

Disharmony in the Regulation of Patent License Contract Clauses in Joint Venture Companies in Indonesia

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ABSTRACT

Patent license agreements in joint venture companies serve as strategic instruments for technology transfer; however, their regulation in Indonesia continues to face disharmony across different legal frameworks. Law Number 13 of 2016 on Patents grants flexibility through the principle of freedom of contract, yet several restrictive clauses—such as grant-back clauses, excessive exclusivity, export prohibitions, and bans on reverse engineering—potentially conflict with Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, the Indonesian Civil Code, as well as Law Number 24 of 2009 on the National Flag, Language, and State Symbols. This situation creates an imbalance of bargaining positions, weakens legal protection for licensees, and hampers the fundamental objective of joint ventures, namely sustainable technology transfer. A normative legal research approach employing statutory, conceptual, and case analysis demonstrates that the absence of synchronization across legal regimes leads to legal uncertainty, provides opportunities for abuse of dominant positions, and generates potential disputes before both the courts and the Indonesian Competition Commission (KPPU). Therefore, a more comprehensive regulation of patent license contract clauses, along with harmonization across statutory provisions, is required to ensure legal certainty and to strengthen the role of joint ventures in advancing national technological capacity.

Keywords:

Patent Licensing
Joint Ventures
Legal
Disharmony
Technology
Transfer

INTRODUCTION

The government has the obligation to enhance economic competitiveness and ensure public welfare within the growth of the national economy by optimally utilizing available resources. One strategic instrument employed in achieving this goal is the facilitation of foreign direct investment (FDI), which can help address domestic limitations in capital, technology, technical expertise, and managerial capacity. In this context, FDI is anticipated to stimulate technology transfer, capital flow, and management skills, as supported by research indicating that FDI should not merely serve as a financial provider but also as a medium for the transfer of knowledge and technology to mitigate the risks of structural dependency on developed countries (Abdika et al., 2024; Pujiati et al., 2023).

A tangible manifestation of foreign investment activities that encourages technology acquisition by domestic players is the establishment of joint ventures, regarded as one of the effective legal mechanisms. In practical investment terms, a joint venture facilitates share distribution, management control, and the integration of assets and competencies from both foreign investors and local partners. This scheme aligns with national policy directions articulated in Law Number 25 of 2007 on Capital Investment, which mandates that technology transfer is a fundamental obligation for foreign investors (Tran et al., 2024). Alternative cooperative forms, such as licensing agreements, franchising, management contracts, and technical assistance, are well-recognized in international business practices; however, joint ventures are often considered more effective in fostering sustainable technology transfer (Hanim et al., 2022).

Generally, the execution of technology transfer within the framework of joint ventures is accompanied by patent licensing agreements, which represent a form of rights transfer that allows other parties to use a patented invention under specific timelines and conditions. Indonesian legal norms governing patent licenses are laid out in Law Number 13 of 2016 on Patents, particularly in Articles 75 to 84. Despite this legal structure, the provisions remain general and lack comprehensive regulatory support, resulting in a legal vacuum regarding contract oversight, legal protection mechanisms, and the regulation of critical clauses, such as restrictions on business practices. The absence of implementing regulations leads to patent licensing agreements between patent holders (licensors) and licensees being entirely subject to Article 1338(1) of the Civil Code, which asserts that every valid agreement is binding. This provision emphasizes the principle of contractual freedom; however, in practice, it may result in imbalances in legal standing between foreign and domestic parties, particularly concerning the enforcement of onerous unilateral clauses upon the licensee (Fathia et al., 2021; Mansur, 2023).

At the international level, patent licensing regulations have been developed by organizations like the World Intellectual Property Organization (WIPO), which, through their "Licensing Guide for Developing Countries," provides contractual guidance for developing nations in formulating equitable licensing agreements. Nevertheless, Indonesia has yet to fully incorporate these principles into its legal framework, making the protection of licensees contingent on the bargaining power and negotiation capacity of each party. Within the context of Industry 4.0 and the acceleration of global economic integration, mastering technology emerges as a critical determinant in establishing national competitive advantage. Various strategic sectors, including tourism, energy, transportation, and manufacturing, greatly require advanced technology, often accessible only through foreign investment collaborations (Sari & Amar, 2023; Ichsan et al., 2023).

In light of the above discussion, the author argues that ensuring legal certainty and protection for legal subjects forms an integral part of the essential objectives of the legal system, aimed at fostering order, justice, and the continuity of norms within society. Legal protection for subjects must be realized through the establishment of legal certainty. The law acts as a guardian of individual rights and obligations in conducting legal actions. Based on this condition, the author sees the necessity for scientific research to examine normative aspects related to patent licensing regulations in the context of technology transfer within joint ventures. The legal issues to be analyzed in this study are formulated as follows: (1) How is patent licensing regulated in technology transfer within joint ventures according to Indonesian law? (2) What legal implications arise from the disharmony in patent licensing regulations within joint ventures in Indonesia? This study aims to analyze and comprehend the regulation of patent licensing within the technology transfer framework in joint ventures based on Indonesia's positive legal system, providing clarity on applicable legal norms. Moreover, the research seeks to identify and assess the legal implications stemming from the disharmony in patent licensing regulations in the practice of joint ventures in Indonesia. Ultimately, this research emphasizes the urgency for the formulation of more detailed, specific, and implementable patent licensing regulations to prevent ambiguities and the potential misuse of existing legislative provisions, thereby ensuring legal certainty and protection for all parties involved (Sudrajat, 2021; FoEh et al., 2020).

METHOD

This research employs a normative legal method that focuses on the study of relevant regulations and legal doctrines. The analysis is conducted through three main approaches. First, the statutory approach examines norms governing patent licensing and business contracts, including Law Number 13 of 2016 on Patents, Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Competition, the Civil Code, Law Number 24 of 2009 on the Flag, Language, and National Emblem, and Government Regulation Number 36 of 2018 regarding the Registration of Intellectual Property License Agreements. The second approach is conceptual, referring to principles such as contractual freedom, balanced obligations of the parties, and the principle of fair competition within civil law and intellectual property law. The third approach is case-based, analyzing relevant judicial decisions and rulings from the Business Competition Supervisory Commission (KPPU) concerning disputes arising from licensing contract clauses Mappong & Lili (2023) Abdullah, 2022; Marfungah & Suartini, 2024).

The legal sources utilized in this research encompass primary legal materials in the form of laws and judicial rulings, as well as secondary legal materials consisting of academic literature, scientific journals, and previous research outcomes. All legal materials are subjected to qualitative analysis, emphasizing the consistency of norms and their implications for the implementation of patent licensing agreements in joint ventures in Indonesia. This methodological approach aims to ensure a comprehensive understanding of the legal landscape and its effects on technology transfer practices among domestic entities engaged in joint ventures (Rahmawati et al., 2024; Claudia, 2023; Marfungah & Suartini, 2024).

RESULTS AND DISCUSSION

What are the regulations regarding patent licensing in technology transfer within joint ventures according to Indonesian law? Intellectual property licensing is seen as a legal instrument granting rights to the holder to transfer utilization permission to other parties Hedyanto et al. (2021). Through such licensing, opportunities for business development in both domestic and international markets are created, facilitating optimal economic benefits (Sukananda & Mudiparwanto, 2020). Legally, licensing is understood as an agreement between the licensor and licensee, wherein the licensor confers usage rights of their intellectual property to the licensee in exchange for certain compensation and potentially includes specific conditions based on party agreements (Kamil, 2022). Various types of licenses can be categorized based on the type of the licensed object, the nature of the license, the breadth of the license's scope, and the licensing method itself. According to Kamil, these can be divided into two types: exclusive and non-exclusive licenses (Kamil, 2022).

Article 82 of Law Number 13 of 2016 concerning Patents defines the compulsory license as permission to practice a patent granted by the Minister, based on applications submitted by interested parties. The historical evolution of patent licensing regulation reveals that Indonesia's intellectual property regime can be traced back to the colonial era. As a nation that inherited its legal system from the Dutch colonial government, Indonesia has integrated licensing regulations into its intellectual property laws. The Draft Law on Patents was proposed in 1989 and subsequently enacted as Law Number 6 of 1989, with further amendments made in

subsequent years to align with evolving legal frameworks and societal needs (Robbani, 2024; Tjandrawinata & Budi, 2025).

Licensing agreements are fundamentally governed by contract law as stipulated in the Civil Code. Over time, legal studies emphasize that agreements must meet requisite legal conditions founded on fundamental principles inherent in contract law. However, rapid socioeconomic changes have led to unilateral conditions imposed in licensing agreements. Therefore, contemporary licensing agreements typically take the form of standard contracts drafted by licensors (Shykhnenko, 2024). Standard contracts are widely used in business practices for several reasons, including technical considerations, socioeconomic factors, and efficiency in time management. Article 76 of the Patent Law authorizes patent holders to offer licenses to others through agreements, whether in the form of exclusive or non-exclusive licenses, to undertake acts related to the patent itself.

Licensing agreements must not contain elements that could jeopardize Indonesia's national interests or impose restrictions that limit the nation's ability to conduct technology transfer, mastery, or development. In response, Government Regulation Number 36 of 2018 on the Registration of Intellectual Property Licenses emphasizes that a licensing agreement should not cause harm to the state, hinder national capacity building, engender unfair competition, or contravene legal provisions (Nuradi, 2023; Purwaningsih & Widyawati, 2023).

What are the legal implications of the disharmony in patent licensing regulations within joint ventures in Indonesia? The regulation of patent licensing within Indonesia's legal system is primarily contained in Law Number 13 of 2016 concerning Patents, particularly Articles 75 to 84. However, these provisions remain general and lack detailed implementing regulations, creating legal uncertainty, as patent licensing agreements in practice are subject to the principles of contractual freedom established in Article 1338 of the Civil Code. Although this principle grants leeway to the parties involved, its application in joint ventures often leads to imbalances in legal standing. Foreign licensors typically draft contracts in standardized forms that favor their interests, leaving domestic licensees in a vulnerable position with limited ability to negotiate more equitable terms (Syafitri & Dewi, 2022).

This imbalance has implications for the emergence of various restrictive clauses, such as grant-back clauses that require licensees to return results of technology developments to patent holders, export prohibitions, and reverse engineering bans. Such clauses not only deprive the licensee of potential advantages but also obstruct the primary goals of joint ventures, notably the achievement of sustainable technology transfer. Furthermore, these restrictive practices can be classified as restrictive business practices that may violate Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition, as they often contain elements of abuse of dominance or agreements that impede competition (Ullrich, 2023; Gaessler et al., 2025).

The legal consequences of this regulatory disharmony include: first, the creation of legal uncertainty due to the absence of normative instruments explicitly defining permissible licensing clauses; second, weakened legal protection for domestic parties in the role of licensees; and third, failure to achieve intended technology transfer objectives within the framework of joint ventures. Consequently, the disharmony in patent licensing regulations not only engenders contractual issues between parties but also impacts the overall strategic function of joint ventures in

supporting national technology development (Siriringoringo & Anugrahini, 2023; Tjandrawinata & Budi, 2025).

CONCLUSION

The regulation of patent licenses within joint venture companies in Indonesia continues to encounter disharmony in legal norms. Law Number 13 of 2016 on Patents merely provides a general basis for the implementation of license agreements without sufficient implementing regulations. This normative gap makes the principle of freedom of contract the primary reference, thereby opening the possibility of standard-form contracts unilaterally drafted by patent holders containing restrictive clauses. Such conditions create an imbalance in legal standing between foreign parties and domestic partners, while simultaneously weakening legal protection for licensees. Restrictive clauses such as grant-back provisions, export prohibitions, and bans on reverse engineering have the potential to disadvantage domestic parties, hinder the fundamental objectives of joint ventures, and at the same time constitute business practices that impose restrictions and may conflict with Law Number 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition. The juridical implications of this regulatory disharmony include the emergence of legal uncertainty, the disruption of the principle of contractual balance between parties, and the failure to realize the strategic function of joint ventures as a vehicle for sustainable technology transfer.

Recommendations

The establishment of more detailed implementing regulations on patent licenses is urgently required to regulate prohibited contractual clauses, thereby shifting the focus beyond administrative registration and ensuring that the substantive content of agreements aligns with principles of fairness and national interests. Harmonization of legal norms across Law Number 13 of 2016 on Patents, the Indonesian Civil Code, Law Number 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, and Law Number 24 of 2009 on the National Flag, Language, and State Symbols must be promptly

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