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Protection of Exclusive Rights for Inventors in Order to Prevent Intellectual Property Infringement

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ABSTRACT: This research was conducted to determine protection and law enforcement practices related to exclusive rights for inventors in the context of preventing intellectual property violations in Indonesia. In practice, patents in Indonesia adhere to the rules of Law Number 13 of 2016 concerning patents which contain articles regarding the protection of an invention and sanctions if there is a violation of intellectual property, both criminal and civil. The method used in this research is a normative juridical legal research method. The result of this research is that the Patent Law in Indonesia has been regulated in such a way as to protect inventors' inventions. But unfortunately the rules and practices do not work straight so there are still legal violations as happened at PT. FIRSTWAVE, and therefore it is necessary to update the Patent Law in Indonesia.

KEYWORDS: Patents, Intellectual Property Rights, Inventions.

INTRODUCTION

Intellectual Property Rights law is part of civil law, which is an aspect of private law. An IPR is a right that arises because of the human mindset so as to produce products or processes that have use value for humans. There are important elements of the above definition, namely human intellectual ability, wealth, and the right itself,[1] Humans have problems and these problems will be the source. For his intellectual abilities, humans can also create or produce a work that can be categorized as IPR regulates it. There are various types of works when described, which can be in the form of a written work, scientific works, works in the field of technology, works of art, industrial products, and so on. These works are the result of human intellectual property.

A work certainly has a beneficial value. If the perceived benefits are greater (especially in economic terms), the value of the work will also increase. These works of intellectual ability can become wealth for their creators.

The presence of law in the midst of society has the aim of protecting and affirming the rights to such wealth. The aspects described can be in the form of the conception of the aspect of ownership itself, how to obtain it, how to use it, how to transfer it, as well as the period and method of protection.[2]

Indonesia has ratified the Convention Establishing The WTO with Law No. 7 of 1994, which became the beginning of the IPR system in Indonesia. Afterward, many IPR problems were encountered, some of which could be problems regarding brands, patents, copyrights.

In Indonesia, there are 2 types of IPR to be protected. First, communal IPR is given to a group of people who live in a certain area, these rights include: traditional knowledge of the community (traditional knowledge), traditional cultural expressions (folklore), geographical indications (geographical indication), and biodiversity (biodiversity). Second, IPRs that are personal in nature, given to individuals who produce an intellectual work, these rights include: copyright, trademark, patent, industrial design, layout design of integrated circuits, protection of new varieties of plants and trade secrets.[3]

Patent rights are one part of IPR that has been regulated in Indonesian legislation, namely Law of the Republic of Indonesia No. 13 of 2016 concerning Patents (hereinafter referred to as the Patent Law). Based on Article 1 of the Patent Law, it is said that basically a patent is an exclusive right granted to an inventor by the state, for an invention he has discovered in the field of technology. There is a certain period of time in the implementation of the invention and if any other party wants to implement it, it needs the approval of the owner of the invention.

[1] Bambang Kesowo, 2021, *Pengantar Pemahaman Konsepsi Dasar Sekitar Hak Atas Kekayaan Intelektual*, Bandung : Bumi Aksara, hlm. 2.

[2] Hery Firmansyah, 2013, *Perlindungan Hukum Terhadap Merek*, Yogyakarta : Penerbit Medpress Digital, hlm. 2.

[3] www.daftarhaki.com, diakses pada tanggal 06 Oktober 2023, pukul 21.35

Protection of Exclusive Rights for Inventors in Order to Prevent Intellectual Property Infringement

WIPO as an international organization related to intellectual property rights says that basically a patent is a document issued upon application by a government office or regional office acting for several countries containing an invention, where the patented invention can be exploited either for use, sale, production or import, after obtaining permission from the patent owner. Auctor (Latin), is the initial term of the patent which means to be opened. It means that an invention that has received a patent is open to public knowledge. Although it is said to be open, it remains that an invention that has been patented does not mean that it can be practiced by everyone unless it has received permission from the inventor to be used. When the patent protection period has expired, then the invention has become public property.[4] WIPO has also designed a global system to facilitate patent protection through the PCT (Patent Cooperation Treaty) system. PCT is a provision to facilitate the patent application process in various countries.[5]

According to Article 1 paragraph (2) of the Patent Law, an invention is an idea of an inventor that is expressed in an activity to solve a specific problem in the field of technology in the form of a product or process, or the improvement and development of a product or process. The law on patents regulates patent protection as a form of appreciation and protection for the efforts of the inventor of the invention.

Therefore, based on the definition of a patent that has been described, the protected object is an invention in the field of technology. The technology can be either hi-tech or low-tech. The technology must be a solution to a specific problem needed by society. Thus, a patent can be either a process or a product.[6] However, not all inventions in the field of technology can be granted patents. In order to be granted patent protection, the invention must fulfill certain conditions and criteria, which are usually known as patentability. There are 3 (three) requirements for patent protection, namely: (1) novelty,[7] (2) contains an inventive step[8], and (3) industrially applicable.[9]

Regarding the term of patent protection, Article 22 of the Patent Law states that the term granted for a patent is for 20 years from the date of acceptance and the term cannot be extended. Meanwhile, based on Article 23, the term of a simple patent is for 10 years and also cannot be extended.

In Indonesia, in relation to the legal protection of patent rights, the patent registration system is known as the First To File principle. This principle emphasizes the protection of patent rights owners, who have first discovered an invention and have registered it at the Directorate General of Intellectual Property at the Ministry of Law and Human Rights of the Republic of Indonesia as the first registrant. The purpose of the application of First To File is so that the patent owner gets certainty and legal and legal protection for his invention.

In practice, there are examples of patent disputes, namely between FIRST WAVE TECHNOLOGY SDN BHD (hereinafter referred to as FIRSTWAVE) against PT PANCA KARSA BANGUN REKSA (hereinafter referred to as PANCAKARSA) and PT SAWIT KALTIM LESTARI (hereinafter referred to as SAWITKALTIM), regarding "Sterilizer for processing oil palm bunches and other similar fruits" which has been granted Patent Rights with Patent Certificate Number No. P0023361 by the Directorate General of Intellectual Property at the Ministry of Law and Human Rights RI: ID P0023361 by the Director General of IPR in the Republic of Indonesia in his decision Number 46/Pdt.Sus-Paten/2020/PN Niaga Jkt.Pst. jo Number 1130K/ Pdt.Sus-HKI/2021.

FIRSTWAVE as the Plaintiff, is the inventor of the patent invention which has been recorded and registered at the Directorate of Intellectual Property Rights in Indonesia under Patent Application No. : P 00200600655 filed with the Directorate General of Intellectual Property Rights, and received on November 07, 2006 and announced on March 13, 2008 without any rebuttal or objection from the parties with the announcement based on Article 46 Jo Article 47 Jo Article 48 Jo Article 49 of the Law of the Republic of Indonesia No. 13 of 2016 concerning Patents in lieu of Law. No. 14 of 2001 on Patent.

Then in November 2013, there was information that SAWITKALTIM (Defendant II) since 2010 had used as many as 3 (three) units of FIRSTWAVE's Invention without its rights and approval. After FIRSTWAVE traced where SAWITKALTIM obtained the 3 units of FIRSTWAVE's Invention from, it turned out that SAWITKALTIM obtained the 3 units of FIRSTWAVE's Invention from PANCAKARSA (ACCUSED I).

FIRSTWAVE as the inventor has incurred considerable costs to arrive at the product of the tool, where FIRSTWAVE's idea before it became a product, FIRSTWAVE first had to conduct research and researches that were long and costly. After FIRSTWAVE conducted research from these studies, FIRSTWAVE also conducted experiments or trials to make the Invention perfect. Of course, the trials or experiments that FIRSTWAVE carried out were not enough once or twice so that the Invention

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[4] Endang Purwaningsih, *Hak Kekayaan Intelektual (HKI) dan Lisensi*, Bandung : CV. Mandar Maju, hlm. 60.

[5] Novianti, 2017, *Perlindungan Paten Melalui Patent Cooperation Treaty Dan Regulations Under The Patent Cooperation Treaty*, Jurnal Ilmiah Hukum : Negara Hukum Vol 8, No 2 (2017), hlm. 290.

[6] Muhamad Amirulloh dan Helitha Novianty Muchtar, *Buku Ajar Hukum Kekayaan Intelektual*, Bandung : Unpad Press, 2016, hlm. 125

[7] Lihat lebih lanjut Pasal 3, Pasal 5, dan Pasal 6 UU No. 13 Tahun 2016 tentang Paten

[8] Lihat lebih lanjut Pasal 3 dan Pasal 7 UU No. 13 Tahun 2016 tentang Paten

[9] Lihat lebih lanjut Pasal 3 dan Pasal 8 UU No. 13 Tahun 2016 tentang Paten

that FIRSTWAVE made became perfect, and of course, each time experiments and trials were carried out, it cost a lot of money to achieve the perfection of the Invention. In addition, FIRSTWAVE has suffered losses that cannot be valued in money, namely FIRSTWAVE's ideas and knowledge that led to the creation of the Invention "Sterilizer for processing oil palm bunches and other similar fruits" which has been granted a Patent with Patent Certificate No. P0023361 by the Directorate General of Palm Oil: ID P0023361 by the Director General of IPR in the Republic of Indonesia.

In this case, the first court decision rejected FIRSTWAVE's lawsuit and ordered FIRSTWAVE to pay court costs which were set at Rp7,516,000.00 (Seven million five hundred sixteen thousand rupiah). One of the considerations of the judge decided to reject the lawsuit, because he considered that FIRSTWAVE did not have legal standing as the owner of the patent that must be protected.

It was different with the judge's decision at the cassation level. FIRSTWAVE re-filed its lawsuit at the cassation level and was accepted by the judge, with consideration:

a. Considering, when connected between the considerations and decisions of the judex facti, which in this case is the Commercial Court at the Central Jakarta District Court, it is considered to have erred in the application of the law.
b. Considering, in this case the judex facti did not consider the evidence of infringement committed by PANCAKARSA and SAWITKALTIM, namely the existence of Work Agreement Letter Number 012/HO/PBR/PKS-SKL/X/2010 dated October 19, 2010 between the two parties, where there is a clear article stating that the first party in the agreement provides a Hydraulic System with the function of tilting or raising the vessel and the Hydraulic System has been granted a patent by the Director General of Intellectual Property Rights of Indonesia. PANCAKARSA and SAWITKALTIM also cannot prove that the tools they use have actually obtained patents and there are new inventions from FIRSTWAVE.
c. Considering, in order not to cause sustainable losses, the Supreme Court ordered SAWITKALTIM to stop using FIRSTWAVE's patent with patent certificate ID Number P0023361 dated April 30, 2009.

Then the Supreme Court adjudicated by granting FIRSTWAVE's lawsuit and canceling the Commercial Court Decision at the Central Jakarta District Court Number 46/Pdt.Sus-Paten/2020/PN Niaga Jkt.Pst, dated May 24, 2021. Furthermore, it sentenced PANCAKARSA and SAWITKALTIM to pay material damages to FIRSTWAVE for the act of patent infringement in the amount of Rp1,000,000,000.00 (one billion rupiah) jointly and severally and ordered SAWITKALTIM to stop using FIRSTWAVE's patent with Patent Certificate Number ID P 0023361, dated April 30, 2009.

It can be seen from the example of the case that there are parties who have patent rights to their inventions and are regulated in legislation, but there are still loopholes for other parties to violate them. Some of the articles violated include:

Article 19

"That as a patent holder, it has the exclusive right to exercise its patent and prohibits anyone without its consent to use, sell, make, deliver, lease, sell or rent the patented product, both product patents and process patents".

In such cases, it is clearly evident that FIRSTWAVE owns the patents that have been granted by the Director General of IPR through patent certificates. Of course, no one can use it without permission from FIRSTWAVE.

Article 47

"That the announcement of the patent application needs to be announced in both non-electronic and electronic media".

In this case, it is clear that on October 26, 2013, the Kompas daily newspaper, page 46, announced a notice and warning that the FIRSTWAVE invention should not be copied in whole or in part, because it had been granted a patent certificate.

From the brief description of the article above, it can raise the question of whether the process of legal protection of invention owners actually has legal certainty as the Indonesian state regulates it, and it is necessary to know the actual extent of the meaning of legal certainty itself. But in reality, the application of the articles listed in the Patent Law is still not maximally applicable.

Based on the above background, the formulation of the problem in this study is how is the legal protection of patent holders for their inventions in the context of preventing intellectual property violations according to Indonesian law?

RESEARCH METHODS

This research uses normative juridical legal research methods, namely research carried out by examining secondary data or library materials as the main data.[10] The scope of this research is carried out by drawing legal principles from both written and unwritten positive law.[11] In addition, this research also draws legal principles and interprets legislation formulated explicitly or implicitly.[12]

[10] Soerjono & Sri Mamudji Soekanto, P*enelitian Hukum Normatif suatu Tinjauan Singkat*, Jakarta : PT. Raja grafindo Persada, 2003, hal 13.

[11] *Ibid,* hlm. 63.

[12] Bambang Sunggono,2003, *Metodologi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, hlm. 27-28.

Based on the formulation of the problem, the appropriate form of research is normative juridical. As with this method, the object being analyzed will refer to the legal norms contained in the legislation.[13]

RESULT AND DISCUSSION

Legal Protection of Patent Holders for Their Invention in the Context of Preventing Intellectual Property Infringement Under Indonesian Law

Legal protection of patent holders for their inventions is the goal of preventing intellectual property infringement under Indonesian law. Patents grant exclusive rights to the inventor to exploit the invention within a certain period of time.[14] Historically, legislation in the field of IPR in Indonesia has existed since the 1840s. In 1844, the Dutch Colonial Government introduced the first law regarding IPR protection in Indonesia. Then the Dutch Government enacted the Trademark Law in 1885, the Patent Law in 1910, and the Copyright Law in 1912. At least until 1945, approximately 18,000 patents were granted in Indonesia based on the Dutch Colonial Law, Octroiiwet 1910. Reporting from the book Intellectual Property Rights An Introduction by Tim Lindsey, said that after independence the number of patents was not as much as the previous period of years but in the 1970s due to increased economic development in Indonesia, there was awareness in the government to update regulations related to the field of IPR including patents.[15]

Currently, patent protection of inventions is based on national legislation, several international treaties and European Community legislation. The 2 (two) types of international treaties referred to are the Paris Convention for the Protection of Industrial Property (Paris Convention)[16] with subsequent amendments, and again in 1883 (Paris Convention 1994)[17] can be considered as a source of the above types of law and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement)[18] yang merupakan Annex IC dari Agreement Establishing the World Trade Organization (WTO) atau Perjanjian Marrakesh (Perjanjian Putaran Uruguay: TRIPs, 1994I).[19]

According to Ruth L. Gana's view[20], that in developing countries Intellectual Property (IP), needs to interact with existing social structures to promote the development of capital and technological innovation in the country. Without a strong IP system, free market capitalism, a stable government system, as well as effective protection of corporate interests, it is difficult to create modern IP[21] and this in itself has the ability to turn developing countries into technology producers in accordance with the ideals of the developing countries themselves.

Patent Protection based on Presidential Decree of the Republic of Indonesia Number 16 of 1997 concerning Patent Cooperation Treaty (PCT) and Regulations under The PCT

The Patent Cooperation Treaty (PCT) is an international patent registration system. This system allows applicants or inventors to obtain protection in many countries that have joined the PCT membership. Indonesia has participated in the signing of the PCT between countries in the United States in 1970. The PCT has been ratified based on the Decree of the President of the Republic of Indonesia Number 16 of 1997 concerning Patent Cooperation Treaty (PCT) and Regulations under The PCT. This ratification aims to provide protection for inventors in carrying out honest business and taking into account the interests of society.

WIPO as a United Nations agency in relation to intellectual property rights, facilitates patent protection through this PCT system. The benefit of the PCT is that only by applying for international protection once through the PCT, Indonesian inventors and entrepreneurs can get legal protection for their patents in many countries according to the wishes of the applicant as long as the country has become a member of the PCT and Indonesia is also one of the members of the PCT because it has ratified it.

Regulations under the PCT and Regulations under the PCT

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[13] Soerjono Seokanto dan Sri Mamudji, Op.Cit, hlm. 14.

[14] Lihat Pasal 1 ayat 1 UU Paten

[15] Nanda Dwi Rizkia dan Hardi Fardiansyah, Jurnal Hukum Sasana, Volume 8, No. 1 (2022), hal. 73.

[16] Telah diratifikasi oleh Pemerintah Indonesia melalui Keppres RI No. 15 Tahun 1997 tentang Perubahan Keputusan Presiden No. 24 Tahun 1979 tentang pengesahan *Paris Convention for the Protection of Industrial Property* dan *Convention Establishing the World Intellectual Property Organization*. Lembaran Negara Republik Indonesia No. 32 Tahun 1997.

[17] Pada tanggal 14 Juli 1967 WIPO didirikan di Stockholm dan ditandatanganinya *the Establishment Convention – the WIPO Convention.* WIPO telah melakukan pengadministrasian berkaitan dengan perlindungan Kekayaan Intelektual sebanyak 26 traktat internasional sampai tahun 2020. Pada tahun 2020 keanggotaan WIPO memiliki 193 negara anggota.

[18] Lihat UU No. 7 Tahun 1994 tentang Pengesahan *Agreement Establishing the World Trade Organization* (Persetujuan Pembentukan Organisasi Perdagangan Dunia).

[19] "Kebijakan Kesehatan Publik dan Perlindungan Paten di Bidang Farmasi", Cita Citrawinda Noerhaadi, (Jakarta : Yayasan Pustaka Obor Indonesia, 2020), hlm. 1

[20] Carlos Alberto Primo Braga, *The Economics of Intellectual Property Rights and the GATT: A View from the South,* Vanderbit Journal of Transnational Law, Vol. 22:223, 1989, hal. 253

[21] *Ibid,* hlm. 738.

Protection of Exclusive Rights for Inventors in Order to Prevent Intellectual Property Infringement

WIPO says that intellectual property rights are divided into Industrial Property Right and Copy Right. The 1883 Paris Convention on the Protection of Industrial Property Rights states that:

> The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.[22]

The article means that the legal protection of industrial property includes patents, trademarks, industrial design rights, company names, geographical indications and indications of origin.

Regarding patents, WIPO provides the following definition:

> A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.[23]

This means that a patent is an exclusive right granted to an invention, be it a process or a product, that provides a new way or offers a new technical solution to a particular problem. Therefore, to obtain a patent, the information on the invention must be disclosed to the public through patent registration.

Regarding the PCT, it is categorized as a multilateral patent-related cooperation agreement, which was held on 19 June 1970 in Washington in a conference attended by 22 international organizations and diplomats from 78 countries. The PCT itself has been amended 3 (three) times, namely in 1979, 1984, and 2001.[24] Indonesia's ratification of the PCT was done in 1997 with the legal product of Presidential Decree No. 16 of 1997. Basically, the PCT is an agreement under the Paris Convention and the purpose of this agreement is to provide facilities and patent protection in Paris Convention member countries.

Reported from the WIPO website[25], It is said that there are currently 157 member countries of the PCT. Basically, the PCT in this case plays a role in simplifying administrative procedures for international patent requests, such as filling, searching and examining. So as to achieve the simplification process, a single application is applied, which means that the request is filed simultaneously in a number of countries and the submission of the request will be comparable to the filing of patents in the intended member countries, as stated in the patent request.[26] Patent applications that want to be filed through the PCT will basically be done with two phases, namely the national phase and the international phase. The international acceptance date here will be the date of acceptance in all destination countries and is done no later than the 30th month from the priority date.[27]

Several substances related to Regulations under the PCT have related discussions:[28]

1) Desiring to make a contribution to the progress of science and technology,
2) Desiring to perfect the legal protection of inventions,
3) Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,
4) Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,
5) Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,
6) Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

This means that the Regulations under the PCT discuss a lot about the purpose of achieving (a) contributing to the advancement of science and technology, (b) improving legal protection in relation to an invention, (c) simplifying and being economical in relation to obtaining protection for an invention where such protection is sought in several countries, (d) accelerate and facilitate access for the public to information in documents relating to inventions, (e) accelerate the pace of economic development in developing countries through the adoption of measures designed to improve the efficiency of the legal system both nationally and regionally, (f) ensure that cooperation between countries will facilitate the objectives to be achieved.

Filing a Patent Application through PCT

In Indonesia, filing a patent application can also be done through the PCT or Patent Cooperation Treaty. The Patent Cooperation Treaty is regulated in Article 33 of the Patent Law, which reads:

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[22] Pasal 1 Konvensi Paris

[23] https://www.wipo.int/patents/en/, diakses pada tanggal 01 Mei 2024 pukul 22:27

[24] https://www.uspto.gov/ip-policy/patent-policy/patent-cooperation-treaty, diakses pada tanggal 01 Mei 2024 pukul 23:04

[25] *Ibid*

[26] *Ibid*, hlm. 297.

[27] https://www.dgip.go.id/index.php/artikel/detail-artikel/kenali-lebih-dekat-pemeriksaan-substantif-pada-pct?kategori=agenda-ki, diakses pada tanggal 10 mei 2023 pukul 23:33

[28] *Patent Cooperation Treaty,* hlm. 6.

1) An application may be filed under the Patent Cooperation Treaty.
2) The provisions referred to in Articles 24 through 28 shall apply mutatis mutandis to an application under the Patent Cooperation Treaty.
3) Further provisions regarding the Patent Cooperation Treaty shall be regulated in a Ministerial Regulation.

Registration through the PCT system can be done by any nationality as long as it is a PCT participating country. The application is filed with the national patent office of the participating country, where the applicant is a resident or citizen or at the request of the applicant which can be submitted to the WIPO International Bureau in Geneva, Switzerland. The filing of the PCT application applies automatically to all participating countries that are members of the PCT according to the international filing date. An international patent request is considered the same in each country, as if it were a national request filed with the patent office of that country.[29]

PCT has several advantages that make it one of the efforts in the patent registration process, namely:

1) An applicant has 18 months more time than if they had not used the PCT to think about seeking patent protection abroad, selecting a local patent agent in a foreign country, preparing the necessary translations as well as paying national fees;
2) An applicant can be assured that if their international application conforms to the requirements of the PCT, it cannot be rejected by the designated office at the formal national stage;
3) Regarding the international search report as well as the written opinion, the applicant can judge for himself whether his invention is patentable;
4) The applicant has the possibility, during the optional international preliminary examination proceedings, to amend the international patent request and thus it can be organized prior to the proceedings by the national or regional patent office;
5) The examination and search work of the patent office at the national stage can be reduced by having the international search report, the author's opinion submitted to the national patent office together with the international application;
6) The applicant can access fast-track examination procedures at the national phase in Contracting Parties that have PCT-Patent Prosecution Highway (PCT-PPH) agreements or similar arrangements;
7) Since each international application will be published in an international search report, third parties are in a better position to formulate opinions relating to the patentability of the claimed invention; and
8) Applicants should make international publications on PATENTSCOPE to make the world aware of their application which can also be an effective advertising tool for the prospective licensee.[30]

Patent Protection under Law No. 13 Year 2016 on Patents

Currently, the legal protection of patents in Indonesia is recognized in Law No. 13 of 2016. It is divided into preventive legal protection and repressive legal protection.

Preventive Protection of the Law

Preventive legal protection is a form of protection provided by the state with the aim of preventing an offense in society. The actions taken are through the laws and regulations in force in Indonesia, so that patent infringement does not occur.[31]

The Patent Law has a role to protect inventors for their invention rights. An invention is an idea or idea of an inventor that is realized in an activity to solve specific problems, both products and processes in the field of technology. Article 2 of the Patent Law clearly states that patent protection includes patents and simple patents. Furthermore, Article 9 (b) stipulates that inventions that cannot be granted patents include methods of examination, methods of treatment, methods of care, and/or surgery applied to humans and/or animals.[32]

For new inventions, "Patents" can be granted that contain inventive steps and can be applied in industry.[33] Article 5 of the Patent Law explains that an invention can be granted a patent if it fulfills the element of "novelty". The "novelty" here is if the date of acceptance of the invention is different from previously discovered technology. "Previously invented technology" means that the

[29] "Urgensi Perlindungan Paten Secara Internasional Dalam Tatanan Digitalisasi", Andrian Nathaniel, Michelle Audree Ongko, Richie Sanjaya Putra, Jurnal Fakultas Hukum UPH, 2024

[30] https://www.wipo.int/treaties/en/registration/pct/summary_pct.html, diakses pada tanggal 16 Mei 2024 pukul 19.35.

[31] Ishaq, "Dasar-Dasar Ilmu Hukum", Jakarta : Sinar Grafika, 2008, hlm. 43.

[32] Lihat dan bandingkan antara UU Paten Nomor 14 Tahun 2001 dengan UU Paten Nomor 13 Tahun 2016, yang memiliki perbedaan terkait "metode pemeriksaan" yang merupakan metode diagnosa. Sementara yang dimaksud dengan "metode perawatan" adalah bagian dari metode perawatan untuk medis. Dalam hal kaitannya dengan pemeriksaan, pengobatan, perawatan dan juga pembedahan menggunakan peralatan kesehatan, Adapun ketentuan ini berlaku bagi invensi metodenya saja, sementara peralatan kesehatan termasuk bahan, alat ataupun obat tidak menjadi bagian dalam ketentuan ini.

[33] Lihat Pasal 2 Jo Pasal 3 ayat (1) UU Paten

technology has been announced both in Indonesia and abroad either in writing or oral description or through use, demonstration or other means that make it possible for an expert to perform the invention before: (1) the date of acceptance; (2) the priority date related to applications filed through priority rights.[34]

Pre-disclosed technology includes other documents filed in Indonesia, which are subsequently published on or after the date of acceptance for which substantive examination is being conducted but the date of acceptance is earlier than the date of acceptance or priority date of the patent application.[35] So it can be seen here that the legal protection system for patents in Indonesia adopts the first to file alias the first registrant where the owner of the invention has registered it first with the Directorate General of Intellectual Property at the Ministry of Law and Human Rights.

Furthermore, the regulations regarding patents have also undergone changes as the enactment of Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law), has implications for several current laws and regulations, including the Patent Law. The changes that occur because the Job Creation Law contains:[36]

1) 1 article substance deletion
2) 2 articles adding substance
3) 5 articles of substance substitution.

The Third Part of Article 107 of the Job Creation Law regulates several provisions in Law No. 13/2016 regarding patents to be amended. First, Article 3 paragraph 1 states that patents as intended in Article 2 letter a are granted to inventions that are new, contain elements of inventive steps, and can be applied in industry. Then in paragraph 2, it is said that simple patents as intended in Article 2 letter b are granted to inventions that are new, the development of existing processes or products, have practical uses, and can be applied in industry. Furthermore, paragraph 3 states that the development of an existing process or product as intended in paragraph 2 includes simple products, simple processes, and simple methods.

Second is Article 20 which contains several important points. Paragraph 1 states that patents must be implemented in Indonesia. Paragraph 2 further elaborates that the implementation of patents as mentioned in paragraph 1 includes: the implementation of product-patents which includes manufacturing, importing, or licensing the patented product; the implementation of process-patents which includes manufacturing, importing, or licensing the product resulting from the patented process; and the implementation of method, use, and system patents which includes importing, manufacturing, or licensing the product resulting from the patented method, system, and use.

The third is Article 82 which outlines that a compulsory license is a license in the implementation of a patent granted by a Ministerial Decree on the basis of an application on the grounds that: (a) The patent is not implemented in Indonesia as mentioned in Article 20 with a period of 36 months after the patent is granted; (b) The patent has been implemented by the patent holder or licensee in a form and in a manner that is detrimental to the interests of the public; and (c) The patent as a result of the development of a previously granted patent cannot be implemented without using a patent owned by another party that is still under protection. Applications for compulsory licenses as referred to in the above description are subject to fees.

The fourth is Article 123, which explains that the announcement of a simple patent application is made within a maximum of 14 days from the date of receipt of the simple patent application. The announcement is counted from the date of the announcement of the simple patent application. Regarding the substantive examination of a simple patent application, it will be conducted after the announcement period of a simple patent application ends. Finally, the provisions related to views and objections on patent applications as intended in Article 49 paragraph (3) and paragraph (4) of the Patent Law have exceptions for filing views and/or objections related to simple patent applications.

Repressive Protection of the Law

Repressive legal protection is a last resort in the event of a violation and applies as the rules and procedures of the legislation in the event of a dispute that can be sued civilly or criminally.[37] Through this protection system, it emphasizes the role of law enforcement and judicial institutions in overcoming it. Law enforcers and judicial institutions need to provide sanctions for parties who deliberately violate based on the applicable Patent Law.

However, it turns out that in practice, legal protection related to patents in Indonesia is still not optimal because the implication is that there are still parties who use someone's invention that has been registered with the Directorate General of IPR, as in the case in decision Number 46/Pdt.Sus-Paten/2020/PN Niaga Jkt.Pst. jo Number 1130K/ Pdt.Sus-HKI/2021. In the next discussion, we will discuss law enforcement against infringement of exclusive rights related to the unilateral use of an invention.

[34] Lihat Pasal 5 ayat (1) dan (2) UU Paten

[35] Lihat Pasal 5 ayat (3) UU Paten

[36] Budi Agus Riswandi, "Implikasi Pemberlakuan UU Cipta Kerja Terhadap UU Merek dan Paten dalam Upaya Meningkatkan Daya Saing UMKM Indonesia", Prosiding Seminar Nasional Hukum Perdata, Departemen Hukum Perdata Fakultas Hukum Universitas Islam Indonesia, Yogyakarta 2021, hal. 1

[37] *Op.cit*

CONCLUSION

Indonesia as a state of law has proven to have made efforts to protect the rights of its citizens, especially regarding IPR. Patent rights are one part of IPR that has been regulated in Indonesian legislation, namely Law of the Republic of Indonesia No. 13 of 2016 concerning Patents. This law acts to protect inventors for their invention rights. In addition to Patent Law No. 13 of 2016, Indonesia is also known for patent protection through the Patent Cooperation Treaty (PCT) which has been ratified in Presidential Decree of the Republic of Indonesia Number 16 of 1997 concerning Patent Cooperation Treaty (PCT) and Regulations under The PCT. The Job Creation Law is present to also update the provisions in the Patent Law, but unfortunately the changes are only related to requirements, procedural matters related to patent registration, and substantial content material regarding the obligations of domestic and foreign patent holders. In practice, it turns out that the Patent Law still suffers from violations such as those found in Article 19 and Article 47 of the Patent Law, which state that an invention that has been registered and announced has exclusive rights, which a person may no longer sell or use without the permission of the invention owner. This raises the question of whether legal certainty in Indonesia is still less binding or still creates legal loopholes. Although Indonesia adheres to the first to file system, the implication is that it does not guarantee to be violated by other parties.

REFERENCES

1) Andrian Nathaniel, Michelle Audree Ongko, Richie Sanjaya Putra, "Urgensi Perlindungan Paten Secara Internasional Dalam Tatanan Digitalisasi", Jurnal Fakultas Hukum UPH, 2024
2) Bambang Kesowo, 2021, Pengantar Pemahaman Konsepsi Dasar Sekitar Hak Atas Kekayaan Intelektual, Bandung : Bumi Aksara, hlm. 2.
3) Bambang Sunggono,2003, Metodologi Penelitian Hukum, Jakarta: Raja Grafindo Persada, hlm. 27-28.
4) Budi Agus Riswandi, "Implikasi Pemberlakuan UU Cipta Kerja Terhadap UU Merek dan Paten dalam Upaya Meningkatkan Daya Saing UMKM Indonesia", Prosiding Seminar Nasional Hukum Perdata, Departemen Hukum Perdata Fakultas Hukum Universitas Islam Indonesia, Yogyakarta 2021, hal. 1
5) Carlos Alberto Primo Braga, The Economics of Intellectual Property Rights and the GATT: A View from the South, Vanderbit Journal of Transnational Law, Vol. 22:223, 1989, hal. 253
6) Cita Citrawinda Noerhaadi, "Kebijakan Kesehatan Publik dan Perlindungan Paten di Bidang Farmasi", (Jakarta : Yayasan Pustaka Obor Indonesia, 2020), hlm. 1
7) Endang Purwaningsih, Hak Kekayaan Intelektual (HKI) dan Lisensi, Bandung : CV. Mandar Maju, hlm. 60.
8) Hery Firmansyah, 2013, Perlindungan Hukum Terhadap Merek, Yogyakarta : Penerbit Medpress Digital, hlm. 2.
9) https://www.dgip.go.id/index.php/artikel/detail-artikel/kenali-lebih-dekat-pemeriksaan-substantif-pada-pct?kategori=agenda-ki, diakses pada tanggal 10 mei 2023 pukul 23:33
10) https://www.uspto.gov/ip-policy/patent-policy/patent-cooperation-treaty, diakses pada tanggal 01 Mei 2024 pukul 23:04
11) https://www.wipo.int/patents/en/, diakses pada tanggal 01 Mei 2024 pukul 22:27
12) https://www.wipo.int/treaties/en/registration/pct/summary_pct.html, diakses pada tanggal 16 Mei 2024 pukul 19.35.
13) Ishaq, "Dasar-Dasar Ilmu Hukum", Jakarta : Sinar Grafika, 2008, hlm. 43.
14) Lihat dan bandingkan antara UU Paten Nomor 14 Tahun 2001 dengan UU Paten Nomor 13 Tahun 2016, yang memiliki perbedaan terkait "metode pemeriksaan" yang merupakan metode diagnosa. Sementara yang dimaksud dengan "metode perawatan" adalah bagian dari metode perawatan untuk medis. Dalam hal kaitannya dengan pemeriksaan, pengobatan, perawatan dan juga pembedahan menggunakan peralatan kesehatan, Adapun ketentuan ini berlaku bagi invensi metodenya saja, sementara peralatan kesehatan termasuk bahan, alat ataupun obat tidak menjadi bagian dalam ketentuan ini.
15) Lihat lebih lanjut Pasal 3 dan Pasal 7 UU No. 13 Tahun 2016 tentang Paten
16) Lihat lebih lanjut Pasal 3, Pasal 5, dan Pasal 6 UU No. 13 Tahun 2016 tentang Paten
17) Lihat Pasal 2 Jo Pasal 3 ayat (1) UU Paten
18) Lihat Pasal 5 ayat (1) dan (2) UU Paten
19) Lihat Pasal 5 ayat (3) UU Paten
20) Lihat UU No. 7 Tahun 1994 tentang Pengesahan Agreement Establishing the World Trade Organization (Persetujuan Pembentukan Organisasi Perdagangan Dunia).
21) Muhamad Amirulloh dan Helitha Novianty Muchtar, Buku Ajar Hukum Kekayaan Intelektual, Bandung : Unpad Press, 2016, hlm. 125
22) Nanda Dwi Rizkia dan Hardi Fardiansyah, Jurnal Hukum Sasana, Volume 8, No. 1 (2022), hal. 73.
23) Novianti, 2017, Perlindungan Paten Melalui Patent Cooperation Treaty Dan Regulations Under The Patent Cooperation Treaty, Jurnal Ilmiah Hukum : Negara Hukum Vol 8, No 2 (2017), hlm. 290.
24) Pada tanggal 14 Juli 1967 WIPO didirikan di Stockholm dan ditandatanganinya the Establishment Convention – the WIPO Convention. WIPO telah melakukan pengadministrasian berkaitan dengan perlindungan Kekayaan Intelektual sebanyak 26 traktat internasional sampai tahun 2020. Pada tahun 2020 keanggotaan WIPO memiliki 193 negara anggota.

25) Pasal 1 Konvensi Paris
26) Patent Cooperation Treaty, hlm. 6.
27) Soerjono & Sri Mamudji Soekanto, Penelitian Hukum Normatif suatu Tinjauan Singkat, Jakarta : PT. Raja grafindo Persada, 2003, hal 13.
28) Telah diratifikasi oleh Pemerintah Indonesia melalui Keppres RI No. 15 Tahun 1997 tentang Perubahan Keputusan Presiden No. 24 Tahun 1979 tentang pengesahan Paris Convention for the Protection of Industrial Property dan Convention Establishing the World Intellectual Property Organization. Lembaran Negara Republik Indonesia No. 32 Tahun 1997.
29) www.daftarhaki.com, diakses pada tanggal 06 Oktober 2023, pukul 21.35