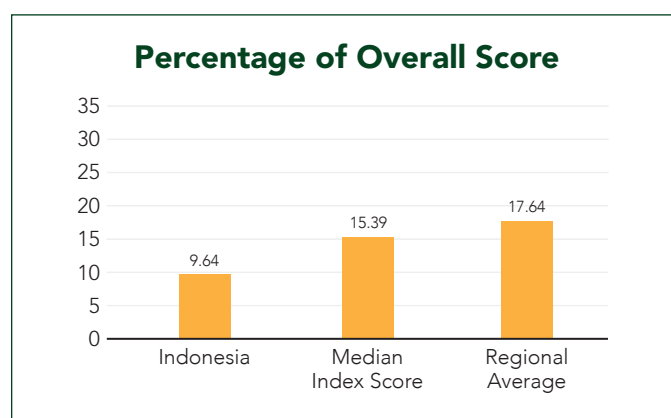
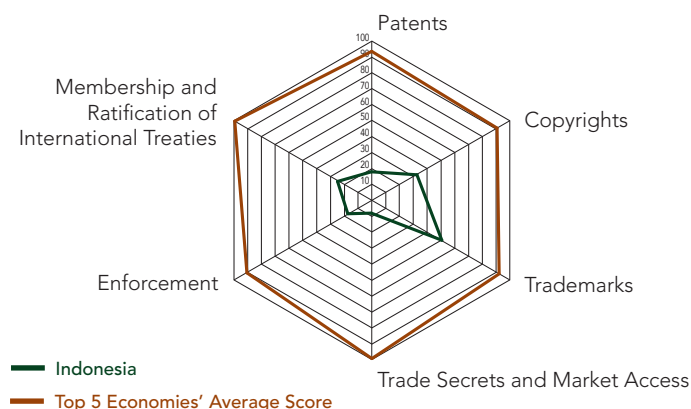




Strengths and Weaknesses

Key Areas of Strength

- ✓ New Trademark and Geographic Indications Law passed that strengthens existing criminal sanctions for trademark infringement

Key Areas of Weakness

- ✗ New patent law fundamentally weakens Indonesia's national IP environment
- ✗ New patent law contains heightened efficacy requirement targeting biopharmaceuticals
- ✗ Parallel importation has been introduced in new patent law targeting biopharmaceuticals
- ✗ New patent law also includes an ill-defined requirement for technology transfer of all patented technologies and processes in Indonesia
- ✗ Limited framework for protection of life sciences IP
- ✗ History of using compulsory licensing for commercial and nonemergency situations
- ✗ Challenging copyright environment with high levels of piracy
- ✗ Limited participation in international IP treaties

INDICATOR	SCORE	INDICATOR	SCORE
Category 1: Patents, Related Rights, and Limitations			
1. Term of protection	1	19. Frameworks against online sale of counterfeit goods	0.25
2. Patentability requirements	0	20. Industrial design term of protection	0.4
3. Patentability of CILs	0.25	21. Exclusive rights, industrial design rights	0.5
4. Pharmaceutical-related enforcement	0	Category 4: Trade Secrets and Market Access	
5. Legislative criteria and active use of compulsory licensing	0	22. Protection of trade secrets	0.25
6. Pharmaceutical patent term restoration	0	23. Non-barriers to market access	0
7. Regulatory data protection term	0	24. Regulatory and administrative barriers to commercialization	0
8. Patent opposition	0.25	Category 5: Enforcement	
Category 2: Copyrights, Related Rights, and Limitations		25. Physical counterfeiting rates	0.31
9. Term of protection	0.52	26. Software piracy rates	0.16
10. Exclusive rights	0.25	27. Civil and procedural remedies	0.25
11. Cooperative action against online piracy	0.5	28. Pre-established damages	0
12. Limitations and exceptions	0.25	29. Criminal standards	0.25
13. Digital rights management	0.25	30. Effective border measures	0.25
14. Government use of licensed software	0.25	31. Transparency and public reporting by customs	0
Category 3: Trademarks, Related Rights, and Limitations		Category 6: Membership and Ratification of International Treaties	
15. Term of protection	1	32. WIPO Internet Treaties	1
16. Limitations on use of brands	1	33. Singapore Treaty on the Law of Trademarks	0
17. Protection of well-known marks	0.25	34. Patent Law Treaty	0
18. Exclusive rights	0.25	35. Post-TRIPS FTA	0
TOTAL: 9.64			

Spotlight on the National IP Environment

Past Editions versus Current Scores

Indonesia's overall score has decreased from 28.6% (8.59 out of 30) in the fourth edition to 27.5% (9.64 out of 35) in the fifth edition. This drop in score reflects a relatively weak performance in the 5 new indicators added in the fifth edition and a deterioration of the environment as it relates to Category 1: Patents, Related Rights, and Limitations and the new patent law.

Patents, Related Rights, and Limitations

1. Patent term of protection; 2. Patentability requirements; and 3. Patentability of computer-implemented inventions (CIIs): In 2016, the Indonesian Parliament (People's Representative Council) finally passed a new, wide-ranging patent law (Law 13 2016). Although it aims to strengthen Indonesia's innovation infrastructure and to encourage more high-tech economic development through the creation and use of new technologies, overall the law does not improve what was already a challenging patenting environment. First, Article 4 inserts a new heightened efficacy requirement that targets biopharmaceutical products and outlaws second use claims. The new efficacy standard is not comprehensively defined, with the sole example cited being for antibiotics. In a further effort to target biopharmaceutical innovation, Article 167 allows for parallel importation of follow-on products under patent protection in Indonesia but approved for consumption in other markets. The law explains that this importation is to target the cost of medicines, particularly where prices in Indonesia are judged to be higher than the "international market." No details are provided as to what constitutes a "higher price" or the "international market." This law adds significant uncertainty and raises serious questions about the extent basic patent protection is afforded to biopharmaceutical products in Indonesia. More broadly, Article 20 of the law mandates that all patent rights holders "make" the patented product or process within Indonesia. Subsection (2) of this article states that this production should support Indonesia's industrial and development policies, specifically the "transfer of technology, investment absorption and/or employment." No further details are provided about the meaning or legal definition of "make" in this context. As discussed in previous editions of the Index, Indonesia has had in place a number of localization requirements that target certain industrial sectors (most notably the biopharmaceutical sector), but it would seem that this new requirement has broadened this mandatory localization to any patented technology. In one notable positive development, the new patent law does allow a limited form of patenting of CIIs. The explanation to Article 4(3) seems to suggest that patents will be allowed when they fulfill a technical effect or problem-solving requirement.

Trademarks, Related Rights, and Limitations

17. Ability of trademark owners to protect their trademarks: requisites for protection; and 18. Legal measures available that provide necessary exclusive rights to redress unauthorized uses of trademarks: 2016 saw a number of important developments with respect to the protection of trademarks in Indonesia. In October 2016, a new Trademark and Geographic Indications law was passed. Although it primarily focuses on expanding the realm of protection for trademarks to nontraditional trademarks (including sound holograms and 3-D marks) and improving the speed and administration of trademark applications, the law also strengthened existing enforcement mechanisms. Specifically, Article 100 strengthens existing criminal sanctions against trademark infringement. Fines have been increased to a maximum of IDR2–5 billion (about USD150,000–380,000) and prison sentences to between 4 and 10 years. The higher fines and sentences are applicable only in cases in which the infringing goods have led to public health issues, death, or environmental damage. This is a positive development, given the relatively high level of counterfeit medicines in Indonesia. Unfortunately, a number of negative developments increased the already high level of uncertainty about the protection of well-known marks. Two decisions by the Supreme Court of Indonesia entrench the difficulties that rights holders face in protecting their registered and well-known marks from rival and potential bad faith registrations and subsequent use. In September 2016, the court rejected the claims of designer Pierre Cardin that a local company was infringing its trademark. The local company had filed a similar trademark in the late 1970s incorporating the Pierre Cardin name, whereas the French designer had only registered its trademark in Indonesia in 2009. In a different case, the Supreme Court held that Swedish furniture giant IKEA's locally registered trademarks were not valid as they had not been used for a period of 3 years. The challenge of nonuse came from a local furniture company that requested to file its own trademark acronym "IKEA," which is short for Intan Khatulistiwa Esa Abadi.