

Legal Protection Of Patent Right Holders In Efforts To Develop Economic Aspects

Suwardi

Program Studi Ilmu Hukum, Universitas Narotama
suwardi@narotama.ac.id



e-ISSN: 2987-811X

MARAS: Jurnal Penelitian Multidisiplin

<https://ejournal.lumbungpare.org/index.php/maras>

Vol. 2 No. 1 Maret 2024

Page: 459-473

Article History:

Received: 19-02-2024

Accepted: 24-02-2024

Abstrak : *The function and role of patents faces quite serious obstacles considering that they are so important in supporting economic development. Development based on technology is absolutely necessary to support successful development in the economic sector to support success in the technological sector. Legal instruments are needed that regulate legal protection if an invention in the field of technology is misused by someone else who has no right to use it. Legal instrument Number 6 of 1998 as amended and perfected by Law Number 14 of 2001 (hereinafter abbreviated to the Patent Law / UUP). The number of patent applications originating from within the country was 229 or 1.82 percent of all patent applications. Meanwhile, the number of simple patent applications originating from within the country was 153 or 41.02 percent of all simple patent applications. What is the legal protection for patent holders in economic aspects ? The method used in this writing is normative which refers to legal norms and existing laws, namely Law Number 14 of 2001 concerning patents. Patent studies for holders will be able to provide protection for apprentices and business actors who are still hampered by the influence of the Covid-19 pandemic so that maximum service is hampered, as well as our bureaucratic system which is not yet impartial to business actors, so there needs to be a commitment to togetherness between business actors and The bureaucratic system must be synergistic in helping each other and providing opportunities for each other so that patent ownership can achieve the mutually expected targets. Conditions that must be prepared are factors that trigger successful ownership of patent rights for rights owners based on a sustainable economy.*

Kata Kunci : *Patent Protection; Economic Development*

INTRODUCTION

In providing services to business actors to obtain patent rights, even in today's technological era, the function and role of patents is so important in supporting digital development. Development based on this technology is absolutely necessary to support the success of development in all sectors, especially the economic sector. To support success in the field of technology, legal instruments are needed that regulate legal protection if an invention in the field of technology is misused by other people who do not have the right to use it. This legal instrument is in the form of the Patent Law which is contained in Law Number 6 of 1998 as amended and perfected by Law Number 14 of 2001 (hereinafter abbreviated to the Patent Law / UUP). The UUP provides legal protection for discoveries in the field of technology, both in the form of processes and products. However, the UUP also regulates certain inventions that cannot be granted a patent. From existing data. The number of requests for registration of patents and simple patents received by the Patent Office, both from within the country and from abroad since the enactment of the UUP, namely the period 1 August 1997 to 31 December 2001, was 12,936 which can be broken down into 12,536 patent applications and 373 simple patent request. The number of patent applications originating from within the country was 229 or 1.82 percent of all patent applications. Meanwhile, the number of simple patent applications originating from within the country was 153 or 41.02 percent of all simple patent applications. Looking at the figures above, in the period of approximately five years since the enactment of the UUP, it turns out that requests for patent registration are still widely used by technology inventors (inventory originating from abroad (wna). Meanwhile, those originating from within the country (wni) are fewer in number both in the field of patents and simple patents. This phenomenon is certainly an irony, that our nation is still not aware of the importance of patent registration and simple patents. This is related to the constitutive system adopted by the UUP that a patent (including simple patents) is only given legal protection if it is registered at the patent office. The system requires and requires technology inventors to register their inventions. so that technological discoveries can be given legal protection. Without registration, a patent and a simple patent will not receive legal protection. Apart from mandatory registration, there are several things that technology inventors can do so that technological discoveries are protected by the state. In this regard, this research will discuss several things related to patent legal protection efforts and economic impacts.

The novelty of this research is that on the basis of the description above, the author does not understand the provisions that in terms of the nature of novelty, UUP adheres to the world wide novelty system, meaning that the discovery is not only new in Indonesia, but also new throughout the world. Meanwhile, what is meant by containing an inventive step is if the invention is for someone who has ordinary technical expertise something that cannot be foreseen (article 2 paragraph 1 UUP). Meanwhile, what is meant by inventor is a person who, alone or several people, together carries out activities that result in an invention.

RESEARCH METHODS

This research is normative in nature to examine how legal protection for patents is from economic influences. Because it is normative research, the main data sources used come from primary legal materials in the form of special laws and regulations of

Law No. 14 of 2001 and also supporting legal bodies (secondary) in the form of various kinds of literature that discuss the main problem.

These secondary legal materials in the form of various types of literature are of a supporting and complementary nature for analyzing normative data originating from various kinds of laws and regulations in the patent field. Especially those originating from UUP. Therefore, the nature of this research leads to studies that rely on data sources originating from various existing and relevant libraries.

Analysis of the main data was carried out qualitatively using a deductive approach and the discussion was adjusted to the main problem presented to obtain conclusions on the problems studied. To obtain conclusions on the problems studied.

RESULTS AND DISCUSSION

Moving on to the patent law, namely Law Number 6 of 1989 jo: Law Number 14 of 2001, there are several forms and mechanisms of legal protection provided by the state for patent rights for their holders. It can be concluded that the patent is granted by the state for the basis of the request without a request does not automatically provide legal recognition and protection from the state. On the basis of this request, the state grants special rights: these exclusive rights mean that these rights can only be exercised by those entitled to the patent or in other words the rights are only owned by the patent owner: other people do not have the right to use them. these special rights. Other people can only exercise this special right in the form of the right to implement their invention, which in this case is in the form of implementing a patent in the field of production. In connection with the provision of legal protection provided by the state, this directly implies that it can be protected by law. So an invention in the field of technology must be registered with the patent office. On this basis it means that only inventions in the listed technological fields will be protected. Meanwhile, discoveries in the field of technology that are not registered will not receive protection from the state. Therefore, the legal protection mechanism provided by the state in the case of patents is through patent registration. Apart from that, other methods are through licensing agreements and cancellation efforts and lawsuits that can be carried out by the patent owner.

Patent Registration

Patent registration here is mandatory and not voluntary as a constitutive stelsel mandate adhered to by the UUP. Without registration. So the technological discovery in question will not be protected. Therefore, technology inventors should register their inventions with the patent office, which in this case is the office of the Directorate of Paren, Directorate General of Copyright, Patents and Trademarks of the Department of Justice in Jakarta. After the patent registration procedure has been carried out by the registrant, the person concerned will be given a patent certificate. Of course, in this case the patent office will carry out its duties in accordance with the mandate stated in articles 23 to 71 of the UUP. All procedures related to patent registration must be fulfilled and carried out by the registrant and likewise the examination steps for the application must be carried out by the patent office. After the patent certificate is given to the applicant, which also means a letter of legitimacy for the owner of the patent, he is given the following obligations:

1. Making, selling, renting, handing over, using, providing for sale or rent or directing production products that are granted a patent:

2. Using patented production processes to make goods and other actions (article 17 UUP). Implementation must be carried out in the territory of the Republic of Indonesia.

The problem of patent registration is related to the results of technological discoveries produced: the problem related to patent registration is the imbalance between the number of registrants who come from within the country and the number who come from abroad. The number of Indonesian citizens who register their patents is relatively small compared to foreign citizens. This is of course an irony and shows that we are not yet able to become hosts in the technology sector. According to Insan Budi Maulana, from data available at the patent office, the number of patent applications at the Indonesian patent office for the period 1 August 1997 after the UUP was declared came into effect until the period 31 March 2001: 21,761 pieces. Of that number of applicants, the number of requests submitted by Indonesian citizens was 685, while the largest number was from American citizens with 6,837, followed by Japanese citizens with 4,060 and then German citizens with 1,863. Followed by 1,308 British citizens, and 921 French citizens. Meanwhile, 15,674 citizens from other countries came from all countries in the world who registered their patents at the patent office. (Maulana 1998). These figures show that even though the UUP has been in effect in Indonesia since August 1 1997 or approximately 7 years. Indonesia is still lagging behind compared to other countries. Especially developed countries. With the small number of patent applications, it raises the question of whether this is an indication of the low ability of the Indonesian people to make inventions that are entitled to patents. Or is there still a very low level of awareness among inventors regarding the need to patent every invention in the field of technology? Or is it because the innovators are researchers, or the inventors don't know about the existence of UUP.

These various questions were asked by Insan Budi Maulana as an observer who is concerned and cares about the field of IPR. According to him, so far we have heard about and even witnessed competitions or exhibitions related to the field of technology or scientific works. They show off all their innovations, inventors or discoveries and they are very happy when they receive a piece of paper and a number of prizes. However, after that, the innovation and invention were simply forgotten by the innovators and also the organizing committee: we seemed to forget that every innovation or discovery in the field of technology required a lot of time and a lot of money. We do not realize that third parties, entrepreneurs both national and foreign stealing innovations created by our innovators without having to pay a single rupiah in royalties and we can't do anything because we don't want to link each of these activities with legal protection and don't link them to the UUP. Furthermore, Insan Budi Maulana said that so far there have been quite a lot of works by students, our young engineers who have been sent to continue their study assignments abroad, especially in developed countries, which have been funded by the state, but it is a shame that there are not many works by our students. who are able to bring home discoveries in the field of technology that can be patented and are beneficial to the country. In fact, what has happened is that quite a few innovations carried out by our youth have become the property of foreign parties. Owned by the institution or institutions where the students study or write papers: The students seem to be quite satisfied with returning home with just a Master of Science (MSc) or Doctorate degree, but they forget that the innovation they make from papers that take time, sweat and state money should actually be one of the riches national level

which can increase their welfare. institutions in the country and also the country. But it is very unfortunate, without realizing that the discoveries from the works of Indonesian students have actually added to the wealth of the institutions or institutions where they study abroad: Why does this happen ? because they do not understand that every innovation or discovery they make is entitled to a patent and is entitled to legal protection and is also entitled to royalties if other parties use it.

Several other obstacles that are thought to be an obstacle to patent registration are that not many educational institutions understand the importance of patent protection: Indonesia has at least dozens of state universities and hundreds of private universities and existing paper institutions, but the work results are in the form of research or papers. Not many of the products produced have been registered with the patent office: However, such works sometimes have value not only in educational fields. However, it also has high economic value, if the works are taken over by other people or parties, they are then put to use, resulting in a large income contribution. Of course, it will be detrimental to the inventor or researcher concerned: they cannot get legal protection, because their work has not been registered with the patent office. These various obstacles need to be resolved quickly and precisely so that patent development in the country will be more rapid in the future. Considering that in the global era, competition will be increasingly tight and competitive. The illustration above shows how important the meaning of patent registration is for the legal protection provided by the state to the owner or inventor of technology: considering its function is so central and decisive, it is necessary to carry out a kind of regular and targeted socialization regarding the existence of UUP, especially in terms of registration, which really supports protection. a patent. Patent registration not only pursues the meaning and importance of the legal protection provided but will also further increase the degree of legal certainty and order which is still not very good in Indonesia. On the other hand, to stimulate the enthusiasm of inventors and technology owners to register their inventions, they need to be given compensation in the form of maximum legal protection when their patent rights are hijacked by someone else. Apart from that, they need to be given some kind of convenience and guidance so that they can easily carry out patent registration.

In Aspects of License Agreements

Another mechanism for patent legal protection is through a license agreement: in the license agreement, the patent owner as the licensor gives permission to the licensee to implement the invention in exchange for a specified royalty amount. agreement between both parties. Patent licensing agreements can be entered into between individuals and legal entities or legal entities both within and outside the country. With a license agreement, each party is bound by the agreement they have made, and generally the rights and obligations of each party have been stated in the form of the license contract in question. In general, the licensee's obligations are based on three things, namely: obligations that are usually regulated by law, obligations that are regulated by agreement between the parties, obligations that are agreed upon based on trust.

Obligations regulated by law, for example, the licensee must pay royalties or the licensee cannot enter into a sub-license agreement with a third party without permission from the licensor and so on. Meanwhile, obligations are based on trust and agreement, for example in determining how much royalties must be paid by the licensee

to the royalty provider. In order to achieve order and legal certainty. The license agreement must be registered with the patent office. The registration functions as a control tool for the patent office and can be used as evidence for the parties if a dispute arises in the future.

Later a dispute arose

Cancellation and Lawsuit Attempts: This cancellation effort and lawsuit are regulated in articles 94 to 99 of the UUP; The cancellation efforts are related to several patent cancellation mechanisms which can be divided into three types, namely:

1. patents that are null and void;
2. patent cancellation at the request of the patent holder;
3. patent invalidation due to lawsuit;

A patent can be invalidated by law because it is not implemented within 48 months of the granting of the patent and the annual payment obligation is not fulfilled within the specified time period. (Article 94 of the UUP): Besides that, a patent can be canceled at the patent holder's own request which is submitted in writing to the patent office and the cancellation takes effect from the date the patent office's decision is made. (article 96 paragraphs 1 and 5 UUP). Meanwhile, legal protection efforts for patents and simple through patent efforts are due to a lawsuit filed with the Central Jakarta District Court on the grounds :

1. According to the provisions as intended in article 2 and article 7, the patent should not be granted.
2. The patent is the same as other patents that have been granted to other people for the same invention based on law. (article 97 paragraph 1 UUP).

In addition to the lawsuit, the patent holder can use the lawsuit as regulated in article 121 of the UUP: the lawsuit is carried out on the basis that the patent was granted to someone other than the person who, based on articles 11, 12 and 13, is entitled to the patent. In addition to lawsuits and demands, to provide legal protection to patent holders, the state in this case can apply criminal threats to patent violators based on the provisions of article 126 of the UUP which threatens a maximum prison sentence of 7 years and a maximum fine of one hundred million rupiah for violators. patents and simple patents as intended in article 17 of the UUP.

Meanwhile, article 127 of the UUP threatens a maximum sentence of five years and a maximum fine of 50 million rupiah for anyone who violates the rights of a simple patent holder by carrying out one of the actions as intended in article 17 of the UUP. In the event that article 17 regulates the rights possessed by the patent holder over his patent in the form of the right to make, sell, rent, hand over, use, provide for sale or lease or hand over the patented production results and use the patented production process to make goods and services. other actions. This right is exclusive so that other people use it without the patent holder's permission. This is a patent violation which can be subject to criminal penalties as intended in articles 126 and 127 of the UUP.

Good patent protection is characterized by the availability of a complete set of regulations in the field of patents and satisfactory law enforcement. The reform process in this direction began with the ratification of an agreement with the World Intellectual Property Organization (WIPO), the UN body that handles intellectual property rights matters, in 1979. So that patent rights are not violated arbitrarily, there needs to be serious law enforcement efforts and supported by legal instruments. the strong one. For this reason, the government has issued Law Number 14 of 2001 concerning Patents.

This law outlines the provisions relating to patents such as the rights and obligations of a patent holder, methods of obtaining a patent license, expiration of the patent license, provisions regarding royalties, and so on. It is hoped that legal protection for the results of inventions in the field of technology will stimulate inventors to be more creative and innovative in finding various inventions in the field of technology and at the same time facilitate the transfer of technology in order to support development and development in the field of technology. In reality, there are still many inventions that have not been registered by their inventors, so existing inventions are vulnerable to being patented by non-inventors. Apart from that, there are still inventions that modify previously existing inventions, such as what happened in the registration of patents for machine inventions. In Indonesia, law enforcement is always referred to as law enforcement (merely implementing the law), so there is a strong tendency to interpret law enforcement as the implementation of a judge's decision (the process of being able to play a role in a rule in a society which is accompanied by supervision by various parties and it contains the intention to prosecute the violation as proof of the operation of the law). Article 1 number (1) of Law number 14 of 2001 concerning Patents states, "Patents are exclusive rights granted by the State to investors for the results of their inventions in the field of technology who, for a certain period of time, implement the invention themselves or give their consent to other parties to carry it out. Meanwhile, a foreign patent is a right given by the government to a foreign party over an invention for its own use and protects it from imitation/piracy (Big Indonesian Dictionary, 2005: 836). Patent registration is a process or method of carrying out legal actions to register an invention in the field of technology. Once a patent is registered it will receive legal protection. Legal protection is a legal certainty given to someone who needs it to feel secure in their interests. Law enforcement is legal action to achieve truth and justice (Jur Andi Hamzah, 2008: 158), while law violations are people who commit acts that are contrary to criminal law.

Historically, patent regulations were first contained in IPR law in Venice, Italy in 1470. Caxton, Galileo, and Guttenberg were listed as inventors who emerged during that time and had monopoly rights over their inventions. These laws regarding patents were then adopted by the English kingdom in the Tudor Era in the 1500s and then the first law regarding patents was born in England, namely the Statute of Monopolies (1623). Indonesia has known about patents since the Dutch colonial period based on Octroiwet 1910 until the announcement of the Minister of Justice dated 12 August 1953 Number J.S.5/41/4 concerning temporary registrants of octroi and the announcement of the Minister of Justice dated 29 October 1953 Number J.G.1/2/17 concerning temporary applications for octroi from abroad (Endang Purwaningsih, 2005: 107). Regarding the definition of a patent according to Octroiwet 1910, it is a special right which is given to someone at their request to that person who creates a new product, new way of working or new improvement of the product or way of working. Regarding the subject of patents, Article 10 of Law Number 14 of 2001 concerning Patents states that: (1) The person entitled to obtain a Patent is the Inventor or the person who further receives the rights of the Inventor concerned, and (2) If an Invention is produced by several people jointly -together, the rights to the invention are owned jointly by the inventors concerned. In Article 11, it is stated that the patent subject is the inventor who first applied for the patent registration. Patents are not simply granted by the state, but inventors must submit an application to the state. If an invention is to be submitted to the Patent Office

for registration to be granted, it must meet the requirements, namely (Harso Adisumarto, 1989: 11): the invention must be new (Novelty), contain an inventive step (Inventive step), and can be applied in industry (Industrial applicability). Requirements for a patent registration application according to the Announcement of the Minister of Justice dated 12 August 1853 No. J.S.5/41/4 (State Gazette No. 53-69) concerning the application for Provisional Patent Registration (O.K. Saidin, 2004: 242). The procedures or stages that a patent application must go through are: application submission, administrative examination, announcement of the patent application, substantive examination, and granting or rejection. The regulation of patent infringement actions is contained in article 130 of the Patent Law (UUP), namely: "Anyone who intentionally and without right violates the rights of the patent holder by carrying out one of the actions as intended in article 16 shall be punished by imprisonment for a maximum of four years and/ or a maximum fine of five hundred million rupiah." (Indonesian Patent Law, Article 130). The action referred to in article 16 is a description of the patent rights granted by the state to the patent owner, namely: "The patent holder has the exclusive right to implement the patent he owns and prohibits other parties who, without his consent, in the case of product patents: make, use, sell, import, rent, or provide for sale or lease or delivery of patented products." Patent Regulations According to International Law The Paris Convention came into force on 20 March 1883, then revised several times, namely: in Brussels on 14 December 1900, in Washington 2 June 1911, The Hague 6 November 1925, London 2 June 1934, Lisbon 31 October 1958, in Stockholm 14 July 1967, and then amended on 2 October 1979. Indonesia became a member of the Paris Convention on 10 May 1979 through Presidential Decree No. 24 of 1979, Indonesia proposed revisions to articles 1 to 12 (substantive articles) and article 28 paragraph 1. Then these revisions were revoked based on RI Presidential Decree no. 15 of 1997. The Paris Convention is a legal rule that from the start was intended to apply universally. Therefore, the detailed regulation of patents is left to each country provided that it does not conflict with the basic principles set out in this convention. The aim is to give each country the freedom to adapt its own situation and conditions to the Paris Convention. The Paris Convention also regulates patent independence. Independence of Patents Obtained for the Same Invention in Different Countries, art. 4). After understanding the basic principles of patents, it is then necessary to understand the components that form patents which are regulated in more detail in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which include: Patent Objects, Patent Rights, Patent Applications, Exclusion of Rights from Patents, Other Use Without Patent Holder Consent, Cancellation, Protection Period. PCT (Patent Cooperation Treaty) is a multilateral Patent Cooperation Treaty, established in Washington on June 19 1970, and is a special treaty under the Paris Convention. This agreement is intended to facilitate and provide patent protection in several member countries of the Paris Convention. Membership of the PCT is open to member countries of the Paris Convention, and until 2006 there were 133 member countries. where Indonesia is one of the members (Suwantin Oemar, 2008). Indonesia became a member of the PCT on May 7 1997 through Presidential Decree No. 16 of 1997. PCT is intended to simplify administrative procedures for registering international patent applications, such as: filling, searching and examining. In order to achieve the goal of PCT, namely process simplification, a "single application" system is used. Registered Foreign Patents The Paris Convention has the principle that a Union country is obliged to treat foreigners,

citizens of other Union member countries, the same as its own citizens in patent matters (the principle of national treatment). This principle, combined with the right of every country to become a member of the Union, means that citizens of a member country that does not have patent regulations can be given patent protection by other member countries of the Union (Muhammad Djumhana and R. Djubaedillah, 2003: 125). According to Article 4 bis, which adheres to the principle of independence of patents, it is determined that the elimination of a patent right in a member country of the Union will not affect the continuity of the same patent right in another member country of the Union. A foreign inventor himself has requested a patent in his own country, but in order for his invention to be protected in another country he applies for a patent in that other country. Indonesian patent law regulates that inventors from abroad can also submit patent applications in Indonesia in accordance with the provisions as intended in the Paris Convention. Meanwhile, similar patent applications are given the right to take precedence if the application is submitted within the time and in accordance with the conditions specified in the existing patent regulations. The right to take precedence is called priority right. If a foreigner submits a patent application for his invention, which his home country has already obtained, then there are 3 (three) possibilities, namely voluntary local exploitation; local exploitation with mandatory licensing; and the patent recipient does not comply with exploiting the patent locally. The provisions of Article 5 paragraph (1) of the Paris Convention stipulate that a member State may not cancel a contract a patent has been granted only because the patent owner has imported the patented goods from a member country of another Union. However, according to paragraph (2), the patent owner is still obliged to exploit his patent in accordance with the regulations in force in the country where he imports his patented goods. Exploitation obligations in the patent granting country are almost enshrined in patent legislation in every country. In Indonesia, it is regulated in Article 17 of Law Number 14 of 2001 concerning Patents, namely that patent holders are required to implement their patents in the territory of the Republic of Indonesia. This provision provides benefits for technology transfer. A patent that has been registered with the Directorate General of Intellectual Property Rights results in the patent owner obtaining the rights to the patent. Patent owners are given exclusive rights by the state to use their patents in the world of commerce. Therefore, the patent owner must be consistent with the registered patent. The consequence is that the patent owner must continue to produce objects according to their class as stated in the patent registration. If the patent owner is passive, does not carry out trading activities using the registered patent, then as a result the patent will not receive legal protection in the future. In this case, there are two possibilities that can occur, namely (Gatot Supramono, 2008: 42): 1. The patent owner cannot extend the patent protection period. 2. The Directorate General of Intellectual Property Rights deregisters patents. Regarding the patent owner not being able to extend the patent protection period, it is very logical because the patent is not used in trade, there is no point in giving the patent owner the opportunity to extend the patent protection period. Implementation of Legal Protection and Law Enforcement of Foreign Patents The World Intellectual Property Organization (WIPO) has designed a global system to facilitate requests for patent protection in many countries through the Patent Cooperation Treaty (PCT) system. This facility only applies to member countries. Indonesia ratified the PCT in 1997 through a presidential decree, so the inventor is from Indonesia can search for international patents in many

countries through WIPO. Patent applicants from abroad to Indonesia are more likely to use PCT facilities compared to submitting applications directly. PCT has advantages, including not having to go directly to Indonesia, but simply going through the international bureau of The World Intellectual Property Organization (WIPO) in Geneva, Switzerland, then the applicant names Indonesia as one of the registration destination countries. However, there are foreign patent registrations in Indonesia through PCT that are not recognized at the Patent Office, one example of foreign patent registration by BAL. If the patent owner only requests patent protection in only one or two countries, then this facility is not appropriate because the costs are relatively more expensive. For Indonesia, this PCT facility is profitable because it will stimulate domestic demand for foreign patents. Indonesia will receive a fee from every foreign patent that requests legal protection in Indonesia. If the applicant wants patent protection only in one country, for example Japan, the applicant can go directly to that country. This means that patent protection is only in Japan. For example, an Indonesian doctoral student who studies in Japan, then discovers something new in the field of technology, then he can immediately register it in Japan, without having to go to Indonesia. The consequence is that if it is not registered in Indonesia, the patent is not protected domestically, protection only exists in Japan. This patent cooperation agreement (PCT) allows a patent right that has been obtained in one country to be protected in various other countries at once. For this reason, every citizen of a country participating in this convention can apply for an international patent through the directorate general in his or her country. In this convention it is also possible to request priority rights based on the Paris Convention.

Based on the UUP, several elements that must be fulfilled for an invention to be patentable or in other words obtain legal protection, namely (Marni Emmy Mustafa, 2007: 19):

1. The invention carried out must be an invention in the field of technology.
2. The technology invented must be a problem solution.
3. The invention must contain novelty (state of the art), and has never been published in written or oral form and has never been demonstrated.
4. The invention must contain an inventive step, which means the invention cannot be foreseen.
5. The invention to be patented can be applied in industry so that if the invention is a product, the product can be reproduced in large or mass quantities using certain technology.

From the case that occurred with BAL, there were several things that resulted in the emergence of patent land problems, especially from patent law in Indonesia. It can be seen that patent law in Indonesia still has a number of problems. Some of the problems that arise include: First, it is related to the difficulties faced in testing an inverse that can actually be patented. This is perhaps due to the lack of human resources who have expertise in the field of testing an inverse that can be patented. Apart from that, the accuracy and accuracy of the tester regarding the inverse requested for testing is sometimes a problem in itself. Second, there is no complete data base system regarding previously existing inverses (prior art), so that the unavailability of this data base makes it quite difficult to compare an inverse that will be categorized as having blueness, where this novelty is an absolute requirement for an inverse that will be patented. Third, there are still several other implementing regulations that have not

been immediately issued, such as patent law regulations that have become ineffective. Fourth, there are differences in patent regulations in several countries, which often give rise to conflicts such as protection time limits, patent client issues, and issues regarding the protection of patentable inverses. Likewise with patent law in Indonesia. Fifth, the awareness of inventors to patent their information is still very minimal. The issue of patent interpretation is a problem because it is still very minimal.

In Indonesia, the legal system is left to the judge's interpretation, while Indonesia does not adhere to a precedent system. Therefore, it is very potential that this will give rise to legal uncertainty. In terms of legal protection for foreign patents, the protection of patents registered in Japan can be seen as a comparison. Japan is the country with the largest number of patent applicants in Asia. In principle, patent examination in Japan is the same as in Indonesia, especially regarding the assessment of: industrial applicability, novelty and inventive steps, which are contained in Article 29 of the Japanese UUP. Likewise, in the case of inventions that cannot be patented, according to article 32 of the Japanese Constitution without prejudice to article 29 of the Japanese Patent Law, any invention that disturbs the public interest, morality or public health may not be patented. 1. Law Enforcement Against Foreign Patents in Indonesia. In order to eradicate piracy and counterfeiting of various intellectual property protected by Intellectual Property Rights law, TRIPS regulates this issue by establishing rules regarding law enforcement. Eradication efforts are carried out with 20 articles which are general obligations (General Obligations) for TRIPS participating countries to carry out law enforcement as regulated in Articles 41 to Article 60 of TRIPS. Criminal Provisions and Investigation of Patent Crimes

Even though a patent is an individual's right, its implementation has a very broad impact in other aspects, especially in the areas of social, economic and political life. Therefore, the implementation of these rights can take place in an orderly manner. The state also threatens criminal penalties for certain violations of the Patent Law. In other words, the right to filing a claim for compensation does not reduce the State's right to carry out criminal prosecution for patent infringement. The UUP does not specify further the types of patent crimes, but what is clear is that acts that violate the rights of patent holders or do not fulfill the obligations specified in the UUP on Patents are patent crimes. Criminal provisions for patent rights are regulated in Articles 130 to 135 of the UUP.

Procedures and Requirements Not Fulfilled by Patent Applicants

The Patent Law (UUP) not only provides legal protection for patents owned by Indonesians, but also provides opportunities for foreign citizens to obtain legal protection for their patents in Indonesia. There is a need for protection of foreign patents in Indonesia considering the large number of foreign patent applications in Indonesia. As is known, there were 3,363 patent registration applications during the first seven months of 2011, the majority of which came from abroad, namely 3,038 or around 90.3% of the total number of patent registration applicants. The opportunity for foreign citizens to obtain patent protection in Indonesia is regulated in Articles 26, 27 and 29 of the UUP, these articles regulate patent applications submitted by foreign citizens. The UUP uses a postponed examination system, that is, substantive examinations are only carried out after administrative requirements have been fulfilled. So the substance examination is the second stage of examination. In the case of substantive examinations such as those experienced by BAL, patent applications, both national patents and

foreign patents, in Indonesia often experience rejection. Of the terms and procedures for patent applications, the most frequently rejected is the substantive/patentability examination. The reasons for patent rejection in substantive examination are:

1. The invention conflicts with patent law.
2. Inventions are not regulated by patent law.
3. The invention is not a patentable invention.
4. The invention cannot be applied in industry
5. The invention is not new.
6. The invention does not contain an inventive step.
7. Two or more applications were registered on the same day and the consultation failed.
8. The detailed description of the Invention in the patent specification does not match.
9. The description of the claim/claims in the patent specification is incorrect.
10. Two or more inventions are not unified.

There is new subject matter added. Of the 11 reasons for rejection of a patent during a patent examination, the most frequent reason for rejection is that the invention does not have novelty and does not contain an inventive step, as is the case with BAL patent rejections.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusion

Legal enforcement of foreign patents in Indonesia is normatively stated in Articles 130 to 135 of Law Number 14 of 2001 concerning Patents. In terms of criminal provisions to determine whether a patent crime has occurred, it is necessary to conduct an inquiry and investigation. Investigations into patent crimes, apart from being carried out by investigators from the Republic of Indonesia's state police, can also be carried out by certain PPNS who have certain powers. Based on the terms and procedures, registration of foreign patents in Indonesia according to Indonesian patent law can be carried out through 2 (two) systems, namely the constitutive system and the declarative system. The principles of patent examination in Indonesia are the same as the principles of patent examination in Japan, except that patent examination in Japan is very strict in determining the inventive step. The conditions and procedures that most often cause rejection are inventions that are not new and do not contain an inventive step, as is the case with BAL patent rejections.

B. Suggestion

It would be better if Law Number 14 of 2001 concerning Patents also needs to be followed by the willingness and ability of the authorities to enforce this Law so that what the Law wants to achieve can be implemented. Law Number 14 of 2001 concerning Patents also needs to include penalties and sanctions for parties who violate the law. Law enforcement in the patent sector by tackling piracy will cut off Indonesian society from the chain of dependence on pirated goods which can lead to the death of one's own creativity and innovation. If law enforcement is truly enforced, Indonesian people will undoubtedly be more creative and innovative, because they will try to create rather than pirate. To reduce the frequency of rejection or non-fulfillment of Indonesian patent legal requirements and procedures by patent applicants, the Indonesian patent office should improve its patent examination facilities, such as outsourcing the search for comparative documents (Prior Art), and

quality control and management of patent examination. Like patent searches in Japan, apart from IPC (International Patent classification), there is known as FI (file index), which is a subclassification of IFC. If possible, this FI is good to adopt in patent searches at the Indonesian patent office because this FI helps and/or speeds up the process of searching for patent applications. It would be good for the Indonesian patent office to adopt the efforts made by JPO in an effort to increase the number and quality of domestic patent applications.

REFERENCES

- [1] Abdullah Abdul Husein at-Tariqi. Islamic Economics (principles, foundations and objectives), Yogyakarta: Magistra Insani Press, 2004
- [2] Afrillyanna Purba, et al, TRIPs-WTO Indonesian IPR Law: Study of Copyright Protection of Indonesian Traditional Batik Art, Jakarta: PT Rineka Cipta, 2005
- [3] Amir Syarifuddin, Ushul Fiqh, Jakarta: Kencana, 2011 IKAPI Member, Intellectual Property Rights: An Introduction, Bandung: PT, Alumni, Cet IV, 2005
- [4] Budi Agus Riswandi and M. Syamsudin, Intellectual Property Rights and Legal Culture, Jakarta: PT Raja Grafindo, 2004
- [5] Bambang Kesawo, General Introduction to Intellectual Property Rights (HAKI) in Indonesia, 26 Republic of Indonesia State Secretariat, Jakarta, 1999.
- [6] Bambang Sunggono, Legal Research Methodology, Raja Grafindo Persada, Jakarta, 1997.
- [7] Citra Aditya Bhakti, Business Success Through Brands, Patents and Copyrights. PT. Bandung 1997
- [8] Cholid Narbuko and Abu Achmadi, Research Methodology, Jakarta: PT. Earth Literacy, 2011
- [9] Endang Purwaningsih, Development of Intellectual Property Rights Law, Ghalia Indonesia, Bogor, 2005.
- [10] Eddy Damian, 2009, Copyright Law, Publisher P.T. Alumni, Bandung.
- [11] Ermansyah Djaja, 2009, Intellectual Property Rights Law, Sinar Graphics Publisher, Jakarta.
- [12] Eddy Damian, Copyright Law, Bandung: PT. Alumni, Cet III, 2005
- [13] Endang Purwaningsih, Development of Intellectual Property Rights Law: Legal Study of Intellectual Property Rights and Comparative Study of Patent Law, Bogor: Ghalia Indonesia
- [14] Ermansjah Djaja, Intellectual Property Rights Law, Jakarta: Sinar Graphics, 2009
- [15] Fauzi, Rights Theory and Istishlahi in Contemporary Fiqh: An Application to Copyright Cases, Banda Aceh: Arraniry Press, Cet I, 2012
- [16] Farida Hasyim, 2009, Commercial Law, Sinar Graphics, Jakarta
- [17] Ghuffron A. Mas'adi, Konstektual Fiqh Muamalah, Jakarta: PT. Raja Grafindo Persada, 2002
- [18] Gatot Supramono, Resolving Brand Disputes According to Indonesian Law, Rineka Cipta, Jakarta, 2008.
- [19] Harso Adisumarto, Industrial Property Rights, Akademika Presindo, Jakarta, 1989.
- [20] Hendi Suhendi, Fiqh Muamalah, Jakarta: PT Raja Grafindo Persada, 2008
- [21] Henry Soelistyo, Copyright Without Moral Rights, Jakarta: PT Raja Grafindo Persada, Cet I, 2011

- [22] Jur Andi Hamzah, Criminal Law Terminology, Sinar Graphic, Jakarta, 2008. Big Indonesian Dictionary, Third Edition, Balai Pustaka, Jakarta, 2005.
- [23] Kesowo, Bambang, General Introduction to IPR in Indonesia, 1983.
- [24] Lawrence M. Friedman, American Law, W.W. Norton & Company, New York-London 1984.
- [25] Maulana, Insan Budi, Patent license, PT. Citra Aditya Bhakti, Bandung 1996.
- [26] Marni Emmy Mustafa, Principles of Procedure in Patent Law Enforcement in Indonesia linked to TRIPS-WTO, PT. Alumni, Bandung, 2007.
- [27] Muhammad Djumhana and R. Djubaedillah, Intellectual Property Rights, PT. Aditya Bakti, Bandung, 2003.
- [28] M. Faruq an Nabahan, Islamic Economic System: Options After the Failure of the Capitalist and Socialist Systems, translation: Muhadi Zainuddin. Yogyakarta: UII Press, 2000
- [29] M. Quraish Shihab, Tafsir al-Misbah: Message, Impression and Harmony of the Al-Qur'an, Volume I, Jakarta: Lentera Hati, 2006
- [30] Muchsin, Legal Protection and Certainty for Investors in Indonesia. Surakarta: Master of Laws, Sebelas University Postgraduate Program, March, 2003
- [31] Muhammad Djakfar, Business Law: Building a Discourse on the Integration of National Legislation with Sharia, Malang: UIN-Malang Press, Cet I, 2009
- [32] Muhammad Djumhana and R. Djubaidillah, Intellectual Property Rights: History, Theory and Practice in Indonesia, Bandung: Citra Aditya Bakti, 2003
- [33] Muhammad Nazir, Research Methodology, Jakarta: Ghalia Indonesia, 1998.
- [34] Muhammad Teguh, Economic Research Methodology Theory and Application, Jakarta: PT. Raja Grafindo Persada, 2005
- [35] Pipin Syarifin and Daedah Jubaedah, Intellectual Property Rights Regulations in Indonesia, Bandung: Pustaka Bani Quraisy, 2004
- [36] Poerwadarminta, General Indonesian Dictionary, Jakarta: Balai Pustaka, 2005
- [37] Roosono Harjowidigdo, Getting to Know Indonesian Copyright: along with its implementing regulations, Jakarta: Pustaka Sinar Harapan, 1992
- [38] Rachmadi Usman, 2003, Intellectual Property Rights Law Protection and Its Legal Dimensions in Indonesia, Publisher P.T. Alumni, Bandung.
- [39] Rahmi Jened, 2007, Intellectual Property Rights Abuse of Exclusive Rights, Airlangga University Press, Surabaya.
- [40] Saidin, Legal Aspects of Intellectual Property Rights: Intellectual Property Rights, Jakarta: Rajawali Press, 2010
- [41] Satjipto Rahardjo, Other Sides of Law in Indonesia, Jakarta : Kompas, 2003
- [42] Shalih Bin Fauzan, Complete Fiqh Summary, Jakarta: Darul Falah, 2005.
- [43] Sudargo Adisumarto, Intellectual Property Rights, Especially Copyright, Jakarta: Akademika Pressindo, 1990
- [44] Suharsimi Arikunto, Research Management, Jakarta: Rineka Cipta, 2005
- [45] Syafiq M. Hanafi, Islamic Economic System & Capitalism: The Relevance of Islamic Teachings in Economic Activities, Jakarta: Cakrawala, 2007
- [46] Syafrinaldi, Law on Protection of Intellectual Property Rights in Facing the Global Era, Riau: UIR Press, First Printing, 2001
- [47] Saidin, Legal Aspects of Intellectual Property, PT. Raja Grafindo Persada, Jakarta, 2004. Part II Agreement on Trade-Related Aspects Of Intellectual Property Rights (TRIPS Agreement) 1994.

- [48] Soerjono Soekanto, Introduction to Legal Research, UI Press, Jakarta, 1984.
Soerjono Soekanto, Normative Legal Research, A Brief Overview, PT. Raja Grafindo Persada, Jakarta, 1995.
- [49] Sujana Donandi S, 2019, Intellectual Property Rights Law in Indonesia, Deepublish Publisher, Yogyakarta.
- [50] Tim Lindsey (Ed.), Intellectual Property Rights: An Introduction, Bandung: Alumni, 2006 Law of the Republic of Indonesia Number 19 of 2002 concerning Copyright.
- [51] Law Number 6 of 1989 jo : Law 13 of 1987 jo : Law 14 of 2001
- [52] _____, Application of Patents Since Law Number 6 of 1989 to Patent Number 13 of 1997: Indonesian Experience So Far, Seminar paper, 1998.