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Legal Protection of Intellectual Property Rights Intellectual Property Rights in the Field of Patents According to Law Number 13 of 2016

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ABSTRACT: This study analyzes the Indonesian patent legal system and the comparison of legal protection against simple patents. Descriptive normative juridical research method that uses a statutory approach supported by a theoretical approach. In this case, Law No. 13/2016 on Patents is studied using legal theory to study the comparison of legal protection available for simple patents in the Indonesian patent legal system. The results show that several mechanisms and principles of legal protection are seen in the regulatory standards that still adhere to the principles of the WTO/TRIPs Agreement. Indicators of infringement that are important in the settlement of simple patent disputes are related to (1) the introduction of the invention in the claim supported by the description of the simple patent, (2) identifying competitors' inventions before the date of acceptance; and (3) anticipating prior art against inventions that are considered not new for each claim unit of the patent to be invalidated, so that at least it can provide an overview of the settlement of patent cases in the future.

KEYWORDS: Simple Patent, Comparative Legal Protection, Dispute Resolution.

INTRODUCTION

Literature, science, technology, and art are some examples of the work, passion, and creativity of human intellectual abilities that have economic value and benefit human life. If the inventor or creator receives compensation, the innovation or creation product made using their intellectual ability is reasonable. Plant Variety Protection, Copyrights, Patents, Trademarks, Geographical Indications, Trade Secrets, Industrial Designs, and Integrated Circuit Layout Designs are some of the legal instruments that can be used to benefit from intellectual property.

There are several reasons why IPR needs to be protected. First, the rights granted to creators in the fields of science, art, and literature, or inventors in the field of new technology involving innovation, are an award and recognition of the human ability to produce innovative works. As a result, inventors and creators should be protected from its legal consequences. As such, the exclusive right to explore IPR should be given to those who put their creativity to the best of their ability.

The protection of Intellectual Property Rights ensures that people will respect the right to take initiative and action and protect their copyrighted works. The future of a country will be better along with the level of recognition of IPR. Although Indonesia has comprehensive intellectual property rights legislation, including the field of patents, and has ratified international intellectual property rights treaties, conflicts between parties often cause harm, both domestically and at the regional level.

According to the legal system, three types of wealth are categorized. The first is the personal wealth that most people have, which are intangibles; the second is wealth in the form of materials, such as land and buildings; and the third is intellectual property. All countries recognize intellectual property (IP) rights in the form of products of ideas, such as copyrights, patents, brands, and trade secrets (Maria Alfons, 2017).

Intellectual property rights are known to be disaggregated into two major parts, namely industrial property rights and copyrights. Patents are of course included in industrial property rights. Patents are a form or construction of protection for inventions in the field of technology. Related to the invention and its protection, there is a new law that regulates Patents, namely Law Number 13 of 2016. The background of the law is to advance technology and realize Indonesia's technological independence.

After Law No. 13/2016 on Patents was enacted, the patent registration application process at the DJKI and Regional Office has not been running well. This is due to the poor coordination and synergy function between the DJKI and the Regional Office as well as related agencies in the regions. Therefore, this process needs to be improved. There is a need to improve organizational performance and expand the authority of the Regional Office in areas related to IP services. The socialization that has been carried out so far has not been able to improve the understanding of relevant stakeholders in the regions about the registration procedure until the issuance of Patent certificates (Ahmad Jazuli, 2018).

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Indonesia's independence is clearly the goal of patent policy. The expansion of the substance (law) related to the object of patent protection as regulated by Law No. 13/2016 must ensure legal stability, so that national interests in technological development can be achieved. Another factor that cannot be ignored, according to Friedman, is the legal structure, where law enforcement and stakeholders relate to policies in technological development and legal culture. These policies include society's attitudes and actions towards patentable innovations.

According to Mochtar Kusumaatmadja in Legal Theory and Development, technological development must be accompanied by legal development. Therefore, so that technological development, especially the expansion of patent objects, can run smoothly and in accordance with applicable legal principles, the role of law cannot be ignored (Sujana, 2017).

RESEARCH METHOD

In accordance with the title and research topic, this is a normative juridical research. The normative legal research method is a scientific research method that aims to find the truth based on legal scientific logic from the normative side. Therefore, this legal research focuses on investigating the law relating to the protection of patents registered in Indonesia in accordance with Law No. 13 of 2016. This research aims to answer the research problem by providing a description of the facts about the research subject as well as positive legal analysis.

RESULTS AND DISCUSSION

Intellectual Property Rights Regulation on Patents: The term "patent" comes from the Dutch word "octrooi", which is derived from the Latin word "auctor" or "auctorizare", meaning "to open". In other words, a patented invention must be made public. Patent is the English term for patent.

According to WIPO (World Intellectual Property Organization) defines a patent:

"APatent is a legally enforceable right granted by by virtue of a law to person to exclude, for limited time,other from certain acts in relation to describe new invention; the privilege is granted a government authority as a matter of right to the person who is entilted to apply for it and who fulfils the prescribed condition"

Patent Rights are exclusive rights granted by the government. The production (manufacture), use (use), and sale (sale) of the patented goods are the exclusive rights of the patent holder. They can also perform acts related to the sale of the goods, such as importing and storing the goods. An invention must fulfill certain conditions to obtain a patent, such as being novelty, practicability, having an inventive step, and meeting formal requirements.

In a legal sense, a patent is a special right granted by the government to individuals or legal entities that make technological inventions (innovations) based on the law. Patents are granted upon request so that the invention can be recognized by the inventor himself or prohibited by other parties from performing or loading the goods. The inventor or other person receiving the patent right is the patentee.

Basically, patents are granted for certain reasons, such as the advancement of technology and science. In addition, the purpose is to: a. Give recognition to a work with a new invention. The inventor should be granted a Patent as it is fair and just for his labor. b. Encourage creative ideas and efforts. It is possible to provide this incentive to the inventor with the assurance that they will be given inviolable rights to their invention. If the invention is used in commercial production, they are also entitled to draw the benefits of a real kickback. c. Patents as a source of information: The patent system not only preserves patents and particulars for the benefit of the inventor, but also publishes them for the public so that everyone can know about them, encouraging new inventions.

In relation to the role of patents in enhancing technological and economic progress, there are four advantages of the patent system: 1. Patents help foster the technological and economic progress of a country; 2. Patents help create a favorable environment for the growth of local industries. 3. With the facility of licensing, patents help the economic and scientific progress of other countries; 4. Patents help the transfer of technology between developed and developing countries.

Some drawbacks of patents are the high cost and short protection time of twenty years for conventional patents and ten years for simple patents. Moreover, the prevailing patent law does not allow patents for all inventions. Various interests converge in the patent system, such as: a. The interests of the patent holder;

b. The interests of the investors and their competitors;

c. The interests of the customers;

d. The general interest of society;

Thus, only the inventor or assignee of the inventor is entitled to a patent on his invention. This invention can occur in certain situations, such as due to employment contracts, official work, and so on. In Law No. 14 of 2001 on Patents, articles 11 to 15 stipulate that: a. In cases where the invention is made by several persons jointly, the one who receives further rights to the invention. b. In the case of an employment agreement, the person who provides the work is the one entitled to a patent on the resulting invention.

Types of Patents:

1. Stand-alone patents, not dependent on other patents (independent patents);

2. A patent that is related to another patent (dependent patent). This occurs when there is an ordinary license or compulsory license relationship with another patent and the two patents differ in different fields.
3. Patent of addition (patent of addition) or patent of improvement (patent of improvement);
4. Importation patents, confirmation patents, or revalidation patents are patents that are unique because they have been recognized abroad by the country that granted the patent.

In Indonesia, in the Patent Law No. 13 of 2016, compulsory licensing and the implementation of patents by the government have been regulated where the Patent Law states that the government can implement patents without the permission of the patent holder in urgent situations including to produce pharmaceutical and/or biotechnology products that are expensive and/or necessary to overcome diseases that can cause sudden death in large numbers, cause significant disability, and constitute a World Public Health Emergency. Thus, drug inventors will still get economic rights and their inventions are protected In Indonesia, according to the provisions of Law Number 14 of 2001 concerning patents, it is divided into two forms, namely:

1. Ordinary patent
2. Simple Patent

An invention can be classified as a simple patent because the invention does not go through an in-depth research and development process. Simple patents only have the right to 1 (one) claim, substantive examination is immediately carried out without a request from the inventor. This is different from ordinary patents which go through an in-depth research and development process and can have many rights to claim.

Not all inventions have the opportunity to receive patent protection. Several exceptions, both absolute and limited, exist. The criteria for absolute exclusion are as follows: 1. Knowledge that the production process or product is contrary to applicable laws, religious morality, public order, or decency; 2. Invention concerning theories and techniques in the field of mathematics and science; 3. Invention of examination, treatment, medication, and or surgical techniques used on animals and humans; 4. Invention relating to living things other than microorganisms; 5. Invention concerning biological processes except nonbiological or microbiological processes necessary for producing plants or animals.

Among the limited patent exceptions, the grant of a patent is suspended for reasons of public interest. In other words, the government can postpone the grant of a patent for a certain period of time, at most 5 years from the government's decision, if the invention is deemed important to society or essential to a particular development program.

Intellectual Property Law on Patents

The validity period of patents in each country depends on the laws applicable in that country. Some provide patent protection for five, ten, fifteen, and twenty years, depending on economic conditions and applicable regulations. According to Article 8 Paragraph (1) of Law Number 14 Year 2001 on patents, the term of patent protection in Indonesia is 20 years from the date of acceptance, and Article 9 regulates the term of protection of simple patents is 10 (ten) years and cannot be extended.

Patent Transfer through License Agreement

Patent rights can be fully or partially transferred through several means, such as inheritance; grant; wasiyat; agreement (license agreement); or as otherwise justified by law. All transfers of intellectual rights must be registered at the Directorate General of Intellectual Property Rights and entered into the general register of patents. Otherwise, the transfer is invalid and legally void. The right of the inventor-or inventors-to retain their name and identity in the patent is not removed by the transfer of the patent; it is a moral right.

The transfer of a patent can be done through an agreement. One form of agreement known as a license agreement is an agreement in which the patent right holder grants permission to another party with a letter of agreement to do what the patent right holder allows. License agreements must be registered at the Directorate General of IPR so that agreements containing unfair or unreasonable terms can be rejected. License Agreements must not have a negative impact on the Indonesian economy or include restrictions that hinder Indonesia's ability to master and develop technology as a whole, particularly with regard to the patent invention.

Three types of licenses are commonly used: 1. Exclusive license The patent holder agrees not to grant a license to another party or a license is granted to only one party, so that the patent holder no longer has the right to exercise his invention (article 70); 2. Non-exclusive license, the patent holder can grant rights to various parties through this license. The patent holder retains the right to exercise or use the patent; 3. Individual License, In this agreement, the patent holder can transfer his patent to another party; however, the patent holder can still exercise their rights. In the license agreement, the following should be mentioned: a. The party who will pay the annual fee for the continuity of the patent; b. The party who will handle the patent infringement suit; c. The patent holder gives a guarantee that the patented invention is original; d. The licensor's guarantee that the patent is original. The licensor's assurance that the patent meets the requirements of the patent law.

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Conditions for Obtaining A Patent

Not all inventions will get this patent. An invention must meet several substantive requirements, such as its novelty, industrial applicability, inventive step value, and formal requirements. To determine whether an invention requested for a patent can be granted a patent, Government Regulation No. 34 of 1991, Article 56, considers the following matters:

a. The innovative factor (novelty) b. The inventive step involved in the invention c. The capacity of the invention to be applied or used in the industry

d. Whether the relevant invention falls under the category of inventions that cannot be granted a patent.

e. Whether or not the invention is patentable by the invention itself or by another party receiving such rights.

f. Whether the invention violates the law, public order, and decency? An invention must fulfill all three substantive requirements- novelty, inventive step, and industrial applicability.

- Novelty

The requirement of novelty, or novelty, is that the invention for which a Patent is sought must not have been known before in any way. It can be relative or absolute in terms of novelty. is absolute or globally recognized. Nevertheless, due to the interests of developing countries, there are local or national variations that are relatively novel. The patent law of developing countries created by the Bivieaux International Reunis pour la Protection de la Propriete Intectuelle (BIRPI) in 1964 fulfills all the requirements of novelty. In accordance with article 3 of Law No. 14 of 2001 on patents, Indonesia considers an invention to be wholly new if it is announced in Indonesia and outside Indonesia in writing or demonstration or in any other way that enables an expert to carry out the invention before the date of acceptance or the date of priority.

- **inventive Step**

Article 2(3) of Law No. 14/2001 on first application patent rights stipulates that innovation is something that is not foreseen.

- **industrial applicability**

The criterion of patent applicability is that the invention must be applicable in industry and reusable. The applicability criteria include that patents relating to products should be capable of being made iteratively to the same standard and that process patents should be applicable and used in practice.

- **Formal Conditions**

Formal conditions are administrative conditions included in the patent application documents. The patent application must be complete and the attachments regarding the technical explanation and technical drawings of the invention for which the patent is sought must meet the requirements. Article 4 of Patent Law No. 14/2001 explains this.

Expiry of Patent Protection

Expiry of Patent Protection There are several reasons why the protection of an invention may expire: a. The patent holder or the licensee indicates that after the stipulated time, the Act has not implemented the invention without valid reasons. The Directorate General, as the authorized government agency, is responsible for this withdrawal. According to Article 88 of Law No. 14 of 2001 on patents, a patent is considered legally void by the Directorate General if: 1. The patent is not used within a period of 48 (forty-eight) months from the granting of the patent; or 2. Failure to fulfill the obligation to pay the annual fee within the period stipulated in the Act. b. Cancellation, also known as invalidation, if requested by the patent holder in whole or in part. c. Revocation of the property rights (onteigening) of the patent: Patent revocation is an act that ends the validity of a patent. It is carried out by an authorized institution, such as the government or a court, if there are compelling reasons to do so. In Indonesia, the property right to a patent can only be revoked by the government, as indicated by Article 99 of Law No. 14/2001 on patents, which stipulates that revocation of the property right to a patent can only be done if it is beneficial to the general public or in the interest of the country's defense and security.

CONCLUSION

The works, deeds, and copyrights of human intellectual abilities that are useful and economically beneficial are known as intellectual property rights. Due to this fact, we have to manage IPR proportionally based on national and international legal principles and tenets. The national IPR system must be thoroughly addressed, supervised, and developed. This should not only be done through legal approaches, but also through technological and business approaches. The state must protect and regulate intellectual property rights, including copyrights, trademarks, patents, trade secrets, industrial designs, integrated circuit layout designs, and plant varieties. Law No. 14 of 2001 regulates patent rights as one of the most economically important intellectual property rights. Article 8(1) of Law No. 14 of 2001 stipulates the term of patent protection; simple patents last 10 years, and ordinary patents 20 years, and cannot be extended.

The general objectives of intellectual property rights (IPR) protection are as follows: First, to provide legal clarity on how intellectual property relates to inventors, creators, designers, owners, users, intermediaries who use it, work areas used, and who receive the results for a certain period of time. Second, it rewards efforts or endeavors that successfully create intellectual works; third, it encourages the publication of intellectual property.

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