

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 27 YEAR 2004
REGARDING
THE PROCEDURE OF EXPLOITATION OF PATENT BY THE GOVERNMENT

WITH THE MERCY OF GOD ALMIGHTY,

PRESIDENT OF THE REPUBLIC OF INDONESIA,

- CONSIDERING : that, to implement the provision of Article 103 of Law No. 14 of 2001 regarding Patent, it is necessary to stipulate a Government Regulation on Procedure of Exploitation of Patent by the Government;
- IN VIEW OF : 1. Article 5 paragraph (2) of the Constitution of Republic of Indonesia of 1945, as amended by the Fourth Amendment of the 1945 Constitution;
2. Law No 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization (State Gazette of the Republic of Indonesia No 57 of 1994, Supplementary State Gazette of Republic of Indonesia No 3564);
3. Law No 14 of 2001 regarding Patents (State Gazette of the Republic of Indonesia No 109 of 2001, Supplementary State Gazette of the Republic of Indonesia No 4130);

HAS DECIDED

TO ENACT A GOVERNMENT REGULATION REGARDING THE
PROCEDURE OF EXPLOITATION OF PATENT BY THE
GOVERNMENT

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Government Regulation:

1. Patent shall mean an exclusive right granted by the State to an Inventor for his Invention in the field of technology, for a certain time, to exploit his Invention or to authorize another person to exploit it.
2. Invention shall mean an Inventor's idea that is poured in any 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. Patent Holder shall mean an Inventor as the owner of Patent or a recipient of such right from the owner of Patent or a subsequent recipient of Patent from the person mentioned above who is registered in the General Register of Patents.
4. Royalty shall mean the payment received by the Patent Holder for a patent which is exploited by the government.
5. Minister shall mean the minister, whose scope of duties and responsibilities includes the guidance in the field of intellectual property rights, including Patents.
6. Directorate General shall mean the Directorate General of Intellectual Property Rights under a department presided over by the Minister.
7. Day shall mean working day.

CHAPTER II SCOPE OF PATENT EXPLOITED THE GOVERNMENT

Article 2

- (1) In case that the government is in the opinion that a patent in Indonesia is very important for state defense and security, the government itself may exploit the patent.
- (2) In case that the government is in the opinion that there is an urgent need for the public interest of a patent, the patent maybe exploited by the government.
- (3) In the exploitation of a patent, as referred to in paragraphs (1) and (2), the government may authorize a third party to implement it.
- (4) The third party referred to in paragraph (3), shall fulfill the following requirements:
 - a. Having a facility and being able to exploit the patent;
 - b. Not delegating the exploitation of patent to any other party; and
 - c. Having good methods of production, circulation, and monitoring which is in accordance with prevailing laws and regulations.

Article 3

The exploitation of patent, as referred to in Article 2 paragraph (1) includes the exploitation of patent in the following fields:

- a. Fire guns;
- b. Ammunitions;
- c. Explosives used in the military;
- d. Chemical weapons;
- e. Biological weapons;
- f. Nuclear weapons; and
- g. Military equipments.

Article 4

The exploitation of patent, as referred to in Article 2 paragraph (2) includes the exploitation of patent in the following fields:

- a. Pharmaceutical products needed to eliminate wide-spreading disease;
- b. Chemical products related to agriculture; or
- c. Medicine for animals needed to eliminate wide-spreading animal pests and diseases.

Article 5

The exploitation of patent as referred to in Articles 3 and 4 shall be stipulated in a Presidential Decree after the President hears the opinion of the Minister, and the minister or head of institution responsible in the related fields.

Article 6

The exploitation of patent by the government which is stipulated in a Presidential Decree as referred to in Article 5 shall be done for a certain period of time and may be extended after hearing the opinion of the Minister, and the minister or head of institution responsible in the related fields.

Article 7

- (1) The exploitation of patent by the government in case of urgent need for public interest as referred to in Article 2 paragraph (2) shall not reduce the right of the patent holder to exploit his right, as referred to in Article 16 of Law No. 14 of 2001 regarding Patent.
- (2) In the exploitation of patent by the government relating to the state defense and security as referred to in Article 2 paragraph (1), the patent holder does not exploit his right as referred to in Article 16 of Law No. 14 of 2001 regarding Patent.

CHAPTER III PROCEDURE OF PROPOSAL OF UTILIZATION OF PATENT BY THE GOVERNMENT

Article 8

- (1) The exploitation of patent as referred to in Article 2 paragraphs (1) and (2) shall be proposed in writing by a government institution to the Minister through the Directorate General.
- (2) The proposal on the exploitation of patent as referred in paragraph (1) shall contain:
 - a. Title of invention;
 - b. Name patent holder;
 - c. Patent number;
 - d. Reason for exploitation; and

e. Term of exploitation.

- (3) Within a period of 7 (seven) days at the latest as of the receipt of the proposal, as referred to in paragraph (1), the Minister shall establish a team presided over by the Director General to provide opinion including the amount of royalty from the exploitation of patent by the government.
- (4) Within a period 14 (fourteen) days at the latest as of the establishment of the team by the Minister, the team must provide its opinion regarding the proposal to the Minister.
- (5) The Directorate General shall notify the patent holder on the submission of proposal regarding the exploitation of his patent by the government institution as referred to in paragraphs (1) and (2).

Article 9

- (1) The Minister shall submit the proposal as referred to in Article 8 paragraph (1) within a period of 24 (twenty-four) days at the latest as of the receipt of the proposal to the President for approval.
- (2) The approval on the exploitation of patent by the government paragraph (1) will be stipulated in a Presidential Decree.
- (3) The Presidential Decree as referred to in paragraph (2) shall at least contain:
 - a. Title of invention;
 - b. Name of patent holder;
 - c. Patent number;
 - d. Reason for exploitation;
 - e. Term of exploitation; and
 - f. Royalty.
- (4) Copy of the Presidential Decree as referred to in paragraph (2) shall be forwarded by the Minister to the patent holder within a period of 7 (seven) days at the latest as of the receipt of the Presidential Decree.
- (5) The exploitation of patent by the government shall be recorded in the General Register of Patents and published in the Official Gazette of Patents.

CHAPTER IV ROYALTY

Article 10

- (1) The exploitation of patent by the government shall be done by the payment of royalty to the patent holder as compensation.
- (2) The royalty as referred to in paragraph (1) shall be paid within 1 (one) month at the latest as of the stipulation of the Presidential Decree as referred to in Article 9 paragraph (2).

- (3) In case that the patent holder has an objection on the amount of the royalty paid by the government, he may file a lawsuit to the Commercial Court.
- (4) The objection as referred to in paragraph (3) may be submitted within a period of 3 (three) months at the latest as of the stipulation of the Presidential Decree, as referred to in Article 9 paragraph (2).
- (5) If the objection as referred to in paragraph (4) is not submitted, the patent holder is deemed agreeable on the amount of royalty and compensation.
- (6) The process of examining of the lawsuit as referred in paragraph (3) shall not stop the exploitation of patent by the government.

CHAPTER V ANNUAL FEE

Article 11

The annual fee of a patent which is exploited by the government shall be paid by the governmental institution or the third party authorized by the government to exploit the patent.

CHAPTER VI CLOSING PROVISION

Article 12

This Government Regulation shall come into force from the date of its enactment.

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

Enacted in Jakarta on October 5, 2004

PRESIDENT OF THE REPUBLIC OF INDONESIA

MEGAWATI SOEKARNOPUTRI

Promulgated in Jakarta on October 5, 2004

STATE SECRETARY OF THE REPUBLIC OF INDONESIA

BAMBANG KESOWO

STATE GAZETTE OF THE REPUBLIC OF INDONESIA OF 2004 NUMBER 106

ELUCIDATION
OF
GOVERNMENT REGULATION NUMBER 27 OF 2004
REGARDING
THE PROCEDURE OF EXPLOITATION OF PATENT BY THE GOVERNMENT

I. GENERAL

This Government Regulation is composed as the implementation of Article 103 of Law No. 14 of 2001 regarding Patent which provides that the procedure of exploitation of patent by the government shall be stipulated in a Government Regulation. The stipulation of this Government Regulation is intended to serve as a legal ground for the government in exploiting a patent.

In case that the government is in the opinion that a patent is important for the state defense and security or because of an urgent need for the public interest, the government may exploit a patent or authorize a third party to exploit it.

The scope of the exploitation of patent by the government as provided for in this Government Regulation includes the state defense and security purposes which include the exploitation of patent on fire guns, ammunitions, explosives used in the military, chemical weapons, biological weapons, nuclear weapons, and military equipment.

Meanwhile, the scope of exploitation of patent by the government in case of an urgent need for the public interests includes:

- a. Pharmaceutical products including active raw materials, other raw materials needed in the making of diagnosis material and substance needed for that purpose; and
- b. Chemical products relating to agriculture and food for animals needed to eliminate wide-spreading animal pests and diseases and plant disturbing organisms.

The proposal for the exploitation of patent shall be filed in writing by a government institution to the Minister through the Directorate General. The Minister shall convey the proposal to the President for approval which will be stipulated in a Presidential Decree. The Presidential Decree will be stipulated after the President hears the opinion of the Minister, and minister or head of the institution responsible in the related fields.

In line with the appreciation on patent as right and the intention to realize a better climate to encourage research performance producing invention in the field of technology, the exploitation of patent by the government must be done proportionally by respecting right of the patent holder. Therefore, the exploitation of patent by the government is done by a notification to the patent holder and the payment of a reasonable amount of royalty.

The matters provided for in this Government Regulation are, among others, the scope of patent exploited by the government, the procedure of proposal for exploitation of patent by the government, royalty, and annual fee.

II. ARTICLE BY ARTICLE

Article 1

Self-explanatory.

Article 2

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory.

Paragraph (3)

In principle, the exploitation of patent by the government shall be done entirely by the government, but the government may authorize a third party for and on behalf of the government to exploit the patent based on the consideration of efficiency and technological capacity.

Paragraph (4)

Self-explanatory.

Article 3

Self-explanatory.

Article 4

Self-explanatory.

Article 5

In this provision, "opinion" shall mean the opinion of the Minister, minister or head of the institution responsible in the related fields regarding, among others, the product safety, production capacity worthiness, quality, and product benefits.

Article 6

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Paragraph (1)

Self-explanatory.

Paragraph (2)

Letter a

Self-explanatory.

Letter b
Self-explanatory

Letter c
Self-explanatory

Letter d
The ground for exploitation, in this provision, is in the form of recommendation from the minister or head of the institution responsible in the related fields in accordance with the type of invention exploited.

Letter e
Self-explanatory.

Paragraph (3)
Self-explanatory.

Paragraph (4)
Self-explanatory.

Paragraph (5)
Self-explanatory.

Article 9
Self-explanatory.

Article 10
Self-explanatory.

Article 11
Self-explanatory.

Article 12
Self-explanatory.

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