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FOREIGN PATENT HOLDERS ARE ABLE TO POSTPONE THE IMPLEMENTATION OF THEIR INDONESIAN PATENT REGISTRATION

JAKARTA: The Minister of Law and Human Rights, Yasonna H. Laoly, states that the Indonesian Government has made a breakthrough to overcome objections from foreign patent holders towards the obligation to implement their patents in Indonesia.

With such advancement, patent holders could delay the implementation of their patents in Indonesia up to 5 (five) years as of the end of period of 3 years after the patent granting date by the Indonesian government. Previously, foreign patent holders had objected to the provision of having to manufacture their granted products or implement their patent-processes in Indonesia, as stipulated in Article 20 of the Patent Law (Law No. 13/2016).

The Minister of Law and Human Rights of the Republic of Indonesia, during the visit of the United States Ambassador for Indonesia Joseph R. Donovan Jr. (end of February 2019) states that the government had issued a ministerial regulation to address the objections from foreign patent holders, during which the Minister was accompanied by the Director General of Intellectual Property Freddy Harris, Director of Patent Dede Mia Yusanti, and Director of Trademarks and Geographical Indications, Fathlurachman.

The intent of the visit was to discuss the implementation of Law No. 13/2016, where various new provisions are included, one of which is Article 20 that stipulates "The Patent Holder is obliged to manufacture his/her product or use his/her process in Indonesia." (paragraph 1). "Manufacturing the product or using the process as referred to in paragraph 1 must enhance technology transfer, investment absorption and/or providing career opportunity." (paragraph 2). Due to this Article, without the present ministerial regulation, foreign patent holders,

including from the US, have been reluctant to implement their patents in Indonesia.

Basically, such obligation is very beneficial to the prosperity of the Indonesian society, as it will absorb many Indonesian labor as well as providing transfer of knowledge and technology to the Indonesian society. However, this provision has raised objections from foreign patent holders who currently have constraint in implementing their patents in Indonesia.

To overcome this problem, the Minister of Law and Human Rights has issued Regulation Number 15 of 2018 on Patent Implementation by Patent Holders (Permenkumham No. 15/2018).

Pursuant to Permenkumham No. 15/2018, a patent holder may request for postponement of the implementation of his/her patent in Indonesia up to 5 (five) years as from the end of period of 3 years after the patent granting date by submitting a request of postponement of the implementation of the Article 20 of the Patent Law to the Minister along with all relevant reasons.

The time limit of 5 (five) years, according to the Minister of Law and Human Rights, is considered to be sufficient for the patent holders to implement their patents in Indonesia. Within that period, patent holder would have the opportunity to consider on how to implement their patents in Indonesia, particularly in regard to the commencement of their production in Indonesia.

In the event the relevant patent does not provide sufficient business revenue, he said, then the patent holder has the option to request for a deletion for his/her patent to the Minister.