

**INDONESIA**

**Patent Law**

as amended by Law No. 14 on August 1, 2001

TABLE OF CONTENTS

CHAPTER I GENERAL PROVISIONS

Article 1

CHAPTER II SCOPE OF PATENTS

Part One Patentable Inventions

Article 2

Article 3

Article 4

Article 5

Article 6

Article 7

Part Two Duration of Patents

Article 8

Article 9

Part Three Subjects of Patents

Article 10

Article 11

Article 12

Article 13

Article 14

Article 15

Part Four Rights and Obligations of a Patent Holder

Article 16

Article 17

Article 18

Part Five Legal Action against Infringement on Patent

Article 19

## CHAPTER III PATENT APPLICATIONS

### Part One General

Article 20

Article 21

Article 22

Article 23

Article 24

### Part Two Consultant of Intellectual Property Rights

Article 25

Article 26

### Part Three Application with Priority Right

Article 27

Article 28

Article 29

### Part Four Time of Receipt of an Application

Article 30

Article 31

Article 32

Article 33

Article 34

### Part Five Amendment of an Application

Article 35

Article 36

Article 37

Article 38

### Part Six Withdrawal of a Patent Application

Article 39

### Part Seven Prohibitions to File Patent Applications and Obligations to Preserve Confidentiality

Article 40

Article 41

## CHAPTER IV PUBLICATION AND SUBSTANTIVE EXAMINATION

### Part One Publication of Patent Applications

Article 42

Article 43

Article 44

Article 45

Article 46

Article 47

### Part Two Substantive Examination

Article 48

Article 49

Article 50

Article 51

Article 52

Article 53

### Part Three The Granting or Rejection of Applications

Article 54

Article 55

Article 56

Article 57

Article 58

Article 59

### Part Four Appeal Petitions

Article 60

Article 61

Article 62

Article 63

### Part Five Patent Appeal Commission

Article 64

Article 65

## CHAPTER V TRANSFER AND LICENSE OF A PATENT

### Part One Transfer

Article 66

Article 67

Article 68

Part Two License

Article 69

Article 70

Article 71

Article 72

Article 73

Part Three Compulsory Licenses

Article 74

Article 75

Article 76

Article 77

Article 78

Article 79

Article 80

Article 81

Article 82

Article 83

Article 84

Article 85

Article 86

Article 87

CHAPTER VI CANCELLATION OF PATENTS

Part One Patent Canceled By Law

Article 88

Article 89

Part Two Cancellation Upon Request of the Patent Holder

Article 90

Part Three Patent Cancellation Due To Lawsuit

Article 91

Article 92

Article 93

Article 94

Part Four Effects of Patent Cancellation

Article 95

Article 96

Article 97

Article 98

CHAPTER VII IMPLEMENTATION OF PATENT BY THE GOVERNMENT

Article 99

Article 100

Article 101

Article 102

Article 103

CHAPTER VIII SIMPLE PATENTS

Article 104

Article 105

Article 106

Article 107

Article 108

CHAPTER IX APPLICATIONS THROUGH THE PATENT CO-OPERATION TREATY (PCT)

Article 109

CHAPTER X PATENT ADMINISTRATION

Article 110

Article 111

Article 112

CHAPTER XI FEES

Article 113

Article 114

Article 115

Article 116

CHAPTER XII SETTLEMENT OF DISPUTES

Article 117

Article 118

Article 119

Article 120

Article 121

Article 122

Article 123

Article 124

CHAPTER XIII PROVISIONAL DECISION BY THE COURT

Article 125

Article 126

Article 127

Article 128

CHAPTER XIV INVESTIGATION

Article 129

CHAPTER XV CRIMINAL PROVISIONS

Article 130

Article 131

Article 132

Article 133

Article 134

Article 135

CHAPTER XVI TRANSITIONAL PROVISIONS

Article 136

Article 137

CHAPTER XVII CLOSING PROVISIONS

Article 138

Article 139

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1**

In this Law:

1. Patent shall mean an exclusive right given by the State to an inventor for his invention in the field of technology, for a certain time, in which he shall himself exploit the invention or give his approval to any other person to exploit the same.
2. Invention shall mean an inventor's idea that is poured into an activity of solving a specific problem in the field of technology, either in the form of a product or process, or an improvement and development of a product or a process.
3. Inventor shall mean a person or several persons acting together implementing an idea poured in an activity resulting in an invention.
4. Applicant shall mean those filing a patent application.
5. Application shall mean a patent application filed at the Directorate General.
6. Patent holder shall mean an inventor as the owner of patent or any party having received such right from the owner of patent or any person having received further right from the person aforesaid registered in the General Register of Patents.
7. Attorney shall mean a consultant of intellectual property rights.
8. Examiner shall mean a person who because of his expertise is appointed by the Minister as a functional official as patent examiner and shall have the duty to conduct substantive examination on applications.
9. Minister shall mean the Minister whose part of duties and responsibilities covers the development in the field of intellectual property rights, including patents.
10. Directorate General shall mean the Directorate General of Intellectual Property Rights under a department presided over by the Minister.
11. Filing date shall mean the date of receipt of an application, which has fulfilled formality requirements.
12. Priority Right shall mean the right of an applicant to file an application originating from a member country of the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization in order to get recognition that the filing date of the country of origin be the priority date in the country of designation that is also a member country of the two agreements, provided that the filing of the application is made during the period prescribed in the Paris Convention for the Protection of Industrial Property.

13. License shall mean a permission granted by the patent holder to another party by means of an agreement based on the grant of right to enjoy the economic benefit of a patent that is protected for a certain period of time and certain requirements.

14. Day shall mean working day.

## **CHAPTER II SCOPE OF PATENTS**

### **Part One Patentable Inventions**

#### **Article 2**

(1) A patent shall be granted to an invention, which is novel, involves inventive steps and which can be applied in industry.

(2) An invention involves inventive steps if said invention does not consist of the matters which are not predictable for a person who possesses average skills in the technical field.

(3) The judgment that an invention does not consist of the matters which are not predictable should be made by assessing the expertise existing at the time a patent application is submitted or existing at the time first application is submitted in case such application is submitted by claiming a right of priority.

#### **Article 3**

(1) An invention is considered as new, if at the date of filing of the application said invention is not the same with any previous technological disclosure.

(2) A previous technological disclosure as referred to in paragraph (1) is one which has been published in Indonesia or outside Indonesia in writing, by a verbal description or by a demonstration, or in other ways, which enable an expert to use said invention before:

- a. the filling date, or
- b. the priority date.

(3) The previous technological disclosure as referred to in paragraph (1) includes the documents of applications filed in Indonesia, which have been published on or after the filing date of application being substantively examined and which have a filing date that is prior to the filing date or priority date of application being substantively examined.

#### **Article 4**

(1) An invention is considered to be unpublished, if, within a maximum period of 6 (six) months before the filing date;

- a. the invention has been shown in an international exhibition in Indonesia or abroad, which is official, or acknowledged to be official

or in an national exhibition in Indonesia, which is official or acknowledged to be official;

b. the invention has been used in Indonesia by the inventor within the framework of experimentation for research and development purposes.

(2) An invention is also considered to be unpublished, if, within a period of 12 (twelve) months before the filing date, it was published by any other person by way of breaching an obligation to preserve the confidentiality of the relevant invention.

#### **Article 5**

An invention is industrially applicable if it can be implemented in the industry as described in the application.

#### **Article 6**

Any invention in the form of a new product or apparatus and possesses practical utility because of its shape, configuration, construction, or component may obtain legal protection in the form of a simple patent.

#### **Article 7**

Patent shall not be granted to an invention of:

a. a process or product whose publication and use or implementation contravenes the prevailing rules and regulations, religious morality, public order or ethics;

b. a method of examination, treatment, medical care, and/or surgery which may be applied on human beings and/or animals;

c. Theories and methods in the field of science and mathematics; or

d. i. all living creatures, except micro-organism;

ii. any biological process which is essential in producing plant or animal, except non-biological process or microbiological process.

### **Part Two Duration of Patents**

#### **Article 8**

(1) A patent shall be granted for a period of 20 (twenty) years unextendable, as from the filing date.

(2) The date of effect and the date of expiry of a patent shall be recorded and published.

## **Article 9**

A simple patent shall be granted for a period of 10 (ten) years as from the filing date and unextendable.

## **Part Three Subjects of Patents**

### **Article 10**

(1) Those entitled to a patent shall be the inventor or anyone subsequently receiving the right of such inventor.

(2) If an invention has been jointly produced by several persons, the right on the invention shall jointly belong to the relevant inventors.

### **Article 11**

Unless proved otherwise, the party deemed as the inventor shall be one who is firstly declared as the inventor in the application.

### **Article 12**

(1) Unless otherwise agreed in an employment agreement, those entitled to a patent on an invention which has been produced shall be the employer.

(2) The provision as referred to in paragraph (1) shall also be applicable to inventions produced by employees or a workers using data and/or facilities available in their employment, despite their employment agreement does not require them to make an invention.

(3) The inventors referred to in paragraphs (1) and (2) shall be entitled to receive a reasonable compensation with due observance to the economic benefits which can be derived from such invention.

(4) Compensation as referred to in paragraph (3) may be paid:

- (a) in a certain amount or in a lump sum;
  - (b) on a percentage basis;
  - (c) in a combination of a certain lump sum together with a gift or bonus;
  - (d) a combination of percentage with a gift or bonus; or
  - (e) any other forms agreed by the parties;
- the amount of which shall be determined by the relevant parties.

(5) If no agreement is reached concerning the method of calculation and the determination of the amount of compensation, a decision shall be given by the Commercial Court.

(6) The provisions as referred to in paragraph (1), paragraph (2) and paragraph (3) shall not abrogate the right of the inventor to have his name stated in the patent certificate.

#### **Article 13**

(1) With regards to the other provisions under this Law, a party using an invention at the time an identical invention is applied for patent shall remain entitled to use such invention as the prior user, even though such identical invention is subsequently granted a patent.

(2) The provisions in paragraph (1) shall also prevail for patent applications filed with priority rights.

#### **Article 14**

The provisions referred to in Article 13 shall not be effective when the party implementing such invention as a prior user, uses knowledge about the invention from the descriptions, drawings, or any other information of the invention from which patent has been requested.

#### **Article 15**

(1) The party using an invention as referred to in Article 13 may be acknowledged as the prior user, if he submits a patent application therefor to the Directorate General after a patent has been granted on the identical invention aforesaid.

(2) Request for acknowledgment as a prior user must be accompanied with evidence that such invention has not been made by using descriptions, drawings, samples or other information of the invention for which a patent has been requested.

(3) Acknowledgment as the prior user shall be given by the Directorate General in the form of a prior user certificate upon payment of a fee therefore.

(4) A prior user certificate shall expire at the time patent of identical invention expires.

(5) The procedure for obtaining the acknowledgment as a prior user shall be regulated by a Government Regulation.

## **Part Four Rights and Obligations of a Patent Holder**

### **Article 16**

(1) A patent holder shall have the exclusive right to exploit his patent and prohibit any other party who without his consent:

a. in case of product-patent: makes, uses, sells, imports, rents out, delivers, or supplies for sale or rental or delivery of the patented product;

b. in the case of process-patent: uses the patented production process to make products and commits other activities as referred to in point a.

(2) In the event of process-patent; such prohibition against any other party who without his consent commits the import of products as referred to in paragraph (1) shall only apply to imported products solely produced from the use of the pertinent patent process.

(3) Exempted from the provisions as referred to in paragraphs (1) and (2) if the use of said patent is for the education, research, experiment, or analysis, as long as it does not harm the normal interest of the patent holder.

### **Article 17**

(1) Without prejudice to the provisions in Article 16 paragraph (1), a patent holder shall be obliged to make products or to use the process that has been granted a patent in Indonesia.

(2) Exempted from the obligation as referred to in paragraph (1) if the making of the product or the use of the process is only suitable to be implemented in a regional scale.

(3) The exemption as referred to in paragraph (2) may only be approved by the Directorate General if the patent holder has submitted a written request that is accompanied by the reasons and evidence issued by the authorized agency.

(4) The requirements regarding the exemption and the procedure of submitting a written request as referred to in paragraph (3) shall be regulated further by a Government Regulation.

**Article 18**

For the management of the validity of a patent and the registration of licenses, the patent holder or license holder shall be obliged to pay the annual fees.

**Part Five Legal Action against Infringement on Patent****Article 19**

In the event that a product is imported into Indonesia and that the process to produce the relevant product has been protected by a patent based on this Law, the patent holder of the process shall have the right, based on the provisions of Article 16 paragraph (2) to bring a legal action against the imported product, if the product has already been made in Indonesia by using the patented process.

## **CHAPTER III PATENT APPLICATIONS**

### **Part One General**

#### **Article 20**

A patent shall be granted on the basis of an application.

#### **Article 21**

Each application may be filed for one invention only, or a number of inventions that constitute a unity of invention.

#### **Article 22**

A patent application shall be filed to the Directorate General with the payment of a fee.

#### **Article 23**

(1) If a patent application is filed by a person other than the inventor, such application must be accompanied with sufficient evidence that the patent applicant is entitled to the relevant invention.

(2) The inventor may examine the application form filed by a person other than the inventor as referred to in paragraph (1) and at his own expense may request a copy of documents of such application.

#### **Article 24**

(1) An application shall be filed at the Directorate General in writing in the Indonesian Language.

(2) The application form shall contain:

- a. the date, month and year of the application;
- b. clear and full address of the applicant;
- c. full name and nationality of the inventor;
- d. if the application is filed through an attorney, full name and address of the attorney concerned;
- e. a special power of attorney, where the application is filed by an attorney;
- f. a request for a patent;
- g. the title of invention;
- h. claim(s) contained in the invention;
- i. a written description of the invention which fully discloses the manner of implementation of the invention;

- j. drawings mentioned in the description which are required for the explanation;
- k. an abstract of the invention.

(3) Further provisions regarding the procedure for filing of an application shall be regulated by a Government Regulation.

## **Part Two Consultant of Intellectual Property Rights**

### **Article 25**

(1) An application may be filed by the applicant or through an attorney.

(2) The attorney as referred to in paragraph (1) shall be a consultant of intellectual property rights registered at the Directorate General.

(3) As from the date of receipt of a power of attorney, the patent consultant shall be obliged to safeguard the secrecy of the invention and all documents of the patent application until the date of publication of the relevant application.

(4) The provisions regarding the requirements to be elected as a consultant of intellectual property rights shall be regulated by a Government Regulation whilst the procedure for election shall be regulated by a Presidential Decree.

### **Article 26**

(1) An application which is filed by an inventor or an applicant who does not reside or does not have a fixed domicile in the territory of the Republic of Indonesia must be filed through his attorney in Indonesia.

(2) The inventor or applicant as referred to in paragraph (1) shall declare and choose his residence or legal domicile in Indonesia for the purpose of such application.

## **Part Three Application with Priority Right**

### **Article 27**

(1) An application filed with priority right as regulated by the Paris Convention for the Protection of Industrial Property shall be submitted within a period of 12 (twelve) months as from the date the first application is received by any country which also participates in such

convention or has become a member country of the Agreement Establishing the World Trade Organization.

(2) With due observance to the provisions of this Law concerning the requirements which must be fulfilled in the application, an application with priority right as referred to in paragraph (1) must be completed with a copy of the priority document validated by the competent authority in the country concerned within a period of 16 (sixteen) months as from the priority date.

(3) If the requirements contained in paragraphs (1) and (2) are not fulfilled, the application shall not be filed with priority right.

#### **Article 28**

(1) The provisions as referred to in Article 24 shall be applicable mutatis mutandis to an application with priority right.

(2) The Directorate General may request that an application filed with priority right shall be supplemented with:

- a. an official copy of the documents pertaining to the substantive examination of the first patent application overseas;
- b. an official copy of the patent documents which have been granted with respect to the first patent application made overseas;
- c. an official copy of the decision concerning the rejection of the first patent application made overseas in case such application is rejected;
- d. an official copy of the decision for the annulment of the relevant foreign patent which has been issued overseas in case such patent has been annulled;
- e. other documents which may be required in order to facilitate an evaluation that the invention for which a patent has been requested is a new invention and actually involves an inventive step and is industrially applicable.

(3) The submission of the copies of documents referred to in paragraph (2) may be supplemented with a separate additional clarifications by the applicant.

#### **Article 29**

Further provisions regarding the request for a priority document from the Directorate General and pertaining to the application that is filed with a priority right shall be regulated by a Presidential Decree.

## **Part Four Time of Receipt of an Application**

### **Article 30**

(1) The filing date of an application shall be the date the Directorate General receives the application which has fulfilled the provisions as referred to in Article 24 paragraph (1) and paragraph (2) letters a, b, f, h, i and j, if the application has drawings, and after the fee as referred to in Article 22 has been paid.

(2) In the case the description as referred to in Article 24 paragraph (2) letters h and i is written in English, the description shall be supplemented with its translation in the Indonesian language which must be submitted within 30 (thirty) days from the filing date as referred to in paragraph (1).

(3) If the Indonesian translation has not been submitted within the period as referred to in paragraph (2), such application shall be deemed withdrawn.

(4) The date of filing of a patent application shall be recorded by the Directorate General.

### **Article 31**

In case there are deficiencies as referred to in Article 30 paragraphs (1) and (2), the filing date shall be the date the Directorate General receives all the minimum requirements.

### **Article 32**

(1) If in fact the requirements as referred to in Article 30 have been fulfilled, however the application does not fulfill the provisions of Article 24, the Directorate General may request that such deficiencies be fulfilled within the period of 3 (three) months as from the date of transmittal of the notification of deficiencies by the Directorate General.

(2) Based on reasons acceptable to the Directorate General, the period referred to in paragraph (1) may be extended for a maximum of 2 (two) months upon the request of the applicant.

(3) The period as referred to in paragraph (2) may be extended for a maximum of 1 (one) month as of the date of expiry of the period, provided that

a fee has to be paid by the applicant.

### **Article 33**

If the requirements have not been fulfilled within the period as referred to in Article 32, the Directorate General shall notify the applicant in writing that the application is deemed to be withdrawn.

### **Article 34**

(1) In the event one or more patent applications are filed by different applicants for the same invention, only the application which is filed first shall be accepted.

(2) If the patent applications as referred to in paragraph (1) were filed on the same date, the Directorate General shall notify the applicants in writing to negotiate to decide which application is to be filed and deliver the decision to the Directorate General at the latest 6 (six) months from the date of the notification.

(3) If the applicants could not reach an agreement or could not produce a decision or it is impossible for them to negotiate, or the results of the negotiation are not delivered to the Directorate General within the period stipulated in paragraph (2), the said applications shall be rejected and the Directorate General shall give notice thereof to the applicants in writing.

## **Part Five Amendment of an Application**

### **Article 35**

An application may be amended by revising the description and/or the claims, provided that such amendments do not expand the scope of invention applied for the original application.

### **Article 36**

(1) An applicant may request division of an application if the said application contains a number of inventions that do not constitute a unity of invention as referred to in Article 21.

(2) The division of an application as referred to in paragraph (1) may be filed separately in an application or more, provided that the scope of protection applied for in each application does not expand the scope of protection applied for in the original application.

(3) The request for the division of an application as referred to in paragraph (1) may be filed at the latest before the original application is granted a decision as referred to in Article 55 paragraph (1) or Article 56 paragraph (1).

(4) The request for the division of an application as referred to in paragraphs (1) and (2) which has fulfilled the requirements as referred to in Article 21 and Article 24 shall be deemed to have been filed on the same date with the original filing date.

(5) In the case an applicant does not file the request for the division of an application within the period as referred to in paragraph (3), the substantive examination shall only be conducted on the inventions as stated in the sequence of claims in the original application.

#### **Article 37**

An application may be amended from a patent to be a simple patent or the other way round by the applicant, by still considering the provisions in this Law.

#### **Article 38**

Further provisions regarding the amendment as referred to in Articles 35, 36 and 37 shall be regulated by a Presidential Decree.

### **Part Six Withdrawal of a Patent Application**

#### **Article 39**

(1) A patent application may be withdrawn by submitting a written request to the Directorate General.

(2) Further provisions concerning the withdrawal of an application shall be regulated by a Presidential Decree.

### **Part Seven Prohibitions to File Patent Applications and Obligations to Preserve Confidentiality**

#### **Article 40**

While still bound in active service and until one year after the retirement or after ceasing to work at the Directorate General for whatever reason, an employee of the Directorate General or any person who, due to his assignment has been working for or on behalf of the Directorate General,

shall not be permitted to file an application, to obtain a patent, or in any other manner obtain a right or hold a right relating to a patent, unless the ownership of patent is due to inheritance.

**Article 41**

As from the filing date of an application, all officials at the Directorate General or any person whose duties relate to the duties of the Directorate General shall be obliged to preserve the confidentiality of the invention and all application documents, until the publication date of the relevant application.

## CHAPTER IV PUBLICATION AND SUBSTANTIVE EXAMINATION

### Part One Publication of Patent Applications

#### Article 42

(1) The Directorate General shall publish applications that have fulfilled the requirements of Article 24.

(2) The publication shall be carried out

a. in the case of a patent, 18 (eighteen) months after the filing date of the application, or 18 (eighteen) months after the priority date if the application is filed with a priority right; or

b. in the case of a simple patent, at the latest 3 (three) months after the filing date.

(3) The publication as referred to in paragraph (2) letter a may be conducted earlier upon a request from the applicant with the payment of a fee.

#### Article 43

(1) The publication shall be carried out by:

a. placing such publication in the Official Patent Gazette published periodically by the Directorate General; and/or.

b. placing such publication on publication board exclusively provided for such purpose by the Directorate General which may be easily and clearly seen by the public.

(2) The commencement date of the publication of a patent application shall be registered by the Directorate General.

#### Article 44

(1) The publication shall prevail for:

a. 6 (six) months as from the date of the publication of an application for a patent;

b. 3 (three) months as from the date of the publication of an application for a simple patent.

(2) The publication shall be made by containing:

a. name and nationality of the inventor;

b. name and complete address of the applicant, and the attorney if an application is filed through an attorney;

- c. title of invention;
- d. the filing date; and in the event an application is filed with a priority right, the date, number and country where the application was first filed;
- e. an abstract;
- f. the classification of invention;
- g. drawings, if any;
- h. the patent publication number; and
- i. the patent application number.

#### **Article 45**

(1) Any person may see the publication as referred to in Article 44 and may submit a written opinion and/or objection on the relevant patent application together with the reasons.

(2) In the event of any opinion or objection as referred to in paragraph (1), the Directorate General shall immediately send a copy of the letter containing such opinion and/or objection to the applicant.

(3) The applicant shall be entitled to submit in writing any denial or explanation regarding such opinion or objection to the Directorate General.

(4) The Directorate General shall use the opinion and/or objections, denials and/or explanations as referred to in paragraphs (1) and (3) as additional information for consideration during the substantive examination level.

#### **Article 46**

(1) After consulting the government agency of which the duties and authorities are related to the defense and security of the state, if needed, the Directorate General with the approval of the Minister may decide not to publish a patent application, if in its opinion the publication of such invention may disrupt or contravene defense and security interest of the State.

(2) The decision not to publish a patent application as referred to in paragraph (1) shall be notified by the Directorate General in writing to the patent applicant or his attorney.

(3) Any consultation held by the Directorate General with any other government agencies, including the giving of information concerning an

invention for which a patent has been applied, which results in a decision not to publish the application, shall not be considered as a violation of the obligation to safeguard the confidentiality of the invention as referred to in Article 40 and Article 41.

(4) The provision as referred to in paragraph (3) shall not diminish the obligation of the relevant government agencies and their staff members to continue preserving the confidentiality of the invention and the application documents from any third party.

#### **Article 47**

(1) An application which is not published as referred to in Article 46 shall be examined as to substance after 6 (six) months from the date of the decision not to publish the said application.

(2) The examination as referred to in paragraph (1) shall be conducted without a payment of fee.

#### **Part Two Substantive Examination**

#### **Article 48**

(1) A request for the examination of an application shall be submitted in writing to the Directorate General with the payment of a fee.

(2) The procedure and requirements regarding the request for a substantive examination shall be further regulated by a Presidential Decree.

#### **Article 49**

(1) A request for the substantive examination as referred to in Article 48 paragraph (1) shall be submitted no later than 36 (thirty six) months from the filing date.

(2) If a request for examination has not been submitted within the period as referred to in paragraph (1), or the fee therefor has not been paid, the application shall be deemed to have been withdrawn.

(3) The Directorate General shall notify the applicant or his attorney in writing regarding the withdrawal of the application as referred to in paragraph (2).

(4) If the request for examination as referred to in paragraph (1) is

filed before the end of the publication period as referred to in Article 44 paragraph (1), the examination shall be conducted after the end of the publication period.

(5) If the request for examination as referred to in paragraph (1) is filed after the end of the publication period as referred to in Article 44 paragraph (1), the examination shall be conducted after the date of receipt of the request for substantive examination.

#### **Article 50**

(1) For the purpose of conducting substantive examination, the Directorate General may request experts assistance and/or utilize necessary facilities from other Government agencies or may request the assistance from examiners of patent offices from other countries.

(2) The use of expert assistance, facilities, examiners of other patent offices as referred to in paragraph (1) shall be performed by observing the provisions concerning the obligation to preserve the confidentiality as referred to Article 40 and Article 41.

#### **Article 51**

(1) A substantive examination shall be conducted by patent examiners.

(2) A patent examiner at the Directorate General is a functional official and shall be appointed and dismissed by the Minister in accordance with the prevailing rules and regulations.

(3) A patent examiner as referred to in paragraph (2) shall be accorded a functional rank and allowances in addition to other rights in accordance with the prevailing regulations.

#### **Article 52**

(1) In the event the examiner reports that an invention for which a patent has been requested evidently contains ambiguities or other significant deficiencies, the Directorate General shall notify the result to the applicant or his attorney and request comments or the completion of such deficiencies.

(2) The notification as referred to in paragraph (1) must state clearly and in details the matters considered to be ambiguous or other significant deficiencies together with the reasons and references used in the

examination as well as the period for the completion of said deficiencies.

### **Article 53**

If following the notification as referred to in Article 52 paragraph (1) the applicant does not provide any clarification or complete the deficiencies, or does not make any changes or improvements on the application within the period stipulated by the Directorate as referred to in Article 52 paragraph (2), the relevant application shall be deemed withdrawn and the Directorate General shall notify the applicant in writing.

## **Part Three The Granting or Rejection of Applications**

### **Article 54**

The Directorate General shall be obliged to decide to approve or to refuse an application for:

- a. a patent, no later than 36 (thirty six) months from the date of receipt of the request for substantive examination as referred to in Article 48 or from the end of the publication period as referred to in Article 44 paragraph (1) if the request for substantive examination was filed before the end of the publication period.
- b. a simple patent, no later than 24 (twenty four) months from the filing date.

### **Article 55**

(1) If the result of the examination conducted by Patent Examiner concludes that the invention complies with the provisions of Article 2, Article 3 and Article 5 and other provisions of this Law, the Directorate General issue a Patent Certificate to the applicant or his attorney.

(2) If the result of the examination conducted by Patent Examiner concludes that the invention complies with the provisions of Article 3, Article 5 and Article 6 and other provisions of this Law, the Directorate General may issue a simple patent certificate to the applicant or his proxy.

(3) The Directorate General shall record and publish a patent that has been granted, except for patent applications which concern the defense and security of the State.

(4) The Directorate General may provide copies of the patent document

to any person in need upon the payment of a fee, except for patents that are not published as referred to in Article 46.

#### **Article 56**

(1) If the result of the examination carried out by the examiner indicates that the invention for which a patent has been requested does not fulfill the provisions of Article 2, Article 3, Article 5, Article 6, Article 35, Article 52 paragraphs (1) and (2), or is included among inventions as referred to in Article 7, the Directorate General shall refuse the relevant application and shall notify the applicant or his attorney in writing.

(2) The Directorate General shall also refuse an application that has been divided, if the division has expanded the scope of invention or the request for the division was filed after the end of period as referred to in Article 36 paragraph (2) or (3).

(3) If the result of the examination carried out by the examiner indicates that the invention for which a patent has been requested has not fulfilled the provision of Article 36 paragraph (2), the Directorate General shall refuse parts of the application and notify the applicant or his attorney in writing.

(4) The notification of refusal of an application shall clearly state the reasons and considerations that constitute the basis for the refusal.

#### **Article 57**

(1) A patent certificate shall be the proof of right on patent.

(2) The Directorate General shall record the notification of refusal.

#### **Article 58**

A patent shall be effective as of the date of issuance of a patent certificate and shall be valid retroactively as of the filing date.

#### **Article 59**

Further provisions concerning the granting of patent certificates, their form and contents and other provisions regarding the recording and the request for copies of patent documents shall be regulated by a Government Regulation.

## **Part Four Appeal Petitions**

### **Article 60**

(1) An appeal may be filed against the refusal of an application in respect of reasons and basic considerations pertaining to substantive matters as referred to in Article 56 paragraph (1) or (2).

(2) A request for appeal shall be filed in writing by the applicant or his attorney to the Patent Appeal Commission with a copy to the Directorate General.

(3) A request for appeal shall be filed by describing in detail the objections to the refusal of the application as the result of substantive examination and stating the grounds therefore.

(4) The grounds as referred to in paragraph (3) must not constitute new reasons or explanations that expand the scope of invention as referred to in Article 35.

### **Article 61**

(1) A request for appeal shall be filed no later than 3 (three) months from the date of the notification of rejection of the application.

(2) If the period as referred to in paragraph (1) has elapsed without an appeal petition, the refusal of the patent application shall be deemed to be accepted by the applicant.

(3) In the event the refusal of an application has been deemed to be accepted as referred to in paragraph (2), the Directorate General shall record and publish this fact.

### **Article 62**

(1) A request for appeal shall be examined by the Patent Appeal Commission at the latest 1 (one) month from the date of filing of said request.

(2) The Patent Appeal Commission shall make its decision no later than 9 (nine) months from the end of period as referred to in paragraph (1).

(3) In the event the Patent Appeal Commission accepts and approves an appeal petition, the Directorate General shall be obliged to implement the decision of the Patent Appeal Commission.

(4) If the Patent Appeal Commission refuses an appeal petition, the applicant or his attorney may bring a legal action against the decision to the Commercial Court within the period of 3 (three) months from the date of receipt of the refusal.

(5) Upon the decision of the Court as referred to in paragraph (4), the applicant may only file a cassation to the Supreme Court.

### **Article 63**

The procedure of filing a request, examination as well as the settlement of appeals shall be further regulated by a Presidential Decree.

## **Part Five Patent Appeal Commission**

### **Article 64**

(1) The Patent Appeal Commission is a special independent agency and operates within the department in the field of intellectual property right.

(2) The Patent Appeal Commission shall comprise a chairman who also acts as member, a deputy chairman who acts also as member and members consisting of several experts in the necessary fields, and senior patent examiners.

(3) The members of the Patent Appeal Commission as referred to in paragraph (1) shall be appointed and dismissed by the Minister for a service period of 3 (three) years.

(4) The chairman and deputy-chairman shall be elected from and by the members of the Patent Appeal Commission.

(5) To examine an appeal, the Patent Appeal Commission shall establish a hearing board with an odd number, at a minimum of 3 (three) persons, one of whom shall be a senior examiner who has not conducted the substantive examination of the relevant patent application.

### **Article 65**

The organizational structure, duties and functions of the Patent Appeal Commission shall be further regulated by a Government Regulation.

## **CHAPTER V TRANSFER AND LICENSE OF A PATENT**

### **Part One Transfer**

#### **Article 66**

(1) A patent or the ownership of a patent may be transferred in whole or in part by:

- a. inheritance;
- b. legacy;
- c. will;
- d. written agreement; or
- e. other reasons justified by the law.

(2) The transfer of a patent as referred to in paragraph (1) letters a, b and c shall be accompanied with the original patent documents together with other rights pertaining to the relevant patent.

(3) All forms of patent transfer as referred to in paragraph (1) must be recorded and published, with the payment of a fee.

(4) Any transfer of patent, which is not in accordance with the provisions of this Article, shall not be valid and effective.

(5) The requirements and procedures for the recording of patent transfers shall be further regulated by a Presidential Decree.

#### **Article 67**

(1) Except for inheritance, the rights as the prior user as referred to in Article 13 shall not be transferred.

(2) The transfer of right as referred to in paragraph (1) shall be recorded and published, with the payment of fee.

#### **Article 68**

The transfer of right shall not obliterate the right of the inventor to have his name or other identity included in the relevant patent.

### **Part Two License**

#### **Article 69**

(1) The Patent Holder shall be entitled to give a license to another person

pursuant to a license agreement for performance of acts referred to in Article 16.

(2) Unless otherwise agreed, the scope of the license as referred to in paragraph (1) shall cover all acts as referred to in Article 16 which shall be effective during the term of license, and shall be valid for the whole territory of the Republic of Indonesia.

#### **Article 70**

Unless otherwise agreed, a patent holder may continue to perform by himself or give a license to any other third parties to perform the acts referred to in Article 16.

#### **Article 71**

(1) A license agreement shall not contain provisions that may directly or indirectly be detrimental to the economy of Indonesia, or contain restrictions which hamper the capabilities of the Indonesian people to master and develop technology in general and particularly with respect to invention for which patent has been granted.

(2) The request for recordation of any license agreement which contains provisions as referred to in paragraph (1) must be refused by the Directorate General.

#### **Article 72**

(1) A license agreement shall be recorded and published, with the payment of a fee.

(2) In the event a license agreement is not recorded at the Directorate General as referred to in paragraph (1), such license agreement will have no legal effects on a third party.

#### **Article 73**

Further provisions concerning license agreements shall be regulated by a Government Regulation.

### **Part Three Compulsory Licenses**

#### **Article 74**

A compulsory license shall mean a license to implement a patent which has been granted based on a decision of the Directorate General based

on an application.

#### **Article 75**

(1) Any party may, after the expiration of the 36 (thirty six) months as of the date of grant of a patent, submit an application for a compulsory license at the Directorate General, with the payment of a fee.

(2) A request for a compulsory license as referred to in paragraph (1) may only be submitted on the grounds that the relevant patent has not been implemented in the Republic of Indonesia or only partially implemented by the patent holder.

(3) A request for a compulsory license may also be submitted 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.

#### **Article 76**

(1) In addition to the truth of reasons as referred to in Article 75 paragraph (2), a compulsory license may only be given if:

a. the person submitting such application can provide convincing evidence that he:

i. has the capability to personally and fully implement the relevant patent;

ii. has his own facilities for the immediate implementation of the relevant patent;

iii. has made efforts in a sufficient period of time to acquire a license from the patent holder on the basis of normal terms and conditions but did not succeed.

b. the Directorate General is of the opinion that relevant patent may be implemented in Indonesia on a feasible economic scale and may benefit to the majority of the society.

(2) The examination of a request for a compulsory license shall be conducted by the Directorate General by hearing the opinion of other related government agencies and parties, as well as the relevant patent holder.

(3) A compulsory license shall be given for a period no longer than the period of patent protection.

**Article 77**

If, based on the evidence and opinions as referred to in Article 76, the Directorate General is convinced that the time frame referred to in Article 75 paragraph (1) is not sufficient for the patent holder to commercially implement the patent in Indonesia, or within a regional scope as referred to in Article 17 paragraph (2), the Directorate General may decide to adjourn or dismiss the application for compulsory license.

**Article 78**

(1) The implementation of a compulsory license shall include the payment of royalty by the compulsory licensee to the patent holder.

(2) The amount of royalty which must be paid and the method of payment shall be determined by the Directorate General.

(3) The stipulation of the amount of royalty shall be made by taking into account the common practices in patent license agreement or other similar agreements.

**Article 79**

The decision of the Directorate General regarding the grant of a compulsory license shall contain the followings:

- a. that the compulsory license shall be non-exclusive;
- b. the reasons for issuance of the compulsory license;
- c. evidence, including convincing statement or explanations, which form the basis for the granting of the compulsory license;
- d. the period of the compulsory license;
- e. the amount of royalties which must be paid by the compulsory licensee to the patent holder and the method of payment therefore;
- f. conditions on the termination of the compulsory license and matters which may cancel the compulsory license;
- g. that the compulsory license will be primarily used to supply the demand in the national market.
- h. other matters necessary to protect the interest of the parties concerned in a fair manner.

**Article 80**

(1) The Directorate General shall record and publish the grant of a compulsory license.

(2) The implementation of a compulsory license shall be deemed to be the

implementation of the relevant patent.

#### **Article 81**

The decision to grant a compulsory license shall be made by the Directorate General at the latest 90 (ninety) days as of the filing of request for the relevant compulsory license.

#### **Article 82**

(1) The request for a compulsory license may also be filed at any time by the patent holder on the grounds that the implementation of his patent cannot be carried out without infringing another existing patent.

(2) The request for a compulsory license as referred to in paragraph (1) may only be considered if the patent to be implemented genuinely contains elements of technological reform, which is more advanced than the existing patent.

(3) In the event the request for a compulsory license is filed on the grounds as referred to in paragraphs (1) and (2):

a. the patent holder shall be entitled to give each other a license to use the other party's patent under reasonable terms.

b. the implementation of patent by the compulsory license holder cannot be transferred unless it is transferred together with the assignment of the other patent.

(4) Upon the request for a compulsory license at the Directorate General as referred to in paragraphs (1) and (2) the provisions of Part Three of this Chapter shall apply, except the provisions concerning the time frame for filing a request as provided in Article 75 paragraph (1).

#### **Article 83**

(1) Upon a request of the patent holder, the Directorate General may revoke the decision to grant a compulsory license as referred to in Part Three of this Chapter, if:

a. the underlying reasons for the granting of a compulsory license is no longer exist;

b. the compulsory license holder in fact has not implemented the compulsory license or has not made any appropriate preparations for immediate implementation of the license;

c. the compulsory license holder no longer complies with other terms and conditions, including the obligation to pay royalties which has been

determined in the granting of the compulsory license.

(2) The revocation as referred to in paragraph (1) shall be recorded and published.

**Article 84**

(1) In the event a compulsory license terminates due to the expiry of the period stipulated in the grant thereof, or upon revocation, the compulsory licensee shall return the license he has obtained.

(2) The Directorate General shall record and publish the compulsory license that has terminated.

**Article 85**

The termination of a compulsory license as referred to in Article 83 and Article 84 shall result in the restoration of the rights of the patent holder to the relevant patent, commencing on the date of recordation of the termination.

**Article 86**

(1) A compulsory license may not be transferred, except due to inheritance.

(2) A compulsory license that is transferred due to inheritance shall continue to be subject to the requirements of its grant and other provisions, particularly regarding the period of time, and shall be reported to the Directorate General to be recorded and published.

**Article 87**

Further provisions regarding compulsory licenses shall be regulated by a Government Regulation.

## **CHAPTER VI CANCELLATION OF PATENTS**

### **Part One Patent Canceled By Law**

#### **Article 88**

A patent may be declared as canceled by operation of law if the patent holder does not fulfill his obligation to pay the annual fees within the period stipulated under this Law.

#### **Article 89**

(1) The cancellation of a patent by operation of law shall be notified in writing by the Directorate General to the patent holder and the licensee and shall be effective as of the date of notification.

(2) The cancellation of a patent on the grounds as referred to in Article 88 shall be recorded and published.

### **Part Two Cancellation Upon Request of the Patent Holder**

#### **Article 90**

(1) A patent may be canceled completely or partially by the Directorate General upon the written request from the patent holder to the Directorate General.

(2) The cancellation of patent as referred to in paragraph (1) can not be effected if the license holder has not given a written approval to be attached to the request for cancellation.

(3) The decision of cancellation of a patent shall be notified in writing to the license holder by the Directorate General.

(4) The decision of cancellation of a patent due to reasons as referred to in paragraph (1) shall be recorded and published.

(5) The cancellation of a patent shall be effective as of the date of the stipulation of the decision of the Directorate General.

### **Part Three Patent Cancellation Due To Lawsuit**

#### **Article 91**

(1) A lawsuit for cancellation of a patent may be made in the event:

- a. the relevant patent should not have been granted pursuant to Article 2, Article 6, or Article 7;
- b. such patent is similar to another patent that has been granted to another person for the same invention based on this Law;
- c. the grant of a compulsory license proves that the continuing patent implementation in the way and form that damage public interest can not be prevented, within a period of 2 (two) years since the date of grant of the compulsory license or the date of grant of such compulsory license for the first time, in the case there are several compulsory licenses.

(2) A lawsuit for cancellation due to reasons as referred to in paragraph (1) letter a may be filed by a third party against the patent holder to the Commercial Court.

(3) A lawsuit for cancellation due to reasons as referred to in paragraph (1) letter b may be filed by the patent holder or the license holder to the Commercial Court requesting the cancellation of the other patent which is similar to his.

(4) A lawsuit for the cancellation due to reasons as referred to in paragraph (1) letter c may be filed by the public prosecutor against the patent holder or the compulsory licensee to the Commercial Court.

#### **Article 92**

If the lawsuit for cancellation of a patent as referred to in Article 91 shall be confined to one or several claims or parts of claims, the cancellation shall be granted only with respect to matters for which revocation is sought.

#### **Article 93**

(1) The decision of the Commercial Court on the cancellation of a patent shall be forwarded to the Directorate General at the latest 14 (fourteen) days as of the date of the decision.

(2) The Directorate General shall record and publish the decision on cancellation of a patent as referred on in paragraph (1).

#### **Article 94**

The procedure of filing a lawsuit as referred to in Chapter XII of this Law shall apply mutatis mutandis to Article 91 and Article 92.

## **Part Four Effects of Patent Cancellation**

### **Article 95**

The cancellation of a patent shall nullify all legal consequences connected with the patent and other rights deriving from it.

### **Article 96**

Unless determined otherwise by a decision of the Commercial Court, the cancellation of a patent completely or partially shall be effective as of the date on which the decision regarding the revocation becomes legally binding.

### **Article 97**

(1) The license holder of a patent canceled due to reasons as referred to in Article 91 paragraph (1) letter b shall continue to be entitled to implement his license until the expiration date stipulated in the license agreement.

(2) The license holder as referred to in paragraph (1) shall no longer be required to continue to pay royalties which he would otherwise be required to pay to the patent holder whose patent was canceled, but to pay royalties for the remaining of his license period to the right patent holder.

(3) Where the patent holder has received in advance a lump sum payment of royalties from the licensee, he shall be obligated to refund the amount of royalties proportionate to the remaining period of the utilization of the license to the legitimate patent holder.

### **Article 98**

(1) A license of a patent declared to be canceled due to reasons as referred to in Article 91 paragraph (1) letter b, but acquired in good faith before the filing of the lawsuit for revocation of the relevant patent, shall continue to be effective with respect to the other patent.

(2) The license as referred to in paragraph (1) shall continue to be effective provided that the licensee shall thereafter continue to be obligated to pay royalties to the patent holder that was not revoked in the same amount as previously agreed with the patent holder that was revoked.

## **CHAPTER VII IMPLEMENTATION OF PATENT BY THE GOVERNMENT**

### **Article 99**

(1) If the Government is of the opinion that a patent in Indonesia is very important for the defense and security of the State and for an urgent need for the public interest, the Government may implement the relevant patent itself.

(2) The decision to implement a patent itself shall be stipulated by a Presidential Decree after hearing the consideration from the Minister and from the minister or head of the agencies in-charge in the relevant field.

### **Article 100**

(1) The provisions of Article 99 shall apply mutatis mutandis to any invention for which a patent has been requested but which has not been published as referred to in Article 46.

(2) In the event the Government does not or has not yet intended to implement a patent itself as referred to in paragraph (1), the implementation of the same patent may only be undertaken with an approval from the Government.

(3) The holder of patent as referred to in paragraph (2) shall be exempted from the obligation to pay the annual fees until the relevant patent has been implemented.

### **Article 101**

(1) In the event the Government intends to implement a patent itself for the defense and security of the State and for an urgent need for the public interest, the Government shall inform the patent holder of such matter in writing by stating:

- a. the title and number of the relevant patent as well as the name of patent holder;
- b. the reasons;
- c. the period of implementation;
- d. other matters considered significant.

(2) The implementation of a patent by the Government shall be carried out with the provision of reasonable compensation to the patent holder.

**Article 102**

(1) The decision of the Government to implement a patent itself shall be final.

(2) In the event the patent holder does not agree with the amount of compensation determined by the Government, he may file objections as a lawsuit to the Commercial Court.

(3) The process of examining the lawsuit as referred to in paragraph (2) shall not stop the implementation of the relevant patent by the Government.

**Article 103**

Provisions regarding the procedure of implementation of patent by the Government shall be regulated by a Government Regulation.

## **CHAPTER VIII SIMPLE PATENTS**

### **Article 104**

Except for matters that are specifically regulated for simple patents, all other provisions regarding patents as regulated in this Law shall apply mutatis mutandis to simple patents.

### **Article 105**

(1) A simple patent shall only be granted for one invention.

(2) A request for the substantive examination on a simple patent may be filed at the same time with the filing of the application or at the latest 6 (six) months as of the filing date, with the payment of a fee.

(3) In the event a request for the substantive examination has not been filed or the fee has not been paid within the prescribed period as referred to in paragraph (2), the application shall be deemed withdrawn.

(4) Upon an application for a simple patent, the substantive examination shall be conducted after the expiration of publication period as referred to in Article 44 paragraph (1) letter b.

(5) In conducting the substantive examination, the Directorate General shall only examine the novelty as referred to in Article 3 and the industrial applicability as referred to in Article 5.

### **Article 106**

(1) A simple patent granted by the Directorate General shall be recorded and published.

(2) The Directorate General shall issue a certificate of simple patent to the holder of simple patent, for a simple patent as a proof of right.

### **Article 107**

A simple patent shall not be applied for a compulsory license.

### **Article 108**

Further provisions regarding simple patents shall be regulated by a Government Regulation.

## CHAPTER IX APPLICATIONS THROUGH THE PATENT CO-OPERATION TREATY (PCT)

### Article 109

(1) An application may be filed through the Patent Co-operation Treaty (PCT).

(2) Further provisions regarding the application as referred to in paragraph (1) shall be regulated by a Government Regulation.

## **CHAPTER X PATENT ADMINISTRATION**

### **Article 110**

The administration of patents as regulated under this Law shall be performed by the Directorate General with due regard to the authority of other agencies as regulated under this Law.

### **Article 111**

The Directorate General shall maintain the documentation and patent information services by establishing a national patent documentation system and information network capable of providing information to the public regarding patented technology on the widest possible scale.

### **Article 112**

In implementing the administration of patents, the Directorate General shall receive guidance from and be responsible to the Minister.

## **CHAPTER XI FEES**

### **Article 113**

(1) All fees that have to be paid under this Law shall be stipulated by a Government Regulation.

(2) Further provisions regarding the requirements, periods and methods of payment of fees as referred to in paragraph (1) shall be regulated by a Presidential Decree.

(3) The Directorate General with the approval from the Minister and the Minister of Finance may use the income deriving from the fees as referred to in paragraph (1), based on the prevailing rules and regulations.

### **Article 114**

(1) The payment of the first annual fee shall be made at the latest one year from the date of grant of patent.

(2) The payment of the following annual fees, provided that the patent is still valid, shall be made at the latest on the same date with the date of grant of patent or the date of the recording of the relevant license.

(3) The payment of annual fee as referred to in paragraph (1) shall be counted from the first year of the application.

### **Article 115**

(1) If within 3 (three) consecutive years a patent holder has not paid the annual fees as stipulated in Article 18 and Article 114, the relevant patent shall be declared to be canceled by operation of law on the date constituting the time limit for the payment for the third year.

(2) In the event the failure to meet the obligation regarding the payment of annual fees concerns the payment of annual fees for the eighteenth and subsequent years, the relevant patent shall be deemed void on the time limit for the payment of annual fee for the relevant year.

(3) The revocation of a patent on the grounds as referred to in paragraphs (1) and (2) shall be recorded and published.

**Article 116**

(1) Except for matters as referred to in Article 114 paragraph (3) and Article 115 paragraph (2), the payment of annual fees later than the time stipulated in this Law shall be subject to an additional fee of 2.5% (two and a half percents) for each month from the annual fee of relevant year.

(2) The late payment of annual fees as referred to in paragraph (1) shall be notified in writing by the Directorate General to the patent holder within 7 (seven) days after the stipulated time limit has passed.

(3) The failure to receive the notification as referred to in paragraph (2) by the person concerned shall not detract from the applicability of the provisions as referred to in paragraph (1).

## **CHAPTER XII SETTLEMENT OF DISPUTES**

### **Article 117**

(1) In the event a patent is granted to a person other than the person entitled to relevant patent based on Article 10, Article 11, and Article 12, the person so entitled to the patent may bring a lawsuit to the Commercial Court.

(2) The rights that pertain to a patent as referred to paragraph (1) may be claimed and shall be effective retroactively as from the filing date.

(3) The notification of the decision on a lawsuit as referred to in paragraph (1) shall be forwarded to the relevant parties by the Commercial Court at the latest 14 (fourteen) days as of the date on which the decision is made.

(4) The Directorate General shall record and publish the decision as referred in paragraph (3).

### **Article 118**

(1) A patent holder or a licensee shall be entitled to bring a lawsuit for damages through the Commercial Court against any person who deliberately and without rights performs any acts as referred to in Article 16.

(2) The lawsuit for damages filed against any acts as referred to in paragraph (1) may only be accepted if the product or process is proven to have been made by using the patented invention.

(3) The decision of the Commercial Court on the lawsuit shall be forwarded to the Directorate General at the latest 14 (fourteen) days as of the date on which the decision is made, to thereafter be recorded and published.

### **Article 119**

(1) In the trial of an infringement case on a patented process, the burden of proof that the product was not produced by using the process-patent as referred to in Article 16 paragraph (1) letter b shall lie on the defendant if:

a. the product which was made with the process-patent constitutes a new one;

b. there is a possibility that the product has resulted from the process-patent and although sufficient effort has been made for the purpose, the patent holder is not able to determine which process he has used to make the product.

(2) For the purpose of proof in the infringement case as referred to in paragraph (1), the Court shall be authorized:

a. to order the patent holder to deliver in advance a copy of certificate of the relevant patent, and prima facie evidence supporting his allegation; and

b. to order the party who is assumed to have committed an infringement to prove that the product did not result from the use of the process-patent.

(3) In the trial of the patent infringement case as referred to in paragraphs (1) and (2), a judge shall consider the interest of the party assumed to have committed the infringement, to get a protection on the secrecy of the process he described for the purpose of proof in the court session.

#### **Article 120**

(1) A lawsuit shall be filed at the Commercial Court, with a payment of fee.

(2) The Commercial Court shall determine the date for a hearing within a period of 14 (fourteen) days at the latest.

(3) The examination on a lawsuit shall be conducted within the period of 60 (sixty) days as of the date on which the lawsuit is filed.

#### **Article 121**

(1) The confiscation clerk shall summon the relevant parties at the latest 14 (fourteen) days before the first examination takes place.

(2) A decision on the lawsuit shall be made at the latest 180 (one hundred and eighty) days as of the date on which the lawsuit is filed.

(3) The injunction as referred to in paragraph (2), which contains a complete legal reasoning as the basis of the decision, shall be stated in a court session which is open to the public.

(4) The Commercial Court shall forward the decision to the relevant parties at the latest 14 (fourteen) days as of the date on which the decision is made in a court session that is open to the public.

#### **Article 122**

Upon the decision of the Commercial Court as referred to in Article 121 paragraph (3) may only be filed a cassation.

#### **Article 123**

(1) The request for cassation as referred to in Article 122 shall be made at the latest 14 (fourteen) days after the date of the decision and submitted to the court that has made a decision of the lawsuit.

(2) The clerk of the court shall register the request for cassation on the date it is filed and issue a receipt, which is signed by him on the same date with the registration date, to the applicant of the cassation.

(3) The applicant for cassation shall submit the brief of the cassation to the clerk of the court within a period of 7 (seven) days commencing from the date of filing of request of a cassation as referred to in paragraphs (1) and (2).

(4) The clerk of the court shall deliver the request for cassation and the brief of the cassation as referred to in paragraph (3) to the defendant of the cassation at the latest 2 (two) days after the brief is submitted.

(5) The defendant of the cassation may submit a counter against the cassation to the clerk of the court at the latest 7 (seven) days after the date the defendant received the brief of cassation as referred to in paragraph (4), and the clerk of the court shall deliver the counter against the cassation to the applicant of the cassation at the latest 2 (two) days after he received the said counter.

(6) The clerk of the court shall deliver the documents of the cassation to the Supreme Court at the latest 7 (seven) days after the termination of the period as referred to in paragraph (5).

(7) The Supreme Court shall study the documents of the cassation and determine the date for a hearing at the latest 2 (two) days after the request for cassation was received.

(8) The examination hearing on the request for cassation shall be conducted at the latest 60 (sixty) days after the date on which the Supreme Court received the request.

(9) A decision of the Supreme Court shall be made at the latest 180 (one hundred and eighty) days after the date on which the Supreme Court received the request.

(10) The decision on a cassation as referred to in paragraph (9) that contains a complete legal reasoning as the basis of the decision shall be stated in a court session that is open to the public.

(11) The clerk of the Supreme Court shall deliver the decision to the clerk of the Commercial Court at the latest 3 (three) days after the decision was made.

(12) The confiscation clerk of the court shall deliver the decision as referred to in paragraph (11) to the applicant of the cassation and the defendant of the cassation at the latest 2 (two) days after the decision was received.

(13) The decision of the Supreme Court as referred to in paragraph (11) shall also be delivered to the Directorate General at the latest 2 (two) days as of the date on which the Commercial Court received the decision to thereafter be recorded and published.

#### **Article 124**

In addition to the settlement of dispute as referred to in Article 117, the parties concerned may settle their dispute by means of arbitration or an alternative dispute resolution.

## **CHAPTER XIII PROVISIONAL DECISION BY THE COURT**

### **Article 125**

Upon a request from the party who might have suffered due to the implementation of a patent, the Commercial Court may immediately issue a provisional decision that is effective:

- a. to prevent the continuation of infringement on the patent and the rights pertaining to the patent, particularly to prevent the entry of products allegedly infringing the patent and the rights pertaining to the patent into the trade channel, including importation;
- b. to keep the evidence relating the infringement of patent and the rights pertaining to the patent in order to prevent the elimination of evidence;
- c. to request the party who might have suffered to provide evidence that the party is truly entitled to the patent and the rights pertaining to the patent and that such rights are being infringed.

### **Article 126**

In the event a provisional decision by the Court has been issued, the parties concerned shall be notified thereof, including the right to be heard for parties affected by the decision.

### **Article 127**

In the event the Commercial Court has issued a provisional decision, it shall decide whether to amend, cancel or reaffirm the decision as referred to in Article 125 within the period of 30 (thirty) days at the latest as of the date of issuance of the relevant provisional decision.

### **Article 128**

In the event a provisional decision is cancelled, the party who might have suffered may file a claim to the party that requested the decision for damages he incurred due to the decision.

## CHAPTER XIV INVESTIGATION

### Article 129

(1) In addition to police investigators of the Republic of Indonesia, certain civil servants working in a government department of which the scope of works and responsibilities includes the field of intellectual property rights shall be vested with special authority as investigators as referred to in Law No.8 of 1981 on Criminal Proceedings, to conduct an investigation of criminal offences in the field of patents.

(2) The civil servant investigator as referred to in paragraph (1) shall be authorized:

- a. to conduct examination of the truth of reports relating to criminal offences in the field of patents;
- b. to conduct examination of persons or legal entities suspected of committing criminal offences in the field of patents based on the reports as referred to in letter a;
- c. to collect information and evidence from persons or legal entities in connection with criminal offences in the field of patents;
- d. to conduct examination of books, records and other documents relating to criminal offences in the field of patents;
- e. to inspect locations on which evidence, books, records, and other documents are to be found, as well as to confiscate materials and goods resulting from infringements which can be used as evidence in the criminal trials in the field of patents;
- f. to request expert assistance in the scope of carrying out the duties of investigation of criminal offences in the field of patents.

(3) The civil servant investigators as referred to in paragraph (1) shall inform the police investigators of the Republic of Indonesia about the initiating and the result of an investigation.

(4) The civil servant investigator as referred to in paragraph (1) shall forward the results of an investigation to the public prosecutor through the investigating officers at the State Police of the Republic of Indonesia in view of the provision of Article 107 of Law No. 8 of 1981 on Criminal Proceedings.

## **CHAPTER XV CRIMINAL PROVISIONS**

### **Article 130**

Any person having deliberately and without rights infringed the rights of a patent holder by committing any acts as referred to in Article 16 shall be sentenced to imprisonment for a maximum period of 4 (four) years and/or a maximum fine of Rp. 500,000,000 (five hundred million rupiahs).

### **Article 131**

Any person having deliberately and without rights infringed the rights of a simple patent holder by committing any acts as referred to in Article 16 shall be sentenced to imprisonment for a maximum period of 2 (two) years and/or a maximum fine of Rp. 250,000,000 (two hundred and fifty million rupiahs).

### **Article 132**

Any person having deliberately failed to fulfill the obligations as referred to in Article 25 paragraph (3), Article 40, and Article 41 shall be sentenced to imprisonment for a maximum period of 2 (two) years.

### **Article 133**

The criminal offences referred to in Article 130, Article 131, and Article 132 shall constitute offense that warrants complaint.

### **Article 134**

Where an infringement on patent is established, a Judge may order that the products resulted from the infringement shall be confiscated by the State to thereafter be destroyed.

### **Article 135**

The stipulations of this chapter exceptionally will not be applied to the following:

(a) Import of a pharmaceutical product which is protected by patent in Indonesia and sold in a country by the rightful patent holder under the condition that the said product is imported in accordance with existing laws and regulations.

(b) Manufacturing of a pharmaceutical product which is protected by patent in Indonesia within 2 (two) years before expiration of protection of the patent for the purpose of permission process to merchandize after the protection of the said patent is expired.

## **CHAPTER XVI TRANSITIONAL PROVISIONS**

### **Article 136**

With the effect of this Law, all regulations in the field of patents that have existed on the date of effect of this Law shall continue to be valid, provided that they are not contradictory with this Law or they have not been replaced with new ones based on this Law.

### **Article 137**

Upon applications that have been filed before the effect of this Law shall apply the Law No.6 of 1989 regarding Patents as amended by Law No.13 of 1997 regarding the Amendment of Law No. 6 of 1989 regarding Patents.

## **CHAPTER XVII CLOSING PROVISIONS**

### **Article 138**

Upon the effectiveness of this Law, Law No.6 of 1989 regarding Patents (State Gazette of the Republic of Indonesia of 1989 No. 39, Supplementary State Gazette No.3398) and Law No. 13 of 1997 regarding the Amendment of Law No. 6 of 1989 regarding Patents (State Gazette of the Republic of Indonesia of 1997 No. 30, Supplementary State Gazette No.3680) shall be declared to no longer be valid.

### **Article 139**

This Law shall take effect on the date of its promulgation.

In order that every person may know of it, the promulgation of this Law is ordered by placement in the State Official Gazette of the Republic of Indonesia.