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# Unconstitutional Legal Problems of the Job Creation Law against Local Working Patents in the Elimination of Article 20 of Law Number 13 of 2016 concerning Patents

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**A R T I C L E I N F O**

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**ABSTRACT**

*Patent is a tool or tool aimed at disseminating technology and means in transferring technology so that patents can have a high social impact both through learning and economic progress of society in a country through technological developments. Patents are not only about granting the right to monopolize. However, it is also an award for technology to develop which will eventually have a good impact in the world of education and teaching as well as from the development of technology itself which aims also to increase the economic growth of the community. This method of research is normative juridical. The problem in this study is How is the problem of the application of local working after the abolition of article 20 in the UUPATEN? and then after the validity of Article 110 of the Job Creation Law for almost 1 year How is the polemic of the position of Article 20 of the UUPATEN and the achievement of TRIPs after the unconstitutional occurrence of the Job Creation Law based on the Constitutional Court Decision Number 91 / PUU-XIX / 2021? The conclusion of this study is that Article 20 of the Patent states that Bauwa requires patent holders to make products in Indonesia. So that Article 20 makes a conflict with Article 27 paragraph 1 trips agreement. the ratification of the JOB CREATION Law was then declared conditionally unconstitutional by the constitutional court and resulted in the regulations it had previously invited to patents.*

**ABSTRAK**

Paten merupakan sebuah tools atau alat yang ditujukan untuk mendiseminasikan teknologi dan sarana dalam melakukan transfer of technology agar paten dapat memiliki dampak sosial yang tinggi baik melalui pembelajaran maupun kemajuan ekonomi masyarakat dalam sebuah negara melalui perkembangan teknologi. Paten bukan hanya berisikan mengenai pemberian hak untuk memonopoli saja. Akan tetapi juga merupakan sebuah penghargaan agar teknologi berkembang yang pada akhirnya akan menimbulkan dampak yang baik dalam dunia pendidikan dan pengajaran serta dari perkembangan teknologi itu sendiri yang bertujuan juga untuk meningkatkan pertumbuhan ekonomi masyarakat. Metode penelitian ini yuridis normatif. Adapun permasalahan dalam penelitian ini adalah Bagaimana problematika dari penerapan local working setelah terjadinya penghapusan pasal 20 dalam UUPATEN ? dan kemudian setelah sah keabsahan dari Pasal 110 UU Cipta Kerja selama hampir 1 tahun Bagaimana polemik kedudukan dari Pasal 20 UUPATEN dan intseprestasi TRIPs setelah terjadinya inskonstitutional UU Cipta Kerja berdasarkan Putusan Mahkamah Konstitusi Nomor 91/PUU-XIX/2021? Kesimpulan dari penelitian ini adalah Pasal 20 Paten menyebutkan bauwa mewajibkan pemegang paten untuk membuat produk diindonesia. Sehingga atas Pasal 20 tersebut membuat adanya pertentangan dengan Pasal 27 ayat 1 TRIPs agreement. pengesahan UU CIPTA KERJA kemudian UU tersebut dinyatakan inkonstitusional bersyarat oleh mahkamah konstitusi dan berakibat kepada peraturan yang diundangnya sebelumnya terhadap paten.

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# I. INTRODUCTION

Trade Related aspects of intellectual property rights agreement (TRIPs) which is an attachment of Agreement Establishing the World Trade Organization (WTO) which is a legal globalization closely related to international trade and intellectual property rights. In its purpose the WTO made this agreement to abolish or rather prevent any fraudulent business practices (*unfair Trade).*

The implementation of TRIPs in Indonesia began on January 1, 1995, which in the beginning resulted in providing push and coerce to international countries to comply with international agreements related to intellectual property rights and global trade. The obligation of patent holders in the implementation of government in Indonesia which is a public policy that aims to achieve public policies such as job creation, industrial and technological capacity building, national balance of payments and economic independence (Michael; Halewood, 1997) local working considerations are sought so as not to conflict with *TRIP*s Agreement and attracting foreign patent holders.(Michael; Halewood, 1997).

Protection of Intellectual Property Rights "IPR" in the field of patents in the form of exclusive rights given to inventors is a form of appreciation for the hard work in the form of thoughts, energy, and costs that have been incurred. The very rapid development of technology at this time has also influenced various fields, both economic, socio-cultural, and also legal fields. Patents as a type of IPR in the field of technology have an important and strategic role in Indonesia's development, especially in stimulating economic growth, which can be done in the following 4 ways:(Kamil Idris, 2000) *Patent information makes it easier to transfer technology and investment; Patents encourage research and development at universities and research study centers; Patents as catalysts for new technologies and businesses; Businesses collect and use patents in the context of granting licenses, joint ventures and other transactions that generate profits.*

The above provides an important note for all elements of society and government regarding the importance of patents for a country, especially Indonesia, which is a developing country and needs to accelerate the utilization value of patents which will have an impact on improving the economy and development in all fields and not tailing to developed countries. Therefore, the existence of Local working patents relates to the purpose of regulating patents into international conventions. TRIPs mentioned that in some articles that want technolohi to develop by giving awards to the inventors of

new technologies. This means that the patent must be able to provide social and economic impact for residents who participate in the TRIPs agreement.(Rani Fadhila Syafrinaldi; David Hardiago, 2021)

TRIPs stated that patents are a tool or tool aimed at disseminating technology and means in transferring technology so that patents can have a high social impact both through learning and economic progress of society in a country through technological developments. Patents are not only about granting the right to monopolize. However, it is also an award for technolohi to develop which will eventually have a good impact in the world of education and teaching as well as from the development of technology itself which aims also to increase the economic growth of the community. Local working will then also become a necessity and the right to monopolize that is decided without considering social impact is also a mistake.

Law Number 13 of 2016 concerning Patents in article 20 states that "patent holders are required to make products or use processes in Indonesia which as referred to in paragraph 2 mentions that they must be able to support the transfer of technology to absorb investment and or the provision of employment." Article 20 of the Patent Law contains consequences for patent holders to make products or use processes in Indonesia, then in that article the patent holders must at least be able to establish a factory or place to manage or make products / use the process given a patent in Indonesia.(Undang-Undang Nomor 13 Tahun 2016 Tentang Paten, n.d.)

The granting of patent rights will be balanced with local working where the arrangement can be implemented as a consideration for the Indonesian government as affirmed in Article 20 of the Patent Law. The word "Mandatory" as mentioned in the Patent Law is claimed to be an act that can charge the patent applicant in producing or using the process in Indonesia.(BPHN, 2019) The inclusion of these provisions will hinder the entry of patent applications in Indonesia, especially against the provisions which will then also have an impact on the imposition of reciprocal actions against patents belonging to Indonesian inventors or the imposition of trade sanctions on Indonesian trade products that are abroad. So that this will harm the export trade of Indonesian products.(BPHN, 2019) it states that "a countermeasure that will affect Indonesia's exports is the revocation of the GSP (*General System of Preference*) by the United States."

GSP is a program provided by the United States for several products that can be allowed into the United States market by being granted duty free by first meeting the conditions set by Congress. The GSP criteria include respect for court decisions/arbitrations involving U.S. persons or corporations, eradication of exploitation of child labor, recognition and respect for workers' rights, providing reasonable and effective protection of intellectual property rights, providing fair market access for the United States. Indonesia is one of the GSP recipient countries with export products in 2018 that use

the benefits of the GSP facility is as much as $2.13 billion dollars (in billion dollars) of Indonesia's total exports to the United States of $18.4 billion dollars.(Syahroni, 2021).

Then, in 2020 the national Legislature, namely the DPR, was busy discussing the Job Creation Bill (which has been passed into the Job Creation Law) and one of the articles listed in the Job Creation Law is aimed at deleting Article 20 of the Patent Law as referred to in Article 110 of Job Creation. After that, at the end of 2021, the Job Creation Law was declared conditionally unconstitutional by the Constitutional Court (MK) which was decided through Decision Number 91/PUU-XIX/2021 which was read on November 25, 2021 because there was a formal defect.(Putusan Mahkamah Konstitusi Nomor 91/PUU-XIX/2021, n.d.)

The Chief Justice, anwar Usman, who was accompanied by 8 eight Constitutional judges, stated that is:("UU Cipta Kerja Dinyatakan Inkonstitusional Bersyarat, Pemerintah Segera Tindak Lanjuti Putusan MK," n.d.) "*The establishment of the Job Creation Law is contrary to the 1945 Constitution and does not have conditionally binding legal force as long as it is not interpreted as 'no improvement has been made within 2 (two) years since this decision was pronounced'. The Job Creation Law remains in force until improvements are made to the formation in accordance with the grace period as specified in this decision."*

The 448-page judgment was ordered by the Constitutional Court to make improvements to the framers of the Act within a period of 2 (two) years. If no improvement is made within the grace period, the Job Creation Law will be declared permanently unconstitutional. The occurrence of this problem will also have an impact on Article 110 which has been promulgated to regulate the abolition of Article 20 of the Patent Law. So that it can provide legal uncertainty and will have a great impact and the benefits of the laws and regulations will be questioned. The Patent Law in the future must be able to provide protection for all parties by formulating laws and regulations that can really encourage investment growth and remove barriers to investment and trade in Indonesia, but still stand in favor of providing partnership opportunities for the entrepreneurs in Indonesia. Based on the description above, the researcher is interested in discussing how are the problems of the application of local working after the abolition of article 20 in the UUPATEN? and then after the validity of Article 110 of the Job Creation Law for almost 1 year How is the polemic of the position of Article 20 of the UUPATEN and the achievement of TRIPs after the insconstitutional occurrence of the Job Creation Law based on the Constitutional Court Decision Number 91/PUU-XIX/ 2021?

## II. RESEARCH METHODS

This research uses normative juridical legal research As for the source, it explains that normative legal research or literature includes research on legal principles, research on legal systematics,

research on the level of vertical and horizontal synchronization, comparison of laws and legal history. with a statutory approach, a concept approach and a comparative approach. This statutory approach is intended to analyze and identify provisions governing the legal working of patents in Indonesia. Sources of legal materials used in this paper include primary legal materials, secondary legal materials and tertiary legal materials. The research data source collection technique used is a literature study. The data analysis technique used in this study is the deduction data analysis technique.

## III. RESULT AND DISCUSSION

1. Problems of the application of local working before after the abolition of article 20 in the PATENT Law against the Application of Local Working in the JOB CREATION LAW
2. The local working policy is contained in the provisions of Article 20 of the Patent Law which requires patent holders to carry out their patents in the country. Based on the provisions in Article 20 of the Patent Law, patent owners are required to create products or use processes that are protected by their patents in Indonesia to support technology transfer, investment, and/or employment. If the patent owner does not perform the obligation to manufacture the product or use the process covered by the terms of that patent within 36 months of grant, the third party may apply for a mandatory license(Masnun; et.al, 2019) Article 82 (1) of the Patent Law which states that a compulsory license is a license to execute a patent granted under a Ministerial Decree on the basis of an application on the grounds that: The Patent Holder does not carry out the obligation to make products or use processes in Indonesia as referred to in article 20 paragraph (1) within 36 months after being granted the patent; The patent has been executed by the patent holder or licensee in a form and in a manner that is detrimental to the interests of society; or Patents resulting from the development of patents that have been previously granted cannot be implemented without the use of other parties' Patents that are still under protection.

The Patent Law is a form of efforts to protect and enforce IPR which should provide benefits for innovation, technology transfer and technology dissemination by providing balanced interests between technology producers and users by supporting social and economic welfare and balancing rights and obligations. The principles or principles adopted and underlying the protection arrangements of the 2016 Patent Law can be the basis for implementing patents for the public interest are as follows:(Nurbaningsih, 2015) "The Principle of Benefits, means that patent protection provides benefits for the inventors of rights holders and users of patent rights; Rational Principle, meaning that the protection of patents that consider the economic value of inventions, based on the nature of the development of human knowledge itself, considers national resilience, the welfare of society and

justice for all components of society; The Sustainable Principle means that rights management that pays attention to technological and sociological developments so that their use can be continued in the future; The Principle of Fairness, means that the protection of patents that guarantee the accessibility of information of all levels of society; The Principle of Public Welfare, meaning that patent protection is oriented towards the welfare of all levels of society."

Implementing regulations on the obligations of patent holders in the manufacture of patent products where the process does not necessarily only exist when the 2016 PATENT Law is promulgated. However, the implementing provisions have been developed from time to time which started from the 1989 PATENT Law to the 2016 PATENT LAW. The implementation in 82 of the 1989 PATENT Law states that if the patent holder does not exercise his patent as per Article 18, then "after a period of 36 months from the date of granting the patent, any person may apply for a compulsory license to the district court to execute the patent. Implicitly, when viewed from the political law that the provisions of the obligation to implement patents for patent holders are good, assuming that the framers of the law have thought of directions or policies in the field of patents for the mastery of indonesian technology without the need for dependence on foreign."

The birth of Law Number 13 of 1997 concerning Amendments to Law Number 6 of 1989 concerning Patents (Patent Law 1997) is an amendment to the 1989 Patent Law to accommodate several provisions of TRIPs that have not been regulated before. With regard to the provisions of Article 18 of the 1997 Patent Law, there is no significant change, only adding to paragraphs (2) and (3) in the form of exceptions if the implementation of the patent is economically feasible only if it is made on a regional scale accompanied by reasons and evidence and approved by the Patent Office. Article 82 was also added with regard to the mandatory license application that is possible if the patent holder exercises the patent in a way that harms the interests of the public.

Implementing the provisions of Article 20 of the Patent Law, the government through the Ministry of Law and Human Rights (Kemenkumham) issued Permenkumham Number 15 of 2018 concerning the Implementation of Patents by Patent Holders on July 11, 2018. The regulation allows patent owners who have not been able to work on their inventions to postpone their obligations for a maximum of five years by submitting an application to the Ministry of Justice along with the reasons for the delay in this case usually beyond the maximum period of five years can be given upon request. In addition, the patent may be revoked by the Indonesian government if the patent holder fails to work on the invention claimed in the granted patent within the specified period of time. The delay request must be accompanied by at least several valid reasons, including: The patented process or product requires further development; Lack of facilities for the implementation of patented inventions in Indonesia (including difficulties in partnering with local companies for manufacturing, and/or

insufficient domestic production capacity); Inability to provide investment to bring manufacturing technology to Indonesia (e.g. if products are imported/distributed in Indonesia but not produced locally).

The local working policy is also interpreted as a domestic provision that allows granting licenses when patents are not 'worked out in the country. Failure to work on a patent locally is considered an abuse of patent rights by the patent holder, so a mandatory license can be granted by the government, forcing the patentee to party to exploit the product and the process it patents Therefore, the local working policy requires the patentee to actually use his patented ideas within the country that granted him the patent rights if he wants to retain his exploitative exclusive rights.(Nurbaningsih, 2015).

Based on the description of the article above in article 27 paragraph 1 of the TRIPs Agreement, it states that patents must be available and patent rights enjoyed without discrimination relating to the place where they were found in the field of technology and whether the product was imported or produced at the local level. The purpose of the article is that every production implementation carried out by the entrepreneur to be patented in order to prevent the absence of discrimination related to the invention of the patented product. And then in Article 27 paragraph 1 of the TRIPs mentions also for the patent process of the product whether it is made locally or imported.

Meanwhile, Article 20 of the Patent states that Bauwa requires patent holders to make products in Indonesia. So that Article 20 makes a conflict with Article 27 paragraph 1 trips agreement. The TRIPS rule is logically acceptable because it judges from the provisions so that people can have patents. However, if you follow Article 20 of the Patent, it is possible if there are Menegah Small Businesses and researchers who have good patents and are registered in ASEAN. But suddenly it was hampered by the application of Article 20 of the PATENT LAW which requires the manufacture of products in Indonesia.

This resulted then with the decline in Foreign Patent applications which was hampered due to the Provisions of Article 20 of the PATENT LAW since the promulgation of the PATENT LAW, it was calculated that there was a decrease in patent applicants from 2017-2019 which of course resulted in hindering investment and innovation of the products to be patented.(Syahroni, 2021) Based on explanations from several countries such as the United States, China, Japan, Germany and Korea, it is among the countries with the most patent applications out of a total of 91 countries that registered their inventions in Indonesia. However, that number has declined from 2017 to 2019. The occurrence of this condition is caused by the provisions in Article 20 of the Patent Law which requires Patent Holders to make products and use processes in Indonesia. In addition, the provisions of Article

20 of the Patent Law are also considered contrary to the provisions of Article 27 of the TRIPs Agreemen.(BPHN, 2019)

3. Polemic of the position of Article 20 of the UUPATEN and the achievement of TRIPs after the unconstitutional occurrence of the Job Creation Law based on the Constitutional Court Decision Number 91 /PUU-XIX/2021

Again talking about TRIPs, the basis for its formation is based on the desire of capitalist industrial countries that aim to control the world economic market by imposing the implementation of IPR stansar rules in developing countries.(Kholis Roisah, 2015) The determination of laws and regulations relating to the limitation of exclusive rights of patents in the public interest has also been given an Article in the TRIPs which discusses concepts related to local working patents in this case are:

1) *"Article 2 TRIPS jo Article 5A(2) Paris Convention: Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work;*
2) *Article 27(1) TRIPS: Subject to the provisions of paragraphs 2 and 3, 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. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, 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;*
3) *Article 27(2) TRIPS: Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law;*
4) *Article 7 TRIPS – Objectives: 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 obligations;*
5) *Article 8 TRIPS – Principles-1: Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement;*
6) *Article 8 TRIPS – Principles-2: Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology."*(Sardjono, n.d.)

In mid-2020, amid efforts to enshrine the Job Creation Law, the substance of the Job Creation Bill is seen as referring more to the content of the free trade agreement than the constitutional mandate. Therefore, the IGJ urged the House of Representatives and the Government to stop discussing the Omnibus Law because the liberalization agenda stipulated in it caused injustice for the people and was contrary to the Constitution at the time. The situation above is illustrated in the

polemic of sweeping the provisions of Article 20 of Law Number 13 of 2016 concerning Patents. Executive Director of IGJ Rachmi Hertanti explained that the abolition of article 20 of the Patent Law in Article 110 of the Omnibus Law on Job Creation will only strengthen the space for drug patent monopolies by large pharmaceutical companies so that it has a long-term impact on the fulfillment of health insurance for all Indonesians.

Basically, local working patents will have an impact on the abolition of Article 20 of the Patent Law paragraphs (1) and (2) states "Patent Holders are required to make products or use processes in Indonesia"; subsection (2) "Making a product or using the process referred to in paragraph (1) shall support the transfer of technology, the absorption of investment and/or the provision of employment." The truth is that it is clearly contrary to the TRIPs article and resulted in a decline Shortly after a year after the ratification of the JOB CREATION Law, then the law was declared conditionally unconstitutional by the constitutional court and read on November 25, 2021. Related to his amar is as a beriku:("UU Cipta Kerja Dinyatakan Inkonstitusional Bersyarat, Uji Materiil Aturan Integrasi Ke BRIN Tidak Dapat Diterima," n.d.)

> "*Based on the decision of the Constitutional Court Number 91/PUU-XVIII/2020, it has been declared that Law 11/2020 is conditionally unconstitutional and the said decision has binding legal force since it was pronounced. Therefore, against the application for material testing filed by the Petitioner a quo is no longer relevant for continued examination, as the object of the application filed by the Petitioner is no longer as the substance of the statute for which the test is pleaded. Moreover, taking into account the principle of speedy, simple, and low-cost trial, then based on the provisions of Article 54 of the Constitutional Court Law, there is no longer any urgency for the Court to hear the statements of the parties as referred to in Article 54 of the Constitutional Court Law. Therefore, the application for material testing of Law 11/2020 must be declared a loss of object," said Constitutional Judge Enny Nurbaningsih reading out the legal considerations."*

In his earlier plea, the Petitioner, who is a researcher by profession, considered his constitutional rights to have been harmed because the phrase "integrated" in article a quo was considered multi-interpretive. That is, the phrase "integrated" has an unclear interpretation whether it is only integrated coordination of the preparation of plans, programs, budgets, and resources of science and technology in the fields of research, development, assessment, and application to produce inventions and innovations as a scientific basis in the formulation and determination of national development policies or institutional amalgamation.

The legal norm control mechanism can basically be implemented through political supervision, administrative control or through judicial legal control.(Asshiddiqie, 2006b) The main purpose of this control is to keep the constitutional rules contained in the Basic Law and other constitutional laws and regulations not violated or violated, so it is necessary to have institutions and procedures for

supervision. There are three legal norms known in the testing of legal norms, namely normative decisions that regulate (*regeling)* and are general and abstract, normative decisions containing administrative determinations (*beschikking)* are individual and concrete norms, normative decisions that are judgmental (*judgement)* are *general and abstract* norms are called *verdicts*.

The constitutional test of the law against the 1945 Constitution (1945 Constitution) submitted to the Constitutional Court (MK) is to assess the suitability between the legal product, namely the law and the 1945 Constitution which is based on the norms written in it. Generally, norms are categorized into general norms (*algemeen*) and individual norms (*individueel)* as well as norms that are abstract (abstract) and norms that are concrete (*concrete).* The distinction between the common and the individual is based on those who are exposed to the rules of the norm (*adressat*), aimed at a person or group of people who are not specific or addressed to a specific person or group of people. Concrete legal norms are interpreted as a legal norm that sees a person's actions more concretely.

In relation to the testing of legislation, it is how constitutional judges can explain the position of the norm to be tested, whether it is an abstract or concrete norm. If what is requested to be tested is a concrete norm then the constitutional judges are no longer authorized to try them, because it is the same as adjudicating the authority of other courts besides the Constitutional Court. Theoretically, the test of concrete norms of the Constitutional Court does not assess a legal issue packaged in judicial review based solely on the events experienced by the Applicant, but the Constitutional Court becomes a constitution in this case the 1945 Constitution as the basis for the constitutionality test. In relation to the Job Creation Law Number 11 of 2020 which was decided by the Constitutional Court is a conditional unconstitutional which is declared contrary to the law, therefore, it will have implications for the relationship in article 110 of the law that abolishes Article 20 of the Law on the Application of Local Working after the abolition and promulgation of Article 110 of the JOB CREATION LAW.

Jimly Asshiddiqie is of the view that there is a difference between 'judicial review' and 'constitutional review', this is also different from the notion of 'judicial preview' as in the French system. If it is related to the right or authority to test, it can use the term right to test or test right (*'toetsingsrecht').* The right of test (*toetsingsrecht*) granted to judges is called 'judicial review' or review by the judiciary. When the authority to test is given to the legislature, it is called 'legislative review'. Meanwhile, the *"executive review"* that conducts the testing is the government. Then if the test is carried out against legal norms that are abstract and general (general and abstract norms) in a "*posteriori"* manner, then the test can be referred to as "judicial review." However, if the test is "*a priori",* that is, against a bill that has been passed by parliament but has not been promulgated as it should be called a 'judicial preview'. As for "constitutional review" or constitutional testing is a test

carried out using the constitution as a measuring tool, this is called a test of the constitutionality of the legal norms being tested (judicial review on the constitutionality of law*)*(Asshiddiqie, 2006a).

## IV. CONCLUSION

1. The local working policy is contained in the provisions of Article 20 of the Patent Law which requires patent holders to carry out their patents in the country. Based on the provisions in Article 20 of the Patent Law, patent owners are required to create products or use processes that are protected by their patents in Indonesia to support technology transfer, investment, and/or employment. If the patent owner does not carry out the obligation to make the product or use the process covered by the patent provisions within 36 months after the grant, the third party can apply for a mandatory license so that basically it can make the problem with the patent application more complicated and does not attract the interest of investors and it can be known that the PATENT Law in Article 20 is contrary to the TRIPs Agreement.
2. The constitutional test of the law against the 1945 Constitution (1945 Constitution) submitted to the Constitutional Court (MK) is to assess the suitability between the legal product, namely the law and the 1945 Constitution which is based on the norms written in it. polemic of sweeping the provisions of Article 20 of Law Number 13 of 2016 concerning Patents. With the decision of conditional unconstitutionality in the JOB CREATION Law so that it can be known that the law is not in line with the laws and regulations and then results in article 110 of the Job Creation Law which abolishes Article 20 of the PATENT Law to be reusable.

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