SYSTEM PROTECTION PATENT THE RESULTS OF INVENTIONS IN THE FIELD OF TECHNOLOGY

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Abstract: Patent is the exclusive right of the inventor to the invention in the field of technology for a certain period of time to carry out himself or give approval to other parties to carry out his invention. It is necessary to provide legal protection for every intellectual work in the form of this patent related to technology, so that the ownership rights of the patent holder are guaranteed. On the other hand, patent protection can provide incentives for inventors to make new innovations through exclusive rights to the inventions they produce. The legal system in Indonesia states that the protection of patents will follow the type of patent. Ordinary Patents will be protected for 20 years from the receipt of the patent application, while Simple Patents will be protected for 10 years from the receipt of the patent application. For companies or industries with patents, companies have strong evidence that all ideas and products produced are original from the company without duplicating products from other parties. This will increase consumer confidence and dedication to the company. Copyrights that protect all forms of ideas and works of the company are also an important asset for the recognition of the company's inventions. Patents are also very legal and become an important asset in the confirmation of inventions.

Keywords: Patent, inventor, protection, ownership, industry

Abstrak: Paten adalah hak eksklusif inventor atas invensi di bidang teknologi untuk selama waktu tertentu melaksanakan sendiri atau memberikan persetujuan kepada pihak lain untuk melaksanakan invensinya. Perlu diberikan perlindungan hukum atas setiap karya intelektual berupa paten ini yang terkait di bidang teknologi, sehingga terjamin hak kepemilikan pemegang paten tersebut. Disisi lain perlindungan paten dapat memberikan insentif bagi para inventor dalam melakukan inovasi baru melalui hak eksklusif atas invensi yang dihasilkannya. Sistem hukum di Indonesia menyebutkan bahwa perlindungan atas paten akan mengikuti jenis dari paten. Untuk \Paten Biasa akan dilindungi selama 20 tahun sejak penerimaan permohonan paten, sementara Paten Sederhana akan dilindungi selama 10 tahun sejak penerimaan permohonan paten. Bagi perusahaan atau industri dengan hak paten perusahaan memiliki bukti yang kuat bahwa semua ide dan produk yang dihasilkan adalah asli dari perusahaan tersebut tanpa menduplikasi produk dari pihak lain. Hal tersebut akan menambah kepercayaan konsumen dan berdedikasi pada perusahaan tersebut. Hak cipta yang melindungi segala bentuk ide dan hasil karya perusahaan jugamenjadi aset penting bagi pengakuan penemuan perusahaan. Hak paten juga sangat berkekuatan hukum dan menjadi aset penting dalam pengukuhan penemuan.

Kata kunci: Paten, inventor, perlindungan, kepemilikan, industri

INTRODUCTION

Technology plays a very important role in human life. Today technology is able to solve problems faced by humans, for example overcoming distance and time (Chyril, 2008). In the delivery of information, mobile phone technology and the internet, for example, play an important role (Yodo, 2016). To produce new inventions in its development, it always requires sacrifice, both energy, thought, time and also the cost of the inventor/inventor, and generally these technological findings have high economic value (Saidin, 2004). Therefore, it is appropriate for the invention to be given legal protection, namely in the form of granting exclusive rights to the inventor for his invention in the field of technology.

Inventions in the field of technology are objects of patents, which in the legal framework of Intellectual Property are included in the Intellectual Property Industry group (Sutedi, 2009). In Indonesia, patents are regulated by Law no. 14 of 2001, and internationally the legal basis for setting Patents are: the Paris Convention, the Patent Cooperation Treaty (PCT), the European Patent Convention (EPC), and the TRIPs Agreement (Sadino & Astuti, 2021). According to Article 1 of Law no. 14 of 2001,

Patent is an exclusive right granted by the State to an Inventor for the results of his invention in the field of technology, which for a certain period of time carries out the invention himself or gives approval to other parties to implement it. In this case, the person who is entitled to obtain a Patent is the inventor himself, or another party who further accepts the rights of the inventor concerned. For example, the acquisition of rights due to the process of inheritance, grants, wills, or written agreements, or through the licensing process (Sigit, 2000).

Through this definition, it can be stated that the subject of a Patent or who is entitled to obtain a Patent is the Inventor or who further receives the rights of the relevant Inventor (Rychlicki, 2008). If an invention is produced by several people jointly, the rights to the invention are jointly owned by the inventors concerned. Meanwhile, the object of a Patent is an invention produced by the Inventor. According to article 1 (2) of Law no. 14 of 2001, Invention is an inventor's idea which is poured into a specific problem solving activity in the field of technology which can be in the form of a product or process, or improvement and development of a product or process (Ribowo & Raisah, 2019).

Not all technological inventions can be patented. According to the provisions of article 2 paragraph (1) of Law no. 14 of 2001, Inventions that can be patented are only inventions that are new and contain inventive steps and can be applied in industry (Usman, 2003). Based on the foregoing, it can be stated that the object of a patent is an invention/invention in the field of new technology, contains inventive steps, and can be applied in the industrial world.

METHOD

This study uses a legal policy approach, which is an approach that is carried out by observing laws and regulations relating to the policy issues under study. The procedure for processing materials through library research using a card system is to make an inventory of statutory regulations, text books, journals, and seminar papers to obtain material in accordance with the formulation of the problem to be discussed. Then arranged systematically based on the subject matter in the study and identified for use as material for analysis. The operationalization of the method begins with affirming legal policies, taking inventory of policies, identifying and classifying policy problems or potential problems with the achievement of national development goals. Then proceed with policy analysis, and the next step is to produce recommendations or follow-up designs as solutions to problems.

RESULT AND DISCUSSION

Legal protection for patents is obtained through a registration system, namely in this case the Constitutive System, or also known as the first to file system (Djaja, 2009). According to the Constitutive System, Patent Rights are granted on the basis of registration, namely the registration process by going through the stages of application by the inventor and examination by the Directorate General of Intellectual Property Rights. In this system the emphasis is on the registration process through the application and examination stages. This system is also known as the Examination System. Submission of a patent registration application must meet the specified requirements, namely: formal/ administrative and substantive requirements, which will also give birth to two stages of examination, namely formal/administrative examination and substantive examination.

Formal requirements include completeness in administrative and physical fields, such as the date, month and year of the patent application letter, full name and nationality of the inventor/inventor, full address, title of the invention, claims contained in the invention, written description of the invention, drawings, and abstraction of the invention (Utomo, 2010). The first examination of the completeness of the formal requirements must be completed before entering the substantive examination stage (Patel, 2015). The second examination, which is regarding the substance, includes an examination of the novelty of an invention, the presence or absence of inventive steps, and whether or not the invention can be applied in industry.

The first substantive requirement is that an invention can be granted a patent if it is the result of a new invention in the field of technology. In other words, it must be something new. An invention can be said to be new if the invention is not anticipated by prior art. Prior art is all knowledge that existed before the date of receipt of a patent application (filling date) or the priority date of the relevant patent application, either through written or oral disclosure (Purwaningsih, 2005).

The second substantive requirement is the requirement for inventive steps (Bainbridge, 1999). An invention is said to contain inventive steps, if the invention for a person who has certain expertise in engineering is something that cannot be predicted beforehand. The last requirement is that it can be applied in industry (industrial applicability). An invention to be worthy of a patent must be applicable for practical purposes, meaning that the invention cannot be purely theoretical, but must be practicable. If the invention is intended as a product or part of a product, then the product is must be capable of being made. If the invention is intended to be a process or part of a process, then the process must be capable of being carried out or used in practice.

For this substantive requirement, sometimes other names are found for the name of the requirement. However, in essence the essence is the same. Like America, according to the Federal Patent Statute of 1952, it is known that: To be patented, the inventions must be novel, useful, and non-bvious. The substantive requirements as stated above are those that require an invention to be patentable if it meets the requirements, namely: It must be new, contain inventive steps, and can be applied in industry.

Patent registration applications can be filed for Patents (Ordinary Patents) and Simple Patents. In Indonesia, patents are grouped into two groups, namely ordinary patents and simple patents. Patent protection (Ordinary Patent) is an invention in the field of products and processes. Simple Patents only concern inventions in the product field. No Simple Patent for the process. Simple Patent protection requirements are easier, only looking at the novelty and benefits of product innovation, while the inventive step is not required.

Patents (Ordinary Patents) consist of Product Patents and Process Patents. In the patent system, inventions that may be granted patent protection include processes, methods of carrying out the process and tools for carrying out the process, use, composition, and products which are product by process. Patents are granted for works or inventions in the field of technology which after processing can produce a product or only a process and if utilized will bring economic benefits. What is meant by a product in a Product Patent includes tools, machines, compositions, formulas, product by process, systems, and others. Examples are stationery, eraser, drug composition, invention of HP (Hand Phone) technology, etc., while what is meant by process includes process, method or use. Examples are the process of making ink, and the process of making tissue."

Simple Patents are intended for simple technological inventions and are limited to things that are tangible, tangible and can be used practically (Cheeseman, 2000). The Simple Patent only covers the protection of the product, i.e. in particular the form of a mechanical product with very practical uses. A simple patent is a technological invention in a simple form. These findings are generally not born through an in-depth Research and Development process, therefore the protection period is shorter than Ordinary Patent 50 and is calculated from the filing date of the patent application.

The Simple Patent cannot be extended and is valid for one claim only. This is of course different from the Ordinary Patent which can be filed for several claims. Known several terms for simple patents. Australia uses the term Petty Patents, Germany and Japan uses the term Utility Models, and Patents brevet in France. Examples of simple patents include coconut grater tools, household appliances, and accessories. In several other countries, such as the United States, the Philippines, and Thailand, Simple Patents are known as Utility Models, Petty Patents, or Simple Patents, which are specifically intended for objects or devices (General Explanation of

the Patent Law). The procedure for applying for a patent registration to the examination process, both administrative and substantive for ordinary patents is regulated in articles 20 to 65 of the patent law, while for simple patents it is regulated in articles 104 to 106 of law no. 14 of 2001 concerning Patents.

The obligation to harmonize the IPR legal system is not only required for Indonesia, but also applies to other WTO member countries such as the United States. In the context of GATT, several important changes were made in the U.S. Patent Law relates to the period of Patent protection, namely:

1. Patent are valid for 20 years instead of the previous term of 17 years.
2. The patent term begins to run from the date the patent application is filed instead of when the patent is issued, as was previously the case.

In Indonesia, according to the provisions of Article 8 of the Patent Law, the period of protection of a Patent is 20 (twenty) years from the date of receipt and that period cannot be extended (Margono, 2015). Meanwhile, the Simple Patent is 10 years and cannot be extended. With regard to legal protection of foreign patents, according to the Paris Convention which adheres to the principle of national treatment, foreigners who are citizens of member countries of the Paris Union are given the same treatment as their own citizens.

Patent Rights as well as other Intellectual Property Rights groups can be transferred and transferred either in whole or in part, namely through the process of inheritance, grants, wills, or by way of agreement or in a way justified by law. Every process of transferring Patent Rights must be registered with the Directorate General of Intellectual Property Rights. With regard to inventions in the field of technology that eventually resulted in patents, Indonesia is still very far behind when compared to other countries. Therefore, as a means of accelerating technology transfer, the licensing mechanism is one of the most important means.

According to article 1 number (13) of the Patent Law, a license is a permit granted by a patent holder to another party based on an agreement granting the right to enjoy the economic benefits of a patent that is protected for a certain period of time and under certain conditions.

In principle, according to the provisions of Article 16 of the Patent Law, the Patent Holder has the Exclusive Right to exercise his Patent and prohibits other parties without his consent:

1. In the case of a Product Patent: making, using, selling, importing, renting, delivering, or providing for sale or rental or delivery of the product for which the Patent is granted.
2. In the case of a Process Patent: using a production process that is granted a Patent to manufacture goods and other actions as referred to in letter a. In relation to the Exclusive Rights mentioned above, the Patent Holder has the right to grant a License to another party based on the License agreement to carry out the actions as regulated in Article 16. The license adopted in the Patent is in principle a Non Exclusive License.

In addition to being regulated on a general license (voluntary license) as stipulated in the provisions of Articles 69 to 73 of the Patent Law, it also regulates a compulsory license. Regarding the Compulsory License or often called the Forced License, it is also regulated both in the Paris Convention and in the TRIPs Agreement. The Paris Convention uses the term Compulsory Licenses for Compulsory Licenses whose arrangements are set out in Article 5A of the Paris Convention. Meanwhile, the TRIPs Agreement uses the term Other use without the authorization of the right holder as regulated in Article 31 of the TRIPs Agreement.

According to the provisions of Article 31 of the TRIPs Agreement, there are four considerations that form the basis for granting a compulsory license for a patent, namely;

1. Due to a very urgent need (emergency and extreme urgency)
2. To avoid unfair business competition practices (anti-competitive practice)
3. In the context of non-commercial use for the public interest (public non-commercial)

4. There is an interdependence of existing patents with those that follow (dependent patents).

In general, the difference between a general license (Voluntary License) and a Compulsory License can be found as follows:

In general Licenses (Voluntary Licenses), the Inventor makes a License Agreement with the Licensee, namely granting the Licensee the right for a certain period of time to use the patents owned by the Inventor based on the same needs between the two parties, in the sense that both parties Inventor and Licensee both intend, are willing and want, and agree voluntarily to take legal action on the License Agreement, without requiring government intervention, except in the process of registering a license agreement which must be registered with the Directorate General of Intellectual Property Rights in order to have consequences. law to third parties. Whereas in Compulsory Licenses, the granting of a License from an Inventor to a Licensee is not initially based on the mutual desire of both parties, but rather because of the desire of only one party, namely the Licensee, to exercise the Patent which is basically related to the public interest. through government intervention.

Compulsory licensing in the Patent Law is regulated in Articles 74 to 87. According to Article 74 of Law no. 14 of 2001, Compulsory License is: A license to exercise a Patent granted based on a decision of the Directorate General on the basis of an application. From this definition, it can be stated that after an application has been submitted with the fulfillment of the requirements by the applicant and has been approved by the Directorate General, the inventor or patent holder is obliged to license the patent forcibly to the applicant, even though his party/patent holder actually does not want and does not want to intends to enter into the License Agreement.

Even if there is a Mandatory License provision, it does not mean that every Patent that a person wants can apply for a Compulsory License. A Compulsory License may only be applied for by an applicant to the Directorate General if: The relevant Patent is not implemented or is not fully implemented in Indonesia by the Patent Holder. An application may also be filed in the event that the Patent has been exercised by the Patent Holder or Licensee, but in a form and in a manner that is detrimental to the public interest.

Based on the provisions of Article 75 paragraph (1) of the Patent Law, any party/ everyone may apply for a Compulsory License, namely after 36 (thirty-six) months have passed since the date of granting the Patent by paying a fee. The government, in this case the Directorate General of Intellectual Property, in addition to paying attention to the valid reasons for the application for a Compulsory License as stated above, will only grant and grant the application for a Compulsory License from the applicant in the event that the applicant can show convincing evidence that his party :

1. Have the ability to fully implement the relevant Patent itself.
2. Have their own facilities to implement the relevant Patent as soon as possible
3. Has tried to take steps within a sufficient period of time to obtain a license from the Patent Holder on the basis of reasonable terms and conditions, but to no avail

Based on the above evidence, if the Directorate General is of the opinion that the patent can be exercised in Indonesia in a feasible economic scale and can provide benefits to the majority of the community, the applicant's application for a Compulsory License will be granted, and a decree will be issued. Directorate General regarding the granting of a Compulsory License. With the issuance of this Decree, it means that the Patent Holder is obliged to forcibly license his Patent to the applicant.

What if there is a dispute? Patent Disputes can be resolved through the Court and out of Court (Darusman, 2016). In the event that the Patent Holder or Licensee suffers a loss as a result of their Patent being used by another person without rights, the Patent Holder and the valid Licensee may sue and demand compensation to the violator through the Commercial Court. A claim for compensation can be filed against anyone who knowingly and without rights commits the act of making, using, selling, importing, renting,

delivering, or providing for sale and rental or delivery of a product that is granted a patent, or uses a production process that is granted a patent to make goods and other actions. A claim for compensation can only be accepted if the product or process is proven to be made using an Invention that has been granted a Patent. The process of proof in a patent dispute adheres to the Reverse Evidence System (Article 119 paragraph (1) and paragraph (2) of the Patent Law.

CONCLUSION

Patents in Indonesia are regulated under Law no. 14 of 2001 concerning Patents. Human intellectual works that are protected by patents are works related to findings in the field of new technology or novelty. Patents are divided into ordinary patents and simple patents, and the protection system adheres to the first to file system. Infringement of Patents is resolved both civilly and criminally. Civil lawsuits are submitted to the Commercial Court, and criminal cases related to patent infringement are submitted to the District Court. A criminal offense in a patent is a complaint offense, in this context there must be a complaint regarding a patent infringement.

REFERENCES

Adrian Sutedi, 2009, *Hak Atas Kekayaan Intelektual*, Sinar Grafika, Jakarta

Ary M. Sigit, 2000, *Sistem Perlindungan Paten*, Makalah Seminar, Kerjasama Ditjen HAKI- UNUD, Denpasar

Chyril, D. 2008. *Analisis Yuridis Normatif Perlindungan Hak Kekayaan Intelektual Bidang Paten di Indonesia* (Doctoral dissertation, Fakultas Hukum UAI).

Darusman, Y. M. 2016. Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten dalam Kerangka Hukum Nasional Indonesia dan Hukum Internasional. *Yustisia Jurnal Hukum*, *5*(1), 202-215.

David Bainbridge, 1999, *Intellectual Property*, England: Finacial Times Pitman Publishing

Endang Purwaningsih, 2005, *Perkembangan Hukum Intellectual Property Rights*, Ghalia Indonesia, Bogor

Ermansyah Djaja, 2009, *Hukum Hak Kekayaan Intelektual*, Sinar Grafika, Jakarta

Gillian Davies, 2002, *Copyright and The Public Interest*, Thomson Sweet & Maxwell, London

Henry R. Cheeseman, 2000, *Contemporary Business Law*, Prentice Hall, Upper Saddle River, New Jersey

Henry Soelistyo, 2014, *Hak Kekayaan Intelektual: Konsepsi, Opini dan Aktualisasi*, Penaku, Jakarta

Lawrence Liang, 2007, *Free/Open Source Software Open Content*, Asia–pacific Development

Nilay Patel, 2015. *Open Source And China: Inverting Copyright?*, Wisconsin International Law Journal, Vol 23, 4,

OK Saidin, 2004, *Aspek Hukum Hak Kekayaan Intelektual*, Grasindo Persada, Jakarta

Rachmadi Usman, 2003, *Hukum Hak Atas Kekayaan Intelektual Perlindungan dan Dimensi Hukumnya di Indonesia*, Alumni, Bandung

Ribowo, M. B., & Raisah, K. 2019. Perlindungan Hukum Terhadap Paten Sederhana Dalam Sistem Hukum Paten di Indonesia (Studi Komparasi dengan Sistem Hukum Paten di Negara China). *Notarius*, *12*(1), 42-60.

Sadino, S., & Astuti, J. 2021. Penerapan Hak Paten di Indonesia. *Jurnal Magister Ilmu Hukum*, *3*(2), 41-46.

Sugito, E., & Syahruddin, E. 2021. Sejarah Perbandingan Sistem Pendaftaran Paten Di Amerika Serikat dengan di Indonesia. *Batulis Civil Law Review*, *2*(1), 16-23.

Suyud Margono, 2015, *Hukum Kekayaan Intelektual (HKI)*, Pustaka Reka Cipta, Bandung

Tomasz Rychlicki, 2008, *GPLv3: New Software License and New Axiology of Intellectual Property Law*, E.I.P.R Issue 6, Sweet & Maxwell Limited And contributors

Tomi Surya Utomo, 2010, *Hak Kekayaan Intelektual (HKI) di Era Global: Sebuah Kajian Kontemporer*, Graha Ilmu, Yogyakarta.

Yodo, S. 2016. Perlindungan Hak Paten (Studi Komparatif Lingkup Perlindungan di Berbagai Negara). *Fiat Justisia: Jurnal Ilmu Hukum*, *10*(4), 697-714.