

CHAPTER I

INTRODUCTION

1.1 Background

As Bill Gates defines Intellectual Property, he states that:

“The role of intellectual property overall has a positive impact where once we as individuals invent an idea, anything from a song a drug or software, it can be made available for the people in the world by any chance, with easier accessibility and low cost.”¹

Intellectual Property itself is the recognition given by the society towards an intellectual creation. It is actually a creation by a creator which will be given to the society. The rights given through an Intellectual Property Right is basically an intangible thing.

The use of Intellectual property itself will give a sense of full ownership and rights towards the owner, without any deprivation of enjoyment. Aside from giving the rights of enjoyment and ownership to the owner/holder of the intellectual rights, it has a usage to restrain other people/parties to use that right. Therefore the right

¹ Jewell, Catherine. “IP and Philanthropy: the Gates Foundation’s approach”,
http://www.wipo.int/wipo_magazine/en/2013/04/article_0006.html, 2013, accessed on 20
September 2017

actually has a sense of prevention and limitation for other parties for the protection of rights of ownership.²

According to David I. Bainbridge, “Intellectual property” is the collective name given to legal rights which protect the product of the human intellect. The term intellectual property seem to be the best available to cover that body of legal rights which arise from mental and artistic endeavor.³

Most national laws do not include a precise concept of what an invention is, but limit themselves to establishing the traditional criteria for patentability (novelty, inventive step, industrial applicability) and to determining what is not an invention. One of the main areas where the lack of a uniform definition of invention is relevant, relates to the distinction between “invention” and “discovery”. According to the basic principles of patent law, while the former is patentable, the latter is not. The distinction is not based on the degree of talent, knowledge or investment needed. Many discoveries and inventions have been the outcome of chance rather than of effort. A “discovery” is commonly considered to mean the mere recognition of what already exists; it is the finding of casual relationships, properties or phenomena that objectively exist in nature. According to Fernandez de Cordoba, an “invention”, in

² *Ibid.*

³ R. Djubaedillah Djumhana and Muhamad, *Hak Milik Intelektual: Sejarah, Teori, dan Prakteknya di Indonesia*. (Bandung: Citra Aditya Bakti, 1993), p.g 222

contrast, entails developing a solution to a problem by the application of technical means.⁴

However, it will be based on how the law grants the scope and to what extent will the right restrains the usage of the law to other parties. The wider the scope, the more the enjoyment and ownership will be given to the owner/holder of the Property Rights.

Patent have various definition from different sources of law. In essence patent in its entirety generally known as the right of ownership over an invention. In depth, it gives the right to the creator over the invention to exploit, generally for but not limited to economic value.

Patent According to Indonesian Law

According to Law No. 14 year 2001 regarding Patent Rights, Article 1 subsection 1 states as “an exclusive rights given by the State to the Inventor as the result of his/her Invention in technology invention or provide an agreement to third parties to implement said rights”. The law also states patent may only be subjected to Invention and entitled Inventor in which according to Article 1 subsection 2 states Invention as “Idea (by) Inventor which is poured to specific problem solving activity

⁴ Carlos M. Correa, *Intellectual Property Rights, the WTO and Developing Countires: The TRIPS Agreement and Policy Options*, (London & New York: Zed Books Ltd, 2000), pg. 52.

in terms of technology in the form of product, process, refinement or development of product and/or process” and Article 1 subsection 3 states Inventor as “a person or several persons together implement the ideas outlined in the activities that resulted in the Invention”.⁵

Thus an invention has certain condition that must be fulfilled before given the patent status. Such conditions are stated in Article 2:

“(1) Patents are granted for new Inventions and contain inventive steps and can applied in the industry.

(2) An Invention contains an inventive step if the Invention for a person having a particular skill in engineering that would otherwise be unexpected.

(3) The judgment that an Invention is unexpected must be done with respect to the expertise available at the time the Application is filed or existing at the time of the first application in case the Application is filed with a Priority Right.”⁶

Exclusive rights received by the Inventor according to Article 16 stated as:

“(1) The Patent Holder shall have the exclusive right to exercise its Patent and prohibit any other person without his consent:

a. in the case of Patent-products: make, use, sell, import, rent, deliver, or provide

for sale or lease or submitted Patented products;

⁵ Article 1 Law No. 14 Year 2001 regarding Patent

⁶ Article 2 Law No. 14 Year 2001 regarding Patent

- b. in the case of a process Patent: using a Patented production process to produce goods and other actions as referred to in letter a.

(2) In the case of a process Patent, the prohibition against any other party without his consent to import as referred to in paragraph (1) shall only apply to the import of the product which is merely derived from the use of the Patent-its process.

(3) Exempted from the provisions referred to in paragraphs (1) and (2) where the use of such Patent for the purposes of education, research, experiment or analysis shall not prejudice the reasonable interests of the Patent Holder.”⁷

Patent According to TRIPS

The provisions of Patent from the view of international community’s law are compiled in the Second Part of the document. The Definition provided in TRIPS Agreement regulated in Article 27 Paragraph 1 states: “... Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application ... Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced”

⁷ Article 16 Law No. 14 Year 2001 regarding Patent

The exclusive rights provided with patent is regulated in Article 28

“1. A patent shall confer on its owner the following exclusive rights:

- A. where the subject matter of a patent is a product, to prevent third parties not having the owner’s consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;
- B. where the subject matter of a patent is a process, to prevent third parties not having the owner’s consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.”⁸

Patent According to the Paris Convention

According to the Paris Convention for the Protection of Industrial Property, Article 1 Paragraph 4 defines patent as “Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.” The Paris Convention mainly regulates on procedure and rules over Patent on

⁸ Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994

cases of similar findings in different countries or filing a patent procedure to decide who has priority and/or appropriateness.⁹

The standard set in accordance by the TRIPS agreement by has several requirements to fulfill in obtaining a patent license, which are considered as a formal substantive license, which consists of novelty, inventive steps, industrial applicability and also a formal requirement to be fulfilled.¹⁰

1. **Novelty:** Novelty is a requirement which states that the invention of the object to undergo a patent must not be known to anybody through any kind of way. Regarding novelty, it could be a worldwide novelty or a relative novelty. In a developed country, the sense of worldwide novelty will be used, where a patent will not be deemed to have the sense of novelty when the patent demanded had been informed either in Indonesia or outside of Indonesia.
2. **Inventive Steps:** An inventive step means an invention that has not been predicted prior to the invention and the initial demand of a patent regarding a novel invention will be deemed as a priority right.
3. **Industrial Applicability:** An invention must fulfill a requirement that the invention must be applicable towards the industry. This criteria demands that

⁹ Paris Convention, 1883

¹⁰ Masur, Jurnal Ilmiah Ilmu Hukum QISTI Vol. 6 No. 1 January 2012, pg. 66-67.

the patent must be in relation to a product that is producible multiple of times with the same quality.

- 4. Formal Requirement:** The formal requirements are the administrative requirement that consists of important documents in proposing for a patent. The requirements will be fulfilled once the application form is complete with technical explanation, technical pictures from the invention of the patent to be proposed.

There are many aspects in business that need to be protected from potential harm, such as; its name, logo, design, inventions, or any other creative works or intellectual product that distinguishes one's business from another. That being said, one can see that the purpose of IP is not only to protect intellectual rights but also encourage businesses to be original, hence flourishing creativity and innovation within the competitive market.

Not all products are created in physical form, where it can be touched or moved. Intellectual product refers to products that are intangible, where the value does not merely depends on physical characteristics of the product, but the idea behind the product. "The idea" of product meaning concept, purpose, or design comes from the mind of an individual or group, which is appreciated for its originality, separating its product from the rest of the competitors.

Regarding the originality of a product, the concept and purpose shall be deemed a “creators right” both given through the originality of the creation itself and given by the law. The two concepts regarding the originality of the creation of a product will be in the scope of the technology, hence, the involvement of Patent.

The understanding of patent lies within the understanding that Patent is an exclusive right that is given by the state, and written by law to an investor, as for the result of the invention in the fields of technology. The right of patent will usually be given to the creator of the invention themselves, or could be through a third party, when the rights to patent is given from the inventor to another party. Patent is known as type of Intellectual Rights Protection which is effective, knowing that it has the power to prevent the action of an invention used by another party without the permission to use the invention through the knowledge of the inventor, even though if the other party has the invention of the technology individually, without copying from the original inventor.¹¹

Law Number 14 Year 2001 is one of the first codified law of Indonesia that explains the details and understanding of Patent. This law is revised later on into another Law, which is Law Number 13 Year 2016. According to the new law, the rights of Patent will be given for an invention that has fulfilled the requirement of

¹¹ Sudarmanto, *KI & HKI Serta Impelmentasinya bagi Indonesia*, (Jakarta: Elexmedia, 2012), pg. 64-65.

something new, has an inventive step, and could be applied into the industry in 20 years.

In general, Patent has a broad understanding as an exclusive right which is given by the state to the inventor, where the result of the invention is an end product or a new instrument which has values and usage in its practice, in regards to its shape, configuration, construction, and components. The understanding of how the invention has a mandatory to be able to be applied for the industry in 20 years is in the scope of the invention patent, which accordingly to preamble in Law Number 13 Year 2016, it is stated that:

“Patent is an Intellectual Property that is given by the state to the inventor, in relation to the result of an invention, in the fields of technology, that strategically has a role in supporting the development of the nation and to empower the society’s welfare.”¹²

Regarding the time given for the rights to have a patent for an invention will be in accordance to the formal requirement of having a “new” concept universally and should be in Indonesia. The Patent protection will usually be given 10 years since the legality of the patent certificate is given¹³.

The aspect of design has a wide scope that will encounter the design of several different products ranging from; machines for agriculture, furniture, garment,

¹² Article 1 point (1) Law Number 13 Year 2016 regarding Patent.

¹³ Sudarmanto, *Op.Cit.*, p. 64.

handicrafts, even at the scope of the packaging of a product. For another example, a food product that is simple will be perceived as a attractive and expensive product when it is supported through the design of the product's packaging¹⁴.

Regarding today's era in relation to design, it is usually the case where design becomes the supporting factor towards the sales of a product. This happens especially when consumers started to problematize the technical aspect of a product, or when the construction of the technology becomes boring. Just by changing the design of a product, or adding a little bit of changes of arrangements towards the design of a product with the current technology, producers will indeed enjoy the changes of sales of their products.

There have been issues in implementing the IP culture in developing countries, especially the patent system in flourishing innovation, technology and industrial development of the country. The role of patent in protecting inventor's right is crucial in providing freedom of movement in the company's field, especially in a competitive field or a field that is dominated by a single or few players. Having patent allows originality to prevail over the market, and pushes all players to rely on innovation, hence satisfying consumer's options with various options in the market.

There was a dispute between two Bajaj producer, Bajaj Auto Limited (BAL) and Ditjen, where BAL plead for patent cancelation of Ditjen's fueling system as they have already filed before from Honda Giken Kogyo. Another case example, was law

¹⁴ *Ibid*, pg. 75.

suit from Yahoo against Facebook. Yahoo felt that Facebook has been using their registered technology, which was method and system to optimize advertisement in web page. These patent cases have similar disputes; over which party registered their patent first.

For this research paper, the case study that will be analyzed will be **Case Study: PT Rajawali Parama Konstruksi vs. Poltak Sitinjak (No. 67/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst)**

PT Rajawali Parama Konstruksi (RPK) filed lawsuit for removal of patent of vertical pump line installation for condenser and chiller pump that belongs to Poltak Sitinjak at Commercial Court of Central Jakarta. The plaintiff (RPK) argues that the patent that is in possession of Poltak does not consist of innovative element or inventive step. The patent that belonged to Poltak is merely a combination of pump, pipe and other valve combination with standard features. RPK representatives argued “The function valve combination that combines several valves in something that can be thought out by other engineer easily”. In addition, the invention was revealed on 31st August 2002, long before Poltak submitted patent appeal on 20th May 2013, hence, RPK saw an absence in inventive element.

Another compromising position for Poltak is their position as a piping agent for an American company, Armstrong. In other words, Poltak is not an inventor, thus, does not have the capacity to misuse patent by introducing a product that the market

has already been familiar with the object far before the patent appeal. RPK intends to prove that the patent invention by Poltak is not legitimate by the lack of inventive element.¹⁵

This study case was taken from a news website that only provides summary of the dispute and some case files of this case. It was an on-going case when this thesis was in process, and ended just after the thesis completed, thus, the writer was unable to obtain and attach court decision to this research paper.

1.2 Formulation of Issue

According the background Information given above, there will be several formulating issues, which are:

1. How effective is the Prevailing Patent Law (Law No. 13 Year 2016) Providing Legal Protection to the Inventor?
2. What are the Cancellable Patent Terms to be found in Case Study No. 67/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst ?

¹⁵ Sinar Putri S. Utami, Rajawali Parama Gugat Paten Pompa Milik Poltak, Kontan.co.id, 2017, <http://nasional.kontan.co.id/news/rajawali-parama-gugat-paten-pompa-milik-poltak> accessed on 30th August 2017

1.3 Purpose of Research

The purpose of this research is to understand the root problem of Indonesia's ineffectiveness in enforcing intellectual property rights, especially in Patent right and find solution for it. In order to do so, one has to answer the formulation issue that is questioned by the author, which are:

1. How effective is the Prevailing Patent Law Providing Legal Protection to the Inventor?
2. What are the Cancellable Patent Terms to be found in Case Study No. 67/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst ?

1.4 Advantages of Research

The advantages that can be obtained from this research paper are as follows;

I. Academic Aspect

In academic aspect, the benefit of this research paper is to:

- a. To fulfill and complete one of the academic requirements to obtain Bachelor of Law degree in the faculty of Law in Universitas Pelita Harapan

- b. Further understanding in Intellectual Property Right field, especially in patent field of Indonesian Law
- c. Provide understanding and critical review in regards to Patent law in Indonesia
- d. Add insight towards the lacking enforcement of Patent within Indonesian market, hence increasing the awareness of IPR awareness for both author and reader.

II. Practical Aspect

The benefit in practical aspect from this research paper is to add insight for the reader and also additional consideration for future research for relevant studies. The author also wishes to additional insight for law practitioners in economic field and for both local and foreign business actor as a reference especially in the field of Intellectual Property Rights for the betterment of Indonesian economy. Another practical benefit to be obtained is to learn and analyze a real life lawsuit by studying case No. 67/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst.

1.5 Legal Research Method

I. Type of Legal Research Method

The type of method that is required in completing this research is in a systematic manner, with sufficient reasoning to back up the thesis. It is

crucial for the author to understand the topic he is researching. The author aims to study one or more study in regard of Indonesia's weakness in maintaining IPR protection, especially in patent field. This research can be categorized as normative legal research, as it consist of approaches that uses written law and regulations in relevant field, in addition of resources from the library. The type of research is to analyze the existing issue and raise awareness for improvement of the law.

1.6 Systematic Writing

To complete the anlysis of this reserach, the writing orders will be divided into chapters which will be shown below:

CHAPTER I : INTRODUCTION

This chapter will introduce the background foundational problem for this thesis which is regarding the effect of patent and several formulating issues, purpose of this thesis, benefits of this thesis and the systematic writings.

CHAPTER II : LITERATURE REVIEW

This chapter will go over the main theories that is relevant to intellectual property right. It will explain several different concepts of intellectual property right, specifically on patent, based on the prevailing law, Law Number 13 Year 2016

regarding Patent. In this chapter, the theories will be explained through the commentaries of experts regarding the understanding of patent, and its usage that will affect Indonesia's economy.

CHAPTER III : RESEACH METHODOLOGY

The third chapter of this thesis will be showing the method of thesis approaches, the kinds of approaches and the procedure in obtaining the research, and the technique of this research. It will be shown through a normative and qualitative research by finding the laws and commentaries from experts regarding the usage of patent and intellectual property.

CHAPTER IV : ANALYSIS AND DISCUSSION

The analysis will be based on the findings from the facts and information gathered from research. There will be discussions to find the answer for questions asked by the author, whether or not he has met his expectations. The case No. 67/Pdt.Sus-Paten/2017/PN.Niaga.Jkt.Pst will also be examined as a study case for this research paper.

CHAPTER V : CONCLUSION AND SUGGESTION

The last chapter of this thesis will consist of the result of the findings throughout the process, and will discuss furthermore whether or not the author has answered his question.