

# Legal Responsibility of Third Parties for Patent Infringement

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**Abstract:** Patent rights not only facilitate new inventions but also encourage research and development through clear legal protection. They protect inventors from the unauthorized use or exploitation of their work. Patent infringement is a significant issue in intellectual property law that involves third parties. These third parties can be held legally accountable if they are involved in supplying or distributing products that infringe on patent rights. The aim of this research is to assess the effectiveness of patent law in protecting patent holders and to understand the responsibilities of third parties regarding patent infringement in Indonesia. The methodology used in this study is normative legal research with a statute approach. The statute approach is a research method that prioritizes legal materials in the form of legislation as the primary reference in conducting research. The findings indicate that although patent law in Indonesia provides a clear foundation for protecting the rights of patent holders, its implementation still faces challenges that reduce its effectiveness. One of the indicators of the lack of effectiveness of a regulation is that, despite some years with zero cases/complaints, the number of cases reappears in subsequent years, indicating that the system fails to maintain its effectiveness. Weak law enforcement creates uncertainty for patent holders. While there are mediation and arbitration mechanisms available, inconsistent implementation worsens the situation. Furthermore, third parties involved in patent infringement in Indonesia have legal responsibilities that must be fulfilled. Those who infringe patents can be subject to Article 161 of the Patent Law, which may impose penalties of up to four years in prison and/or fines of up to IDR 1 billion, with lighter sanctions for simple infringements.

**Keywords:** Patent Protection; Responsibility; Third Parties

## 1. Introduction

The protection of technological and economic innovations is a key element in accelerating a nation's economic growth and technological advancement. In this context, patents play a central role as a form of Intellectual Property Rights (IPR) that provides exclusivity to inventors.<sup>1</sup> Patents not only facilitate new discoveries but also motivate further research and development through clear and effective legal protection. In addition to serving as an indicator of new innovation, patents also provide legal protection to inventors, ensuring that their creations cannot be used, produced, sold, or imported by others without proper authorization.<sup>2</sup> Legal protection for patent holders aims to motivate creators to enhance the quantity and quality of their work, thereby promoting societal welfare and fostering a healthy business climate.<sup>3</sup> By granting a temporary monopoly on unique ideas or designs, patents enable inventors to monetize their creations and avoid plagiarism. Historically, patents have

<sup>1</sup> Edi Santoso, *Pengaruh Era Globalisasi Terhadap Hukum Bisnis Di Indonesia* (Prenada Media, 2018).

<sup>2</sup> Imelda Martinelli et al., "Implementasi Hukum Atas Pelanggaran Hak Paten Di Indonesia," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (2024): 245–49, <https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/967>.

<sup>3</sup> Andi Muhammad Reza Pahlevi Nugraha, "Tinjauan Yuridis Hak Paten Di Dalam Kerangka Hukum Nasional Di Indonesia," *Binamulia Hukum* 11, no. 1 (2022): 1–14, <https://doi.org/https://doi.org/10.37893/jbh.v11i1.302>.

played a significant role in industrial transformation, such as during the Industrial Revolution in 18th century Europe<sup>4</sup>, and continue to contribute to the evolution of modern technology today.

In an era of rapid innovation, the issue of patent infringement has increasingly become a focal point in the industrial and technological sectors. The rising number of patent infringement cases not only threatens the sustainability of innovation but also has significant impacts on patent holders, both individuals and companies. Such infringements often result in substantial financial losses<sup>5</sup>, damage to reputation, and hinder the development of new products. Additionally, the legal uncertainty caused by patent infringements can create a less conducive investment climate, thereby reducing incentives for innovators to create better and more efficient solutions. Therefore, a deep understanding of this issue is crucial for protecting intellectual property rights and promoting sustainable economic growth. Data obtained from the Directorate General of Intellectual Property indicates that there were 43 complaints regarding patent infringement cases from 2011 to 2020<sup>6</sup>. The data shows that in 2011, there were no complaints or patent violations; in 2012, there were 2 cases/complaints; in 2013, there were no cases/complaints; in 2014, there was 1 case/complaint; in 2015, there were 12 cases/complaints; in 2016, there were 7 cases/complaints; in 2017, there were 2 cases/complaints; in 2018, there was 1 case/complaint; in 2019, there were 2 cases/complaints; and in 2020, there were 16 cases/complaints reported to DJKI.

Patent infringement is an important issue in intellectual property law that not only involves patent holders and infringers but also third parties who can play a significant role in this process. In the context of patent infringement, third parties refer to individuals or entities that do not hold patent rights but are involved in actions that may affect the rights of patent holders. These third parties can include suppliers, distributors, and users of the infringing technology. In many cases, third parties can either support or exacerbate patent infringement. For example, a supplier providing components for a product that infringes a patent may be considered complicit in the infringement. Similarly, distributors who distribute products known to infringe patent rights may also be subject to legal liability.

The legal framework in Indonesia for patent protection is governed by Articles 161 and 162 of Law Number 13 of 2016 concerning Patents (Patent Law). Article 161 of the Patent Law states that anyone who engages in activities such as making, using, selling, importing, renting, delivering, or providing for sale or rental a patented product will be subject to a maximum prison sentence of 4 (four) years and/or a fine of up to one billion rupiah. Meanwhile, Article 162 of the Patent Law stipulates that for simple patents related to these activities, the penalty can be a maximum of 2 (two) years in prison and/or a fine of up to five hundred million rupiah. From the explanations of these articles, it can be concluded that any action that violates a patent can result in criminal penalties.

The effectiveness of patent law enforcement in Indonesia is of utmost importance in the context of protecting innovation and the rights of patent holders. Law Number 14 of 2001 concerning Patents provides a clear legal framework, granting patent holders exclusive rights to exploit their inventions for 20 years, protecting them from unauthorized use by

<sup>4</sup> Nanda Dwi Rizkia and Hardi Fardiansyah, *Hak Kekayaan Intelektual Suatu Pengantar* (Penerbit Widina, 2022).

<sup>5</sup> Aria Muhammad Arlan, "Hak Kekayaan Intelektual Dan Perdagangan Digital: Masalah Yang Muncul Dan Implikasi Kebijakan," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 3 (2023): 2392–98, <https://doi.org/http://dx.doi.org/10.58258/jisip.v7i3.5402>.

<sup>6</sup> Direktorat Jenderal Kekayaan Intelektual, "Data Pelanggaran KI 2011-2020," PPID DGIP, 2020, <https://ppid.dgip.go.id/file/429836529.pdf>.

others.<sup>7</sup> However, challenges in enforcement persist, including a lack of awareness about patent rights among the public and frequent violations that often go unpunished. Furthermore, recent regulatory changes, such as the enactment of Law Number 13 of 2016, aim to strengthen protections for inventors and enhance the effectiveness of the patent system in Indonesia.<sup>8</sup>

Previous research has been conducted that bears similarities to this study. First, there is the article by Yoyon M. Darusman titled "The Position and Legal Protection for Patent Holders within the Framework of National Law in Indonesia and International Law." In this article, it is concluded that a patent is a right owned by an inventor over an invention in the field of technology, which can be utilized independently or granted to others, and has economic value. The ownership of patent rights has been recognized by the government in accordance with applicable legal regulations. Patent holders (inventors) receive protection under both national and international law, granting them the primary right to implement their inventions themselves or collaborate with others, as well as to license others to do so. It is essential for the state to seriously address patent-related issues so that patent holders feel valued for their creations. Indonesia has established a sufficient number of legislative regulations in the field of patents, ensuring that protection for patents can be effectively enforced.<sup>9</sup>

Second, there is research by Rachmat Arnanda et al. titled "The Role of Patent Protection in Promoting Innovation Across Various Industries: Systematic Literature Review." In this article, it is concluded that the protection of intellectual property rights, including patents, plays a crucial role in fostering innovation and technological advancement across various industrial sectors. With the incentives provided, the dissemination of information, and support for both large and small companies, patents can create an environment conducive to innovation. However, to maximize these benefits, there needs to be an increase in awareness and collaboration across sectors, accompanied by policy reforms that ensure the patent system can adapt to technological developments.<sup>10</sup>

Third, there is an article written by Imelda Martinelli et al. titled "The Implementation of Law on Patent Infringement in Indonesia," which concludes that in the event of a patent infringement, the patent holder has the right to file a compensation lawsuit with the Commercial Court. In addition to going through the Commercial Court, the parties involved in the dispute may also choose to resolve the issue through arbitration or other alternative dispute resolution methods. When a patent infringement occurs by another party, the aggrieved patent holder can request the Commercial Court to issue an immediate and effective injunction. The purpose of this injunction is to stop the ongoing infringement and protect patent-related rights, including preventing the entry of goods suspected of infringing patents into trade channels, including import actions. Furthermore, this injunction also aims

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<sup>7</sup> Jatmiko Winarno, "Perlindungan Hukum Terhadap Paten Yang Terdaftar Di Indonesia Menurut Undang-Undang Nomor 14 Tahun 2001 Tentang Paten," *Jurnal Independent* 3, no. 1 (2015): 1–20, <https://doi.org/https://doi.org/10.30736/ji.v3i1.31>.

<sup>8</sup> Reda Manthovani, "Pengawasan Hukum Pidana Terhadap Hak Paten Di Indonesia," *Jurnal Magister Ilmu Hukum (Hukum Dan Kesejahteraan)* 5, no. 1 (2020): 79–91, <https://doi.org/http://dx.doi.org/10.36722/jmih.v5i1.2373>.

<sup>9</sup> Yoyon M. Darusman, "Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten Dalam Kerangka Hukum Nasional Dan Hukum Internasional," *Yustisia* 5, no. 1 (2016): 203–15, <https://doi.org/https://doi.org/10.20961/yustisia.v5i1.8732>.

<sup>10</sup> Rachmat Arnanda et al., "Peran Perlindungan Paten Dalam Mendorong Inovasi Di Berbagai Industri: Systematic Literature Review," *SNIV: Seminar Nasional Inovasi Vokasi* 3, no. 1 (2024): 210–16, <https://prosiding.pnj.ac.id/sniv/article/view/2267>.

to preserve evidence related to the patent infringement and require the aggrieved party to provide evidence showing that they are indeed entitled to the patent and that their rights are being violated. Regulations regarding patent rights have been established in the Patent Law.<sup>11</sup>

From the three previous studies, there is a common research object related to the legal protection for inventors concerning their patents. This study also discusses the effectiveness of patent protection in Indonesia, where patent rights are exclusive rights held by inventors. In addition to the similarities with previous research, there are also differences that represent the novelty of this study. This research addresses the responsibilities of third parties involved in patent infringement in Indonesia. This is due to the lack of specific instruments for sanctions or penalties that can be imposed on third parties involved in patent infringements.

The urgency of this research lies in the ongoing ambiguity regarding the legal responsibilities of third parties who commit patent infringements. Therefore, there is a need to examine how third parties are held accountable in cases of patent infringement. Based on the explanation above, the objectives of this study are to identify the effectiveness of patent law in protecting patent holders and to analyze the responsibilities of third parties concerning patent infringement in Indonesia. The research questions to be addressed include how effective patent law is in protecting patent holders and what the legal responsibilities of third parties are regarding patent infringement in Indonesia.

## 2. Method

The research method used in this study is a normative legal research method with a statute approach. Normative legal research involves examining literature sources in the form of applicable legislation as a reference.<sup>12</sup> This approach is chosen to provide a comprehensive legal analysis of the effectiveness of patent law in protecting patent holders in Indonesia, as well as to analyze the responsibilities of third parties regarding patent infringement in Indonesia. The statute approach prioritizes legal materials in the form of legislation as the primary reference for conducting research.<sup>13</sup> The data collection technique in this study involves library research, which includes books, articles, news, legal regulations, and other relevant sources. The collected data is analyzed descriptively and qualitatively by relating the findings to existing theories and applicable legal rules.

## 3. Results and Discussion

### 3.1 The Effectiveness of Patent Law Implementation in Protecting Patent Holders

Effective law can be understood as a legal system capable of achieving desired objectives while comprehensively protecting the interests of society. This is accomplished without causing negative or harmful side effects, both for individuals and for the social structure in general. Therefore, to ensure the success of such law, a form of "guiding administration" is needed in every decision-making process.<sup>14</sup> Thus, it is important for

<sup>11</sup> Martinelli et al., "Implementasi Hukum Atas Pelanggaran Hak Paten Di Indonesia."

<sup>12</sup> Soerjono Soekanto; Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2003).

<sup>13</sup> Bahder Johan Nasution, "Metode Penelitian Ilmu Hukum" (Bandung: Mandar Maju, 2008).

<sup>14</sup> Maria De Benedetto, "Effective Law from a Regulatory and Administrative Law Perspective," *European Journal of Risk Regulation* 9, no. 3 (2018): 391–415.

policymakers to ensure that every step taken not only considers the objectives of the law itself but also avoids impacts that could be detrimental. Laws governing intellectual property grant individuals ownership rights to control their creations, even if those creations are not physically tangible. However, the existence of various overlapping regulations in the field of Intellectual Property Rights (IPR) often leads to confusion and conflicts in their implementation.

For example, Article 154 of the Patent Law mandates mediation obligations before an individual can file a criminal complaint related to copyright infringement. Meanwhile, Law Number 30 of 1999 regulates mediation as a method of dispute resolution outside of court with the assistance of trained mediators. On the other hand, Supreme Court Regulation (Perma) No. 1 of 2008 requires judges in first-instance courts, whether in District Courts or Religious Courts, to conduct mediation as part of the dispute resolution efforts.<sup>15</sup> The inconsistencies and disharmony among these various regulations have the potential to cause confusion in practice, thereby hindering the effectiveness of law implementation in the field of Intellectual Property Rights (IPR). Therefore, it is essential to harmonize existing regulations so that the mediation process can proceed more smoothly and the objectives of protecting intellectual property can be optimally achieved.

Dispute resolution in Intellectual Property Rights (IPR) should be conducted under the jurisdiction of the Commercial Court, which is a specialized court within the general judicial system.<sup>16</sup> However, currently, the Commercial Court has not implemented mediation obligations in dispute resolution. This indicates that simplifying regulations in the field of IPR could lead to rules that are easier to understand, more efficient, and better organized. It is hoped that regulatory simplification will have a positive impact across various sectors, such as promoting investment growth, creating job opportunities, reducing the administrative burden on society, and improving the effectiveness of national budget management.

In addition, to address the various obstacles that often arise in the resolution of Intellectual Property Rights (IPR) disputes, particularly those related to patents, there is a need for legal policies that are more responsive and aligned with contemporary developments.<sup>17</sup> Regulations that prioritize dispute resolution mechanisms through mediation or arbitration can serve as more effective alternatives, as both methods can reduce the complexity and costs typically associated with formal judicial processes.<sup>18</sup> In this context, WIPO (World Intellectual Property Organization) itself acknowledges that patent disputes often require more time and resources compared to disputes in other areas of law.<sup>19</sup> Therefore, it is essential to design policies that not only resolve disputes fairly but also emphasize efficiency and accessibility within the judicial system.

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<sup>15</sup> Ariandi Firdaus Syahputra et al., "Efektivitas Hukum Kekayaan Intelektual Indonesia Dalam Menjamin Penyelesaian Sengketa Hak Paten," *Notary Law Journal* 3, no. 2 (2024): 126–38.

<sup>16</sup> OPNIEL HARSANA B PONGKAPADANG, "PENGHAPUSAN MEDIASI DALAM PROSES PENYELESAIAN SENGKETA BISNIS DI PENGADILAN NIAGA" (Universitas Atma Jaya Yogyakarta, 2016).

<sup>17</sup> Christine S T Kansil and Felicia Amanda Sulistio, "IMPLEMENTASI PERLINDUNGAN HAK CIPTA DALAM ERA MODERNISASI TERHADAP KREATIVITAS DIGITAL BERDASARKAN UNDANG-UNDANG NO. 28 TAHUN 2014," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 3 (2024): 367–80.

<sup>18</sup> Mahkamah Agung RI, "LAPORAN PENELITIAN ALTERNATIVE DESPUTE RESOLUTION (PENYELESAIAN SENGKETA ALTERNATIF) DAN COURT CONNECTED DISPUTE RESOLUTION (PENYELESAIAN SENGKETA TTANG TERKAIT DENGAN PENGADILAN," 2000.

<sup>19</sup> Syahputra et al., "Efektivitas Hukum Kekayaan Intelektual Indonesia Dalam Menjamin Penyelesaian Sengketa Hak Paten."

The complex process of resolving patent disputes has led to an accumulation of cases in the Commercial Court, which impacts the effectiveness and efficiency of handling these cases. This situation arises from the high level of complexity and the lengthy time required to resolve patent disputes through litigation.<sup>20</sup> In this regard, Article 154 of the Patent Law establishes an obligation to conduct mediation first as a preliminary step before proceeding to litigation.<sup>21</sup> This measure aims to reduce the burden on the judicial system, expedite dispute resolution, and provide a more accessible and affordable alternative for the parties involved.<sup>22</sup> Therefore, mediation should be viewed not only as an optional stage but also as a mandatory requirement that must be fulfilled before bringing a dispute to court. It is hoped that this step will decrease the number of cases handled by the Commercial Court and provide a more effective solution for all parties involved in patent disputes by accelerating the resolution process and minimizing the negative impact of lengthy and costly litigation.<sup>23</sup>

Effective law can be understood as a legal system designed to reflect the cultural values of society, be easily understood, and reduce the potential negative impacts that may arise after the resolution of a dispute. In this context, the law must prioritize justice that is not only accessible to all parties but also provides fair outcomes without causing further harm. One example of effective law application can be found in the Patent Court Guide published by WIPO.<sup>24</sup> This guide illustrates that many countries have made efforts to simplify procedures and processes for resolving patent disputes with the aim of making these processes faster, more transparent, and more affordable.<sup>25</sup> The goal is to ensure that, especially for small and medium-sized enterprises, they can access the judicial system in a more straightforward and efficient manner without being burdened by high costs that often pose obstacles.

Nevertheless, patent litigation inherently possesses a very high level of complexity, encompassing various technical and legal aspects that are difficult for the general public to understand. Therefore, the main challenge for the state is how to formulate and implement legal policies that can address this complexity while facilitating access for the parties involved. The state must create a system that is not only fair but also efficient and practical, so that all parties, including small and medium-sized enterprises, can obtain justice without facing significant difficulties in dealing with patent disputes. This poses a significant challenge, given that patent disputes often involve technical elements that require a deep understanding and lengthy procedures.<sup>26</sup>

Based on this, the legal system in Indonesia regarding patent protection has indeed provided a sufficient legal foundation for patent holders to protect their rights. However, it is important to note that the effectiveness of a law is not only measured by the existence of

<sup>20</sup> Teresia Ester Gurning, Rika Ratna Permata, and Sudaryat Sudaryat, “Urgensi Pembentukan Pengadilan Khusus Kekayaan Intelektual Di Era Digital,” *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 08 (2023): 3241–51.

<sup>21</sup> Syahputra et al., “Efektivitas Hukum Kekayaan Intelektual Indonesia Dalam Menjamin Penyelesaian Sengketa Hak Paten.”

<sup>22</sup> Imam Syaroni and Tuti Widyaningrum, “Peningkatan Efektivitas Penyelesaian Sengketa Administrasi Negara Melalui Pendekatan Alternatif,” *Wacana Paramarta: Jurnal Ilmu Hukum* 23, no. 1 (2024): 80–92.

<sup>23</sup> Yeni Nuraeni et al., *Hukum Acara Peradilan Niaga: Teori Dan Implementasinya Di Indonesia* (PT. Sonpedia Publishing Indonesia, 2024).

<sup>24</sup> Dian Nurfitri and others, *Pengantar Hukum Paten Indonesia* (Penerbit Alumni, 2023).

<sup>25</sup> Tri Setiady, “Harmonisasi Prinsip-Prinsip Trips Agreement Dalam Hak Kekayaan Intelektual Dengan Kepentingan Nasional,” *Fiat Justisia Jurnal Ilmu Hukum* 8, no. 4 (2014): 595–613.

<sup>26</sup> Habibi Natama Ritonga et al., “Kewenangan Arbitrase Dalam Penyelesaian Sengketa Bisnis Di Indonesia,” *Jurnal Cendikia ISNU SU* 1, no. 2 (2024): 97–105.

regulations themselves but also by the extent to which those regulations can be effectively applied in practice. In the case of patent disputes, although the Patent Law can provide protection for patent holders' rights, the implementation of patent dispute resolution often encounters difficulties and complexities. This occurs because patent disputes tend to be directly submitted to court without first going through mediation or arbitration. In fact, direct court proceedings require significant time, effort, and high costs. Conversely, if patent disputes are resolved through mediation or arbitration, the process can be more efficient, and the costs incurred are relatively lower. Therefore, the laws governing patents in Indonesia are still considered less effective in dispute resolution, as patent holders are forced to sacrifice considerable time, effort, and expenses just to undergo court procedures without utilizing more affordable alternative dispute resolution methods such as mediation or arbitration.

The implementation of patent law in Indonesia is indeed not yet fully effective, as there are several factors that pose challenges. The challenges in protecting patent holders in Indonesia indicate the presence of significant obstacles, including limitations within the legal system and low public awareness regarding patent rights. Although Law No. 13 of 2016 concerning Patents has provided a clear legal framework, its implementation still faces various issues. The complicated and time-consuming patent registration process, along with a lack of transparency in bureaucracy, often leaves innovators feeling frustrated and reluctant to register their inventions.

Furthermore, the level of public awareness regarding the importance of patents is still very low. Many business actors, especially among Micro, Small, and Medium Enterprises (UMKM), do not fully understand the benefits of patent protection, leading them to often miss opportunities to safeguard their innovations. This situation is exacerbated by a lack of outreach and education regarding intellectual property rights at the community level. Additionally, law enforcement against patent infringement also shows weaknesses. Cases of infringement are not effectively followed up by law enforcement authorities, creating uncertainty for patent holders. The lack of strict penalties for violators makes patent infringement a common occurrence.

Overall, the challenges in protecting patent holders in Indonesia reflect an urgent need to strengthen the legal system, raise public awareness about patent rights, and optimize law enforcement to create a more conducive environment for innovation and the protection of intellectual property.

### **3.2 Responsibilities of Third Parties Regarding Patent Infringement**

The definition of a third party in the context of patent infringement refers to entities that do not have a direct relationship with the patent holder but are involved in the infringement of that patent. According to Article 132, paragraph (2) of the Patent Law, a third party is described as a party that has an interest in the patent being challenged for cancellation and must be proven in court. This third party can include various types of entities, such as individuals, organizations, or even countries that do not hold patents but still infringe upon someone else's patent rights. In practice, third parties can engage in various activities that violate patent rights, such as producing goods that are similar or identical to products protected by a patent without permission from the rights holder, selling these products both online and offline, and modifying protected products to create counterfeit versions. The consequences of such infringements can be quite serious; patent holders have the right to file a lawsuit for damages in court to seek compensation for their losses, and

infringing third parties may face legal sanctions, including fines or criminal charges. Concrete examples of this situation include companies producing counterfeit smartphones resembling flagship models from well-known brands without permission or countries importing electronic goods that infringe patents without the rights holder's approval.

The role of third parties in the context of patent infringement in Indonesia indicates that third parties can act as infringers of patent rights without having a direct relationship with the patent holder, yet they are involved in activities that harm the rights holder. In this case, a third party may be an individual, organization, or even a government that engages in actions such as producing, selling, or importing products protected by a patent without permission from the patent holder.<sup>27</sup>

The law in Indonesia, particularly the Patent Law, provides regulations regarding the rights of patent holders and the responsibilities of third parties.<sup>28</sup> Article 143 states that patent holders or licensees have the right to file a lawsuit for damages in the Commercial Court against third parties who infringe on patent rights.<sup>29</sup> However, despite the clear legal framework, law enforcement often does not operate effectively. Limitations within the legal system, such as lengthy and complex litigation processes, along with low public awareness about the importance of patent protection, result in many infringements going unaddressed.<sup>30</sup>

Additionally, in practice, third parties often fail to receive sufficiently stringent sanctions for patent infringement. This creates a scenario where violations can occur continuously without meaningful consequences for the perpetrators. In some cases, even though patent holders have filed lawsuits, court decisions can still be influenced by subjective factors or insufficient strong evidence.<sup>31</sup>

A prominent case of patent infringement by third parties in Indonesia is the Rubik's Cube case. In Indonesia, the Rubik's Cube has become a popular product; however, ironically, most of the cubes available in the market are counterfeit products imported without permission from the original patent holder. This indicates that law enforcement in Indonesia has not been able to provide effective legal protection for the Rubik's Cube patent, allowing counterfeit products to circulate freely. The third parties in this case are the counterfeit manufacturers who produce and distribute Rubik's Cubes without authorization,

<sup>27</sup> Yustisiana Susila Atmaja, Budi Santoso, and Irawati Irawati, "Pelindungan Hukum Terhadap Paten Produk Farmasi Atas Pelaksanaan Paten Oleh Pemerintah (Government Use)," *Masalah-Masalah Hukum* 50, no. 2 (2021): 196–208.

<sup>28</sup> Annisa Hamidy Zen, "ANALISIS HUKUM TERHADAP PELANGGARAN PATEN (Studi Putusan Nomor 46/Pdr.Sus-HKI/Paten/2021.PN.Niaga JKT Pst)" (Universitas Mataram, 2022).

<sup>29</sup> Jeferson David Rompas, "HAK PEMEGANG PATEN DALAM GUGATAN GANTI RUGI MELALUI PENGADILAN NIAGA MENURUT UNDANG-UNDANG NOMOR 13 TAHUN 2016 TENTANG PATEN," *LEX PRIVATUM* 6, no. 3 (2018).

<sup>30</sup> Revita Nurahmasari, Muhamad Amirulloh, and Anita Afriana, "MEDIASI SEBAGAI KEWAJIBAN PENYELESAIAN SENGKETA PERDATA PELANGGARAN PATEN DI INDONESIA DEMI KEPASTIAN DAN KEMANFAATAN HUKUM," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 1 (2021): 123–38.

<sup>31</sup> Manthovani, "Pengawasan Hukum Pidana Terhadap Hak Paten Di Indonesia."



clearly violating the rights of the original patent holder.<sup>32</sup> Their activities not only financially harm the patent holder but also threaten the sustainability of legitimate businesses. This infringement can lead to legal turmoil, where the patent holder has the right to file a lawsuit for damages to seek compensation for their losses.

The legal sanctions imposed on third parties for patent infringement in Indonesia are regulated under Law Number 13 of 2016 concerning Patents. Patent infringement can have serious consequences for the involved third parties, with penalties that include imprisonment and fines. According to Article 161 of the Patent Law, anyone who intentionally and unlawfully infringes a patent may face a maximum prison sentence of four years and/or a fine of up to IDR 1 billion. For simple patent infringements, the penalties may be reduced to a maximum of two years in prison and a fine of up to IDR 500 million.

Additionally, third parties that commit infringement may also be subject to lawsuits for damages by the patent holder. Patent holders have the right to file a lawsuit in the Commercial Court if they feel harmed by the actions of third parties infringing on their patent rights. In this case, the legal process must include mediation before pursuing litigation, in accordance with the provisions outlined in Article 154 of the Patent Law.

Alternative patent dispute resolution in Indonesia involving third parties indicates that there are various out-of-court mechanisms available to resolve these disputes. Based on Law Number 13 of 2016 concerning Patents, parties who feel their patent rights have been infringed have the option to resolve disputes through non-litigation channels such as mediation, arbitration, negotiation, and conciliation.<sup>33</sup> Mediation is considered an effective method and should be a mandatory initial step for the parties before proceeding to litigation. This is because mediation can reduce the burden on the judicial system and provide quicker and more cost-effective solutions.<sup>34</sup>

Arbitration is also a commonly used alternative, where the parties can agree to resolve the dispute through a designated arbitration institution, in accordance with the provisions of Article 153 of the Patent Law.<sup>35</sup> The arbitration process allows for more flexible and faster resolutions compared to litigation in court.<sup>36</sup> Additionally, negotiation and conciliation provide an opportunity for the disputing parties to reach an agreement directly with the assistance of a mediator or conciliator.

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<sup>32</sup> Maylan Angelina Elisabeth, "Analisis Pelanggaran Paten Produk Dalam Kasus Rubik's Cube" (Universitas Indonesia, 2009).

<sup>33</sup> SIP Law Firm, "Penyelesaian Sengketa Kekayaan Intelektual, Jalur Litigasi Atau Non Litigasi?," siplawfirm, 2024, <https://siplawfirm.id/penyelesaian-sengketa-kekayaan-intelektual-jalur-litigasi-atau-non-litigasi/?lang=id>.

<sup>34</sup> Nurahmasari, Amirulloh, and Afriana, "MEDIASI SEBAGAI KEWAJIBAN PENYELESAIAN SENGKETA PERDATA PELANGGARAN PATEN DI INDONESIA DEMI KEPASTIAN DAN KEMANFAATAN HUKUM."

<sup>35</sup> Jerry Vicky Mawu, "PENYELESAIAN SENGKETA HAK PATEN MENURUT UNDANG-UNDANG NOMOR 13 TAHUN 2016 TENTANG PATEN," *LEX ET SOCIETATIS* 5, no. 7 (2017).

<sup>36</sup> Syamhadi Syamhadi, Muhammad Fauzen Adiman, and Retno Sari Dewi, "Analisis Penyelesaian Sengketa Secara Litigasi Paten Terhadap Perkembangan Inovasi Teknologi Di Indonesia," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 12 (2023): 1191–1200.

These dispute resolution mechanisms are not limited to patents but also apply to various types of other intellectual property rights, such as copyrights and trademarks. With these alternative options available, it is hoped that patent holders can protect their interests more efficiently without having to go through lengthy and convoluted court processes.<sup>37</sup> However, challenges remain in terms of awareness regarding the importance of these alternative dispute resolution methods and the need for consistent law enforcement to support their implementation. Therefore, enhancing public education and oversight of dispute resolution practices is essential for these mechanisms to function optimally in protecting intellectual property rights in Indonesia.

#### 4. Conclusion

Although patent law in Indonesia has provided a clear foundation for protecting the rights of patent holders, its implementation still faces a number of challenges that diminish its effectiveness. The complex and time-consuming process of patent registration, low public awareness regarding the importance of patent rights, and a lack of transparency in bureaucracy are major obstacles. Additionally, law enforcement against patent infringement is also insufficiently stringent, creating uncertainty for patent holders. While there are mediation and arbitration mechanisms that can reduce costs and time, inconsistent implementation in practice exacerbates the situation. Therefore, reforms in the legal system, simplification of regulations, and increased public education are necessary to ensure that protection for patent holders can operate more effectively and support better innovation development in Indonesia.

Third parties involved in patent infringement in Indonesia have legal responsibilities that must be accounted for. These third parties can include individuals, organizations, or other entities that engage in illegal activities related to patents, such as producing, selling, or importing products that infringe on patents without the permission of the rights holder. According to Article 161 of the Patent Law, anyone who intentionally and unlawfully infringes a patent may face a maximum prison sentence of four years and/or a fine of up to IDR 1 billion. For simple patent infringements, the penalties may be reduced to a maximum of two years in prison and a fine of up to IDR 500 million. Based on this, third parties who commit patent infringements or are involved in such violations can be subjected to these provisions. Although the Patent Law provides a clear legal framework, law enforcement against third parties is often ineffective due to limitations within the legal system and a lack of public awareness regarding the importance of patent rights. This results in frequent violations occurring without stringent sanctions, threatening the sustainability of legitimate businesses and financially harming patent holders. Therefore, to ensure accountability for third parties in patent infringement cases, reforms in the legal system, stricter oversight, and public education are necessary to protect patent rights more effectively.

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<sup>37</sup> Syamhadi, Adiman, and Dewi.

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