Indonesia: Omnibus Law’s Patent Regime Overhaul Raises Questions About Practical Implementation
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Indonesia: Omnibus Law’s Patent Regime Overhaul Raises Questions About Practical Implementation

Muhammad Helmi Hikmat, Nabil Argya Yusuf, Reihan Faiz and Putri Choirunnisa Budiman
Am Badar & Am Badar

Summary
As the world’s fourth-most populous nation, the sleeping giant that is Indonesia continues its efforts to carve a place on the global stage. Intellectual property, especially patents, has emerged as one of the key areas that the government wants to improve upon. In this article, we will cover the newly enacted Omnibus Law in Indonesia from the perspective of patents. The focus will be on the changes it has brought to patent regulations in Indonesia, as well as the potential future of patent regulations in Indonesia.

DISCUSSION POINTS

• Background of the Omnibus Law in Indonesia
• Recent updates to patent regulations in Indonesia brought forward by the Omnibus Law
• The future of patent law in Indonesia

REFERRED IN THIS ARTICLE

• The Ministry of Justice Indonesia
• The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement
• Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations
• Law of the Republic of Indonesia No. 13 of 2016, on Patents
• The Constitutional Court of Indonesia
• The People’s Representative Council of Indonesia
• Decision No. 91/PUU-XVIII/2020
• Law No. 11 of 2020 on Job Creation
• Law No. 12 of 2011 on Legislation Making
• Law No. 6 of 2023 on Job Creation (the Omnibus Law 2023)
• The Ministry of Law and Human Rights

BACKGROUND

Patent laws in Indonesia have endured many significant changes throughout history, much like the nation. From being a Dutch colony that had to adapt its coloniser’s patent laws, to becoming an independent nation that developed its own regulations (along with multiple revisions and changes), the evolution of Indonesia’s patent laws has always reflected the nation’s reality at the time. The series of deliberate revisions and adjustments to its patent laws were always the result of aligning with evolving economic, technological and societal priorities. Likewise, the most recent change to Indonesian patent regulations is a testament to a country that is consciously strengthening its role as a member of the international community, as well as encouraging its great potential for groundbreaking innovations.
In March of this year, Law No. 6 of 2023 on Job Creation (the Omnibus Law 2023) was officially enacted after enduring a period of significant controversy. The Law was intended to create jobs as well as raise both foreign and domestic investment; however, many of its articles were adamantly criticised by the public. A popular opinion deemed that the bill heavily favoured capitalists and investors, while ignoring the rights of or even being outright harmful to the working class. This is because the Law reduced severance pay, cut mandatory leave, allowed longer work hours and permitted the hiring of contract and part-time workers in place of full-time employees. Furthermore, the Law’s articles concerning the environment were sharply criticised by observers. The aversion towards the Law was so intense that it led to numerous protests and demonstrations nationwide.

The Omnibus Law had a lengthy and difficult road to becoming legitimised as an applicable law. Before it was brought forward, its predecessor was Law No. 11 of 2020 on Job Creation, a legal product that was similarly met with widespread scrutiny from the general public, academics and various politicians alike. In 2021, the Constitutional Court issued Decision No. 91/PUU-XVIII/2020, which declared Law No. 11 of 2020 to be unconstitutional. In a hearing read out by Constitutional Justice Suhartoyo, the Court ruled that the formulation of Law No. 11 Year 2020 did not follow standard lawmaking procedures and subsequently instructed the government and People’s Representative to revise the Law within a two-year period.

A year later, on 24 May 2022, in yet another controversial chapter of this saga, the People’s Representative Council passed the revisions to Law No. 12 of 2011 on Legislation Making. This was in response to the Constitutional Court’s ruling, as Law No. 12 of 2011 previously did not allow the Omnibus Law. Some sceptical observers viewed this act as a mere shortcut to legitimise the Omnibus Law.

Ultimately, despite intense pressure and protest from much of the public, the new Omnibus Law 2023 was brought forward as a replacement for the previous one and was passed by the People’s Representative Council on 21 March 2023. It has been in effect since 31 March 2023. This enactment signifies a new era for a wide range of sectors in Indonesia, not excluding intellectual property, and specifically to Law No. 13 of 2016 on Patents, on which the Omnibus Law 2023 has brought several important revisions to a few of its articles.

**RECENT DEVELOPMENTS**

The nature of Indonesia’s new Omnibus Law 2023 could be identified by its name. The word omnibus is derived from Latin, meaning ‘for everything’ or ‘many’. In the legal realm, the Omnibus Law 2023 refers to a single regulation that tackles various sectors at different levels. Thus, as the name suggests, the Omnibus Law 2023 was enacted to make numerous changes to wide-ranging sectors, including intellectual property. In regard to patents, it made several revisions to Law No. 13 of 2016, as described below.

Article 3 of Law No. 13 of 2016 on Patents stipulates what type of invention would qualify as either a patent or a simple patent. Article 3, paragraph 2 of Law No. 13 of 2016 on Patents stipulates that simple patents are granted for new inventions, improvements to existing products or processes and inventions susceptible to industrial application. With the Omnibus Law 2023, a paragraph defining the ‘improvements from an existing product or process’ is given to the article. In the newly created article 3 paragraph 3 of Law No. 13 of 2016, what constitutes improvements from an existing product or process includes ‘simple products, simple processes, and simple methods’.
The next change is a more significant one. Article 20 of Law No. 13 of 2016 stipulates that a patent holder is required to use the products or processes they have patented in Indonesia. This is further explained by manufacturing or usage, which must also encourage technology transfer, investment absorption or the creation of jobs. In the Omnibus Law 2023, the requirement for patent holders is reduced only to either manufacturing, importing or licensing the patented products or products created from patented processes or methods. Meanwhile, all previously enacted social-based caveats were abolished. This change is highly criticised by some observers, who believe that article 20 covers an essential and commonly enforced principle called ‘local working’, or the compensation requested by the state for the patent recipient to implement their invention in the country that granted the patent. Furthermore, the abolishment of the requirement for technology transfer was also met with criticism.

Regardless, in the original drafts for the Omnibus Law 2023 bill, the Indonesian government detailed seven reasons why article 20 of Law No. 13 of 2016 needed to be revised. Those reasons, according to the draft, are as follows:

- the need for flexibility in regard to manufacturing products related to patents and technology transfer;
- article 20 is deemed discriminative, and thus incompatible with or a violation of article 27[1] of the TRIPS Agreement, which has been ratified with Law No. 7 of 1994 on Agreement Establishing the World Trade Organization;
- a violation of article 20 could result in the cancellation of a patent;
- the stipulations of article 20 could not be applied to any types of technology due to concerns related to costs, human resources, mastery of technology, etc;
- the requirement for technology transfer decreases investment opportunities;
- difficulty to practice; and
- transfer of technology is difficult to perform in Indonesia due to difficulties in acquiring resources.

The changes in article 20 affected other articles as well. Article 82 of Law No. 13 of 2016 stipulates the qualifications for a compulsory licence. Paragraph 1 of said law stipulates that a compulsory licence could be issued if a patent holder has not fulfilled their obligation to make products or use the process in Indonesia as referred to in article 19, paragraph 1, within a period of 36 months after the granting of a patent. With the Omnibus Law 2023, the paragraph now refers to the newly revised article 20 instead of article 19.

Lastly, the Omnibus Law 2023 made several changes to stipulations regarding simple patents. Article 122, paragraph 2, of Law No. 13 of 2016 stipulates that a request for substantive examination on a simple patent may be submitted together with the filing of the simple patent application or not later than six months from the simple patent application filing date and subject to fees. The Omnibus Law 2023 alters this paragraph by removing ‘not later than six months as from the simple patent application filing date’.

The Omnibus Law 2023 changed the time needed for publications of simple patents. Article 123, paragraph (1) of Law No. 13 of 2016 originally stipulated that publications of simple patent applications are carried out not later than seven days after three months from the filing date. Under the Omnibus Law, this time period is extended to 14 days. Moreover, a
paragraph is added concerning oppositions against patent applications. The newly added paragraph states that stipulations regarding patent application oppositions in article 49, paragraph (3) and paragraph (4) do not apply to simple patent applications. Paragraph (3) stipulates on the duration in which the Minister would communicate an objection or opinion, while paragraph (4) stipulates the filing and response to said opinion or objection and the required maximum duration.

According to the original stipulations of article 124, the Minister is required to decide whether to grant or refuse a simple patent application no later than 12 months from the filing date. Under the Omnibus Law 2023, this duration is now shortened to six months.

**FUTURE**

The Indonesian Omnibus Law 2023, a sweeping and comprehensive piece of legislation aimed at stimulating economic growth and attracting investment, is intended to bring significant changes to various sectors, including the patent field. These revisions hold the promise of fostering innovation, streamlining bureaucratic processes and aligning the Indonesian patent system with international standards. However, as of now, the influence of the Omnibus Law 2023 has not been keenly felt on practical level, primarily due to the recency of the amendments and the lack of necessary delegated legislations that would provide the practical framework for their implementation.

The effects of change, particularly in the legal realm, often take time to manifest. The revisions to Indonesian patent law introduced by the Omnibus Law 2023 are no exception. The transition from the old legal framework to the new one requires adjustments, not only in the legal processes but also for the individuals and organisations involved. Therefore, it is natural that the true macro level goal of these amendments has yet to be fully felt, and their influence will only become more pronounced as time goes on.

Furthermore, the absence of implementing legislations to support the changes stipulated in the Omnibus Law 2023 could create a gap between the intentions of the lawmakers and the practical application of the revised patent law. Implementing legislations are important for fleshing out the details and mechanisms through which the broader provisions of a law are implemented. This lack of specific guidelines can lead to confusion among patent applicants, inventors and legal practitioners, potentially inhibiting the anticipated benefits of the Law.

Moreover, the level of awareness and understanding of the changes among relevant stakeholders, such as inventors, businesses and legal professionals, also plays a role. It takes time for such information to disseminate, and for individuals to adjust their behaviours and strategies accordingly.

Nonetheless, there is optimism that the Indonesian government recognises the importance of bridging these gaps and ensuring the full realisation of the Omnibus Law’s potential impact on patent law. The introduction of delegated legislations specifically tailored to the revised patent law could kick-start meaningful change. By elucidating the procedures and requirements, delegated legislations would reduce ambiguity and promote a more efficient and transparent system.

However, despite the significant changes given to the Indonesian patent ecosystem by the Omnibus Law 2023, there have been plans to introduce a new patent regulation altogether. Since 2019, the Indonesian government has been developing a new legal product that would replace the currently applicable Law No. 13 of 2016 on Patents. According to the Acting
Director General of Intellectual Property, Razilu, three main issues are the driving force behind these plans.

The first is to drive national innovation. The Directorate General of Intellectual Property (DGIP) cited a 2019 statistic, which revealed that in Indonesia, patent applications from domestic applicants are greatly outnumbered by applications from foreign applicants: 20 per cent are domestic and 80 per cent are foreign. The government has expressed the intent to increase the number of national patents directly registered with the DGIP, especially for simple patents by academicians and local manufacturers.

The second is to improve the quality of the current patent service system. Bambang Sagitanto, a legal analyst for the DGIP, has stated that the new patent legislation would look to revise certain administrative aspects concerning patent services, such as, among others, the process of substantive examinations and the changing of applicant data. Annual fees for patent holders will also be changed, as they are considered burdensome and require patent holders to pay through their representatives. Another issue is the receivables that cannot be collected as a result of the annual fee mechanism for patents that do not comply with the payment of fees.

The third reason is to ensure that Indonesian patent regulations comply with or are compatible with the stipulations of the TRIPS Agreement. This issue has been touched upon before with the Omnibus Law, as article 20 of Law No. 13 of 2016 was controversially revised due to the original stipulation being deemed incompatible with or in violation of article 27 of the TRIPS Agreement.

Furthermore, an academic draft discussing the proposed patent law outlined several aspects of the current Law No. 13 of 2016 on Patents that would be changed under the developing regulation. Aside from those already mentioned, the aspects are as follows:

• The definition of simple patent as stipulated in article 3 of the Law No. 13 of 2016 on Patents needs strengthening so that simple patents can have practical advantages.

• In article 4, paragraph D mentions ‘rules and methods containing only computer programs’ as inventions that are not patentable. Computer programs in this article should be further defined as programs that do not have character, technical effects or problem-solving qualities.

• Article 4, paragraph (F) No. 1 stipulates that inventions do not include new usage of existing products, while the next passage stipulates that new forms of existing compounds that do not generate significantly enhanced efficacy and contain different relevant known chemical structures also do not qualify as inventions. The draft mentions that these two stipulations were originally put in place to prevent patent evergreening; however, they could also stifle the economic growth of local industries because local industries and research are limited to original products. Also, the two stipulations are deemed to be dismissive of potential research.

• The grace period of the patent registry for inventions that have been announced.

In a significant step forward, Acting Director General Razilu has confirmed that the new patent law bill has been approved by both the People's Representative Council and the government, as represented by the Ministry of Law and Human Rights. Consequently, this bill has been integrated into the comprehensive national legislative package along with the
new Industrial Design Bill. With these strides, the near future could include the forthcoming enactment of a new patent law in Indonesia.

Given Indonesia’s status on the global stage, this bill will definitively chart the technological and innovative trajectory of one of the world’s biggest economies. Thus, an understanding of this pivotal juncture is essential. IP professionals, businesses and inventors are well-advised to monitor not only this bill in particular, but also the ever-developing landscape of Indonesia’s patent realm.

Five Key Need-to-knows

1. In Indonesia, computer programs without character, technical effects or problem-solving qualities are not patentable. Otherwise, they are patentable
2. Methods of examination, treatment usage or surgery applied on humans or animals are not patentable
3. Essential biological processes for producing plants or animals are not patentable. However, applicants can claim patents of genes from plants, non-biological processes or microbiological processes of a plant or animal
4. As stipulated in article 22 of the Law on Patents, a patent is granted for a period of 20 years counted from the filing date and this is not extendable
5. For simple patents, ‘inventive steps’ are not required for patent eligibility and the protection period lasts for 10 years

Endnotes

Muhammad Helmi Hikmat
hilmi@ambadar.co.id
Nabil Argya Yusuf
ambadar@ambadar.co.id
Reihan Faiz
reihan@ambadar.co.id
Putri Choirunnisa Budiman
putri@ambadar.co.id

Jl Proklamasi No. 79, Jakarta 10320, Indonesia
Tel: +62 21 2123 6062
https://www.ambadar.co.id/

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