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JURIDICAL ANALYSIS OF THE REGULATION ON SPECIFIC TARIFF IMPOSITION ON PATENT SERVICES IN INDONESIA

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Abstract:
The regulation on the imposition of specific tariffs on patent services constitutes a legal instrument designed to enhance access to the patent protection system. However, the implementation of the Minister of Law and Human Rights Regulation Number 20 of 2020 continues to raise issues of legal certainty due to the use of the phrases "under certain circumstances" and "in certain cases" which lack clear normative limitations, and because its provisions are not yet harmonized with Government Regulation Number 45 of 2024. This study aims to analyze the legal certainty and harmonization of the regulation governing the imposition of specific tariffs on patent services in Indonesia. The research employs a normative legal research method using statutory, conceptual, and analytical approaches, with legal materials analyzed qualitatively through grammatical, systematic, and teleological interpretation techniques. The findings indicate that the regulation has not yet provided legal certainty, as it still contains vague norms in the phrases "under certain circumstances" and "in certain cases" which lack objective and exhaustive parameters; furthermore, the regulation exhibits vertical disharmony due to its continued reference to Government Regulation Number 28 of 2019, which has been revoked and superseded by Government Regulation Number 45 of 2024. This study recommends amending the Minister of Law and Human Rights Regulation Number 20 of 2020 by updating its legal reference, formulating clear and exhaustive criteria for specific tariff imposition, and conducting executive review to ensure harmonization with higher-ranking legislation so as to achieve legal certainty and more effective legal protection for patent holders.

INTRODUCTION

Indonesia is a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which constitutes the highest legal authority and the foundation for the protection of citizens' rights, including the right of every person to develop themselves through the fulfillment of basic needs, to obtain education, and to benefit from science and technology as guaranteed under Article 28C paragraph (1) of the 1945 Constitution, as well as the right to private property under Article 28H paragraph (4). As a manifestation of these constitutional mandates, the state provides legal protection through the Intellectual Property system, one form of which is the patent right, granting inventors an exclusive right over their inventions in the field of technology, covering both products and processes. A patent is an exclusive right granted by the state to an inventor over his invention in the field of technology for a specified period to implement the invention himself or to authorize another party to implement it, and this right serves not merely as a legal protection instrument but also as a driver of innovation, technology transfer, enhancement

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of national industrial competitiveness, and knowledge-based economic growth.As a form of the state's commitment to inventors, the government regulates the mechanism of specific tariff imposition on patent services through the Minister of Law and Human Rights Regulation Number 20 of 2020 concerning the Requirements and Procedures for the Imposition of Specific Tariffs on Patent and Copyright Services, which makes possible a tariff of IDR 0.00 (zero rupiah) or a tariff of 10% (ten percent) on certain types of services. This regulation constitutes part of the Non-Tax State Revenue mechanism under Law Number 9 of 2018 concerning Non-Tax State Revenue, and is intended to expand public access to patent protection, particularly for research institutions, higher education institutions, micro and small enterprises, and inventors with limited economic capacity. However, the use of the phrases "under certain circumstances" and "in certain cases" in the regulation's normative framework has given rise to normative vagueness (vage normen), as these phrases are not accompanied by objective, measurable, and exhaustive parameters regarding the conditions intended, thereby creating multivalent interpretation in administrative implementation and opening wide room for discretion by the competent official in determining whether an applicant qualifies for the specific tariff facility.

The normative issue is exacerbated by the issuance of Government Regulation Number 45 of 2024 concerning the Types and Tariffs of Non-Tax State Revenue Types Applicable to the Ministry of Law, which provides an explanation that the meaning of "certain circumstances" includes, among others, a patent that has not yet been commercialized, yet the use of the phrase "among others" (antara lain) demonstrates that the norm remains open and non-exhaustive, thereby failing to fully eliminate legal uncertainty. This condition constitutes vertical disharmony, since the Minister of Law and Human Rights Regulation Number 20 of 2020 continues to refer to Government Regulation Number 28 of 2019, which has been officially revoked and superseded by Government Regulation Number 45 of 2024, creating a duality of legal bases and a situation where, in practice, the implementing regulation lacks a valid normative foundation. The prevailing condition is inconsistent with the principle of clarity of formulation under Article 5 letter f of Law Number 12 of 2011 concerning the Formation of Legislation, which requires that every statutory regulation be formulated in a clear and unambiguous manner to avoid multiple interpretations in its implementation.

The issues described above demonstrate the importance of normative evaluation of the policy on specific tariff imposition in patent services to assess its consistency with the principles of legal certainty, justice, and utility within the national patent legal system framework. Based on these legal issues, this study examines two main research problems: first, how is legal certainty in the imposition of specific tariffs on patent services within the Minister of Law and Human Rights Regulation Number 20 of 2020; and second, how is the harmonization of the regulation on specific tariff imposition on patent services in the Minister of Law and Human Rights Regulation Number 20 of 2020 achieved. The originality of this study lies in its comprehensive normative analysis that simultaneously addresses normative vagueness and vertical disharmony in the regulation, within the context of the recently amended Indonesian patent legislation.

METHODS

This research employs a normative legal research method, focusing on examining the existing norms in the prevailing positive law, particularly those governing the imposition of specific tariffs on patent services. This method was chosen because the object of research comprises statutory regulations, legal principles, legal theories, and doctrines relating to specific tariff regulation in

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Indonesia's patent protection system. Three approaches are used: the statutory approach, which examines the provisions of law concerning the patent system, specific tariff imposition, and Non-Tax State Revenue related to patent services; the conceptual approach, which draws on legal theories and scholarly doctrines of legal certainty, hierarchy of legislation, and utilitarianism as analytical tools; and the analytical approach, which critically analyzes the consistency and coherence of normative provisions in the applicable legal instruments. Legal materials were gathered through library research (library research), sourced from primary, secondary, and tertiary legal materials including the 1945 Constitution, Law Number 13 of 2016 on Patents as amended by Law Number 65 of 2024, Law Number 9 of 2018 on Non-Tax State Revenue, Government Regulation Number 45 of 2024, Minister of Law and Human Rights Regulation Number 20 of 2020, scholarly books, legal journals, and other supporting references. The collected legal materials were analyzed qualitatively using a descriptive-analytical technique, incorporating grammatical, systematic, and teleological interpretation methods, before being presented systematically to construct legal argumentation and arrive at conclusions addressing the research problems.

Table 1. Hierarchy of Legal Instruments Governing Specific Tariff Imposition on Patent Services

No	Legal Instrument
1	Law Number 13 of 2016 on Patents, as amended by Law Number 65 of 2024 (Patent Law)
2	Law Number 9 of 2018 on Non-Tax State Revenue
3	Government Regulation Number 45 of 2024 on Types and Tariffs of Non-Tax State Revenue Applicable to the Ministry of Law
4	Government Regulation Number 69 of 2020 on Procedures for Setting Tariffs on Types of Non-Tax State Revenue
5	Minister of Law and Human Rights Regulation Number 20 of 2020 on Requirements and Procedures for the Imposition of Specific Tariffs on Patent and Copyright Services
6	The 1945 Constitution of the Republic of Indonesia (Article 28C paragraph (1) and Article 28H paragraph (4))

RESULT AND DISCUSSION

Legal Framework for Specific Tariff Imposition on Patent Services. The regulation on specific tariff imposition on patent services is part of the Non-Tax State Revenue policy framework under Law Number 9 of 2018 concerning Non-Tax State Revenue. Patent service fees fall into the category of Non-Tax State Revenue derived from services of the Directorate General of Intellectual Property under the Ministry of Law. As a hierarchically structured system, the legal instruments governing specific tariff imposition on patent services must be consistent at every level of the normative hierarchy, as summarized in Table 1. The exclusive right of a patent holder, including the right to make, use, sell, import, lease, transfer, or provide for sale products covered by the patent, is accompanied by an obligation to pay annual fees as stipulated in Article 21 of Law Number 13 of 2016 on Patents, which provides that "Every Patent Holder or patent license recipient is obligated to pay the annual fee." The annual fee is not only an administrative obligation but also a normative reflection of the balance between rights and obligations in the patent protection system: the state grants an exclusive right while requiring the holder to maintain it by paying fees, which in turn fund the operational costs of the patent administration system.

The specific paying tarif mechanism under the Minister of Law and Human Rights Regulation Number 20 of 2020 provides for two types of tariff reductions: a tariff of 10% (ten percent) of the

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annual fee, available from the sixth year until the expiration of protection for micro enterprises, small enterprises, educational institutions, and government research and development bodies; and a tariff of IDR 0.00 (zero rupiah), available from the sixth year onward for government research and development bodies, state and private universities, state and private schools, and other government educational institutions whose patents have not yet been commercialized, as well as for patents that have been donated or endowed for social and public benefit. The procedural mechanism requires applicants to submit a request either electronically via the Directorate General of Intellectual Property's official website or in person, accompanied by supporting documents tailored to each beneficiary category. From the perspective of the Theory of Legal Hierarchy developed by Hans Kelsen through his Stufenbau Theory, valid norm creation must follow the manner determined by superior norms, and a norm derives its binding force from the higher norm from which it was created; therefore, every implementing regulation must draw its validity from a higher-ranking instrument and must not contradict or exceed the scope authorized by it.

Legal Certainty Analysis: The Problem of Normative Vagueness. The central problem in the Minister of Law and Human Rights Regulation Number 20 of 2020 lies in its use of the phrases "under certain circumstances" (dalam keadaan tertentu) in Article 2 paragraph (2) and "in certain cases" (dalam hal tertentu) in Article 3 paragraph (2) without being accompanied by objective, measurable, and exhaustive normative parameters as to what those circumstances and cases mean. According to Gustav Radbruch's theory of legal certainty, law must be formulated clearly, consistently, and in a manner that provides definite guidance to every legal subject, and legal certainty is essentially the assurance that a rule of law will actually be used in a manner consistent with what a reasonable observer would expect from reading the rule's text. When analyzed systematically, the phrase "under certain circumstances" in the Minister Regulation must be read in connection with the explanation of Article 6 of Government Regulation Number 45 of 2024, which states that "certain circumstances" include, among others, a patent that has not yet been commercialized. However, the use of the phrase "among others" (antara lain) in the explanation still demonstrates that the norm remains open and non-exhaustive, thereby failing to fully eliminate legal uncertainty. Through grammatical interpretation, the phrase "among others" inherently indicates that the examples given are not an exhaustive or closed list, meaning that determining conditions beyond those expressly mentioned is left to the discretion of the competent authority without clear and objective parameters. Applied teleologically, the purpose of the specific tariff policy is to expand public access to patent protection and support the national innovation ecosystem; however, a norm that does not provide clear guidance on who qualifies for the tariff benefit may instead create structural barriers by leaving the outcome of each application dependent on how the authorizing official interprets the undefined phrases, which is inconsistent with Article 5 letter f of Law Number 12 of 2011 on the Formation of Legislation, which requires every statutory regulation to fulfill the principle of clarity of formulation (asas kejelasan rumusan). The Table below illustrates the comparative analysis of the normative provisions at issue.

Table 2. Comparative Analysis of Key Phrases and Their Normative Implications in the Specific Tariff Regulation on Patent Services

Phrase	Normative Problem	Required Improvement
"Under certain circumstances" (Permenkumham 20/2020 Art. 2(2))	Normative vagueness (vage normen): no objective, measurable, exhaustive parameters defining qualifying conditions; opens room for arbitrary	Replace open phrase with exhaustive enumeration: explicitly state that "certain circumstances" covers (i) non-commercialized patent, (ii) donated/endowed patent for

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Phrase	Normative Problem	Required Improvement
	and inconsistent administrative discretion	social/public benefit, and (iii) any other administratively defined criterion
"In certain cases" (Permenkumham 20/2020 Art. 3(2))	Similar vagueness as above; lacks concrete indicators distinguishing the "certain cases" for 10% tariff from the general application, creating potential overlap and unequal treatment	Specify exhaustive qualifying conditions for 10% tariff, distinct from zero-tariff conditions, referencing the updated PP 45/2024 explanation
"Among others" (PP 45/2024 Explanation of Art. 6)	Open-norm character: examples given are non-exhaustive; fails to fully resolve normative vagueness inherited from the Minister Regulation; higher-ranking norm does not cure vagueness in lower norm	Replace "among others" with a closed, exhaustive list of qualifying circumstances, both at the PP level and in the amended Permenkumham

Source: Analysis of Permenkumham Number 20 of 2020 and PP Number 45 of 2024 (2026)

Harmonization Analysis: Vertical Disharmony and Its Implications. The second major finding of this study is the existence of vertical disharmony between the Minister of Law and Human Rights Regulation Number 20 of 2020 and Government Regulation Number 45 of 2024. The Minister Regulation continues to refer in its normative basis to Government Regulation Number 28 of 2019, which was officially revoked and superseded by Government Regulation Number 45 of 2024 on Types and Tariffs of Non-Tax State Revenue Applicable to the Ministry of Law. Specifically, Article 3 of Permenkumham Number 20 of 2020 still bases the imposition of specific tariffs on Government Regulation Number 28 of 2019, even though that Government Regulation is no longer in force. This situation is a textbook example of vertical disharmony as described in Hans Kelsen's norm hierarchy theory and further developed by Hans Nawiasky, in which a lower norm loses its valid normative basis when the higher norm from which it was derived is revoked, thereby calling into question the binding force of the lower norm. According to the lex superior derogat legi inferiori principle, a lower-ranking legal instrument must yield to a higher-ranking one and must not contradict or deviate from it; by contrast, under the lex posterior derogat legi priori principle, the newer regulation supersedes the older one and the older references become invalid. In this case, both principles point to the same conclusion: the continued reference by the Permenkumham to a revoked Government Regulation creates a legally untenable situation of normative duality, where the substantive tariff obligations technically derive from a regulation that no longer has legal force, thereby generating legal uncertainty for patent applicants regarding which tariff basis governs their annual fee obligations.

Urgency of Harmonization and Recommended Normative Reconstruction. The harmonization of the Minister of Law and Human Rights Regulation Number 20 of 2020 with Government Regulation Number 45 of 2024 constitutes a normative imperative rather than merely a technical administrative exercise. From the perspective of Jeremy Bentham's utilitarian theory, the purpose of law is to produce the greatest good for the greatest number (the greatest happiness of the greatest number), and a regulation that fails to provide clear, accessible, and certain guidance for its intended beneficiaries defeats the very utilitarian purpose that justifies its existence. The specific tariff policy is designed to benefit inventors with limited economic capacity, research institutions, universities, and micro and small enterprises, yet a regulation marred by normative vagueness and vertical disharmony fails to serve these beneficiaries effectively. The recommended normative reconstruction involves three concurrent actions: first, updating the legal reference in

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Permenkumham Number 20 of 2020 from Government Regulation Number 28 of 2019 to Government Regulation Number 45 of 2024; second, formulating exhaustive and objective criteria for both the zero-tariff and 10%-tariff categories, replacing open-ended phrases with a closed list of qualifying circumstances including non-commercialized patents, patents donated or endowed for social and public benefit, and any additional categories defined through clear administrative standards; and third, institutionalizing an executive review mechanism to ensure that implementing regulations are systematically updated whenever a higher-ranking regulation is amended or revoked, thereby preventing the recurrence of vertical disharmony in the patent administration system. Such harmonization would not only serve the principle of lex superior derogat legi inferiori but would also ensure that the patent tariff regulation fulfills its role as a tool for achieving legal certainty, justice, and utilitarian benefit for the national innovation ecosystem.

CONCLUSION

The regulation on specific tariff imposition on patent services in the Minister of Law and Human Rights Regulation Number 20 of 2020 has not yet provided adequate legal certainty, as evidenced by the presence of normative vagueness in the phrases "under certain circumstances" in Article 2 paragraph (2) and "in certain cases" in Article 3 paragraph (2), which are not accompanied by objective, measurable, and exhaustive parameters defining the qualifying conditions, and which correspondingly open room for multivalent interpretation and potentially inconsistent administrative discretion in determining who is entitled to the specific tariff facility. Although Government Regulation Number 45 of 2024 clarifies that "certain circumstances" include a non-commercialized patent, the use of "among others" in the explanation preserves the norm's open-ended nature and does not fully resolve the legal uncertainty. Furthermore, the regulation exhibits vertical disharmony, since it continues to refer to Government Regulation Number 28 of 2019, which has been revoked and superseded by Government Regulation Number 45 of 2024, thereby calling into question the normative validity of the implementing regulation and creating legal uncertainty for patent applicants regarding the applicable tariff basis. Harmonization of the Regulation is urgently needed through: updating its legal reference from Government Regulation Number 28 of 2019 to Government Regulation Number 45 of 2024; formulating exhaustive and objective criteria for the conditions qualifying for both zero-tariff and 10%-tariff treatment; and institutionalizing executive review mechanisms within the ministry to prevent future recurrence of vertical disharmony in the patent administration legal framework, so that the specific tariff policy may effectively serve its purpose of promoting legal certainty, justice, and the greatest benefit for inventors, research institutions, universities, and micro and small enterprises as the intended beneficiaries of the policy.

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