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Conditional Unconstitutional Omnibus Law: The Implications On Patent Regulation

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CONDITIONAL UNCONSTITUTIONAL OMNIBUS LAW: THE IMPLICATIONS ON PATENT REGULATION

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49

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27

Abstrak

Perlindungan paten di Indonesia sejauh ini masih menyisakan beragam persoalan, baik yang sifatnya praktis (implementasi) maupun konseptual (penerimaan oleh masyarakat). Penelitian bertujuan untuk menganalisis pengaturan paten di Indonesia saat ini dan implikasi hukum⁴⁷ terhadap pengaturan paten pasca putusan Mahkamah Konstitusi No.91/PUU XVIII/2020. Adapun metode²⁸ yang digunakan dalam penelitian ini adalah menggunakan jenis metode doctrinal. Berdasarkan hasil penelitian ini dapat disimpulkan bahwa lahirnya UU Paten 2016 telah mencabut UU Paten 2001, yang secara umum tidak banyak memiliki perbedaan yang signifikan dalam kaitannya⁹ penguasaan teknologi. Ketentuan Pasal 20 UU Paten 2016 yang mewajibkan bagi pemegang Paten untuk membuat produk ataupun menggunakan proses di Indonesia merupakan salah satu bentuk akselerasi Indonesia di bidang penguasaan teknologi. Namun lahirnya UU Cipta Kerja menjadi salah satu regulasi di Indonesia yang relatif banyak dan tumpang tindih satu dengan yang lain yang akhirnya menjadikan kontraproduktif khususnya terkait dengan bisnis.

Kata kunci: Pengaturan Paten, UU Cipta Kerja, Inkonstitusional

Abstract

Patent protection in Indonesia today still leaves various⁵⁷ problems, both practical (implementation) and conceptual (acceptance by the public). This study aims to analyze the current patent regulation in Indonesia and the legal implications after the Indonesian Constitutional Court²⁸ verdict Number 91/PUU XVIII/2020. This research uses the type of doctrinal method. Based on the results of this study, it can be concluded that the enactment of the 2016 Patent Law has revoked the 2001 Patent Law, which in general does not have many significant differences in terms of mastery of technology. The provision of Article 20 of the 2016 Patent Law, which obliges patent holders to manufacture products or do the processes in⁵ Indonesia, is one of Indonesia's forms of acceleration in the field of technology mastery. However, the birth of the Job Creation Law has become one of the regulations in Indonesia that are relatively numerous and overlap with one another, which ultimately makes it counterproductive, primarily related to business.

Keywords : Job Creation Law, Patent Regulation, Unconstitutional

INTRODUCTION

Humans have been gifted minds by God to utilize their intellect. One form of human intellectuality is producing various creations, designs, and inventions in science, technology,

and business.¹ Information technology is an important thing that must be

39

¹ Nopiana, N., & Disemadi, H. S. (2021). Perlindungan Hukum Terhadap Pemegang Hak Merek: Suatu Kajian Komparatif Antara Jepang

utilized as much as possible to develop intellectual property.² The output of human intellectuality is commonly known as Intellectual Property (IP).³ Patents as a type of IP in technology have a significant and strategic role in Indonesia's development, especially in stimulating economic growth.⁴ Information technology plays a role in intellectual property development in the application process for registration and publication of intellectual property. The Indonesian Directorate General of Intellectual Property (In Indonesia: *DJKI*) develops data and information services in intellectual property as a means of information and submission of applications for intellectual works for the public⁵. A patent is crucial for a country, especially Indonesia as a developing country, which incidentally needs to accelerate development in all fields so that it does not always follow the developed countries. One of the accelerations carried out by Indonesia⁶ is the obligation for patent holders to manufacture products or do the processes in Indonesia.¹³ Provisions relating to this matter are regulated in Indonesian Law Number 13 of 2016 concerning Patents.⁶

Dan Indonesia. *Widya Yuridika: Jurnal Hukum*, 4(2).

² Disemadi, H. S., & Romadona, H. G. (2021). Kajian Hukum Hak Pencipta Terhadap Desain Grafis Gratis Yang Dipergunakan Kedalam Produk Pangan Di Indonesia. *Jurnal Meta-Yuridis*, 4(2).

³ Masnun, M. A., & Roszana, D. (2019). Persoalan Pengaturan Kewajiban Pemegang Paten Untuk Membuat Produk Atau Menggunakan Proses Di Indonesia. *Jurnal Hukum Ius Quia Iustum*, 26(2), 322-48., Hlm. 327.

⁴ Santoso, D. (2016). Upaya Harmonisasi Hukum Dalam Bidang Hki Dan Dampaknya Bagi Pembangunan Nasional. *Jurnal Hukum Ius Quia Iustum*, 8(40), 97-106., Hlm. 102.

⁵ Sari, M. Y. A. R. (2016). Pembangunan Kekayaan Intelektual (Ki) Berbasis Teknologi Informasi Di Era Global. 50

⁶ Demmassabu, V. M. (2017). Penghapusan Lisensi Paten Oleh Pemegang Hak Paten Menurut Undang-

It is known that intellectual property is divided into two major parts, namely industrial property rights and copyrights.⁷ Patents fall into industrial property rights. A patent is a form or construction of protection against inventions in technology.⁸ Technological development makes patents a powerful tool to become an excellent opportunity for inventors through patent innovations that have been validated or ratified. Based on the Indonesian Directorate General of Intellectual Property and legislation, the current use of patents adheres to the first-to-file principle.⁹ So from a social perspective, patents have a positive impact that aims to increase public awareness in various aspects of daily life, such as industrial activities, trade, investment, and economic development, in creating a more competitive advantage of patented products.¹⁰ According to Leon Duguit's opinion, the social function of patents limits intellectual property rights to realize justice for patent holders (individuals) and society. The emergence of justice is sensitive in the

Undang Nomor 13 Tahun 2016 Tentang Paten. *Lex Privatum*, 5(2), 101-106., Hlm. 103.

⁷ Disemadi, H. S., Yusuf, R. R., & Zebua, N. W. S. (2021). Perlindungan Hak Eksklusif Atas Ciptaan Digital Painting Dalam Tatahan Hak Kekayaan Intelektual Di Indoensia. *Widya Yuridika: Jurnal Hukum*, 4(1), 41-52.

¹³ urwaningsih, E., & Ariyanti, E. R. N. (2021). Kebijakan Paten Melalui Penguatan Perlindungan Inovasi Teknologi Dan Peningkatan Kemampuan Inovasi. *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*, 12(2), 163-172., Hl 45 164.

⁹ Idham, I. (2017). Peranan Paten Dalam Alih Teknologi. *Jurnal Hukum & Pembangunan*, 19(3), 248-257., Hlm. 250.

¹⁰ 26
<https://kemenperin.go.id/download/140/kebijakan-pemerintah-dalam-perlindungan-hak-kekayaan-intelektual-dan-liberalisasi-perdagangan-profesi-di-bidang-hukum>. Diakses Pada 28 Desember 2021., Hlm. 6.

distribution of burdens and rewards proportionally between the rights and obligations of the patent holder (individual) and the community.¹¹

Referring to Ahmad Jazuli's opinion, the socialization of IP today has not been able to increase the understanding of relevant stakeholders in the region regarding registration procedures until the issuance of patent certificates. Therefore, it is necessary to strengthen organizational performance and expand the authority of Regional Offices in regions related to IP services.¹² There is a need for harmonization of regulations and the synergy of stakeholders both at the regional and central levels, industry, campuses, researchers, and MSMEs. They may also have the potential to become inventors and related agencies to protect inventions that further promote the results of their exploitation.¹³ Indeed, this should not make the administration slower because the speed and accuracy of protection are the main priority compared to inventions that may suddenly be registered to Indonesia from abroad.

Historically, patent arrangements were contained in the Intellectual Property Rights Law (Indonesia: *HKI*) for the first time in Venice (Italy) in 1470. Then it was adopted by the British in the 1500s and was firstly declared by England in 1623. Indonesia began to recognize patents since the Dutch colonial period

in 1910.¹⁴ Implementing patents in Indonesia using Octroi Wet 1910 was more dominant to the Dutch colonial government, so Indonesia implemented a patent system through the development of patents from the 1989 Patent Law to the 2016 Patent Law made by the Indonesian government.¹⁵ Research on the transfer of Intellectual Property Technology produced by universities, such as developing patents confirmed in Article 20 of 2005 of Indonesian Law.¹⁶ Previous researchers, including Anis Roisah, have carried out similar research. Her research discusses the aspects of the legal reasons for the establishment of Article 20 of the Patent Law in Indonesia. The results of this study state that the rules are expected to make it easier to see the quality of the goods produced whether they are eligible to be registered or not.¹⁷ Muh Ali Masnun, whose research focuses on regulating the obligations of patent holders to make products or do the processes in Indonesia, reveals that the regulation of patents is an obligation for the patent holder in terms of carrying out the product patent process.¹⁸ Based on the descriptions and results of previous

¹¹ Prasada, E. A. (2016). Dasar Filosofis Fungsi Sosial Paten (Kajian Perbandingan Filsafat Pancasila Dan Filsafat Barat). *Jurnal Hukum Uniski*, 5(1), 36-49., Hlm. 39.

¹² Jazuli, A. (2018). Penyelesaian Permohonan Pendaftaran Paten Dalam Rangka Peningkatan Pelayanan Publik. *Jurnal Ilmiah Kebijakan Hukum*, 12(3), 243-257., Hlm. 245.

¹³ Nasir, R. (2016). Paten Dalam Proses Produksi: Tinjauan Hak Yang Melekat Pada Inventor. *Jurnal Hukum Positum*, 1(1), 141-149., Hlm. 142.

¹⁴ Sinaga, E. J. (2017). Implikasi Paten Asing Yang Masih Terdaftar Atas Invensi Di Bidang Teknologi Menurut Uu Nomor 14 Tahun 2001 Tentang Paten The Implications Of Foreign Patents Registered Of Technology Invention By The Act Number 14 Of 2001 On Patents. *Jurnal Ilmiah Kebijakan Hukum*, 7(1), 13-26., Hlm. 18.

¹⁵ Masnun, M. A., & Roszana, D. (2019). *Op.Cit.*

¹⁶ Pratan, R. N., Astanti, D. N., & Masnun, M. A. (2019). Implikasi Kewajiban Pelaksanaan Paten Terhadap Penyelenggaraan Alih Teknologi. *Keadilan: Jurnal Fakultas Hukum Universitas Tulang Bawang*, 17(2), 158-173., Hlm. 167.

¹⁷ Rosiah, A. (2019). *Alasan Hukum Pembentukan Pasal 20 Undang-Undang Nomor 13 Tahun 2016 Tentang Paten Di Indonesia* (Master's Thesis, Universitas Islam Indonesia), Hlm. 72.

¹⁸ Masnun, M. A., & Roszana, D. (2019). *Op.Cit.*

research publications related to the Conditional Unconstitutional Omnibus Law and related to patent arrangements, there are similarities in the theme. However, this research focuses on the current regulation of patents in Indonesia and the legal implications after the Indonesian Constitutional Court Verdict Number 91/PUU XVIII/2020.

METHODOLOGY

This study uses a type of doctrinal method. The doctrinal research method is qualitative and perspective research. In the doctrinal method, the law will be interpreted from a perspective as an ideal value system, law as a conceptual system, and law as a positive legal system. This method is used to analyze the current patent regulation in Indonesia and the legal implications after the Indonesian Constitutional Court Verdict Number 91/PUU XVIII/2020. This research will add insight into the problems studied and provide an overview of how well the theory and facts are matched in real life. It is hoped that this research can be used as a reference. This research also examines legal certainty and legal protection against the problems studied.¹⁹

RESULT AND DISCUSSION

1. Current Patent Regulations in Indonesia

Intellectual Property (IP) essentially talks about the rights to property born of human intellectuals. IP has three important elements, namely rights, human and intellectual. From these

three elements, creations are created. It is necessary to get protection for created works to prevent irresponsible parties from imitating, reproducing, and trading other people's creations. International parties must legally recognize everyone's ideas, patent protection. Patent protection is granted for one invention. In this case, each patent application is only for an invention, or rather an invention cannot be applied for more than one patent. The invention for which an application is filed at the patent office must be new, contain inventive and innovative steps, and can be applied in industry.²⁰ An understanding of IP regarding patents is an eternal and purely technical invention. IP itself in Indonesia is very influential in restoring the unavailability or irregularity of the legal aspects regarding the management of IP in patents. Thereby, the preparation of patent arrangements in Indonesia is integrated with other intellectual property rights arrangements, namely copyrights and trademarks. Based on Presidential Decree Number 34 of 1986, a team was formed to prepare a draft of the Patent Law.²¹ Indonesia needs to provide a national data center that is integrated and easily accessible by the public in government institutions.

The Indonesian Directorate General of Intellectual Property (In Indonesia: *DJKI*) is the voice in coordinating the collection and compilation of national data related to

¹⁹ Irianto, S. (2017). Metode Penelitian Kualitatif Dalam Metodologi Penelitian Ilmu Hukum. *Jurnal Hukum & Pembangunan*, 32(2), 155-172., Hlm.156.

²⁰ Tuuk, W. P. (2017). Perlindungan Hak Kekayaan Intelektual (Hki) Terhadap Pengetahuan Dan Teknologi Tradisional Menurut Undang-Undang Nomor 13 Tahun 2016 Tentang Paten. *Lex Privatum*, 5(4), 122-129. Hlm. 124.

²¹ Hanafi, M. (2014). Tinjauan Yuridis Tentang Paten Berdasarkan Undang-Undang Paten Nomor 14 Tahun 2001. *Syariah: Jurnal Hukum Dan Pemikiran*, 13(1), Hlm. 3.

intellectual property.²² The main points of patent regulation in the first Indonesian Patent Law were only in 1989 the promulgation of Law Number 6 of 1989 was later amended to Law Number 13 of 1997. However, with the development of increasingly advanced technology, the law is deemed no longer appropriate. It needs to be changed so that in 2001, Law Number 14 of 2001 was applied. Patent regulations are also very adaptable based on philosophical foundations, theoretical and sociological foundations. The concept of patent regulation is intended to give knowledge for the betterment of society, and in return, the inventor gets exclusive rights for a certain period.²³ Patent regulations in Indonesia are contained in the new Patent Law, namely Law Number 13 of 2016 concerning Patents.²⁴

The patent regulations as outlined in the 2016 Indonesian Patent Law above have differences compared to the previous Patent Law. It is stated in the 2016 Patent Law: a. Whereas patents are intellectual property granted by the state to inventors for their inventions in technology, which have a strategic role in supporting national development and promoting general welfare; b. The development of technology in various fields has been so rapid that it is necessary to increase protection for inventors and patent holders; c. Whereas increasing patent protection is very important for

inventors and patent holders because it can motivate inventors to increase their work, both in quantity and quality, encourage the welfare of the nation and state, and create a healthy business climate; d. Whereas Law Number 14 of 2001 concerning Patents is no longer following legal developments, both national and international, it needs to be replaced; e. Whereas based on the considerations as referred to in letter a, letter b, letter c, and letter d, it is necessary to enact a Law on Patents;

The issuance of the 2016 Indonesian Patent Law has revoked the previous 2001 Patent Law, which generally does not have much significant difference in the mastery of technology. Article 20 of the 2016 Patent Law, which obliges patent holders to manufacture products or do the processes in Indonesia, is one of Indonesia's forms of acceleration in technology mastery.²⁵ Technological developments have not been fully utilized in all fields, so they have not strengthened Indonesia's ability to face global competition. Thus, one of the government's policies to improve patent regulation is directed to the service optimization system in the intellectual property sector. Consequently, it forms new inventions that increase the utilization of technology in the production sector by realizing an increase in the national economy and appreciation for domestic technology. Therefore, this Law instructs the producers to mention materials used in the Invention clearly and honestly. Inventions in the form of second and subsequent uses (second use and second medical use) of

²² Adawiyah, R., & Rumawi, R. (2021). Pengaturan Hak Kekayaan Intelektual Dalam Masyarakat Komunal Di Indonesia. *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 10(1), 1-16., Hlm. 13.

²³ Nurfitri, D. (2013). *Pengantar Hukum Paten Indonesia*. Pt Alumni., Hlm. 133

²⁴ Masrur, D. R. (2019). Upaya Perlindungan Sumber Daya Genetik Berdasarkan Undang-Undang Nomor 13 Tahun 2016 Tentang Paten. *Jurnal Jurisprudence*, 8(2), 53-67., Hlm.55.

²⁵ Masnun, M. A., Wardhana, M., Perwitasari, D., Lovisonnya, I., & Hasyiyati, A. A. (2021). Polihukum Penguasaan Teknologi Di Indonesia. *Pandecta Research Law Journal*, 16(2), 267-278., Hlm. 266.

patents whose protection period has expired (public domain) are not allowed.

The 2001 Indonesian Patent Law regulates intellectual property in the industrial sector, especially technology. As a result of thought (human intellectual), technology can be protected through the type of *IPR* (Intellectual Property Rights) "patent." As stated in the preamble to the Indonesian Patent Law, Inventions are stated to have a strategic role in supporting the nation's development and advancing the general welfare. The spirit in the preamble of the 2001 Patent Law is considered to direct all inventions, especially those produced by domestic inventors, to become strategic technologies that can support the nation's development so that the estuary can ultimately advance public welfare.²⁶ The regulation of patents in Indonesia was previously stated in Indonesian Law Number 6 of 1989 concerning Patents and amended by Law Number 13 of 1997 concerning Amendments to Law Number 6 of 1989 concerning Patents; The preamble states that the basis for the formation of the 2001 Patent Law is the creation of international agreements, the development of adequate technology, industry, and trade. Regarding the formation of the newly drafted Patent Law, it is hoped to provide legal protection to inventors for inventions encountered and create a climate of fair business competition.

The regulation of patents in Indonesia was previously stated in Law Number 13 of 1997. The preamble to the Patent Law states: a. With the rapid development of life, especially in

the economic sector both at the national and international levels, providing adequate legal protection for Intellectual Property Rights, particularly Patents, needs to be further enhanced to create a better climate for the growth and development of research activities. Therefore, it results in the discovery and development of technology that is indispensable in implementing national development to create a just, prosperous, advanced, and independent Indonesian society based on Pancasila and the 1945 Constitution; b. By participating in the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPs), which is part of the Agreement Establishing the World Trade Organization, Indonesia continues to adjust national laws and regulations regarding the Intellectual Property Rights including Patents to the Agreement; c. Based on the considerations as referred to in letters a and b, as well as taking into account the assessment of all experiences, especially deficiencies during the implementation of the Law on Patents, it is necessary to amend and improve several provisions of Law Number 6 of 1989 concerning Patents by Law;

As a renewal form of the Patent Law Number 13 of 1997, it is adjusted to the Trade-Related Aspects of Intellectual Property Rights (TRIPs) on inventors' intellectual property (IP) by including law enforcement norms. TRIPs as a form of improvement also provide supporting facilities for economic growth that are prosperous, advanced, and independent in trade, both nationally and internationally. From the point of view of international economic development, the amendment of the Patent Law, which is intended to adapt it to the international trade agreement

²⁶ Erfamiati, A. D. (2021). *Perlindungan Hukum Terhadap Pemegang Hak Paten Ditinjau Dari Uu No 14 Tahun 2001 Tentang Hak Paten*. *Ganesha Law Review*, 3(2), 79-84., Hlm. 82.

Agreement Establishing the World Trade Organization (WTO), is part of the effort to liberalize the economy at the international level. It naturally demands socio-political and legal institutional changes to run economic liberalization well.²⁷

The renewal of the Patent Law in Indonesia was inseparable from the Dutch colonial period and the establishment of the prefix legal patent regulation in Presidential Decree (In Indonesia: *Keppres*) Number 34 of 1989, which declared the Patent Law Number 6 of 1989 as a change from Octroi Wet. The reasons for forming the Patent Law Number 6 of 1989 are:

a. The Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution, intending to realize a just and prosperous society materially and spiritually evenly distributed; b. In the context of implementing national development in general and the development of the economic sector in particular, technology represents an essential role in improving and developing industry; c. By taking into account the important part of technology in the development of the industry, efforts are needed to create a better climate in finding technology and tools to provide legal protection for the results; d. To create an environment and legal protection device as mentioned before, Indonesia needs to stipulate a regulation regarding patents immediately;

The preamble in the Patent Law above states the general parts of a patent as a legal protection device for technology-based inventions. Protection is the primary means of

long-term development because it will create a strong foundation for the Indonesians. It is needed by the Indonesian state to grow and develop its strength on a prosperous society based on Pancasila, particularly in building industrial-strength by paying attention to technological developments. This law regulates, among other things, the import of production results by other parties about the ownership of a patent and several other matters relating to a license to the Government to regulate it further so that it is always following the needs and circumstances.

However, the birth of the Job Creation Law has become one of the regulations in Indonesia that are relatively numerous and overlap with one another, which ultimately makes it counterproductive, primarily related to business. It furthermore hampers Indonesia in various ways, one of which is the investment climate. Indonesia's competitiveness is still low and even lagging compared to other countries (peer groups).²⁸ The Job Creation Law does not only contain labor issues but also includes other aspects, namely patents. Through the Job Creation Law, the government has revoked the provisions in Article 20 of the 2016 Patent Law. The article states that every product about to get a patent must be produced in Indonesia through technology transfer and employment. The revocation of Article 20 has negated Indonesia's spirit in mastering technology. Indonesia, which currently imports a lot of technology, has to oblige investors who will protect their patents, to do producing in Indonesia

²⁷ Todung Mulya Lubis, "Reformasi Hukum Ekonomi: Harmonisasi Dan Internasional", Dalam Seri Debat Publik Seputar Reformasi: Opini Masyarakat Dari Krisis Ke Reformasi, Demokratisasi Dan Otonomi, Kompas, Jakarta, 1999, Hlm. 19-26.

²⁸ Setyawan, Y. (2020). Rancangan Undang-Undang Omnibus Law Cipta Kerja Dalam Perspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Jurnal Ilmiah Hukum Dan Keadilan*, 7(1), 150-164., Hlm. 162.

by transferring technology. This is not something that hinders investment, but how we have a bargaining position and can be equal to countries that have today's technology.²⁹

2. Legal Implications for Patents after the Constitutional Court Verdict Number 34/PUU-XVIII/2020

During the inauguration of Indonesian President Joko Widodo for the period 2019-2024, he said that Indonesia must be more advanced. Therefore, to form an ideal legal arrangement so as not to experience legal deviation, the President proposed the draft of Omnibus Law, which establishes the Job Creation Law Number 11 of 2020 to the DPR-RI (Indonesian House Representatives).³⁰ The substance of Omnibus Law is to revise and revoke many laws. The definition of the Omnibus Law starts from the word Omnibus, which comes from Latin, which means for all. In Bryan A. Garner's Black Law Dictionary Ninth Edition, it is written that Omnibus: relating to or dealing with numerous objects or items at once, including many things having various purposes. Thus, Omnibus Law means the law for all.³¹ Omnibus Law proposes improvements due to too many regulations (over-regulation) and overlapping. The concept of the Omnibus Law has been widely adopted by several countries such as

²⁹ Helmi, H. (2021). Penataan Peraturan Daerah Dengan Metode Omnibus Law: Urgensi Dan Mekanisme. *Undang: Jurnal Hukum*, 4(2), 441-478. Hlm. 445.

³⁰ Suriadinata, V. (2019). Penyusunan Undang-Undang Di Bidang Investasi: Kajian Pembentukan Omnibus Law Di Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 4(1), 115-132. Hlm. 116

³¹ Busroh, F. F. (2017). Konseptualisasi Omnibus Law Dalam Menyelesaikan Permasalahan Regulasi Pertanahan. *Arena Hukum*, 10(2), 227-250. Hlm. 241-242

England, Belgium, Canada, and the United States. If solved in the usual way, the problem of the many overlapping rules will take a long time and be relatively expensive. Therefore, the concept of designing and establishing the Omnibus Law by the government is a solution to solve these problems.³² In solving regulatory problems, it needs a solid philosophical foundation. The jurisdiction in adopting the Omnibus Law concept by the Serbian government covers culture, education, language, media, health, sanitation, health insurance, pensions, social protection, tourism, mining, agriculture, and sports.

The Indonesian Economic Minister has stipulated the concept of the Omnibus Law regarding business licensing and empowerment of Micro, Small, and Medium Enterprises (MSMEs) by reviewing the investment method.³³ The creation of the Omnibus Law contains three essential parts, first, the Bill on Development and Strengthening of the Financial Sector, second, the Bill on Job Creation, and the third, the Bill on Tax Provisions and Facilities for Economic Strengthening. Those three bills are several factors in improving the Law for public attention.³⁴ The Omnibus Law serves as the primary Law in regulating several clusters of Law Number 11 of 2020 on Job Creation, which has pros and cons to the community's needs. In

³² Putra, A. (2020). Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi. *Jurnal Legislasi Indonesia*, 17(1), 1-10. Hlm. 2.

³³ Tiyarsari, D., & Pramesti, D. A. (2021, November). Analisis Pengaruh Omnibus Law Rancangan Terhadap Harga Saham Perbankan Konvensional Di Bei. In *Prosiding Seminar Nasional Fakultas Ekonomi Untidar 2021* (Vol. 1, No. 1), Hlm. 42.

³⁴ Fauzi, A. M. (2021). Resistensi Masyarakat Terhadap Pengesahan Uu Cipta Kerja Dalam Perspektif Sosiologi Hukum. *Reformasi Hukum*, 25(1), 77-91. Hlm. 78.

the Job Creation Act, there are 11 clusters. The government's goal in this Law is expected to provide an opportunity for investors to see regulations so that investors do not worry about overlapping.³⁵ Furthermore, the Indonesian government and the *DPR-RI* ratified or enforced the Job Creation Law in the *DPR's* plenary meeting on October 5, 2020.³⁶ The Job Creation Law is expected to realize flexible, accountable, competitive, and responsive legal rules and develop a conducive legal system by synchronizing the Law by Omnibus Law.³⁷ The comparison of the Patent Law and the Job Creation Law regarding patents can be seen in Chart 1 below:

Chart 1. Comparison of changes between the Patent Law and the Job Creation Law.

Patent Law	Job Creation Law	Impact
Article 20 Patent Holders	Patents must be enforced in Indonesia.	<i>Changing the obligation to</i>

³⁵ Kurniawan, F., & Dewanto, W. A. (2020). Problematika Pembentukan R UU Cipta Kerja Dengan Konsep Omnibus Law Pada Klaster Ketenagakerjaan Pasal 89 Angka 45 Tentang Pemberian Pesangon Kepada Pekerja Yang Di Phk. *Jurnal Panorama Hukum*, 5(1), 63-76., Hlm. 64-11

³⁶ Munawar, M., Marzuki, M., & Affan, I. (2021). Analisis Dalam Proses Pembentukan Undang-Undang Cipta Kerja Perspektif Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Jurnal Ilmiah Metadata*, 3(2), 452-468., Hlm. 454

³⁷ Mayasari, I. (2020). Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(1), 1., Hlm. 1.

must manufacture products or do the processes in Indonesia Making Products or doing the process in paragraph (1) must support technology transfer, investment absorption, job opportunities	The implementation of the Patent as referred to in paragraph (1) is as follows: Application of a product-Patent includes making, importing, or licensing a product for which a Patent is granted - the process that includes making, importing, or licensing a product that is granted a Patent. Application of patents-methods, systems, and uses, including making, importing, or licensing products resulting from the methods, systems, and uses for which the Patent is	"make/use" to "execute." Patent enforcement obligations are more relaxed. Eliminate the obligation to "support technology transfer, investment absorption, and job opportunities."
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	granted.	
Article 124		
The Minister is obliged to decide to approve or reject a simple Patent application no later than 12 (twelve) months from the date of receipt of a simple Patent application.	The Minister is obliged to decide to approve or reject a simple Patent application no later than 6 (six) months from the date of receipt of a simple Patent application.	Speed up the patent application process.

37

Source: What are new things from the Copyright Law specifically for Patents and Trademarks based on smart legal.³⁸

In the substance of the Omnibus Law, there are instructions for content that have many relations and contributions to human rights. In this Law, the Job Creation Law has issues in fulfilling the right to a decent living, and justice in structuring the authority of the regulations.³⁹ The Changes in the substance of the Omnibus Law in the Job Creation Law are regulations on patents. According to its history, patents were not something new for the Indonesian people until 1945,

⁵⁶ <https://Smartlegal.Id/Event/2021/03/17/Apa-Saja-Hal-Yang-Baru-Dari-Uu-Cipta-Kerja-Khusus-Paten-Dan-Merek/>. Diakses 06 Februari 2022.

³⁹ Suntoro, A., & Komnas, H. A. M. (2021). Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja. *Jurnal Ham*, 12(1), 1-18., Hlm. 3.

when no less than 18,000 patents had been granted in Indonesia based on the Dutch colonial Law, Octroi wet 1910.⁴⁰ From this history, patents have many enthusiasts, so the Indonesian government made regulations on patents as stated in Article 107 of the Copyright Law Number 11 of 2020 and the Patent Law of 2016. The granting of patents in the Job Creation Law regulation means supporting innovation and invention activities (inventor's ideas are poured into a solution to problems in the technology sector) to benefit the common welfare.⁴¹ One of the reasons to reject this Law is because there is an effort to revive articles that have been declared unconstitutional.⁴²

The Job Creation Law is contrary to the 1945 Constitution of Indonesia. Therefore, Article 10 paragraph (1) letter A in Indonesian Law Number 7 of 2020 concerning the Constitutional Court states that the Constitutional Court has the authority to adjudicate at the first and final levels whose verdicts are final for: (a). examine the Law against the 1945 Constitution of the Republic of Indonesia. With this authority, the Constitutional Court has issued a Verdict on the Job Creation Law contrary to the 1945 Constitution. The Court ruled the Job Creation Law as a conditionally unconstitutional law in its decision. A conditional unconstitutional decision is granted by a Constitutional

⁴⁰ Lindsey, T. (2002). Hak Kekayaan Intelektual. *Suatu Pengantar*. (Bandung: Alumni), Hlm. 182.

⁴¹ Kurnianingrum, T. P. Pelindungan Hak Paten 52s Pengetahuan Obat Tradisional Melalui Pasal 26 Uu No. 13 Tahun 2016 Tentang Paten. *Jurnal Negara Hukum*, 10., Hlm. 51.

⁴² Aprianti, N., Safa'at, M. A., & Qurbani, I. D. (2021). Dualisme Model Pengujian Peraturan Daerah Pasca Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Jurnal Ius Kajian Hukum Dan Keadilan*, 9(2), 472-485., Hlm. 473.

Judge, which means that a law is contrary to the 1945 Constitution. The Constitutional Court first decided an unconstitutional decision in Constitutional Court Verdict Number 4/PUU-VII/2009 dated 24 March 2009 regarding the review of Article 12 letter a and Article 50 paragraph 1 letter G and Article 58 letter f of Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004 concerning Regional Government. The Court believes that applying these articles violates the provisions of Article 28D paragraph 1 and paragraph 3 of the 1945 Constitution of Indonesia.⁴³ The legal implications of conditional unconstitutional decisions in the Constitutional Court Verdict number 130/PUU-XIII/2015 explain conditional unconstitutional interpretation in Article 109 paragraph 1 of the Criminal Procedure Code. It was decided by the Constitutional Court using a conceptual approach so that the existence of the Constitutional Court becomes one of the doctrine elements of the Rule of Law.⁴⁴ As in conditional constitutional decisions or conditional unconstitutional decisions, the Constitutional Court is essentially one of the lawmakers who does not go through the legislative process because it is not included in the competence of the Constitutional Court. Therefore, two variants of the decision have terms and meanings to

⁴³ Cerdas, F. A. (2018). *Tinjauan Yuridis Putusan Mahkamah Konstitusi Yang Bersifat Inkonstitusional Bersyarat (Analisis Putusan Mahkamah Konstitusi Nomor 33/PUU-Ix/2016)* (Doctoral Dissertation, University Of Muhammadiyah Malang). 25 m. 5.

⁴⁴ Supena, N. *Konstitusional Dan Inkaaonstitusional Bersyarat Dalam Perspektif Mahkamah Konstitusi (Analisis Putusan Mahkamah Konstitusi Nomor 130/PUU-Xiii/2015)* (Bachelor's Thesis, Fakultas Syariah Dan Hukum Uin Syarif Hidayatullah Jakarta), Hlm. 5.

the subject of the Constitutional Court Verdict in carrying out the formation of the provisions of the Law through the legislative process carried out by the Indonesian House of Representatives together with the president. In comparison, the Constitutional Court directly takes the regulation of the two variants through its Verdicts.⁴⁵

As stated in the Constitutional Court Verdict, the Job Creation Law was formally flawed because during its formation, it did not meet the provisions based on the 1945 Constitution and was declared conditionally unconstitutional for 2 (two) years. Therefore, the rules regarding patents still refer to the Job Creation Law as required by the Constitutional Court. In addition to the requirements that must be met, in the Verdict Number 91/PUU-XVIII/2020, the Constitutional Court ordered the legislators, the Indonesian House of representatives, to improve the Job Creation Law within a maximum of 2 (two) years since the Verdict was pronounced. Furthermore, suppose that the revision of the Job Creation Law cannot be completed within the specified period, the Law or Article or material content that has been revoked or changed by the Job Creation Law is declared to be valid again. Based on the conditional unconstitutional decision by the Constitutional Court in the Verdict Number 91/PUU-XVIII/2020, the implications for patents, in this case, are still stated as a constitutional law but by requiring something based on the interpretation developed by the Constitutional Court and still applying the Job Creation Law

⁴⁵ Ali, M. M., Hilipito, M. R., & Asy'ari, S. *Tindak Lanjut Putusan Mahkamah Konstitusi Yang Bersifat Konstitusional Bersyarat Serta Memuat Norma Baru The Implementation Of Constitutional Court Verdict On Conditionally Constitutional And New Legal Norm.*, Hlm. 5.

for only 2 (two) years for further revision by the Lawmakers.

CONCLUSION

A patent is an exclusive right granted by the state to an inventor for his invention in technology. It carries out the invention himself or permits other parties to implement it for a certain period (Article 1 of the Indonesian Patent Law). Patents are given a technology scope, a science applied in industrial processes. In addition to patents, there are also utility models, which are similar to patents but have more simple protection requirements. Patents and simple patents in Indonesia are regulated in the Patent Law (In Indonesia: *UUP*). A patent is one type of intellectual property rights in technology that has an essential and strategic role in Indonesia's development, especially stimulating economic growth. Article 20 of the Indonesian Patent Law states that patent holders must manufacture products or do the processes in Indonesia. This provision implies that patent holders from within and outside the country who have submitted applications and have received patent protection (granted) from Indonesia are obliged to manufacture products or processes in Indonesia.

However, the community rejected the establishment of the omnibus law or the Job Creation Law Number 11 of 2020. One of the reasons for the rejection is the effort to revive articles that have been declared unconstitutional. As it is known that patents have many enthusiasts, the Indonesian government makes a law on patents listed in Article 107 of the Copyright Law and Patent Law 2016. The granting of patents in the regulation of the Job Creation Law has the meaning to support innovation and invention activities (inventor's ideas are

poured into a solution to problems in the field of technology) so that they are beneficial for the common welfare. However, the Constitutional Court Verdict stated that the Job Creation Law was formally flawed because during its formation, it did not meet the provisions based on the 1945 Constitution and was declared conditionally unconstitutional for 2 (two) years. Therefore, the rules regarding patents still refer to the Job Creation Law as required by the Constitutional Court.

The Job Creation Law's establishment is excellent and careful when viewed from philosophical, sociological and juridical considerations. It intended to realize the mandate in the opening of the 1945 Constitution, which is a fundamental direction regarding the national vision, mission, and goals. Those must be realized in the life of the nation and state. However, it is hoped that the Government can be wiser in forming a law so that there is no overlapping of existing laws.

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