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Implementation of Alter Ego Principles Regarding Patent Ownership by Employee Inventors in Indonesia

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Abstract:
Law Number 13 Year 2016 regarding Patents is intended to encourage the welfare of the nation and the state and create a healthy business climate through increased protection for inventors and patent holders. This is predicted to be difficult to achieve due to legal constraints in the consistency of the provisions of the provisions of patent subjects, especially regarding the position and rights of inventor employees compared to investors or employers. The contradictions between articles in this section are clearly seen when the principle of alter ego is used as a knife for analysis. Article 12 of the Patent Law automatically grants patent ownership to the employer / investor, not to the inventor's employee, regardless of the type and / or form of invention produced by the employee. The Patent Law indirectly positions inventor employees as a bargaining position, which has the potential to hamper the inventor's creativity in producing patents and creates an unhealthy business climate. Stages and research methods used are literature study and field research. The method of approach used in this study is normative juridical study. The results show that the alter ego principle has not been implemented properly in the Patent Law related to patent ownership by inventor employees in Indonesia, because Article 12 of the Patent Law defines patent ownership "automatically" to the employer / investor, regardless of whether the invention was produced using or not use resources owned or provided by the employer / investor.

Keywords*: Patents, inventor employees, alter ego, patent ownership, harmonization.*

1. INTRODUCTION

In the Minister of Law considering the letter d of Law Number 13 of 2016 concerning Patents, it is stated that, "Law Number 14 of 2001 concerning Patents is not in accordance with the development of law, both national and international, so it needs to be replaced". It was also stated in the Dictum considering the letters b and c that, "technological development in various fields has been so rapid that it is necessary to increase protection for inventors and patent holders in order to motivate inventors to improve their work, both in quantity and quality to encourage the welfare of the nation and the state and creating a healthy business climate ". In the General Explanation section of paragraph 3 of the Patent Law, it is stated among other things that, "Thus, one of the policies is directed towards ... ... respect for domestic technology". This feels somewhat different and less harmonious when seen in legal norms related to patent ownership by inventor employees. The contradiction between articles on the subject of patents is clearly seen when the principle of alter ego is used as a knife for analysis. The position of investor / employer is more favored than the position of inventor employees, including in terms of patent ownership. This condition is feared to be an obstacle to creating a good and harmonious relationship between inventor employees and employers /

investors, which in turn will hamper and even decrease the creativity of inventor employees to produce new inventions / patents. The departure of Indonesian inventor employees to neighboring countries, as happened some time ago, could have been repeated, the result of which was losses for Indonesia due to loss of potential and reliable human resources, despite the investment in human resources.

Opinions that say that the departure of Indonesian inventors is due to royalty issues, is very interesting to be questioned again for its validity, given that Article 12 paragraph (3) of Law no. 14 of 2001 concerning Patents (the old Patent Law, which has now been amended to Law No. 13 of 2016 on Patents) has guaranteed the inventor's economic right to obtain reasonable compensation with due regard to the economic benefits resulting from patents. The revolt of the researchers actually occurred after the Patent Law regulates the economic rights in the form of royalties. The author sees that the real problem is not just a matter of economic benefits (rights), but rather more fundamental is the issue of ownership of patents themselves.

Technology has made human life easier and more efficient. Products and processes resulting from the invention in the field of technology have increasingly developed their quality and quantity to meet various human lives. The increasing number of population affects the increasing needs of the number of products used to meet human needs. This was overcome by increasing the amount of capacity or quantity of production of the patent product. This condition can be overcome by increasing the quantity of production machinery and / or increasing the quantity of production section employees.

The development of the needs of human life, in addition to demanding the existence of products that are completely new technology, also requires the improvement of existing products. Completely new products or perfected products will usually be measured in terms of "excess", is it more practical, faster, more environmentally friendly, or other "more" measures. These conditions require special employees whose job is to research and study and produce certain advantages of the company's products. This further emphasizes the importance of technology research and development (R&D) in human life. Likewise, how important and strategic are the roles of researchers / inventor employees.

Research and development activities are generally carried out by certain expert researchers, who often work on research and development based on their ideas or work plans as a result of individual or group thinking, not based on ideas or work plans made by companies or employers.

Patents, like other forms / types of IPR, are the work / creation with the inventor's intellectual abilities. The principle of alter ego recognizes that the inventor and his work (patent) are a unity. There will be no work / invention / patent without an inventor. Thus, the Inventor has a natural right to the product produced by his mental labor. Patents are the intellectual work of the inventor as a form of expertise and have an element of personal reflection (alter ego) inventor. Without an alter ego a patent-protected invention will not be born.

A country will develop rapidly, progress, and become a prosperous country if its economy develops with the support and important role of science and technology. In this context, the country's economic policy must encourage investment in research and development and increase and implement human resource development programs.

2. RESEARCH METHODS

This study uses a normative juridical approach method by examining the provisions of the Indonesian Patent Law related to patent ownership by inventor employees. The research specifications used are analytical descriptive, describing the arrangements for ownership of patents by inventor employees that will be analyzed with the principle of alter ego. The aim is to obtain a comprehensive and systematic picture of the application of the principle of alter ego and the achievement of the goal of

establishing the Patent Law related to the norm of patent ownership by inventor employees.

Stages of research by examining library materials or secondary data that includes primary, secondary and tertiary legal materials. Primary legal materials include: the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2016 concerning Patents. Secondary legal materials include: a variety of literature / books related to research material, various seminar results, workshops, symposiums and research, journals, articles relating to research issues, and interviews. Tertiary legal materials, for example Legal Dictionaries, Large Indonesian Dictionaries, English-Indonesian Dictionaries, Encyclopedias, and print and electronic media.

Data collection techniques used by the author in writing this thesis through the study of documents / literature study of secondary data and interviews. The data analysis method used in this writing is a qualitative juridical method that is by way of inventorying, systematically compiling, linking with each other related to the problems studied based on the principle. That is, whether the legislation studied has implemented the principle correctly so that it is able to achieve the objectives of its formation.

3. RESULTS AND DISCUSSION

Amendment of Patent Law from Law No. 14 of 2001 became Law No. 13 of 2016, one of which was done with the consideration that, "technological developments in various fields have been so rapid that it is necessary to increase protection for inventors and patent holders in order to motivate inventors to improve their work, both in quantity and quality to encourage the welfare of the nation and the state as well creating a healthy business climate ".

Inventor as the most important human resource asset in the creation of inventions in technology, based on the principle of alter ego has the highest place or position in this matter because it is the main key to the creation of new technology that is able to answer the various needs of life (and death) of humans to achieve their welfare. The technology produced by the inventors is a personal reflection that has a very close relationship with the inventor, because the inventor devotes all his intellectual power to the maximum based on his personal intellectual reasoning for and answers to technical life problems.

Patent Law No. 13 of 2016 as a new regulation in the field of intellectual property in the form of inventions in the field of technology, is expected to be able to see various weaknesses of the old Patent Law, particularly related to the regulation of patent ownership by inventor employees in Indonesia. However, when examined in depth, the reality is very far from expectations. Arrangements related to patent ownership by inventor employees, are apparently still the same as the three money stipulated in the old Patent Law.

Article 10 of Law No. 13 of 2016 concerning Patents as the main article governing patent ownership, in paragraph (1) states that, "The party entitled to obtain a Patent is the Inventor or Person who further receives the relevant Inventor's rights." the right to obtain a Patent is an Inventor ... ", indicating that the Inventor as the party who truly devotes his intellectual abilities in producing an invention in the field of technology, is highly valued and has the highest position in his legal relationship with the invention that is produced. This is in line with the principle / principle of alter ego. In other words, in principle other than the Inventor, the other party is declared not entitled to a patent on an invention produced by the inventor.

The phrase "... or a person who further receives the right of the relevant Inventor" in Article 10 paragraph (1) of the Patent Law, means that no more than 1 (one) party can obtain a patent, only 1 (one) party. This understanding is strengthened by the use of the conjunction "or" between the first phrase and the second phrase in Article 10 paragraph (1) of the Patent Law. Thus, it can be said that in terms of patent ownership, it is only possible that the patent is owned by 1 (one) party only.

Other provisions which are in line with or reinforce that a patent holder may only be owned by 1 (one

party) is the provisions of Article 1 Number 6 of the Patent Law, which states that, "Patent Holder is Inventor as the Patent owner, the party that receives the rights to the Patent from the Patent owner. , or other party who receives further rights to the Patent that is registered in the general register of Patents. "These provisions can mean that the patent holder is one of the following parties:

1. Inventor as the owner of the patent; or
2. The party who receives the patent rights from the Inventor as the patent owner; or
3. Other parties who receive further patent rights are registered in the public register of patents.

The use of the conjunction phrase "or" in the provisions of Article 1 number 6 and Article 10 paragraph (1) can mean that the subject of the law regulated is facultative (optional), and not cumulative (includes all or can be more than one party). Thus, if the understanding is considered wrong, then the use of the conjunction phrase "or" becomes inappropriate and must be replaced by the conjunction phrase "and / or".

Another problem is the pronouncement of legal subject pronouns which are inappropriate, confusing, and unusual in showing the legal relationship to intellectual property. The term "owner", "holder", "inventor" has been confused and does not indicate precisely the legal relationship that occurs between the subjects of the patent.

Harmonization of horizontal law can be done by comparing the terminology of legal subjects regulated in Law No. 20 of 2016 concerning Brand and Geographical Indications. In the Trademark Law, the legal subjects regulated therein related to the process of ownership and proper use of the mark have been formulated in a legal relationship and are not confusing. The mention of legal subjects is carried out chronologically according to the stages / conditions of legal relations and legal actions / legal events that occur / are carried out. The phrase "applicant" is used to refer to the party who wishes to register the mark, while the phrase "registered trademark owner" is used to refer to the trademark owner who has obtained a certificate of trademark rights. In addition to the two phrases, the phrase "Other party" is used to describe the legal relationship that occurs between the trademark owner and other legal subjects, for example the recipient of a trademark license.

In the Patent Law, the mention of patent subjects can be simplified by taking lessons and similarities from those stipulated in the Trademark Law. Mention of patent law subjects in the trademark registration application process, can use the term "Applicant", while patent law subjects who have obtained their patent rights based on registration, can be referred to as "Patent Owner". Mention of the legal subject "inventor" should not be used in the provisions relating to registration, but only used to designate the party with the intellectual ability to produce inventions. The term or phrase "Patent Holder" should be omitted because it causes confusion. It is probable that the term "Patent Holder" is affected by legal subjects in the area of copyright, namely "Copyright Holder". It is wrong to harmonize the mention of legal subjects between the Patent and Copyright fields, given that the two fields / forms of intellectual property have fundamental differences related to legal protection, especially regarding the protection system. Patents are protected based on registration because the protection system is constitutive, whereas copyright is not based on registration because the protection system is declarative - automatic protection - non formality.

Provisions relating to patent ownership by inventor employees in Indonesia are contained in Article 12 of Law no. 13 of 2016 (which turns out to be the exact article number as contained and regulated in the old Patent Law). Article 12 of the Patent Law states as follows:

(1) A Patent Holder of an Invention produced by an Inventor in an employment relationship is the party that provides the work, unless agreed otherwise.

(2) The provisions referred to in paragraph (1) also apply to inventions produced, both by employees and workers who use data and / or facilities available in their work.

(3) Inventors as referred to in paragraph (1) and paragraph (2) are entitled to get Rewards based on agreements made by the employer and Inventor, taking into account the economic benefits obtained from the said Invention.
(4) Rewards referred to in paragraph (3) can be paid based on:
a. certain amount and all at once;
b. percentage;
c. a combination of a certain amount and all at once with prizes or bonuses; or
d. other forms agreed by the parties.
(5) In the event that there is no conformity regarding the method of calculation and determination of the amount of the Rewards, the parties may submit a lawsuit to the Commercial Court.
(6) The provisions referred to in paragraph (1), paragraph (2), and paragraph (3) do not nullify the Inventor's right to have his name included in the Patent certificate.

The provision of Article 12 paragraph (1) is very contrary to the principle of alter ego because it has not placed the inventor in his highest position as the subject of law producing inventions in the field of technology. Establish the inventor regulated in Article 12 paragraph (1), if it cannot be said to degrade the inventor than the investor (the employer), then at least it has equalized or equalized the position of the inventor with the investor. Based on the understanding previously stated that the "patent holder" as regulated in Article 1 number 6 is facultative not cumulative, so it must be understood that the understanding is only 1 (one) party, then the provisions of Article 12 paragraph (1) of the Patent Law prefer that the patent holder is not an inventor but an investor.
Article 12 paragraph (1) and paragraph (2) positions the employee / research employee / researcher as a party that has a lower (sub-ordinate) position compared to the employer (investor). This is very contrary to the principle of alter ego which actually gives a high position and appreciation to the employees / researchers / researchers by stating that it would not be possible and the birth of a patent without the creation of employees / employee researchers / researchers as inventors in the inventor's activities.
Employee / employee researchers / researchers must be treated as workers who have a position and coordinative nature with employers. This is because employees of researchers / researchers have special expertise that is not owned by employers or other workers who are sub ordinative. Researchers / researcher employees have distinctive, strong, and differentiating and determining abilities in their fields (most characteristic). Thus, the employee / researcher / researcher employee position is at least equal to that of the employer. This equality in rank and position is implied in the phrase "unless otherwise agreed" contained in the end of Article 12 paragraph (1) of the Patent Law.
Research and development activities mainly require workers or employees with certain qualifications as researchers, which are different from production activities that only require ordinary employees who are subordinate. Research researchers who produce ideas or research plans themselves are workforce that is coordinative or equal to the owner of the company or employer.
The phrase "unless otherwise specified", in the end of sentence Article 12 paragraph (1) also confirms that, through the provisions of the Law, the State is in favor of the employer (investor) by granting patent rights "automatically" to the employer (investor) by prioritizing employees / researchers / researchers (inventors). This provision once again ignores the position and authority of the employee / research employee / inventor who, according to the alter ego principle, has a natural right (natural right) to the resulting patent. This provision distorts the position and authority of the employee / researcher employee / researcher in terms of the bargaining position (bargaining position) in making contracts / agreements to transfer patent rights. In fact, patents that "automatically" must belong to investors include patents generated from inventors' work inventions that do not use data and / or company / employer

(investor) data. As such, all types of inventions produced by inventor employees, both those using employer / investor resources and those produced without employer / investor resources, are "automatically" directed in the Patent Law to be owned by investors.

In line with this, the provisions of Article 10 paragraph (1) of the Patent Law state that those entitled to obtain a patent are the inventors or those who further receive the rights of the relevant inventors. Related to this problem, based on this provision, the acquisition of patent rights from the employee of the researcher / researcher as the inventor, must be preceded by the transfer of rights in advance by the employee of the researcher / researcher as the inventor to the employer.

The existence of data and / or facilities as regulated in Article 12 paragraph (2), which is available from the employer is not the main factor of the birth of a patent, but the existence of the inventor's idea is the main one. With the data and / or makeshift facilities belonging to the employee / research employee / researcher, specific problem solving activities in the technology sector can also be carried out. Likewise, the existence of data and / or facilities available to other employers can also be used by research employees / researchers / researchers to produce patents. Therefore, the employer's data and / or facilities are not the main factors or factors that are unique, strong, and distinguish and determine (most characteristic) in giving birth to patents. Creativity is the determining factor that gives the character or reflection of the creator's personality. Conversely, the creativity of a work is a reflection of the creator's personal creativity.

The provisions of Article 12 paragraph (6) further indicate the disharmony in regulating the subject of patents in the Patent Law in Indonesia. The article states that the provisions referred to in paragraph (1), paragraph (2), and paragraph (3) do not abolish the inventor's right to keep his name on the Patent Certificate. This provision is confusing, because if the patent is owned by the employer as regulated in paragraph (1), the employer should be called an inventor, not an employee / researcher / researcher employee. Likewise, the provisions in paragraph (3) which still refer to the employee / researcher / researcher as inventors are entitled to receive a reasonable reward by taking into account the economic benefits obtained from the invention. Both of these provisions, Article 12 paragraph (3) and paragraph (6), seem to reaffirm the transfer of rights of employees / researchers / researchers as inventors to the employer, while the formulation of the provisions of Article 12 paragraph (1) and paragraph (2) provides ownership rights automatically to the employer (investor).

Japan makes strict and clear regulations regarding ownership of patents that favor the research staff / researchers / researchers and applies the principle of alter ego appropriately. Japan is called the "Motherland of Invention" because it has the highest number of patents in the world, 1,200 patents for every 1,000 inhabitants. Higher than Switzealand (500 patents for every 1,000 inhabitants) and America (350 patents for every 1,000 inhabitants). In 2002 Japanese Prime Minister Koizumi declared Japan as a nation based on IPR (Nation Based on IP).

Japanese Patent Law is Law No. 121 of 1959 which has been amended several times (revised April 1, 2005, and April 1, 2019). Regarding patent ownership, Article 35 paragraph (1) of the Japanese Patent Law states as follows:

"(1) An employer, a juridical person or a national or local government (hereinafter referred to as" employer, etc. "), where is an employee, an officer of the juridical person, or a national or local government employee (hereinafter referred to as "employee, etc.") has obtained a patent for an invention which, by the nature of the said invention, falls within the scope of the business of the said employer, etc. and was achieved by an act (s) categorized as a present or past duty of the said employee, etc. performed for the employer, etc. (hereinafter referred to as "employee invention") or where a successor to the right to obtain a patent for the employee invention has obtained a patent there

for, shall have a non-exclusive license on the said patent right. "

Based on these provisions, the position of an employee is recognized as equal and may even be greater than the employer in terms of acquisition or ownership of patents. With the employee's position recognized as the owner of the patent rights, the employee has the authority to transfer or grant his patent rights to other parties, including the employer. An employee who is creative and innovative and has an invention that is included in the definition of "employee invention", is given the position of patent owner and can give a non-exclusive license to the employer / company. In other words, the inventor's employee is the owner of the patent, while the employer / company is the party who receives the licensing rights from the inventor's employee. This arrangement is very much in line with the alter ego principle / principle, bearing in mind that it would not be possible to create a patent if there were no inventor employees who were creative and innovative.

Importantly and most importantly, the position of the inventor's employees is increasingly confirmed by the recognition of the inventor's employee rights to transfer ownership rights based on agreements or company regulations made before the invention is produced. Article 35 paragraph (2) of the Japan Patent Act states that:

"(2) In the case of an invention by an employee, etc., any provision in any agreement, employment regulation or any other stipulation providing in advance that the right to obtain a patent shall be obtained by an employer, etc., that the patent rights for any invention made by an employee, etc. shall vest in the employer, etc., or that a provisional exclusive license or exclusive license for the said invention shall be granted to the employer, etc., shall be null and void unless the said invention is an employee invention. "

These provisions expressly prohibit and declare null and void any labor / company agreements or regulations or other provisions stating that the resulting patent by the employee becomes the property of the employer, unless the resulting invention is included in the understanding or constitutes an "employee invention" as referred to in Article 35 paragraph (1) of the Japanese Patent Law. Therefore, other inventions which are not included in the definition of "employee inventions", cannot be transferred to the employer / company based on the contract or company regulations made before the patent is produced. Company contracts or regulations made before a patent is produced by an inventor's employee, which is not an "employee invention", are declared null and void.

The provisions of Article 35 paragraph (1) and paragraph (2) of the Japanese Patent Law are clearly very different from the formulation of Article 12 paragraph (1) and paragraph (2) of the Indonesian Patent Law, because it is explicitly stated that it is Employees who can grant their patents to the grantor work, not vice versa. It is also stipulated that the granting of patent rights or transfer of patents from workers to the employer must be accompanied by respect for economic rights for workers through payment of a fair amount of money in accordance with the commercial value of the patent.

Based on these things, it can be said that the Japanese Patent Law more clearly and firmly applies the principle of alter ego by assigning employees as patent owners, prohibiting work agreements or other regulations that automatically determine patent ownership for employers, as well as granting power and authority to employees to grant or transfer the patent rights to the employer.

4. CONCLUSION

The principle of alter ego has not been applied appropriately in the regulation of patent ownership based on Article 12 paragraph (1) and paragraph (2) of the Patent Law in Indonesia, because the provision is more favorable to investors (individuals, private companies, or government agencies providing employment) inventor (employee, researcher employee or researcher), by giving ownership rights automatically to investors

regardless of whether the invention produced by the employee uses investor facilities and infrastructure. The concept of regulating patent ownership that better reflects the principle of alter ego in Indonesia is a concept that provides ownership of patents automatically to research employees / employees, while still opening opportunities for ownership transfer to investors based on written agreements.

REFERENCES

1. Achmad Zen Umar Purba, TRIPs Agreement and Some Strategic Issues, Jakarta-Bandung, FH UI and Alumni Publishing Board, 2011
2. Eddy Damian, Copyright Law, Bandung, Alumni, 2014
3. http://www.arrahmah.com/read/2009/08/04/5230-gaji-kecil-banyak- researcher-indonesia-hengkang-ke-luar-negeri.html;
4. http://www.biotek.lipi.go.id/index.php/publication/berita/biotek/488-periset-pilih-hengkang;
5. http://www.kompasiana.com/myintermezo.blogspot.com/para-periset-indonesia-hengkang-ke-malaysia_550025f4a333115b7450fb5e#;
6. Kamil Idris, Intellectual Property, A Power Tool for Economic Growth, WIPO, Second Edition, June, 2003
7. See Japan Patent Office, Asia-Pacific Industrial Property Center, Japan Institute of Invention and Innovation, Theory and Practice of Employee's Invention, JPO, 2006
8. Muhamad Amirulloh, "Craving for Patent Regulation Encouraging Inventor Employee Creativity in Indonesia", Regarding West Java Online, October 22, 2015, in http://www.seputarjabar.com/2015/10/membakan-regulasi-paten-pendorong.html
9. Muhamad Djumhana and R. Djubaedillah, Intellectual Property Rights, History, Theory and Practice in Indonesia, Citra Aditya Bakti, Bandung, 2003
10. Indonesian Law No. 13 of 2016 concerning Patent
11. Japanese Patent Law No. 121 of 1959, rev 1 April 2019