

**LAW OF THE REPUBLIC OF INDONESIA**  
**NUMBER 14 OF 2001**  
**REGARDING**  
**PATENT**

WITH THE MERCY OF GOD ALMIGHTY

PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that in accordance with Indonesia's ratification of international agreements, the ever growing development of technology, industry and trade, a Patent Law that can provide appropriate protection for inventors is needed;
- b. that the above is also needed in the framework of creating a conducive climate for business competition, which is fair and considers the interest of the public in general;
- c. that based on the considerations as mentioned in items a and b, and learning from the experience of implementing the existing Patent Law, it is necessary to enact a new Patent Law to replace Law No. 6 of 1989 on Patents as amended by Law No. 13 of 1997.

In view of:

1. Article 5 paragraph (1), Article 20 paragraph (2) and Article 33 of the Constitution of 1945;
2. Law No. 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization, (State Gazette of 1994 No. 57, Supplementary State Gazette No. 3564).

With The Approval of: THE HOUSE OF REPRESENTATIVES OF THE  
REPUBLIC INDONESIA,

DECIDES To Enact: A LAW on  
PATENTS

**CHAPTER I GENERAL**  
**PROVISIONS**

**Article 1**

In this law the following meanings shall apply:

1. Patent is an exclusive right granted by the State to an Inventor for his Invention in the field of technology, for a certain time, to exploit his Invention or to authorize another person to exploit it.

2. Invention is an Inventor's idea that is poured in any activity of solving a specific problem in the field of technology, either in the form of a product or process, or an improvement and development of a product or a process.
3. Inventor is a person or several persons acting together implementing an idea poured in an activity resulting in an Invention.
4. Applicant is a person or persons filing a Patent Application.
5. Application is a Patent Application filed at the Directorate General.
6. Patent Holder is an Inventor as the owner of a Patent or a recipient of such a right from the owner of a Patent or a subsequent recipient of a Patent from the person mentioned above who is registered in the General Register of Patents.
7. Proxy is a consultant of Intellectual Property Rights.
8. Examiner is a person who because of his expertise is appointed by the Minister as a functional official as a patent examiner and shall have the duty to conduct substantive examinations of Applications.
9. Minister is the Minister, whose scope of duties and responsibilities includes guidance in the field of Intellectual Property Rights, including Patents.
10. Directorate General is the Directorate General of Intellectual Property Rights under a Department presided over by the Minister.
11. Filing Date is the date of receipt of an Application, which has fulfilled all the formal requirements.
12. Priority Right is the right of an Applicant to file an Application originating from a member country of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization in order to get recognition that the Filing Date of the country of origin be the priority date in the country of designation that is also a member country of the two agreements, provided that the filing of the Application is made during the period prescribed in the Paris Convention for the Protection of Industrial Property.
13. License is a permission granted by the Patent Holder to another party by means of an agreement based on the grant of a right to enjoy the economic benefits of a Patent that is protected for a certain period of time and certain requirements.
14. Day is a working day.

## **CHAPTER II SCOPE OF PATENTS**

### **Part One Patentable Inventions**

#### **Article 2**

- (1) A Patent shall be granted to an Invention, which is novel, involves an inventive step and has potential for industrial application.
- (2) An Invention shall be considered to involve an inventive step if the said Invention does not constitute something that is obvious to a person skilled in the art.
- (3) The evaluation of whether or not an Invention constitutes something that is obvious must be made taking

into account the state of the art at the time the Application is filed or which has existed at the time the first Application was filed, in case the Application is filed on the basis of a Priority Right.

### **Article 3**

- (1) An Invention shall be considered novel, if at the date of filing of the Application the said Invention is not the same with any previous technological disclosure.
- (2) A technological disclosure as referred to in paragraph (1) is one which has been announced in Indonesia or outside Indonesia in writing, by a verbal description or by a demonstration, or in other ways, which enable a skilled person to implement the Invention before;
  - a. the Filing Date, or
  - b. the Priority Date.
- (3) The previous technological disclosure referred to in paragraph (1) includes the documents of Applications filed in Indonesia, which have been published on or after the Filing Date of Application being substantively examined and which have a Filing Date that is prior to the Filing Date or priority date of Application being substantively examined.

### **Article 4**

- (1) An Invention shall not be deemed to have been announced, if, within a period of at most 6 (six) months before the Filing Date:
  - a. the Invention has been exhibited in an official or officially recognized international exhibition in Indonesia or abroad or in an official and officially recognized national exhibition in Indonesia;
  - b. the Invention has been exploited in Indonesia by its Inventor in relation to experimentation for purposes of research and development.
- (2) An Invention shall also not be deemed to have been announced, if, within a period of 12 (twelve) months before the Filing Date, it was announced by any other person by way of breaching an obligation to preserve the confidentiality of the relevant Invention.

### **Article 5**

An Invention shall be considered to have potential industrial application if it can be implemented in industry as described in the Application.

### **Article 6**

Any invention in the form of a product or device, which is novel and possesses practical use value because of its shape, configuration, construction, or components may be granted legal protection in the form of a Simple Patent.

### **Article 7**

A Patent shall not be granted to an Invention regarding:

- a. any process or product of which the announcement and use or implementation contravenes the prevailing rules and regulations, religious morals, public order or ethics;

- b. any method of examination, treatment, medication, and/or surgery applied to humans and/or animals;
- c. any theory and method in the field of science and mathematics; or
- d.
  - i. all living creatures, except micro-organisms.
  - ii. any biological process which is essential in producing plants or animals, except non-biological or microbiological processes.

## **Part Two Duration of Patents**

### **Article 8**

- (1) A Patent shall be granted for a period of 20 (twenty) years, which cannot be extended, commencing from the Filing Date.
- (2) The date of commencement and expiry of a Patent shall be recorded and announced.

### **Article 9**

A Simple Patent shall be granted for a period of 10 (ten) years, which cannot be extended, commencing from the Filing Date.

## **Part Three Subjects of Patents**

### **Article 10**

- (1) An Inventor or a subsequent recipient of the rights of the Inventor shall be entitled to obtain a Patent.
- (2) If an Invention is produced jointly by several persons, the right on the Invention shall belong to the relevant Inventors.

### **Article 11**

Unless proven otherwise, those who are firstly declared as the Inventor in the Application shall be deemed to be the Inventor.

### **Article 12**

- (1) Unless agreed otherwise in an employment contract, the party entitled to obtain a Patent on an Invention produced shall be the one who has commissioned the work.
- (2) The provision referred to in paragraph (1) shall also be applicable to an Invention by an employee or a worker using data and/or facilities available in his work, even though the employment contract does not require him to produce an Invention.
- (3) An Inventor referred to in paragraph (1) and paragraph (2) shall be entitled to receive just compensation

by considering the economic benefit that can be obtained from the said Invention.

- (4) The amount of compensation referred to in paragraph (3) may be paid:
  - (a) in a certain amount or in a lump sum;
  - (b) as a percentage;
  - (c) as a combination or a lump sum together with a gift or bonus;
  - (d) a combination of percentage with a gift or bonus; or
  - (e) any other form agreed by the parties; the amount of which shall be determined by the parties concerned.
- (5) Where no agreement can be reached regarding the method of calculation and the determination of the amount of compensation, the Commercial Court may be requested to decide the matter.
- (6) The provisions referred to in paragraph (1), paragraph (2) and paragraph (3) shall not in any way invalidate the right of the Inventor to have his name included in the Patent Certificate.

#### **Article 13**

- (1) By obeying the other provisions under this law, a party who exploits an Invention at the time a similar Invention is filed for Patent shall still be entitled to exploit the Invention as a prior user, even though the similar Invention is then granted a Patent.
- (2) The provisions referred to in paragraph (1) shall also be applicable to any Application that is filed with a Priority Right.

#### **Article 14**

The provisions referred to in Article 13 shall not be applicable when the party, who exploits the Invention as a prior user, exploits the Invention by using the knowledge about the Invention from the description, drawings, or any other information from the Invention for which a Patent is requested.

#### **Article 15**

- (1) The party who exploits an Invention as referred to in Article 13 shall only be recognized as a prior user, if, after a Patent has been granted for the same Invention, he submits a request for such purpose at the Directorate General.
- (2) A request for recognition as a prior user shall be furnished with evidence that the exploitation of the said Invention was not performed by using a description, drawing, or sample of, or other information on the Invention for which a Patent has been requested.
- (3) The recognition as the prior user shall be issued by the Directorate General in the form of a Prior User Certificate upon payment of the prescribed fee.
- (4) A Prior User Certificate shall expire at the same time as the expiry of the Patent for the same Invention.
- (5) The procedure for obtaining recognition as a prior user shall be regulated by Government Regulation.

### **Part Four Rights and Obligations of a Patent Holder**

#### **Article 16**

- (1) A Patent holder shall have the exclusive right to exploit his Patent and prohibit any other party who without his consent:
  - a. in the case of a product : makes, uses, sells, imports, rents out, delivers, or makes available for sale or rental or delivery of the Patented product;
  - b. in the case of a process: uses the Patented production process to make products and commits other activities referred to in point a.
- (2) In the case of process, such prohibition against any other party who without his consent commits the importation referred to in paragraph (1) shall only apply to imported products solely produced from the use of the pertinent process Patent.
- (3) Exempted from the provisions referred to in paragraph (1) and paragraph (2) if the use of the said Patent is for the sake of education, research, experiment, or analysis, as long as it does not harm the normal interest of the Patent holder.

#### **Article 17**

- (1) Without prejudice to the provisions in Article 16 paragraph (1), a Patent holder shall be obliged to make products or to use the process that has been granted a Patent in Indonesia.
- (2) Exempted from the obligation referred to in paragraph (1) if the making of the product or the use of the process is only suitable to be implemented on a regional scale.
- (3) The exemption referred to in paragraph (2) may only be approved by the Directorate General if the Patent Holder has submitted a written request that is accompanied by the reasons and evidence issued by the authorized agency.
- (4) The requirements regarding the exemption and the procedure of submitting a written request referred to in paragraph (3) shall be further regulated by Government Regulation.

#### **Article 18**

For purposes of maintaining the validity of a Patent and the recording of licenses, the Patent Holder or licensee must pay the annual fee.

### **Part Five Legal Action Against Infringement on Patent**

#### **Article 19**

In the case of the importation of a product into Indonesia of which the process to produce the relevant product has been protected by a Patent based on this Law, the Patent Holder of the process shall have the right, based on the provisions of Article 16 paragraph (2) to bring a legal action against the imported product, if the product was made in Indonesia by using the Patented process.

### **CHAPTER III**

## **PATENT APPLICATIONS**

### **Part One General**

#### **Article 20**

A Patent shall be granted on the basis of an Application.

#### **Article 21**

Each Application may be filed for one Invention only, or a number of Inventions that constitute a unity of Invention.

#### **Article 22**

A Patent Application shall be filed with the payment of the prescribed fee to the Directorate General.

#### **Article 23**

- (1) If an Application is filed by a person other than the Inventor, the Application must be furnished with a statement with adequate supporting evidence that he is entitled to the said Invention.
- (2) The Inventor may examine the Application form filed by a person other than the Inventor referred to in paragraph (1) and may at his own expense request a copy of documents of said Application.

#### **Article 24**

- (1) An Application shall be filed at the Directorate General in writing in Indonesian.
- (2) The Application form must contain:
  - a. the date, month and year of Application;
  - b. clear and full address of the Applicant;
  - c. full name and nationality of the Inventor;
  - d. where the Application is filed by a Proxy, full name and address of the Proxy concerned;
  - e. a Special Power of Attorney, where the Application is filed by a Proxy;
  - f. a request that a Patent be granted;
  - g. the title of Invention;
  - h. a claim(s) implied in the Invention;
  - i. a written description of the Invention which contains a complete information on the ways of implementing the Invention;
  - j. drawings mentioned in the description required for clarification;
  - k. an abstract regarding the Invention.

- (3) Provisions regarding the procedure for filing of an Application shall be further regulated by Government Regulation.

## **Part Two Consultant of Intellectual Property Rights**

### **Article 25**

- (1) An Application may be filed by the Applicant or through a Proxy.
- (2) The Proxy referred to in paragraph (1) shall be a consultant of Intellectual Property Rights and be registered at the Directorate General.
- (3) Beginning on the date of receipt of the Proxy through the date of announcement of the relevant Application, the Proxy shall be obligated to preserve the confidentiality of the Invention and all documents of Application.
- (4) Provisions regarding the requirements to be elected a consultant of Intellectual Property Rights shall be further regulated by Government Regulation whilst the procedure for election shall be further regulated by Presidential Decree.

### **Article 26**

- (1) An Application which is filed by an inventor or an Applicant who does not reside or does not have a fixed domicile in the territory of the Republic of Indonesia must be filed through his Proxy in Indonesia.
- (2) The Inventor or Applicant referred to in paragraph (1) shall declare and elect a residence or legal domicile in Indonesia for the purpose of said Application.

## **Part Three Application with a Priority Right**

### **Article 27**

- (1) An Application filed with a Priority Right as regulated by the Paris Convention for the Protection of Industrial Property must be filed within 12 (twelve) months commencing on the date on which the first Application was received by any country that also participates in the said convention or has become a member country of the World Trade Organization.
- (2) By fully observing the provisions of this Law regarding the requirements which must be fulfilled in the letter of Application, an Application with a Priority Right referred to in paragraph (1) must be furnished with a copy of the priority document validated by the competent authority in the country concerned within a period of 16 (sixteen) months commencing on the priority date.
- (3) If the requirements in paragraph (1) and paragraph (2) are not fulfilled, the Application may not be filed by using a Priority Right.

### **Article 28**

- (1) The Provisions referred to in Article 24 shall be applicable mutatis mutandis to an Application with a



Priority Right.

- (2) The Directorate General may request that an Application filed with a Priority Right also be furnished with:
  - a. a valid copy of the documents connected with the results of examination executed with respect to the first Application abroad;
  - b. a valid copy of the Patent document granted in connection with the first Application abroad;
  - c. a valid copy of the decision of the rejection of the first Application abroad if the said Application was rejected;
  - d. a valid copy of the decision of cancellation of the foreign Application concerned if the said Patent has been cancelled;
  - e. other documents required to facilitate an evaluation that the Invention for which a Patent is requested is indeed a new Invention and truly involves inventive steps and industrial applicability.
- (3) The filing of copies of documents referred to in paragraph (2) may be furnished with separate additional explanations by the Applicant.

#### **Article 29**

Provisions regarding the request for a priority document from the Directorate General and regarding the Application that is filed with a Priority Right shall be further regulated by Presidential Decree.

### **Part Four Time of Receipt of an Application**

#### **Article 30**

- (1) The Filing Date of an Application shall be the date the Directorate General receives the Application which has fulfilled the provisions as referred to in Article 24 paragraph (1) and paragraph (2)a, b, f, h, i and j, if the Application has drawings, and after the prescribed fee referred to in Article 22 has been paid.
- (2) In the case where the description referred to in Article 24 paragraph (2)h and i is written in English, the description shall be furnished with its translation in Indonesian which must be lodged no later than 30 (thirty) days from the Filing Date referred to in paragraph (1).
- (3) If the Indonesian translation has not been lodged within the given period referred to in paragraph (3), the said Application shall be deemed withdrawn.
- (4) The Directorate General shall record the Filing Date.

#### **Article 31**

If there are deficiencies in the application referred to in Article 30 paragraph (1) and paragraph (2), the Filing Date shall be the date the Directorate General receives all the minimum requirements.

#### **Article 32**

- (1) Where the requirements referred to in Article 30 have been fulfilled, however the Application does not fulfill the provisions of Article 24, the Directorate General may request that such deficiencies be fulfilled no later

than 3 (three) months after the date of transmittal of the notification of deficiencies by the Directorate General.

- (2) Based on reasons acceptable to the Directorate General, the period referred to in paragraph (1) may be extended for a maximum of 2 (two) months upon the request of the Applicant.
- (3) The period as referred to in paragraph (2) may be extended for a maximum of 1 (one) month as of the date of expiry of the period, provided that the prescribed fee has to be paid by the Applicant.

#### **Article 33**

If the requirements have not been fulfilled within the period referred to in Article 32, the Directorate General shall notify the Applicant in writing that the Application is deemed withdrawn.

#### **Article 34**

- (1) If there are more than one Application for a similar Invention filed by different Applicants, the Application that shall be accepted is one that was first filed.
- (2) If the Patent Applications referred to in paragraph (1) were filed on the same date, the Directorate General shall notify the Applicants in writing to negotiate to decide which Application is to be filed and deliver the decision to the Directorate General no later than 6 (six) months from the date of the notification.
- (3) If the Applicants cannot reach an agreement or cannot produce a decision or it is impossible for them to negotiate, or the results of the negotiation are not delivered to the Directorate General within the period stipulated in paragraph (2), the said Applications shall be rejected and the Directorate General shall give notice thereof to the Applicants in writing.

### **Part Five Amendment of an Application**

#### **Article 35**

An Application may be amended by revising the description and/or the claims, provided that such amendments do not expand the scope of invention applied for in the original Application.

#### **Article 36**

- (1) An Applicant may request that an Application be divided if the said Application contains a number of Inventions that do not constitute a unity of Invention referred to in Article 21.
- (2) The division of an Application referred to in paragraph (1) may be filed separately in one Application or more, provided that the scope of protection applied for in each Application does not expand the scope of protection applied for in the original Application.
- (3) The request for the division of an Application referred to in paragraph (1) may be filed no later than the original Application is granted a decision referred to in Article 55 paragraph (1) or Article 56 paragraph (1).
- (4) The request for the division of an Application referred to in paragraph (1) and (2) which has fulfilled the requirements referred to in Article 21 and Article 24 shall be deemed to have been filed on the same date with the original Filing Date.
- (5) In the case an Applicant does not file the request for the division of an Application within the period

referred to in paragraph (3), the substantive examination shall only be conducted on the Inventions as stated in the sequence of claims in the original Application.

#### **Article 37**

An Applicant may amend an Application for a Patent to be one for a Simple Patent or vice versa, by considering the provisions in this Law.

#### **Article 38**

Provisions regarding the amendment referred to in Articles 35. 36 and 37 shall be further regulated by Presidential Decree.

### **Part Six Withdrawal of a Patent Application**

#### **Article 39**

- (1) An Applicant may withdraw his Application by submitting a written request to the Directorate General.
- (2) Provisions regarding the withdrawal of an Application shall be further regulated by Presidential Decree.

### **Part Seven Prohibitions to File Patent Applications and Obligations to Preserve Confidentiality**

#### **Article 40**

While still bound in active service and until one year after the retirement or after ceasing to work at the Directorate General for whatever reason, an employee of the Directorate General or any person who due to his assignment who has been working for or on behalf of the Directorate General, shall not be permitted to file an Application, to obtain a Patent, or in any other manner obtain a right or hold a right relating to a Patent, unless the ownership of the Patent is due to inheritance.

#### **Article 41**

As of the Filing Date of an Application, all officials at the Directorate General or any person whose duties relate to the duties of the Directorate General shall be obligated to preserve the confidentiality of the Invention and all Application documents, until the date the relevant Application is announced.

## **CHAPTER IV ANNOUNCEMENT AND SUBSTANTIVE EXAMINATION**

### **Part One Announcement of Patent Applications**

#### **Article 42**

- (1) The Directorate General shall announce an Application that has fulfilled the requirements of Article 24.
- (2) The announcement shall be carried out:
  - a. in the case of a Patent, 18 (eighteen) months after the Filing Date of the Application, or 18 (eighteen) months after the priority date if the Application is filed with a Priority Right; or
  - b. in the case of a Simple Patent, no later than 3 (three) months after the Filing Date.
- (3) The announcement referred to in paragraph (2)a may be conducted earlier upon a request from the Applicant with the payment of the prescribed fee.

#### **Article 43**

- (1) The announcement shall be carried out by:
  - a. the placement in the Official Patent Gazette published periodically by the Directorate General; and/or.
  - b. the placement on a special announcement board provided exclusively for this purpose by the Directorate General which can be easily and clearly seen by the public.
- (2) The Directorate General shall record the date of commencement of the announcement of an Application.

#### **Article 44**

- (1) The announcement shall prevail for:
  - a. 6 (six) months as of the date of announcement of an Application;
  - b. 3 (three) months as of the date of announcement of an Application for a Simple Patent.
- (2) The announcement shall list the following:
  - a. name and nationality of the Inventor;
  - b. name and complete address of the Applicant, and the Proxy if an Application is filed through a Proxy;
  - c. title of Invention;
  - d. the Filing Date; and in the event an Application is filed with a Priority Right, the date, number and country where the Application was first filed;
  - e. an abstract;
  - f. the classification of invention;
  - g. drawings, if any;
  - h. the number of announcement; and
  - i. the number of Application.

#### **Article 45**

- (1) Any person may see the announcement referred to in Article 44 and may file in writing his comment and/or

objection on an Application by stating the reasons therefore.

- (2) Where there are any comments or objections referred to in paragraph (1), the Directorate General shall immediately send a copy of the letter containing the comments and/or objections to the Applicant.
- (3) The Applicant shall have the right to submit to the Directorate General a written denial and explanations with respect to such comments and/or objections.
- (4) The Directorate General shall use the comments and/or objections, denials and/or explanations referred to in paragraph (1) and paragraph (3) as additional information for consideration during the substantive examination.

#### **Article 46**

- (1) After consultation with the government agency of which the duties and authorities are related to the defense and security of the State, if needed, the Directorate General with the approval of the Minister may decide not to announce an Application, if it considers the announcement of the Invention to be potentially disturbing or contrary to the interest of the defense and security of the State.
- (2) The decision not to announce an Application as referred to in paragraph (1) shall be notified by the Directorate General in writing to the Applicant or his Proxy.
- (3) Any consultation held by the Directorate General with any other government agencies, including the forwarding of information concerning an Invention for which a Patent has been requested, which results in a decision not to announce the Application, shall not be considered as a violation of the obligation to preserve the confidentiality of the Invention referred to in Article 40 and Article 41.
- (4) The provision as referred to in paragraph (3) shall not detract from the obligation of the government agencies concerned and their staff members to continue preserving the confidentiality of the Invention and the Application documents towards any third party.

#### **Article 47**

- (1) An Application which is not announced pursuant to Article 46 shall be examined as to substance after 6 (six) months from the date of the decision not to announce the said Application.
- (2) The examination referred to in paragraph (1) shall be conducted without a payment of a fee.

### **Part Two Substantive Examination**

#### **Article 48**

- (1) A request for the examination of an Application must be filed in writing to the Directorate General with the payment of the prescribed fee.
- (2) The procedure and requirements regarding the request for a substantive examination shall be further regulated by Presidential Decree.

#### **Article 49**

- (1) A request for the substantive examination referred to in Article 48 paragraph (1) shall be filed no later than 36 (thirty six) months from the Filing Date.

- (2) If a request for examination has not been filed within the period referred to in paragraph (1), or the prescribed fee has not been paid, the Application shall be deemed withdrawn.
- (3) The Directorate General shall notify the Applicant or his Proxy in writing regarding the withdrawal of the Application referred to in paragraph (2).
- (4) If the request for examination referred to in paragraph (1) is filed before the end of the announcement period referred to in Article 44 paragraph (1), the examination shall be conducted after the end of the announcement period.
- (5) If the request for examination referred to in paragraph (1) is filed after the end of the announcement period referred to in Article 44 paragraph (1), the examination shall be conducted after the date of receipt of the request for substantive examination.

#### **Article 50**

- (1) For purposes of the substantive examination, the Directorate General may request experts assistance and/or utilize appropriate facilities from other Government agencies or may request the assistance from Examiners of other Patent offices.
- (2) The use of expert assistance, facilities, Examiners of other Patent offices referred to in paragraph (1) shall be performed by observing the provisions concerning the obligation to preserve confidentiality referred to Article 40 and Article 41.

#### **Article 51**

- (1) A substantive examination shall be conducted by Examiners.
- (2) The Examiners at the Directorate General shall hold the position of a functional official and shall be appointed and dismissed by the Minister in accordance with the prevailing rules and regulations.
- (3) Upon the examiner as referred to in paragraph (2) shall be accorded a functional rank and allowances in addition to other rights in accordance with the prevailing regulations.

#### **Article 52**

- (1) Where the Examiner reports that an Invention for which a Patent has been requested evidently contains vagaries or other significant deficiencies, the Directorate General shall notify the Applicant or his Proxy and request comments or the completion of such deficiencies.
- (2) The notification referred to in paragraph (1) shall clearly and specifically state the items considered to be vague or other significant deficiencies together with the reasons and standard or references used in the examination as well as the period for the completion of the said deficiencies.

#### **Article 53**

If following the notification referred to in Article 52 paragraph (1) the Applicant does not provide any clarification or complete the deficiencies, or does not make any changes or improvements on the Application within the period stipulated by the Directorate referred to in Article 51 paragraph (2), the relevant Application shall be deemed withdrawn and the Directorate General shall notify the Applicant in writing.

### **Part Three**

## **The Granting or Rejection of Applications**

### **Article 54**

The Directorate General shall make the decision on whether to approve or to refuse an Application for:

- a. a Patent, no later than 36 (thirty six) months from the date of receipt of the request for substantive examination referred to in Article 48 or from the end of the announcement period referred to in Article 44 paragraph (1) if the request for substantive examination was filed before the end of the announcement period.
- b. a Simple Patent, no later than 24 (twenty four) months from the Filing Date.

### **Article 55**

- (1) If the result of the examination executed by an examiner concludes that the Invention has fulfilled the provisions of Article 2, Article 3 and Article 5 and other provisions of this Law, the Directorate General may issue a Patent Certificate to the Applicant or his Proxy.
- (2) If the result of the examination executed by an examiner concludes that the Invention has fulfilled the provisions of Article 3, Article 5 and Article 6 and other provisions of this Law, the Directorate General may issue a Simple Patent Certificate to the Applicant or his Proxy.
- (3) The Directorate General shall record and announce a Patent that has been granted, except for Patents, which concern defense and security of the State.
- (4) The Directorate General may provide copies of the Patent document to any person in need upon the payment of the prescribed fee, except for Patents that are not announced as referred to in Article 46.

### **Article 56**

- (1) If the result of the examination executed by the Examiner indicates that the Invention for which a Patent has been requested is not the Invention referred to in Article 1, Article 2 or has not fulfilled the provisions of Article 2, Article 3, Article 5, Article 6, Article 35, Article 52 paragraphs (1) and (2), or is included among Inventions referred to in Article 7, the Directorate General shall refuse the relevant Application and shall notify the Applicant in writing.
- (2) The Directorate General shall also refuse an Application that has been divided, if the division has expanded the scope of Invention or the request for the division was filed after the end of period referred to in Article 36 paragraph (2) or paragraph (3).
- (3) If the result of the examination executed by the Examiner indicates that the Invention for which a Patent has been requested has not fulfilled the provision of Article 36 paragraph (2), the Directorate General shall refuse parts of the Application and notify the Applicant in writing.
- (4) The notification containing the refusal of an Application shall clearly state the reasons and considerations that constitute the basis for the refusal.

### **Article 57**

- (1) A Patent certificate shall be proof of a right on Patent.
- (2) The Directorate General shall record the notification containing the refusal.

#### **Article 58**

A Patent shall be valid on the date of issuance of a Patent Certificate and shall be valid retroactively from the Filing Date.

#### **Article 59**

Provisions regarding the issuance of Patent Certificates, including the format and contents thereof and other provisions regarding the recording as well as the request for copies of Patent documents shall be further regulated by Government Regulation.

### **Part Four Appeal Petitions**

#### **Article 60**

- (1) An appeal petition may be filed with respect to the refusal of an Application based on reasons and considerations regarding matters which are substantive in nature referred to in Article 56 paragraph (1) or paragraph (3).
- (2) An appeal petition shall be filed in writing by the Applicant or his Proxy to the Patent Appeal Commission with a copy delivered to the Directorate General.
- (3) An appeal petition shall be filed by describing in detail the objections to the refusal of the Application as the result of substantive examination and stating the grounds thereof.
- (4) The grounds referred to in paragraph (3) must not constitute new reasons or explanations that expand the scope of Invention referred to in Article 35.

#### **Article 61**

- (1) An appeal petition shall be filed no later than 3 (three) months from the date of the notification of rejection of the Application.
- (2) If the period referred to in paragraph (1) has elapsed without an appeal petition, the refusal of the Application shall be deemed accepted by the Applicant.
- (3) Where the refusal of an Application has been deemed accepted as referred to in paragraph (2), the Directorate General shall record and announce this fact.

#### **Article 62**

- (1) An appeal petition shall be examined by the Patent Appeal Commission no later than 1 (one) month from the date of filing of the said petition.
- (2) The Patent Appeal Commission shall produce its decision no later than 9 (nine) months from the end of period referred to in paragraph (1).
- (3) Where the Patent Appeal Commission accepts and approves an appeal petition, the Directorate General shall be obliged to implement the decision of the Patent Appeal Commission.
- (4) If the Patent Appeal Commission refuses an appeal petition, the Applicant or his Proxy may bring legal action against the decision to the Commercial Court within a period of 3 (three) months from the date of



receipt of the refusal. (5) Upon the decision of the Court referred to in paragraph (4), the Applicant may only file a cassation.

#### **Article 63**

The procedure of filing a request, examination as well as the settlement of appeals shall be further regulated by Presidential Decree.

### **Part Five Patent Appeal Commission**

#### **Article 64**

- (1) The Patent Appeal Commission is a special independent agency and operates within the Department in the field of Intellectual Property Rights.
- (2) The Patent Appeal Commission shall comprise a chairman who also acts as a member, and members consisting of some experts in the necessary fields, and Senior Examiners.
- (3) The members of the Patent Appeal Commission referred to in paragraph (1) shall be appointed and dismissed by the Minister for a service period of 3 (three) years.
- (4) The Chairman and Deputy Chairman shall be elected from and by the members of the Patent Appeal Commission.
- (5) To examine an appeal petition, the Patent Appeal Commission shall establish a hearing board with an odd number of members and a minimum of 3 (three) persons, one of whom shall be a senior Examiner who did not carry out the substantive examination of the relevant Application.

#### **Article 65**

The organizational structure, duties and functions of the Patent Appeal Commission shall be further regulated by a Government Regulation.

## **CHAPTER V TRANSFER AND LICENSE OFA PATENT**

### **Part One Transfer**

#### **Article 66**

- (1) A Patent or the ownership of a Patent may be transferred in whole or in part by:
  - a. inheritance;
  - b. donation;

- c. testament,
  - d. written agreement; or
  - e. other reasons recognized by the law.
- (2) The transfer of a Patent referred to in paragraph (1)a, b and c shall be furnished with the original Patent documents together with other rights pertaining to the relevant Patent.
  - (3) All forms of Patent transfer referred to in paragraph (1) must be recorded and announced, with the payment of the prescribed fee.
  - (4) Any transfer of Patent, which is not in accordance with the provisions of this Article, shall be invalid and void.
  - (5) The requirements and procedures for the recording of Patent transfers shall be further regulated by Presidential Decree.

#### **Article 67**

- (1) Except for inheritance, the rights as prior user referred to in Article 13 shall not be transferred.
- (2) The transfer of right referred to in paragraph (1) shall be recorded and announced, with the payment of the prescribed fee.

#### **Article 68**

The transfer of a right shall not nullify the right of the Inventor to have his name or other identity included in the relevant Patent.

### **Part**

### **Two**

### **License**

#### **Article 69**

- (1) A Patent Holder shall have the right to grant a license to any other person on the basis of a licensing agreement in order to perform acts referred to in Article 16.
- (2) Unless agreed otherwise, the scope of a License referred to in paragraph (1) shall cover acts referred to in Article 16 and shall continue for the term of the License granted, and shall be effective for the entire territory of the Republic of Indonesia.

#### **Article 70**

Unless agreed otherwise, a Patent Holder shall continue to be able to personally exploit the Invention or to grant a license to any other third party to perform acts referred to in Article 16.

#### **Article 71**

- (1) A licensing agreement shall not contain any provisions that may directly or indirectly damage the Indonesian economy, or contain restrictions, which obstruct the ability of the Indonesian people to master and develop technology in general and in connection with the Patented Invention in particular.

- (2) The Directorate General shall refuse any request for registration of a licensing agreement containing provisions referred to in paragraph (1).

#### **Article 72**

- (1) A licensing agreement shall be recorded and announced, with the payment of the prescribed fee.  
(2) Where a licensing agreement is not recorded at the Directorate General referred to in paragraph (1), the said licensing agreement will not have any legal effects on a third party.

#### **Article 73**

Provisions concerning licensing agreements shall be further regulated by Government Regulation.

### **Part Three**

#### **Compulsory Licenses**

#### **Article 14**

A compulsory license shall mean a License to implement a Patent that is granted based on a decision of the Directorate General based on an Application.

#### **Article 75**

- (1) Any party, after the expiration of a period of 36 (thirty six) months commencing from the date of grant of a Patent, may file a request for a Compulsory License at the Directorate General, with the payment of a fee.  
(2) A request for a Compulsory License referred to in paragraph (1) shall only be made on the grounds that the relevant Patent has not been implemented or only partially implemented by the Patent holder.  
(3) A request for a Compulsory License may also be filed at any time after the grant of Patent on the grounds that the relevant Patent has been implemented by the Patent Holder or the licensee in a form and manner that contravenes the public interest.

#### **Article 76**

- (1) In addition to the truth of grounds referred to in Article 75 paragraph (2), a Compulsory License may only be granted if:
- a. the person filing the request can provide convincing evidence that he:
    1. has the ability to personally and fully implement the relevant Patent;
    2. has his own facilities to readily implement the relevant Patent;
    3. has made efforts in a sufficient period of time to acquire a License from the Patent Holder on the basis of normal terms and conditions but did not succeed.
  - b. the Directorate General is of the opinion that relevant Patent can be implemented in Indonesia on a feasible economic scale and can be of benefit to the majority of the society.
- (2) The examination of a request for a compulsory license shall be carried out by the Directorate General by

hearing the opinion of other related government agencies and parties, as well as the relevant Patent Holder.

- (3) A Compulsory License shall be granted for a period no longer than the period of Patent protection.

#### **Article 77**

If, based on the evidence and opinions as referred to in Article 76, the Directorate General is convinced that the period referred to in Article 75 paragraph (1) is insufficient for the Patent Holder to commercially implement the Patent in Indonesia, or within a regional scope as referred to in Article 17 paragraph (2), it may stipulate to temporarily postpone the decision to grant a Compulsory License or to refuse to grant one.

#### **Article 78**

- (1) The implementation of a Compulsory License shall be accompanied by the payment of royalties by the compulsory licensee to the Patent Holder.
- (2) The Directorate General shall stipulate the amount of royalty to be paid and the method of payment.
- (3) The stipulation of the amount of royalty shall take into account the common practices in Patent licensing or other similar agreements.

#### **Article 79**

The decision of the Directorate General regarding the grant of a Compulsory License shall include the followings:

- a. that the Compulsory License shall be non-exclusive;
- b. the grounds for granting of the Compulsory License;
- c. evidence, including convincing information or explanations, which form the basis for the granting of the Compulsory License;
- d. the period of the Compulsory License;
- e. the amount of royalties to be paid by the compulsory licensee to the Patent Holder and the method of payment therefore;
- f. conditions on the termination of the Compulsory License and matters, which may cause revocation of the Compulsory License;
- g. that the Compulsory License will be primarily used to supply the demand in the national market.
- h. other matters necessary to fairly protect the interest of the parties concerned.

#### **Article 80**

- (1) The Directorate General shall record and announce the grant of a Compulsory License.
- (2) The implementation of a Compulsory License shall be deemed to be the implementation of the relevant Patent.

#### **Article 81**

The decision to grant a Compulsory License shall be made by the Directorate General no later than 9 (nine) months as of the filing of request for the relevant Compulsory License.

#### **Article 82**

- (1) The request for a Compulsory License may also be filed at any time by a Patent Holder on the grounds that the implementation of his Patent would be impossible without infringing another existing Patent.
- (2) The request for a Compulsory License referred to in paragraph (1) may only be considered if the Patent to be implemented genuinely contains elements of new technology, which are clearly more advanced than said existing Patent.
- (3) Where the request for a Compulsory License is filed on the grounds referred to in paragraph (1) and (2):
  - a. the Patent Holders are entitled to give each other licenses to use the other party's Patent under reasonable terms.
  - b. the implementation of Patent by the compulsory licensee cannot be transferred unless it is transferred together with the assignment of the other Patent.
- (4) Upon the request for a compulsory license at the Directorate General referred to in paragraph (1) and (2) shall apply the provisions of Part Three of this Chapter except the provisions regarding the period for filing a request as provided for in Article 75 paragraph (1).

#### **Article 83**

- (1) Upon a request of the Patent holder, the Directorate General may revoke a decision on the grant of a Compulsory License referred to in Part Three of this Chapter, if:
  - a. the grounds that formed the basis for granting the Compulsory License no longer exist;
  - b. the compulsory licensee has evidently not implemented the Compulsory License or has not made any appropriate preparations for immediate implementation of the License;
  - c. the compulsory licensee is no longer complying with other terms and conditions, including the obligation to pay royalties stipulated in the grant of the Compulsory License.
- (2) The revocation referred to in paragraph (1) shall be recorded and announced.

#### **Article 84**

- (1) Where a Compulsory License terminates due to the expiry of the period stipulated in the grant thereof, or upon revocation, the compulsory licensee shall return the License he has obtained.
- (2) The Directorate General shall record and announce the Compulsory License that has terminated.

#### **Article 85**

The termination of a Compulsory License referred to in Article 83 and Article 84 shall result in the restoration of the rights of the Patent Holder to the relevant Patent, commencing on the date of recordation of the termination.

#### **Article 86**

- (1) A Compulsory License may not be transferred, except due to inheritance.

- (2) A Compulsory License that is transferred due to inheritance shall continue to be subject to the requirements of its grant and other provisions, particularly regarding the period of time, and shall be reported to the Directorate General to be recorded and announced.

#### **Article 87**

Provisions regarding compulsory licenses shall further be regulated by Government Regulation.

### **CHAPTER VI REVOCATION OF PATENTS**

#### **Part One Revocation of Patent by Operation of Law**

#### **Article 88**

A Patent shall be deemed null and void if the Patent Holder does not fulfill his obligation to pay the annual fees within the period stipulated under this Law.

#### **Article 89**

- (1) The revocation of a Patent by operation of law shall be notified in writing by the Directorate General to the Patent Holder and the licensee and shall be effective as of the date of notification.
- (2) The revocation of a Patent on the grounds referred to in Article 88 shall be recorded and announced.

#### **Part Two Revocation of Patent at the Request of the Patent Holder**

#### **Article 90**

- (1) A Patent may be revoked in whole or in part by the Directorate General upon a written request from the Patent Holder to the Directorate General.
- (2) The revocation of a Patent referred to in paragraph (1) may not be carried out if the licensee has not given a written consent to be attached to the request for revocation.
- (3) The decision to revoke a Patent shall be notified in writing to the licensee by the Directorate General.
- (4) The decision to revoke a Patent on the grounds referred to in paragraph (1) shall be recorded and announced.
- (5) The revocation of a Patent shall be effective as of the date on of the stipulation of the decision of the Directorate General.

#### **Part Three**

## **Revocation of Patent by Virtue of a Lawsuit**

### **Article 91**

- (1) A lawsuit for revocation of a Patent may be granted where:
  - a. the relevant Patent should not have been granted according to Article 2, Article 6, or Article 7;
  - b. the relevant Patent is the same as another Patent that has been granted to another person based on this Law;
  - c. the grant of a Compulsory License cannot stop the implementation of the relevant Patent in the form and manner which contravenes the public interest within a period of 2 (two) years commencing from the date of granting of the relevant Compulsory License or from the date of granting of the first Compulsory License in cases where some Compulsory Licenses have been granted.
- (2) A lawsuit for revocation on the grounds referred to in paragraph (1)a may be filed by a third party against the Patent Holder in the Commercial Court.
- (3) A lawsuit for revocation on the grounds referred to in paragraph (1)b may be filed by the Patent Holder or the licensee in the Commercial Court requesting the revocation of the other Patent which is the same to his.
- (4) A lawsuit for the revocation on the grounds referred to in paragraph (1) item c may be filed by the public prosecutor against the Patent Holder or the compulsory licensee in the Commercial Court.

### **Article 92**

If the lawsuit for revocation of a Patent referred to in Article 91 shall be confined to one or several claims or parts of claims, the revocation shall be granted only with respect to matters for which revocation is sought.

### **Article 93**

- (1) The decision of the Commercial Court on the revocation of a Patent shall be forwarded to the Directorate General no later than 14 (fourteen) days as of the date of the decision.
- (2) The Directorate General shall record and announce the decision on revocation of a Patent referred on in paragraph (1).

### **Article 94**

The procedure of filing a lawsuit referred to in Chapter XII of this Law shall apply mutatis mutandis to Article 91 and Article 92.

## **Part Four Consequences of Patent**

### **Revocation**

### **Article 95**

The revocation of a Patent shall nullify all legal consequences connected with the Patent and other rights deriving from it.

#### **Article 96**

Unless determined otherwise by a decision of the Commercial Court, the revocation of a Patent in whole or in part shall be effective as of the date on which the decision regarding the revocation becomes legally binding.

#### **Article 97**

- (1) The licensee of a Patent revoked on the grounds referred to in Article 91 paragraph (1)b shall continue to be entitled to implement his license until the expiry date stipulated in the licensing agreement.
- (2) The licensee referred to in paragraph (1) shall no longer be required to continue to pay royalties which he would otherwise be required to pay to the Patent holder whose Patent was revoked, but to pay royalties for the remaining of his licensing period to the right Patent Holder.
- (3) Where the Patent Holder has received in advance a lump sum payment of royalties from the licensee, he shall be obligated to refund the amount of royalties proportionate to the remaining period of the utilization of the license to the legitimate Patent Holder.

#### **Article 98**

- (1) A license of a Patent declared to be revoked on the grounds referred to in Article 91 paragraph (1)b, but acquired in good faith before the filing of the lawsuit for revocation of the relevant Patent, shall continue to be effective with respect to the other Patent.
- (2) The license referred to in paragraph (1) shall continue to be effective provided that the licensee shall thereafter continue to be obligated to pay royalties to the Patent Holder that was not revoked in the same amount as previously agreed with the Patent Holder that was revoked.

### **CHAPTER VII EXPLOITATION OF PATENT BY THE GOVERNMENT**

#### **Article 99**

- (1) If the Government is of the opinion that a Patent in Indonesia is very important for the conduct of defense and security of the State and for an urgent need for the sake of public interest, the Government may itself exploit the relevant Patent.
- (2) The decision to self-exploit a Patent shall be regulated by Presidential Decree after hearing the consideration from the Minister and from the Minister or Head of the agencies responsible in the relevant field.

#### **Article 100**

- (1) The provisions of Article 99 shall apply mutatis mutandis to any Invention for which a Patent has been requested but which has not been announced pursuant to Article 46.
- (2) Where the Government does not or has not yet intended to self-exploit a Patent referred to in paragraph (1), the exploitation of such a Patent may only be undertaken with approval from the Government.
- (3) The Patent Holder referred to in paragraph (2) shall be released from the obligation to pay the annual fees until the relevant Patent is exploited.



#### **Article 101**

- (1) Where the Government intends to self-exploit a Patent that is important to the conduct of defense and security of the State and for an urgent need for the sake of public interest, the Government shall notify the Patent Holder in writing of this fact by setting forth:
  - a. the title and number of the relevant Patent as well as the name of Patent Holder;
  - b. reasoning;
  - c. the period of exploitation;
  - d. other matters that are deemed significant.
- (2) The exploitation of a Patent by the Government shall be carried out with the provision of reasonable compensation to the Patent Holder.

#### **Article 102**

- (1) The decision of the Government to self-exploit a Patent shall be final.
- (2) Where the Patent Holder does not agree with the amount of compensation stipulated by the Government, he may file objections as a lawsuit in the Commercial Court.
- (3) The process of examining the lawsuit referred to in paragraph (2) shall not stop the exploitation of the relevant Patent by the Government.

#### **Article 103**

Provisions regarding the procedure of exploitation of Patent by the Government shall be further regulated by Government Regulation.

### **CHAPTER VIII SIMPLE PATENTS**

#### **Article 104**

Except for matters that are specifically regulated for Simple Patents, all other provisions regarding Patents as regulated in this Law shall apply mutatis mutandis to Simple Patents.

#### **Article 105**

- (1) A Simple Patent shall only be granted for one Invention.
- (2) A request for the substantive examination on a Simple Patent may be filed at the same time with the filing of the Application or no later than 6 (six) months as of the Filing Date, with the payment of the prescribed fee.
- (3) Where a request for the substantive examination has not been made within the prescribed period referred to in paragraph (2), the Application shall be deemed withdrawn.
- (4) Upon an Application for a Simple Patent, the substantive examination shall be conducted after the expiry

of announcement period referred to in Article 44 paragraph (1)b.

- (5) In conducting the substantive examination, the Directorate General shall only examine the novelty referred to in Article 3 and the industrial applicability referred to in Article 5.

#### **Article 106**

- (1) A Simple Patent granted by the Directorate General shall be recorded and announced.
- (2) The Directorate General shall issue a Certificate of Simple Patent to the Holder of Simple Patent as a proof of right.

#### **Article 107**

A Simple Patent shall not be applied for a Compulsory License.

#### **Article 108**

Provisions regarding simple Patents shall be further regulated by Government Regulation.

### **CHAPTER IX APPLICATIONS THROUGH THE PATENT CO-OPERATION TREATY (PCT)**

#### **Article 109**

- (1) An Application may be filed through the Patent Co-operation Treaty (PCT)
- (2) Provisions regarding the Application referred to in paragraph (1) shall be further regulated by Government Regulation.

### **CHAPTER X ADMINISTRATION OF PATENT**

#### **Article 110**

The Directorate General shall conduct the administration of Patents as regulated under this Law with due regard to the authority of other agencies as regulated under this Law.

#### **Article 111**

The Directorate General shall organize documentation and Patent information services by establishing a national Patent documentation system and information network capable of providing information to the public regarding Patented technology as widely as possible.

#### **Article 112**

In implementing the administration of Patents, the Directorate General shall receive guidance from and be

responsible to the Minister.

## **CHAPTER XI**

### **FEEES**

#### **Article 113**

- (1) All fees that have to be paid under this Law shall be prescribed by Government Regulation.
- (2) Provisions regarding the requirements, periods and methods of payment of the prescribed fees referred to in paragraph (1) shall be further regulated by Presidential Decree.
- (3) The Directorate General with the approval from the Minister and the Minister of Finance may use the income deriving from the fees referred to in paragraph (1), based on prevailing rules and regulations.

#### **Article 114**

- (1) The payment of the first annual fee shall be made no later than one year from the date of grant of Patent.
- (2) The payment of the following annual fees, provided that the Patent is still valid, shall be made no later than on the same date with the date of the grant of Patent or the date of the recording of the relevant License.
- (3) The payment of the annual fee referred to in paragraph (1) shall be counted from the first year of the Application.

#### **Article 115**

- (1) If within 3 (three) consecutive years a Patent Holder has not paid the annual fees as stipulated in Article 18 and Article 114, the relevant Patent shall be deemed void commencing from the date constituting the time limit for the payment for the third year.
- (2) If the failure to meet the obligation regarding the payment of annual fees concerns the payment of annual fees for the eighteenth and subsequent years, the relevant Patent shall be deemed void on the time limit for the payment of annual fee for the relevant year.
- (3) The revocation of a Patent on the grounds referred to in paragraph (1) shall be recorded and announced.

#### **Article 116**

- (1) Except for matters referred to in Article 114 paragraph (3) and Article 115 paragraph (2), the payment of annual fees later than the time stipulated in this Law shall be subject to an additional fee of 2.5% (two and a half percent) for each month from the annual fee of the relevant year.
- (2) The late payment of annual fees referred to in paragraph (1) shall be notified in writing by the Directorate General to the patent holder within 7 (seven) days after the stipulated time limit has passed.
- (3) The failure to receive the notification referred to in paragraph (2) by the person concerned shall not detract from the applicability of the provisions referred to in paragraph (1).

## **CHAPTER XII**

## SETTLEMENT OF DISPUTES

### Article 117

- (1) If a Patent is granted to a person other than the person entitled to the relevant Patent based on Article 10, Article 11, and Article 12, the person so entitled to the Patent may bring a lawsuit to the Commercial Court.
- (2) The rights that pertain to a Patent referred to paragraph (1) may be claimed and shall be effective retroactively from the Filing Date.
- (3) The notification of the decision on a lawsuit referred to in paragraph (1) shall be forwarded to the relevant parties by the Commercial Court no later than 14 (fourteen) days as of the date on which the decision is made.
- (4) The Directorate General shall record and announce the decision referred in paragraph (3).

### Article 118

- (1) A Patent Holder or a licensee shall be entitled to bring a lawsuit for damages through the Commercial Court against any person who deliberately and without rights performs any acts referred to in Article 16.
- (2) The lawsuit for damages filed against any acts referred to in paragraph (1) may only be accepted if the product or process is proven to have been made by using the Patented Invention.
- (3) The decision of the Commercial Court on the lawsuit shall be forwarded to the Directorate General no later than 14 (fourteen) days as of the date on which the decision is made and thereafter be recorded and announced.

### Article 119

- (1) In the trial of an infringement case on a Patented process, the burden of proof that the product was not produced by using the process-Patent as referred to in Article 16 paragraph (1)b shall lie on the defendant, if:
  - a. the product which was made with the process-Patent constitutes a new one;
  - b. there is a possibility that the product has resulted from the process Patent and although sufficient effort has been made for the purpose, the Patent holder is not able to determine which process he has used to make the product.
- (2) For the purpose of proof in the infringement case referred to in paragraph (1), the Court shall be authorized:
  - a. to order the Patent holder to deliver in advance a copy of certificate of the relevant Patent, and prima facie evidence supporting his allegation; and
  - b. to order the party who is assumed to have committed an infringement to prove that the product did not result from the use of the process-Patent.
- (3) In the trial of the Patent infringement case referred to in paragraph (1) and (2), a judge shall consider the interest of the party assumed to have committed the infringement, to get protection on the secrecy of the process he describes for the purpose of proof in the court session.

### Article 120

- (1) A lawsuit shall be filed at the Commercial Court, with the payment of the prescribed fee.

- (2) The Commercial Court shall determine the date for a hearing within a period of no more than 14 (fourteen) days.
- (3) The examination on a lawsuit shall be conducted within the period of 60 (sixty) days as of the date on which the lawsuit is filed.

#### **Article 121**

- (1) The Confiscation Clerk, shall summon the relevant parties no later than 14 (fourteen) days before the first examination takes place.
- (2) A decision on the lawsuit shall be made no later than 180 (one hundred and eighty) days as of the date on which the lawsuit is filed.
- (3) The injunction referred to in paragraph (2), which contains a complete legal reasoning as the basis of the decision, shall be stated in an open court session.
- (4) The Commercial Court shall forward the decision to the relevant parties no later than 14 (fourteen) days as of the date on which the decision is made in an open court session.

#### **Article 122**

Appeal upon the decision of the Commercial Court referred to in Article 121 paragraph (3) may only be filed as cassation.

#### **Article 123**

- (1) The request for a cassation referred to in Article 122 shall be made no later than 14 (fourteen) days after the date of the decision and submitted to the Court that has made a decision on the lawsuit.
- (2) The Clerk of the Court shall register the request for a cassation on the date it is filed and issue a receipt, which is signed by him on the same date with the registration date, to the Applicant of the cassation.
- (3) The Applicant for a cassation shall submit the brief for the cassation to the Clerk of the court within a period of 7 (seven) days commencing from the date of filing of request for a cassation referred to in paragraphs (1) and (2).
- (4) The Clerk of the Court shall deliver the request for a cassation and the brief for the cassation as referred to in paragraph (3) to the defendant of the cassation no later than 2 (two) days after the brief is submitted.
- (5) The defendant of the cassation may submit a counter against the cassation to the Clerk of the Court no later than 7 (seven) days after the date the defendant received the brief for cassation referred to in paragraph (4), and the Clerk of the Court shall deliver the counter against the cassation to the Applicant of the cassation no later than 2 (two) days after he received the said counter.
- (6) The Clerk of the Court shall deliver the documents of the cassation to the Supreme Court no later than 7 (seven) days after the termination of the period referred to in paragraph (5).
- (7) The Supreme Court shall study the documents of the cassation and determine the date for a hearing no later than 2 (two) days after the request for cassation was received.
- (8) The examination hearing on the request for cassation shall be conducted no later than 60 (sixty) days after the date on which the Supreme Court received the request.
- (9) A decision on the cassation shall be made at the latest 180 (one hundred and eighty) days after the date on which the Supreme Court received the request.

- (10) The decision on a cassation referred to in paragraph (9) that contains a complete legal reasoning as the basis of the decision shall be stated in an open court session.
- (11) The Clerk of the Supreme Court shall deliver the decision of cassation to the Clerk of the Commercial Court no later than 3 (three) days after the decision was made.
- (12) The Confiscation Clerk of the Court shall deliver the decision of the cassation referred to in paragraph (11) to the Applicant of the cassation and the defendant of the cassation no later than 2 (two) days after the decision was received.
- (13) The decision of the cassation referred to in paragraph (11) shall also be delivered to the Directorate General no later than 2 (two) days as of the date on which the Commercial Court received the decision to thereafter be recorded and announced.

#### **Article 124**

In addition to the settlement of dispute referred to in Article 117, the parties concerned may settle their dispute by means of arbitration or alternative dispute resolution.

### **CHAPTER XIII PROVISIONAL DECISION BY THE COURT**

#### **Article 125**

Upon a request from the party who might have suffered due to the implementation of a Patent, the Commercial Court may immediately issue a provisional decision that is effective:

- a. to prevent the continuation of infringement on the Patent and the rights pertaining to the Patent, particularly to prevent the entry of products allegedly infringing the Patent and the rights pertaining to the Patent into the trade channel, including importation;
- b. to keep the evidence relating the infringement of Patent and the rights pertaining to the Patent in order to prevent the elimination of evidence;
- c. to request the party who might have suffered to provide evidence that the party is truly entitled to the Patent and the rights pertaining to the Patent and that such rights are being infringed.

#### **Article 126**

Where a provisional decision by the Court has been issued, the parties concerned shall be notified thereof, including the right to be heard for parties affected by the decision.

#### **Article 127**

Where the Commercial Court has issued a provisional decision, it shall decide whether to amend, cancel or reaffirm the decision referred to in Article 125 within the period of 30 (thirty) days as of the date of issuance of the relevant provisional decision.

#### **Article 128**

Where a provisional decision is cancelled, the party who might have suffered may file a claim to the party that

requested the decision for damages he incurred due to the decision.

## **CHAPTER XIV INVESTIGATION**

### **Article 129**

- (1) In addition to investigating officers at the National Police Force of the Republic of Indonesia, certain civil servants at the Department of which the scope of works and responsibilities includes the field of Intellectual Property Rights shall be granted special authority as investigators referred to in Law No.8 of 1981 on Criminal Proceedings, to conduct an investigation of criminal offences in the field of Patents.
- (2) The Civil Servant Investigator referred to in paragraph (1) shall be authorized:
  - a. to conduct examination of the truth of reports relating to criminal offences in the field of Patents;
  - b. to conduct examination of persons or legal entities suspected of committing criminal offences in the field of Patents based on the reports as referred to in a;
  - c. to collect information and evidence from persons or legal entities in connection with criminal offences in the field of Patents;
  - d. to conduct examination of books, records and other documents relating to criminal offences in the field of Patents;
  - e. to inspect locations on which evidence, books, records, and other documents to be found, as well as to confiscate materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of Patents;
  - f. to request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of Patents.
- (3) The Civil Servant Investigators referred to in paragraph (1) shall inform the investigating officers at the National Police Force of the Republic of Indonesia about the initiating of an investigation and the results thereof.
- (4) The Civil Servant Investigator referred to in paragraph (1) shall forward the results of an investigation to the Public Prosecutor through the investigating officers at the National Police Force of the Republic of Indonesia in view of the provision of Article 107 of Law No. 8 of 1981 on Criminal Proceedings.

## **CHAPTER XV CRIMINAL PROVISIONS**

### **Article 130**

Any person who deliberately and without rights infringes the rights of a Patent Holder by committing any of the acts referred to in Article 16 shall be sentenced to imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp.500,000,000.00 (five hundred million Rupiah).

### **Article 131**

Any person who deliberately and without rights violates the rights of a Simple Patent holder by committing any of

the acts referred to in Article 16 shall be sentenced to imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp.250,000,000.00 (two hundred and fifty million Rupiah).

#### **Article 132**

Any person who deliberately fails to fulfill the obligations referred to in Article 25 paragraph (3), Article 40, and Article 41 shall be sentenced to imprisonment for a maximum term of 2 (two) years.

#### **Article 133**

The criminal offences referred to in Article 130, Article 131, and Article 132 shall constitute an offence that warrants complaint.

#### **Article 134**

Where an infringement on Patent is established, a judge may order that the products resulting from the infringement be confiscated by the State to thereafter be destroyed.

#### **Article 135**

Exempted from the criminal provisions referred to in this Chapter are:

- a. the importation of a pharmaceutical products protected by a patent in Indonesia and that the product has been marketed in a country by the Patent Holder provided that the product is imported in accordance with the prevailing rules and regulations;
- b. the production of a pharmaceutical product protected by a patent in Indonesia in a 2 (two) year period before the termination of the patent protection with the purpose to process the permit and to do marketing after the termination of the patent protection.

### **CHAPTER XVI TRANSITIONAL PROVISIONS**

#### **Article 136**

With the effect of this Law, all regulations in the field of Patents that have existed on the date of effect of this Law shall continue to be valid, provided that they are not contradictory with this Law or they have not been replaced with new ones based on this Law.

#### **Article 137**

Applications that have been filed before the effect of this Law shall be subject to Law No. 6 of 1989 regarding Patents as amended with Law No.13 of 1997 regarding the Amendment of Law No. 6 of 1989 regarding Patents.

### **CHAPTER XVII CLOSING PROVISIONS**



**Article 138**

Upon the enactment of this Law, Law No. 6 of 1989 regarding Patents (State Gazette of the Republic of Indonesia of 1989 No. 39, Supplementary State Gazette No 3398) and Law No. 13 of 1997 regarding the Amendment of Law No. 6 of 1989 regarding Patents (State Gazette of the Republic of Indonesia of 1997 No. 30, Supplementary State Gazette No. 3680) shall be declared to no longer be valid.

**Article 139**

This Law shall take effect on the date of its enactment.

In order that every person may know of it, the promulgation of this Law is ordered by placement in the Official State Gazette of the Republic of Indonesia.

Ratified in Jakarta,

On August 1, 2001

PRESIDENT OF THE REPUBLIC OF INDONESIA,

(signed)

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta,

On August 1, 2001

STATE SECRETARY OF THE REPUBLIC OF INDONESIA,

(signed) MUHAMMAD M.

BASUNI

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2001 NUMBER 109