Legal Policy Establishment of Article 107 Numbers 2 Law Number 11 of 2020 on Job Creation Reviewed From Transfer Of Technology Regulation in Article 7 Trade Related Aspects of Intellectual Property Rights (TRIPs)

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Abstract
The purpose of this study is to analyze the Legal Policy Establishment of Article 107 Numbers 2 Law Number 11 of 2020 on Job Creation Reviewed From Transfer of Technology Regulation in Article 7 TRIPs. This research is normative legal research by prioritizing statutory approaches and historical approach. The results of the study show that Article 107 Numbers 2 Law Number 11 of 2020 on Job Creation is not by the mandate of Article 7 TRIPs, and implicated for the absence of government interference in technology transfer especially in the field of patents. The legal policy of establishing Article 107 Numbers 2 Law Number 11 of 2020 on Job Creation is influenced by the intervention of other countries and more inclined towards adjusting international trade politics than defending national interests. The most ideal arrangement regarding technology transfer is by the formulation of Article 20 Paragraph (2) Law Number 13 of 2016 concerning Patents, which in essence patents must support technology transfer. Suggestions in this study for the lawmaker should emphasize the necessity for technology transfer in the field of patents through licenses in Indonesian laws and regulations.

I. Introduction

Article 20 Paragraph (1) of Law Number 13 of 2016 concerning Patents requires patent holders to make products or use processes in Indonesia. Further in Paragraph (2) it is stipulated that making a product or using a process must support technology transfer,

absorb investment and/or provide employment. This article is a problem and has received criticism from several countries, especially because this obligation is accompanied by the implication of canceling a patent if it is not implemented. This is confirmed by Article 130 Paragraph (1) Letter e of Law Number 13 of 2016 concerning Patents which states that patent holders who violate the provisions referred to in Article 20 will have their patents nullified through a court decision. The principle of being obligated to make a product or use a process in the country's territory where the patent is applied is known as "local working". Local Working according to Michael Halewood is *a "requirement that the patentees must manufacture the patented product, or apply the patented process, within the patent granting country. By applying that requirement, the patent granting country forces the patentees to transfer the patented technology, or the technology needed to produce the patented product, into the country*" (Halewood, 1997). Article 20 of Law Number 13 of 2016 Concerning Patents mentioned above is considered inconsistent with Article 27 Paragraph (1) TRIPs which states that:

"…patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application…patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced".

The article declares the principle of non-discrimination in patent protection, patents must be granted and patents can be enjoyed without discrimination regarding the place of invention, the field of technology, and whether the product is imported or locally produced.

Article 20 of Law Number 13 of 2016 concerning Patents is one of the government's concerns, especially the House of Representatives (DPR) in drafting the Job Creation Bill (RUU). The draft Job Creation Law was approved by the DPR on October 5 2020 to become Law Number 11 of 2020 concerning Job Creation. However, it turns out that the law does not abolish Article 20 of the Patent Law, but the article is amended through Article 107 Number 2 so that it reads as follows:

(1) Patents must be implemented in Indonesia
(2) Patents as referred to in paragraph (1) are as follows:
    a. Execution of product patents which include manufacturing, importing, or licensing patented products;
    b. Execution of process patents which include making, licensing, or importing products produced from patented processes; or

c. Execution of Patents-methods, systems, and uses, including making, importing, or licensing products resulting from patented methods, systems, and uses.

It turns out that the Job Creation Law does not change the obligation to make and implement patents in Indonesia, but instead removes the clause on the obligation to transfer technology.

Based on the Decision of the Constitutional Court Number 91/PUU-XVIII/2020, the Court ordered the legislators to make improvements to the Job Creation Law within a maximum period of 2 (two) years since the decision was pronounced on November 25, 2021. Subsequently, the Government issued Government Regulation instead of Law Number 2 of 2022 concerning Job Creation on December 30, 2022, and on March 31, 2023, the Perppu was enacted into law through Law Number 6 of 2023 concerning Stipulation of Government Regulation instead of Law Number 2 In 2022 concerning Job Creation becomes a Law.

The formulation of Article 107 point 2 of Law Number 11 of 2020 concerning Job Creation does not change the meaning in the Government Regulation instead of Law Number 2 of 2022 concerning Job Creation which has been stipulated to become law through Law Number 6 of 2023. The formulation of Article 107 Number 2 of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation which has been stipulated to become law through Law Number 6 of 2023 is as follows:

(1) Patents must be implemented in Indonesia
(2) The application of a patent as referred to in paragraph (1) consists of:
    a. Execution of product patents which include manufacturing, importing, or licensing patented products;
    b. Execution of process patents which include making, licensing, or importing products produced from patented processes; or
    c. Execution of Patents-methods, systems, and uses, including making, importing, or licensing products resulting from patented methods, systems, and uses.

Even though the main focus of this research is the elimination of patent requirements to support technology transfer, absorption of investment, and/or provision of employment, this research will still discuss whether "Patents are mandatory in Indonesia" in line with the non-discrimination provisions in Article 27 Paragraph (1)) TRIPs, because the clause in Article 20 of Law Number 13 of 2016 concerning Patents must be understood in full/not partially in only one paragraph because "local working" is a medium for technology transfer.

Provisions for technology transfer at the international level are regulated in Article 7 TRIPS:

"*The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations*".

After the enactment of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation which has been stipulated into law through Law Number 6 of 2023, the removal of this technology transfer clause can create a legal vacuum, particularly the transfer of technology in the Patent field.

The non-accommodation of the technology transfer clause raises a big question of whether technology transfer is contrary to TRIPs and should be abolished. This deletion also has the potential to cause problems in the future about the implementation of foreign patents in Indonesia, whether patents must be implemented to support technology transfer, whether the obligation to transfer technology has become one unit with the stipulation that patents must be implemented in Indonesia, or technology transfer is completely handed over to the parties based on the principle of freedom of contract, and how the implementation of the patent should support the transfer of technology as mandated by TRIPs.

This research aims to answer the legal issue: the legal politics of establishing Article 107 point 2 of Law Number 11 of 2020 concerning work copyright. Previous research related to technology transfer, in general, discussed the implementation of mandatory licenses in the framework of technology transfer, the legal reasons for establishing Article 20 of Law Number 13 of 2016 concerning Patents, and the impact of removing this article. This can be seen from research conducted by (i) Niken Sari Dewi (2017), the focus of the discussion is an analysis of the obstruction to the implementation of mandatory patent licenses in the context of technology transfer to pharmaceutical companies in Indonesia and why patent technology transfer needs to be implemented in pharmaceutical companies. Subsequent research was carried out by Anis Rosiah (2019), the focus of the discussion is the legal reasons for the formation of Article 20 of Law Number 13 of 2016 concerning Patents and the legal consequences arising from the formation of this article. Furthermore, research conducted by (iii) Trias Palupi Kurnianingrum (2022), research departs from the point of view that Article 20 of Law Number 13 of 2016 concerning Patents is completely deleted in Law Number 11 of 2020 concerning Job Creation. From the three previous studies, the

legal politics of forming Article 107 point 2 of Law Number 11 of 2020 concerning Job Creation in terms of Technology Transfer Arrangements in Article 7 TRIPs have never been carried out, so this research is original and has a novelty that can be accounted for.

II. Research Method

The primary legal materials in this study are statutory regulations and judge's decisions or court decisions related to research, including Law Number 11 of 2020 concerning Job Creation and Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The secondary legal materials in this research are books, journal articles, and the opinions of related legal experts.

III. Results and Discussion

The Legal Policy of the Establishment of Article 107 Point 2 of Law Number 11 of 2020 concerning Job Creation in terms of Technology Transfer Arrangements in Article 7 TRIPs

After being declared conditionally unconstitutional on November 25, 2021, to carry out the mandate of the Decision of the Constitutional Court of the Republic of Indonesia Number 91/PUU-XVIII/2020, the government continued to carry out legal reforms until December 30, 2022, Law Number 11 of 2020 concerning Job Creation revoked by Government Regulation instead of Law Number 2 of 2022 concerning Job Creation. The Perpu was then enacted into law on March 31, 2023, through Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation to become law.

Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation, which is a legal issue in this study, does not experience a change in meaning in Government Regulation instead of Law Number 2 of 2022 concerning Job Creation which has been stipulated to become law through the Law Law Number 6 of 2023 so that this research can still discuss Law Number 11 of 2020 concerning Job Creation which is the forerunner to the elimination of the technology transfer clause.

Since the enactment of Law Number 13 of 2016 concerning Patents, there are patent arrangements that are considered problematic, especially Article 20 of Law Number 13 of 2016 concerning Patents which are considered to be contrary to TRIPs. The existence of this article has received a lot of objections, especially from some developed countries which have registered a large number of patents in Indonesia. This is what the legislators

then worry about, which will have an impact on other countries' distrust of patent protection in Indonesia, and has the potential to hinder investment and trade between countries.

The clause "…obliged to make products in Indonesia…" is considered to be burdensome for foreign patent applicants. What's more, Law Number 13 of 2016 concerning Patents also stipulates dwangenrecht the implementation of a Compulsory License on Foreign Patent Applicants if they don't make products and/or use the patent process in Indonesia within 36 (thirty-six) months from the Patent application accepted. If Article 20 Paragraph (1) is not implemented beyond the period of 36 (thirty-six) months, the Patent Application may be submitted for cancellation to the Court, which imperatively enforces this rule through the provisions of Article 130 Paragraph (1) letter e of Law Number 13 of 2016 concerning Patents.

The reality of intervention from the foreign patent applicant's country of origin in this matter is actually a form of deviation from the norms of the TRIPS Agreement itself. Apart from deviating from the norms of the TRIPS agreement, this intervention is also a form of deviation from the pacta sunt servanda principle. All member countries, whether developed countries, developing countries, or underdeveloped countries, have agreed to bind themselves to the TRIPS agreement, so, in this case, the obligation of developed countries to support technology transfer is also included. Supposedly, developed countries also comply with these provisions and carry out agreements with good faith.

Various perspectives for amending the provisions of Article 20 Paragraph (1) and Paragraph (2) of Law Number 13 of 2016 concerning Patents include that the politics of forming current Patent Laws are closely related to investment and economic cooperation (Maulana, 1997:107). Content in patent laws and regulations can become a bargaining position for a country in conducting export-import trade. If the content in the patent law harms one of the countries (and/or in this study does not follow the minimum standards of the TRIPS Agreement), then Indonesia will encounter obstacles in product export transactions, and the country that feels disadvantaged will also think again about investing capital and its patented technology in Indonesia and even that country can take cross-retaliation against patents belonging to investors from Indonesia and/or the possibility of imposing sanctions on trading products from Indonesia when they are exported to their country. However, the clause "…mandatory to manufacture products in Indonesia…" makes a significant contribution to Technology Transfer in Indonesia. As the global economy develops, Technology Transfer is not only an issue of foreign investment,

but also intersects with the development of IPR in a country. Marco Ricofoli in his writings mentions the provision of making products in destination countries is a formidable means of coercing patent holders to carry out Technology Transfer.

Member States that impose obligations on patent holders to produce products in their own countries have been regulated in Article 30 and Article 31 TRIPS. In Article 30 TRIPS itself provides limited exceptions regarding the exclusive rights granted by patents, as long as they do not unreasonably harm the legitimate interests of the patent owner and with due regard to the legitimate interests of member countries. Remember the permissibility to adopt partly or fully the provisions of the TRIPS Agreement, then by disputing the clause in Article 20 Paragraph (1) Paragraph (2) of Law Number 13 of 2016 concerning Patents, a premise can be withdrawn if what influences legislators more is adjust content material to the TRIPS Agreement and follow international trade politics solely (Kurnianingrum, 2019).

If you look closely at Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation, apart from the very regrettable abolition of the obligation to Transfer Technology in the new provisions, the State also does not have coercive power, especially for "Technology Transfer" against Foreign Patent Holders through Compulsory Licenses, if the Patent Holder does not use or implement the Patent in Indonesia. According to the author, this is very detrimental to Indonesia's position as a recipient of a patent application. Whereas Transfer of Technology which requires a licensing contract in it, actually has provided protection and legal certainty for the Patent Holder, because it has been carefully regulated, so that any action without the consent of the Patent Holder can have legal consequences and responsibilities for the licensee as *pacta sunt servanda* principle (Prasetiyo, 2020).

In principle, a Compulsory License can be applied imperatively on a non-voluntary basis to the Patent Holder. As for the TRIPS Agreement and the Paris Convention, although they are not explicitly stated, these agreements allow Member States to apply for Patent Compulsory Licenses, as long as certain conditions have been met (what is meant by certain conditions, in this statement are regulated in Article 30 TRIPs: Exceptions to Right Conferred). Furthermore, based on the Doha Declaration on the TRIPs and Public Health Agreement, adopted on November 14, 2001, states that each member state has the right to apply for a Compulsory License and is free to determine the basis for imposing the license (*Compulsory Licences For Export Of Medicines*, n.d.).

Judging from some international treaty arrangements that allow the application of

Compulsory Licenses, the premise can be drawn that the protection of the patent holder's exclusive rights may not be applied purely because it can hinder increased access to new technology and harm consumer rights (Kinda Mohammadieh in Sanib, 2019). So it can be concluded that the Compulsory License is the right mechanism for developing technology and science and technology through Technology Transfer. From another point of view, actually the Compulsory-License policy in Article 82 Paragraph (1) of Law Number 13 of 2016 concerning Patents provides for the possibility of granting licenses by Patent Holders, especially those from abroad who must support the Transfer of Technology, when patents are not produced and/or implemented in that country.

Background Reading Material on Intelectual Property WIPO, mentions 3 (three) types of legal formats that can be used to carry out the Transfer of Technology, including: (1) Through sales and transfer of technology, (2) Through granting patent licenses (3) Through know-how how agreement. The TRIPS Agreement itself recognizes the importance of the success of Technology Transfer especially for Developing Countries in some principles and objectives stated in the Agreement. If you look at the provisions of Part Least-Developed Country Member Article 66.2 of the TRIPs Agreement, then, in fact, the TRIPs Agreement requires Developed Countries to provide facilities for increasing Transfer of Technology in Developing Countries that are Member States. Meanwhile, within the scope of being a WTO member state, the issue of technology transfer has been specifically regulated in the objectives or Part Objective Article 7 of the TRIPs Agreement *"...The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligation..."*

Eliminating the requirement for Technology Transfer in Law Number 11 of 2020 concerning Job Creation hinders the success of technology transfer in Indonesia (in the field of patents), considering that this program should be routinely carried out mainly by Developing Countries so as not to experience a stark gap with Developed Countries. Through Part Objective: Article 7 TRIPs, actually normatively the purpose of this agreement is very good, namely to provide law enforcement for violations and protection of IPRs with actions that create healthy trade, spur innovation in the field of technology, and facilitate the Transfer of Technology and the dissemination of technology while taking into account individual rights (in this case the exclusive rights of the Patent Holder) carried out to support economic and social welfare.

"Technology transfer is difficult for the domestic industry to practice because it is still difficult to obtain raw materials", citing the reasons for lawmakers in enacting Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation, by removing the requirement for Transfer of Technology is indeed a complex issue. Ongoing Soeropati in his book mentions, if anyone wants to master technology, then they must be willing to pay a high price for this technology. Before the transfer of technology, creating a technology also cost a large amount of money to the patent applicant's country of origin (or in this case a foreign investment company). The costs incurred by the Patent Applicant's country of origin are for research and technology development activities (Soeropati, 1999:93-94). The expert opinion which can also be said to support Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation, was also conveyed by Thee Kian Wie who stated 4 (four) things that became a benchmark for the success of Technology Transfer in a country (Wie, 1998:8):

a. That the local/local manpower is capable of efficiently handling imported technology or patents. Technology transfer is said to be successful if the local/local workforce has the skills to operate the imported machines and knows how to maintain them. This also includes the ability of a good local manager, in coordinating the process of using these machines.
b. That the technology or process-Patent has been fully understood by local experts, technical staff, local/local workers, and local managers. This imported process patent has begun to be modified and adapted to the conditions and specific needs of local conditions. Furthermore, Technology Transfer is said to be very successful if local workers and/or experts can invent and develop engineering new production techniques from imported technology or process patents.
c. That the technology (both product-patent and/or process-patent) has been spread to other local companies. An example of its deployment, in this case, could be the first company to use the technology or through a licensing agreement with the importing country.

However, even though resources (raw materials) are difficult to obtain, the reasons for eliminating the Transfer of Technology by lawmakers in Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation are incorrect. If you look at the notion of technology as defined by the Word Intellectual Property Organization (WIPO), the notion of technology is not only limited to scientific knowledge (scientific knowledge, in this case,

means papers, and publications) but also regarding business and organizational knowledge.

"Technology mean systematic knowledge for manufacturing of a product, the application of a process or the rendering a service wether that knowledge be reflected in an invention, an industrial design, a utility model or a new plant variety or in technical information or skill, or in services and the assistance of an industrial plant or the management of an industrial or skill, or the management of an industrial or commercial enterprise or its activities"

Based on the WIPO clause, it can be interpreted that technology is information that can apply to all stages of planning, organization, and operation of an industrial or commercial company with all its activities. So understanding technology is not only scientific knowledge but also knowledge about running a business. Thus, the technology can be in the form of patents (patents and/or inventions), know-how (trade secrets), industrial designs, utility models, and new plant varieties. Meanwhile, if classified, technology can be divided into 3 (three) types:

a. *Advance Technology*
b. *Intermediate Technology*
c. *Low/Tradisional Technology* (Anoraga, 1995:7)

The reality of eliminating the requirement for the Transfer of Technology in Law Number 11 of 2020 concerning Job Creation is a form of deviation from some principles and objectives stated in the Agreement, especially Article 7 TRIPS. The issue of IPR is indeed complex because it must be able to balance, especially between the interests of patent holders, and patent licensees, and between developed countries against developing countries and underdeveloped countries. So the protection of the public interest is also regulated in the Part Principle, Article 8 TRIPS. The Principle of Public Interest in Article 8 of the TRIPS Agreement, allows each Member State to decide on the necessary policies in terms of protecting public health and nutrition, as well as for the interests of society related to social, economic, and technological development.

Technology Transfer in Developing Countries in many ways occurs and is successful if it is done through the method of License Agreement (either Voluntary License or Compulsory License). The success of this method is due to several factors, namely: (a) The License Agreement requires little to no capital from foreign parties or the Patent Holder on the technology concerned, (b) With little capital charged to foreign parties or Patent Holders, it can be said that the risk incurred by the implementation of the Patent License is very small. However, it does need to be a separate note if another risk that may

arise is the possibility of the Recipient of Lisesnsi as a competitor or market competitor, (c) The last is in terms of marketing, granting Patent Licenses is considered faster to dominate the market (Saidin, 1997:16).

The TRIPs agreement as an international law certainly has differences in legal principles with ideal legal arrangements in Indonesia. The basis of the TRIPs Agreement is based on the protection of exclusive rights that prioritize the interests of the Patent Holder and the Patent Applicant Country. Meanwhile, IPR law in Indonesia is very thick with the values of nationalism and social justice derived from the philosophy of Pancasila. Quoting expert opinions, Budi Agus Rismandi in his book said that the viewpoints between developed and developing countries are very different. Generally, the point of view of developed countries towards IPR protection, especially patents, is that investment and technology transfer of developed countries will not enter developing countries, if in developing countries there is no adequate IPR protection. While the point of view of developing countries in the formation of IPR laws and regulations, is:

a. The benefits of IPR protection are only enjoyed by developed and developing countries only as consumers so there is no need to protect IPR strictly.
b. IPR is seen as an obstacle in the process of Technology Transfer from Developed Countries to Developing Countries, because it has to pay royalties and high licensing fees.

After comparing the Patent protection provisions of the Old Patent Law (Law Number 13 of 2016 concerning Patents) and the New Patent Law (Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023) with one of the international conventions, namely the TRIPs Agreement, There is increasing confidence in the importance of a legal political concept (ius constituendum) of IPR, especially ideal patent protection in the promulgation of new laws (in this case Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023). This is in line with what John Rawls called "justice of fairness". Regarding political regulatory justice (or distributive justice in the limited sense), Rawls sought to maximize equal individual freedom without harming even the most disadvantaged groups in the community (Ratnapala, 2009:337).

The political conceptualization of patent protection law in ius constituendum must be able to balance the philosophical principles contained in Pancasila, the Preamble to the 1945 Constitution of the Republic of Indonesia and constitutionally through the 1945

Constitution of the Republic of Indonesia while taking into account international developments (international conventions related to IPR protection).

The principle of State authority to carry out IPR protection in the national interest, if drawn to the root of the Fifth Precept of Pancasila "Sausage Justice for All Indonesian People". The legal ideals of the Indonesian nation are rooted in Pancasila, which the founding fathers established as the foundation of philosophy (Handoyo, 2008:65). Pancasila as a rechtsidee must be the soul of the establishment of IPR protection laws and regulations. The national interests of each State are contained in the purpose of the formation of the State. Quoting the opinion of Aristotle, who said that the purpose of the formation of the State was to organize a better life for its citizens by realizing the general welfare (Dinoyudo, 1986:4).

If you look at the regulation of Law Number 13 of 2016 concerning Patents, regarding the implementation of Article 20 Paragraph (1) and Technology Transfer by Patent Holders, actually this provision is in line with 2 (two) basic studies adopted in the preparation of Law Number 13 of 2016 concerning Patents, namely the Principle of National Interest and the Principle of Public Interest. The principle of public interest in Law Number 13 of 2016 concerning Patents is contained in a number of clauses: Article 82 Paragraph (1) letter b, Article 109 Paragraph (1) letter b, Article 112 Paragraph (2), Article 114 Paragraph (1), Article 132 Paragraph (1) letter d.

The abolition of the requirement for Technology Transfer in the new provisions (Article 107 Number 2 of Government Regulation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023) is not in accordance with the ideals of national law, considering that Technology Transfer itself is intended so that Indonesia does not experience prolonged dependence on foreign parties. And if returned to the philosophy of forming patent law, then the elimination of the obligation of Technology Transfer is contrary to the goal of accelerating the mastery of science and technology by the nation itself (Pramuntjak, 1994:147). The establishment of IPR protection laws, especially patents, must be pursued so that they remain oriented towards national interests, even though they must adjust to the contents of the TRIPs Agreement. Meanwhile, aspects of national interest, even though they are included in the consideration of the New Patent Law (Government Regulation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023), do not animate the law. Departing from this reality, Indonesia should be more careful in adopting the TRIPs Agreement into the formation of IPR laws and regulations, especially

patents. If you look at the reasons for the Technology Transfer regulation in the Academic Paper of Bill 13 of 2016 concerning Patents which repeals Law Number 14 of 2021 concerning Patents, then the patent arrangement in Law Number 13 of 2016 concerning Patents is the most ideal and beneficial for Indonesia both as a Developing Country and as a recipient of Patent applications.

Based on this statement, the legal politics of the formation of patent legislation in the future (ius constituendum) needs to be reviewed with the following considerations:

First, the total harmonization modification method used during the establishment of Law Number 13 of 2016 concerning Patents is a very rational choice by Indonesia. Through Law Number 13 of 2016 concerning Indonesian Patents, it remains consistent with the principles of the TRIPs Agreement, while still affirming the protection of patent holders' exclusive rights but also prioritizing national interests. This is in accordance with what was stated by Geny as quoted by C.S.T Kansil in Hasim Purba and Muhammad Hadyan Yunhas Purba, stating that "in science et technigue en droit prive positive, the main purpose of law is to achieve justice, and as an element of justice is mentioned importance, usefulness and expediency" (Purba, 2019:30). Bellefroid also stated that the content of the law must be determined according to two principles, namely justice and benefit (Purba, 2019:29). These two opinions are in line with John Rawls' "justice of fairness" which in essence justice is given by providing maximum protection of individual freedom without harming other groups, even the most disadvantaged groups.

Law Number 11 of 2020 concerning Job Creation, which was later repealed by Government Regulation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023 which is currently in force, is actually full of paradigms of wanting to adjust the new patent law to the provisions in the TRIPs Agreement and due to intervention from other countries.

Second, through Law Number 13 of 2016 concerning Patents, it is possible to accelerate science and technology to catch up with developed countries. If returned to Article 20 Paragraphs (1) and (2) of Law Number 13 of 2016 concerning Patents which regulates the mandatory provisions for making products in Indonesia that must support technology transfer, investment absorption and/or employment provision. Against the implementation of Article 20 Paragraph (1) of Law Number 13 of 2016 concerning Patents by Patent Holders, Indonesia is able to demonstrate its dignity and dignity as a sovereign state and equal to other countries.

Third, although Technology Transfer can be carried out through the operation of

Foreign Investment companies and / or joint venture contracts or other methods, if it refers back to the definition of Patent License (Article 1 Number 11 of Law Number 13 of 2016 concerning Patents), the premise can be drawn if the method of Technology Transfer through Patent License is the most comprehensive and effective way. The Technology Transfer Method regulated in Article 20 Paragraphs (1) and (2) of Law Number 13 of 2016 concerning Patents actually does not conflict with the TRIPs Agreement, because the provisions of Article 40.1 and Article 40.2 of TRIPs itself which mention that Technology Transfer that fulfills the agreement can only be done through a License Agreement. If it departs from Government Regulation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023, the state does not even have the force that Foreign Patent Holders through Compulsory Licenses must support technology transfer.

IV. Conclusion

Article 107 Number 2 of Legislation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023 is not in accordance with the mandate of article 7 of TRIPs, and has implications for the absence of government interference in technology transfer in the field of patents (especially regulations in legislation). This causes no guarantee of legal certainty for the necessity of technology transfer in the field of patents, even in compulsory licenses. Technology transfer that is difficult for domestic industries to practice because they still have difficulty obtaining raw materials is the reason for the abolition of the technology transfer clause, even though patent licenses are considered to be the most effective means of technology transfer. The legal politics of the establishment of Article 107 Number 2 of Law Number 11 of 2020 concerning Job Creation are influenced by the intervention of other countries and are more inclined towards adjusting international trade politics rather than maintaining the principle of national interest. The law maker should emphasize the necessity of technology transfer in the field of patents through licenses in laws and regulations in Indonesia. Article 107 Number 2 of Government Regulation Number 2 of 2022 concerning Job Creation which has been enacted into law through Law Number 6 of 2023 needs to be revised/corrected with legal policy that laws and regulations should be able to balance the philosophical principles contained in Pancasila, and the Constitution of the Republic of Indonesia Year 1945 (prioritizing national interests) while still providing protection for

the exclusive rights of patent holders and still paying attention to international developments, both the TRIPs Agreement and other conventions.

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