

Jakarta, August 18, 2020

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## The Enactment of Presidential Regulation No. 77 of 2020 on Patent Implementation Procedure by the Government

The President of Republic of Indonesia, Joko Widodo, has recently enacted the Presidential Regulation No. 77 of 2020 which regulate the procedure of patent implementation by the government (“**PR 77/2020**”) on 7 July 2020. This regulation was issued as a realization to the implementation of Article 120 Law No. 13 of 2016 on Patent. By the enactment of this regulation, there are similar provisions which previously provided in the Government Regulation No. 27 of 2004 (“**GR 27/2004**”) that have been replaced and also number of changes on the procedure have been introduced in PR 77/2020.

The following are some key changes being provided in PR 77/2020:

### Expansion on the Field of Patent Implementation by the Government

PR 77/2020 has provided an expansion on the field of patent implementation by the government, specifically to the one relating to the interest of state defense and security. The expansion further extend to cover the field of patent which may cause disturbance or in a contrary with the interest of state defense and security being independently regulated in the regulation, which was previously covered under the field of patent related to the interest of state defense and security under GR 27/2004.

### New Mechanism on the Filing of Proposal regarding Patent Implementation by the Government

According to PR 77/2020, the process of filing a proposal on patent implementation by the government would begin with an examination towards the administrative requirement and the legal status of the relevant patent. Further, PR 77/2020 also describes the membership structure of the team which held the authority to provide a consideration as well as determine the royalty amount to be received by the patent holder. These provisions were previously not available in GR 27/2004.

Moreover, the changes could also be found on the required time frame of the proposal process and the result form issued. The required time frame to issue the approval for patent implementation by the government now would take longer than the previous mechanism provided in GR 27/2004 and such

approval will be granted by virtue of a Presidential Regulation (previously under Presidential Decree).

#### **Annuity Fee Payment by the Patent Holder**

Previously, GR 27/2004 exempted the patent holder from paying the annuity fee of his registered patent which being implemented by the government. However, under PR 77/2020, the patent holder of a registered patent that is relating to the urgent need for the public interest is still subject to payment of annuity fees, since the implementation of such patent by the government will not eliminate the exclusive rights of the patent holder with respect of his patent.

Further, patent holder of a registered patent which may cause disturbance or in a contrary with the interest of state defense and security will be exempted from his obligation to pay the annuity fee until the relevant patent holder is able to implement his patent on his own.

#### **Royalty Payment by Third Party**

Through PR 77/2020, any third parties appointed by the government to implement a patent will be subject to the obligation to pay royalty to the relevant patent holder. This provision was not regulated under GR 27/2004.

#### **Availability of Legal Remedy regarding an Objection on the Royalty Amount**

PR 77/2020 does not provide any legal remedy that may be taken by a patent holder that hold an objection to the amount of determined royalty. Despite this, there remains a possibility that the legal remedy may be further regulated in each presidential regulation on the approval of patent implementation by the government. This is different from GR 27/2004, where an objection towards the fixed royalty amount can be filed by the patent holder with the Indonesian Commercial Court.

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Please do not hesitate to contact us should you have any query regarding PR 77 of 2020 or any other regulation related to patent.