

Government Cuts Red Tape to Pave the Way for Covid-19 Vaccine



As seen from the many regulations issued since the declaration of COVID-19 as a public health emergency, the Indonesian government has been rolling out various measures to protect the country and its citizens. Most recently, the government issued Presidential Regulation No. 77 of 2020 on the Procedures to Implement Patents by the Government (“**New Regulation**”). This regulation is the implementing regulation of Law No. 13 of 2016 on Patents.

In the past, the procedure to implement patents by the government was governed under Government Regulation No. 27 of 2004 as mandated by the old patent law (Law No. 14 of 2001 on Patent). Based on such regulation, the government then issued Presidential Regulation No. 76 of 2012 on the Implementation of Patent by the Government for Antiviral and Anti-Retroviral Medicines, which was enacted to meet the urgent demand and need for antiviral and anti-retroviral medicines to treat HIV/AIDS and Hepatitis B.

In light of the current pandemic, the New Regulation is certainly a positive sign that the Indonesian government is taking active steps to eliminate bureaucratic red tapes to ensure that when a COVID-19 vaccine becomes available, the government can immediately implement the patent.

Under the New Regulation, the government can implement a patent if the patent relates to Indonesia’s national defence and security or in the event of an urgent public needs, which includes the needs for pharmaceutical or biotechnological products that may potentially be expensive or necessary to treat diseases that can adversely affect the general rate of mortality. If the government cannot implement the patent, it can appoint a third party to implement the patent provided that such third party owns the necessary facilities and is able to implement the relevant patent, will not assign or transfer the implementation of the relevant patent to any other party, and has an adequate production, distribution and monitoring procedure and method.

The New Regulation states that a minister or a head of a governmental agency/ministry must apply for the patent implementation to the Minister of Law and Human Rights (“MOLHR”). Such request must state the object of the patent, the details of the invention to be covered by the patent, and the needs for such patent in the country. The MOLHR will then examine whether the request and the patent itself meet the requirements. Upon approval of the request, the MOLHR will form a team to determine the amount of compensation that will be paid to the patent owner, which must be fair and reasonable.

Despite the implementation of the patent by the government or a party appointed by it, the patent owner will still hold an exclusive right over the relevant patent. This means that the patent owner can still implement their patent in Indonesia, as well as being obliged to pay the relevant annuity fees for the patent.

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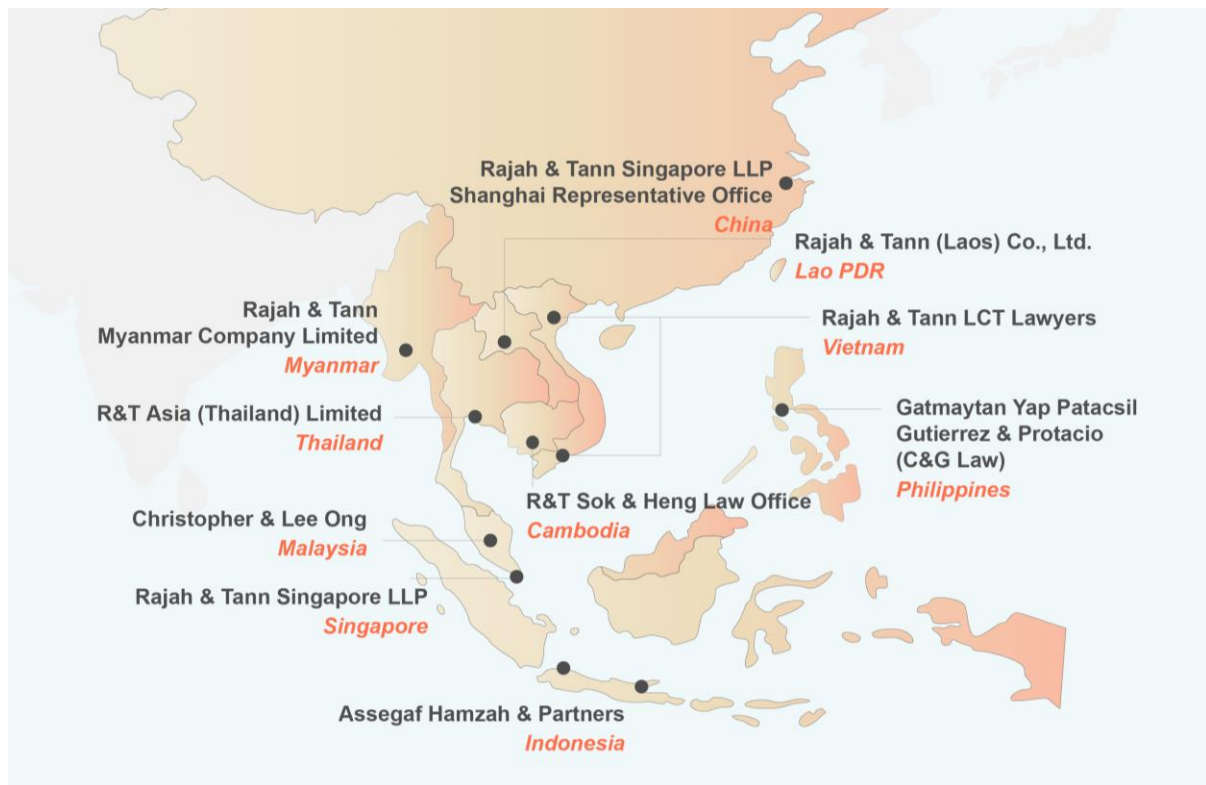
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