

**LAW OF THE REPUBLIC OF INDONESIA
NUMBER 14 OF 2001
CONCERNING PATENTS**

Considering:

- (a) that in line with the international conventions already ratified by Indonesia, the rapid development in technology, industry and trade, a Patent Law is required in order to give the reasonable protection to Inventors;
- (b) that the issue as described in item (a) is also required in order to create a fairly competitive business climate while maintaining the public's interest in general;
- (c) that based on the consideration in items (a) and (b), and the experience in enforcing the existing Patent Law, it is deemed necessary to replace Law Number 6 of 1989 on Patents as already amended under Law Number 13 of 1997 on Amendment to Law Number 6 of 1989 on Patents.

In view of:

- (1) Article 5 paragraph (1), Article 20, and Article 33 of 1945 Constitution of the Republic of Indonesia;
- (2) Law Number 7 of 1994 on Ratification of the Agreement Establishing the World Trade Organization (State Gazette of the Republic of Indonesia of 1994 Number 57, State Gazette Supplement Number 3564).

With the endorsement of the People's Representative Assembly of the Republic of Indonesia it has been decided to declare the effectiveness of the Law of Patents.

Chapter I - General Provisions

Article 1

For the purpose of this Law:

- (1) Patent is an exclusive right granted by the State to an Inventor on his or her invention in the field of technology, who for a defined period of time makes the said invention by himself or gives another party an approval to make it;

- (2) Invention is an Inventor's idea formulated into activities of solving specific problem in the field of technology in the forms of products or processes, or improvement and development of the said products or processes.
- (3) Inventor is a person individually or a number of persons jointly who transforms the formulated idea into activities that produce an Invention.
- (4) Applicant is the party making the Application for Patent.
- (5) Application is application for Patent registration made in writing to the Directorate General.
- (6) Patent Holder is an Inventor as the Patent owner or the party receiving such a right from the Patent owner or another party who subsequently receives such right, that is registered with the Patent General Registry.
- (7) Attorney is Consultant on Intellectual Property Rights.
- (8) Inspector is an official who by competency is so appointed in a Ministerial Decree as a Patent Inspector functional official and is assigned to do substantive inspection on the Application.
- (9) Minister is the minister in charge of the ministry with the tasks and responsibilities cover among other things the management of intellectual property rights, including Patent.
- (10) Directorate General is Directorate General on Intellectual Property Rights which is within the ministry supervised by the Minister.
- (11) Filing Date is the date the Application that has fulfilled the administration requirements is received.
- (12) Priority Right is the right of an applicant to make an application from a country that belongs to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization to get the acknowledgment that the filing date in the country of origin be the priority date in the country of destination that is also a member of the two conventions, as long as such an application is made within the period provided in the Paris Convention.
- (13) License is permit issued by the Patent Holder to another party on an agreement based on an assignment of right to make use of the economic benefit of a protected patent under a definite period and conditions.
- (14) Day is working day

Elucidation: For the last few decades, the impacts of rapidly growing technological development on to our daily life have been so significant. The development is not only limited to hi-tech areas such as the computer, electronics, telecommunication, and biotechnology but also in mechanics, chemicals, and many others. Furthermore, in line with the foregoing, the people's awareness of increasing the utilization of simple technology has been getting higher and higher.

As for Indonesia, a country possessing abundant natural resources, the important role of technology is something undeniable. However, such technological development has not yet reached the expected target. This has been clearly formulated under the Decree of People's Consultative Assembly Number IV/MPR 1999 concerning Broad Guidelines of State Policy, among others things as described in Chapter II stating that technological development has not yet been significantly utilized in socio-economic and cultural activities that it has not strengthened the capability of Indonesia in facing global competition. To improve technological development in the form of protection of intellectual property rights, including equivalent Patent, a conducive system is highly required.

Accordingly, even though Indonesia has possessed Patent Law, that is, Law Number 6 of 1998 on Patent (State Gazette of 1989 Number 39) jo Law Number 13 of 1997 (State Gazette of 1997 Number 30) (hereafter referred to as former Patent Law) and the implementation thereof has been being exercised, it is deemed necessary to make proper amendments to the former Patent Law. Besides, there are some other aspects under the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereafter referred to as TRIP's Agreement) which have not been accommodated under the said Patent Law. It should be noted, Indonesia has ratified the Agreement Establishing the World Trade Organization, hereafter referred to as World Trade Organization, under the Law Number 7 of 1994 concerning Ratification on Agreement Establishing the World Trade Organization (State Gazette of 1994 Number 57) in which TRIP's Agreement constitutes one of the attachments thereof.

Considering the scope of change and for the smooth implementation by the people, the Patent Law is comprehensively composed in a single text replacing the former Patent Law, the substance of which is not changed and again contained in this Law. In general, the changes applied to the former Patent Law include improvement, addition, and deletion. Among the distinguishable changes in this law are:

(1) Improvements

(a) Term

- (i) The term "Invensi" (Indonesian Version) is used for Invention and "Inventor" For Inventor. The term "penemuan" is changed to "Invensi" considering the word invention is particularly used in regard of Patents. In other words, the term "Invensi" here is far more accurate compared with "penemuan" as the latter has a number of meanings. The example of the use of "penemuan" is "penemuan benda yang tercecer" (findings of dropped articles), while the term "Invensi" in respect of patent is the results of a number of activities that come out with something new that has never existed before (this should, naturally, be in the context of human kind, while being fully aware that everything is created by*

God). We know the words in English: to discover, to find and to get. These words are clearly different from the word to invent in respect of Patent.

The term “*invensi*” is found in the *Kamus Besar Bahasa Indonesia*, published by Balai Pustaka, Ministry of Education and Culture, 2nd Edition, 1999, pp. 386. In practice, there are terms in English which have been adopted in the Indonesian language, such as, “*Invensi*”, “*eksklusif*” (from *exclusive*), “*investasi*” (from *investment*), “*reformasi*” (from *reform* or *reformation*), or the word “*riset*” (*research*) which has been commonly and officially used. Some of these words are even used in the names of the Government agencies, such as Kantor Menteri Negara “*Investasi*”, or Kantor Menteri Negara “*Riset*” dan *Teknologi*. In these regards, the word “*penemu*” is changed to “*Inventor*” (*Inventor*).

(ii) *Invention does not include:*

- (1) *Esthetical creations;*
- (2) *Schemes;*
- (3) *Rules and methods required for doing the activities:*
 - (a) *involving mental activities;*
 - (b) *games;*
 - (c) *business;*
- (4) *Rules and methods concerning computer program;*
- (5) *Presentation of information.*

(iii) *The name of Patent office stated in the former Patent Law is changed to Directorate General, such a change is intended to confirm and clarify the Intellectual Property Right Agency as a unified system.*

(b) *Simple Patent*

Under this Law, the objects of Simple Patent does not include process, use, composition, and product being product by process. The objects of Simple Patent are only limited to tangible, not intangible objects. In some countries, like Japan, the USA, the Philippines, and Thailand, the meanings of Simple Patent are called utility model and petty patent, particularly referring to objects or devices.

Unlike the former Patent Law, in this Law the protection of Simple Patent is applied as from the Filing Date because Simple Patent, which is not first announced prior to substantive inspection, is then announced. The Application for Simple Patent is announced no later than three (3) months after the Filing Date. It is meant to give the public the opportunity to know that there is an

Application or an Invention and to give their opinions about it. Besides, with such announcement, the announced Application documents may soon be used as control documents, if so needed in substantive inspection without infringing the secrecy of the Invention.

Furthermore, the protection concept of Simple Patent already changed to be effective as from the Filing Date, is meant to give Simple Patent Holders the opportunity to recover damage from the infringement effective as from the Filing Date. A recovery for damage may only be made after Simple Patent is granted.

The novel being of Simple Patent was not clear enough in the former Patent Law. In this Patent Law, the universal being of the novelty is confirmed. Besides being unclear, the provisions in the former Patent Law give a number of possibilities for invention imitation from another country for Simple Patent application.

The period of substantive inspection on Simple Patent, which was the same with that of Patent, namely from thirty-six (36) months is now changed to twenty-four (24) months effective as from the Filing Date. It is meant to shorten the period of substantive inspection to be in line with the Patent concept in the efforts to improve services to the public.

(c) Government Regulation and Presidential Decree

A number of stipulations which in the former Patent Law were provided under Ministerial Decree, are now provided under Presidential Decree and those in former Patent Law were provided under Presidential Decree are now provided under Government Regulation, or vice-versa.

(d) Empowerment of the Commercial Court

Considering that Patent is closely associated with economy and trade, settlement of civil acts relating to patent should be timely sought. Unlike the former Patent Law, where the settlement of such acts was made at the District Court.

(e) Mandatory License

Under this Law, an agency given the authority to grant mandatory license is Directorate General. Under the former Patent Law such authority was assigned to the District Court. The present arrangement is meant to simplify the procedure and to improve services to the public, and in line with what have been done by such countries as Thailand, the Philippines, Brazil, and People's Republic of China.

(2) *Additions*

(a) *Confirmation on the term day*

Considering that the term day may contain several definitions, in this Law, it is confirmed that day means working day.

(b) *Invention Not Patentable*

The addition of Article 7 item (d) is meant to accommodate the public proposals that Patent may not be granted for any Invention concerning living creatures (including human kind, animals and plants). Such act is taken because it is considered against religious morality, ethics, or decency. Besides, living creatures have the ability to replicate themselves. In some countries their respective levels of technology mostly affect such ruling. TRIP's Agreement only lays down the ruling minimum requirements concerning patentable and not-patentable activities.

Patent is granted to Invention concerning microorganism or non-biological process and microbiological process producing plants and animals with a view that the rapidly growing biotechnological development during the past few decades have seen various Inventions with a lot of benefits to the general public. Therefore, the protection of Intellectual Property Rights on Patent is highly required as the rewards to such Inventions.

(c) *Interim Decision by the Court*

Addition of Chapter XIII concerning Interim Decision by the Court is intended as an initial effort to prevent more loss due to Patent exercises by the party doing so without the right thereto.

(d) *Use of Non-Tax State Revenues*

Unlike the former Patent law, this Law provides for the use of a part of the Non-Tax State Revenues (PNPB) by the Directorate General, that have come from all fees and charges relating to Patents.

The use of non-tax State revenues here is done on the basis of the prevailing systems and mechanisms. Under this arrangement, all non-tax State revenues are first deposited to the State treasury as non-tax State revenues. Then, the Directorate General makes an application through the Minister to the Minister of Finance for permit to use a part of the non-tax State revenues for the purposes acceptable by the Law, as is now provided in Law Number 20 of 1997 concerning Non-Tax State Revenues (State Gazette of 1997 Number 43) which provides the use of Non-Tax State Revenues.

(e) *Out-of-Court Settlement of Disputes*

In general, of disputes in court takes much time and costs much money.

Considering that Patent dispute shall be closely associated with problems of

economy and trade which keep on running, out-of-court settlement of dispute such as through Arbitration or Alternative of Dispute Settlement is made possible in this Law, it is not only relatively faster, but also a lot cheaper.

(f) *Exemption from Criminal Acts*

This Law rules matters which are not categorized as criminal acts, that is matters closely related with the interest of public health. Such ruling is contained in the legislation of various countries.

(3) *Deletion*

In addition to above-mentioned improvements and additions, deletions were made to provisions in the former Patent Law which were considered not in line with TRIPs Agreement, such as provisions relating to the postponement of Patent Granting and scope of exclusive right of a Patent Holder.

Chapter II - Scope of Patents

PART ONE – PATENTABLE INVENTIONS

Article 2

- (1) A Patent shall be granted for a new Invention that is potentially inventive and is applicable in industry.
- (2) An Invention is potentially inventive if the Invention is for a person who has a special technological competency in engineering is a discovery.
- (3) An Invention shall be considered a discovery by observing the competency existing at the time the Application is made or already existing at the time the first application was made in the case an Application is made under the Priority Right.

Elucidation: First application if the Application is made under the Priority Right shall be the Application already first made in another country that is a member of the Paris Convention for the Protection of Industrial Property of a member of the World Trade Organization. Indonesia ratified the Paris Convention as already amended a number of times under Presidential Decree Number 15 of 1997.

Article 3

- (1) An Invention shall be considered novel if the Invention is on the Filing Date different from the technology already revealed before.

Elucidation: The term technology already revealed before may be interpreted as “state of the art” or “prior art”, which includes a number of Patent literatures as well as non-Patent literatures.

Different here means not only literary but should be distinguishable by the features of the Invention and the features of the previous Invention.

- (2) Technology already revealed before as described in (1) shall be the technology already made announced in Indonesia and outside Indonesia in forms of articles, verbal explanations or demonstrations, or in other manners that makes a particular person expert in performing the Invention before:

- (a) The Filing Date; or
- (b) the priority date.

Elucidation: Verbal explanations or demonstrations or in other manners here means the activities have not only been undertaken in Indonesia but also in other countries, for which the written evidence shall also be provided.

- (3) Technology revealed before as described in paragraph (1) shall include the Application documents submitted in Indonesia announced on or after the Filing Date which is still undergoing a substantive inspection, but the said Filing Date was earlier than the Filing Date or the Application priority date.

Elucidation: In the former Patent Law, the wording of a part of previous Invention may be misinterpreted so that these words are deleted in this Law.

Substantive inspection in this paragraph and in the subsequent articles is the inspection of the Invention stated in an Application to determine the compliance with the requirements of being: novel, of inventive and applicable in industry, and satisfies the conditions of an Invention, is clearly revealed, and does not belong to the category of a thing not Patentable. Technology revealed before in this paragraph includes the Application made in Indonesia and was published on or after the Filing Date or the Application priority date which is undergoing a substantive inspection. The Filing Date or the priority filing date of the document being published is earlier than the Filing Date or the priority date of the Application which is undergoing an inspection.

This provision is meant to solve the problem arising due to similar Inventions being applied by another Applicant at different time (conflicting applications)

Article 4

- (1) An Invention shall not be considered already announced in a period of no later than six (6) months before the Filing Date:
- (a) The Invention had been exhibited in an official or officially-recognized international exhibition in or outside Indonesia, or an official or officially-recognized national exhibition in Indonesia.
- Elucidation: Official exhibition is an exhibition organized by the Government, and an officially-recognized exhibition is an exhibition organized by the community but is recognized or approved by the Government.*
- (b) The Invention held by the Inventor been exercised in Indonesia for a test or for a research and development purpose.
- (2) An Invention shall not be considered already announced in a period of no later than twelve (12) months before the Filing Date, there had been another party who had announced it in violation of the obligation to keep the secrecy of the Invention.

Article 5

An Invention is applicable in industry if the Invention is operable in industry as described in the Application.

Elucidation: If the Invention is a product, the product must be capable of being massively made in the same quality, and for an Invention in the form of a process, the process must be capable of being operated or applied to practice.

Article 6

Invention in the form of a product or new device that is practical for use because of its shape, configuration, construction or components may obtain a legal protection in the form of a Simple Patent.

Elucidation: Simple Patent is only granted for Invention that comes in the form of a device or a product which is not only different in its technical features but also has the function that is more practical than the previous Invention and is tangible.

Invention of an intangible nature, such as a method or a process shall not be protected by a Simple Patent.

Article 7

A Patent shall not be granted for an invention on:

- (a) a process or product whose announcement and exercise or implementation is against the prevailing laws and regulations, religious morality, public order, or decency.
- (b) a method of examination, treatment, medication and/or surgery applied to human and/or animals;

Elucidation: If the examination, treatment, medication and surgery using medical equipment, this provision only applies to the Invention of its methods, while the medical equipment including the device, materials, and drug are not covered by this provision.

- (c) a theory or method in science and mathematics; or
- (d) (i) all living creatures, except micro-organism;

Elucidation: Living creature in item (d) point (i) here may be human being, animal, or plant, and mirco-organism is living creature of micro-size which can only be viewed through a microscope, such as amoeba, yeast, virus and bacteria.

- (ii) a biological process essential for the production of plants or animals, except non-biological process or microbiological process.

Elucidation: Essential biological process for producing plants or animals in point (ii) is a conventional or natural crossing process such as through grafting, transplantation, or natural pollination, while non-biological or microbiological process for producing plants and animals is the process for producing plants or animals by trans-genial means/engineering done by using chemical, physical processes, using micro-organism or other genetic engineering.

PART TWO – TERM OF PATENT

Article 8

- (1) A Patent shall be valid for twenty (20) years commencing the Filing Date and may not be extended for another term.
- (2) The date a Patent commences and expires shall be recorded and announced.

Elucidation: Recorded and announced in this paragraph and in the subsequent provisions of this Law means recorded in the Patent General Registry and be announced in the Official Patent Bulletin.

Patent General Registry means a registry containing the bibliographies and statuses of the Applications and Patents the general public may see and may be used as a means for monitoring the activities of the Directorate General.

The Application and Patent announced include information of the bibliographies, specifications, transfers, licenses, infringements, changes in the addresses of the Applicants or the Patent Holders issued by the Directorate General.

Official Patent Bulletin may take the form of: a book (presently) or may be in digital format in the future.

Article 9

A Simple Patent shall be valid for ten (10) years commencing the Filing Date and may not be extended for another term.

Elucidation: In general, a product or device that is protected, obtained in a short time, in a simple manner, at a relatively low cost, and is technologically also simple in form makes it reasonable that a protection period of ten (10) years sufficient time for getting reasonable economic benefits.

PART THREE – SUBJECT OF THE PATENT

Article 10

- (1) A Patent shall be granted to the Inventor or the further receiver of such Inventor's rights.
- (2) If an Invention is a product of a number of persons jointly, the right to the Invention shall be held together by the concerned inventors.

Article 11

Except otherwise proved, an Inventor shall be a person or a number of persons who are first stated as the Inventors in the Application.

Article 12

- (1) The party entitled to a Patent of an Invention made in an employment relationship shall be the party providing the employment, except otherwise agreed.
- (2) The provision as described in paragraph (1) shall also apply to an Invention made by an employee or a worker who uses the data and/or facilities available at his work though the agreement does not require him or her to make an Invention.

- (3) The Inventor as described in paragraph (1) and paragraph (2) shall be entitled to a reasonable reward by considering the economic benefits obtained from the Invention.
- (4) The reward as described in paragraph (3) may be paid:
 - (a) in a lump sum of a particular amount;
 - (b) in percentage;
 - (c) in a combination of a lump sum of a particular amount and a gift or a bonus;
 - (d) in a combination of percentage and gift or bonus; or
 - (e) in another form as agreed between the parties;in the sum as agreed by the concerned parties.
- (5) In the case an agreement is not reached on the assessment and determination of a reward, the Commercial Court shall make the decision.
- (6) The provisions described in paragraph (1), paragraph (2) and paragraph (3) shall not completely nullify the rights of the Inventor to have his or her name mentioned in the Patent Certificate.

Elucidation: Inclusion of the Inventor's name in the certificate is essentially common. It is known as a moral right.

Article 13

- (1) Subject to other provisions in this Law, the party making an Invention at the time the same invention is being applied for Patent shall still be entitled to exercise the Invention as an earlier user though a Patent is later granted to the same Invention.

Elucidation: This provision is meant to give protection to the earlier user with good faith but did not make an Application. In this respect, the activities he or she did and was the exercise of the Invention will still be exercisable by him or her as the former user, until the period the Patent protection cover expires.

- (2) The provision as described in paragraph (1) shall also apply to Applications made under the Priority Right.

Article 14

The provision as described in Article 13 shall not apply if the party making the Invention as an earlier user did so by using the knowledge on the particular Invention from the descriptions, drawings, or other information from the Invention being applied for Patent.

Article 15

- (1) The party making an Invention as described in Article 13 shall only be acknowledged as the earlier user if he or she makes an application therefor to the Directorate General after a Patent has been granted to the same Invention.
- (2) An Application for an acknowledgment as the earlier user shall be accompanied by evidence that the said Invention had been made without using the descriptions, pictures, examples or other information of the Invention being applied for Patent.

Elucidation: The Invention shall be the product of the activities of the done in good faith by the person who first exercised the Invention.

- (3) An acknowledgment as an earlier user shall be made by the Directorate General in the form of a certificate of earlier user issued at a cost.
- (4) A certificate of earlier user shall expire at the expiry of the same Patent of the Invention.
- (5) The procedure of getting an acknowledgment as the earlier user shall be provided in a Government Regulation.

PART FOUR - RIGHTS AND OBLIGATIONS OF A PATENT HOLDER

Article 16

- (1) A Patent Holder shall have the exclusive right to exercise the Patent he or she owns and forbids other parties to without his or her consent:
 - (a) in the case of a product Patent: make, use, sell, import, lease, deliver or provide for sale or lease or delivery the Patented products;
 - (b) in the case of a process Patent: use the Patented production process to make goods and other acts as described in item (a).

Elucidation: Exclusive right means the right that is only granted to the Patent Holder for a particular period of time to by himself or herself exercise the right commercially or give further right thereto to another person.

Accordingly, other people shall not use the Patent without the consent of the Patent Holder. Product here may take the form of a tool, machine, composition, formulae, product by process, system, etc. Examples of these are a writing tool, eraser, drug composition, and ink. Process here may take the form of a process, method, or usage. An example of these are the process to make ink, and process to make tissue.

Party here means a person, a number of persons together or legal entities that suit the respective contexts.

- (2) In the case of process Patent, the prohibition of other parties to without his or her consent import the goods described in paragraph (1) shall only apply to the importation of the products that have been exclusively produced by using the process Patent he or she owns.
- (3) Exempted from the provision of paragraphs (1) and (2) is the use of the Patent for the purpose of education, research, experiments, or analysis as long as such use does not adversely affect the proper interests of the Patent Holder.

Elucidation: This provision is meant to give the opportunity to the party who actually requires the use of the Invention merely for research and education. Besides, for education, research, experiments, or analysis also include the activities for bioequivalence test or other tests.

Adversely affecting the proper interests of the Patent Holder means that the exercise or the use of the Invention will not be for the purpose that tends to do exploitation for commercial purposes that the activities may adversely affect or create competition against the Patent Holder.

Article 17

- (1) Notwithstanding the provision in Article 16 paragraph (1), the Patent Holder shall make products or use the Patented process in Indonesia.

Elucidation: This provision is meant to promote transfer of technology, investments, creation of employment opportunities, as may be made possible by making the product.

- (2) Exempted from the obligation described in paragraph (1) shall be if the making of the products or use of the process shall only be regionally appropriate.

Elucidation: The provision in paragraph (2) is meant to accommodate the economic rationales of the Patent exercise because not all the Patented Invention may economically be beneficial if the market scale of the particular product is not in balance with the investment. Some industrial sectors face such problems, such as pharmaceutical industry. In such an industry, the economic viability scale frequently covers the market of regional scale, such as South-East Asia region. Accordingly facilities are provided on the basis of objective evaluations.

If the Patent will not be exercised in Indonesia, the Patent Holder shall apply for a permit giving the reasons therefor and the evidence produced by the relevant authority. For example, such evidence for a pharmaceutical product is issued by the Ministry of Health and Social Welfare, while the evidence for an electronic product is issued by the Minister of Industry and Trade. If the Invention relates to technology for exploration, the evidence will be issued by the Ministry of Mining and Energy.

Further stipulations on the conditions for such exceptions will be provided in a Government Regulation, which is expected to promote transfer of technology in an effective manner and will contribute to increasing the State's foreign revenues.

- (3) The exemption as described in paragraph (2) shall only be approved by the Directorate General if the Patent Holder has made a written application accompanied by the reasons therefor and evidence thereof issued by the relevant agency.
- (4) The conditions for the exemption and the procedure of making a written approval as described in paragraph (3) shall be further provided in a Government Regulation.

Article 18

For the administration of Patents and recording of licenses, the Patent Holder or Patent licensee shall pay an annual fee.

Elucidation: Annual fee is the fee payable by the Patent Holder regularly on annual basis. In some countries, such fee is called maintenance fee.

PART FIVE – LEGAL ACTIONS ON PATENT INFRINGEMENTS

Article 19

If a product is imported to Indonesia and the process of making the particular product has been Patented under this Law, the concerned process Patent Holder shall based on the provision of Article 16 paragraph (2) have the right to take a legal action of the imported product if the product has been made in Indonesia using the Patented process.

Chapter III - Patent Application

PART ONE - GENERAL

Article 20

A Patent shall be granted on an Application therefore.

Article 21

An Application may only be made for a single Invention or a number of Inventions that make up an Invention.

Elucidation: An Invention made up of a number of Inventions is a number of new Inventions that are closely related to each other. For example a new Invention of a writing tool and new ink. In this case, it is clear that the ink makes up a single invention to be used for the writing tool, and therefore the writing tool and the ink can be combined in a single Application. Another example is the Invention of a new product and the process to make the concerned product.

Each Application shall only be made for a single Invention or a number of inter-related Inventions that make up a single Invention.

Article 22

An Application shall be made by paying the cost thereof to the Directorate General;

Article 23

- (1) If Application is being made by the Applicant who is not the Inventor, the Application shall be accompanied by a statement with sufficient evidence that the Applicant has the right to the particular Invention.

Elucidation: "...not the Inventor" here means another party who has received a transfer from the Inventor. Sufficient evidence is, for instance, a statement by the company that the Inventor is its employee or a transfer of the Invention from the Inventor to the company the Inventor works for.

- (2) The Inventor may review the Application made by the Applicant who is not the Inventor as described in paragraph (1) and may at his or her cost request a copy of the Application document.

Elucidation: This provision is meant to protect the Inventor from any possible damages.

Article 24

- (1) An Application shall be made in writing in Indonesian language to the Directorate General.
- (2) The Application shall contain the following:
 - (a) date, month and year of the Application;

- (b) full address of the Applicant;
- (c) full name and citizenship of the Inventor;
- (d) name and address of the Attorney if the Application is made through an Attorney;
- (e) a special power of attorney if the Application is made by an Attorney;
- (f) statement of application for Patent;
- (g) title of the Invention;
- (h) claim contained in the Invention;

Elucidation: Claim is a part of an Application describing the core of the Invention being applied for legal protection, that must be clearly described and must be supported by descriptions.

- (i) descriptions of the Invention, which gives full accounts on how the Invention was made;
- (j) drawings indicated in the descriptions required to clarify the Invention; and

Elucidation: "Picture" here means technical drawings.

- (k) abstract of the Invention.

Elucidation: Abstract is brief descriptions of the Invention.

- (3) Further stipulations on making Applications shall be provided in a Government Regulation.

PART TWO – INTELLECTUAL PROPERTY RIGHTS CONSULTANT

Article 25

- (1) An Application may be made by the Applicant or his or her Attorney.
- (2) The Attorney as described in paragraph (1) shall be an Intellectual Property Rights Consultant registered with the Directorate General.

Elucidation: It is in line with the concept that Patent is a part of comprehensive intellectual property right. Patent Consultant who in the former Patent Law was called Patent Consultant is, in this Law called Intellectual Property Right Consultant.

- (3) The Attorney shall as from the date the attorney becomes effective keep the Invention and all the documents confidential until the date the Application is announced.
- (4) The requirements for the appointment as Intellectual Property Rights Consultants shall be provided in a Government Regulation, and the procedure of the appointment shall be provided in a Presidential Decree.

Article 26

- (1) An Applicant made by an Inventor or an Applicant who does not reside or have a permanent domicile in the territory of the Republic of Indonesia shall make the Applicant through Attorney in Indonesia.

Elucidation: This provision is meant to facilitate the process of Application regarding an Invention by the Inventor who is domiciled outside the territory of the Republic of Indonesia, as this involves the aspects of languages and fulfillment of the requirements.

- (2) The Inventor or Applicant as described in paragraph (1) shall for the purpose of such Application declare to choose his or her legal domicile in Indonesia.

PART THREEE – Applicant under the Priority Right

Article 27

- (1) An Application made using the Priority Right shall as provided in the Paris Convention for the Protection of Industrial Property be made no later than twelve (12) months as from the date the Patent was first received in any country which is a signatory of the said convention or is a member of the Agreement establishing the World Trade Organization.
- (2) With due observance of the provisions of this Law regarding the requirements to be fulfilled in an Application, an Application under the Priority Right as described in paragraph (1) shall be accompanied by the priority right document legalized by the relevant authority in the concerned country no later than sixteen (16) months after the priority date.

Elucidation: Priority document is Application document first submitted in a country which is a member of the Paris Convention or the World Trade Organization, used to claim the priority date of the Application made in a country of destination, which is also a member of the two conventions, and is validated by the authorized official with the Patent office where the Patent was first applied for.

The authority that validates the copy of the first Application is the official of the Patent office in the country where the Patent was first applied. If the application was made through the Patent Cooperation Treaty (PCT), the authority will be the official of the World Intellectual Property Organization (WIPO), a UN Agency with the tasks of administering international treaties on intellectual properties. Indonesia ratified the PCT under Presidential Decree Number 16 of 1997.

- (3) Unless the requirements in paragraph (1) and paragraph (2) are fulfilled, an Application under the Priority Right shall not be made.

Article 28

- (1) The provision described in Article 24 shall mutatis mutandis apply to Applications under the Priority Right.
- (2) The Directorate General may request that the Applications made under the Priority Right be accompanied by the following:
 - (a) authorized copy of the documents regarding the results of the substantive inspection of the Patent application first made in another country;
Elucidation: Authorized copy as found in items (a) through (d) of this paragraph are documents pertaining to inspection results, Patent decision, Patent rejection or Patent cancellation for the same Invention outside Indonesia issued by the competent party.
 - (b) authorized copy of the Patent documents issued in respect of the Patent application first made in another country;
Elucidation: Patent documents here are the Application documents already Patented and announced – required for facilitating the evaluation of novelty and inventive step of the Invention.
 - (c) authorized copy of the first rejection of the Patent application in another country if the application for the particular Patent was then rejected;
 - (d) authorized copy of the decision of the cancellation of the particular Patent issued in another country if the particular Patent was once cancelled;
 - (e) other documents required for proper evaluation of whether the Invention applied for a Patent is a new Invention, is potentially inventive step and applicable in industry.
Elucidation: Other documents here mean, amongst others, as control documents, tracing report, initial inspection report, and correspondence of the inspection report outside Indonesia.
- (3) The submission of the documents described in paragraph (2) may be accompanied by separate additional explanations by the Applicant.
Elucidation: Additional explanations here may take the forms of explanations regarding an amendment made by the Applicant to the Patent application documents based on review or initial inspection reports and these serve as a part of the information required in the inspection.

Article 29

Further requirements of applications under Priority Right documents by the Directorate General and the Applications under the Priority Right shall be provided in a Presidential Decree.

PART FOUR – APPLICATION FILING TIME

Article 30

- (1) The Filing Date shall be the date the Directorate General receives the Application has have satisfied the requirements as provided in Article 24 paragraph (1) and paragraph (2) item (a), item (b), item (f), item (h), and item (i), and item (j) if the Application is accompanied by drawings and after settlement of the cost as described in Article 22.

Elucidation: This sets forth what is called the minimum requirements. This is meant to make it easier for the Applicant to get the Filing Date that is very important for the Application status that uses the file-to-file system. It is also meant to confirm the Filing Date with the Directorate General.

It is also meant to improve the services and to give the community the facilities by adjusting the need to meet the minimum requirements of the Filing Date for an Application made through the Patent Cooperation Treaty.

- (2) If the descriptions as described in Article 24 paragraph (2) item (h) and item (i) are in English, such descriptions shall be accompanied by their translations in the Indonesian language and shall be submitted no later than thirty (30) days as from the Filing Date as described in paragraph (1)
- (3) Unless the translation in the Indonesian language is submitted in the period described in paragraph (2), the Application shall be deemed withdrawn.
- (4) The Filing Date shall be recorded by the Directorate General.

Article 31

In the case of any deficiency of the requirements described in Article 30 paragraph (1) and Article 30 paragraph (2), the Filing Date shall be the date the minimum requirements are fulfilled and submitted to the Directorate General.

Article 32

- (1) If the requirements described in Article 30 have been fulfilled but the requirements described in Article 24 have not been fulfilled, the Directorate General shall request that the deficiency be covered in no later than three (3) months as from the date the Directorate General so requests.

- (2) On reasons made by the Applicant and accepted by the Directorate General, the period described in paragraph (1) may be extended in no longer than two (2) months.
- (3) The period described in paragraph (2) may be extended for no longer than one (1) month after the expiry of the above-said period, but the Applicant shall be charged a payment therefore.

Article 33

If all the requirements in the periods described in Article 32 are not fulfilled, the Directorate General shall notify in writing thereof to the Applicant stating that the Application is deemed withdrawn.

Article 34

- (1) If a single Invention appears to have been applied for a Patent by more than one Applicants, the first Application shall be accepted.
- (2) If a number of Applications of the same Invention as described in paragraph (1) were made on the same date, the Directorate General shall notify in writing to the Applicants to deliberate and decide which of the Applications shall be made and notify the Directorate General of the decision no later than six (6) months as from the date of the notification.
- (3) If the Applicants fail to consent or it is impossible to arrange such deliberation or the result of the deliberation is not submitted to the Directorate General in the period described in paragraph (2), the Directorate General shall reject the Application by notifying thereof in writing to the Applicants.

PART FIVE – AMENDMENT OF APPLICATION

Article 35

An Application may be amended by making the changes in the descriptions and/or claim as long as such an amendment does not expand the scope of the Invention described in the original Application.

Elucidation: To expand the scope of the Invention in an amendment is to add the core/ subject, new information, or to reduce the technical features of an Invention, in respects of descriptions, drawings as well as claims that may cause an expansion of the Invention scope.

This Article emphasizes that an amendment is only possible for expanding the scope of Invention.

Article 36

- (1) The Applicant may request divisions of the original Application if an Application consists of a number of Inventions that do not make up a single Invention as described in Article 21.
- (2) An Application for division as described in paragraph (1) may be made separately in one or more Applications on the conditions that the scope of protection being applied for each such division shall not go beyond the scope of protection stated in the original Application.
- (3) The Application for a division as described in paragraph (1) may be made no later than the time the first Application is decided as described in Article 55 paragraph (1) or Article 56 paragraph (1).
- (4) The Application for division as described in paragraph (1) and paragraph (2) that has fulfilled the requirements described in Article 21 and Article 24 shall be deemed submitted on the same date as the original Filing Date.
- (5) Unless the Applicant submits an Application for a division within the period described in paragraph (3), the substantive inspection shall only be made of the Invention as stated in the descriptions of the first claim in the original Application.

Elucidation: Invention as stated in the first sequence of the claim in paragraph (5) is as follows.

If an Application consists of 12 claims comprising:

- *invention A declared in claims 1 to 5.*
- *Invention B, declared in claims 6 to 10, which different inventions and the inventions that are not related to Invention A.*
- *Invention C declared in claims 11 to 12 that are Inventions related to Invention A.*

The three inventions described above show that Invention A make up unity of Invention with Invention C, while Invention B does not make a unity of Invention with A or C.

Based on the provision in this paragraph (5), the inspection will only be made of claims 1 to 5 (Invention A) and claims 11 and 12 (Invention C). Invention B will not undergo an inspection and it is proposed that it be submitted as a split Application.

Article 37

The Applicant may request an Application be changed from a Patent to a Simple Patent or vice-versa with due observance of the provisions of this Law.

Elucidation: Due observance of the provisions of this Law is to observe the provision on a change from Patent to Simple Patent or vice-versa, that shall be in accordance with the provisions in Article 35 and Article 36.

Article 38

Further stipulations on the changes as described in Article 35, Article 36 and Article 37 shall be provided in a Presidential Decree.

PART SIX – WITHDRAWAL OF APPLICATIONS

Article 39

- (1) An Applicant may withdraw his or her Application by notifying thereof in writing to the Directorate General.
- (2) Further stipulations on withdrawal of applications shall be further provided in a Presidential Decree.

PART SEVEN – PROHIBITION OF APPLICATION AND OBLIGATIONS OF CONFIDENTIALITY

Article 40

The officials of or the people whose duties require them to work for and on behalf of the Directorate General shall not during their term of service through the first year of retirement for any reasons whatsoever make Applications, get Patents, or in any other manner get the rights pertaining to Patents, except they get such Patents as an inheritance.

Article 41

As from the Filing Date, the officials of or the people whose duties require them to work for and on behalf of the Directorate General shall keep the confidentiality of all the Application documents until the date the Application is announced by the concerned party.

Chapter IV - Announcement and Substantive Inspection

PART ONE – ANNOUNCEMENT OF AN APPLICATION

Article 42

- (1) The Directorate General shall announce the Application that has satisfied the requirements described in Article 24.
- (2) An announcement is made:
 - (a) for a Patent: soon after eighteen (18) months as from the Filing Date or soon after eighteen (18) months as from the priority date if the Application is made under the Priority Right; or
 - (b) for a Simple Patent: soon after three (3) months as from the Filing Date.
- (3) The announcement as described in paragraph (2) item (a) may be made earlier at the request thereof by the Applicant at a cost.

Elucidation: This is meant to give the Applicant the opportunity to, for his or her interests, request earlier announcement. It is also in line with the requirements of the applications made through the Patent Cooperation Treaty (PCT).

Article 43

- (1) An announcement shall be made by:
 - (a) placement in the Official Patent Bulletin published periodically by the Directorate General; and/or
 - (b) placement in a special facility provided by the Directorate General which makes it easily seen by the general public.

Elucidation: Special facilities provided by the Directorate General include a notice board and if possible, microfilm, microfiche, CD-ROM, Internet, and other media.

- (2) The date an announcement starts shall be recorded by the Directorate General.

Article 44

- (1) An announcement shall be for a period of:
- (a) six (6) months as from the first date of announcement for a Patent Application;
 - (b) three (3) months as from the first date of announcement for a Simple Patent Application.

Elucidation: The announcement lasts through the period.

- (2) An announcement shall contain the following descriptions:
- (a) name and citizenship of the Inventor;
 - (b) name full address of the Applicant and the Attorney if the Application is made through an Attorney;
 - (c) title of the Invention;
 - (d) the Filing Date; if an Application is made under the Priority Right: the priority date, number, and country where the Application for Patent was first made;
 - (e) abstract;
 - (f) Invention classification;

Elucidation: The classification is meant to organize the Applications by Inventions of the defined technologies. Under this arrangement, examinations of similar Inventions (to find the control documents) required in a substantive inspection of an Application may be completed in a practical manner. Though Indonesia has not ratified the International Patent Classification (IPC), it has practically been using the IPC as the other countries do. Under this system, inventions are categorized into any of around 60,000 sub-groups that belong to eight (8) sections, and further classified into classes, sub-classes, groups and sub-groups.

- (g) drawings, if any;
- (h) number of the announcement; and
- (i) number of the Application.

Article 45

- (1) Anyone is free to see the announcement as described in Article 44 and may give written comments and/or complaints of the Application giving the reasons therefor.

Elucidation: Comments include information provided by another party without requesting anything therefor, while complaints are information provided by another party with a request of rejecting a Patent to the announced Invention.

- (2) If there are comments and/or complaints as described in paragraph (1), the Directorate General shall forthwith send copies of such comments and/or complaints to the Applicant.
- (3) The Applicant shall have the right to make a written denial or explanation of such comments and/or complaints to the Directorate General.
- (4) The Directorate General shall use all such comments and/or complaints, denials and/or explanations as described in paragraph (1) and paragraph (3) as additional considerations at the stage of substantive inspection.

Article 46

- (1) After due consultation with the Government's agency in charge of the State's defense and security, if necessary, the Directorate General shall with the approval of the Minister decide not to announce an Application if it is of the opinion that the announcement of the Invention may disturb or is against the interest of the defense and security protection of the State.
- (2) The decision of not announcing an Application as described in paragraph (1) shall be notified in writing by the Directorate General to the Applicant or his or her Attorney.
- (3) The consultation to be made by the Directorate General as described in paragraph (1), including the provision of information of the Invention being applied that is eventually decided not to be announced, shall not be a violation of the obligation to keep the Invention confidential as described in Article 40 and Article 41.

Elucidation: Provision of information which is not a violation of the obligation to keep the Invention confidential is provision of information on an Invention by the Directorate General or by the relevant Agencies that received the information of such Invention.

- (4) The provision as described in paragraph (3) shall still require the concerned Government agency and its personnel to keep the Invention and the Applicant documents provided to them confidential to a third party.

Article 47

- (1) The Application that is not announced as described in Article 46 shall undergo a substantive inspection for six (6) months as from the date the Directorate General decides the Application not to be announced.
- (2) The substantive inspection as described in paragraph (1) shall not be charged any payment.

PART TWO – SUBSTANTIVE INSPECTION

Article 48

- (1) An Application for a substantive inspection shall be made in writing to the Directorate General at a cost.
- (2) The procedure and requirements of the application for a substantive inspection as described in paragraph (1) shall be further provided in a Presidential Decree.

Article 49

- (1) The Application for a substantive inspection as described in Article 48 paragraph (1) shall be made no later than thirty-six (36) months after the Filing Date.
- (2) If a substantive inspection is not applied for in the period described in paragraph (1) or the cost therefor is not paid, the particular Application shall be deemed withdrawn.
- (3) The Directorate General shall notify in writing of the Application that has been deemed withdrawn as described in paragraph (2) to the Applicant or his or her Attorney.
- (4) If an application for a substantive inspection as described in paragraph (1) is made before the end of the announcement period as described in Article 44 paragraph (1), the inspection shall be made after the end of the announcement period.
- (5) If an application for a substantive inspection as described in paragraph (1) is made after the end of the announcement period as described in Article 44 paragraph (1), the inspection shall be made after the receipt of the application for a substantive inspection.

Article 50

- (1) For the purpose of a substantive inspection, the Directorate General may request the assistance by experts and/or use the required facilities of the related Government agencies or a Patent Inspector of a Patent Office of another country.

Elucidation: It is most possible that the type of expertise required for the substantive inspection of an Invention being applied for Patent is not available or is insufficiently mastered by the Patent Inspector. Also, the facilities required for the examination may be found in other agencies or institutions. In such a case the Directorate General may through multilateral cooperation program, request expert assistance in the form of use of facilities or other agencies or institutions, such as the European Patent Office, Japanese Patent Office, United States Patent and Trademark Office.

- (2) The use of expert assistance, facilities or Patent Inspector from another country as described in paragraph (1) shall be arranged with due observance of the provision of keeping the confidentiality as described in Article 40 and Article 41.

Article 51

- (1) The substantive inspection shall be undertaken by the Inspector.
- (2) The Inspector with the Directorate General shall be a functional official who is appointed and discharged as a functional official by the Minister based on the prevailing laws and regulations.
- (3) The Inspector as described in paragraph (2) shall be entitled to functional level and allowances and of the rights as provided in the prevailing laws and regulations.

Elucidation: Due to the specialty in the scope of work, it is realistic that the job of a Patent Inspector be of a functional status, as he or she works essentially on his or her expertise. This status will ensure that his or her career will not develop slower than his or her colleagues holding structural jobs in the same agency.

In this regard, the Patent Inspector will be assigned a functional status and be entitled to a special allowance, other than other benefits he or she is entitled to as a government employee based on the prevailing laws and regulations.

Article 52

- (1) If the Inspector reports that an Invention applied for Patent is insufficiently clear or contains other essential insufficiencies, the Directorate General shall notify in writing of such insufficiencies to the Applicant or his or her Attorney to get a comment on such insufficiencies.

Elucidation: Is insufficiently clear or contains other essential insufficiencies include explanations in the descriptions or claims that are not clear or explanations in the descriptions that do not support the claim being made. These also include irrelevant and inconsistent explanations in the claim and descriptions.

- (2) The notification as described in paragraph (1) shall be clear and in details, giving the points that are considered insufficiently clear or other essential insufficiencies, together with the reasons and reference used in the substantive inspection, and the period required for the fulfillment.

Elucidation: Reference here means the reference obtained from review of the Patent as well as non-patent literatures (magazines, etc.)

Article 53

If after the notification described in Article 52 paragraph (1) the Applicant fails to give comments or fails to comply for the required sufficiency, or fails to make corrections to the Application he or she has made within the period determined by the Directorate General as described in Article 52 paragraph (2), the particular Application shall be deemed withdrawn and the Applicant shall be notified thereof.

PART THREE – APPROVAL AND REJECTION OF AN APPLICATION

Article 54

The Directorate General is obliged to make a decision on whether an Application is approved or rejected:

- (a) Patent: no later than thirty-six (36) months as from the receipt of the written request for a substantive inspection as described in Article 44 paragraph (1) if the request for an inspection is made before the end of the announcement period.
- (b) Simple Patent: no later than twenty-four (24) months as from the Filing Date.

Article 55

- (1) If the substantive inspection report by the Inspector states that an Invention fulfills the requirements as described in Article 2, Article 3, Article 5 and other provisions in this Law, the Directorate General shall issue a Patent Certificate to the Applicant or his or her Attorney.
- (2) If the substantive inspection report by the Inspector states that an Invention fulfills the requirements as described in Article 3, Article 5, Article 6 and other provisions in this Law, the Directorate General shall issue a Simple Patent Certificate to the Applicant or his or her Attorney.
- (3) The Patent granted shall be recorded and announced, except the Patent that affects the defense and security of the State.
- (4) The Directorate General may provide a copy of the Patent documents to those who request such documents at a cost, except the Patent that is not announced as described in Article 46.

Article 56

- (1) If the substantive inspection report by the Inspector shows that the Invention applied for Patent fails to meet the requirements described in Article 2, Article 3, Article 5, Article 6, Article 35, Article 52 paragraph (1), Article 52 paragraph (2), or as exempted under Article 7, the Directorate General shall reject the Application and notify in writing thereof to the Applicant and his or her Attorney.
- (2) The Directorate General may also reject a divided Application if such division expands the scope of the Invention or the request thereof is made after the period as described in Article 36 paragraph 2 or Article 36 paragraph (3).

Elucidation: Such division expands the scope of the Invention here means an Application of the results of a division for which the Invention protection will be more expansive than the protection of the first Invention.

- (3) If the substantive inspection report by the Inspector shows that the inspection being applied for Patent fails to fulfill the requirements described in Article 36 paragraph (2), the Directorate General shall reject such Application and notify thereof in writing to the Applicant or his or her Attorney.
- (4) The written notice of the rejection of an Application shall clearly give the reasons and considerations that make the basis of the rejection.

Article 57

- (1) A Patent Certificate shall serve as evidence of a Patent Right.
- (2) A written notice of a rejection shall be recorded by the Directorate General.

Article 58

A Patent shall become effective on the date the Patent Certificate is issued and shall apply retroactively as from the Filing Date.

Article 59

Further stipulations on the issuance of a Patent certificate, the forms and contents thereof, and other stipulations regarding the recording and request for copies of the Patent documents shall be further provided in a Government Regulation.

PART FOUR - APPEALS

Article 60

- (1) An appeal may be made against a rejection of an Application in respect of the reasons and basis of the substantive matters as described in Article 56 paragraph (1) or Article 56 paragraph (3).

Elucidation: An appeal may not be made if the Application has been deemed rejected.

- (2) An appeal shall be made in writing by the Applicant or his or her Attorney to the Patent Appeal Committee sending a copy thereof to the Directorate General.
- (3) An appeal shall describe in details the objection and the reasons thereof to the rejection of an Application as a result of a substantive inspection.
- (4) The reasons as described in paragraph (3) shall not be new reasons or explanations that may expand the scope of Invention as described in Article 35.

Article 61

- (1) An appeal shall be made no later than three (3) months as from the receipt of the written notice of the rejection of the Application.

Elucidation: The date of the written notice shall be the date on the postal stamp.

- (2) If no appeals are made until after the period described in paragraph (1) the rejection shall be deemed accepted by the Applicant.
- (3) If the rejection of an Application has been deemed accepted as described in paragraph (2), the Directorate General shall record and announce it.

Article 62

- (1) The Appeal Committee shall start examining an appeal no later than one (1) month as from the date the appeal is received.
- (2) The decision of the Appeal Committee shall be made no later than nine (9) months as from the end of the period described in paragraph (1)
- (3) If the Appeal Committee accepted and approved an appeal, the Directorate General shall realize the decision of the Appeal Committee.
- (4) If the Appeal Committee rejects an appeal, the Applicant or his or her Attorney may file a complaint of the decision to the Commercial Court in no later than three (3) months as from the date the decision of rejection is received.

- (5) Only a kasasi may be made of the Court decision as described in paragraph (4).

Article 63

The procedures of the application, examination and settlement of an appeal shall be further provided in a Presidential Decree.

PART FIVE – PATENT APPEAL COMMITTEE

Article 64

- (1) The Patent Appeal Committee is an independent body within the ministry in charge of Intellectual Property Rights.
- (2) The Patent Appeal Committee shall be composed of a Chairman concurrently member, a vice chairman concurrently member, and members consisting of people of the required competency as well as a senior Inspector.
- (3) The members of the Patent Appeal Committee as described in paragraph (2) shall be appointed and discharged by the Minister for a period of three (3) years.
- (4) The Chairman and Vice Chairman shall be elected by the members of the Patent Appeal Committee.
- (5) In the examination of an appeal, the Patent Appeal Committee shall set up a panel of odd number members consisting of at least three (3) persons, one of them being a senior Inspector who has not made a substantive inspection of the Application.

Article 65

The organization structure, tasks and functions of the Patent Appeal Committee shall be further provided in ` Government Regulation.

Chapter V - Transfer and Licensing of Patents

PART ONE - TRANSFER

Article 66

- (1) The right to a Patent may be as a whole transferred through:
 - (a) inheritance;
 - (b) bequest;
 - (c) last will and testimony;
 - (d) written agreement; or
 - (e) other reasons acceptable according to laws and regulations.

Elucidation: As it is with the other intellectual property rights such as Copyrights and Trademarks, Patent is essentially owned by an individual person which is non tangible and is developed from human's intellectual ability. As a property right, Patent may be transferred by the Invention or by the party with the right thereto to an individual person or to a legal entity. Another valid reason for a transfer may be a Patent holding following the dissolution of a legal entity as the Patent Holder. Where a transfer is made on the basis of a law, such law shall not be against this Law.

- (2) The transfer of a Patent as described in paragraph (1) items (a), (b), and (c) shall be accompanied by the original copy of the Patent documents and other rights relating to the particular Patent.
- (3) All types of transfer of Patents as described in paragraph (1) shall be recorded and announced at a cost.
- (4) A transfer of Patent done in the manner other than as provided in this Article shall be null and void ipso iure.
- (5) The requirements and procedure of recording Patent transfer shall be further provided in a Presidential Decree.

Article 67

- (1) Except in the case of inheritance, the right as an earlier user as described in Article 13 shall not be transferable.

Elucidation: Right as the earlier user in this paragraph is the right to exercise an Invention as a Patent Holder is entitled to. However, such right is not transferable except through inheritance. This is because the right as an earlier user is not completely exclusive, as with a Patent, but only granted under a particular situation.

- (2) The transfer of right as described in paragraph (1) shall be recorded and announced at a cost.

Article 68

The transfer of right shall not completely nullify the rights of the Inventor to have his or her name mentioned in the Patent Certificate.

Elucidation: This right is also called moral right. See also Article (12) paragraph (6).

PART TWO - LICENSE

Article 69

- (1) The Patent Holder shall have the right to License the Patent to another party under a License agreement for doing the act as described in Article 16.

Elucidation: Unlike the transfer of patent in which the right is also transferred, a License granted in an agreement is essentially only a grant of right to get the economic benefits of the Patent and in a specified period and under particular conditions.

- (2) Except otherwise provided, the scope of License as described in paragraph (1) which include acts described in Article 16 shall last during the License period and cover the territory of the Republic of Indonesia.

Article 70

Except otherwise provided, The Patent Holder shall still exercise the Patent himself or herself or License another third party to do the acts described in Article 16.

Article 71

- (1) A License agreement shall not contain a stipulation, either directly or indirectly, that may adversely affect the economy of Indonesia nor a restriction that may retard the ability of Indonesians to master and develop technology in general in respect of the Patented Invention in particular.
- (2) An application for the recording of the License agreement that contains the provision as described in paragraph (1) shall be rejected by the Directorate General.

Article 72

- (1) A License agreement shall be recorded and announced at a cost.
- (2) A License agreement which is not recorded by the Directorate General as described in paragraph (1) shall not have a legal effect on a third party.

Article 73

Further stipulations on a License agreement shall be provided in a Government Regulation.

PART THREE – MANDATORY LICENSE

Article 74

Mandatory license is the License to exercise Patent issued under a decree of the Directorate General on the basis of an application.

Article 75

- (1) Any party may apply for a mandatory license to the Directorate General to exercise the Patent after a period of thirty-six (36) months as from the date of the Patent granting, at a cost.
- (2) An application for a mandatory license as described in paragraph (1) may only be made for reasons that the particular Patent is not being exercised or is not being completely exercised in Indonesia by the Patent Holder.
- (3) An application for a mandatory license may also be made any time after the particular Patent is granted on the reason that the particular Patent has by the Patent or the Licensee been exercised in Indonesia in the form and manner that adversely affect the interests of the general public.

Article 76

- (1) In addition to justifications of the reasons as described in Article 75 paragraph (2), a mandatory license shall only be granted if:
 - (a) The Applicant can successfully prove that he or she:
 - (1) possesses the ability to by himself or herself exercise the particular Patent entirely;

- (2) possesses the facilities to as soon as practical exercise the Patent; and
 - (3) has tried to take the steps and spent enough time to get the license from the Patent Holder based on the requirements and fair conditions, but has not been successful; and
- (b) The Directorate General is of the opinion that the Patent is exercisable in Indonesia in a reasonable economic scale that will give benefits to the larger part of the people.
- (2) The inspection of a mandatory license shall be undertaken by the Directorate General with due considerations of the opinions given by the related agencies and parties, and the Patent Holder.
 - (3) A mandatory license shall be granted for the period which is no longer than the particular Patent protection period.

Article 77

If based on evidence and opinions as described in Article 76, the Directorate General finds that the period described in Article 75 paragraph (1) is still too short for the Patent Holder to exercise the Patent commercially in Indonesia, or in the region as described in Article 17 paragraph (2), the Directorate General may temporarily postpone the decision of the mandatory license or otherwise reject it.

Article 78

- (1) The exercise of a mandatory license shall be made with a payment of royalty by the Licensee to the Patent Holder.

Elucidation: Royalty is a reward provided by the Licensee to the Patent Holder for the exercise of its Invention. The royalty may be in monetary form or other form agreed by the parties.

- (2) The sum of the royalty to be paid and the method of payment shall be determined by the Directorate General.
- (3) The sum of the royalty is determined with a view of the procedures commonly applied in a Patent license agreement or other such agreements.

Elucidation: Other such agreements are agreements commonly made in the framework of know-how and technology transfer for the technologies that are not patented.

Article 79

The decision of the Directorate General on a mandatory license shall contain the following:

- (a) mandatory license is a non-exclusive;
- (b) reasons for granting a mandatory license;
- (c) evidence, including the accepted explanations used as the basis for the mandatory licensing;
- (d) period of the mandatory license;
- (e) the royalty to be paid by the mandatory licensee to the Patent Holder and the method of payment;
- (f) termination terms of the mandatory license and reasons causing termination;
- (g) mandatory license shall particularly be utilized for domestic market demands; and
- (h) other matters required to fairly protect the concerned parties.

Article 80

- (1) The Directorate General shall record and announce the granting of a mandatory license.
- (2) The exercise of a mandatory license shall be deemed the exercise of the Patent.

Article 81

A decision to grant a mandatory license shall be made by the Directorate General no later than ninety (90) months as from the submission of the application for the particular mandatory license.

Article 82

- (1) A mandatory license may also be from time to time requested by the Patent Holder for reasons that it is impossible to exercise the Patent without infringing the existing Patent.

Elucidation: This situation is frequently found in the exercise of a Patent that is the product of the improvement and development of a previous Invention already Patented. Hence, exercising the new Patent will mean exercising a part or the whole Invention already Patented being held by another party.

If the earlier Patent Licensed another Patent Holder, that makes it possible for exercising further Patent, then this case is not a Patent infringement.

However, if the License therefore is not given, this Law should give the solution thereof.

Hence, in order that the Patent granted later may be exercised, it will also be appropriate if

the latter will be able to exercise it without infringing the previous Patent. This situation will only be possible if the mandatory license is issued by the Directorate General.

An example of this is as follows:

Patent A consists of four claims that make up a unity.

Patent B is obtained after Patent A, that essentially contains three claims that are in principle the improvement and development of the three of the four claims in Patent A.

If the Holder of Patent B intends to exercise his or her Patent, it will be difficult for him or her to do so without infringing one of the claims contained in Patent.

If the Holder of Patent A licensed the Holder of Patent B to exercise one of his or her claim, there will not certainly be any trouble. But if the Holder of Patent A refuses to license as required here, the only way the Holder of Patent B can seek is to request a mandatory license from the Directorate General.

- (2) The request for a mandatory license as described in paragraph (1) shall only be considered if the Patent to be exercised has the element of novelty that is clearly more advanced than the existing Patent.
- (3) If a mandatory license is being requested on the basis as described in paragraph (1) and paragraph (2):
 - (a) The Patent Holders shall have the rights to license each other based on reasonable terms and conditions;
 - (b) The exercise of a Patent by a Licensee shall not be transferred except it is transferred together with the other Patent.
- (4) The application for a mandatory license to the Directorate General as described in paragraph (1) and paragraph (2) shall be in accordance with the provisions of Chapter V, Part Three, except the provision on the submission of the application for a mandatory license which shall be as provided in Article 75 paragraph (1)

Article 83

- (1) At the request of the Patent Holder, the Directorate General may cancel a mandatory license decision as provided in Chapter V Part Three of this Law if:
 - (a) there are no longer such reasons used as the basis for the mandatory licensing;
 - (b) the licensee is proved to have failed to exercise the mandatory license or has failed to take proper preparations for effecting such exercise;
 - (c) the mandatory licensee no longer observe the other terms and conditions including the payment of royalty determined the mandatory licensing.

- (2) The cancellation as described in paragraph (1) shall be recorded and announced.

Article 84

- (1) If a mandatory license is terminated following the specified period or due to a cancellation, the mandatory licensee shall return the license he or she has been granted to.
- (2) The Directorate General shall record and announce the terminated mandatory licenses.

Article 85

The termination of a mandatory license as described in Article 83 and Article 84 following the restoration of the rights of the Patent Holder shall be the recording date thereof.

Article 86

- (1) A mandatory license shall not be transferable except through an inheritance;
- (2) A mandatory license transferred through an inheritance shall remain bound by the conditions of the licensing and other conditions particularly regarding the period, and shall be reported to the Directorate General for recording and announcement.

Article 87

Further stipulations on the mandatory license shall be provided in a Government Regulation.

Chapter VI - Cancellation of a Patent

PART ONE – CANCELLED IPSO IURE

Article 88

A Patent shall be declared cancelled ipso iure if the Patent Holder fails to pay the annual fee in the period provided in this Law.

Article 89

- (1) A Patent that has become cancelled ipso iure shall be notified in writing by the Directorate General to the Patent Holder and the Licensee and shall be effective as from the date of the notice.
- (2) The Patent declared cancelled for reasons described in Article 88 shall be recorded and announced.

PART TWO – CANCELLED AT THE REQUEST OF THE PATENT HOLDER

Article 90

- (1) The Directorate General may cancel a Patent as a whole or a part thereof at the request of the Patent Holder in a written application to the Directorate General.
- (2) The cancellation of a Patent as described in paragraph (1) shall not be made if the Licensee does not give an approval in writing attached with the application for the cancellation.
- (3) The decision of Patent cancellation shall be notified in writing by the Directorate General to the Licensee.
- (4) A decision on a Patent cancellation for reasons described in paragraph (1) shall be recorded and announced.
- (5) Patent cancellation shall become effective as from the date it is so decided by the Directorate General.

PART THREE – CANCELLED ON CLAIM

Article 91

- (1) A claim for a cancellation of a Patent shall be made if:
 - (a) the Patent shall according to the provision of Article 2, Article 6, or Article 7 have not been granted;
 - (b) the Patent is similar to another Patent already granted to another party for the same Invention based on this Law;
 - (c) the mandatory licensing appears to have failed to prevent the exercise of Patent in the form and manner that adversely affect the interests of the general public in a period of two (2) years as from the date the mandatory license is granted or as from the date of

the granting of the first mandatory license in the case a number of mandatory licenses are issued.

Elucidation: Appears to have failed to prevent the exercise of Patent in the form and manner that adversely affect the interests of the general public here means that despite the mandatory license, the decision has not been followed up in the implementation that the products highly required by the general public have not been made and the intention of the licensing does not materialize. An example of this is the granting of a mandatory license to produce drugs but the implementation was not very effective that the amount of production remained small, and the drug price remained high.

- (2) A claim for cancellation for the reason as described in paragraph (1) item (a) shall be made by a third party to the Patent Holder through the Commercial Court.
- (3) A claim for cancellation for the reason described in paragraph (1) item (b) may be made by the Patent Holder or the Licensee to the Commercial Court in order that another Patent that is similar to his or her Patent be cancelled.
- (4) The claim for cancellation as described in paragraph (1) item (c) may be made by the prosecutor to the Patent Holder or the mandatory licensee to the Commercial Court.

Article 92

If the claim for a Patent cancellation as described in Article 91 only affect one or a number of claims or parts of a claim, the cancellation shall only be effected for the claim being so applied.

Article 93

- (1) The decision of the Commercial Court on the cancellation of a Patent shall be delivered to the Directorate General no later than fourteen (14) days as from the decision is pronounced.

Elucidation: Decision of the Commercial Court here means the decision that has become legally permanent.

- (2) The Directorate General shall record and announce the decision on the Patent cancellation as described in paragraph (1)

Article 94

The procedure of making a claim as described in Chapter XII of this Law shall mutatis-mutandis apply also to Article 91 and Article 92.

PART FOUR – EFFECTS OF A PATENT CANCELLATION

Article 95

The cancellation of a Patent shall annul all the legal effects in respects of the Patent and other matters arising from the particular Patent.

Article 96

Except otherwise provided in the decision of the Commercial Court, a Patent shall become null and void as a whole or a part thereof as from the date the decision becomes permanently valid.

Article 97

- (1) The Licensee of a cancelled Patent for reason as described in Article 91 paragraph (1) item (b) may still continue exercising the License he or she possesses through the end of the period provided in the License agreement.
- (2) The Licensee as described in paragraph (1) shall no longer be liable to pay the royalty he or she should continue paying to the Patent Holder whose Patent has been cancelled but, instead, shall pay the royalty in the rest of the License period to the right Patent Holder.
- (3) If the Patent Holder has received the royalty in a lump sum from the License, the Patent shall return the sum of the royalty for the rest of the License period to the right Patent Holder.

Article 98

- (1) The License of the Patent declared cancelled for reasons as described in Article 91 paragraph (1) item (b) obtained in good faith before the claim for the cancellation of the particular Patent remain effective to other Patents.

Elucidation: The Licensee of a cancelled Patent may in principle continue to exercise the rights it has been granted. The License becomes a License of a Patent that is not cancelled.

- (2) The License as described in paragraph (1) shall remain effective on the conditions that the Licensee shall thereafter be obliged to pay the royalty to the Patent Holder whose Patent has not been cancelled, in the sum similar to the sum agreed before to be paid to the Patent Holder whose Patent has been cancelled.

Chapter VII - Patent Exercised By the Government

Article 99

- (1) If the Government considers a Patent in Indonesia important for the defense and security of the State and it is urgently needed for the interests of the general public, the Government may exercise the Patent by itself.

Elucidation: As the defense of the State and urgent needs of the national interests are fundamental matters, it is appropriate if the Government or a third party licensed by the Government exercise the particular Patent.

This ruling is also made possible in accordance with Article 31 of the TRIPs. The Inventions related to Defense and security purposes include explosives, firearms, and munitions.

Urgent needs for the national interests include matters affecting the health sector as drugs that are still protected under Patents in Indonesia, required to eradicate endemics; the agriculture sector such as pesticides that are highly required to prevent a country-wide harvest failure due to plant diseases. It is understood that one function of the patent is to contribute to the sustainability of the Nation's economy and the welfare of the community of the concerned country.

- (2) The decision effecting the State to exercise a patent shall be provided in a Presidential Decree after the President has considered the recommendations of the Minister of the ministers or chiefs of the relevant agencies.

Article 100

- (1) The provision of Article 99 shall mutatis mutandis apply to the Invention applied for Patent but is not announced as described in Article 46.
- (2) If the Government does not or has not decided to exercise a Patent by itself as described in paragraph (1), the exercise of such Patent shall only be possible on a Government's approval.
- (3) The Patent Holder as described in paragraph (2) shall be exempted from paying the annual fee until the particular Patent is exercisable.

Article 101

- (1) When the Government intends to exercise a Patent that is important for the defense and security of the State and it is urgently needed for the interests of the general public, the

Government shall notify in writing thereof to the Patent Holder giving the following information:

- (a) the particular Patent, the Patent Holder and the number;
 - (b) the reasons;
 - (c) period of exercise;
 - (d) other matters of importance.
- (2) The exercise of a Patent by the Government shall be done by giving the Patent Holder a reasonable reward therefor.

Article 102

- (1) The Government's Decision that a Patent shall be exercised by the Government itself shall be final.
- (2) If the Patent Holder does not agree to the reward determined by the Government, he or she shall bring the case to the court by filing a complaint to the Commercial Court.
- (3) The court process of the complaint as described in paragraph (2) shall not effect the Government's ceasing its exercise of the Patent.

Article 103

The procedures of Patent exercise by the Government shall be provided in a Government Regulation.

Chapter VIII - Simple Patents

Article 104

All the stipulations in this Law shall mutatis mutandis apply to the Simple Patents, except it is expressly provided that it does not apply to Simple Patents.

Article 105

- (1) A Simple Patent shall only be granted to a single Invention.

Elucidation: An Invention is an intangible product. However, it may comprise a number of claims.

- (2) The application for a substantive inspection of a Simple Patent may be made together with the Application or no later than six (6) months after the Filing Date at a cost.
- (3) If an application for a substantive inspection is not made within the period described in paragraph (2) or the cost thereof is not paid, the Application shall be deemed revoked.
- (4) The substantive inspection of an Application for a Simple Patent shall be undertaken after the end of the announcement period as described in Article 44 paragraph (1) item b.
- (5) The Directorate General shall in undertaking the substantive inspection only examine the novelty as described in Article 3 and the industrial applicability as described in Article 5.

Elucidation: Novelty here is not only in respect of its technical features but also its being more practical than the previous Invention.

Article 106

- (1) A Simple Patent granted by the Directorate General shall be recorded and announced.
- (2) As evidence of the right a Simple Patent Certificate will be issued to the Simple Patent Holder.

Article 107

A Simple Patent shall not be requested for a mandatory license.

Article 108

Further stipulations on Simple Patent shall be provided in a Government Regulation.

Chapter IX - Application Through the Patent Cooperation Treaty

Article 109

- (1) An Application may be made through the Patent Cooperation Treaty.

Elucidation: This provision is designed to facilitate the processing of Patent Application by an Indonesian to a number of other countries (that are also members of the Patent Cooperation Treaty (PCT), and similarly, the Applicants from other countries that are members of the PCT may find it easier to get their Applications submitted in Indonesia.

- (2) Further stipulations on the Application as described in paragraph (1) shall be provided in a Government Regulation.

Elucidation: The Government Regulation includes, amongst others:

- (a) additional administrative requirements the Applicant has to fulfill such as the use of foreign language that is accessible, appointment of the Patent office that will serve as the international search authority and the international preliminary examination authority) by the Applicant, and so forth;
- (b) the obligations of the Directorate General as the receiving office or as a designated office of this system, and so forth.

Chapter X - Patent Administration

Article 110

Patent administration as provided in this Law shall be undertaken by the Directorate General with due observance of the authorities of other agencies as provided in this Law.

Article 111

The Directorate General shall maintain Patent documentation and information services by setting up a Patent documentation system and nationwide information network that it will be able to provide as much information as possible to the general public regarding the Patented technologies.

Elucidation: As one source of technological information, Patent is a facility for promoting the competency and capability of the nation in technology. Accordingly, Patent documentation

and information have a very important, even strategic, role. In these respects, the Directorate General should be encouraged to maintain a documentation system, particularly relevant and full-fledged information system. For this purpose, the Directorate General may utilize the ability and facilities of other organizations – the Government or the private sector – in the best possible cooperation for the attainment of the system. Besides, a well maintained information system will also contribute to promoting smooth implementation of the tasks and responsibilities of the Directorate General, particularly in the inspection of Patents. In the efforts to develop a nation-wide Patent documentation and information system, the Directorate General may also utilize international technical cooperations.

Article 112

The Directorate General shall in undertaking the Patent administration get guidance of and be responsible to the Minister.

Chapter XI - Costs

Article 113

- (1) All costs payable under this Law shall be provided in a Government Regulation.
- (2) Further stipulations on the requirements, period and procedure of the payment described in paragraph (1) shall be provided in a Presidential Decree.
- (3) The Directorate General may on a consent of the Minister and the Minister of Finance use the revenues from the costs as described in paragraph (1) based on the prevailing laws and regulations.

Article 114

- (1) The payment of the first annual fee shall be settled no later than one year as from the date the Patent is granted.
- (2) The payment of the annual fees of for the subsequent years shall be settled no later than the same date as the date the Patent is granted or the date the License is recorded.

- (3) The payment of the annual fee as described in paragraph (1) shall be as from the first year of the Application.

Elucidation: Paragraph (1), Paragraph (2), and Paragraph (3)

The first annual fee is the annual fee before the Patent is granted.

For the purpose of calculation, the first year of the Application is effective as from the Filing Date.

An example of calculating the annual fee is as follows:

The Application is submitted on April 1, 1997, and the decision is that the Patent will be granted on January 5, 2000.

The Patent Holder will have to pay the first annual fee as described in paragraph (1) is no later than January 4, 2001.

Article 115

- (1) If in three consecutive years the Religious Affairs Court fails to pay the annual fee as described in Article 18 and Article 114, the Patent shall be declared cancelled ipso iure as from the last date of the third year the payment should have been made.

Elucidation: The period of three (3) years is meant to give the Patent Holder enough time to develop the sustainability of his or her Patent. A cancellation of a Patent due to failure to pay the annual fee shall be informed in writing by the Directorate General to the Patent Holder.

The notice will indicate the date the Patent expires as provided by this Law. the annual fee to be paid in the three(3)-year period shall remain payable by the Particular Patent Holder.

- (2) If the payment for the annual fee in respect of the annual fee payment for the eighteenth year and the subsequent years is not fulfilled, the Patent shall be deemed cancelled ipso iure at the end of the annual payment period of the relevant year

Elucidation: The annual fee XVIII shall be settled no later than the date year XVIII ends.

The explanations are a continuation of the explanations in Article 114:

Annual fee XVIII (April 1, 2014 – March 30, 2015) will be payable and shall be settled no later than January 5, 2016;

Annual fee XIX (April 1, 2015 – March 30, 2016) will be payable and shall be settled no later than January 5, 2017;

Annual fee XX (April 1, 2016 – March 30, 2017) will be payable and shall be settled no later than January 5, 2018.

The payment of annual fee XVIII which is not settled until January 5, 2016, will cause the Patent cancelled ipso iure as from January 5, 2016. Even then, the unpaid annual fee will remain payable by the Patent Holder. The same applies to the payment of the annual fees of the subsequent years.

- (3) The cancellation of a Patent for reasons as described in paragraph (1) and paragraph (2) shall be recorded and announced.

Article 116

- (1) Except in the cases described in Article 114 paragraph (3) and Article 115 paragraph (2), any late payment of the annual fee beyond the period described in this Law shall be charged a penalty of two point five percent (2.5%) per month of the annual fee payable.

Reference to the elucidation of Article 114:

- (a) If the first annual fee is not paid until after January 4, 2001, (e.g., not until May 1, 2001), the total annual fee payable by the Patent Holder will be $(A+B+C) + \{2.5\% \times 4 \times (A+B+C)\}$.
 - (b) In the case of a delay in the payment of the annual fees of the subsequent years (e.g., annual fee V not paid until June 1, 2003), after the annuals fees of the previous years have been settled timely, the total payment amount payable will be $E + (2.5\% \times 5 \times E)$.
- (2) The later payment of the annual fee as described in paragraph (1) shall be notified in writing by the Directorate General to the concerned Patent Holder no later than seven (7) days as from the date the payment becomes due.
 - (3) The non-receipt of the written notification as described in paragraph (2) by the concerned party shall not reduce the applicability of the provision described in paragraph (1)

Chapter XII - Settlement of Disputes

Article 117

- (1) If a Patent is granted to another party based on Article 10, Article 11 and Article 12, the party having the right to the particular Patent shall have the right to complain thereof to the Commercial Court.
- (2) The right to complain as described in paragraph (1) shall be valid retroactively as from the Filing Date.
- (3) The notification of the decision of the complaint as described in paragraph (1) shall be made to the parties by the Commercial Court no later than fourteen (14) days as from the date the decision is pronounced.

- (4) The decision as described in paragraph (3) shall be recorded and announced by the Directorate General.

Article 118

- (1) A Patent Holder or a Licensee shall be entitled to file a complaint to the local Commercial Court to for damages by any person who has willfully without the right thereto take the act as described in Article 16.
- (2) The complaint for damages due to the acts as described in paragraph (1) may be acceptable if the product or process is proved to have been made using the Patented Invention.
- (3) The decision by the Commercial Court of the complaint as described in paragraph (1) shall be sent to the Directorate General no later than fourteen (14) days as from the date the decision is pronounced for recording and announcement.

Elucidation: The decision of the Commercial Court here is the decision that has become legally permanent.

Article 119

- (1) In the case of a hearing of a complaint of a process Patent, the obligation to prove that a product is not made using the process Patent as described in Article 16 paragraph (1) item (b) shall be charged to the Defendant of:
 - (a) the product made through the process Patent is a novel product;
 - (b) the product is alleged to have been made using a process Patent and even sufficient efforts have been made therefore, the Patent Holder is still unable to determine what process has been used for making the product.
- (2) The court shall for the purpose of the examination of a complaint as described in paragraph (1), have the authority to:
 - (a) order the Patent Holder to first provide a copy of the Patent Certificate of the particular process and the initial evidence that makes the basis of the complaint; and
 - (b) order the defendant to prove that the product it has made has not been produced using the particular process Patent.

Elucidation: Reversal of the burden of proof is required in view of the complexity in the handling of a Patent dispute for process. In spite of this, in order to ensure appropriate balance of interests between the parties, the judge retains the authority to order the Patent Holder to first provide evidence of the copy of the Patent Certificate for the process and the

initial evidence that substantiates the allegation. Besides, the 'judge shall also consider the interests of the defendant to get protection of the confidentiality of the process it has described for the purpose of giving the evidence to the court.

Process that has been patented is as defined process Patent here.

- (3) In the case of an examination of a complaint as described in paragraph (1) and paragraph (2), the court shall consider the interests of the defendant to get protection of the secrecy of the process it has described for the purpose of proving before the court.

Elucidation: The protection of confidentiality is very important in view of the nature of a process which could generally be very easily manipulated or improved by a person who has general knowledge in engineering or in particular technology. According, at the request of the parties, the judge may declare that the hearing be closed to the general public.

Article 120

- (1) A complaint shall be filed to the Commercial Court by paying the complaint fee.
- (2) The Commercial Court shall in no longer than fourteen (14) days as from the date the complaint is filed, decide the hearing date.
- (3) The court hearing of a complaint shall commence no later than sixty (60) days as from the date the complaint is made.

Article 121

- (1) The summons of the parties shall be made by the bailiff no later than fourteen (14) days before the scheduled first day of court hearing.

Elucidation: Except otherwise provided, bailiff in this Law means the bailiff of the District/ Commercial Court.

- (2) The decision of the complaint shall be pronounced no later than one hundred and eighty (180) days as from the date the complaint is filed.
- (3) The decision of the complaint as described in paragraph (2) containing complete legal considerations that make the basis of the decision shall be pronounced in a session open to the public.
- (4) The Commercial Court shall deliver the content of the decision to the party who did not appear at the court no later than fourteen (14) days as from the date the decision is pronounced in the session open to public.

Article 122

Only a kasasi may be made of the decision of the Commercial Court as described in Article 121 paragraph (3).

Article 123

- (1) An application for a kasasi as described in Article 122 shall be made no later than fourteen (14) days as from the date the decision for which the kasasi is made is pronounced or received, by filing it to the court that has made the decision.
- (2) The clerk shall register the application for a kasasi on the date the application is filed and the applicant shall be given the written receipt thereof signed by the clerk on same date as the date the filing is made.

Elucidation: Except otherwise provided, clerk in this Law means the clerk of the District/Commercial Court.

- (3) The applicant for kasasi shall submit the memorandum of kasasi to the clerk no later than seven (7) days as from the date the application for kasasi is filed as described in paragraph (1) and paragraph (2)
- (4) The clerk shall send the application for kasasi and memorandum of kasasi as described in paragraph (3) to the defendant of kasasi no later than two (2) days as from the application for kasasi is received by the clerk.
- (5) The defendant of kasasi may submit a contra memorandum of kasasi to the clerk no later than seven (7) days as from the date the defendant of kasasi receives the memorandum of kasasi as described in paragraph (4) and the clerk shall send the contra memorandum of kasasi to the applicant for kasasi no later than two (2) days after the receipt of the contra memorandum of kasasi is received by the clerk.
- (6) The clerk shall submit the dossiers of the case of kasasi to the Supreme Court no later than seven (7) days as after the expiry of the period as described in paragraph (5).

Elucidation: Dossiers of the case of kasasi in this Law mean the application for kasasi, memorandum of kasasi, and/or contra-memorandum of kasasi and the other documents.

- (7) The Supreme Court shall review the dossiers of the case of kasasi and decide the examination day thereof no later than two (2) days after the date the application for kasasi is received by the Supreme Court.
- (8) The examination session of the case for kasasi shall be arranged no later than sixty (60) days as from the day the application for kasasi is received by the Supreme Court.

- (9) The decision on the application for kasasi shall be pronounced no later than one hundred and twenty (120) days as from the dossiers of the case of kasasi is received by the Supreme Court.
- (10) The decision of the case of kasasi as described in paragraph (9) that gives full accounts on the legal considerations that make the basis of the decision shall be read out in a session open to public.
- (11) The clerk of the Supreme Court shall send the copy of the decision of kasasi to the clerk no later than three (3) days as from the date the decision on the application for kasasi is pronounced.
- (12) The bailiff shall send the decision on the kasasi as described in paragraph (11) to the applicant for kasasi and the defendant of the application for kasasi no later than two (2) days as from the receipt of the decision on the kasasi.
- (13) A copy of the decision of kasasi as described in paragraph (11) shall also be sent to the Directorate General no later than two (2) days as from the day the decision on the case of kasasi is received by the kasasi for recording and announcement.

Article 124

Besides the settlement of a dispute as described in Article 117, the parties may also seek settlement through Arbitration or Alternative of Dispute Settlement.

Elucidation: Alternative of Dispute Settlement here means negotiations, mediations, conciliations and other forms the parties agree to choose in accordance with the prevailing Laws.

Chapter XIII - Interim Decision By the Court

Article 125

The Commercial Court may at the request by the party who has been adversely affected by the case, issue a decision directly and immediately effecting:

- (a) prevent further infringement of the Patent and rights in respect of Patent, particularly the influx of the goods alleged to have been produced by infringing the Patent and rights in respect of Patent through importation;

Elucidation: This provision is meant to prevent further damages to party whose rights have been infringed so that at the request of the applicant, the Commercial Court is authorized to issue an interim decision to prevent further infringement and the influx of goods that are alleged to have been produced by infringing the Patent to the trading line including importation.

- (b) to keep the evidence relating to Patent and rights in respect of the particular Patent to prevent removal of the evidence;
- (c) to request the adversely affected party to prove stating that the party actually has the right to the Patent and the right in respect of the Patent, and that the right of the Applicant is actually being infringed.

Article 126

If such interim decision has been made, the parties shall forthwith be notified thereof, including the matters relating to the rights, for information to the party affected by the interim decision.

Article 127

If the Commercial Court issues an interim decision, the Commercial Court shall decide whether it amends, cancels or substantiate the letter of decision as described in Article 125 in no later than thirty (30) days as from the day the decision is made.

Article 128

If the interim decision is cancelled, the party adversely affected by the decision may claim recovery for damages to the party requesting the interim decision for all the losses it has incurred due to the decision.

Chapter XIV - Investigation

Article 129

- (1) Beside the investigator of the Indonesian National Police, particular Civil Service Officials of the ministry whose tasks and responsibilities include the fields of Intellectual Property Rights shall be authorized as investigators as provided in Law Number 8 of 1981 concerning Criminal Law Procedure to investigate criminal acts in Patents.
- (2) The Civil Service Investigator as described in paragraph (1) shall have the following authorities:
 - (a) to examine the evidence of a report relating to criminal acts in Patents;
 - (b) to interrogate the persons or legal entities alleged as having taken a criminal act in Patents based on the report in item (a);
 - (c) to request information and evidencing materials from the persons or legal entities in respect of criminal acts in Patents;
 - (d) to conduct examination of the bookkeeping, records and other documents relating to criminal acts in Patents;
 - (e) to conduct investigations in particular places suspected as being the location of evidencing materials, bookkeeping, records and other documents and to confiscate the materials and goods produced in the violation that may be used as evidence in a criminal case in Trademark; and
 - (f) to request expert assistance in conducting the investigation of criminal acts in Trademark.
- (3) The Civil Service Investigator as described in paragraph (1) shall notify the commencement of an investigation and the results thereof to the Indonesian National Police.
- (4) The Civil Service Investigator as described in paragraph (1) shall give the results of his investigation to the Public Prosecutor through the Indonesian National Police, by observing the provision of Article 107 of Law Number 8 of 1981 concerning Criminal Law Procedure.

Chapter XV - Criminal Penalties

Article 130

Anyone who willfully and without the right thereto infringe the right of the Patent Holder by doing any of the acts described in Article 16, shall be subject to serving a maximum imprisonment of four (4) years and/or paying a maximum penalty of five hundred million rupiah (Rp.500,000,000).

Article 131

Anyone who willfully and without the right thereto infringe the right of the Simple Patent Holder by doing any of the acts described in Article 16, shall be subject to serving a maximum imprisonment of two (2) years and/or paying a maximum penalty of two hundred and fifty million rupiah (Rp.250,000,000).

Article 132

Anyone who willfully fail to fulfill the obligations described in Article 25 paragraph (3), Article 40, and Article 41 shall be subject to serving a maximum imprisonment of two (2) years.

Article 133

The criminal acts as described in Article 130, Article 131 and Article 132 shall be delict of complaint.

Article 134

In the case a Patent infringement is proved, the judge may order that the goods produced in violation of the particular Patent be confiscated by the State for disposal.

Article 135

Exceptions of the criminal acts as described in this Chapter are:

- (a) importing pharmaceutical product protected by a Patent in Indonesia and this product has been exported to a Country by the Patent Holder legitimately provided that that the importation is done in accordance with the prevailing laws and regulations.

Elucidation: The exemption of the importation of pharmaceutical products as described in item “a” of this Article is to ensure reasonable price and fairness by getting pharmaceutical products serve human needs of medical services. This provision may be applied if the price of a product in Indonesia becomes very high compared with the reasonable price on the international market.

- (b) producing a pharmaceutical product protected by a Patent in Indonesia in two (2) years before the Patent protection expires, for the purpose of going through the permit process and doing the marketing of the product when the Patent protection has expired.

Elucidation: The exemption as described in item “b” of this Article is meant to ensure the availability of a pharmaceutical product by another party after the expiry of the Patent protection period. This is expected to control the pharmaceutical product’s price to a reasonable level.

The permit process in this item is the process to obtain the distribution permit and the production permit of a pharmaceutical product from the relevant agency.

Chapter XVI- Transitional Provisions

Article 136

With the effectiveness of this Law, all laws and regulations on Patents existing on the date this Law becomes effectible shall remain effective as long as they are not against or have not been amended under new laws and regulations based on this Law.

Article 137

All Applications made before this Law becomes effective shall undergo process under Law Number 6 of 1989 on Patents as already amended under Law Number 13 of 1997 concerning Amendment to Law Number 6 of 1989 on Patents.

Chapter XVII - Closing Provisions

Article 138

When this Law becomes effective, Law Number 6 of 1989 on Patents (State Gazette of the Republic of Indonesia of 1989 Number 39, Supplement to State Gazette of the Republic of Indonesia Number 3398) and Law Number 13 of 1997 concerning Amendment to Law Number 6 on Patents (State Gazette of the Republic of Indonesia of 1997 Number 30, Supplement to State Gazette of the Republic of Indonesia Number 3680) shall become null and void.

Article 139

This Law shall become effective on the date it is enacted. In order that every person knows about it, it is hereby ordered that this Law be promulgated in the State Gazette of the Republic of Indonesia.