



Protection of Patent Rights (Comparative Studies in Japan and Indonesia)

Nasrullah¹

¹*Master of Law in Universitas Negeri Semarang, Indonesia*

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Abstract

Difference is motivated by the legal system used. Japan uses a common law and Indonesian system that uses the civil law system even though finally Indonesia finally mixes both of them, but the determination of the civil law used in Indonesia is still very thick. This article discusses an Indonesian young man who has had 14 patents in Japan because of his intelligence in creating patent works in Japan, namely the country he has occupied since college until now working in a leading company in Japan. The results of the study show that Japan, which legally adheres to the United States with common law, but in terms of Japanese patent protection adheres to the civil law system as used in Indonesia. The method used is normative juridical data collection techniques carried out by way of viewing or studying documents / libraries (library research).

Keyword: patent rights; protection of patent rights

INTRODUCTION

In this day and age, technology has an important role that is very significant in everyday life. The country that controls the world is a country that controls technology such as the United States, Germany, France, China and Russia are examples of countries that are very advanced in the field of technology so that they are able to give influence to other countries. These countries protect their technology strictly. Therefore, it is important to protect the technology against intellectual property to be registered as a patent.

The number of heckers makes more anxious for intellectuals in the field of technology. Legal protection for people who have intellectual work in the field of technology is considered very urgent to get certainty. Patent rights is one way for security and certainty of intellectuals in the field of technology feel their rights are protected. Moreover, there is a bad intention to acknowledge the work of someone who has succeeded in creating work in the field of technology.

Intellectual Property Rights (IPR) is a privilege granted exclusively by the state to several works that proceed from a creativity by the creator or inventor. A country that is still pursuing technology for the benefit of its country is a benchmark for assessing a country's progress. Developed countries usually have some intellectual property in the form of technology for several works in the form of technology which are then known as patents. The word patent itself is taken from petent words (French). Developed countries such as the United States, Germany, Japan, China etc., are some examples of countries that have influence on other countries in terms of technology.¹

The protection of patents granted by the state to holders of patents is a protection for the work in the form of technology (invention) which has an impact on the holder to be very strong, but the process of transferring technology to a country is not easy, because of not too significant changes while not substantially violating patents. Likewise, when the protection carried out by the government to inventors is too narrow, patent protection is not beneficial for patent holders, so this is not included in violating patent rights.

For someone who wants to register his patent with the government, the state is careful of the inventions

¹ Adrian Sutedi, *Hak Atas Kekayaan Intelektual*. Jakarta: Sinar Grafika, 2009, h.50.

* E-mail : nasruallah89@gmail.com

Address : K1 Building, 1st Floor, UNNES, Sekaran, Gunungpati, Semarang
Central Java, Indonesia, 50229

listed, many inventions of the invention that have similarities with one another. The first to invent principle that is applied by a country to the patent applicant that is first registered to the government for the invention carried out, or uses the principle first to file. Both first to invent and first to file are applied together to cover the possibility of the similarity of one invention to another. The application of these two principles also has implications for patent protection for inventors. As long as it has nothing in common with the other inventions that have been registered first.

The legal system used by a country affects the extent or extent of patent protection granted by the state to inventor. The existence of civil law and common law systems used by each country is interesting to discuss in obtaining clarity of claims submitted by inventor. Civil law that uses codification in its legal system, while civil law rejects codification, will also result in clarity of claims by the state to inventor.

Ricky Elson is an Indonesian citizen who works for a company in Japan. Ricky Elson already has dozens of patented electric drive technology in Japan. For 14 years in Japan Ricky Elson started from college to work in an automotive company in Japan. In 2013 the then Minister of Energy and Mineral Resources, Dahlan Iskan invited Ricky Elson to complete the national electric car project named Gendhis and Selo on display at the APEC Summit in Denpasar City, Bali Province. However, after the national electric car project was completed and has been exhibited at the APEC Summit, the constraints on licensing that did not come out became an obstacle in mass production. Until finally the permit was not issued, Ricky Elson then returned to Japan to his original company. This article was made to find out how to protect patent rights Ricky Elson as an Indonesian citizen who has a patent in Japan who has a different legal system used.

RESEARCH METHOD

This research is a normative juridical study using the statutory approach. In legal normative juridical research, it is put in place as the norm stated as a doctrinal approach or law in book. In the practical level, normative legal juridical research is a set of positive rules or norms in the legal system.

The type of data used in this study is secondary data. Primary legal material, secondary or tertiary legal material. Primary legal materials, among others, relate to the research theme. Law Number 13 of 2016 concerning Patents

Data collection techniques are done by looking at or studying documents / libraries (library research). Study of documents / libraries (library research) is a data collection technique that is carried out by researching, reviewing, and exploring various official documents and materials related to this research as the main and complementary and supporting materials in order to obtain adequate descriptive analysis for then tested through in-depth evaluation. The study data collection tool for documents or literature is used to collect legal materials as mentioned above.

RESULT AND DISCUSSION

General Patent Protection

According to Peter Mahmud Marzuki, patent protection has two aspects, namely in terms of the economy and aspects of technology transfer. The technological aspect is actually related to the transfer of technology to the people who make modifications to the previous findings that have been registered so as to allow for technological wear. If protection against discovery will be considered a violation, there will be no modification and transfer of technology. Economic aspects of patent protection are related to competition. Patent applications received for the first registrant, while the second patent applicant who resembles his findings with the first applicant does not obtain patent rights by the state. The second petitioner just gave up his findings, this matter from a legal standpoint was felt unfair because whatever findings were an attempt to facilitate human activities that were beneficial to humans. Jeremy Bentham who stated the utility principle states that the law must provide happiness to most people.² Protection of intellectual property rights (IPR) as regulated in WIPO conventions is actually voluntary, which means that provisions are only basic rules for countries that will implement these rules in their respective countries. However, with the passage of time and the progress of the world economy, the provisions in the WIPO conventions have become compulsive, which means that these provisions must be carried out for countries that have already joined their membership.³

International patent protection has only been carried out since 1883 through The Paris Convention

² Peter Mahmud Marzuki, *Luasnya Perlindungan Hak Paten*, Jurnal Hukum No. 12 Vol. 6 Tahun 1999.

³ Yoyon M Darusman, *kedudukan serta Perlindungan Hukum bagi Pemegang Hak Paten dalam Hukum Nasional Indonesia Dan Hukum Internasional*. Jurnal Yustisia, Vol. 5 No. 1 Januari-April 2016.

for The Protection of Industrial Property. The Paris Convention has the goal of reciprocal patent protection in countries that follow the convention. Countries that apply for the Paris Convention can become participants. The Paris Convention has undergone several changes. Changes were made through a conference in Brussels in 1900 as the first change, the second change took place in Washington in 1911, the third change was in Lisbon in 1958, and in Stockholm in 1967 it was the last change. This last change Indonesia has ratified and become a member of the WIPO (World Intellectual Property Organization) through no. 24 of 1974.⁴

Japanese Patent Protection

Japan as a country adhering to the civil law legal system has different provisions with Indonesia in terms of patent protection. Japan in terms of patent protection adheres to the system adopted by America, namely the common law. The Japanese patent law namely Law Number 21/1959 is known about the rules regarding the extent of the expansion of invention protection. Japan in patent protection imitates America because it has the same legal system. In the American legal system it is open for judges to interpret theologically in accordance with the interests needed at that time. This is because the law does not regulate the protection of inventions submitted to the judge according to the system used in the common law.

The law of the United States is actually narrower compared to the extent of patent protection in the United Kingdom. Narrow protection facilitates the process of technology transfer through the modification of the relevant patent. Insan Budi Maulana said, inventors or researchers in developed countries often look for “short cuts” by reading patent application information, then researching, developing, and developing or improving shortcomings, weaknesses of prior art (previous invention). This method is much faster, simpler, does not require too much money and does not need to be examined from the start.⁵ Japan applies the first-to-file rules contained in article 39 (1) of the Japanese patent law, stipulating that if there are two or more similar discovery requests submitted on different dates. The application received is the first discovery. Such regulations are the same as patent protection in German Law and European patent conventions. Section 29 (1) of the Japanese Patent Act, specifies that invention is not subject to patent protection because of the absence of novelty:

- (1) Findings known to the public in Japan or elsewhere before submission of the relevant patent application;
- (2) Findings that have generally operated in Japan or elsewhere before submitting the relevant patent application;
- (3) Findings that have been presented in a publication circulated in Japan or elsewhere prior to the submission of the relevant patent application;

Japan in providing patent protection applies many of the doctrines used by America, namely the estoppel and equivalent file wrapper doctrine in addition to the Japanese Patent Law, namely Law Number 21/1959 which also regulates the broad protection of inventions. The definition of equivalent developed by the Japanese court is the same as that adopted in the United States compared to the estoppel file wrapper doctrine. Because the Japanese legal system is based on the Civil Law tradition, the principles of good faith contained in the Japanese Civil Code are used in situations when the file wrapper estoppel doctrine is applied. From this system, what can be said to be balanced in providing protection between patents and the community is the United States system and of course Japan which does emulate the United States system. Common law doctrine concerning the protection of patent inventions is the “purposive construction” doctrine which is followed by British courts, the estoppel and equivalent file wrapper doctrine that applies in the United States which is not only followed by US courts but Japan also adopts this doctrine.⁶

The United States uses the Anglo Saxon legal system. Anglo Saxon is a legal system that is based on jurisprudence, namely the decisions of the previous hakim which later become the basis of the decisions of subsequent judges. Anglo Saxon legal systems tend to prioritize customary law, laws that run dynamically in line with the dynamics of society. The establishment of law through judicial institutions with a system of jurisprudence is considered better so that the law is always in line with the sense of justice and benefit that is felt by the community in real terms.⁷ Judges / court decisions are a source of law in the Anglo Saxon legal system. The judge functions not only as the party tasked with setting and interpreting the legal rules. Judges also play an active role in shaping the whole system of community life. The judge created a new law which became a guide-

4 Jabalnur, *Perlindungan Hak Paten Bagi Pengrajin Khas*, Jurnal HOLREV, Volume 1 Issue 2 September 2017.

5 Maulana, Insan Budi. (2000). *Penerapan Paten Sejak UU Paten No. 6 Tahun 1989 Hingga UU Paten No. 13 Tahun 1997: Pengalaman Indonesia Selama Ini, dalam Kapita Selektia Hak Kekayaan Intelektual I*. Pusat Studi Hukum UII Yogyakarta Bekerja Sama dengan Yayasan Klinik HAKI Jakarta.

6 Sutarman Yodo, *Perlindungan Paten Studi Komparatif di Ruang Lingkup di Berbagai Negara*, Jurnal Fiat Justitia Volume 10 Oktober-Desember 2016. Universitas Lampung.

7 Handoyo, Hestu Cipto, *Hukum Tata Negara Indonesia*, Yogyakarta: Universitas Atma Jaya, 2009, h. 58.

line for other judges to settle similar cases. This legal system adheres to the doctrine known as “the doctrine of precedent / *Stare Decisis*”. This doctrine essentially states that in deciding a case a judge must base his decision on the legal principles that have been in the judgment of other judges from previous similar cases.⁸

Indonesian Patent Protection

Patent protection is granted by the state on request. The request was submitted by the inventor or prospective patent holder in the form of a request for registration to the Directorate General of Intellectual Property Rights. If there is no request, there is no patent, and only the inventor or the one who receives the inventor's rights is entitled to obtain a patent.⁹ Patents must be available for each invention either in the form of products or processes in all fields of technology, provided that they meet new requirements, involve inventive steps, and can be applied industrially. Patent rights can be enjoyed without discrimination based on the place of origin of the invention, the technology field and whether the product is produced locally or imported.¹⁰

Article 3 of Law Number 13 of 2016 states that inventions that can be protected by patents are those given for inventions that are new, and contain inventive steps, and can be applied in industry. The following will explain the terms of the invention can obtain patent protection.

a. Novelty / Invention fulfills the element of renewal

An invention is considered new if the invention is not the same as the technology previously disclosed in Indonesia or outside Indonesia in writing, oral description or demonstration, or in another way that allows an expert to carry out the invention before the date of application.¹¹ The invention is considered new, if at the time of filing a patent application, the invention is not the same as the technology previously disclosed. As a renewal requirement, the notion of technological terms disclosed previously is the state of art or prior art, which includes the patent literature and not the patent literature, and not equal understanding is not just a difference, but must be seen as equal to or not the technical function of the invention beforehand.¹²

prior art includes all knowledge available in the community in the form of portrayal of actors, written or oral portrayals, use in the form of casts, sellers or offers or other means through video, or voice over the internet. prior art can be in the form of products, processes, information about inventions or related to inventions available to the community.¹³ if an invention turns out to be the same as another invention that has been granted a patent, it turns out that it is also given a patent, then the patent holder can file a patent deletion claim to the commercial court so that the other invention which is the same as the invention is deleted.¹⁴

b. The invention contains inventive steps

Provisions regarding this matter are stated in Article 7 paragraph (1) of Law Number 13 of 2016 concerning Patents which states that an invention contains an inventive step if the invention is for someone who has if the invention for someone who has certain expertise in the technical field is which is unpredictable. Containing inventive steps can also mean that the invention contains logically specific problem-solving steps and other parties who have the ability in the field of engineering do not expect the steps of the discovery.¹⁵

To determine an invention is an unpredictable matter by taking into account the expertise that exists at the time the application is submitted or that has existed at the time the application was submitted or which already existed at the time the first application was submitted in the case that the application was submitted with priority rights as stated in Article 7 paragraph (2) of Law Number 13 of 2016 concerning Patents.

c. The invention can be applied in industry

An invention in order to obtain patent protection must qualify that the invention can be applied in the industry. The invention must be produced or used in various types of industries.¹⁶ In the explanation of article 18 of Act No. 13 of 2016 concerning patents stating that if the invention is a product, the product must be able to be made repeatedly with the same quality, whereas if the invention is a process, then the process must be able to be used or used in practice. There is a reason why inventions can be applied in the industrial world because

8 Fajar Nurhardianto, *Sistem Hukum dan Posisi Hukum Indonesia*, Jurnal TAPIS Vol. 11 No. 1 Januari-Juni 2015.

9 Suyud Margono, *Hak Milik Industri dan Praktik di Indonesia*, Bogor: Ghalia Indonesia, 2011, h. 134.

10 Rahmi Jened, *Hak Kekayaan Intelektual Penyalahgunaan Hak Eksklusif*, Surabaya: Airlangga University Press, 2010, h. 116.

11 Khoiril Hidayah, *Hukum HKI di Indonesia Kajian Undang-undang & Integrasi Islam*, Malang: UIN Maliki, Press, 2013, h.95.

12 Suyud Margono, *Hak Milik Industri dan Praktik di Indonesia*, h. 137.

13 Rahmi Jened, *Hak Kekayaan Intelektual Penyalahgunaan Hak Eksklusif*, h. 119.

14 Pasal 132 Undang-undang Nomor 13 Tahun 2016 tentang Paten.

15 Yusran Isnaini, *Buku Pintar HAKI*, Bogor: Ghalia Indonesia, 2010, h. 77.

16 Endang Purwaningsih, *Hak Kekayaan Intelektual (HKI) dan Lisensi*, Bandung: Mandar Maju, 2012, h. 74.

of inventor's efforts in making discoveries in principle to facilitate human life. These findings will be useful and useful for the community, such as the realization of investment, employment and technology transfer.¹⁷

Not all inventions can be granted patent protection. Inventions that cannot be granted patents include:¹⁸

- a. The process or product of the announcement, use or implementation is contrary to the laws and regulations, religion, public order, or decency.
- b. Methods of examination, treatment, treatment and / or surgery that are applied to humans and / or animals.
- c. Theories and methods in the field of science and mathematics.
- d. Living things, except microorganisms, or
- e. A biological process that is essential for producing plants or animals, except for nonbiological processes or microbiological processes.

CONCLUSION

Patent protection in Japan and Indonesia has a different legal system. In fact, patent protection has the same protection. Determining the scope of patent protection both refers to different legal doctrines in which the United Kingdom refers to the "purposive construction" doctrine and the United States refers to the doctrine of "estoppel and equivalent wrapper files" which are followed by Japanese court judges. In this connection the influence of civil law systems is only limited in the form of extensive patent protection through laws that do not bind the courts of each country.

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¹⁷ Yusran Isnaini, *Buku Pintar HAKI*, h. 77.

¹⁸ Pasal 9 Undang-undang Nomor 13 Tahun 2016 tentang Paten.