi Ju Huang, and Hsuan Yu Lin, "Do Stronger Intellectual Property Rights Induce More Innovations? A Cross-Country Analysis," *Hitotsubashi Journal of Economics* 55, No. 2 (2014). *See also* Salsabila Khairunnisa, "Patent Legal Protection on Invention (Comparation Study Between Indonesia and Japan)." *Jurnal Hukum Novelty* 9, No. 2 (2018): 183–191

inventions are eligible for patent protection and can be utilized for the public good.

Thirdly, the patent application process is considered bureaucratic and time-consuming. This perception arises from researchers' lack of understanding that the procedures and processes involved in filing a patent application are not as simple as presumed. It requires knowledge of patent law, the ability to draft a comprehensive patent application description, and an awareness that the patent application process must adhere to predetermined procedures, a reality applicable globally.

Furthermore, the monetary crisis that afflicted Indonesia has led to an increase in intellectual property rights (IPR) infringements, including patents. The deteriorating economic condition resulting from the economic crisis has diminished the purchasing power of the population. In such circumstances, people are faced with the reality that original or patented products are often expensive, which has driven the public to engage in piracy and patent infringements. In the field of patents, due to the monetary crisis, patent infringements are likely to occur in industries such as automotive, pharmaceuticals, household appliances, and others. This situation will result in conflicts between advanced industrial countries and Indonesia. If such conflicts arise, Indonesia will be at a disadvantageous position, as it will face the World Trade Organization (WTO). In contrast, Thailand and the Philippines, through tough negotiations, have sought to suspend the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) until 2003-2005, citing the adverse economic conditions caused by the crisis. As a result, they have obtained temporary relief not only in the pharmaceutical sector but also in other areas. Indonesia could have also sought the same suspension; however, during the WTO meeting

in Seattle, the Indonesian delegation declared its commitment to implementing TRIPs and even claimed to have complete.

Moreover, the perception of society that patents are a Western concept, where patents represent exclusive rights, contrasts with the cultural roots of the Indonesian nation. It can be argued that patents do not have a historical foundation and are not found in customary law. The philosophical values underlying individual ownership of innovative works and inventions are Western cultural values manifested in their legal systems. This is clearly different from Indonesian culture, which emphasizes a sense of community, togetherness, and familial bonds, as manifested in the values of Pancasila. The substance of the values embodied in TRIPs highly upholds individual ownership, including the ownership of intellectual creations. TRIPs also emphasize individual freedom of expression and self-actualization within society. In addition, TRIPs are one of part of a free trade system that highly values the principles of free and open competition. In terms of values, TRIPs clearly reflect capitalist values. Because patents and other intellectual property rights do not originate from the cultural values of the Indonesian people, but rather from Western values embodied in their civil law system, the enforcement of these rights in society sometimes conflicts with traditional cultural values that have been institutionalized in community life. As a result, certain actions that qualify as infringements under the Patent Law may not be perceived as violations according to the cultural values of the community. Consequently, many individuals tend to disregard or not fully comply with these regulations.[13]

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[13] *See* Endang Purwaningsih, *Seri Hukum Kekayaan Intelektual Hukum Paten*. (Jakarta: CV. Mandar Maju, 2015); Endang Purwaningsih, Evie Rachmawati, and Nur Ariyanti. "Kebijakan Paten Melalui Penguatan Perlindungan Invensi Teknologi dan Peningkatan Kemampuan Inovasi." *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan*

# SIMPLE PATENT ARRANGEMENTS IN LAW NO. 13 OF 2016 CONCERNING PATENTS

Patent regulation is an important aspect of intellectual property law. Patents are exclusive rights granted by the state to owners to protect their inventions from unauthorized use. Patents provide exclusive rights for a certain period of time to the patent owner to control the use of their invention. The Patent Law No. 13 of 2016 is a legal regulation that governs the application, registration, and protection of patent rights in Indonesia. There are several implementing regulations of the Patent Law in Indonesia, including:

1. Government Regulation No. 45 of 2016 concerning the Implementation of Law No. 13 of 2016 concerning Patents.
2. Director General of Intellectual Property Rights Regulation No. HKI-02.DG.01.08 of 2017 concerning Procedures for Granting and Examining Patent Applications.
3. Ministry of Law and Human Rights Regulation No. 67 of 2016 concerning Tariffs for Intellectual Property Services at the Directorate General of Intellectual Property Rights.

These regulations govern the procedures for filing and examining patent applications, patent requirements, fees and tariffs, as well as the procedures for validating foreign patents in Indonesia.[14]

Specifically, regarding Simple Patents, they are entitled to the same protection as regular patents, including protection for the use of

12, No. 2 (2021): 163–172

[14] *See* Prabodh M., Chaitanya Prasad K., Ashish S., Suthakaran R., and Abhijit K. "Indonesian Patent System: An Overview." *International Journal of Drug Regulatory Affairs* 2, No. 2 (2014): 26–30; Baimoldina Svetlana Malikovna, "Concept of Legal Protection of Intellectual Property Rights." *Procedia: Social and Behavioral Sciences* 176 (2015): 998–1004.

patent rights. Article 8, paragraph (1) of the Patent Law states that every person has the right to a patent for an invention that meets the requirements.[15] One of the requirements that must be met is novelty, which means that the invention has not been publicly known before. In addition, the invention must also have an inventive step, which means that the invention cannot be easily discovered by someone working in the same field.[16]

In the case of Simple Patents, Article 20 of the Patent Law provides convenience for entrepreneurs or inventors who have low technological advancements but have practical applications in daily life. Entrepreneurs or inventors can apply for a Simple Patent with a simpler procedure and lower cost than a regular patent application.

Furthermore, the Minister of Law and Human Rights Regulation No. 69 of 2016 concerning Procedures for the Granting and Examination of Simple Patent Applications, or Minister of Law and Human Rights Regulation No. 69 of 2016, regulates the procedures for granting and examining Simple Patent applications.[17] Simple Patents are defined as patents that have relatively simple technological advancements and meet the requirements set by laws and regulations. Article 3 of Minister of Law and Human Rights Regulation No. 69 of 2016 regulates the requirements for granting Simple Patents. Simple Patents can be granted for inventions that fall into the group of goods or services determined by the Directorate

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15 Waspiah, "Pandecta Perlindungan Hukum Melalui Pendaftaran Paten Sederhana Pada Inovasi Teknologi Tepat Guna," *Pandecta* 6, No. 2 (2011); Waspiah Waspiah, "Model Percepatan Komersialisasi Paten Sederhana Pada Dunia Industri," *Pandecta : Jurnal Penelitian Ilmu Hukum (Research Law Journal)* 12, No. 2 (2017).

16 Alif Muhammad Ardani, "Penghapusan Paten Terdaftar Di Indonesia: Perkembangan dan Penyebabnya," *Undang: Jurnal Hukum* 2, No. 1 (2019), https://doi.org/10.22437/ujh.2.1.147-168.

17 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, https://doi.org/10.22219/ljih.v29i2.15680.

General of Intellectual Property. Other requirements include novelty, technological advancements, and adequate clarity regarding the invention.

This regulation also regulates the procedures for examining simple patent applications. Examination can be substantive and non-substantive. Substantive examination includes examination of patentability requirements and compliance with legal requirements. Meanwhile, non-substantive examination includes examination of completeness and accuracy of documents. This regulation also regulates the validity period of simple patents, which is set for 10 years from the date of registration and can be extended for 5 years. However, simple patents cannot be sold, transferred, or rented, and only apply within the territory of Indonesia.

In the event of a simple patent claim that is deemed to infringe the patent rights of others, Article 18 of this regulation regulates the dispute resolution procedures. Dispute resolution can be done through mediation, arbitration, or through the court. In order to encourage technological development in Indonesia, the government provides incentives in the form of exemption of administrative fees and reduction of examination costs for small-scale simple patent applicants, such as MSMEs, universities, and research institutions. The granting of these incentives is regulated in Article 22 of Ministerial Regulation No. 69 of 2016.

However, in practice, there is a consequence if the patent has been registered, which is the annual fee must be paid for 10 years, and it may be withdrawn if the patent becomes marketable and receives royalties. This annual fee is considered to create burdensome patent bureaucracy for patent holders because they have to pay through their agents, and there is also uncollectible debt due to the annual fee mechanism for patents that do not comply with payment. The legal

consequence of not paying the annual fee within the specified period for simple patent holders is that the simple patent can be revoked.

The main requirement for legal protection is the registration by the inventor. This is also related to the fact that the Patent Law adopts the First to File system, which is stated in Article 24 (1) of the Patent Law, which says that patents are granted based on applications, with various administrative examinations and others that require considerable time and a long process for simple patent inventors.[18]

The implementation of provisions for utility models, which are similar to simple patents, varies among countries based on their respective legal systems. China, for example, has a distinct approach in addition to granting patents for advanced inventions. It also provides legal protection for utility models, specifically intended for non-inventive innovations in areas like everyday equipment or toys that involve minor modifications to existing products. The utility model system in China aims to safeguard such simple inventions that do not require a high level of technical sophistication.

In China, a "*utility model*" refers to a novel technical solution related to the shape, structure, or combination of a practical-use product. The requirements for utility models include substantive features contributing to the innovation and a slightly lower inventive step compared to invention patents. Utility models can incorporate a maximum of two prior inventions to anticipate the inventive step, while regular patents can cite more than two prior art documents. The protection period for utility models is ten years, and it is limited to claims concerning physical products. The utility model undergoes a

[18] *See* also Hanxin Lin, and Cheryl Xiaoning Long. "Do Discretion Criteria for Patent Administrative Law Enforcement Encourage Innovation among Firms?" *China Economic Quarterly International* 1, No. 2 (2021): 160175

preliminary examination process before being granted, and there is no restriction on the number of claims allowed.[19]

In Malaysia, a utility model, also known as utility innovation, requires two main criteria: novelty and industrial applicability. Unlike patents, there is no requirement for an inventive step. Substantive examination is conducted for utility models, and there are two types of substantive examinations: modified substantive examination and normal substantive examination. The applicant can choose the type of examination to be conducted. Modified Substantive Examination: This is a simplified examination process. Substantive requirements regarding novelty and industrial applicability are considered fulfilled if the Malaysian application corresponds to a foreign utility innovation that forms the basis for the modified examination. Normal Substantive Examination: The application will be examined for compliance with all substantive requirements and formalities. [20] Only one claim per application is allowed. The protection period for a utility model is 10 years and can be extended for a maximum of 20 years by demonstrating that the utility model is being used or applied in Malaysia.

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[19] Ribowo and Raisah, "Perlindungan Hukum Terhadap Paten Sederhana dalam Sistem Hukum Paten di Indonesia (Studi Komparasi dengan Sistem Hukum Paten di Negara China)."

[20] Rohmat Rohmat, Waspiah Waspiah, 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), https://doi.org/10.15294/jils.v7i1.55439. *See also* Angayar Kanni Ramaiah, "Innovation, Intellectual Property Rights and Competition Law in Malaysia." *South East Asia Journal of Contemporary Business, Economics and Law* 14, No. 4 (2017): 60-69

# PATENT POLICY: FROM GLOBAL PROVISION INTO DOMESTIC REGULATION

The emergence of changes in the Intellectual Property Law cannot be separated from the pressure exerted by developing countries for the reform of intellectual property protection in Indonesia. Intellectual Property exists legally when there is support, shelter, or legal protection from the state or public authorities for an intellectual work. Through the mechanism of documentation management, rights are granted to applicants of intellectual property, including investors, designers, and trademark owners. There are three main elements involved:[21] (1) exclusive rights, (2) the state, and (3) a specific time period. With the rights granted by public authorities, exclusivity or ownership is established, allowing the owner to prohibit others from using the rights without permission. Law enforcement is the second aspect, alongside the granting of rights as described above. Granting rights is pointless without proper law enforcement. Essentially, exclusive rights represent a monopoly for a specified period and under specific conditions. Intellectual property rights are individual rights. Intellectual works that have obtained or been packaged exclusively are considered "*property*" enabling the owners to create a market (supply and demand). [22] This arises because the implementation of the intellectual property rights system fulfills the needs of the wider society. This is why, in the case of intellectual

[21] Florian Wettstein et al., "Examining the Performance of Competition Policy Enforcement Agencies: A Cross-Country Comparison," *Business and Society* 13, No. 1 (2019).

[22] Beatriz Conde Gallego, "Unilateral Refusal To License Indispensable Intellectual Property Rights," *Research Handbook on Intellectual Property and Competition Law*, 2008. *See also* George J. Benston, "Required Disclosure and the Stock Market: An Evaluation of the Securities Exchange Act of 1934." *The American Economic Review* 63, No. 1 (1973): 132–155

property rights, such as patents, the industrial applicability element is required, meaning that the invention in question can be applied in the industry. In summary, intellectual property rights serve as a driver for economic growth.

The ratification of TRIPs in Indonesia has led to the formulation of several regulations concerning the protection of Intellectual Property Rights in Indonesia, encompassing various points of implementation in line with TRIPs. Essentially, TRIPs address three main issues. Firstly, it contains provisions that outline general rules and basic principles to be followed by WTO member countries. Secondly, it establishes standards regarding the granting, scope, and utilization of each Intellectual Property Right mentioned in the TRIPs agreement. Thirdly, it includes provisions related to the obligations of WTO member countries to enforce Intellectual Property Rights through legal measures aimed at protecting and safeguarding these rights. The purpose of the TRIPs agreement is to reduce distortions and barriers to international trade, as well as to enhance effective and adequate protection of Intellectual Property Rights, ensuring that the processes and enforcement measures themselves do not impede trade. To achieve these goals, new regulations and a monitoring system are required regarding: a) the application of basic GATT principles and various international agreements and conventions related to Intellectual Property Rights; b) the implementation of appropriate standards and principles regarding the granting, scope, and utilization of Intellectual Property Rights in trade activities; c) the establishment of effective and appropriate mechanisms for the protection of Intellectual Property Rights related to trade activities, taking into account existing differences in national legal systems; d) the establishment of effective and expeditious procedures for the prevention and settlement of disputes between governments; and e)

transitional provisions that allow for full participation in the negotiated agreements.

The first part of the TRIPs agreement establishes general provisions and basic principles that must be implemented by participating countries. These provisions include a commitment to provide national treatment, meaning equal treatment to all citizens of participating WTO member states or WIPO members in the field of Intellectual Property Rights. Another principle outlined in the TRIPs agreement is the principle of "free to determine." According to this principle, each participating WTO member or WIPO member is free to determine the most appropriate method by incorporating the provisions of the TRIPs agreement into its own legal system and practices.

From the perspective of international economic development, the amendments to the Patent Law aimed at aligning it with international agreements are part of the efforts towards economic liberalization at the international level. In order for this economic liberalization or internationalization to work effectively, it necessitates changes in social, political, and legal institutions. This is why adjustments to legal institutions (including through the revision of laws) in the field of patents (as well as other areas of intellectual property) are made.

After being in effect for four years, the Patent Law of 1997 was replaced by Law No. 14 of 2001. The preamble of the new Patent Law states: a. in line with Indonesia's ratification of international agreements, rapid technological, industrial, and trade developments, it is necessary to have a Patent Law that provides reasonable protection for inventors; b. this is also necessary to create a climate of fair business competition and consider the interests of the general public; c. based on the considerations mentioned in points a and b, as well as taking into account the experience in implementing the

existing Patent Law, it is deemed necessary to establish a new Patent Law to replace Law No. 6 of 1989 on Patents as amended by Law No. 13 of 1997 on Amendments to Law No. 6 of 1989 on Patents, and the last amendments to Law No.13 of 2016 on Patents.

The preamble of the Patent Law of 2016 indicates that its formation was driven by the ratification of international agreements and rapid developments in technology, industry, and trade. Based on these two conditions, the new Patent Law was drafted with the aim of providing protection to inventors and creating a climate of fair business competition.

Regarding the ratified international agreements, it specifically refers to TRIPs. This agreement also served as the basis for the previous Patent Law (1997). However, it was recognized that certain provisions of the old law had not been fully aligned with the content of TRIPs. Therefore, a new law was enacted to further harmonize the provisions.

When examining the reasons for aligning the provisions with TRIPs in terms of the content of the new law, there were not many substantial adjustments made. The adjustments to TRIPs mainly involved classifying plant varieties as non-patentable inventions and exempting the importation of pharmaceutical products from patent infringement. The classification of plant varieties as non-patentable inventions was done through a separate law, namely Law No. 29 of 2000. This is in line with the provisions of TRIPs, which allow member states to choose to protect plant varieties through either patents or sui generis systems. Similarly, the exemption of imported pharmaceutical products from patent infringement is also permitted by TRIPs.

In the context of the study of legal politics, the issues related to patent protection in Indonesia encompass practical and conceptual challenges that are connected to the reasons behind the establishment of the Patent Law. Initially, the formation of the Patent Law was based

on national interests to promote domestic industrial development. However, as time progressed, there has been involvement of foreign parties from developed countries. The formation of the Patent Law was subsequently influenced by the desire to keep up with international developments and trade policies, align the law with international agreements (such as TRIPs), and improve the investment climate, industrialization, liberalization, and harmonization. Therefore, these factors became key considerations in the establishment of the Patent Law in Indonesia. The convergence of domestic and foreign interests can affect the acceptance and implementation of patent protection and may encounter various obstacles, as previously explained. Although the convergence of domestic and foreign interests is a common phenomenon in the current international landscape, it becomes unfair and difficult to accept when foreign interests dominate and exert greater influence than national interests.

## I. REFORMULATION OF LEGAL PROTECTION FOR SIMPLE PATENT INNOVATIONS BASED ON THE WELFARE STATE PERSPECTIVE

Innovation is an important aspect in developing a country's progress. Innovation can be defined as an effort to create or produce new products or technologies that can provide added value for society and a country's economy. Therefore, legal protection for innovation becomes very important in ensuring the success of that innovation.

One form of legal protection for innovation is a patent. A patent is an exclusive right granted by the state to the holder to control,

produce, and trade a certain product or technology. In a broader sense, a patent can also be interpreted as an award for someone's innovative efforts in producing new products or technologies. However, in reality, legal protection for patents is often inadequate for small or simple innovations. This is due to the complicated patent registration process and high costs. As a result, simple innovations are often unprotected and difficult to commercialize.

Therefore, there is a need for reformulation in legal protection for simple patent innovations. This reformulation must be done by considering the welfare state perspective, which prioritizes the welfare of society as the main goal of public policy. In this paper, we will discuss the reformulation of legal protection for simple patent innovations based on the welfare state perspective.

Essentially, legal protection of simple patent innovations can be achieved through two approaches, namely procedural improvement and substantive improvement. Procedural improvement approach includes efforts to simplify and reduce the cost of patent registration procedures. This can be done by accelerating the patent registration process, reducing the cost of patent registration, and increasing the availability of information about patent registration procedures.

On the other hand, substantive improvement approach includes efforts to improve the substance of patent protection. This can be done by expanding the scope of patents, providing wider patent protection, and improving the criteria used to assess the novelty of an innovation. In the context of a welfare state, patent law reform from a welfare state perspective aims to strengthen fair and balanced protection of intellectual property rights, while considering the interests of the public and the welfare of society as a whole. In this regard, patent law reform should be directed towards developing and strengthening a

patent system that can benefit the entire society, not just large corporations.[23]

One of the basic principles of patent law reform is the equalization of access to patent rights. In this regard, it should be noted that patent rights are not only for large companies but also for individuals, small groups, and SMEs who have innovations or creations that are worth protecting.[24] Therefore, patent law reform needs to encourage SMEs to be more active in developing their innovations and creativity by providing sufficient incentives to encourage them to file patent applications.

In addition, patent law reform should also strengthen the protection of simple patent rights, also known as "utility models".[25] This is related to the protection of simpler products, such as tools or machines that do not qualify as inventions and do not require too much time and cost to file a patent. By strengthening the protection of simple patent rights, small communities and SMEs can more easily obtain patent rights and encourage innovation in wider sectors.[26]

However, on the other hand, patent law reform must also consider the balance between patent protection and public interests. For example, efforts to strengthen patent protection should not hinder public access to technology and innovation needed to improve the welfare of the people. Therefore, patent law reform needs to provide

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[23] *See* Ilayda Nemlioglu, "A Comparative Analysis of Intellectual Property Rights: A Case of Developed versus Developing Countries." *Procedia Computer Science* 158 (2019): 988–998

[24] Susy R. Frankel and Peter Drahos, "Indigenous Peoples' Innovation and Intellectual Property: The Issues," *SSRN Electronic Journal*, 2012, 0–28, https://doi.org/10.2139/ssrn.2138657.

[25] Waspiah et al., "Technological Advancement on Patent Registration in Indonesia."

[26] Gangfeng Wang et al., "Extraction of Principle Knowledge from Process Patents for Manufacturing Process Innovation," in *Procedia CIRP*, Vol. 56, 2016, https://doi.org/10.1016/j.procir.2016.10.053.

guarantees of access for the public to obtain technology and innovation at affordable prices.

In this regard, patent law reform should be directed towards efforts to create a fair and balanced patent system by providing sufficient protection for SMEs and individuals while still considering the public interests and welfare of the wider community. This is in line with the basic principles of a welfare state, which aims to create a fair and equitable system that benefits the wider community.

# II. PLANNING AMADEMENT OF PATENT LAW BY LAW MAKERS

The patent regulation in Indonesia has been established since the colonial era until the enactment of Law No. 6 of 1989. Indonesia's involvement in international intellectual property frameworks can be traced back to its ratification of the Paris Convention through Presidential Decree No. 24 of 1979, which was later supplemented by Presidential Decree No. 15 of 1997. Indonesia actively participates in the World Intellectual Property Organization and is a member of the Patent Cooperation Treaty, established in 1970. Indonesia also became a founding member of the World Trade Organization in 1994 after engaging in lengthy negotiations during the Uruguay Round. The Agreement on Trade-Related Aspects of Intellectual Property Rights serves as a fundamental component of trade regulation within the WTO framework. In line with its active participation, Indonesia adjusted its patent policy framework through Law No. 13 of 1997, which was further improved with the enactment of Law No. 14 of 2001 concerning Patents.

The formation of Article 20 in Law Number 13 of 2016 concerning Patents aims to facilitate regulations in improving the

quality of goods produced from an invention. This regulation is expected to create job opportunities that can absorb Indonesian workforce. Additionally, it is hoped that there will be an increase in foreign investments coming to Indonesia. The provision of Article 20 in Law Number 13 of 2016 concerning Patents has legal consequences for patent holders who violate its provisions. The implementation of Article 20 of Law Number 13 of 2016 concerning Patents is expected to benefit the Indonesian people, as it is anticipated that with the registration of foreign patents in Indonesia, apart from technology transfers, it will also create numerous job opportunities and subsequently reduce the unemployment rate.

The existence of Article 20 of the Patent Law is reinforced by Article 132 paragraph (1) letter e, which opens the possibility of filing a request for invalidation against patents that do not comply with the provisions of Article 20 of the Patent Law. As a result of this provision, objections have been raised by other countries, particularly by developed countries that regularly register a large number of patents in Indonesia. Another consequence is the potential application of reciprocal measures against patents owned by Indonesian inventors or the imposition of trade sanctions on Indonesian trade products abroad, which would have a detrimental impact on Indonesia's export trade.

In response to the evolving needs, Law Number 14 of 2001 was subsequently amended by Law Number 13 of 2016 concerning Patents. Throughout more than 7 years of the journey of Law No. 13 of 2016, various developments and legal needs of the community regarding patent regulations could not be accommodated within the norms stipulated in the said law. The existing provisions did not align with the spirit of innovation and tended to hinder innovation. Therefore, the provisions in the articles/clauses/letters of Law No. 13 of 2016 need to be refined.

As an instrument that provides intellectual property protection, the existing regulatory system in Law No. 13 of 2016 needs to harmonize with the international system. The provisions in Article 20 of Law No. 13 of 2016 are not in line with the provisions of the international agreement known as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The disharmony in this regard has led to negative responses from the international community towards Indonesia's commitment to its national patent policy. Therefore, the legal policy that needs to be developed in this regard is the necessity to make adjustments in accordance with international provisions through responsive policies that address global development needs while prioritizing the social needs of the community, aiming to encourage scientific and technological advancements in line with international standards.

The proposed amendment to the Patent Act aims to introduce new regulations to Law No. 13 of 2016 concerning Patents, which will address various aspects related to innovation development, international harmonization, and improved patent services. This revision process is being conducted by the relevant government agency, specifically the Directorate General responsible for intellectual property within the Ministry of Law. The substantive policy provisions within the Patent Bill will cover issues such as simple patents, computer program inventions, discoveries as inventions, the grace period for patent registration after publication, local working or manufacturing requirements under the Patent Act, and policies aimed at enhancing patent services and protection.

The ongoing examination of the Patent Law revision seeks to establish a framework that enables innovative and responsive patent protection and services, in line with international developments, while addressing constraints and challenges related to policy innovation and international harmonization. This necessitates

substantial enhancements to the substantive provisions found within the Patent Act. Several issues have been identified, including:

a. Regarding simplified patents;
b. Inventions related to computer programs;
c. Inventions in the form of discoveries;
d. Publication time limits for inventions;
e. Local working requirements for patents;
f. Information on genetic resources;
g. Changes to patent application data;
h. Acceleration of substantive examination procedures;
i. Re-examination of patent applications;
j. Annual fees for patent holders.

# III. IMPLICATION OF AMADEMENT OF PATENT LAW ON SIMPLE PATENT REQUIRMENT & NATIONAL INTEREST

The provision of simple patents aims to provide protection for new inventions, developments of existing products or processes, and their applicability in the industry. However, in practice, the criteria for simple patents, particularly regarding the development of existing products or processes, create contradictions and confusion due to the challenges in assessing such criteria. The patentability criterion for the development of existing products or processes is intended for all types of inventions, including both regular patents and simple patents, according to the definition provided in the Patent Law. Consequently, the criterion of development of existing products or processes cannot be used as a determining factor for patentability for either regular patents or simple patents. Furthermore, in practice, it is challenging to assess whether an invention filed under a simple

patent application qualifies as a development of existing products or processes since most inventions filed for simple patents are typically modifications of existing inventions.[27]

According to Article 3, paragraph (2) of the Patent Law, a simple patent is granted for new inventions, developments of existing products or processes, and their applicability in the industry. Additionally, the Explanation of Article 3, paragraph (2) clarifies that a simple patent is specifically granted for inventions involving new processes or methods. Under this provision, any invention that qualifies as a simple discovery, as long as it meets the criteria of novelty, development from existing products or processes, and industrial applicability, can be eligible for a simple patent. The formulation of Article 3, paragraph (2) of the Patent Law represents a new normative formulation that amends the previous formulation found in the previous Patent Law, Law No. 14 of 2001 on Patents. In the previous formulation, the practical value criteria were explicitly stated in the normative provision. However, in the new Patent Law, the practical value criterion is not explicitly mentioned in the normative provision but is instead explained in the accompanying Explanation.

That issue arises from the formulation of the provision concerning the development of existing products or processes, which serves as a general criterion for inventions eligible for regular patents rather than a specific criterion for modifications, as is the case for simple patents. This criterion should not be applicable to inventions eligible for simple patents. Assessment of novelty in determining patentability is not limited to products or processes that are entirely different. The novelty criterion also encompasses various aspects of

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[27] M. Zulfa Aulia, "Politik Hukum Pembentukan UU Paten Di Indonesia: Industrialisasi, Liberalisasi, Dan Harmonisasi," *Jurnal Hukum IUS QUIA IUSTUM* 22, No. 2 (2015): 223–37, https://doi.org/10.20885/iustum.vol22.iss2.art3.

differentiation for inventions filed under both regular patents and simple patents. This includes considering novelty in terms of form, configuration, construction, components, and other features of a product or process. Even features related to the scope of indications or functions can be considered as novel. Consequently, the absence of explicit criteria regarding practical utility value in the normative provision of Article 3 of the Patent Law leads to bias in the registration process for patents.

Referring to the provisions of Article 3 of the Patent Law, a simple patent is granted for an invention that meets the following criteria: a) it is new, b) it involves an inventive step, which includes the development of existing products or processes, and c) it is applicable in the industry. However, according to the current Patent Law, the emphasis of simplicity for a patent lies solely on the novelty requirement. Nonetheless, for a patent to be considered novel, it must possess a technological step (inventive step). Even if a patent is a development of a previous product, it must have a technical function that distinguishes it from other patents.

Thus, the technical function is the primary criterion for the approval of a patent application. However, in practice, the assessment of novelty as stated in Article 3 of the Patent Law only considers the novelty aspect and does not sufficiently consider the criteria of practical utility. As a result, patent applications are evaluated primarily based on novelty, leading to situations where new patents lack significant practical functional differences from existing simple patents. The absence of criteria for practical utility in simple patents, as mentioned above, has resulted in a majority of patent applications being filed as simple patents. This is because the process is faster and, in practice, only novelty is taken into account.

Furthermore, it should be noted that a simple patent is granted for any new invention, including the development of existing

products or processes that are applicable in the industry. However, in practice, the provision regarding simple patents, as stated in the aforementioned article, leads to contradictions, particularly in the assessment of the development of existing products or processes, which proves to be challenging to evaluate effectively.

The patentability criterion regarding the development of existing products or processes is primarily intended for assessing the invention criteria applicable to all types of patents, including both regular patents and simple patents. According to the definition provided in the Patent Law, patents are granted for all types of technological inventions, encompassing products, processes, as well as improvements and developments of existing products or processes. Consequently, this provision implies that inventions, including developments of existing products or processes, are eligible for protection under both regular patents and simple patents. Thus, the criterion of development of existing products or processes cannot serve as a patentability requirement for either regular patents or simple patents.

Furthermore, the patentability criterion of development of existing products or processes stipulated in the Patent Law fails to differentiate whether an invention should be granted protection as a regular patent or a simple patent. In practical terms, since the enactment of the Patent Law, the criterion of development of existing products or processes cannot be employed to assess whether an invention submitted through a simple patent application truly represents a development of existing products or processes. This is primarily because most inventions seeking simple patent protection are generally modifications of pre-existing inventions that meet the criteria of being a development of existing products or processes.

Recognized by the Patent Examiner, the assessment of patentability for simple patents in Indonesia is primarily based on two

criteria: novelty and industrial applicability. Therefore, the evaluation of applications for simple patents primarily focuses on the requirement of novelty. It is important to note that a simple patent is not identical to a regular patent but rather referred to as a Like Patent. In Indonesia, simple patents represent a distinctive regime of intellectual property protection specifically designed to promote innovation in the field of technology within the country. Under the previous patent laws, namely Patent Law No. 13/1997 and Patent Law No. 14/2001, simple patents were intended to safeguard inventions of a simple nature, such as products, tools, or processes, that demonstrated practical utility based on their form, configuration, construction, or components.

However, to encompass a broader range of simple technology protection, commonly known as Appropriate Technology, and to encourage innovation and enhance intellectual property protection in the technological field within Indonesian society, the regulations governing simple patents were revised in Patent Law No. 13 of 2016. This updated law stipulates that the protection of simple patents is applicable to all types of technological inventions that meet the new criteria of novelty, involve an inventive step, and are capable of industrial application.The purpose and objective of regulating simple patents under the Patent Law have led to a remarkable increase in the number of domestic applications for simple patents. This indicates a significant increase in technological innovation within the country. Patent is essentially a business strategy, where inventors seek to protect their intellectual property in the field of technology in order to pursue their business interests. In practice, many applicants and inventors prefer to protect their intellectual property in the form of simple patents. This preference is due to the easy and fast process involved, which provides legal certainty and ensures future business plans. However, the inclusion of the criterion of development of

existing products or processes in the Patent Law has caused confusion. Many inventions with similar characteristics are still granted protection under simple patents. This is because the criterion of development of existing products or processes does not differentiate whether an invention should be registered as a regular patent or a simple patent. The confusion arising from this criterion leads to the same invention being granted dual protection under both a regular patent and a simple patent.

# CONCLUSION

In the case of simple patents, Implementing Regulation No. 69 of 2016 regulates procedures for granting and procedures for examining simple patent applications. Simple patent arrangements aim to provide convenience for business actors or inventors who have inventions with a low level of technological progress but have uses in everyday life. With this regulation, it is hoped that it can increase creativity and innovation in Indonesia, especially among small and medium-sized communities who have limited access to intellectual property rights protection. Patent law reform from the perspective of the welfare state aims to strengthen the protection of intellectual property rights in a fair and balanced manner, while taking into account the public interest and the welfare of the wider community. Reform should be directed towards developing and strengthening a patent system that can benefit the whole of society, not just big companies. One of the basic principles of patent law reform is equal access to patents, including for individuals, small groups, and MSMEs who have innovations or copyrighted works that deserve protection. Patent law reform must also strengthen simple patent protection or

the 'utility model' and pay attention to the balance between patent protection and the public interest.

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# REFERENCES

Ardani, Alif Muhammad. "Penghapusan Paten Terdaftar di Indonesia: Perkembangan dan Penyebabnya." *Undang: Jurnal Hukum* 2, No. 1 (2019): 147-168. https://doi.org/10.22437/ujh.2.1.147-168.

Anderson, Jane, E. "Indigenous Knowledge and Intellectual Property Rights." I*nternational Encyclopedia of the Social & Behavioral Sciences* 2 (2015): 769–778. https://doi.org/10.1016/B978-0-08-097086-8.64078-3.

Atkins, Paul S., and Bradley J. Bondi. "Evaluating the Mission: A Critical Review of the History and Evolution of the SEC Enforcement Program." *Fordham Journal of Corporate and Financial Law* 13 (2008): 367–417. https://ir.lawnet.fordham.edu/jcfl/vol13/iss3/1

Aulia, M. Zulfa. "Politik Hukum Pembentukan UU Paten di Indonesia: Industrialisasi, Liberalisasi, dan Harmonisasi." *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 2 (2015): 223–37. https://doi.org/10.20885/iustum.vol22.iss2.art3.

Bachri, 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. https://doi.org/10.36448/pranatahukum.v15i1.216.

Bakhtiar, A., H. Suliantoro, R. H. Ningsi, and K. Pitipaldi. "Relationship of Quality Management System Standards to Industrial Property Rights in Indonesia Using Spearman Correlation Analysis Method." In *IOP Conference Series: Earth and Environmental Science*, Vol. 623, 2021. https://doi.org/10.1088/1755-1315/623/1/012092.

Bambang Ribowo, Mochammad, and Kholis Raisah. "Perlindungan Hukum Terhadap Paten Sederhana dalam Sistem Hukum Paten di Indonesia (Studi Komparasi dengan Sistem Hukum Paten di Negara China)." *NOTARIUS* 12, No. 1 (2019): 42-60. https://doi.org/10.14710/nts.v12i1.23761.

Bainbridge, Stephen M. "Kokesh Footnote Three Notwithstanding: The Future of the Disgorgement Penalty in SEC Cases." Washington University *Journal of Law & Policy* 56, No. 1 (2018): 18–30. https://openscholarship.wustl.edu/law_journal_law_policy/vol56/iss1/8/.

Benston, George J. "Required Disclosure and the Stock Market: An Evaluation of the Securities Exchange Act of 1934." *The American Economic Review 63*, No. 1 (1973): 132–155. https://www.jstor.org/stable/1803131.

Bhakti, Dwi, Hidayat Sofyan Widjaja, and Dihin Septyanto. "Buffetology's Use in Stock Trading Amid the COVID-19 Pandemic." *SSRN Electronic Journal*, August (2021): 1–17. https://doi.org/10.2139/ssrn.3896854.

Bordo, Michael, and Harold James. "The Great Depression Analogy." *Financial History Review* 17, No. 2 (October 14, 2010): 127–140. https://doi.org/10.1017/S0968565010000193.

Chang, Ha-Joon. "Intellectual Property Rights and Economic Development: Historical Lessons and Emerging Issues." *Journal of Human Development* 2, No. 2 (2001): 287-309. https://doi.org/10.1080/14649880120067293

Choi, Mincheol, and Chang Yang Lee. "Power-Law Distributions of Corporate Innovative Output: Evidence from U.S. Patent Data." *Scientometrics* 122, No. 1 (2020). https://doi.org/10.1007/s11192-019-03304-8.

Conde Gallego, Beatriz. "Unilateral Refusal To License Indispensable Intellectual Property Rights." In *Research Handbook on Intellectual Property and Competition Law* (Massachusetts, USA: Edward Elgar Publishing, Inc., 2008). https://doi.org/10.4337/9781848443853.00018

Dewi, Lily Karuna, and Putu Tuni Cakabawa Landra. "Perlindungan Produk-Produk Berpotensi Hak Kekayaan Intelektual Melalui Indikasi Geografis." *Kertha Semaya: Journal Ilmu Hukum* 7, No. 3 (2019): 1-17. https://doi.org/10.24843/km.2019.v07.i03.p02.

Frankel, Susy R., and Peter Drahos. "Indigenous Peoples' Innovation and Intellectual Property: The Issues." *SSRN Electronic Journal* (2012): 1–28. https://doi.org/10.2139/ssrn.2138657.

Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. (Russell Sage Foundation, 1975).

Kamil, Abir Rafa. "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. https://doi.org/10.36312/jisip.v6i1.2801.

Khairunnisa, Salsabila. "Patent Legal Protection On Invention (Comparation Study Between Indonesia and Japan)." *Jurnal Hukum Novelty* 9, No. 2 (2018): 183–191. http://dx.doi.org/10.26555/novelty.v9i2.a11338.

Kwon, Seokbeom, and Alan C. Marco. "Can Antitrust Law Enforcement Spur Innovation? Antitrust Regulation of Patent Consolidation and Its Impact on Follow-on Innovations." *Research Policy* 50, No. 9 (2021): 104295. https://doi.org/10.1016/j.respol.2021.104295.

Lin, Hanxin, and Cheryl Xiaoning Long. "Do Discretion Criteria for Patent Administrative Law Enforcement Encourage Innovation among Firms?" *China Economic Quarterly International* 1, No. 2 (2021): 160175. https://doi.org/10.1016/j.ceqi.2021.05.001

M., Prabodh, Chaitanya Prasad K., Ashish S., Suthakaran R., and Abhijit K. "Indonesian Patent System: An Overview." *International Journal of Drug Regulatory Affairs* 2, No. 2 (2014): 26–30. https://doi.org/10.22270/ijdra.v2i2.129.

Malikovna, Baimoldina Svetlana. "Concept Of Legal Protection Of Intellectual Property Rights." *Procedia: Social And Behavioral Sciences* 176 (2015): 998–1004. https://doi.org/10.1016/j.sbspro.2015.01.570.

May, Christopher, and Susan K. Sell. *Intellectual Property Rights: A Critical History*. (Boulder: Lynne Rienner Publishers, 2006).

Mezzanotti, Filippo, and Timothy Simcoe. "Patent Policy and American Innovation after EBay: An Empirical Examination." *Research Policy* 48, No. 5 (2019): 1271-1281. https://doi.org/10.1016/j.respol.2019.01.004.

Nemlioglu, Ilayda. "A Comparative Analysis of Intellectual Property Rights: A Case of Developed versus Developing Countries." *Procedia Computer Science 158* (2019): 988–998. https://doi.org/10.1016/j.procs.2019.09.140.

Purwaningsih, Endang. Seri Hukum Kekayaan Intelektual Hukum Paten. (Jakarta: CV. Mandar Maju, 2015).

Purwaningsih, Endang, Evie Rachmawati, and Nur Ariyanti. "Kebijakan Paten Melalui Penguatan Perlindungan Invensi Teknologi dan Peningkatan Kemampuan Inovasi." Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan 12, No. 2 (2021): 163–172. http://dx.doi.org/10.32493/jdmhkdmhk.v12i2.15865.

Perangin-angin, Reh Bungana Beru, Ramsul Nababan, and Parlaungan G. Siahaan. "Perlindungan Pengetahuan Tradisional Sebagai Hak Konstitusional di Indonesia." *Jurnal Konstitusi* 17, No. 1 (2020): 178-196. https://doi.org/10.31078/jk1718.

Ramaiah, Angayar Kanni. "Innovation, Intellectual Property Rights and Competition Law in Malaysia." *South East Asia Journal of Contemporary Business, Economics and Law* 14, No. 4 (2017): 60-69.

Republic of Indonesia. *Undang-Undang No 13 Tahun 2016 Tentang Paten*. (Jakarta: Sekretariat Negara, 2016).

Rohmat, Rohmat, Waspiah Waspiah, 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. https://doi.org/10.15294/jils.v7i1.55439.

Sudirman, Lu, 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. https://doi.org/10.22219/ljih.v29i2.15680.

Sudjana, Sudjana. "Penerapan Sistem Hukum Menurut Lawrence W Friedman Terhadap Efektivitas Perlindungan Desain Tata Letak Sirkuit Terpadu Berdasarkan Undang-Undang Nomor 32 Tahun 2000." *Al Amwal (Hukum Ekonomi Syariah)* 2, No. 1 (2019): 78–94.

Wang, Gangfeng, Xitian Tian, Junhao Geng, Richard Evans, and Shengchuang Che. "Extraction of Principle Knowledge from Process Patents for Manufacturing Process Innovation." In *Procedia CIRP*, Vol. 56 (2016). https://doi.org/10.1016/j.procir.2016.10.053.

Waspiah, Waspiah. "Perlindungan Hukum Melalui Pendaftaran Paten Sederhana Pada Inovasi Teknologi Tepat Guna." *Pandecta Research Law Journal* 6, No. 2 (2011): 181-190. https://doi.org/10.15294/pandecta.v6i2.2336

Waspiah, Waspiah. "Model Percepatan Komersialisasi Paten Sederhana Pada Dunia Industri." *Pandecta Research Law Journal)* 12, No. 2 (2017): 86-105. https://doi.org/10.15294/pandecta.v12i2.7491

Waspiah, Waspiah, Budi Santoso, Paramita Prananingtyas, Januari Nasya Ayu Taduri, and Ridwan Arifin. "Technological Advancement on Patent Registration in Indonesia." In *AIP Conference Proceedings*, Vol. 2573 (2022). https://doi.org/10.1063/5.0104090.

Waspiah, Waspiah. "The Acceleration of Simple Patent: How We Optimize Technology on Indonesian Intellectual and Property Rights Law (Study on Central Java, Indonesia)." *1st International Conference on Indonesian Legal Studies (ICILS 2018)*. Atlantis Press, 2018.

Wettstein, Florian, Dorothea Baur, Patnaik Sanjay, Chris Jones, Tony Kinder, Colleen B Mullery, Steven N Brenner, et al. "Examining the Performance of Competition Policy Enforcement Agencies: A Cross-Country Comparison." *Business and Society* 13, No. 1 (2019): 1-121.

Yang, Chih Hai, Yi Ju Huang, and Hsuan Yu Lin. "Do Stronger Intellectual Property Rights Induce More Innovations? A Cross-Country Analysis." *Hitotsubashi Journal of Economics* 55, No. 2 (2014): 167-188. http://www.jstor.org/stable/43296295

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