



# International Conference on Law and Social Science

**Editorial Office:** Faculty of Law, Universitas Islam Riau, Pekanbaru, Indonesia.

Phone:

E-mail:

Website

## Compulsory Patent Implementation In Indonesia According to Law No. 6 of 2023 About Job Creation

**Nur Aisyah Thalib, Syafrinaldi, Abd Thalib**

*Doctor of Law, Postgraduate Program, Riau Islamic University*

*[nur\\_aisyah@student.uir.ac.id](mailto:nur_aisyah@student.uir.ac.id), [syafrinaldi@law.uir.ac.id](mailto:syafrinaldi@law.uir.ac.id), [thalib@law.uir.ac.id](mailto:thalib@law.uir.ac.id)*

### **Abstract:**

*Law Number 6 of 2023 amends the provisions of Article 20 of the Patent Law, (1) Patents must be implemented in Indonesia. (2) Patent implementation as intended in paragraph (1), is as follows: a. implementation of product Patents, which includes making, importing, or licensing products granted a Patent; b. implementation of a process Patent, which includes making, licensing, or importing products resulting from a Patented process; or c. implementation of Patents-methods, systems and uses which includes making, importing or licensing products resulting from methods, systems and uses granted a Patent. The legal research method used is the normative legal research method, which focuses on literature study using various secondary data sources. With the implementation of these changes, we can see that the definition of patent enforcement has become fragmented. The new Article 20 breaks down Patent enforcement into several activities, and uses the word "or" in its formulation, such as "includes making, importing or licensing products granted a Patent". Thus, by only doing one of these things, the obligation to implement a patent in Indonesia can be fulfilled, so that fulfilling the provisions of Article 20 paragraph (1) becomes easier. Patent holders are no longer required to make products in Indonesia, so they do not create factories or offices in Indonesia, which means there is no transfer of technology and knowledge, or employment. In fact, the goals of transferring technology and knowledge, as well as absorbing labor, are the most important goals contained in Article 20 of the Patent Law. With the new formulation of Article 20, this objective seems to be removed from the Patent Law.*

**Keywords:** *patent implementation ; omnibus law*

### **I. Introduction**

The development of technology policies in developing countries is based on the country's technological capabilities and technology transfer from outside, both of which enable increased exploration and growth of technology generated by the country. Therefore, it is necessary to increase the coverage of the potential of many countries to estimate their respective

technological needs, consider technology transfer options, align with the bounty of potential sources as well as efficiently achieve social economic development goals, and discuss the best terms and conditions, so that technology can be used effectively to optimize the consequences of the development process. (Abd Thalib 2012)

In addition, technology can be transferred non-commercially, such as through the dissemination and use of printed

technological information (such as technical and scientific publications), the movement of people from developing countries to other developing countries, exchange programs for teaching and training personnel in research and development institutions in other countries, and technical cooperation programs. (N. A. Thalib, Santoso, and Prananingtyas 2019)

The mastery and utilization of science and technology is one of the keys to how a country has a competitive position in the global arena. This is very reasonable, science and technology, which was originally limited to being used to sustain human life, has shifted to become an inseparable part of everyday life, even on a larger scale, science and technology is used as a benchmark to assess the level of economic competitiveness as well as the progress of countries in the world (Masnun et al. 2021)

Undoubtedly, science and technology have proven to be very instrumental in improving the development of a nation. A country rich in science and technology is considered developed. People now need more information on Intellectual Property Rights (IPR) laws, regulations, and protection practices. Investment in intellectual property innovation, which grows and develops alongside the commercialization of IPRs, greatly aids national and global economic growth. Therefore, it is expected that national intellectual works can develop and flourish simultaneously with the intellectual works of other countries. Indonesian industries must keep up with the latest technological trends in order to compete with the products of developed countries. In general economics, technology is defined as the application of scientific knowledge in the production of industrial goods and the improvement of services. (Umami 2019)

The protection of Intellectual Property Rights (IPR) and the commercialization of intellectual work are important aspects of economic development. IPR protection in turn becomes irrelevant if it is not associated with the process or activity of commercialization of the IPR itself. The Convention Relating to Trade in Intellectual Property Rights (hereinafter TRIPs) regulates international trade agreements relating to intellectual property rights (IPRs). Some people even consider TRIPs as progress in cooperation in the field of international trade. (N. A. Thalib, Santoso, and Lestari 2020)

Indonesia, in its current national development process, prioritizes the economic sector's development. Indeed, Indonesia's effort focus on developing a balanced economic structure with advanced and strong industrial capabilities. Strengthening and deepening the industrial structure that supports humans' technological capabilities is important. It is to encourage the Indonesian nation to pursue such development with its own strengths in order to be capable of entering the era of globalization. When considering these development objectives, technology plays a critical role, particularly when it comes to initiatives aimed at strengthening industrial power. This is so because industrial growth and development are influenced by technology. (Umami 2019)

A patent is an exclusive right to apply a particular invention during the period stipulated by the patent. A patent is a new or inventive discovery that can increase economic value and benefit society. Patents, which are intangible property rights, have limited monopoly rights.

First of all, it is seen that independence is the ultimate goal of the patent policy in

Indonesia. Substance expansion related to the object of patent protection regulated by Law No. 13/2016 law should be such that it guarantees legal stability, enabling the development of national interests in technologies. Legal structure, according to Friedman, is another issue that should not be disregarded. It is law enforcement and interested parties' behavior that interplay law and policies in technological development and legal culture. This policy includes the attitudes and actions of society towards innovations that can be patented. Legal Theory and progress by Mochtar Kusumaatmadja asserts that legal progress must coincide with technical advancement. Therefore, the function of law cannot be disregarded in order for technical growth, particularly the expansion of patent objects, to proceed smoothly and in compliance with applicable principles. (Purwaningsih and Nur Ariyanti 2021)

In Indonesia, Law Number 13 of 2016 on Patents (UUP) was replaced by Law Number 14 of 2001 on Patents. This new law contains various provisions that aim to support the development and welfare of society. It is hoped that the replacement will improve the quality and quantity in improving national and state welfare.

Since the Dutch colonial period, Indonesia has used patent laws before it had a specific law governing patents. The 1912 Reglement Industriële Eigendom, which legalized patents, brands, and industrial designs, referred to similar regulations enacted in the Netherlands at the time. Octroiwet 1910 No. 136, which regulates patents, previously authorized similar legislation in the Netherlands. (Glorianti 2019)

By enacting Article 20 of Law Number 13 Year 2016 on Patents, the government aims to increase the growth of the Indonesian state

in terms of technology transfer and competitiveness because there is a technology transfer system. This regulation is also in accordance with Article 20 paragraph (2) of Law Number 13 Year 2016, which states that patent owners must provide greater employment opportunities for Indonesians due to the obligation of patent owners to carry out patent production in Indonesia. (Rosiah 2019)

The above conditions occur due to the provisions in the UUP that require patent holders to make goods and use processes in Indonesia. As stipulated, Article 20 paragraph (1) of the Patent Law expressly states that "*Patent holders are obliged to make products or use processes in Indonesia*", and paragraph (2) states that "*the criteria for making products or using processes as referred to in paragraph (1) must support technology transfer, investment absorption, and/or employment provision*".

Article 20 of the Patent Law stipulates that the right holder who has a patent to make goods or processes in Indonesia must indirectly establish a factory or facility to make the goods or processes protected by the patent in Indonesia. This is considered difficult especially for patent holders who are foreign nationals as they are not domiciled in Indonesia and will also find it difficult to manufacture in Indonesia. In addition, Article 132 paragraph (1) letter e reinforces Article 20 of the Patent Law, which stipulates that if a patent holder violates the provisions as referred to in Article 20, the patent shall be revoked based on a court decision. Because of this, other countries oppose this arrangement, especially developed countries that often register their patents in Indonesia because it is considered unfair. It is not without reason that foreign parties still own

many patents in Indonesia. (Kurnianingrum 2022)

The House of Representatives of the Republic of Indonesia (DPR RI) has passed the Job Creation Law No. 6 of 2023. With the passage of this law, it is expected that economic recovery will be faster starting in 2023 and allow for the reduction of hyperregulation, which has been hindering investment growth in Indonesia. In addition, the Job Creation Law is expected to create a favorable investment environment. Therefore, there will be an increased influx of investments, both domestic and international, which will indirectly lead to the creation of new businesses and jobs. This is not unreasonable as the main objective of the Job Creation Law is to provide a favorable business and investment climate for businesses, including foreign investors, and MSMEs. Nevertheless, the passage of the Job Creation Law has generated controversy and criticism in the community as this law has a major impact on current regulations in the areas of labor, environment, and intellectual property rights (IPR).(Kurnianingrum 2022)

In such a situation, the background of the Job Creation Law is important to understand as a foundation for understanding the government's objective to overcome obstacles in the rule of business law and adapt to global economic changes to achieve sustainable economic growth. The business order in Indonesia faces great challenges in today's dynamic global era. These challenges are caused by profound changes in the economic paradigm and business law. (Rohendi 2023)

The government should review the obligations of patent holders because such obstacles will cause losses to the state and business entities and are not in accordance with the government's goal of supporting

ease of doing business. Therefore, there is a debate on whether Article 20 of Law Number 13 of 2016 on Patents has set proportionate obligations for patent holders in order to accelerate the investment climate, encourage ease of doing business, and in accordance with the state's objectives to improve national life and general welfare. (Pratama, Astanti, and Masnun 2019)

To ensure the expected success of the intellectual property rights system, the organized and earnest involvement of various parties is essential. The Ministry of Justice and Human Rights, based on Presidential Decree No. 189 of 1998, Directorate General of Intellectual Property Rights is assigned to cooperate with all government agencies responsible for intellectual property rights. (A. Thalib et al. 2023)

## **II. Legal Materials and Methods**

A statutory approach is used in this legal research. According to Peter Mahmud Marzuki, the statutory approach takes into account all applicable laws and rules regarding the legal matter. Researchers can examine the relationships between laws and the constitution, laws and regulations, or laws and one another using this method. (Marzuki 2019)

The purpose of this research is to use descriptive analytical specifications to provide a clear, detailed, and systematic description of the research subject. Analytical specifications are used because the data collected will be analyzed to solve problems in accordance with applicable legal regulations. The purpose of the analytical descriptive specification is to provide a description of what actually happens to the research subject objectively. (Wahyuni and Zainuddin 2021) The purpose of this descriptive research is to observe how Article

20 of the Patent Law regulates the requirements for patent implementation in Indonesia. Legal theories and statutory restrictions, such as the way that Article 20 of the Patent Law governs Indonesia's requirement to implement patents, are related to analytical work.

In normative juridical legal research, secondary data is used as the basic material and primary data is used as additional material. Both primary and secondary legal information can be obtained in library resources, which provide secondary data.

Primary legal materials are those that are authoritative—that is, derived from the actions or endeavors of organizations with the right to do so—and have authority. (Rosiah 2019) This information is essentially a subset of secondary information, which is information gleaned from primary, secondary, and tertiary legal sources and includes the following:

- a. Constitution of the Republic of Indonesia Year 1945
- b. Law Number 13 of 2016 concerning Patents
- c. Law Number 14 of 2001 Concerning Patents
- d. Law Number 6 of 2023 Concerning Job Creation
- e. Minister of Law and Human Rights Regulation Number 15 of 2018 concerning Patent Implementation by Patent Holders
- f. Secondary legal sources both in the form of writings or reports that have been compiled in lists or that have been booked, as well as literature on the opinions of legal experts and theories that are related to this research.

g. Tertiary legal materials include encyclopedias, legal dictionaries, cumulative indexes, and other materials that offer direction and explanations for primary and secondary legal materials. (Ahmad 2017)

### **III. Result and Discussion**

#### **A. Implementation of Patent Provisions According to the Law on Job Creation Number 6 of 2023**

One of the 79 laws that were considered overlapping was simplified into one law. The purpose of this regulatory simplification is to provide businesses, including micro, small and medium enterprises, with a favorable business and investment climate. Various sectors, especially investments that are difficult to develop, are affected by overlapping regulations. The Omnibus Law on Job Creation, passed by the House of Representatives and the government, was a novel idea. They hope this law will improve the performance of domestic industries. The Omnibus Law on Job Creation was made in the spirit of deregulation as the country's laws are being repealed or reduced. To get faster results, actions or processes are carried out by reducing work procedures that make the process slow and complicated. The Omnibus Law on Job Creation is expected to make business easier, improve the performance of domestic industries, and encourage investment into Indonesia, improving the Indonesian economy so that it can compete with other countries. (Darma Pertiwi 2022)

The Job Creation Law No. 6 of 2023 was approved by the Republic of Indonesia's House of Representatives (DPR RI). With the passage of this law, it is expected that economic recovery will be faster starting in 2023 and allow for the reduction of hyperregulation, which has been hindering investment growth in Indonesia. It is also

anticipated that the Job Creation Law will foster an atmosphere that is conducive to investment. Therefore, there will be an increased influx of investments, both domestic and international, which will indirectly lead to the creation of new businesses and jobs. This is not without reason as the main objective of the Job Creation Law is to provide a favorable business and investment climate for business actors, including foreign investors and MSMEs. However, because the Job Creation Law has a significant impact on present legislation in the fields of labor, the environment, and intellectual property rights (IPR), its passage has sparked debate and criticism in the community. (Kurnianingrum 2022)

The result of the Job Creation Law is the result of many regulations in Indonesia overlapping with each other, which ultimately becomes unproductive, especially in terms of business. Indonesia then falls behind in several ways because of it, such as poor investment climate and low competitiveness, even lagging behind compared to other countries in the same group such as Malaysia and Thailand. Indonesia is placed 73rd out of 190 countries included in the World Bank's Ease of Doing Business 2020 assessment.

Substantially, the Job Creation Law has established eleven groups, including: (Masnun et al. 2021)

1. Licensing and Sector Business Activities;
2. Cooperatives and MSMEs and Village-Owned Enterprises (BUMDes);
3. Investment;
4. Employment;
5. Fiscal Facilities;
6. Spatial Planning;

7. Land and Land Rights;
8. Environment;
9. Construction and Housing
10. Economic Zone; and
11. Government Goods and Services.

In addition to labor issues, the Job Creation Law also covers matters such as patents. The provisions of this law apply to all Indonesian citizens since the Job Creation Law came into effect. Law No. 13 Year 2016 on Patents, which has undergone various amendments, is one of the affected ones. The pattern of modification consists of adding material, improving substance, and removing substance. Considering these modifications, the Patent Law's eliminated Article 20 is one of the intriguing articles that should be covered in more detail in this article. According to this article, patent holders must not only manufacture goods or employ Indonesian techniques, but also distribute technology, attract capital, and create jobs. (Kurnianingrum 2022)

Indonesia's 1945 Constitution conflicts with the Job Creation Law. Therefore, the Constitutional Court has the ability to convene court at the first and last level, with final decisions, as stated in Article 10 paragraph (1) letter A of Law Number 7 of 2020 concerning the Constitutional Court. The Constitutional Court may also hold proceedings to: (a) analyze the Republic of Indonesia 1945 Constitution. Using this power, the Constitutional Court decided that the Job Creation Law was unconstitutional under the 1945 Constitution. The Court declared the Job Creation Law to be unconstitutional in its ruling. A statute is in violation of the 1945 Constitution when it is determined by a Constitutional Court decision to be conditionally unconstitutional.

The first unconstitutional decision made by the Constitutional Court was in Decision No. 4/PUU-VII/2009, dated March 24, 2009, regarding the review of Article 12 letter G, Article 50 paragraph 1 letter G, and Article 58 letter f of Law No. 12 of 2008 on the Second Amendment to Law No. 32 of 2004 on Regional Government. (Tobing and Sudirman 2022)

The Court determined that the application of these articles was against the provisions of the Indonesian Constitution's Article 28D, paragraphs 1 and 3. In Article 109 paragraph 1 of the Criminal Procedure Code, the legal conditional implications of an unconstitutional decision are explained in Constitutional Court Decision Number 130/PUU-XIII/2015. The Constitutional Court made this decision through a conceptual approach, making it one part of the Rule of Law doctrine. The Constitutional Court is in essence a parliamentarian who cannot be present in the legislative process as it does not fall within the Court's Constitutional competence; therefore, a conditional or conditional decision is an unconstitutional decision. As a result, with regard to the subject matter of the Constitutional Court's decision in the application of the law's provisions through the legislative process run by the president and the DPR RI, each of the two variations of the decision has the same word and meaning. On the other hand, the Constitutional Court directly stipulates the provisions in one decision. (Tobing and Sudirman 2022)

Article 20 of Law Number 13/2016 on Job Creation is amended to read as follows:

Article 20

*“(1) Patents shall be implemented in Indonesia.*

*(2) Patent implementation as referred to in paragraph (1), shall be as follows:*

*a. the implementation of a product Patent which includes manufacturing, importing, or licensing the Patented product;*

*b. the implementation of a process-Patent which includes making, licensing, or importing the product produced from the Patented process; or*

*c. the implementation of a method, system, and use Patent which includes making, importing, or licensing products resulting from the Patented method, system, and use”.*

This amendment to Article 20 is very important as it stipulates that a prior patent holder in Indonesia must manufacture and process its patents in the country. This will enable technology transfer, investment, and job creation. However, unfortunately, the clause that protects the Indonesian nation has to be changed into a clause that allows patent holders from abroad to exercise their patents by selling goods and obtaining legal protection in Indonesia without having to manufacture and process those patents in Indonesia. In fact, the part that talks about Indonesia's obligation to provide employment, investment, and technology transfer is deleted. In addition, the provisions of subsection (2) provide additional ease to implement the provisions of subsection (1) *"Patents shall be implemented in Indonesia"*, implying that Indonesia may use patents through the production, importation, or licensing of commodities.

Furthermore, talking about the intent of Article 20 of UUP No. 13/2016, which stipulates that the patent holder must carry out the process or production of the product in Indonesia. In fact, the policy is very beneficial for Indonesian society as it can attract labor and knowledge from Indonesia.

On the other hand, if a discussion turns to patent holders who are primarily foreigners and haven't been able to use their rights in Indonesia. This is because there are many prohibitive causes, including the patent holder's internal issues and the government's disapproval to enforce their patents.

According to Article 20 of the 2016 UUP, patent holders in Indonesia or overseas who have applied for and been awarded patent protection in Indonesia are obliged to produce or carry out such procedures in Indonesia. Supporting technological transfer, investment inflow, and/or employment availability is necessary, nevertheless. Legally, the policy provides a clear outline of how patent holders can develop and thrive in Indonesia without depending on imports from abroad. (Pratama, Astanti, and Masnun 2019)

Article 82 of Law Number 13 Year 2016 on Patents, reads:

Article 82

*“(1) Compulsory license is a license to implement a Patent granted under a Ministerial Decree on the basis of an application:*

- a. The Patent Holder does not carry out the obligation to make the product or use the process in Indonesia as referred to in Article 19 paragraph (1) within a period of 36 (thirty six) months after the Patent is granted;*
- b. The Patent has been implemented by the Patent Holder or the licensee in a form and in a manner that is detrimental to the interests of the public; or*
- c. The Patent resulting from the development of a Patent that has been granted previously cannot be implemented without using the Patent of another party that is still under protection.*

*(2) Application for Compulsory License as referred to in paragraph (1) shall be subject to fees.”*

Article 82 of Law Number 13 Year 2016 on Job Creation shall be amended as follows:

Article 82

*“(1) Compulsory license shall be a license to implement a Patent granted under a Ministerial Decree on the basis of an application on the grounds of:*

- a. The Patent is not implemented in Indonesia as referred to in Article 20 within a period of 36 (thirty six) months after the Patent is granted;*
- b. The Patent has been implemented by the Patent Holder or the Licensee in a form and in a manner that is detrimental to the interests of the public; or*
- c. The Patent resulting from the development of a previously granted Patent cannot be implemented without using the Patent of another party which is still under protection.*

*(2) Application for Compulsory License as referred to in paragraph (1) shall be subject to fees”.*

Article 82 must be amended because the provision on Compulsory Licenses is related to Article 20, which talks about the implementation of Patents in Indonesia. Article 20 amends the provisions on the implementation of Patents in Indonesia so that applications for Compulsory Licenses can be made. Therefore, Article 82 on Compulsory License Implementation must also be amended. These changes lead to patent holders being able to enforce their patents in Indonesia within 36 (thirty-six) months, without having to manufacture or duplicate the product. The patented product does not have to be manufactured and used in Indonesia. Simply by importing the product



manufactured abroad, the patent can be used in Indonesia. Consequently, with the issuance of the Job Creation Law, which amended Indonesia's prevailing laws on patents, the procedures required to obtain a license have become more difficult to fulfill. (Darma Pertiwi 2022)

According to legal politics, the provision shows a clear path for patent holders to maintain independence and technological progress in Indonesia without relying on imports from abroad.

The Job Creation Law, which mandates the use of patents, has reinforced Indonesia's patent policy to strengthen invention protection, according to Dede Mia Yusanti, Director of Patents, DTLST, and Trade Secrets from the Directorate General of Intellectual Property of the Indonesian Ministry of Law and Human Rights. (Purwaningsih and Nur Ariyanti 2021)

## **B. Factors Hindering the Implementation of Such Patent Provisions in Indonesia**

The term "omnibus" refers more closely to common law practice in the United States and the United Kingdom. Nonetheless, Indonesia has adopted the Dutch civil law system. In the civil law legal system, which emphasizes codification of rules to address redundant and incomplete current regulations, the idea of omnibus law is unknown. (Arief and Sutrisni 2021) Omnibus law is a method of drafting laws or regulations that cover a wide range of topics or fundamental components for particular uses that depart from accepted norms. The primary areas where omnibus rules differ from draft regulations are the quantity of content covered, the number of articles controlled, and, lastly, the degree of legal complexity. Almost all pertinent material is covered by an

omnibus statute. The resultant Omnibus Law is an illustration of how regulations were integrated and codified with the ultimate objective of enhancing the efficacy of those regulations' application. Both from a theoretical and practical perspective, the omnibus law method of legislation is less well known in Indonesia. The Omnibus Law is a process for creating good laws rather than a result of law. Two examples of comparable and widely used regulatory formulation methodologies in Indonesia are regulatory impact evaluation (RIA) and Rule, Opportunity, Capacity, Communication, Interest, Process, Ideology (ROCCIPI). When legislative techniques remove or change one rule and reorganize it in the created law, this is common in lawmaking. However, given this method of legislation omnibus laws are very rarely used in Indonesia. The question of whether the traditions of these legal systems are influential arises from the above. In short, the distinction between common law and civil law is now easier to decide. Countries like Indonesia are beginning to incorporate various legal systems, including Islamic law. The rise of more specialized laws is also characterized by the abolition of codification and jurisprudence. One of the problems that can arise when using the Omnibus Law method to legislate is as follows: (Habibah Zulaiha 2022)

- a. The process of forming omnibus laws in the House of Representatives (DPR) requires readiness and a special discussion model;
- b. The busy agenda of members of the House of Representatives (DPR) needs to be briefed on the importance of legislating using the omnibus law method.

One of the problems that can arise when using the Omnibus Law method to create laws is as follows:

- a. The process of drafting omnibus laws in the House of Representatives (DPR) requires readiness and a special discussion model;
- b. The busy agenda of members of the House of Representatives (DPR) needs to be briefed on the importance of drafting laws using the omnibus law method.

The government passed Law No. 2020 on Job Creation in an effort to spur investment. Law No. 6/2023 on the Stipulation of Perppu No. 2/2022 on Job Creation is the result of further amendments. However, Law 6/2023 will end up like Law /2020, which also has to go through a formal and informal examination process at the Constitutional Court (MK).

Nindyo Pramono said that prior to the issuance of Law /2020, many investors complained about various things, including complicated and confusing licensing. According to Professor Nindyo, the complexity of licensing has a significant economic impact as an additional cost for investment. (DA 2023)

Investors choose neighboring countries over Indonesia because of this situation. Because it took a while to alter different laws and regulations that were thought to be impeding investment, the government decided to employ the omnibus law procedure. At the time, at least Law/2020 revised 79 laws.(DA 2023)

The Omnibus Law is still not optimally implemented in Indonesia, causing weaknesses, especially with regard to official defects. A number of legal precepts, including *lex specialis derogat legi generali* (special regulations supersede general rules) and *lex posterior derogat legi priori* (new regulations can supersede previous regulations), are crucial to the success of the Omnibus Law. (Istiqomah 2023)

In addition, there is a possibility that the Omnibus Law may be deleted or revised by new laws in the future. This could lead to legal chaos as the applicable laws could be null and void and override each other." (Istiqomah 2023)

Maria Farida Indrati said several important things about the establishment of the Omnibus Law. Firstly, all laws must be founded on the foundations of *behoorlijke regelgeving*, or the principles of good legislation development, as well as on distinct philosophical, legal, and sociological pillars for each type of legislation. Second, regarding the fact that some laws have been repealed (moved) and incorporated into the Omnibus Law, each law regulates distinct topics (*adressat*) in addition to distinct substance. (Indrati 2020)

From the point of view of lawmakers-the government, parliament, and political actors at the elite level who set state and government policies, the practice of Omnibus Law is considered very beneficial. However, from the point of view of consumers or broad stakeholders, especially the regulated legal subjects and the targets of statutory regulation in legal traffic, this legislative omnibus technique is unlikely to guarantee justice.(Asshiddiqie 2020) The author can discuss the advantages and disadvantages of the Omnibus Law for the creation of legislation, as well as the opportunities and difficulties associated with incorporating the Omnibus Law into the Indonesian Legislation System, in relation to the two assessments mentioned above.

Jimly Asshiddiqie argues that although the omnibus law has some advantages, it also has disadvantages. He claims that the flaws in omnibus legislation undermine democracy and the rule of law, particularly when it comes to the idea of due process of law. The

following are some detrimental consequences of this omnibus law practice: (Asshiddiqie and Safa'at 2006)

“a) The process of deliberations in the parliamentary forum in a technical sense has decreased in quality and degree of trustworthiness;

b) The quality of public participation declines;

c) The quality of substantive debate in the parliamentary forum on every policy issue related to the general interest of the people has also greatly decreased;

d) Debates in the public sphere through public discourses have become unfocused and undirected. Whereas the role of free media and political and academic forums is very important as a medium of socialization and education for the wider community. These are factors that determine the process of democracy developing from a formalistic and procedural democracy to a substantive democracy that is more qualified and integrated”.

Indonesia has several laws that regulate intellectual property rights before the Job Creation Law. Here are some of those laws: (Rohendi 2023)

“a) Law Number 28 of 2004 concerning Copyright: This law regulates copyright in Indonesia, including the rights and obligations of copyright holders, copyright registration procedures, and sanctions for copyright infringement.

b) Law No. 3 of 2000 on Industrial Design: It is a law that regulates the protection of industrial designs. It grants exclusive rights to holders of industrial design rights and regulates registration procedures.

c) Law No. 20 of 2016 on Trademarks and Geographical Indications: This regulation governs trademark rights and geographical

indications in Indonesia. It grants exclusive rights to trademark owners to use and trade their trademarks.

d) Law No. 4 of 2000 on Patents: Regulates patent rights and the protection of new inventions and technological innovations. This law stipulates the procedure for patent registration and the exclusive rights granted to the patent holder.

e) Law No. 30 of 2000 on Trade Secrets: This regulation provides for the protection of trade secrets. It sets out provisions regarding the use and disclosure of information deemed to be a trade secret”.

Prior to the Job Creation Law, a number of laws had provided the legal basis for the protection of intellectual property rights in Indonesia. The Job Creation Law then combined and amended several laws related to intellectual property rights, bringing reforms aimed at improving the investment environment and the protection of intellectual property rights. (Rohendi 2023)

Jimly Asshiddiqie describes two general patterns of application and drafting of omnibus laws, which have been applied to many countries. These patterns can be summarized as follows: (Habibah Zulaiha 2022)

a) Pattern of One Law Amending Many Laws: This pattern allows one law to amend several laws at once by changing certain parts of the law without repealing the law as a whole. Laws created through this method can have a thickness that suits a particular need, but they also cover the scope of regulatory materials that have been governed by various previous regulations that are deemed to be amended simultaneously through new laws.

b) Pattern of One Law Integrating Many Laws: This pattern allows one law to

combine various laws into a single new law. At the same time, the old laws that are combined are repealed, and some of the material of the old laws is changed as needed. There are similarities between the method of codification of laws and this method, where the main goal is to combine all regulatory products that regulate the same material into a single law.

Both patterns allow the drafting of laws to be tailored to specific needs. These patterns allow for the drafting of omnibus laws, which can cover a variety of regulatory materials that are to be amended or integrated simultaneously.

The Job Creation Law 23 was drafted using a single pattern because of the new legal regulations. This means that a single law can amend several laws at once, by simply changing certain parts of them, without repealing the law as a whole.

It is crucial for Indonesia to fulfill the obligation of patent holders to transfer technology as it can help economic growth, domestic and foreign investment, knowledge exchange, and social development. (Irawan 2019) Thus, the regulation of patents in Indonesia can be in accordance with the national goals of improving the quality of human resources and improving the quality of life of the people. such as encouragement to conduct research and development on patented technologies to produce new inventions that have economic value and encourage national economic growth.

Article 7 of the TRIPs Agreement states that *“the protection and enforcement of IPRs should encourage technology transfer and technology dissemination by balancing the rights and obligations of technology producers and technology users, and by supporting social and economic welfare”*.

While all measures must be undertaken in accordance with other TRIPs provisions, this provision recognizes the rights of each World Trade Organization (WTO) member country to protect national interests in intellectual property rights.

In contrast, the government considers technology transfer arrangements under patent holder obligations to be ineffective if domestic enterprises face problems and cannot meet the quality, performance, and cost requirements of internationalized technologies. As a result, domestic enterprises are unfit to act as suppliers to foreign companies. (Wartini 2002) Internal and external barriers include a large number of human resources with low levels of education; lack of capital available for technology transfer; low levels of technology; poor organizational and marketing management; lack of social and cultural support; and an unplanned education system.

If technology transfer is not successful, it will cause losses to the state and business entities and is inconsistent with the government's objective of supporting ease of doing business. As a result, the government should review the obligations of patent holders. (Qur'ani, n.d.) Therefore, there is a debate as to whether Article 20 of Law No. 13 of 2016 on patents has set proportionate obligations for patent holders in a setting that accelerates the investment climate, promotes ease of doing business, and is in accordance with the state's objectives to improve national life and general welfare. (Ridlwani 2014)

In the 2016 Patent Law, it is stated that *"Patent holders are obliged to make products or use processes in Indonesia."* Thus, Article 107 of this Job Creation Law removes the provision that granting patents in Indonesia requires technology transfer. Furthermore, *"technology transfer, investment absorption,*

*and/or employment provision shall support the manufacture of products or use of processes as mentioned in paragraph (1)".*

One of the reasons why article 20 was amended, according to the Directorate General of Legislation, was to facilitate business opportunities for Indonesians and allow foreign companies to establish their companies in Indonesia. In contrast, the Directorate General of Legislation said that *"Article 20 of the Patent Law of 2016 is not in line with TRIPS as there is no provision on technology transfer"*. Therefore, this article is considered to hinder and complicate the implementation of patents in Indonesia.

Moreover, article 20 of this patent law has been evaluated to meet the current needs because, by nature, these regulations are dynamic in nature and can be amended as per the needs of the society. Moreover, since Indonesia has signed the TRIPS, our country's legal products must conform to the provisions contained in TRIPS with the applicable laws in Indonesia. The Director General of Intellectual Property also stated that the government's efforts to amend Article 20 of the Patent Law of 2016 are in accordance with the current needs of developing countries. This article states that parties exercising patents in Indonesia do not necessarily loosen themselves, but obliges them to be sanctioned if they violate it.

The elimination of the technology transfer requirement has a detrimental effect on Indonesia's human resources. Considering the significance of technology transfer, this should be the opposite of the case because of the enormous advantages that come with it.

From a juridical perspective, Chapter III and Chapter X of the Job Creation Law describe the role of the state as a policy maker (*beleid*), management (*bestuursdaad*), regulation

(*regelendaad*), and supervision (*toezichthoudensdaad*). The state must be able to provide for the needs of the people and strike a balance between enacting policies that will benefit the people and the state. (Wariati, n.d.)

Benefit-wise, technology transfer incorporated into patent holders' obligations aids Indonesia in enhancing the capacity of its human resources. Furthermore, one of the factors that currently determines the nation's success is thought to be technological transfer.

The main role of expediency is to achieve the goals that humans want, which are then poured into applicable legal norms. This demonstrates that the goal of technology transfer is to enable domestic labor to compete with labor from overseas. Technology transfer is used by investment in Indonesia to boost innovation and the country's overall economic competitiveness. (Atmaja 1986) For this reason, technology transfer is crucial to raising the country's youth's potential, particularly with regard to patents. The state needs to have a strategy in place to support the enhancement of kids' education in light of the current rapid advancements in technology. (Idham 2017) This is consistent with the utilitarian theory, which holds that laws should serve the interests of the greatest number of people in addition to being written rules. (Ridwansyah 2016)

If technology is not optimally utilized, a country's development will be hampered. Technology transfer can be an important component in achieving sustainable development in accordance with the country's goals. (Sumanto 1993) To make Indonesia able to compete and even rival other countries in the world, they prioritize sustainable development. Technology

transfer is defined as follows in the United Nations Conference on Trade Development's (UNCTAD) Draft Code of Conduct on Transfer of Technology: (Sumanto 1993)

*"technology" as "systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service", which does not extend to the transactions involving the mere sale or mere lease of goods".*

In the end, we can say that technology transfer is essential for patents and other activities governed by the current legislation.

Basically, they know how important this technology transfer is.

#### IV. Conclusion and Suggestion

The abolition of Article 20 of Law No. 13/2016 on Patent (Patent Law) regarding the obligation of patent holders after the enactment of Law No. 6/2003 on Job Creation has caused debate. This is not without reason because removing the obligation of patent holders to make products or use processes in Indonesia will indirectly eliminate technology transfer, investment absorption and/or provision of employment. Simply by importing products manufactured abroad, the patent can be used in Indonesia. Thus, Article 107 of the Job Creation Law eliminates the provision that granting patents in Indonesia requires technology transfer. Consequently, with the passage of the Job Creation Law, which amends Indonesia's prevailing laws on patents, the procedures required to obtain a license become more difficult to fulfill. If technology is not optimally utilized, a country's development will be hindered. Technology transfer can be an important component in achieving sustainable development in line with the country's goals.

#### References

Abd Thalib. 2012. "Pemindahan Teknologi Di Indonesia :Kajian Perundangan."

*Journal of Legal Studies*, 128–39.

Ahmad, Suryana. 2017. "Metode Penelitian Metode Penelitian." *Metode Penelitian Kualitatif* 3 (17): 43. [http://repository.unpas.ac.id/30547/5/BAB III.pdf](http://repository.unpas.ac.id/30547/5/BAB%20III.pdf).

Arief, Moh. Zainol, and Sutrisni Sutrisni. 2021. "Analisis Politik Hukum Tentang Omnibus Law Di Indonesia." *Jurnal Jendela Hukum* 8 (1): 19–28. <https://doi.org/10.24929/fh.v8i1.1331>.

Asshiddiqie, Jimly. 2020. *Omnibus Law Dan Penerapannya Di Indonesia*. Konstitusi Press (Konpress).

Asshiddiqie, Jimly, and M. Ali Safa'at. 2006. *Seri Pemikir Hukum: Teori Hans Kelsen Tentang Hukum*. Edited by Miftakhul Huda and Nur Rosihin Ana. Konstitusi Press (Konpress).

Atmaja, Mochtar Kusuma. 1986. "Hukum Dan Masyarakat Dan Pembinaan Hukum Nasional." *Bandung: Lembaga Penelitian Hukum Dan Kriminologi Fakultas Hukum Universitas Pajajaran*. Hlm15.

DA, Ady Thea. 2023. "Dianggap Terobosan, UU Cipta Kerja Untuk Benahi Ekosistem Investasi." *Hukumonline.Com*. 2023. <https://www.hukumonline.com/berita/a/dianggap-terobosan--uu-cipta-kerja->

- untuk-benahi-ekosistem-investasi-  
lt64e8c23678b7e.
- Darma Pertiwi, Evi. 2022. "Pelindungan Hak Akses Kesehatan Atas Perubahan Ketentuan Lisensi-Wajib Dalam Undang-Undang Cipta Kerja." *Jurnal Lex Renaissance* 7 (1): 100–113. <https://doi.org/10.20885/jlr.vol7.iss1.art8>.
- Glorianti. 2019. "Konsekuensi Pengaturan Pasal 20 Undang-Undang Nomor 13 Tahun 2016 Tentang Paten Terhadap Pemegang Paten Yang Berkewarganegaraan Asing Di Indonesia." *Jurnal Hukum Universitas Atma Jaya*.
- Habibah Zulaiha. 2022. "Dampak Pengesahan Ruu Omnibus Law Dalam Perspektif Hukum Ketenagakerjaan." *Qawānīn Journal of Economic Syariah Law* 6 (2): 199–228. <https://doi.org/10.30762/qaw.v6i2.168>.
- Idham, Ibrahim. 2017. "Peranan Paten Dalam Alih Teknologi." *Jurnal Hukum & Pembangunan* 19 (3): 248. <https://doi.org/10.21143/jhp.vol19.no3.1143>.
- Indrati, Maria Farida. 2020. "Omnibus Law, UU Sapu Jagat?" *Harian Kompas*, 2020.
- Irawan, Candra. 2019. "Pengaturan Alih Teknologi Pada Kegiatan Penanaman Modal Untuk Percepatan Penguasaan Teknologi Di Indonesia." *Supremasi Hukum: Jurnal Penelitian Hukum* 28 (1): 71–82. <https://doi.org/10.33369/jsh.28.1.71-82>.
- Istiqomah, F. 2023. *Omnibus Law Dan Implikasi Terhadap Perkembangan Sistem Ketatanegaraan Indonesia Dalam Pandangan Prof. Jimly Asshiddiqie*. <http://digilib.uinkhas.ac.id/id/eprint/17392>.
- Kurnianingrum, Trias Palupi. 2022. "Dampak Hukum Penghapusan Pasal 20 UU No. 13 Tahun 2016 Tentang Paten (Legal Impact of Abolishing Article 20 of Law No. 13 of 2016 on Patent)." *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 13 (1): 61–82.
- Marzuki, Peter Mahmud. 2019. "Penelitian Hukum." *Jurnal Penelitian Hukum*.
- Masnun, M A, M Wardhana, D Perwitasari, and ... 2021. "Politik Hukum Penguasaan Teknologi Di Indonesia." *Pandecta Law Journal* 16 (2): 266–77. <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/31458%0Ahttps://journal.unnes.ac.id/nju/index.php/pandecta/article/download/31458/12492>.
- Pratama, Radhyca Nanda, Dilla Nurfiana Astanti, and Muh. Ali Masnun. 2019. "Implikasi Kewajiban Pelaksanaan Paten Terhadap Penyelenggaraan Alih Teknologi." *KeadilaN Jurnal Fakultas Hukum Universitas Tulang Bawang* 17 (2).
- Purwaningsih, Endang, and Evie Rachmawati Nur Ariyanti. 2021. "Kebijakan Paten Melalui Penguatan Perlindungan Invenisi Teknologi Dan Peningkatan Kemampuan Inovasi." *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan* 12 (2): 163–72. <https://doi.org/10.32493/jdmhkdmmhk.v12i2.15865>.
- Qur'ani, Hamalatul. n.d. "Omnibus Law Dianggap Cederai Sejarah Paten." *Hukumonline.Com*. <https://www.hukumonline.com/berita/a/omnibus-law-dianggap-cederai-sejarah-paten%0Alt5e67418c7695f?page=all>.
- Ridlwani, Zulkarnain. 2014. "Negara Hukum Indonesia Kebalikan Nachtwachterstaat." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 5 (2). <https://doi.org/10.25041/fiatjustisia.v5n02.56>.
- Ridwansyah, Muhammad. 2016. "Mewujudkan Keadilan, Kepastian Dan Kemanfaatan Hukum Dalam Qanun Bendera Dan Lambang Aceh." *Jurnal Konstitusi* 13 (2): 278. <https://doi.org/10.31078/jk1323>.
- Rohendi, Acep. 2023. "Dampak Uu Cipta Kerja Terhadap Kaidah Hukum Bisnis." *Selisik : Jurnal Hukum Bisnis* 9 (2): 3–26. <https://ejournal.undiksha.ac.id/index>.
- Rosiah, A. 2019. "Alasan Hukum Pembentukan Pasal 20 Undang-Undang

- Nomor 13 Tahun 2016 Tentang Paten Di Indonesia.” <https://dspace.uui.ac.id/handle/123456789/13978>.
- Sumanto. 1993. *Masalah Pengaturan Alih Teknologi*. Bandung : Alumni.
- Thalib, Abd, Zulfikri Toguan, Bambang Andi Putra, and Nur Aisyah Thalib. 2023. “Kekuatan Hukum Dan Perlindungan Hak Merek Produk Dalam Undang-Undang Republik Indonesia Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis.” *Jurnal Legislasi Indonesia* 20 (2): 144–57.
- Thalib, Nur Aisyah, Budi Santoso, and Sartika Nanda Lestari. 2020. “Suatu Analisis Terhadap Perlindungan Hukum Indikasi Geografis Di Propinsi Riau.” *Jurnal Selat* 7 (2): 169–81. <https://doi.org/10.31629/selat.v7i2.2232>.
- Thalib, Nur Aisyah, Budi Santoso, and Paramita Prananingtyas. 2019. “Problematisasi Ketentuan Alih Teknologi Melalui Lisensi Paten Di Indonesia.” *Diponegoro Law Journal* 8 (2): 1374–83. <https://ejournal3.undip.ac.id/index.php/dlr/article/view/25466>.
- Tobing, Joel Jordan, and Lu Sudirman. 2022. “Conditional Unconstitutional Omnibus Law: The Implications On Patent Regulation.” *Jurnal Komunitas Yustisia* 5 (1): 325–39. <https://doi.org/10.23887/jatayu.v5i1.46076>.
- Umami, Yurida Zakky. 2019. “Pelaksanaan Alih Teknologi Melalui Perjanjian Lisensi Paten Berdasarkan Undang-undang Nomor 13 Tahun 2016.” *QISTIE* 12 (1). <https://doi.org/10.31942/jqi.v12i1.2752>.
- Wahyuni, Raden Ani Eko, and Muhammad Zainuddin. 2021. “Politik Hukum Pembentukan Pasal 20 Undang-Undang Tentang Paten Di Indonesia Dalam Perspektif Hak Kekayaan Intelektual.” *Journal of Judicial Review* 23 (2): 171. <https://doi.org/10.37253/jjr.v23i2.4958>.
- Wariati, Ambar. n.d. “Implementasi Mengenai Hukum Alih Teknologi.”
- Wartini, Sri. 2002. “Aspek-Aspek Hukum Alih Teknologi Dalam Meningkatkan Daya Saing Produksi Teknologi Pertambangan Di Indonesia.” *Jurnal Hukum IUS QUIA IUSTUM* 19 (20): 122–35. <https://doi.org/10.20885/iustum.vol9.is20.art10>.