



## **Issuance of the Minister of Law and Human Rights Regulation of the Republic of Indonesia No. 15 of 2018 concerning Patent Implementation by Patent Holders**

Article 20(1) of the new patent law provides that a patent holder is obligated to manufacture the granted product or use the granted process in Indonesia. It is further stipulated in Article 20(2) that such product manufacturing or use of such a process must encourage the technology transfer, attracting investment and/or creating new job opportunities. Failing to conform to this provision, the granted patent will potentially be invalidated before the Commercial Court filed by prosecutor or any party representing national interest (any individual who launch the lawsuit voluntarily for the sake of the society or the country), or compulsory-Licensee [Article 132(1)(e) jo (4)].

This provision in Article 20 is actually in line with Article 7 of the TRIPS Agreement however, its implementation would be very detrimental, especially to local patent owners competing in the global market. Patent holders, who are either individual or from small entities, university/government research sectors would face obstacles more in capital, manufacturing facilities, whilst institutional/organizational may experience difficulties in implementing their patent appropriately and timely.

Invalidation (Article 132(1)(e)) for failure to meet the provision of Article 20 was considered “harsh” and in alternative, IP practitioners suggested the possibility of imposing a variation of gradual penalties (if it is unavoidable), which offering grace period and flexibilities to patent holders from the grant date until presumably 2 or 3 years prior to the expiration of the patent.

This problem was finally heard by the Government, and was given a solution with the issuance of the Minister of Law and Human Rights Regulation of the Republic of Indonesia No. 15 of 2018 concerning Patent Implementation by Patent Holders. The Minister Regulation no. 15 of 2018 is stipulated on May 22, 2018 and promulgated on July 11, 2018.

In this Ministerial Regulation it has been stipulated that in the event that the Patent Holder has not been able to implement his patent in Indonesia, the patent holder may delay the implementation of

the manufacture of the product or the use of his patent process in Indonesia for a maximum of 5 (five) years by submitting an application to the Minister accompanied by reason.

Furthermore, the application for the postponement of patent application shall be submitted in writing within a period of 3 (three) years, counting from the date of grant, by enclosing also documents as follow:

- Instruction Letter from the Patent Holder;
- Power of Attorney;
- Receipt showing Payment of the latest Annual Fee.

Issuance of Ministerial Regulation No. 15 of 2018 overcame critics and deficiencies regarding article 20 of the Patent Law No. 13 of 2016, and that full advantage of the leniency given should be taken by Patent Holders, who intend to maintain their Patent rights in Indonesia. A thorough review of all existing Indonesian Patent portfolio is thus highly suggested for assurance.

***For further assistance and information relating to the submission of such application to the Minister, please do not hesitate to contact our Patent team at [pat-um@harvespat.com](mailto:pat-um@harvespat.com).***

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