



Reconception of Local Working Patent as A Form of Legal Progressivity in The Era of Disruption

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Technological knowledge in the era of disruption has an important role in responding to the complex needs of society. In order to fulfill the needs, humans continue to produce new discoveries that need legal recognition and protection for the results of human intellectual abilities. One of the manifestations of intellectual wealth is in the form of patents. The main goal to be achieved is to encourage the creation, inventions and intellectual works of Indonesian citizens which in turn are able to create national independence. As an effort to control technology through patent rights, a Local Working Patent concept was formed which is regulated in Article 20 of Act Number 13 of 2016 on Patents. The Local Working Patent mandated in this article is in the form of a provision whereby when a patent has been granted by the state, the patent inventor is obliged to apply the patent in Indonesia to support technology transfer, investment and employment absorption. However, Act Number 11 of 2020 on Ciptaker eliminates this concept because this obligation is considered burdensome and can reduce investment from abroad. In this case the law should follow and oversee the needs and interests of the society. This means that the law must be progressive and must not be left behind by changes in society so that it can accommodate new existing interests. Based on this postulate, the writer wants to contribute in the form of a paper that comprehensively discusses the problems that exist in patent protection. The research method used is normative juridical research with a statutory approach and a conceptual approach. Thus, the author offers an idea in the form of a reconception of Local Working Patent which is ideal to be applied in Indonesia by meeting and fulfill the national and outsiders interests.

1. Introduction

Law Number 11 of 2020 concerning Job Creation/Cipta Kerja (Ciptaker Law) was born as an effort by the government to adjust the times and the needs of the community through ease of doing business and increasing

investment.¹ One form of providing convenience for investment is to eliminate the obligation to transfer technology in Article 20 of Law Number 13 of 2016 concerning Patents (Patent Law) which broadly provides obligations for technology transfer, investment absorption and/or the provision of employment where this is very vital for the interests of the state.² The Ciptaker Law changes it in Article 107 of Law Number 11 of 2020 in Chapter VI of the Third Section on Patents so that it no longer requires technology transfer, investment absorption and labor to facilitate the flow of investment into the country.

This arrangement does not actually support efforts to educate the nation's life and forget the mandate of Article 28 C Paragraph (1) of the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945 NRI Constitution) which affirms that, *"Everyone has the right to develop themselves through the fulfillment of their basic needs, has the right to get education and benefit from science and technology, art and culture in order to improve their quality of life"*. Based on the article, it can be understood that normatively the state has crystallized in the constitution an appreciation of intellectual property that is one of the fundamental rights of each individual. In essence, Intellectual Property Rights (IPR) are rights to ownership of works that arise or are born due to the ability of human intellectuality in the field of science and technology. Therefore, there are several reasons why IPR needs to be protected³, including IPR is a natural right,⁴ reputation protection, and encouragement as well as rewards from innovation and creation.⁵

The juridical reason for the removal of the obligations of Article 20 of the Patent Law is because it is considered contrary to the rules of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement).⁶ Article 20 of the Patent Law is considered to contain elements of discrimination which has been prohibited in Article 27 of the TRIPs Agreement. In fact, the nature of the TRIPs Agreement aims to protect and enforce laws related to IPR in order to motivate the emergence of innovation, transfer, and dissemination of technology and then obtain joint benefits between patent makers (inventors) and users of technological knowledge in a way that supports the realization of social and economic welfare and a balance between rights and obligations. This gives an understanding that Article 20 of the Patent Law is actually similar and has adopted the values contained in the TRIPs Agreement because it utilizes patent protection to improve social welfare.

¹ See the Academic Manuscript of Law Number 11 of 2020 concerning Cipta Kerja

² See in Article 20 of Law Number 13 of 2016 concerning LN Patents: 176, TLN: 5922

³ See in Article 107 point (2) of Law Number 11 of 2020 concerning LN Ciptaker: 245, TLN, 6573

⁴ The most basic legalization for IPR is that a person who has expended effort into creation has a natural right to own and control what they have created where this approach emphasizes honesty and fairness.

⁵ Tim Lindsey et al. (2003). Hak Kekayaan Intelektual sebuah Pengantar, Bandung: Alumni, pp. 13

⁶ The TRIPs Agreement is one of the 15 issue sections in the WTO agreement as an international agreement one of the most comprehensive and influential in the field of IPR

Another reason for the elimination of the obligations of Article 20 of Law No.13 of 2016 is that the value can reduce foreign investment because it burdens investors and outside inventors.⁷ However, based on data during the time the Local Working Patent was applied, investment realization in 2019 increased by 12.0%. Therefore, the amendment of Article 20 Patents Law⁸ with the content of eliminating *local working patents* that support the transfer of technology on the grounds of obstructing investment is a mistake.

Another important thing that is missing from the abolition of the *Obligation of the Local Working Patent* is that the transfer of technology has its own urgency for the Indonesian nation because it can provide many benefits such as advancing economic development, increasing investment from within and outside the country, *transfer of knowledge*, and advancing social infrastructure development. The advantages of the obligation to carry out patent rights if they cannot be achieved can plunge developing countries such as Indonesia into connoisseurs of consumptive technology.⁹ Technological lags can degrade military, health fulfillment, urban planning, architecture, communication, data storage or traces.¹⁰ This is in line with Samuelson's expert opinion where one of the factors that play a role in increasing economic growth is technology which includes science, engineering, management and skills.¹¹

The need for technological knowledge and the improvement of the general welfare is a *legislative ratio* of the need for conformity of the legal umbrella with the dynamism arising from the times. It leads to the law continuing to be in a state of "*law in the making*."¹² The law must be progressive, that is, the law follows the development of people's aspirations, favors the interests of the people, and delivers to welfare.¹³ For the truth is, the law is not present for itself but for man in order to achieve well-being and happiness.¹⁴

For the realization of progressive laws for the Indonesian people in this era of disruption, the essentials in patent protection should not be eliminated. Such a postulate should inspire the author to provide a new view regarding the concept of technology transfer obligations through patent

⁷ See the Academic Manuscript of Law Number 11 of 2020 concerning Ciptaker

⁸ Badan Koordinasi Penanaman Modal, "Melebihi Target, Realisasi Investasi 2019 Capai 800 Triliun", Kementerian Investasi/BKPM, 1/2020, <https://www.bkpm.go.id/id/publikasi/siaran-pers/readmore/2377101/45201>, accessed on March 8, 2022 at 01.27

⁹ N. Rosyidah Rahmawati. (2006). *Hukum Ekonomi Internasional*, Malang: Bayumedia. PP. 34

¹⁰ DJ Wardynsnski, "Technology and Society : How Technology Changed Our Lives", *Brainspire*, 24/10/2022, <https://www.brainspire.com/blog/technology-and-society-how-technology-changed-our-lives> accessed on July 7, 2022 at 16.12 WIB

¹¹ Samuelson, P.A. and Nordhaus, W.D. (1998). "Economics", Singapore: The McGraw-Hill Companies Inc. PP. 38.

¹² Satjipto Rahardjo. (2005). *Hukum Progresif: Hukum Yang Membebaskan*. *Jurnal Hukum Progresif*, Program Doktor Hukum Univ. Diponegoro. 1(1). PP. 16.

¹³ Deni Nuryadi. (2016). *Teori Hukum Progresif dan Penerapannya di Indonesia*. *Jurnal Ilmiah Hukum De'Jure: Kajian Ilmiah Hukum*. 1(2). PP. 401.

¹⁴ Satjipto Rahardjo. (2007). *Biarkan Hukum Mengalir (Catatan Kritis tentang Perjuangan Manusia dan Hukum)*. Jakarta: Penerbit Buku Kompas. PP. ix.

rights that bring together the interests of inventors and investors with the national interest.¹⁵ Therefore, the author tries to examine this problem with the formulation of the problem: 1) **What is the regulatory problem related to local working patents?** 2) **What is the concept of implementing an ideal local working patent in Indonesia?** . The objectives / objectives in this study are: 1. **To explore and understand regulatory problems related to local working patents;** 2. **To design the concept of implementing an ideal local working patent in Indonesia.**

2. Method

This legal research uses a type of normative juridical legal research or called doctrinal legal research.¹⁶ Furthermore, Depri Liber Sonata explains that normative legal research is research that has a tendency to image law as a prescriptive discipline where it only looks at law from the point of view of its norms, which of course is prescriptive.³⁴ The approach method used in this study is a statutory approach¹⁷ related to patents and a conceptual approach¹⁸ by examining the concept of patents and local working patents.

The data sources used in this study refer to secondary data in the form of Primary Legal Materials, namely binding positive law,¹⁹ Secondary Legal Materials, namely information related to primary sources,²⁰ and Tertiary Legal Materials, namely instructions for legal materials that have been mentioned earlier. Normative juridical research is heavily dotted with library research²¹ where the preparation and analysis of data uses deductive reasoning, namely from general to special.²² The elaboration of the paper is carried out in a descriptive-analytical manner, namely describing facts and then analyzed with positive laws and theories. Furthermore, prescriptive elaboration is to present solutions to problems for the improvement of norms and regulatory systems.²³

3. Results & Analysis

3.1. Problems of Abolition of Local Working Patents in a Legal Perspective

¹⁵ Enny Nurbaningsih. (2015). Naskah Akademik RUU Paten, Jakarta: Badan Pengembangan Hukum Nasional. PP. 25-26.

¹⁶ Sukisno B. (2008). *Karakter Penelitian Hukum Normatif dan Sosiologis*. Yogyakarta: PUSKUMBANGSI LEPPA UG. PP.8.

¹⁷ Moh. Nazir, (2005), "Metode Penelitian", Jakarta : Ghaila Indonesia, pp. 35-37.

¹⁸ Johnny Ibrahim. (2007). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang : Penerbit Bayumedia. PP. 391.

¹⁹ Soerjono Soekanto dan Sri Mamuji. (2007). *Penelitian Hukum Normatif Gambaran Singkat*. Jakarta : Sinar Raja Grafindo Persada. PP 52.

²⁰ Sri Mamudji, et al. (2005). *Metode Penelitian dan Penelitian Hukum*, Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia. PP. 31.

²¹ Soerjono Soekanto dan Sri Mamudji. (2001). *Meneliti Hukum Normatif*. Jakarta : Rajawali Press,. PP. 50.

²² Sri Soemantri Martosoewignjo. (1987). *Persepsi Tata Cara dan Sistem Perubahan Konstitusional dalam Batang Tubuh UUD 1945*. Bandung: Penerbit Alumni. PP. 8- 9.

²³ Soerjono Soekanto dan Sri Mamudji. (2001). *Meneliti Hukum Normatif*. Jakarta : Rajawali Press. PP. 69.

The era of disruption like today changes the order of people's lives from the old system to the new system, causing technological knowledge to become an urgency to face and answer the increasingly complex needs of society. The rapid development of technology has caused changes in various economic, socio-cultural, and also legal fields.²⁴ As an effort to meet the needs of the community, patents as a type of IPR in the field of technology play an important role in the growth and development of the national economy through the transfer of technology and investment.²⁵

The abolition of *the Obligation of the Local Working Patent* affirms the spirit of the state's goal of educating the nation's life and creating general welfare. In addition, it can be said that the regulation of patents in the Copyright Law as an amendment to Article 20 of the Patent Law reflects the law does not pay attention to the needs of the community and does not follow the social situation as it is today. Laws that can achieve goals and meet the needs of society are perceived by Satjipto Rahardjo as "Progressive Law", which relies on human ability to understand and interpret laws that prioritize the people, justice, and aim for welfare and happiness based on a good and responsive life.²⁶

The progressivity of law that views the law from the social goals to be achieved as a result of the work of the law really needs to be implemented in the formation of legal substance in order to provide benefits to society.²⁷ It is appropriate that the public interest in the protection of patent rights be established with an arrangement that brings together the interests of all parties protected fairly.²⁸ The protection of interests on the part can be examined the crystallization of its essence in the highest social contract in a country i.e. *Rechtsidee* and the constitution.

The implementation of *the Local Working Patent* policy in Indonesia for every Inventor who wants to apply for a patent is a constitutional mandate of the values in paragraph IV of the Preamble of the 1945 NRI Constitution. The state objectives and the foundation of the state philosophy (*Filosofische Grondslag*) require that the Government is obliged to educate the life of the nation in order to advance the general welfare, including the implementation of the *Local Working Patent* policy in laws and regulations as advice and infrastructure to achieve these goals. The definition of the values contained in the paragraph is then stated in Article 28C paragraph (1) of the 1945 NRI Constitution which broadly wants to provide opportunities for everyone to benefit from science and technology to improve the quality of life and

²⁴ Rindia Fanny. (2016). *Reformasi Regulasi Paten di Indonesia*. Semarang : Makalah Seminar, PP. 3

²⁵ Kamil Idris. (2000). *Kekayaan Intelektual sebuah Kekuatan untuk Pertumbuhan Ekonomi*. Jakarta : Direktorat Jenderal Hak Kekayaan Intelektual, Departemen Kehakiman dan Hak Asasi Manusia Republik Indonesia. PP. 10.

²⁶ Moh. Mahfud MD (et. al). (2011). *Satjipto Rahardjo dan Hukum Progresif-Urgensi dan Kritik*. Jakarta : Epistema Institutue dan HuMa. PP. 5.

²⁷ Deni Nuryadi. (2016). *Teori Hukum Progresif dan Penerapannya di Indonesia*. 1(2). PP. 400

²⁸ Van Apeldoorn. (2001). *Pengantar Hukum*. Jakarta : Pradnya Paramita. PP. 11.

welfare of mankind.²⁹ These provisions are closely related to the regulation of patents which are the result of human intellectual abilities that benefit from the development of science and technology as inventions or inventions in the field of new technologies that have inventive steps and are applied in the industrial field.³⁰

As a form of technology utilization from patent protection, a Local Working Patent arrangement was born in Article 20 of the Patent Law. The purpose of technology transfer is to utilize and master the technology owned for the benefit of research and development of the Indonesian state so that economic growth in terms of technology can compete with other countries. Ciptaker Law³¹ which entail social obligations in patent arrangements can lead to a *tragedy of the anticommons* where a thing that should be used for the common is precisely prevented due to a monopoly so as to create a social goal not achieved. The ease of doing business as stated in the Ciptaker Law by eliminating the obligation of a *Local Working Patent* is not in line with national goals, where it should be increased investment by making it easier for foreign investors to be accompanied by efforts to educate the nation's life and create general welfare.³² Even when viewed from the aspect of international law, it is also unjustified to sacrifice national interests above external interests.

The regulation of Patent Rights in Indonesia at the international level can be seen starting from the beginning as a member of the World Trade Organization (WTO) in 1950.³³ The WTO membership agreement, namely in the regulation related to IPR, must refer to and apply the provisions of the TRIPs Agreement.³⁴ According to Khoirul Hidayah, the ratification of TRIPs as a result of Indonesia's membership in the WTO makes it mandatory to formulate domestic regulations that cannot harm the interests of national medicine and simultaneously create a balance with international needs.³⁵

Based on Article 7 of the TRIPs Agreement, it discusses a local working patent, where the outline of which requires the purpose of IPR protection to be directed at efforts to transfer innovation and technology as a form of mutualism between producers and users in order to improve

²⁹ See in Article 28C Paragraph (1) of the Constitution of the Republic of Indonesia of 1945

³⁰ C.S.T Kansil. (1990). *Paten Hak Kekayaan Intelektual, Merek Perusahaan, Merek Bisnis, Hak Cipta*. Jakarta : Percetakan Pertama, Bumi Aksara. PP. 10

³¹ O.K. Saidin. (2015). Transplantasi Hukum Asing ke dalam Undang-Undang Hak Cipta Indonesia: Kemenangan Ideologi Kapitalisme pada Ideologi Pancasila. *Journal of Intellectual Property Rights*. 20(4). PP. 234.

³² Heller. (1998). Michael A, The Tragedy Of The Anticommons: Property in The Transition From Marx to Markets. *Harvard Law Review*. 111(3). PP. 621-688.

³³ In the concept of international trade, one of the most important sources of law is the provisions of the GATT / General Agreement on Tarriff and Trade which in its course gave birth to the WTO or *World Trade Organization* (*World Trade Organization*). In principle, *the World Organization Trade* (WTO) is a means to encourage an orderly and fair free trade in this world.

³⁴ Sudargo Gautama dan Rizwanto Winata. (1997). *Conventions on New Intellectual Property Rights for Indonesia*. Bandung: PT Citra Aditya Bakti. PP. 1-2.

³⁵ Khoirul Hidayah. (2017). *UU HKI tentang Hak Kekayaan Intelektual*. Malang: Setara Press, PP. 86.

economic welfare and balance of rights and obligations.³⁶ Furthermore, Article 8 of the TRIPs Agreement states that members of the state that have ratified must formulate or amend their laws to adopt consideration of the needs of public health protection, nutrition, vital sectors for socio-economic and technological developments which must be in line with this agreement in order not to abuse the right of carrying out or harm the transfer of technology.³⁷ The meaning that can be obtained in these two provisions is the granting of authority to its member states to apply local working patents in order not only to provide monopoly rights that can lead to deviations so that the elimination of obligations against in Article 20 of the Patent Law is a mistake or contrary to Article 7 and Article 8 of the TRIPs Agreement.³⁸

The implementation of Article 7 and Article 8 of the TRIPs Agreement in Indonesia in the Patent Law is a continuation of the previous law which regulates Patents so that *local working patents* are not new in this country. This is because granting patents that are balanced with local working patents is a must. Article 27 of the TRIPs Agreement discusses "discrimination" which is one of the reasons Dewan Perwakilan Rakyat (DPR) amended Article 20 of the Patent Law to eliminate local working patents because they are considered discrimination against outside products. This actually shows a misunderstanding of the meaning of the word "Discrimination" in Article 27 (1) of the TRIPs Agreement where the real meaning of the word "Discrimination" is the prohibition of the application of discrimination between citizens of the WTO participants, instead of discriminating against local products against foreign products.³⁹

As already explained, the TRIPs Agreement is very concerned with the interests of developing countries and developed countries so that overall there are no provisions that force developing countries to remove local working patents. The concern for the interests of developing countries in the TRIPs Agreement is increasingly proven by the concessions it provides. The TRIPs Agreement provides leeway for developing and underdeveloped countries such as Article 65 (2)⁴⁰ and Article 66 (1)⁴¹ which will allow time delays to implement the TRIPs Agreement in the national law of each country. The TRIPs Agreement also provides safeguards to address patent

³⁶ See in Article 7 Agreement on Trade Related Aspects of Intellectual Property Rights

³⁷ See in Article 8 Agreement on Trade Related Aspect of Intellectual Property Rights

³⁸ Agus Sardjono, "Local Working Patent", Indonesia For Global Justice, 5/10/2020, <https://igj.or.id/local-working-patent/>, accessed on March 20, 2022 at 01.43 WIB

³⁹ See in Article 27 (1) Agreement on Trade Related Aspect of Intellectual Property Rights

⁴⁰ "A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5. See in Article 65 (2) Agreement on Trade Related Aspect of Intellectual Property Rights

⁴¹ In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period. See in Article 66 (1) Agreement on Trade Related Aspect of Intellectual Property Rights

threats to public health, such as Compulsory Licenses, Parallel Import, Government Use, and Bolar Provisions. All TRIPs Safeguards are strategies to counteract the negative effects of patent rights to ensure access to public health in developing and underdeveloped countries. This is one case in point that the TRIPs Agreement remains in substance concerned with the national interests of developing countries.⁴²

In forming protection related to patents, harmonization of IPR laws and regulations is needed which should not only be based on the insistence of developed countries but also because of the reasons for the birth of creation, invention, and intellectual work of Indonesian citizens which are further able to create national independence in the fields of science, technology, and for national development.⁴³ Thus, the creation of a competitive system will be created and will encourage the development of Patents and vice versa Patents are expected to encourage the formation of a competitive system, both in terms of economics and technology.⁴⁴ This is not to be feared by the state to pursue because *local working patents* are the right of the state to grant patents to inventors.

As an effort to optimize patent rights in Indonesia, patent protection is formed by attaching importance to the public interest which is conceptualized in Article 20 of the Patent Law reads Paragraph (1) "*Patent Holders are required to make products or use processes in Indonesia*" and Ayat (2) state "*Making Products or using the process as referred to in paragraph (1) must support technology transfer, investment absorption and/or the provision of employment.*" Law Number 13 of 2016 is present as the latest regulation in the field of Patents replacing the overall law Number 14 of 2001. The birth of the law is among others to improve state regulation in protecting the welfare of the people through the granting of patent rights because in the regulation in Article 20 of the Patent Law of 2016 emphasizes that the implementation of patents must support technology transfer, investment absorption and / or the provision of employment.

Unfortunately, in 2020 the obligation of the Local Working Patent was abolished because it was considered to be one of the factors that could reduce foreign investment.⁴⁵ Investment is one of the main sources of economic growth so that it is indispensable for the state as a support in economic development, which will then increase the stock of capital (*stock capital*) so as to increase employment.⁴⁶ Given the importance of investment, the goodwill

⁴² Selvie Sinaga. "Ancaman Paten terhadap Perjalanan Kesehatan Masyarakat dan Pengamanan", UNIVERSITAS KATOLIK INDONESIA ATMA JAYA, 20/12/2015 ,<https://m.atmajaya.ac.id/web/KontenUnit.aspx?gid=artikel-hki&ou=hki&cid=ancaman-paten-terhadap-kesehatan-publik-dan-safeguards-trips>, accessed on March 16, 2022.

⁴³ Candra Irawan. (2011). *Politik Hukum Hak Kekayaan Intelektual Indonesia; kritik terhadap WTO/TRIPs Agreement dan Upaya membangun Hukum Kekayaan Intelektual Demi Kepentingan Nasional*. Bandung : Mandar Maju. PP. 20.

⁴⁴ Noerhadi Rooseno dan Heraty. (1978). *Masalah Paten dalam Praktik*. Bandung : Bina Cipta, PP. 54.

⁴⁵ See the Academic Manuscript of the Academic Manuscript of Law Number 11 of 2020 concerning Ciptaker

⁴⁶ Rini Sulistiawati. (2017). Pengaruh Investasi terhadap Pertumbuhan Ekonomi dan Lapangan Kerja serta Kesejahteraan Masyarakat di Provinsi-Provinsi di Indonesia. *Jurnal Ekonomi Bisnis dan Kewirausahaan*. 3(1). PP. 29-50.

of the Dewan Perwakilan Rakyat (DPR) as legislative was finally poured out through changes in its policies with the aim of providing ease of doing business by not charging investors with local working patent obligations through Ciptaker Law.⁴⁷ Amendments to Article 20 of Law Number 13 of 2016 concerning Patents are replaced by Article 107 in Chapter VI of the third part concerning Patents Law Number 11 of 2020 concerning Ciptaker which reads: Paragraph (1) states that; "*Patents must be implemented in Indonesia.*" Subsection (2) ; "*The application of the Patent as referred to in paragraph (1), is as follows: a. the exercise of Patents-products which includes making, importing, or licensing patented products;*" . Based on the substance of the new article, there is no longer a binding law on the transfer of technology, the absorption of investment and/or the absorption of labor through the protection of patent rights.

Patents as exclusive rights granted by the state to inventors are not granted indefinitely, but the state may provide arrangements of a restrictive nature in the public interest. This in the protection of IPR can be philosophically justified with the principle of justice that the provisions for the protection of IPR (patents) in the form of exclusive rights must ensure the fulfillment of the interests of the IPR holders and the interests of the community fairly, ⁴⁸ because excessive exploitation of exclusive rights can cause social injustice (*social unjust*).⁴⁹ In fact, according to the history of patents that began to develop in Europe in the 14th and 15th centuries, as in Italy and in the UK are very simple and are not intended for an invention (*invention*), but to attract inventors to transfer technology in the country that grants them patents.⁵⁰ That is, the initial essence of the purpose of patents is not to protect the work of inventors, but rather to try to establish new industries and transfer technology.⁵¹

The exercise of patents in the public interest is also supported by the principles adopted as the basis for regulating UU Patents. These principles include:⁵² a) The Principle of Benefits, patent protection must provide benefits to inventors and users of patent rights; b) The Rational Principle, patent protection considers the economic value of inventions as a result of human knowledge, considers national resilience, public welfare and justice for the whole society; Sustainable Principle, rights management that pays attention to technological developments with social conditions so that its use can be continued in the future; d) The Principle of Fairness, patent protection that ensures the accessibility of information of all levels of society; e) Principles of Public Welfare, protection of patents oriented towards the

⁴⁷ N.H. Pakpahan. (2021). Solving Manpower Act's Legal Redundancy Through Jon Creation Act's Foreign Manpower Utilization Plan. *Veteran Law Review*. 4(2). PP. 116.

⁴⁸ Winner Sitorus. (2014). Kepentingan Publik dalam Perlindungan Paten. *Yuridika Journal*. 29(1). PP. 46.

⁴⁹ *Ibid*. PP. 41.

⁵⁰ Muhammad Djumhana dan Djubaedillah. (2014). *Hak Kekayaan Intelektual, Sejarah Teori dan Identitasnya di Indonesia, Percetakan ke-4*. Bandung: Citra Aditya Bakti. PP. 143.

⁵¹ Bambang Kesowo. (1995). *Pengenalan Umum Hak Kekayaan Intelektual (HAKI) di Indonesia*. Yogyakarta: Fakultas Hukum Gadjah Mada. PP. 15-16.

⁵² Enny Nurbaningsih. (2015). *Naskah Akademik RUU Paten*. Jakarta: Badan Pengembangan Hukum Nasional. PP. 25-26.

welfare of all levels of society. All the essential values in local working patents certainly indicate the need for technology transfer in patent settings where Dewi Astuty Mochtar stated this is important to develop "Indigenous technological capability".⁵³

3.2. Reconception of the Ideal Local Working Patent Applied in Indonesia

Based on the mandate of Pancasila and the 1945 NRI Constitution, it has been expressly stated that the purpose of the Republic of Indonesia is to educate the life of the nation and achieve general welfare.⁵⁴ As an effort to realize the state's goals, it is necessary to carry out national economic development by increasing investment to process economic potential from within the country and abroad.⁵⁵ Specifically, it aims to increase national economic growth, create jobs, and increase national technological capacity and capabilities.⁵⁶

The obligation mandated by Article 20 of the Patent Law was born as a mission to answer the national interest because it encourages the state to obtain technology transfer, investment absorption, and employment.⁵⁷ However, there is a problem where there is a difference in interests between inventors and investors, namely the expansion of the market from its technological products with the interests of Indonesia as a developing country that needs technology to build its economy. These differences in interests should go hand in hand, so that national interests are not marginalized.⁵⁸ The obligations of Article 20 of the 2016 Patent Law, which is considered burdensome to foreign parties, should not sacrifice major national interests, namely technology transfer, investment absorption and employment because it supports the welfare of the nation. It can be understood that the Indonesian nation needs a way that has the concept of a win-win solution according to justice philosophy way (fair treatment).⁵⁹

The idea offered by the author to answer the problem is the Distributive Local Working Patent. In its implementation, the patent registration process must be accompanied by providing information about the patent technology to the Directorate General of IPR which then the state will assess whether the patent is an inventive step or not. The information will be retained by the Directorate General of IPR for as long as the patent

⁵³ Dewi Astuty Mochtar. (2001). *Perjanjian Lisensi Pengalihan Teknologi dalam Pengembangan Teknologi Indonesia*. Bandung : Penerbit Alumni. PP. 58

⁵⁴ See on the Preamble of the Constitution of the Republic of Indonesia of 1945

⁵⁵ See in Section c. Points Considering Law No. 25 of 2007 concerning Investment, LN No. 67, TLN No. 4724

⁵⁶ See in Article 3 Paragraph (2) of Law Number 25 of 2007 concerning Investment, LN No. 67, TLN No. 4724

⁵⁷ See in Article 20 of Law Number 15 of 2016 concerning Patents, LN : 176, TLN : 5922

⁵⁸ OK Saidin. (2013). *Aspek Hukum Hak Kekayaan Intelektual*. Raja Grafindo Persada, Jakarta. PP. 314.

⁵⁹ Adli Dzil Ikram Ahmad Nasution, et al. (2021). Juridical Study of The Implementation of The Principles of Equality of The Parents Parties In Contruction Action Contract Which Is Made In A Notary Face. *Veteran Law Review*. 4(2). PP 134.

protection is valid (20 years) and will become public domain after the patent period expires. Once deemed worthy of patenting, the inventor will be given an alternative option. The choice is to build its industry in Indonesia or if it is unable or burdensome, then after being affirmed by the state through its assessment team, it can choose an alternative option, namely providing training (workshops) to the community as long as the patent is valid in collaboration with the Manpower Office or Pre-Employment Card.

The Inventor's requirements for choosing the second option as an alternative are: 1) The Inventor is unable to implement the first option for financial reasons based on state affirmations and/or; 2) The state has not been able to apply such technologies or methods. In addition, the second option, namely providing training for technology transfer, must still be done for inventors who choose option one if the industry they are building does not absorb local workers such as investors who build industries that use a lot of robotic power so that they do not absorb a lot of labor.

This idea will actually make inventors not have to be afraid of invention plagiarism, because if there are people who want to apply the technology, they must get a license from the relevant inventor and if plagiarism occurs, there is already a legal mechanism that regulates it. Workshop training conducted by the Inventor with the help of providing a forum from the Manpower Office or Pre-Employment Card where this workshop training is carried out for the implementation of technology transfer so that for 20 years patent protection is granted, the state still gets benefits.

The workshop training given to the community must be in the form of a transfer of technology that is needed and not yet owned by the community in the area where the workshop training is carried out. Inventors are required to carry out workshop training 10 times before the patent expires. Training will be calculated if it succeeds in having a good impact on the community with indicators of how well the community masters the transfer of technology taught and how much impact the transfer of technology advances the local economy. This is done to encourage training carried out by inventors not staying in one place so as to create an equitable transfer of technology. Inventors can be encouraged to conduct training workshops in underdeveloped areas because the technology that needs to be diverted in those areas is not high-tech so the implementation is low-budget.

The benefits of applying this idea include not burdening patent registrants to register their patents because they are given an easier backup option if they object to carrying out the option of building an industry. The benefits obtained by the state with the implementation of this idea are the continued implementation of technology transfer and reviving the community's economy by absorbing labor through industrial development or reviving community industries with the training provided.

4. Conclusion

The real root of the problem lies in the elimination of local working patent obligations in Article 20 of Law No. 13 of 2016 concerning Patents through Article 107 of Law No. 11 of 2020 concerning Ciptaker on the

grounds that increasing investment is a mistake. The fact is that patent rights are *conditio sine qua non* (one can't exist without others) with their obligations being local working patents. Local working patents are needed for state purposes in accordance with the 1945 Constitution of the Republic of Indonesia, namely educating the nation's life and general welfare. The transfer of technology through distributive local working patents as a win-win solution idea is the ideal answer to achieve a balance between patent rights and obligations. Its implementation can be through the revision of Article 107 of Law Number 11 of 2020 concerning Ciptaker in the form of re-requiring local working patents accompanied by the provision of alternative options and reconception of local working patent regulations with a distributive local working patent with a legal umbrella in the form of a Government Regulation (PP).

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