

# Legal Protection for Technology Transfer Agreement

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## Abstract:

As a developing country, Indonesia realizes that science and technology have an important role in accelerating its national economic development. In carrying out this matter, the handover of technology is started with a contract between the provider and recipient of technology. The contract could possibly be either commercial or non-commercial. Non-commercial contract is usually targeted to public interest and people in general, not for commercial one. Practically, the handover process of such non-commercial contract should go smoothly as expected. Different motivations on the provider's side have profit orientation in business marketing strategy. While the recipients have technological mastery orientations to make them independent from outsiders. The law protection effort for non-commercial parties has pushed the country to formulate a regulation which limits and avoids the process.

**Keywords:** Non-commercial technological contracts, Law protection

## 1. INTRODUCTION

The development of science and technology will be very meaningful to improve the standard of life, civilization and human dignity, and will give benefit to the society, nation and state. The implementation of national development which is essentially a complete human development of Indonesian society, cannot be separated from efforts to realize an atmosphere that is able to generate enthusiasm and interest to encourage the birth of a new creation that can be used as a support for national development. This is a consequence of the existence of a combination of science and technology that can provide something that is effective for national development. (Astuti Muchtar, 2001; Boniface, 2016) Technology transfer is not only an interest of developing countries, but also developed countries for their market expansion. Even the most sophisticated technology can no longer be self-owned by developed countries. The transfer of technology from one country to another be done in various ways depending on the type of technological assistance needed for a project.

The implementation of technology transfer begins with the agreement of the parties involved between

the provider and the recipient of technology. The parties in agreement can be from by the private sector, the government, both private and government sectors, or countries. private sector, government (government), private and government, or can involve several countries.

The acquisition of technology transfer begins with an agreement, can be either commercial or non-commercial. The acquisition of non-commercial technology transfer is generally aimed at the interests of the lives of many people, especially the urgent needs of the community. Such non-commercial technology transfer needs legal protection and supervision in practice, so as not to be misused by unlawful parties. This article will explain the legal protection for the parties involved in non-commercial technology transfer agreement.

According the rule of Indonesian Civil Code in article 1338 that an agreements made legally. An agreement made legally means that it does not conflict with the law-binding on both parties. The agreement is generally irrevocable, except with the agreement of both parties or based on the reasons

stipulated by the law(Subekti, 1982). Based on the rule, that the position of both parties are equally strong, whereas the reality is often the opposite. Provisions that protect parties that are (economically) weak, must indeed be held in a general part of the law, various agreements(Subekti, 1992)

Technology transfer is used in a place to be applied elsewhere as an innovation of technology. Santikarn stated that there are three concepts of technology transfer that are relevant to developing countries. The first concept is the transfer of technology to local workers. The second concept is the dissemination and diffusion of technology, while the third is technology adaptation and development. The three concepts of technology transfer should be carried out thoroughly so that the technology transfer process can run smoothly and successfully(Santikarn, Gumbira Said, & et.al, 2004; Ambikai., & Ishan, 2016;Barkatullah, & Djumadi, 2018)

## 2. METHODS

Based on the problems, this article will discuss further about the process of technology transfer, especially the legal protection for the parties involved in non-commercial technology transfer agreements. This research was carried out using analytical descriptive research specification which illustrates various legal problems and other facts relating to the regulation and implementation of non-commercial technology transfer agreements. This article further analyzes these aspects in order to obtain a complete and comprehensive analysis.

## 3. RESULTS AND DISCUSSION

Technology transfer can be done with or without a contract, either by the private sector or the government. One way that is commonly used in the technology transfer process is through license agreement. Through this agreement, the technology provider grants the technology recipient rights, for a certain period of time and with the terms and

conditions agreed upon jointly, utilize and use a particular purpose.

From the start, the parties must know which technology will be the object of their agreement. This is basic technology which is the type of technology that will be transferred by provider to recipients (sumantoro: 1993). From a different paradigm, technological objects include intellectual property rights such as a patent, utility model, design, know-how, trade mark, trade name and copyright system and other rights relating to technology. In reality, even though there are known and distinguished systems of protection for intellectual property rights, it cannot be denied that an intellectual property rights can be covered by more than one protection system, e.g. a combination of trade mark and design, between copyright and trade mark (Sumantoro, 1993).

The IPR (Intelectual Property Rights) regime, especially patents, has a very strong role in developed countries. Because this will greatly maintain a good reputation in trade, including the development of innovation. In developing countries that prioritize equitable distribution of income to their people and would grant less patents protection if the poorer section, will be affected by paying higher prices for patents. (vairaj arjune: 2016). Below is a comparasion table of determinants for strong IPR Regime :

**Table 1 : Determinants for strong IPR Regime**

Determinants for Strong IPR	Level of Influences	
	Developed Countries	Developing Countries
Researh & Development	High	Low
Openness of Economy	Low	High
Market Freedom	High	High
Political Freedom	Low	High

Source : Ginarke & Park (as cited Vairaj Arjune, 2016)

TRIPs as part of Agreement in Establishing World Trade Organization is a separate history in relation to international trade arrangements. TRIPs specifically regulates the relationship with Intellectual Property Rights. Transfer of technology is urgently needed by developing countries. One of the basic principles of Trips is that intellectual property rights must contribute to technological innovation and transfer of technology that is mutually beneficial to producers and recipients in ways that are conducive to the realization of social and economic welfare, and the balance of rights and obligations.

With the recognition of copyright it is expected that there will be technology transfer that supports the development of joint technological innovations between providers and recipients of technological knowledge, improvement of social and economic welfare, as well as legal protection of the balance between rights and obligations (Zen Umar Purba, 2005).

Based on provisions of Article 8.1 TRIPs give the country members the opportunity to adjust their legislation to provide health protection, innovation in the development of the public sector for socio-economic and technology. According to Michael Blakeney, the regulation in Article 8.1 of the provisions of TRIPs, can be assessed as strengthening the objectives of TRIPs in the preamble. (Purba; 2005).

Technology development through technology transfer is a legal obligation from developed countries to developing countries. Based on article 7 of the TRIPs, stipulates that contribution of technology is utilized not only to improve aspects of economic development but also the element of social responsibility so that the technology can be utilized for common goals.

Based on observations there are five obstacles to technology transfer between countries as follows :

(Doelle;, Gunbira;, & et.al, 2004).

- Technology in developed countries oriented to industry, business and Economic benefits, there is no socio-economic or socio-ecological orientation. This does not match the conditions of developing countries.
- Technology originating from developed countries is high cost. Whereas What is really needed by developing countries is cost-effective technology.
- Technology transfer requires a strong R & D infrastructure. At present the condition of developing countries is largely unable to assimilate imported technology properly.
- Advanced technology testing institutions and their resources do not support, both in quantity and expertise.
- Funds for transfer of technology greatly reduce the country's foreign exchange.

The practice of non-commercial technology transfer, is not fully run as expected because technology transfer is a continuous process. In addition, the process of technology that is currently running is not entirely non-commercial. Sometimes the existing infrastructure may be non-commercial, but it requires a chain of previous or subsequent processes which can be commercial, in which the recipient must accept because each process is mutually sustainable.

For example, in Indonesia, one of its technology transfer projects is a tidal water power plant in Lombok, which is funded by the Italian government. Still, technology transfer projects often have drawbacks. This deficiency can be in the form of expensive and complicated maintenance costs, spare parts that must be imported or the technology provided is no longer a new technology system in its home country. Technology transfer finally opens up market opportunities to sell technology that has become obsolete to in developing countries. Admittedly, there are indeed a lot of technology transfers whose systems are not designed properly,

until finally they cannot be useful anymore. These technology systems often require the care of experts that only developed countries have. If the developing country is unable to bring in experts, the existing technology system will eventually be wasted (Kohr, 2009)

The technology transferred also can be done by collaboration or imitation, domestic party can learn how to penetrate export markets and the local characteristic will affect the speed of adoption of new technology. In the end the role of new technology transferred is one of the way to support the human capital investment, physical infrastructure investment and these are key driver of economic growth and and improve the economic welfare of the community.

For developing countries, the interest to regulate technology transfer agreements, especially non-commercial ones, is that the government can regulate the agreement with legislation. This can trigger the articles which are very restrictive and obstruction on the objectives of non-commercial technology transfer process can be avoided.

The existence of compulsory licensing provisions for the benefit of developing countries, provides an opportunity to create "forced efforts" from developing countries so that the technology produced by developed countries can be utilized by developing countries, even though it must go through certain preconditions and procedures (Riswandi dan Syamsudin, 2005).

In practice, the existence of a compulsory license is very important for the use of technology, including in the process of technology transfer. An examples of such a practice is evident in Thailand. In November 12, 1999, the Bangkok Post reported that the Thai government drug organizations and several NGOs engaged in HIV / AIDS appealed to the Thai Intellectual Property Rights Department to consider applying a mandatory license for the production of didanosine (ddl), as a very important drug in

treatment of HIV patients (Riswandi & Syamsudin, 2005)

In technology transfer agreement, the negotiating position of recipient may be strong enough so that the provider of the technology will still work together even though the arrangement is quite strict. But in circumstances where the conditions for the need of technology transfer are very urgent for the public interest, it is not possible for recipients to attract the entry of technology when the regulations are too strict. This causes the need to formulate more realistic arrangements. However, efforts should be made to ensure that the agreement does not cause dependence which will weaken the position of the recipient of the technology transfer. Supervision in the implementation of law enforcement must also be endeavored to avoid fraud by certain elements in the regulation of technology transfer. These legal arrangements do not give rise to potential that actually inhibits the process of technology transfer. This certainly requires careful planning from the government to ensure the acquisition of technology transfer for non-commercial agreements

#### 4. CONCLUSION

- a) The practice of a non-commercial technology transfer process, is not fully run as expected. Barriers that occur include the technology that is transferred, especially those from developed countries more that more oriented to industry, business, and economic benefits. In addition the technology transferred is high cost and requires a strong R & D infrastructure. The recipient of technology transfer in developing countries in general, not been able to assimilate imported technology properly.
- b) To provide legal protection to the parties in the non-commercial technology transfer agreement, the State has an important role to make regulations on non-commercial technology transfer agreements, so that articles that severely restrict and hinder the

purpose of non-commercial technology transfer processes this can be avoided. In addition, there must be supervision of law enforcement implementation, so that there is no misuse by certain elements in its implementation.

#### REFERENCES

1. Ambikai., & Ishan, Z. (2016). Comparative analysis of law on tort of deviant behaviors in Malaysia and India. *Journal of Advances in Humanities and Social Sciences*, 2(4), 243-249.
2. Astuti Muchtar, D. (2001). *Perjanjian Lisensi Alih Teknologi dalam Pengembangan Teknologi Indonesia*. Bandung: Alumni.
3. Boniface, A. E. (2016). Animals: 'Objects' or 'sentient beings'? A comparative perspective of the South African law. *Journal of Advances in Humanities and Social Sciences*, 2(3), 143-155.
4. Barkatullah, A. H., & Djumadi. (2018). The urgency of harmonization between investment law in Indonesia and international law in capital investment disputes resolution. *Journal of Advances in Humanities and Social Sciences*, 4(3), 154-160
5. Doelle, Gunbira, & et.al. (2004). *Manajemen Agribisnis Kunci Menuju Daya Saing Global Produk Agribisnis*. Jakarta: Ghalia Indonesia.
6. Gorg, H. (2003). Much Ado about nothing? Do Domestic Firms really Benefit From Foreign Direct Investment?
7. Kohr, M. (2009). *Alih Teknologi Bukan Pasar Baru*. Retrieved from [http://www.ubb.ac.id/menulengkap.php?judul=IMPL EMENTASI%252%090MENGENAI%2520HUKU M%2520%09ALIH%2520TEKNOLOGI&&nomorurut\\_artike l=346](http://www.ubb.ac.id/menulengkap.php?judul=IMPL EMENTASI%252%090MENGENAI%2520HUKU M%2520%09ALIH%2520TEKNOLOGI&&nomorurut_artike l=346)
8. Riswandi, B. A., & Syamsudin, M. (2005). *Hak Kekayaan Intelektual dan Budaya Hukum*. PT. Raja Grafindo Persada.
9. Santikarn;, Gumbira Said, E., & et.al. (2004). *Manajemen Teknologi Agribisnis*. Jakarta: Ghalia Indonesia.
10. Subekti. (1982). *Pokok-Pokok Hukum Perdata* (26th ed.). PT Intermedia.
11. Subekti. (1992). *Aspek-Aspek Hukum Perikatan Nasional*. Bandung: PT Citra Aditya Bakti.
12. Sumantoro. (1993). *Masalah Pengaturan Alih Teknologi*. Bandung: Alumni.
13. Vairaj Arjune (2016). *Intellectual Property Right Protection & Technology transfer in Developing Countries: Foreign Direct Investment & Domestic Technological Capabilities as Indicators*. *GGGI Management Review A Bi Annual Referred Journal Management*, Vol. 6, issue 2, Jul-Dec 2016, 45.
14. Zen Umar Purba, A. (2005). *Hak Kekayaan Intelektual Pasca Trips (First)*. Bandung: PT Alumni.