



The competent authority in managing of Intellectual Property Rights in Indonesia is the Directorate General of Intellectual Property Rights under the Ministry of Law and Human Rights
The Republic of Indonesia

Aribudhi NS

Patent Law No. 14 year 2001

- ▶ License (art.71)
- ▶ “A licensing agreement shall not contain any provisions that may directly or indirectly damage the Indonesian economy, or to 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.”



Compulsory License

- ▶ Art. 75
- ▶ 1. "... after the expiration of a period of 36 months commencing from the date of grant of a Patent, may file a request for a Compulsory License at the Directorate General,..."
- ▶ 2. A request for a Compulsory License ... shall only be made on the grounds that 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.



Government Use License

Art. 99

- ▶ “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”.

President Decree 2004 and 2007:


“Exploitation of Patent by the Government on Anti-Retroviral Drugs”



Exempted from Criminal Provision?

- ▶ Art. 135

“Exempted from the criminal provisions as referred to are:

- ▶ the importation of a pharmaceutical product protected by a patent in Indonesia and that the product has been marketed in a country by the right patent Holder provided that the products imported in accordance with the prevailing rules and regulations;
 - ▶ the production of a pharmaceutical product by a patent in Indonesia in a period of two years before the termination of the patent protection with the purpose to process the permit and to do marketing after termination of the patent protection.”
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Interaction between IP and Competition Law in Indonesia

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Indonesia Competition Law

- ▶ Competition is regulated by The Law No.5 Year 1999 Concerning Prohibition on Monopolistic Practices and Unfair Business Competition
- ▶ The Law has been implemented for almost 11 year to enhance fair competition, since Indonesia economic policy and structure changes after crisis 1998.



The Commission: KPPU

- ▶ The Commission for the Supervision of Business Competition (KPPU) was established in 2000 with the authority mandated by the Law No. 5/1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (“the Competition Law”);
- ▶ The KPPU is consisted of 11 (eleven) Commissioners that work in collegial manner that is assisted by a Secretariat. A chairperson is elected annually amongst Commissioners.
- ▶ It has two major tasks, namely to supervise and *enforce* the competition law, and to create sound competition policy through *policy recommendation* in order to guide public interest and national efficiency for people prosperity;

PRINCIPLES AND PURPOSES

The Principle (Article 2)

Business activities of business actors in Indonesia must be based on economic democracy, with due observance of the equilibrium between the interests of business actors and the interests of the public

The Purposes (Article 3)

The purpose of enacting this Law shall be as follows:

- a. to safeguard the interests of the public and to improve national economic efficiency as one of the efforts to improve the people's welfare;
- b. to create a conducive business climate through *the stipulation of fair business competition* in order to ensure the certainty of equal business opportunities for large-, middle- as well as small-scale business actors in Indonesia
- c. to prevent monopolistic practices and or unfair business competition that may be committed by business actors; and
- d. the creation of effectiveness and efficiency in business activities.

Structure of The Law

Prohibited Agreements:

(rule of reason's approach)

Agreement with Foreigner
Exclusive Dealing
Oligopsony
Trusts
Vertical Intregation
Cartel
Boycott
Oligopoly
Price Fixing

Prohibited Activities

(rule of reason's approach)

Monopoly
Monopsony
Market Control
Conspiracy

Dominant Position:

(rule of reason's approach)

Dominant Position
Share Ownership
Interlocking
Merger and Acquisition

some exemptions (article 50)

“ Excluded from the provisions of this law shall be the following (1 out of 9 exemptions):

(b) Agreements related to intellectual property rights, such as licenses (of) patents, trademarks, copy rights, industrial product design, integrated electronic circuits and trade secrets as well as agreements related to franchise”



The Guideline

- ▶ Commission Regulation No.2 Year 2009 concerning implementation of article 50 (b)
- ▶ principles:
 - 1) IP license agreement does not automatically cause monopoly practices and unfair business competition;
 - 2) issues on IP license Agreement and competition law are whether the license is registered according IP Law and whether the license causes monopoly practices and unfair business competition



Refusal to license?

- ▶ Refusal to license of IP Right basically can be enforced by IP Law
- ▶ Nevertheless, if IP right is part of essential facilities, the refusal could be scrutinized by KPPU (Competition Law)



Exclusive agreement?

- ▶ Pooling licensing and cross licensing
 - (+) reduce transaction cost
 - (-) the licenses create dominant position
- ▶ Tying arrangement
 - (+) reduce transaction cost
 - (-) “misuse patent” doctrine
and close licensee’s option to take 1 (one)
patent instead of 2 (two) tying patents



Exclusive agreement?

- ▶ Raw material (resource) restriction
 - (+) protect quality of patent product
 - (-) outside of IP right, the licensor forces licensee to take specific raw material (resource) that already available in domestic market, *unless* the licensor can prove that he/she need it to protect patent product's quality



Exclusive agreement

- ▶ Resale price maintenance
 - (+) to afford R&D cost
 - (-) to enforce minimum resale price
- ▶ Grant Back
 - mandatory grant back clause is not allowed

