

Patenting Deal in Indonesia: Article 20 of The Patent Law in The Political Perspective of International Trade Law

Mahoro Jean Claude Geoffrey¹, Kholis Roisah²

¹Master of Law, Faculty of Law, Universitas Diponegoro

² Faculty of Law, Universitas Diponegoro

*gmahoro88@gmail.com

ABSTRACT

The research at hand analyses the legal foundation of Article 20 of the Indonesian Patent Law No 13 of 2016. It assesses its conformity with the WTO Agreements known as the Uruguay Round, specifically the TRIPS Agreement. Those agreements have a character of 'hard law,' which compels all the WTO Members to be bound by them. Patent law and other Intellectual Property Rights (IPRs), any WTO Member must implement the minimum standards stipulated under the TRIPS Agreement in its national legal system without discrimination. In this light, Indonesia, as a WTO member since 1994, must comply with all WTO Agreements,. Therefore, it made various law reforms in the protection of IPRs. However, the Patent Law raised a debate that it contradicts the principles of international trade law as it embodies a discriminatory provision that only safeguards the people of Indonesia. As a result, the present found that, based on limited exceptions stipulated in the TRIPS and the Paris Convention, Indonesia did not violate the TRIPS as it applied a given leeway for implementing the TRIPS Agreement in a domestic context. Thus, it had reasonable grounds to secure its nationals' mutual interest without violating general provisions and principles stipulated in the WTO Agreements.

Keywords: Inventions; IPR; Patent law; TRIPS Agreement; WTO.

ABSTRAK

Penelitian yang dilakukan ini menganalisis landasan hukum dari Pasal 20 UU Paten Indonesia No. 13 tahun 2016. Penelitian ini menilai kesesuaiannya dengan Perjanjian WTO yang dikenal sebagai Uruguay Round khusus Perjanjian TRIPS. Perjanjian ini mempunyai karakter Hard Law, yang memaksa semua Anggota WTO terikat olehnya. Hukum paten dan Hak Kekayaan Intelektual lainnya (HKI), setiap Anggota WTO harus menerapkan standar minimum yang ditetapkan dalam Perjanjian TRIPS dalam sistem hukum nasionalnya tanpa diskriminasi. Dalam hal ini, Indonesia, sebagai anggota WTO sejak tahun 1994, harus mematuhi semua Perjanjian WTO. Untuk itu, diperlukan berbagai reformasi hukum dalam perlindungan HKI. Namun, UU Paten mengangkat perdebatan bahwa itu bertentangan dengan prinsip hukum perdagangan internasional karena mengandung ketentuan diskriminatif bagi pengamanan masyarakat Indonesia. Hasil penelitian ini bahwa, berdasarkan pengecualian terbatas yang ditetapkan dalam TRIPS dan Konvensi Paris, Indonesia tidak melanggar TRIPS karena menerapkan kelonggaran tertentu untuk mengimplementasikan Perjanjian TRIPS dalam konteks domestik. Dengan demikian, itu alasan yang kuat untuk mengamankan kepentingan bersama warga negaranya tanpa melanggar ketentuan umum dan prinsip-prinsip yang ditetapkan dalam Perjanjian WTO.

Kata kunci: Penemuan; HKI; UU paten; Perjanjian TRIPS; WTO.

A. INTRODUCTION

The World Trade Organization (WTO) did tremendous work in international trade by establishing a coherent legal framework of trade in goods and services between states. By becoming a member of the WTO, a country undertakes to adhere to the 18 specific agreements annexed to the General Agreement on Tariffs and Trade (GATT). Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the WTO specific agreements, which is considered the most comprehensive multilateral agreement on intellectual property. In this context, TRIPS is known to have a significant effect on the pharmaceutical sector by addressing the problem of access to essential medicines (Correa, 2019). In order to implement TRIPS, similarly to other international treaties, the WTO member States enact legislation in their domestic legal systems in the adoption of the stipulated minimum standards. In this light, Indonesia has enacted different laws regarding copyright, patent, and trademark in fulfilment of the obligations resulting in the TRIPS Agreement. It has made various reforms to ensure better protection of Intellectual Property Rights (IPR) (Butt & Lindsey, 2015).

The protection system of Intellectual Property is not a new phenomenon in Indonesia. It was introduced in the earlier decades of the 20th century by the time Indonesia (former Dutch East Indies) was under the Dutch colony (Kusumadara, 2006). The Colonial Government enacted the Patent Law (Octrooiwet) in 1910 following the ratification of Bern

and Paris Convention at the end of the 19th century. Subsequently, both the Trademark law (Reglement Industriële Eigendom) and Copyright (Auteurswet) were enacted in 1912. After the Indonesian Constitution of 1945, there have been progressive repealing, amendments and introduction of new laws in IPR domain. Thus, colonial laws were replaced by national laws such as, Law on Commercial Mark in 1961, Copyright Law in 1982, and Patent Law No. 6 of 1989 that came into force in 1991. The latter localised patents under Article 18, which required the patent holders to implement their patents in Indonesia (Antons, & Priapantja, 2004). This provision primarily intended to increase the technology transfer to Indonesia through licensing. However, the 1989 Patent Law did not prohibit the importation of patented products or products made by a patented production process.

After Indonesia joined the WTO in 1994 and thereby became part of the TRIPS Agreement, it made significant changes in IPR protection by amending the existing laws to conform to the TRIPS Agreement. It introduced four regimes concerning the IPR protection by promulgating regulations on Plant Variety Protection Rights, Trade Secrets, Industrial Designs, and Integrated Circuit Layout Design (Intellectual property in Indonesia, 2014). Besides, the Government of Indonesia enacted both the Patent law and Trademark law in 2001 and the Copyright law in 2002. It made another reform on IPR in 2014 as per promulgation of the law No. 28 of 2014 concerning Copyright followed by the Patent

Law No. 13 of 2016. However, Article 20 of the Patent Law has risen a debate that the Government disregarded the international trade obligations it undertook under the TRIPS Agreement which is a 'hard law' in nature and subsequently binding to the WTO member States.

Article 30 of TRIPS provides a leeway to the Members to provide limited exceptions in the matter of patent rights provided that those exceptions do not unreasonably conflict with the normal use of the patent or unreasonably prejudice the legitimate interest of the patent holder. Besides, under the international protection system of Intellectual Property Rights, the principle of international cooperation, mutual benefit and joint development would be embraced to attain the WTO's mission of 'ensuring smooth, predictable and free trade flows'. In the context of Article 27 of TRIPS, Members are required not to discriminate between the place of invention and whether products are imported or locally produced in their licensing procedure despite the given exceptions (Bently et al., 2010). Besides, the theory of reasonableness and non-discrimination made a big part in the international protection system of IPR since they ensure legitimate interests of third parties, which should guide any WTO Member in the application of the exceptions to the rights conferred under the TRIPS.

Under current work, the researcher aims at analysing the compatibility of Article 20 of the Indonesian Patent Law with the TRIPS provisions. He also discusses the rationale of this Article in

Indonesian patenting system. The discussion entails how Indonesia did not disregard the TRIPS. It will also localise Article 20 of the Patent Law in the given leeway provided that Indonesia a member to the WTO. Thus, incorporating Article 20 did not create any gap or contradict the provisions of the TRIPS.

B. RESEARCH METHOD

The current research method is doctrinal, by which the researcher analyses the laws relating to the protection of IPRs. Explicitly, the researcher utilises Indonesian Patent Law No 13 of 2016 and other related regulations to understand and elaborate on the legal foundation of Article 20 of this law. Besides, the researcher applies the secondary sources of law such as legal writings that have interpreted the primary sources, including books, scientific papers, and journals accessible online.

C. RESULTS AND DISCUSSION

Following the analysis of various provisions of IPR related treaties and the doctrines of the "working requirements" and the "Lex specialis derogat generali," has found that Article 20 of the Patent Law in Indonesia does not violate the TRIPS provisions. Instead, it is in line with Article 30 of TRIPS which provides specific exceptions to the general provisions under Article 27 TRIPS.

1. Patent and Local Working Requirements

The doctrine of working requirements is as old as the existence of a patent for the first time in Europe around the fourteenth century (Champ &

Attarant, 2001). A patent holder was primarily obliged to work locally for the purpose of technological transfer. In this light, the 1623 United Kingdom Statute of Monopolies imposed the local working of a patent to the patent holder to retain the patent (Legislation.gov.uk,1870). Various statutes that followed such as the French and U.S. statutes expressed the same doctrine. A working requirement is understood as a provision of intellectual property law aims at encouraging patent holders to exercise their rights by imposing punishment (Lau, 2018). The national interest and industrial development are the main purposes of local working requirements.

In case a patent holder fails to exercise the given patent, which is considered an 'abuse' of the conferred right, the sovereign that granted such a right will impose the compulsory license. Avoidance of compulsory license could only be possible in case the patent holder presents a legitimate ground for such a failure. According to Georg Bodenhausen, the legitimate grounds, "may be legal, economic, or technical obstacles to exploitation (Bodenhausen, 1968).

2. Theoretical Grounds of Granting a Patent

A patent is granted for the following four theoretical grounds: (a) motivation to invent, (b) disclosure, (c) commercialisation, and (d) race to invent.(Lau, 2018) The first one, if a sovereign grants a patent to an inventor, it is an incentive for advancing invention or it spurs on technological transfer, which is always in the public interest. In the same way, an inventor with a patent right, as a

monopoly, discloses information which is considered trade secrets in the normal course of business. Commercialization is another important purpose of the patent as it keeps patent holders furthering researches and marketing strategies to serve the purpose of a granting country. The final theoretical ground, race to invent, demonstrates how a patent increases competition to get more inventions.

3. Indonesian Patent System

The Government of Indonesia grants a patent for a technological invention that brings a solution to the technical problem. Article 5 to 8 of the Patent Law provide conditions under which a patent is granted in Indonesia. It is granted for new inventions that meet the inventive steps and that can be applied in industry. Those requirements include novelty, inventive steps, and industrial applicability. The invention that is inconsistent with the law, norms, and public order are exempted from the patent protection. The patent law excludes some inventions from patentable inventions. Those inventions include "methods of examination, treatment, medication or surgery applied to humans and animals; scientific or mathematical theorems/methods; and all living organisms as well as essentially biological processes related to living organisms, except for micro-organisms; aesthetic creation; schemes; rules and methods on mental, gaming, or business activities; computer software; as well as the presentation of information (Intellectual property in Indonesia, 2014)."

Indonesia chose development based on the industry that produces high added value. Besides, it

wanted to realise its obligations resulting from the ASEAN Free Trade Area (AFTA), the World Trade Organization (WTO) and Asia Pacific Economic Cooperation (APEC) by the free economic system and boost the domestic industries for enhancement of their competitiveness. In this line, increasing the quality of products requires technological advancement that calls upon the role of IPRs. For that reason, there was a need for protection of intellectual property (IP), including copyright, patent, and trademark (Direktorat Jenderal Industri Kecil Menengah Departemen Perindustrian, 2007).

Following the Law No. 7/1994 Concerning Ratification of Agreement Establishing the World Trade Organisation, and implementation of TRIPS Agreement required active participation and cooperation of various institutions from both the public sector and private sector. Hence, there was a need for an effective system implementing the IPRs stipulated in the TRIPS Agreement and the need for industrial harmonisation, which compelled the Government to make various reforms in the law concerning intellectual property. Consequently, as a WTO Member that should conform to WTO Agreements, specifically TRIPS Agreement in this regard, with an intent to transform the national economy to a competitive advantage-based economy, Indonesia enacted a Patent Law No 13 of 2016 (The New Indonesian Patent Law: The Law number 13 of 2016 regarding Patent, n.d.).

A patent is one type of intellectual property rights that takes a significant role in modern industry.

It forms the basis of current industrial growth that comes from new inventions, advanced technology, high quality, and quality standards. The patents are granted to protect inventions in the growing technology. The patent duration was shorter in different countries before the TRIPS Agreement. This period was reformed whereby Article 33 of the TRIPS Agreement provides 20 years as a minimum term that the WTO members States are required to offer from the date of the patent application. Besides, the TRIPS Agreement requires the member States to ensure patent protection in both processes and products within all aspects of technology, which was not the case before. Thus, under the TRIPS Agreement, the product patents offer absolute protection of the products (WHO, n.d.).

Indonesia is a party to the Paris Convention and the Patent Cooperation Treaty (PCT) respectively since 1950 and 1997. Under the latter, upon completion of the requirements of its Chapter 1 and Chapter 2, Indonesians can make international applications to protect their inventions in other Contracting Parties and those applications' results facilitate the Indonesian examination process as long as the National Filing Date (NFD) for PCT-based applications follows that of the International Filing Date.

Concerning opposition procedures, the Patent Law No. 13 of 2016 introduced post-opposition in the Indonesian patent protection system. In this light, third parties may challenge the validity of a granted patent to the Directorate General of Intellectual

Property (DGIP) within a period not exceeding six months after such a patent grant. Those claims may be started through the cancellation action in the Commercial Court. Once the granted patent is successfully challenged, the patentee is subjected to the annual maintenance fee of which payment default of three consecutive years results in revocation of the patent while it would be under 20 years of protection from the National Filing Date (NFD).

A number of provisions in Law Number 13 Year 2016 regarding Patents have been considered by some to be problematic for patent holders from abroad to take part in Indonesia. In particular, with regard to Article 20 which raises the pros and cons as it obliges the patent holder to make a product or use the process in Indonesia in order to support the transfer of technology, encourage investment and job creation for local communities (Rosiah, 2019).

Following the above excerpt, the Indonesian Patent Law excludes the patent holders from abroad to take part in Indonesia. Under article 20 of the Indonesian Patent Law, the patent holders are required to make products or use processes in Indonesia to support technology transfer, encourage investment, and open employment opportunities for local communities. Seemingly, this article contradicts the TRIPS philosophy which raised a debate amongst the actors.

With a patent, the right is given to the inventors in the form of a letter to provide opportunities for new technology. It does not mainly protect the inventor, instead, it stimulates the new industrial establishment

and technological transfer (Kesowo, 1995). The patent is not only related to the industry but also an investment. The patent can be imported and exported by countries as any other commodity. Besides, an invention is only carried out by inventors; however, other persons can use the invention upon the permission of the inventor. This permission is no longer needed at the time of expiry of the patent protection period as it immediately becomes open to the public. Considerably, for further technological advance, new inventions are always significant and should provide detailed information about its commercial exploitation.

Indonesia ratified the four conventions securing the IPRs including both the Paris Convention for the Protection of Industrial Property and the Convention Establishing the World Intellectual Property Organisation under Presidential Order No. 24 of 1979 (which was later amended by Presidential Order No. 15 of 1997), the Patent Cooperation Treaty (PCT) and Regulations Under the PCT with Presidential Order No. 16 the year 1997, and WPO Copyrights Treaty (WTC) with Presidential Order No. 19 of 1997 (Rosiah, 2019). In this regard, enactment of the Patent Law in Indonesia was primarily intended to encourage domestic industrialisation compatible with the development and politics of international trade by meeting the requirements of the TRIPS Agreement and harmonising the investment climate.

4. The Rationale of Article 20 in The Indonesian Patent Law

The Chairman of the Special Committee (Pansus) of the Patent Bill, John Kenedy Aziz explained that the reason for the House of Representatives and the Government to include Article 20 in Law Number 13 of 2016 concerning Patents, which requires patent holders to make products in Indonesia, is the sake Indonesian people's mutual benefits. The house of representative approved the bill for three reasons. First, the law facilitates the assessment of the quality of the goods produced, whether they consistent with what is registered or not. Second, this provision opens jobs for Indonesian labour and it is thus advantageous to the Indonesian people. Third, this provision intended to increase investments in Indonesia thereby brings other advantages like taxes to the Government of Indonesia. Subsequently, every patent registered in Indonesia must be produced in Indonesia (Kliklegal.com. 2017).

Practically, Indonesia does not want to register patents that are produced abroad on the basis that it does know their quality. This idea hinders foreign investors holding patents to invest in Indonesia which raises a query of whether Indonesian patents are sufficient to compete with the rest of the globe in terms of technological advancement. This is problematic but what is clear is that Indonesia is a large developing market whose inventions are used to boost the competitiveness of its industry.

As discussed above, the first paragraph of Article 20 imposes the patent holders to make products and use processes in Indonesia. The

second paragraph states that such productions and processes must support technological transfer, investment, or provision of employment. Coming back to the purpose of amendment of the Patent Law No. 14 of 2001, the Government intended to increase the number of patent applicants primarily those originating from Indonesia. This amendment was expected to provide other means like e-filing, incentives, the efficient inspection process, and secure payment of patent maintenance costs (Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia, 2015).

In a philosophical perspective, the Indonesian laws should contain the moral and ethical values rooted in Pancasila, which includes values of truth, justice, and morality for the best interest of the people of Indonesia. This approach emphasises values embodied in Pancasila as the Indonesian national philosophy that must direct the entire life of the nation. Besides, the patent is granted by the state to an inventor as an award and legal protection to an invention fulfilling novelty requirements, inventive steps, and industrial applicability. The purpose of granting the patent within 20 years is to motivate researches with advanced technology that finds out solutions to the problems facing the Indonesian community. Thus, patenting inventions will increase inventors' welfare, contribute to the community welfare, and economic growth of the nation in general. In other words, granting a patent to Indonesian inventors is conforming to the Pancasila

ideology. Consequently, the Patent Law is in line with that philosophy.

The constitutional and sociological ground that pushed drafters of the Indonesian Patent Law to include Article 20 is that the Government of Indonesia must realise social justice for Indonesian people as stipulated in the preamble of the Indonesian Constitution of 1945. In this view, protecting domestic inventions is empowering the rule that governs the social interactions between people in their society by considering their social structure, social processes, social and cultural evolution. Thus, Article 20 recognises the reality of Indonesian society and its need for development as it facilitates the rapid growth of technological inventions and patent-based inventions for industrial use in Indonesia.

Nevertheless, it is essential to assess whether the grounds mentioned above conform with the international trade law specifically the TRIPS Agreement as Indonesia is a Member to the WTO since 1994, which binds it to comply with its rules principally stated in the GATT and its additional Agreements.

5. Compatibility of Article 20 with TRIPS Agreement

Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the Uruguay Round Agreements administered by WTO. This agreement provides minimum standards for many forms of intellectual property (IP) and the latter's legal protection. It is binding to all WTO Members. This

Agreement gives obligations to developing countries as well as developed countries to actively protect IPRs for attracting investment and stimulate local innovation and creativity. However, since its entry into force in 1995, the TRIPS Agreement was criticised for being unhelpful and, in some cases, harmful to the interest of developing countries. NGOs also were not contented of TRIPS as it imposes different costs on developing countries, including expensive drugs, agricultural inputs, and foreign-owned technologies (Dutfield, n.d.). The primary purpose of the WTO is to open trade for the benefit of all (WTO, n.d.). This purpose brings obligations to all Members to harmonise their laws by adopting principles embodied in its various agreements. Under the present work, an issue is whether Article 20 of the Indonesian Patent Law conforms to the WTO rules stipulated in different Agreements. The following is an excerpt from Article 27 of the TRIPS Agreement regarding the patents:

[p]atents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and

whether products are imported or locally produced (The TRIPS Agreement, 1995).

According to this Article, patents in all fields of technology must be made available for all inventions. Paragraph 4 of Article 65 requires developing countries to extend product patent protection to areas of technology not so protectable in its territory upon the entry into force of the WTO Agreement. Besides, paragraph 8 of Article 70 emphasises the applicability of Article 27 as it relates to means of filing for inventions once a Member has not yet made patent protection available for pharmaceutical and agricultural chemical products. This paragraph also imposes a Member to conform to the criteria stipulated in the TRIPS Agreement as far as patent applications are concerned.

Paragraph 3 of Article 27 allows the WTO Member to exclude some products and processes from its patentability. Its letter (a) states processes that may be excluded, such as diagnostic, therapeutic, and surgical methods for the treatment of humans or animals. A letter (b) of the same paragraph lists products and processes that may be excluded by a Member including plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. Considerably, Article 27 prohibits discrimination based on the place of invention, the field of technology and origin of products, whether they are imported or locally produced

Coming to the stipulation of Article 20 of the Indonesian Patent Law, it does not unjustifiably discriminate against other WTO members in violation of Article 27 of the TRIPS. The facts that making products and use processes must be in Indonesia; and that productions and processes must support technological transfer, investment, or provision of employment in Indonesia, they are all in line with the theoretical grounds for a sovereign to grant a patent. In addition, Article 30 of the TRIPS allows a Member to provide limited exceptions to the right conferred by a patent in case it does not unreasonably conflict with a normal exploitation of the patent and does not unreasonably prejudice the legitimate interests of the patent holder. However, by doing so, a Member should take into account the legitimate interests of third parties (TRIPS, 1994). So far, to understand the rationale of Article 20 in the Indonesian Patent Law, Article 27 should be read in different contexts with Article 30 since the latter provides specific exceptions to the former which is general. In this context, a doctrine of "Lex sepecialis derogat generali" which means that specific law prevails over general, should be applied. Article 30 and 31 of TRIPS provide specific exceptions to the general provision (Art. 27) however the present work points at Article 30 for its suitability to the legislation in question.

In line with Article 20 of the Patent Law, it is clear that drafters included Article 20 In the Indonesian Patent Law in line with Article 30 of TRIPS that gives a right to a WTO Member to provide limited exceptions without compromising the general

use and purpose of a patent. They also observed Article 2 of the Paris Convention which grants the right to make the use of local working requirements. Thus, drafters of Indonesian Patent Law did not observe Article 27 of TRIPS apart from other provisions specific to the purpose of Indonesian patenting system.

TRIPS agreement is a 'hard law' and having been amended in 2003 by the WTO Members does not modify its rigidity. The fact that Article 31 bus regarding methods to implement compulsory licenses for both importing and exporting countries was added in and make it a subject to derogation is not substantiated (Rosiah, 2019). Thus, the inclusion of Article 20 in the Patent Law No 13 of 2016 is legally and politically founded as it ensures the national interests without compromising the provisions of the TRIPS Agreement and the Paris Convention.

Another analysis could be based on the extensive protection, also known as the TRIPS-plus, whereby a Member may, but not compelled to, extend the patent protection as an outcome of norms beyond TRIPS standards. Thus, the TRIPS-plus norms are not obligations for Members as they result from a Member's initiative, and they are considered TRIPS-plus since they are only TRIPS-related (Rusekhan, 2014). In this context, Indonesia, without prejudicing the provisions of the TRIPS and other WTO Conventions, can extend its obligation for furthering a patent protection in its legal regime. Otherwise, all WTO Members are required to,

however differently, implement the TRIPS Agreement minimum standards in their legal frameworks.

Nonetheless, Indonesia is documented for keeping 'trade control' instead of adopting 'trade facilitation' (Soeparna, 2017). This can be seen in different patterns, such as Non-Tariff Barriers (NTBs), where it imposes bothersome to foreign investors who want to join Indonesian market through its import licensing system, also known as control measures. This system encompasses all aspects prohibited under the GATT 1994 such as the 'non - automatic licensing, quotas, prohibitions and quantity control measures other than for SPS or TBT reasons (Soeparna, 2017) that are not always justified in the context of international trade framework. For example, Indonesia restricts various imports by imposing 'halal' approval process, letter of recommendation 'Surat Rekomendasi Impor' and an import license (Soeparna, 2017). This NTBs would comply with the stipulations of the chapeau of Article XX GATT on General Exceptions. Under this Article, a WTO Member is allowed to restrict imports for the stipulated grounds and in a way not leading to distortion in international trade. Thus, Indonesia would harmonise its laws and regulations as furtherance in international trade law particularly the GATT and TRIPS Agreement.

The TRIPS Agreement should be understood as hard law as it fulfils all requirements that can be assessed through legalisation theory of Kennet Abbot (Roisah, 2018). Thus, it covers international norms and general principles binding to all WTO Members

as any other international treaty imposing obligations to the international community. For that reason, no member would derogate the TRIPS Agreements by contradicting its provisions.

D. CONCLUSION

The TRIPS Agreement raised significant concern that was not well governed before although it was part of the economic growth of different countries. Indeed, IPR is a field that needed protection for the furtherance of technological inventions, and it would also be strengthened in constitutional property protection. TRIPS Agreement provides minimum standards that should be implemented by the WTO Members. In this regard, the latter are required to protect IPRs by granting the patent to inventors without discrimination. Article 20 of the Indonesian Patent Law No 13 of 2016, which requires the patent holders to make products or use processes in Indonesia exclusively for Indonesian community deceptively compromises the principles of international trade law by discriminating foreign patent holders. However, it is not the case since Article 30 of TRIPS provides a possibility of implementing its provisions in the domestic context.

Therefore, with a leeway of Article 30 of TRIPS and the room of implementing TRIPS Agreement in the national context, Indonesia has provided limited exceptions that do not unreasonably conflict with its normal exploitation and do not unreasonably prejudice the legitimate interests of the patent owner as stipulated in the TRIPS Agreement and other

international obligations resulting from its WTO membership. Indonesia, a WTO Member, did not violate TRIPS and Paris Convention by discriminating between different fields of technology in its patenting regime, nor did it between the place of the invention as well as whether the products are imported or locally produced since its patent law is under Article 30 of TRIPS and Article 2 of the Paris Convention. Thus, the theories of reasonableness and non-discrimination were kept intact. Hence, TRIPS is a hard law with binding character and Indonesia should comply with its stipulations.

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Undang-undang Nomor 6 Tahun 1989 tentang Paten.

Undang-undang Nomor 7 Tahun 1987 tentang Perubahan Undang-undang Nomor 6 Tahun 1982 tentang Hak Cipta