

Patent Protection for The National Interest

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Abstract: *This research will analyze Patent Protection for the Interest of Indonesia. The approach used is normative law, to find the rule of law, legal principles, and legal doctrines in answering the legal issues at hand. This research will analyze the development of Intellectual Property Rights in essence is the development of Human Resources (HR), because IPR related to products and processes related to the IPR system is expected to develop HR, especially the creation of innovative, inventive culture. The role of intellectual property protection systems in relation to the protection of traditional knowledge, regarding how to preserve, protect and be fair in its use. Patent Protection is a matter of shared ownership of traditional knowledge.*

Keywords: *Law, Intellectual Property Rights, Patent Protection*

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INTRODUCTION

Patents are part of Intellectual Property Rights, which are included in the category of industrial property rights. Intellectual Property Rights itself is a part of objects, that is, intangible objects (immaterial objects). Juridical understanding of things is anything that can be the object of rights. Whereas what can become an object of rights is not only tangible objects but also intangible objects. In the German Civil Code/Law (1990) the term *sache* is used to refer to goods or tangible objects. While the Austrian Civil Code (1811) the word *sache* is used in a very broad sense that is anything that is not “personal” and is used by “humans”. The term *zaak* is used in the Indonesian Civil Code, and is used not only to refer to tangible objects, (for example Article 580), but also to refer to intangible objects which are often translated into things. Article 511 of the Civil Code states several tangible objects, namely: interest, fortune and billing as movable objects.¹

According to Sri Soedewi Masjchoen Sofwan in the civil law system. The Civil Code uses the word *zaak* in two meanings. First in the sense of tangible goods, second in the sense other than tangible goods. So, the understanding in the Civil Code is more. But it is narrower than *zaak* in Austrian civil law, because according to the Civil Code Austria not all rights are included in the definition of *zaak*. The rights to immaterial goods (*rechten op immateriele goederen*) do not include *zaak*, for example octroi (*octroirech*), trade mark rights (*merkenrech*), right to fabric (*auteursrech*)

In the Indonesian Civil Code the rights mentioned by Sri Dewi Soedewi are late but the regulation is not placed in the Indonesian Civil Code. These rights are regulated outside the Civil Registry even though the formulation of objects according to Article 499 of the Civil Code, namely every right and every person who can be the object of ownership, is sufficient reason to place that IPR into the legal system of objects. In the country of origin of the Indonesian Civil Code namely the Netherlands in the new Civil Registry the rights have been placed in one book in the chapter on civil law.²

Patents give inventors exclusive rights to exploit their inventions commercially for a certain time (Article 1 number 1). The patent also gives the inventor the right to prohibit other parties from making, using and selling an invention that has been protected by a patent without the approval of the patent holder. After the patent protection period expires, the invention becomes public property and everyone is free to use it. Judging from its history, Patents are not something new for Indonesians. Until 1945 no less than 18,000 patents had been granted in Indonesia under the Dutch colonial law, Octroiiwet 1910. After independence, there were not as many patents as in previous years. Only in the 70s with the increasing economic development, new awareness grew among the government to renew and complete the entire regulation in the field of IPR including patents. The reason for the renewal is that the increasing investment made by developed countries in Indonesia is undeniable, there is a very close relationship between the availability of regulations in the field of IPR and the entry of foreign investors into a country. If the protection of IPR is very good which is marked by the availability of a

¹ OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual (intellectual Property Right)*, PT Raja Grafindo Persada, Jakarta, hlm.343

² OK Saidin, *Ibid*, hlm.67

complete set of regulations in the field of IPR and law enforcement that decides investors will be interested in investing their capital in Indonesia.³

The process of reform of the country began with the ratification of the agreement with WIPO (the UN body that handles intellectual property matters) in 1979. The process was then followed up with the inclusion of Indonesia as a member of the Paris Convention in 1979. In 1989 the Parliament passed the Act Law No.6 of 1989 concerning Patents. This law was later amended to become Law No. 13 of 1997. In 2001, the government renewed the Patent Law by passing Law No. 14 of 2001. The purpose of the changes was to adjust the protection IPR in Indonesia with international standards contained in the TRIPs agreement. Patent is a Latin word that means veiled. While the opposite of the latent word is “patent” which means open. The meaning of an open word in a patent relating to the invention must be described in a document called a patent specification attached to the patent application. At the announcement stage, information about the invention submitted for the patent is announced to the public by placing it in the Official Patent News and on special facilities provided by the Director General.⁴

All kinds of inventions can be patented, provided that the invention is useful and indeed does not yet exist in the relevant technology field. Chemical compounds, machines, manufacturing processes and even new types of creatures can be patented. Rights obtained through patents are special rights to use inventions that have been protected by patents and prohibit other parties from carrying out the invention without the consent of the patent holder. Therefore, patent holders must monitor their rights so that they are not infringed by other parties. Before deciding to submit a patent application, the inventor must first consider the advantages and disadvantages of the patent protection. To obtain a patent, the inventor must disclose all the secrets of his invention, including examples of how best to carry out the invention contained in the patent specifications submitted.⁵

If the inventor does not intend to reveal the secret of the invention. Inventors should not patent their inventions, as an alternative, inventors can look for other forms of protection, for example with trade secrets. A famous example of trade secrets is Coca Cola. Coca cola was discovered in 1886, until now no other company has been able to find a formula for making coca cola, as a result, the coca cola company has been monopolizing the use of this formula for more than one hundred years. The formula is contained in a document stored in a vault in a bank in the city of Atlanta and only a few people (leaders) of coca cola know the formula. If the formula is not kept secret and the inventor prefers to patent his invention, it can be ensured that other companies already know the drink formula and the monopoly obtained by the company is not more than 20 years.⁶

³ Tim Lindsey (*et. al*), *Hak Kekayaan Intelektual Suatu Pengantar*, PT Alumni, Bandung, 2013, hlm.181

⁴ Ahmad Ramli (*et.al*), *Hukum Kekayaan Intelektual*, PT Refika Aditama, Bandung, 2019, hlm.8

⁵ Sudarmanto, *KI&HKI Serta Implementasinya bagi Indonesia*, PT Elex Media Komputindo Kompas Media, Jakarta, 2012, hlm.62

⁶ Agus Sardjono, *Membumikan HKI di Indonesia*, CV Nuansa Aulia, Bandung, 2009, hlm.148

There are 4 advantages of the patent system if it is associated with its role in enhancing technological and economic development:⁷ 1) Patents help promote the development of technology and the economy of a country; 2) Patents help create a conducive atmosphere for the growth of local industries; 3) Patents assist the development of technology and economy of other countries with licensing facilities; 4) Patents help create technology transfer and developed countries to developing countries.

Patent loss is related to a relatively expensive patent fee and a relatively short period of protection that is 20 years for ordinary patents and 10 years for simple patents. In addition, not all inventions can be patented according to the applicable patent law.⁸

Compared to patents, the cost of dealing with trade secrets is relatively cheap. This is because trade secrets need not be registered. Also when there is no limit to the monopoly depending on how the owner of the trade secret maintains the confidentiality of the invention, the loss of trade secret is related to the effort to maintain the confidentiality of the information. If the information is known to others, trade secret protection ends and everyone can use it. Another loss is related to proving the rights in the event of a dispute with another party where the owner of the trade secret may have difficulty defending his rights before the court of law since the trade secret is not registered.⁹

The patent system is a meeting point of various interests, namely: 1) The interests of patent holders; 2) The interests of the inventors and their competitors; 3) The interests of consumers; 4) The interests of the general public.

One of the reasons why piracy activities and counterfeiting of several products carried out by domestic industry players continue to occur, is due to lack of information about the functions and roles of the IPC and IPR subjects, as one of the tools that can be used to develop their businesses, and if piracy activities and Counterfeiting continues in the country, so countries which are included in the TRIPs agreement will naturally take counter-measures in the field of cross-retaliatory measures. Starting from deferring some Indonesian products that are exported to several developed countries, so that the elimination of some incentives to reduce the import quota of developed countries for Indonesian products.

Although the imported products are not directly related to products suspected of piracy or counterfeiting, this will certainly hit the Indonesian economy, especially for the export-oriented domestic industry sector, then to address these conditions. The President of Indonesia through Presidential Decree No.4 of 2006 has formed a National Team for the Prevention of IPR violations in order to create a climate conducive to the development and protection of IPC and IPR, in order to further encourage creativity and innovation in carrying out business activities in industry.

⁷ Dian Nurfitri (*et.al*), *Pengantar hukum Paten Indonesia*, PT Alumni, Bandung, 2013, hlm.37

⁸ Suyud Margono, *Hukum Hak Kekayaan Intelektual (HKI)*, Pustaka Reka Cipta, Bandung, 2015, hlm.304

⁹ Agus Sardjono, *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*, PT Alumni, Bandung, 2006

METHOD

In this paper is to use descriptive research conducted with a normative juridical approach. Types and sources used are secondary data. Data collection is carried out primarily with document study techniques (library research and online research) by inventorying secondary data needed, either in the form of primary, secondary or tertiary legal materials, then tracing its history and synchronization between the legal materials. The primary legal material used consists of laws and regulations.

Library research materials used in the form of document, research materials in the form of secondary legal materials which will be used include scientific work, research results and literature relating to the substance of the research. Tertiary legal materials, namely materials that support information on primary and secondary legal materials. Including data from newspapers, journals, dictionaries, encyclopedias.

The way to collect data in this research is to conduct a literature study of the book. Articles, research results and legislation relating to the consistency of arrangements for material transfer agreements as a means of patent protection. The research will be carried out an analysis of the conception of the welfare state by referring to existing legislation, books, articles, and research results that have already existed. Next will be analyzed the consistency of the delivery of the material transfer agreement as an effort to protect genetic resources.

Normative legal research, the data related to legal research is analyzed by analyzing basically back to three aspects, namely clarifying, comparing, and connecting with other words, a researcher who uses qualitative research methods does not merely aim to reveal the truth, will but to understand the truth of the data collected from library research. Furthermore, it will be analyzed qualitatively to answer the proposed research problem.

RESULT AND DISCUSSION

Legal Protection of IPR

Intellectual Property Rights commonly abbreviated as "IPR" is the equivalent of the word referred to used for Intellectual Property Right (IPR), namely the rights arising from profit sharing by thinking that produces a product or process that is useful for humans which in essence IPR is to enjoy in a manner economical result of an intellectual creativity. The objects arranged in IPR are works that arise or are born because of human intellectual abilities.¹⁰

According to Budi Santoso, Intellectual Property Rights are defined as a right that arises as a result of human intellectual abilities in various fields that produce a process or product beneficial to humans. Intellectual Property Rights has two main aspects, the first is the process and product covering a wide range of fields, ranging from the arts and literature to inventions and innovations in technology and all other forms that are the result of the process of human creativity through creativity, taste, and work. Second, the

¹⁰ Yoga Mahardhita (*et.al*), Perlindungan Hukum Hak Kekayaan Intelektual Melalui Mekanisme :Cross Border Measure" *Jurnal Ilmiah Ilmu Hukum Qistie*, Vol.11, No.1, Mei. 2018, hlm.91

copyrighted work or invention creates property rights for the creator and inventor. Nature as property rights, therefore the rights of an creator or inventor of his work must be protected.

Protection of IPR basically consists of recognition of the wealth and the right for a certain period of time to enjoy or exploit his own wealth earlier. During certain periods of time other people cannot enjoy or use, or exploit these rights without their permission. "IPR" is exclusive and absolute, meaning that IPR can be defended against anyone and those who have the right can sue for violations committed by anyone. The holder of IPR also has a monopoly right, that is the right that can be used by prohibiting anyone without his permission to make his invention or use it.

The concept of IPR ownership came from John Locke, 16th-century English philosopher about property rights. According to Locke, property rights are one of three things that cannot be separated from humans. Humans are born "tabula rasa" meaning that they are free and equal under natural law. Natural law forbids anyone to destroy, eliminate life, freedom, and property rights. These three things according to Locke cannot be released from human beings because they come from the Almighty. Every human being has himself as his own and no one has the personal rights of other people except the owner himself, including the work of his body and the work of his hands and senses. This means that every person naturally has the right to have all the potential inherent in his personal self and all the work that results.¹¹

Theory of IPR Protection

The theory of IPR protection as expressed by Robert M. Sherwood is as follows: Reward Theory says that the creator or inventor who will be given protection needs to be rewarded for the effort or effort. Contains some sort of understanding about community appreciation for one's efforts, a recognition or success. The Recovery Theory says, perhaps without a deep assessment, that the inventor or creator or designer who has wasted time, money and energy to produce his intellectual work needs to be given some kind of opportunity to regain what he will issue. Incentive Theory said that incentives are useful to attract efforts and funds for the implementation and development of creative creativity and enthusiasm to produce new discoveries.

Public Benefit Theory, said that the basis for granting intellectual property rights is to protect economic development. Risk Theory says that intellectual property is the result of a research that risks making it possible for other people to find legal protection against efforts or activities that contain these risks. Economic Growth Stimulus Theory, this theory recognizes the protection of IPR as an economic development tool. Economic development is the overall goal of establishing an effective protection system or IPR.

¹¹ Yoga Maharditha, *Ibid*, hlm.94

Patent History

Patents are an indicator of the progress of a nation. Productivity of intellectual property (IC), especially patents in Indonesia continues to increase. LIPI is an institution that contributes the highest number of patents nationally. Compared to other non-ministerial research institutes, ministries and universities in Indonesia, LIPI leads the largest number of patents reaching 662 patents (data up to April 2018). The highest number of registrations to date is in 2017 which is 159 patents.

The number of patents obtained is nothing but the contribution of intellectual thought from LIPI researchers. The knowledge possessed by researchers is capitalized and protected by patents. Patents are a form of intellectual property protection, especially in the field of technology. The rapid development of technology requires researchers to think hard to produce an innovative work that can benefit society in the field of technology. But not merely a research result can be patented. Patents have 3 (three) main requirements, namely to contain novelty (novelty) inventive steps and can be patented to the industry.

Patent Law provides requirements regarding what things can obtain patent protection, what can be protected with patents is invention, namely invention in the field of technology that meets new requirements (novel), contains an inventive step and can be applied in industrial process (industrial applicability). It can be seen that traditional knowledge, such as the concoction of a medicinal herb, for example, is not at all new. In fact, from research into the Sido Muncul herbal medicine factory, information was obtained that the ingredients used were derived from knowledge gained long ago, which had been criticized by its predecessor. It fits with the character of traditional knowledge that comes from a society's hereditary tradition in medicine. The next condition is inventive step. This requirement is difficult to be fulfilled by the public, considering that the compounding of traditional medicines was not preceded by a scientific study of the content and efficacy of herbal raw materials. There is no explanation about solving the problem in the field of medicine for example, why kencur rice is used for rheumatic medicine, there is no scientific evidence that brotowali can be used as an appetite medicine if taken by children who are not fond of eating. When a shaman puts onion into the stomach of a small child with a stomach ache, there is no explanation for why to use onion, and why to distribute it to the baby's market. How was the discovery step carried out so that the use of shallots as a stomachache. There is no explanation at all. Performers of traditional medicine only mimic those of their predecessors.

Furthermore, to obtain patent protection for the said invention, further steps are needed in the form of filing a patent application to the patent office. One obstacle that will be faced by local communities in compiling applications is regarding patent claims. The question is: what climate is contained in a traditional medicine, in a joke that is contained in a traditional medicine. Jokingly (but actually occurring) there is a fundamental difference between modern medicine and traditional medicine as follows: "Traditional medicine is carried out using a variety of drugs for one disease, whereas traditional medicine is carried out using one drug for various diseases". This joke shows that there is no clear claim regarding the healing properties of a traditional medicine.

Ideas to protect intellectual property rights as intangible objects include various intellectual property consisting of artistic and literary creations, inventions, brands, trade secrets, industrial designs, design of integrated circuit layout and plant varieties. It needs to be stated in advance, that overall intellectual property as detailed above is that intellectual property law is a set of rules that are pleasing or closely related to one's creativity or trade and service reputation. Traditionally, various intellectual property so far is known, grouped in 2 (two) major, in the form of industrial property and copyright. Into the industrial wealth class. The Paris Convention for the Protection of Industrial Property in 1883 regulates patents. A patent is an intellectual property which in the Indonesian legal system is recognized as an intangible object. As intangible objects, they get legal protection which is subject to the legal system of objects, namely Book II.B.W (which has now been revoked).

Patents are original documents called patent letters recognized by a court of a State that grants patents to the patent owner so that they can use their rights in legal proceedings to stop anyone from making, using or selling an invention that already has a patent without the patent owner's permission. According to Law Number 14 of 2001 concerning patents which are replaced by Law Number 13 of 2016 concerning Patents, what is meant by patents is an exclusive right which is interpreted by the State to the inventor of his inventions in technology for a certain period of time carrying out the invention himself or giving approval to other parties to carry it out. Oktroi is a patent term as used in several other countries. The use of this term can be different, although the understanding is almost similar as stated above. The Netherlands uses the term Oktroi with the same meaning. In England, America, Germany, and in countries that use English and German the word patent is used. In the Netherlands the word Oktroi is used, while in France and Belgium the word Brevet is used. The word Oktroi comes from the word auctor/auctorizare which is the Latin word "to be open".

The Nature of Patent Protection

Based on Law No. 14 of 2009 concerning patents which was replaced by Act No. 13 of 2016 concerning patents. Some elements that must be fulfilled in order for an invention to be patented or in other words obtain a law are: a) The invention made must be an invention in the field of technology; b) The technology in the invention must be a solution to the problem; c) The invention must contain a novelty (state of the art) and has never been published either in written form, or oral and has never been demonstrated; d) The invention must contain inventive steps, which means that the invention cannot be predicted beforehand; e) The invention to be patented can be applied in the industry so that if the invention is a product, the product can be duplicated in large quantities or massively by using certain technology.

To stimulate technological development in the form of protection of intellectual property, including patents there are a number of basic principles that can be used as a basis for providing adequate patent protection. The principles of protected patents are: a) A new invention, which is considered new if on the ladder of acceptance, the invention is not the same as the technology that has been announced in Indonesia or outside

Indonesia in a written, oral description or through demonstration, or by other means that allows an expert to carry out the invention before the inspection date or priority date; b) An invention contains an inventive step if the invention is from someone who has certain expertise in the technical field which is something that cannot be foreseen. An assessment that an invention is something that is unpredictable in advance must be made by taking into account the expertise that was available at the time the protection was submitted or that was already available at the time the first application was filed in the event that the application was submitted with priority rights; c) An invention can be applied in the industry if the invention can be carried out in the industry as described in the application

In this case the principle of first-come, first-serve is applied. In this patent law applies a new requirement if the object of a patent application before the day of filing anywhere in the world has been openly for the public to gain access, then the application for that is not granted. In the beginning, the idea to protect intangible property was only limited to artistic areas (such as literary rights). The reasoning was due to the fact (which disputed the stationers company who had power and control over the publication of books. Although the regulation at that time stated that the authors (and their heirs) enjoyed continuous rights to their creations, to protect the intangible property rights extending to all forms of intellectual property rights.

Patents are intangible property rights in law. In the mid-18th century the legal protection of intangible property rights became a debate and costly and discussed everywhere and by anyone. The debate arises because there is an assumption that “mental workers” (which are a concern of property rights law) or are fundamentally different from “real workers”. At the same time the law gives privileges to creative work rather than work done by the body.

According to Bentham, this discussion is similar to meeting blind people who are concerned about color. Even so, they complement in a unique way to understand property rights and the way in which laws give status to intangible property rights, that mental workers come from intellectual workers who use their minds and use genius and reason, and law not only appears to distinguish between mental workers and manual workers but also appears to provide more specificity to those who use the mind than those who use the physical.

Patent law grants monopoly rights to inventors who have incurred costs and thoughts to form an invention, with the condition that the invention is a new product, such as a "window lock" or a method of making equipment for anti-rubber car bodies, because the strength of intellectual property rights is required- high standards, in addition to the invention must be new, also involves an inventive step, this must be more than just an application of technology, which clearly has to be applicable in industrial applications, patent law provides an invention, the invention must disclose details of the invention . Disclosure is a prerequisite for granting a patent and must be total without hiding any institutions. Intellectual property rights (IPR) is a simple and logical conception, because basically IPR regulates the calm appreciation of the work of others, which can be useful for many people. This is the starting point for developing an environment conducive to the development of inventions, creations and other forms of intellectual work. Intellectual

property rights are private, but IPR will only be meaningful if it is realized in the form of products on the market, using roles in the economic field.

Development of Intellectual Property Rights is essentially the development of human resources (HR). Because IPR is related to products and processes related to human thought. With the development of the system of Intellectual Property Rights, it is expected that our human resources will also develop, especially the creation of innovative and inventive cultures, this is very important due to the fact that there are so many real natural resources or natural resources (NR).

License and Legal Position for Patent Holder

It should also be understood that the patent holder has the right to grant a license to another party based on the licensing agreement for the period of time the license is granted and is valid for the entire territory of the Unitary Republic of Indonesia, unless agreed otherwise, the patent holder may still implement it himself or grant a license to the other third parties. A patent is declared null and void if the patent holder does not fulfill the obligation to pay annual fees within the period specified in this Law. Patents can be canceled by the Directorate General for all or part of the patent holder's application submitted in writing to the Directorate. Patents can also be canceled by the Commercial court if there is a patent cancellation claim.¹²

If the government believes that a patent in Indonesia is very important for the defense and security of the State and a very urgent need for the benefit of the community, the government can implement the patent itself by notifying the patent holder in writing and giving reasonable compensation to the patent holder. Whereas both patent law and the Paris Convention regulate the position of patent holders. From the beginning, what is meant by patent, terms, how to apply for registration, examination, announcement of patent until how to implement and make patent. Both of these provisions have confirmed that the patent holder has a strong position, as long as the patent holder is always guided by the provisions of applicable law. However, the Paris Convention does not contain the basic provisions regarding patent protection such as the subject matter of the patented. The Paris Convention contains unclear provisions regarding the licensing of patents that can be used. Several arguments have been raised at the time of the conversion of Paris, but this stalemate without any resolution due to the sharp differences of opinion between developed countries and developing countries. Some further efforts to avoid deadlock, but failed because there are still sharp differences between them. To find a solution to this problem, a certain level of forum is called negotiation TRIPs.

¹² Novianti, *Perlindungan Paten Melalui Patent Cooperation Treaty dan Regulations Under The Patent Cooperation Treaty*, *Jurnal Negara Hukum*, Vol.8, No.2, November. 2017

CONCLUSION

Patent is a right owned by an Inventor on an invention in the field of technology, can be applied alone or authorized to others, and has economic value, and has been declared ownership of its rights by the government based on applicable legal provisions. The Patent Holder (Inventor) is given protection on the basis of national law as a priority right to jointly carry out his own inventions or authorize others to do so. In the future, it is appropriate for developed countries to be serious in overcoming patent problems, it is intended that the patent holders do not feel underestimated for their works. Indonesia already has a sufficient set of laws and regulations in the field of patents, thus it is time for patent protection to be truly enforced, then also the State must be able to provide an understanding to the public as an inventor to truly produce patents and serve as fulfillment to improve welfare.

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