

Protection of Economic Rights for Inventors: A Review of Employment Relations

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Abstract

This research aims to find out and analyze legal protection process in employee/civil servant as an inventor to obtain economic rights, legal protection procedure performed by employee/civil servant as an inventor if not agree on patent ownership and benefits because not suitable on economic value. In addition, this research explores government role in the future to regulate, provide rewards and legal protection especially, for employees or works as inventors. The implementation of rewards and legal protection for employee/civil servant still less than optimal so motivation of researcher and inventor low. Indonesian's culture not receive patents rights as private rights, the low of human resources and ignorance of researches on potential patent as legal protection effort by patent registration. Legal effort on viable granting for employee/civil servant encountered many obstacles namely rewards and legal protection for employee/civil servant as researcher who bounded on working relationship with company has not set up in national legal system. Granting royalty barriers to inventor's status civil servant is caused by the lack of rule in application of integrated inter-agency implementation of non-tax state revenues and inventor rights as civil servant rules.

Keywords: Legal Protection, Invention, Employment Relations

1. Introduction

The purpose of the Unitary Republic of Indonesia set out in the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter, the 1945 Constitution) to protects all Indonesian people and the entire land of Indonesia and to develop the welfare of the people, the life of the nation, and participate in the world orderliness based on freedom, eternal peace and social justice. Nowadays, the country's goal is to be implemented through national development by driving not only of Natural Resources only, but rather rely on the human resources. Thus, the existence of human resources becomes one of the most important and indispensable factor for the successful implementation of national development in order to achieve the basic objectives of the Homeland.¹

One of the most important components of the quality of human resources in the nation's development is the mastery of science and technology. Indonesia is a country with abundant natural resources, mastery of science and technology has become a necessity given the important role of science and technology in processing the existing resources. However, the condition of the development of science and technology in the country until now have not been able to reach the target as desired. That condition needs a system that can stimulate the development of science and technology, to increase in a more optimal development, among others in the form of protection of human intellectual work.

The Indonesian government basically try to do a protection against intellectual citizens of this country, among others, by ratifying international agreements in the field of Intellectual Property Rights. One of the important juridical consequences for Indonesia after the ratification of this international treaty² is that this country will be bound and obliged to implement the provisions contained in the form of harmonization of legislation which relate to the approval referred to.³ One of the law got affection of the harmonization is law related in the field of Intellectual Property Rights (IPR) or commonly known in Indonesia as Hak Kekayaan Intelektual (HAKI).⁴ The attestation based on the awareness of the opportunities and challenges arising from advances in science, technology and information that has been able to break through the boundaries of the state, following the social, cultural, economic and legal aspects⁵.

The existence of IPR (HAKI) increasingly becomes a very important issue and it always gets attention, both in national and international forums, especially when Indonesia entered the new millennium. The inclusion

¹ Djumadi, 2004, *Hukum Perburuhan. Perjanjian Kerja*. Rajawali Pers, Jakarta, pg. 4.

² The passing of Law No. 7 of 1994 regarding the Agreement Establishing the World Trade Organization, which annexed thereto on the General Agreement on Tariffs and Trade, in which one set of Trade Related of Intellectual Property Rights (TRIPs).

³ V. Henry Sulistio Budi, 2010, *Perlindungan Hak Moral menurut Hukum Hak Cipta di Indonesia (Kajian mengenai Konsepsi Perlindungan. Pengaturan dan Pengelolaan Hak Cipta*. (Dissertation) Post-Graduate School of Gadjah Mada University, Yogyakarta, pg. 1-2

⁴ Budi Agus Riswandi and M. Syamsudin, 2004, *Hak Kekayaan Intelektual dan Budaya Hukum*. Jakarta, Rajawali Pers, pg. 1.

⁵ Rahmi Jened, "HKI sebagai *Income Generaling* di Perguruan Tinggi", Oration in order 49th Dies Natalis of Airlangga University, Auditorium of the Faculty of Medicine, Nov 10, 2003, pg. 6.

of TRIPS in the WTO Agreement package in 1994 indicates a new era in the development of intellectual property rights in whole the world was begun, including in Indonesia. The IPR is important in economic development and national trade that is marked by a new era of economic development based on science and technology.

Patents as one of the elements in IPR and one of material rights are intangible (immaterial), is expected able to provide protection and security for the inventor of science and technology, particularly to support the development of industry and trade. This requires the absence of law enforcement, especially legislation in the field of IPR, in this case the Patent and Employment and also Investment.

2. The Provision of Economic Rights for Workers/Employment as Inventor for his Invention

Law has function as the protection of human interest and for the protection implementation, the law should be implemented through law enforcement.¹ Among the various functions of law, protection of private property is one of the most interesting concepts.²

To understand why intellectual property rights must be upheld and protected, there are two main reasons that can be considered. *Firstly*, is how the intellectual property rights created as a right outward from the creator / inventor / inventors, it is only fair that someone who has spent time developing and creating something, to receive recognition for its efforts and gain economic compensation for his work. *Secondly*, the protection of intellectual property rights will meet secondary objectives, namely economic purposes, to provide an incentive for people to continue working. If someone is going to invest time and effort in creating something, but the other party will be able easily to replicate and deploy these works, it will be very little motivation for making art, literature, the development of medical technology, as well as other development covered by intellectual property rights.³

In conducting a legal relationship, as a subject of rights or a person, it means there is no other than the "subject of rights" "rights advocates", so the weight of personal (person) is the subject of rights which treatment is entitled, namely arbitrary to be a supporter of the rights and obligations and civil liability.⁴ But humans are not the only subject of law (support rights and obligations), but there are still other legal subjects are often called "legal persons" (*rechtsperson*). As well as the subject of human law, a legal entity even this can have rights and obligations, and can also hold legal relations (*rechtsbetrekking/rechtshouding*) neither among the legal entity with other law entity nor among legal entities with the human (*natuurlijk person*). Therefore, a legal entity may enter into an agreement of sale, exchange, lease and all kinds of legal acts in the field of wealth.⁵

In the course of research, it is conducted at several research subjects, respondents consisted of a natural person (human) status as Workers, Employees and Civil Servants who conduct research and development activities and result an Invention. Neither on the subject of the law by employers, in the form of Private Legal Entities in this Company Limited nor Public Law Firm namely, Institution/Agency and Government Agencies.

In achieving its objectives, both Private Law Firm and Agency for Public Law, hiring workers or employees whose status as a researcher, between the implementation of research and development has the potential to generate new technologies, which can be applied in the industry and have economic value. Thus, the worker/ employee as researchers and also inventors.

Private Legal Entities (Limited Company), in carrying out the working relationship, based on an agreement between the two parties and contained in an employment agreement. While the Board of Public Law in implementing the employment relationship / official, according to a decree made unilaterally from the employer.⁶ Thus, according to Article 1653 of the Civil Code (B.W.), which distinguishes between legal entities civil and constitutional legal entity was based on the way the formation.

In the study data found that, by an employer and a provider of employment, company has status private legal entities / civil and Agency / Organization's status as a legal entity of public / state administration. next, in the employment relationship are, aspects of Intellectual Property Rights as some opinions below.

In New Jersey Lawyer Magazine mentioned that employers have three fundamental needs in the intellectual property aspects of the employment relationship: First, the company must ensure that a worker is not leaking confidential company information to other parties and not use confidential information for their own benefit; Second, companies need a title for intellectual wealth that has been created by the workers. Third, Finally, the company wanted to prevent workers are not "pollute" the workplace with confidential information of

¹ HP Panggabean, "Penerapan asas-asas Peradilan dalam Kasus Kepailitan", *Jurnal Hukum Bisnis*, Vol.7, 1999, pg. 31

² Vulkania Nesya Almandine, "Monopoli Paten Obat-obatan : Konflik antara Hak Paten dan Kebutuhan atas Pengobatan Terjangkau", *Juris Gentium Law Review*, Vol.1, Nomor 1 Juli 2012, pg. 105.

³ *Ibid.*, pg. 110

⁴ Sri Soedewi M. Sofwan, *Hukum Badan Pribadi*, Jajasan Badan Penerbit "Gadjah Mada", Jogjakarta, pg. 17

⁵ Riduan Syahrani, 1992, *Seluk Beluk dan Asas-asas Hukum Perdata*, Alumni, Bandung, pg. 54-55.

⁶ *I b i d*, pg. 31.

other parties such as the confidential information from the place of his work before.¹

For Inventor, an invention is produced, will provide the essential meaning, among other things:

- 1). Benefit for the inventors themselves, nether the benefits in the field of material nor immaterial field, thus Inventor has the authority to take the benefits of the invention, for its own benefit all are justified by the law;
- 2). Diverting usefulness to others, in the form of permit, lease, sell, donate, or pass on the contents of those patents to other parties;
- 3). Prohibit another person who without the right to exploit the invention of the patent valid, and
- 4). Prohibit the importation or exportation result of the invention, without the consent of holders of valid patents, the ban is made possible by advances in the fields of trade, particularly international trade.

3. Philosophical Basis of Rewards Giving and Legal Protection for Inventor

Rescue Pound as mentioned by Friedman argues that "Law as a tool of social engineering", that the law as a means of social engineering, the law is not passive, but must be able to be used to change a situation and certain conditions to the intended direction in accordance with the ability of its people.² Thus, the existence of the law is not just a set of circumstances that has been running, but the law creates a situation which is relatively new.

Furthermore, Kanta Atmaja Komar stated that the definition of the law as a means of reform is the law must be able to meet the needs something with the rate of progress and the stages of development in all fields that can be created order and legal certainty to assure and facilitate the implementation of the development.³

In order to accommodate the development of science, industry and trade globally, then the existence of Act No. 6 of 1989 further amended by Act No. 13 of 1997, then given the scope of the changes and use by the community and it is adapted to some agreement ratified international and related intellectual property rights, especially patents. Requires thorough legislation in a single text, last enhanced by Act No. 14 of 2001 on Patents.

Patent is an exclusive right granted by the state to an inventor over his invention results in the field of technology, which for a given period to own invention. If someone wants to obtain a patent on his invention, it is required to register an application to the Directorate of Patents at the Directorate General of Intellectual Property Rights and then it must be published his new invention, with compensation for inventors that such a time period that has been determined by the specific requirements, which thus opening the opportunity for third parties to exploit the findings published. Because the patent system also aims to promote the discovery and contribute to the development of the industry, to seek a harmonization between people who have obtained a patent and third parties that are bounded by patents.⁴

The cornerstone of justification of grant are as follows:⁵ a) Incentive to creative invention, which is an incentive for research and development activities that spur technology development and innovation for more rapid; b) Rewarding or tribute to the inventor to his discovery/invention that are beneficial to the development of technology and industry. The inventor / inventors who have struggled with the burden of time and cost, resulting in a discovery / invention it is fair to the inventor of the much appreciated; c) Patents as a source of information, it means that with the disclosure clause, then the discovery / invention that has been announced it will be used their hand to make repairs or improvements and so on so that it might happen on the improvement.

Meanwhile, according to Smith,⁶ the basic justification for the patent system, among others: a) Advance a technological and economic development countries (promoting economic development and technology); b) Stimulation of indigenous industrialization (original native stimulate industrialization); c) Patents can Contribute to technological and economic through licensing in other countries (Patent contribute economic and technological development through licensing in other countries); d) Patents help in dissemination of technological information (Patent assist in the dissemination of information technology weapons); and e) Available of Patents Provides protection in the flow of technology from other countries and the incentive for investment as (their patent protection provide a flow of technology from other countries and investment incentives).

The reward system and incentives, provides exclusive rights, and it is a monopoly that has limitation

¹ Marcus J. Miller, 1994, "Intellectual Property and the Employment Relationship", *New Jersey Lawyer, the Magazine*, May/June, 1994, by the New Jersey Site Bar Assosiation.

² W. Freidman, 1960, *Legal Theory*, London, Steven & Sons Limited, pg. 293-296.

³ Komar Kanta Atmaja, 1985, "Peran dan Fungsi Profesi Hukum dalama Undang Undang Perpajakan", A Paper on National Seminar on Tax Law, IMMO-UNPAD., Bandung.

⁴ Endang Purwaningsih 2005, *Perkembangan Hukum Intellectual Property Rights Kajian Hukum Terhadap Hak Atas Kekayaan Intelektual Dan Kajian Komparatif Hukum Paten*, Rajawali Pers, Jakarta, pg. 30.

⁵ *Ibid.*, pg 15

⁶ Patric A. Smith, 1997, "the characteristicts and Justification of the Paten System" *Executive Summary, Indonesia Australia Specialized Training Project Intellectual Property Rights*, Surabaya, pg. 2

(limited monopoly) and the entry barrier (barrier to entry) for his competitors, so that the holders of intellectual property rights may exploit their rights, and can enjoy the financial benefits that exist. In this respect Intellectual Property Rights also prevents people trying to find opportunities to earn money (rent seeking). This is because the law has become an economy where there is a situation that gives the opportunity to produce a profit, people will come in droves to enjoy the same opportunities.¹

An appreciation, protection and stimulants and also exclusive rights is granted to those who have contributed to the discovery / invention or science and technology, is expected to be more effective to increase further research investigators.

In the present patent does not only relates to industry, but also it relates to investments, even it can be a bargaining position for a State to conduct import-export commodities. So, if the state does not make arrangements for patent protection, the country will get challenge in the export commodities that destined to countries that protect patents or certain countries will rethink to invest the capital and also its patented technology.²

That monopoly rights on patents is the possibility of others to develop the invention without the consent of the inventor that it can cause the development of a technology inhibited. On the other hand, monopoly cannot be said to hinder the development because it is only for a certain time and with the publication of the invention there may be new ideas to be developed.

In principle, each individual has a natural right, to have the advantage of his work hard.³ Similarly, the invention is the result of hard work inventor, naturally get the results above the crowd in the form of royalties. John Locke considers that the goods are supplied but they cannot be got in the status of a naturalist, so someone must convert these items from the natural goods into private goods (private goods) to carry out its efforts on these items. The added value for the efforts on these goods made of these items were able to be enjoyed. Efforts have been sacrificed someone is to be cherished.

The emergence of protection efforts to intellectual property rights is as old as their creations by humans, because of legal protection of intellectual property rights in principle is the protection of the creator, inventor/ inventors, designers. In the development of legal institutions which later became known as the Intellectual Property Rights (IPR).

The protection efforts begin to look from the attention of countries to conduct cooperation on the issue of intellectual property rights formally, these efforts have been around since the late 19th century. These agreements quantitatively largely govern the protection of industrial property rights (Industrial Property Rights) and the other governs copyright. Organizations that handle these issues is the World Intellectual Property Organization (WIPO).⁴

A legal protection should be given to stimulate the creativity of creating an invention. Without the protection, the activities in the field of research and development in any field will not be excited necessary incentives from the government and the guarantee of legal protection in order that any results of intellectual creativity is not easily imitated by others.

If you look at the ideas and structure formation of the Commercial Court in the conception of the Bankruptcy Law, it can be concluded that the establishment of the Commercial Court for the first time at the Central Jakarta District Court is only authorized for the case of bankruptcy, but it is not intended that the Commercial Court only stopped as the "Court for the case of bankruptcy".

It appears there is a long-term plan to use the Commercial Court as a vehicle to improve the performance of the judiciary to the demands of the world economy as a whole. In general, the plan can be seen from the two lines, namely the development of angle relative authority and development from the point of absolute authority.

4. Conclusion

Implementation of legal protection, especially for the economic rights of the inventor who are bonded labor relations on an invention produced is still facing various constraints, among others: Firstly, the workers/employees as possible although the inventor the right to obtain a patent, but many constraints imposed, for example: a) Weighing the fulfillment of the implementation of the provisions of article 12 paragraph (1) UUP, in making otherwise agreed, especially for workers / employees in general economic conditions and a weak bargaining position; b) Large, slow and convoluted fulfillment to make the patent, both the cost and procedures for the issuance of patents followed by the cost of patent registration and maintenance; c) There is no certainty

¹ Rahmi Jened Parinduri Nasution, 2013, *Interface Hukum Kekayaan Intelektual, Dan Hukum Persaingan (Penyalahgunaan HKI)*, Rajawali Pers, Jakarta, pg. 37.

² Insan Budi Maulana, 1997, *Sukses Bisnis melalui Merek, Paten, dan Hak Cipta*. Citra Aditya Bakti, Bandung, pg. 107

³ Rahmi Jened, P.N., *Loc. cit.*, pg.26.

⁴ Taryana Soenandari, 1996, *Perlindungan HAKI (Hak Milik Intelektual) di Negara-negara ASEAN*. Sinar Grafika, Jakarta, pg.7.

that the patent has been certified, interested industry parties. Secondly, legal protection in the fulfillment of the economic rights to the inventor, is still constrained, among others: a) For workers/employees who are bounded a working relationship with the company, it is not set clearly about the rewards and legal protection in the national law system of Indonesia; b) For Inventors are bounded official relations as Civil Servants (ASN), are still constrained by the application of the system of Tax State Revenue (non-tax) (PNPB), because royalties are part of wealth inventors, in the conception of non-tax revenues is country's income that should be put into the state treasury.

Through non-litigation approach, the inventors bonded labor relations, the parties to the dispute are still many who do not know the existence of the Agency dispute resolution outside the court, either through arbitration or mediation made by the Mediator and Arbitrator which controls and experienced in the field of Intellectual Property Rights, especially patent disputes, especially disputes about the amount of remuneration for the inventor. Through litigation, there remains disagreement on the settlement of patent disputes, especially the amount of remuneration for inventors who are bounded the employment relationship, on the absolute authority to examine and decide, between the Commercial Court and the Industrial Relations Court.

The settlement of disputes in the field of intellectual property rights, especially patent rights, especially dispute the workers / employees as inventors bonded labor relations, has its own character that could not be resolved through litigation Strip in the Commercial Court and the Industrial Relations Court. Royalties for ASN researchers / inventors cannot be implemented due to hit the financial mechanism of State, as a result of R & D and State Universities, as holder of IP rights, to issue royalty revenue that is rightfully inventors basically funds received from users of IPR is not wealth IPR holders, but belongs to the State that must be paid directly to the State treasury as a non-tax revenue.

In State University research institute, it does not have clear rules on patent-based business, the commercialization of patents, licensing agreements and the delivery mechanism of royalties to inventors and use of royalties to pay patent maintenance fees. Application of the new invention and the inventive step for the publication in the Universities, have been announced through the stages of examination thesis, dissertation and / or other scientific forums, the patent could not be registered because it was not eligible novelty, because it does not qualify novelty. It is very detrimental for researchers that have been working in university.

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