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1. The Enactment of the New Patent Law in Indonesia

The Government of Indonesia has stipulated a new Patent Law no.13/2016 regarding Patent, which effective on August 26th, 2016.

Below are some important changes in this new Patent Law:

1. The scope of protection of simple patent has been extended/broadened, not only for new products or the improvement of existing products, but also for the process or the improvement of existing processes;
2. A patent shall not be granted for the invention (discovery) of a new use of

known or existing products and/or new form of an existing compound that did not provide any significant improvement in efficacy and have a difference of related chemical structure which had been previously known of the compound

3. Affirmation on how to disclose or describe a patent specification or claims in the application are as follows:
 - a. Patent specifications must clearly and comprehensively disclose/describe how the invention can be implemented by the expert in the respective field;
 - b. Claims must clearly and consistently disclose/describe

- with regard to the substance of the invention, and also must be supported in the specification;
4. If the invention is related to or sourced from genetic resources or traditional knowledge, the related genetic resources or traditional knowledge must be disclosed clearly and correctly in the patent specification. This regulation is in line with the Nagoya Protocol which is intended for Access Benefit Sharing as an effort to protect Genetic Resources and Traditional Knowledge;
 5. Revision of errors in the Patent Certificate can be conducted. The Patent Holder or his proxy may request a correction of the patent certificate which shall be made in writing to the Minister in case there are some errors in the patent registration certificate and/or the attachments. In case the error is caused by the Applicant, the correction request will be subjected to a charge of the official fee. In case the error was not caused by the Applicant, the correction request is free of charge.
 6. The Patent Appeal Commission's authority is expanded with the following particulars:
The Patent Appeal Commission has the duty to receive, examine, and decide:
 - a. The appeal against the rejection of an application;
 - b. The appeal against a correction of the description, claims and/or images after the application is granted (post grant amendment); and
 - c. The appeal against the decision of a granted patent.
 7. An appeal petition shall be filed at the latest 3 months from the date of dispatch of the letter of refusal. An appeal petition against correction upon the description, claim, and/or image after the application was granted shall be filed at the latest 3 months from the date of dispatch of the letter of notification of allowance (granted). An appeal petition against the decision of a granted patent shall be filed at the latest 9 months from the date of notification of allowance.
 8. There are also some changes in the patent annuity payment mechanism as follows:
 - (1) The first payment (back fees) of the annuity patent must be made at the latest 6 (six) months from the date of the patent certificate issued; otherwise the patent shall be affirmatively deleted by the Ministry; The first time payment is calculated from the Filing date up to the grant date of the patent plus the annual fee for the next annuity (will be further stipulated by the Government Implementing Regulation);
 - (2) The next annuity payment shall be made at the latest 1 (one) month prior to the same date as the filing

date in the next year of the protection period;

(3) Payment of annuity fees may be postponed for a maximum period of 12 (twelve) months from the deadline for the annuity payment by submitting a request to the Minister to use this grace period mechanism which has to be filed at the latest 7 (seven) days before the deadline ends;

(4) The payment using the grace period mechanism will be subjected to an additional 100% (one hundred percent) of the total amount of the respective annuity fees;

9. While using the grace period mechanism and the patentee has not made the annuity payment, the following shall apply:

- a. *The patentee cannot prohibit another party to exercise or implement the said patent, conduct a license nor assign said patent to any third party;*
- b. *Any third party cannot exercise or implement said patent; and*
- c. *The patentee cannot file a civil lawsuit or criminal case proceeding;*

This new Patent Law is also tailored to support the use of electronic instrumentations for the improvement of IP services and management, including for filing services and our Patent Office is now preparing the infrastructure for said use of electronic instrumentations.

Furthermore, herewith we are pleased to convey the circular letter No. : HKI.3-08.OT.02.02/2016 assigned on September 30th, 2016 by the Director of Patent, Directorate General of Intellectual Property regarding Annual Fee Payment Transition from Patent Law No. 14/2001 to Patent Law No. 13/2016.

“In order to maintain the administration level related to the decision given on payment of Patent annual fee within the Directorate General of Intellectual Property therefor each application of Patent annual fee is adjusted to Patent Law No.13/2016 regarding Patent”.

“Law No.13/2016 regarding Patent which was declared on August 26th, 2016 and referred to Article 126 Paragraph (1), Paragraph (2), Paragraph (3) and Article 128 Paragraph (1) and the need of transition in implementing Law No.13/2016 regarding Patent is absolutely required”.

“The Implementing rules are as follows:



- a. Unpaid Patent annual fee, which was due prior to the date of the effectiveness of Law No. 13/2016 regarding Patent, the procedure and calculation of Patent annual fee and penalty would use Article 114 of Law No. 14/2001 regarding Patent.
- b. Unpaid Patent annual fee, which is due after the date of the effectiveness of Law No. 13/2016 regarding Patent, the procedure and calculation of Patent annual fee uses Article 126 of Law No. 13/2016 regarding Patent.
- c. Payment of Patent annual fee, which is due after the date of the effectiveness of Law No. 13/2016 from 26 August 2016 up to 30 December 2016, would still be possible for the current year and the years after; the unpaid annual fee could still be paid up until the protection period from 2016 to 2017, by the latest on 30 December 2016.
- d. The Patent Holder who does not make the annual fee payment with regards to point c, thus according to Article 134 Paragraph (1) of Law No. 13/2016 regarding Patent, the referred Patent will be declared as deleted.

Source: from many

2. Gudang Garam vs. Gudang Baru

One case with two judgments, would describe the verdict of Gudang Garam vs

Gudang Baru case. In the civil law case, the Supreme Court rendered their decision that the mark Gudang Baru does not plagiarize the mark Gudang Garam, however in the criminal law proceeding, the Supreme Court rendered their decision that the mark Gudang Baru indeed plagiarized the mark Gudang Garam.

Gudang Baru is a cigarette brand since 1967, the mark Gudang Baru was registered as a trademark under registration number IDM000032226 dated March 21, 2005 and registration number IDM000042757 dated July 14, 2005.

After years of sales and accepted by consumers, in 2013 Gudang Garam filed a lawsuit against Gudang Baru through a civil lawsuit, further, Gudang Garam also filed a criminal lawsuit against Ali Khosin, the owner of mark Gudang Baru.

On the civil lawsuit proceeding, the Commercial Court stated that the mark Gudang Baru has plagiarized the mark Gudang Garam, against the said decision, Ali then filed a cassation into the Supreme Court and the Judges at the Supreme Court considered that *Judex Facti* does not carefully in considering the bad faith in this case, since the Supreme Court considered that there is no similarity in terms of types, placement and sound which may cause a confusion to the consumers. And further, it was also considered that Gudang Garam filed the lawsuit exceeding the time limit to file the lawsuit as stipulated by the law or after

the mark Gudang Baru has been in the market for quite some time, therefore it was considered as an act of unfair competition.



However, in the criminal case, Ali was sentenced by the Supreme Court 10 months of imprisonment, since the Judges considered that the mark Gudang Baru indeed having similarity in terms of designs, placement and composition of color with the mark Gudang Garam for the same kind of goods, whereas the only difference is on pronunciation of the second word.

Furthermore, in the verdict of this criminal case, one of the panel of judges, Judge Agung Suhadi, refused to imprison Ali, since he considered that the lawsuit from Gudang Garam was filed beyond the time limit (expiry).

According to the indictment of the District Attorney, the crime was committed around the year 1993 until 2011. Thus, the crimes which occurred in the year 1993 cannot be treated under the Trademark Law which comes into effect in 2001 (not retroactive).

Further, Judge Agung Suhadi considered that the verdict of cassation in the civil law proceeding is a *Novum* which shall become one of the basis for release Ali from all criminal penalties.

This dissenting opinion could not be resolved, the Judges then conducted a vote in making the verdict and Judge Agung Suhadi's opinion was outvoted, therefore Ali was sentenced 10 months imprisonment for falsification of trademark.

Source: from many

3. Pierre Cardin vs Trademark in Indonesia

Pierre Cardin, one of the famous fashion products from France have to accept that the mark Pierre Cardin in Indonesia is owned by Alexander Satriyo Wibowo for cosmetic products.



pierre cardin

This case started when the French Pierre Cardin filed a cancellation lawsuit to the Commercial Court of Central Jakarta against Alexander Satriyo Wibowo on grounds of bad faith since Alexander has the similar registered mark in class 3 for cosmetic products.

The Judges at the Commercial Court decided to reject the lawsuit on June 9, 2015 with consideration that the Plaintiff (Pierre Cardin) has failed to prove the existence of bad faith of Alexander, the Panel of Judges also considered that the similarity cannot be used as the ground for the existence of bad faith.

Not satisfied with the verdict, Pierre Cardin filed the cassation to the Supreme Court. And again, the Supreme Court rejected the cassation from Pierre Cardin. The panel of judges at the Supreme Court stated that there are dissimilarity between both marks, whereas the mark belonging to Alexander (defendant) having its distinguished elements, which are the words “product by PT. Gudang Rejeki”. Therefore Alexander does not considered as taking benefit from other party’s mark, in this case the mark Pierre Cardin.

However, this cassation was decided with one dissenting opinion. One of the judges considered that the mark Pierre Cardin from France is a trademark that already well-known and famous in various countries. Without having to prove the existence of bad faith, in terms of ethical and morality, the registration of Pierre Cardin belonging to the defendant with argument of first use and has been formerly registered in Indonesia cannot be justified.

After conducting a vote for deciding this case, the Panel of Judges at the cassation in the Supreme Court finally rejected the cassation from the French Pierre Cardin.

Source: from many

4. Famous Host Shall Take Strong Measures Regarding His Infringed Products

The famous host from Indonesia named Daniel Mananta is feeling disappointed and sad because of his products using the label or brand “**Damn I love Indonesia**” has been illegally used or imitated by other party on grounds of bad faith (infringed).

Daniel said that actually his label was infringed by other party since around three years; however it was still in a relatively small scale. However, nowadays, the infringers are getting more aggressive and shameless.



Daniel’s disappointment was raised when he found out that his brand has been infringed which reaches the Singapore’s market. He was shocked with this finding in Singapore.

Daniel exclaimed that they have been in this business for five years and they also have obtained trademark registration from the Directorate General of

Intellectual Property. Further he exclaimed that this is a sad situation since his brand “**Damn I Love Indonesia**”, have a mission and a vision for Introducing Indonesia’s Culture.

Since this matter occurred, Daniel intends to take strong measures, especially to file a lawsuit against several shops which sells infringed products of “**Damn I Love Indonesia**” in which he already appointed a lawyer to take care of this matter. They will first approach those alleged infringers and offer an amicable settlement, so they will not proceed with a lawsuit in this first stage. They would conduct a mutual discussion with the alleged infringers first and failing that Daniel will take file a lawsuit.

Daniel’s move is based on the concerns that they actually have a strong brand name, premium and exclusive products. We do not want these Indonesian Products look cheap, that is why we only sell and distribute in the big shopping malls, with a good quality. If there are many fake low quality products from the other party, our brand image would be compromised.

Source: from many

5. The 6th Roosseno Award

On August 5th, 2016, Biro Oktroi Roosseno celebrated its 65th anniversary along with the 6th annual event of Roosseno Award in Oktroi Plaza, Kemang 1st street, South Jakarta. The event was attended by hundred guests from many backgrounds,

including our 3rd President of Republic of Indonesia, Prof. DR. BJ. Habibie.

The 6th Roosseno Award presented to **Dr. Ir Wiratman Wangsadinata**, for his achievements and contributions in construction industry.

Professor Roosseno has known Dr. Ir Wiratman Wangsadinata as his former student, former assistant, former counterpart and then as a fellow consultant in the construction industry, till Professor Roosseno’s death in 1996.

In this occasion, The President Director of Biro Oktroi Roosseno – **Prof. Dr. Toeti Heraty N. Roosseno**, the oldest daughter of Professor Roosseno, gave a speech on the history and a short-autobiography of her father, Professor Roosseno, as well as Biro Oktroi Roosseno.

She began the speech by mentioning the date when two people, Professor Roosseno and Mr. Yland met and each donated 1.000 guilders, to establish the Biro Oktroi Roosseno & Yland, a law firm specialized in Intellectual Property Rights, on the 22th of June 1951. The term “Intellectual Property” was not known at that time and the Law on Patents came into being in 1989, 30 years after the company was established. In year 1953, where patents started to be registered, even without the legal framework of patent laws, Professor Roosseno became the minister of public works in the Ali Sastroamidjojo Cabinet, leaving Mr. Yland to run the firm. However, in 1958 he left Indonesia, to return to the Netherlands because of the increasingly anti Dutch prevailing atmosphere, as a result of the

conflict over Irian Barat (Now is Papua province and West Papua province of Indonesia).

Eight years later, in 1966, when Professor Dr. Toeti Heraty N. Roosseno moved from Bandung to Jakarta, and was pondering about what to do, her father told her : “What about managing the Biro Oktroi instead of doing nothing?” And so since 1966 she managed Biro Oktroi; it is 2016 already making it 50 years, she is still its (goal) keeper, with one break when she left for Leiden to study psychology for 3 years, and philosophy for another 3.

Presently, at the 65th anniversary of Biro Oktroi Roosseno the time has come to honor an expert in his field of science and the founder of Biro Oktroi Roosseno, She would like to dwell on some memories in the past, on the encounter between Prof. Dr. (HC) Ir. Roosseno and Prof. Dr. Ir. Wiratman Wangsadinata, taken from the epilog¹ written by Prof. Dr. Ir. Wiratman in his book “100 years Prof. Roosseno” as follows: “In commemorating the 100th year of the birth of Prof. Dr. (HC) Ir. Roosseno (1908-1996) let us dwell on the achievements of that great man as the pioneer in the field of concrete science (this not a pun, it is the science of concrete as a building material)”. In this field Professor Roosseno was a charismatic innovator and motivator, imbuing a generation with self-

confidence and a belief in the capabilities of their own people and country.

The predicate of the Father of Concrete in Indonesia is very suitable for Professor Roosseno since he had been working with the Department van Verkeer en Waterstaat (the department of traffic (roads) and waterways) in 1935, he could convince his Dutch bosses to prioritize reinforced concrete for building bridges in Indonesia. He reasoned that the base materials for concrete such as sand, gravel and crushed stones, cement and wood for malls could all be purchased in the country, with the result that the money for purchases would directly or indirectly benefit local people, the indigenous Indonesians. In this way, the use of reinforced concrete would bring welfare to the people of Indonesia. This is an example of rare policy from the side of the Dutch colonial administration to benefit the Indonesian society.

Further, she continued the story with the 1st of April 1944 where Prof. Roosseno became a *kyodju* (professor) in the field of Concrete Science at the Bandung Kogyo Daigaku (presently the Bandung Technological Institute/ITB). Then on the 26th of March 1949 he became a *buitengwoon hoogleraar* or extraordinary professor in the Science of Reinforced Concrete at Faculty of Technology of the University of Indonesia, campus of Bandung. His first book was published in 1954 and became the first text book on

change, *the writer* has been changed to *Wiratman*.

¹ The epilog in the book titled *Cakrawala Roosseno* or “*Rooseseno’s Horizon*” (edited by Eka Budianta) and written by Prof. Dr. Ir. Wiratman Wangsadinata has undergone a

reinforced concrete for universities. Pre-stressed concrete was introduced in Indonesia by Prof. Roosseno in 1959 through his lectures at the ITB, and through his work in the Indonesian Engineers Magazine. As a result, in the early sixties Indonesian technicians were ready to enter the era of pre-stressed concrete applied in the large constructions of that time, such as the Asian Games complex, the Semanggi Bridge, the National Monument, and other buildings in Jakarta. The first application of pre-stressed concrete was in 1961 when the platform for the national monument and the Semanggi Bridge at Jalan Sudirman were built.

Professor Roosseno was a charismatic lecturer, known to rouse interest and to motivate, instilling patriotism and self-reliance in his students, calling for the highest professional ethics. He also strongly spoke out against the use of drugs, against corruption, hypocrisy and dishonesty, urging for self-confidence and belief in the capacities of the people and the nation. In his acceptance speech when inaugurated as a professor at the ITB, the 26th of March 1949 and his oration when awarded the title of Doctor Honoris Cause at the ITB, the 25th of March 1947 he remonstrated against the sentence in Rudyard Kipling's famous poem: "Oh, East is East, and West is West, and never the twain shall meet", making it "Oh, East is East, and West is West, but this time the twain shall meet", meaning that the east would equal the west in science and technology.

In the early seventies the construction of tall buildings started to spread through the Special Region of Jakarta and the Governor at that time, Ali Sadikin established the Consultative Team on Construction of Buildings/TPKB on the 1st of July 1972 with Professor Roosseno as its chairman and Dr. Ir Wiratman Wangsadinata as his deputy. Their task constituted of inspecting the plans for tall buildings, most of which were built by planners from overseas, and many of these plans after inspection turned out to be hazardous. Prof. Roosseno served on this team from (1972-1996), and as its chairman till 1990, till the end of his life.

In 1969 the Agency for the Restoration of the Borobudur Temple (BPCP) was established and Prof. Roosseno was appointed as its chairman with Dr. R. Sukmono as its Secretary and daily Project Leader. In 1972 the project received support from UNESCO, which established the International Consulate Committee (ICC) which was overseeing the technical aspects of the restoration. Its members were the restoration experts from 5 countries, Japan, the US, Belgium, West Germany and Indonesia. As the chairman of this committee Prof. Roosseno was appointed, representing the host country and the writer was appointed as an expert and assistant to the chairman. From the very beginning, the restoration plan and process had to be supported by the result of an analysis on the stability of the hill upon which the Borobudur is built, to withstand strong future earth quakes. From 1973 to 1975 the geotechnical aspects were handled by 2 overseas

consultants appointed by UNESCO, but because their work was slow and never ending, Prof. Roosseno decided to hand over the geotechnical work to national experts. He then requested Dr. Ir Wiratman Wangsadinata to lead a team of experts to evaluate and analyze all the geotechnical data already compiled, and prepare a final report on the stability of the Borobudur hill. The team found that the restoration of the hill sides would be safe from sliding in all directions, and the long term safety factor was sufficient, 1.7 for earth quakes and 1.3 for strong quakes with a recurrence period of 1.000 years. Professor Roosseno had given proof that when given the opportunity, national experts were able to handle mega projects, and could do even better than foreign consultants. Then on the 27th of May 2006 an earth quake occurred in Bantul with a magnitude of 6.3 on the Richter scale with only 10 km between its epicenter and the Borobudur, and no slides or damaged occurred. The national team's calculations turned out to have been correct.

The "Transfer of Technology" from foreign to national consultant was also facilitated by Professor Roosseno when the Rantau Berangin Bridge was being built over the Batanghari river in Riau, in 1973. This was the first pre-stressed concrete bridge in Indonesia. Its overall length is 200 meters with a span of 120 meters. Two years later a similar bridge was built by the state owned company Waskita Karya over the Citarum river at Rajamandala, Cianjur, with a total length of 222 meters and a span of 120 meters.

It was entirely planned by Indonesian engineers (including the writer) under the auspices of Professor Roosseno.

The writings of Professor Roosseno on diverse topics in the framework of the science of concrete and civil engineering have appeared in numerous publications, from colonial times to the post-independence era of the Republic Indonesia, and there are numerous innovations patented in his name. To the end of his life Professor Roosseno was going strong, never quitting in the face of various challenges concerning his private and his professional life, carried by his dedication to serve and work for the progress and greatness of his nation and his country. It was clear that at the end of his life and in old age, Professor Roosseno was happy and proud to see that many of his former students have been successful, and the torch of engineering taken over by the younger generation of Indonesia's engineers from his hands. These are the emphatic words of Prof. Dr. Ir. Wiratman, and how proud was Prof. Dr. Ir. (HC) R. Roosseno when his successors came up with the creative idea of the Sunda Strait Bridge.

In her speech, she also expressed a moment at the end of Prof. Dr. (HC) Ir. Roosseno's life where he asked her, having a background of studying medicines, psychology, philosophy and literature: "Toeti, what is the soul?" she answered him: "Imagine a musical instrument, like a violin, which produced something which is beautiful but has no shape, a melody; the violin as the

instrument is our body, and the melody, that is the soul.” And her father nodded.

In the end, Professor Dr. Toeti Heraty N. Rooseno expressed her gratitude to all parties whose are too many to mention one by one, who have made this event possible at this place: Oktroi Plaza. Why Oktroi? It is another term for “patent” coming from the French “octroyer”. She invited everyone to enjoy the event together at the Rooseno Tower.

by Toeti Heraty N. Rosseno



(Anno 1951)

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