

Comparison Between the Provision of Fair Compensation in the Implementation of Patents by the Government and Compensation for Procurement of Land for Public Interest

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ABSTRACT

Property rights such as land and intellectual property can be taken over in the public interest. There is an attempt to undertake conversations or debate that includes landowners in establishing the amount of compensation due to property purchase in the public interest, as governed by Act Number 2 of 2012 Governing Land Procurement for Development in the Public Interest. In implementing patents by the government for social or public interests as regulated in Act Number 13 of 2016 concerning Patents, there is no regulation regarding deliberation or negotiation in determining reasonable compensation if the government implements a patent. In determining compensation in the form of reasonable compensation for intellectual property, especially patents, the government is carried out without considering the opinion of the patent holder as the owner of the right. With the negotiation or deliberation process, it is hoped that justice will exist for all parties, both for the public interest and the patent holder as the owner of "equality before the law" property rights. Land as a tangible asset, which is the property of tangible objects and is private, also has a public aspect. Property rights to land have a hereditary nature, the strongest and the fullest, but they also have a social function, just like Intellectual Property. There are similarities between material ownership rights to intellectual property and land ownership rights; namely, both are individual property rights. However, it can be seen that the arrangement between the two property rights, when used for the public interest (social interest) by the Government, is unequal.

Keywords: *Fair compensation, Government Patent Implementation, Patent, Land Acquisition, Public Interest, compensation.*

1. INTRODUCTION

The patent act has accommodated "trips safeguards," including government use of patents by article 31 of trips. the implementation of patents by the government justifies or permits the implementation of patents without the patent holder's permission for specific conditions. Article 109 stipulates that: "the implementation of patents by the government is for the defense and security of the state and or for very urgent needs." In the following article, article 115 stipulates that: "the implementation of patents by the government is carried out by providing reasonable compensation to the patent holder." Then, if the patent holder does not agree with the amount of compensation determined by the government, the patent holder may file a lawsuit to the commercial court (article 117). Indonesia's regulation of fair remuneration is not

sufficient because neither article 109 nor article 117 of the patent act provides for a negotiation or deliberation process in determining the fair remuneration as compensation for the implementation of patents by the government.

Philosophically, an intellectual work that someone has produced must be awarded a balance for his creative efforts in finding intellectual property. Creative people who have spent energy, time, money, even sacrificed togetherness with family should obtain back what they have spent. Creative development by providing incentives for creative people aims to encourage helpful research and development activities to create new intellectual works. furthermore, these new intellectual works can eventually be used by the wider community.

Protection of property rights, especially intellectual property, should be able to provide welfare for the community. In terms of patent protection, legal protection is reserved for inventors and patent holders and the public and the public interest at large. This is evident from the existence of "the trips safeguard," which is harmonized into national legislation aimed at protecting the community and or the public interest at large. On the one hand, the public interest has been protected by the patent law. On the other hand, this law has not been optimal in accommodating the interests of both patent holders and inventors because there are no adequate appreciation for their efforts in terms of time, finances, energy, and thoughts if an invention or patent is taken over. In this case, the government must strike a balance between the community's and the patent holder's interests. Fair, in this case, means not arbitrary, impartial, and impartial. Justice is essentially relative, where the measure of justice felt by everyone is not the same. what is fair to one person is not necessarily fair to another. When does one have to assert that he is doing justice, or when one asserts that the justice required. This must be relevant to public order where a scale of justice is recognized [1].

If the analogy is the same as land objects with a personal aspect and a public aspect, intellectual property is the same. intellectual property, if necessary, for some issues and conditions, its implementation can be carried out by the government. however, there has been no regulation regarding deliberation efforts regarding the implementation of patents by the government. based on the above review, the philosophical foundation of patent protection as part of intellectual property protection, in general, is an appreciation of property rights as individual rights that are not separated from humans. humans are born free and equal in the eyes of natural law, which prohibits anyone from eliminating or destroying life, freedom, and property rights. In the fourth amendment to the Republic of Indonesia's constitution of 1945, this guarantee is implied, especially in articles "28 c, 28 d, 28 g, and 28 h". social justice must also include the goal and prosperous state equally in all levels of society based on kinship. Without justice, the state is nothing but an organized group of robbers. based on this background, the formulation of the problem can be formulated as follows: what is the justification for setting up patents as property rights in Indonesian laws and regulations? how is the comparison between providing compensation for the implementation of patents by the government and land acquisition for the public interest?

2. METHOD

The scientific merit of a conversation and problem-solving session on the legal issue under consideration may be determined by the method used. This study employs normative legal research, as the normative element of legal science is one of its distinguishing features. Qualitative research is a term used to describe normative legal research. Because law is a unique

discipline, normative legal research should not be confused with qualitative legal research [2]. This research limits itself to one Law and several laws related to the comparison between the implementation of patents by the government and land acquisition, both of which are intended for the public interest.

3. RESULT AND DISCUSSION

3.1 *Justification of Intellectual Property as an Object*

The emergence of Intellectual Property Rights (IPR) as a topic of discussion at the national, regional, and even international levels cannot be separated from the World Trade Organization (WTO) formation. One of the essential parts in the document establishing the WTO is Appendix 1C, which deals with Trade-Related Aspects on Intellectual Property Rights (TRIPs) [3].

Intellectual Property Rights are rights that originate from the consequences of the brain's thinking, which result in a product or procedure that is helpful to humans. IPR regulates works that emerge or are born as a result of human intellectual talents, granting the right to enjoy the fruits of intellectual innovation [4] economically.

Intellectual property rights are derived from the English word intellectual property rights. In material law, rights are a portion of intangible or immaterial substances. Article 499 of the Civil Code stipulates that objects comprise both things and rights. Article 503 of the Civil Code further states that objects are made up of both physical and immaterial elements. Thus, under Article 503 of the Civil Code, the rights in Article 499 are intangible goods.

Object (thing) is *zaak* in Dutch. According to Article 499 of the Civil Code, what is defined as *zaak* is all goods and rights. Furthermore, it is known that *zaak* is part of the wealth (*vermogensbestanddeel*). Whereas what objects are meant in the legal sense is everything that is the object of property rights [5]. The rights attached to an object are referred to as material rights (*zakenlijk recht*), which is a right that gives direct power over an object, which can be defended against everyone [6]. Both tangible objects and intangible objects can be objects of rights. The right to tangible objects is called an absolute right to an object, while the right to an intangible object is called an absolute right to a right. [7].

Intellectual property is an award of property rights as personal rights. This right is given by the state to creative people for their creations or findings and is the perfect right in material rights, namely property rights. However, unlike other property rights, intellectual property rights are impure. This is due to the limitation of intellectual property rights, among others, by the length of time for legal protection. If the creation is needed for the public interest, the state may require the rights holder to permit other people/or the state to use their rights, even though they are given compensation [8].

Meanwhile, the definition of property rights based on Article 570 of the Civil Code is the right to enjoy the use of an object freely and act freely on that object with complete sovereignty. By controlling the object based on property rights, a person has the right to enjoy the object safely without interference from other parties. This also implies that the property owner who has full sovereignty over the object also has the right to defend his rights from others. If another person takes the object controlled by the property without the right owner's permission, then the right owner can demand the object's return (Article 574 of the Civil Code) [9].

3.2 Comparison of Compensation for Land Acquisition and Compensation for Patent Implementation by the Government

Because it is governed in law, the regulation of land acquisition for development in the public interest has a strong legal foundation since the adoption of Act Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. The word "land acquisition" is defined in Article 1 point 2 of the Law as "the activity of giving land by offering suitable and fair remuneration to the entitled party." The proper party is the one who owns or controls the land being acquired. Furthermore, land, above-ground and subsurface space, buildings, plants, and objects connected to land or other things that may be appraised are the objectives of land acquisition. While ensuring the legal interests of the entitled parties, land procurement for the public interest strives to provide land for the execution of development to increase the welfare and prosperity of the country, state, and society.

Land procurement consists of three (three) elements: first, land acquisition activities in the context of fulfilling development land for the public good; second, compensation for those harmed by land acquisition activities; and third, the transfer of legal relations from landowners to other parties [10]. Land purchase may be divided into two categories: land acquisition for government reasons and land acquisition for private purposes. Land purchase by the government is separated into two categories: public interest acquisition and non-public interest acquisition (e.g., commercial interests). Then, land acquisition for private interests can also be divided into commercial and non-commercial interests, i.e., those that benefit the public good or are used in the development of public and social amenities [11].

Protection of property rights, especially Intellectual Property, should be able to provide welfare for the community. In terms of patent protection, legal protection is reserved for inventors and patent holders and the public and the public interest at large. This is evident from the existence of "the TRIPs Safeguard," which is harmonized into national legislation aimed at protecting the community and or the public interest at large. On the one hand, the public interest has been protected by Act Number 13 of 2016 concerning Patents. On the other hand, this Law has not been optimal in

accommodating the interests of both Patent Holders and Inventors because there are no adequate appreciation for their efforts in terms of time, finances, energy, and thoughts if an invention or patent is taken over. The government, in this case, must act fairly between the interests of the community and the interests of the patent holder. Fair, in this case, means not arbitrary, impartial, and impartial.

Intellectual property can produce knowledge, but not all knowledge is something that can help humans. Science must be used wisely and must be proportional to the values of goodness and humanity. Science can produce technology that gets patent protection from the state, which can then be applied to the community. The development of wise knowledge should be produced so that the community can widely use it. The technology created by a scientist or even a person who is not a scientist will then be faced with two interests, namely personal interests and community or social interests. Therefore, scientists, inventors, or inventors must be instilled in the thought that they have an academic responsibility and a moral responsibility for the things they have produced with the conditions in society.

Patent, an intangible asset, and land as a tangible asset besides having a private nature, also has a public aspect. Land which is privately owned can also be used for the development of public interest. Likewise, Intellectual Property, especially patents, which are also private property rights of the patent holder, can serve social functions if the public interest requires it. The same is the case with intellectual property rights, and land is also the owner's personal property. Intellectual property is an intangible asset, while the land is a tangible asset with two sides, namely the public and private sides.

In contrast to Intellectual Property, in the event of land purchase for public development, there are efforts to carry out negotiations or deliberation even to the stages of procedures or mechanisms in determining the amount of compensation due to land acquisition. The government establishes an Appraisal Team to assess the land in question. The assessment results become the basis for deliberation between the government and the community as landowners. In addition, the outcomes of the discussion serve as the foundation for pay. However, if an agreement is not reached, the people who feel aggrieved can file a lawsuit in the District Court.

The government should provide efforts for negotiation or deliberation by involving the Patent Holder in determining a reasonable fee before the objection is submitted to the Commercial Court. This creates an empty norm. In this case, the government should be represented by the Director-General of Intellectual Property Rights or related agencies to provide negotiation efforts before determining fair compensation for the implementation of patents by the government. If a win-win solution is not found between the government and the patent holder, an attempt is made to file a lawsuit to the Commercial Court. Do not let the absence of

adequate negotiation efforts as well as legal certainty over such legal remedies. Patent holders or inventors feel that they do not get the legal protection to appreciate and appreciate their works. They no longer trigger them to make new inventions or even register their work in other countries considered more representative of their work.

There is a general basic principle in the Government's takeover of private property assets that "No private property shall be taken for public use without just and fair compensation." To avoid damages to the Property Owner, the state's execution of the transfer of ownership of personal assets should adhere to the concept of fairness. Adequate legal protection can spur creative people to continue to produce new Intellectual Property. By producing new inventions, the community will also feel the benefits because they can utilize and use these inventions.

The government may implement a patent owned by a patent holder for the public and the public interest. The urgency of the implementation of patents by the government is carried out for specific reasons as regulated in Article 109 paragraph (1) of the Patent Act, which stipulates that: "The government may implement patents in Indonesia on its own for reasons of national defense and security; and urgent needs for the benefit of society." However, the protection of the Patent Holder is also essential to be appointed as a study because if the interests of the Patent Holder are neglected, it is feared that it will reduce or even eliminate new inventions, which will eventually harm the public interest. Therefore, protection is not only for the public interest and the general public but also synergizes to provide a harmonization and protection for the Patent Holder's interests.

John Locke argues that there are two types of property rights, firstly, God-given property rights, and secondly, property rights based on the efforts of thought and work. God-given property rights can be said as natural rights/natural rights owned by every person/individual which are universal (broad), which means general in nature, for example, the right to live, have an opinion, work, have something, and others. Civil acquisition implies that property rights can be obtained according to the social, economic system. The acquisition of rights based on civil acquisition is based on the *sum cuque tribuere*, which means giving everyone what they should be entitled to [12]. This principle guarantees a person's ownership of the object he has obtained.

The Government can execute its patents in Indonesia based on the following considerations, according to Article 109 of Act Number 13 of 2016 respecting Patents: a. pertaining to national defense and security; or b. a pressing requirement for societal benefit. While the allotment of land acquisition is regulated in Article 3 of Act Number 2 of 2012 concerning Land Procurement for Development in the Public Interest, which states that "Land Procurement for Public Interest aims to provide land for the implementation of development in order to

improve the welfare and prosperity of the nation, state, and society by continuing to guarantee the legal interests of the Entitled Party by continuing to guarantee the legal interests of the Entitled Party."

Article 115 of Act Number 13 of 2016 concerning Patents on the implementation of Patents by the government for state defense and security and very urgent needs for the benefit of the community are carried out by providing reasonable compensation to the patent holder. The Government shall provide reasonable remuneration to the Patent Holder as compensation for implementing the patent by the Government. In the meanwhile, Article 9 of Act No. 2 of 2012 Governing Land Procurement for Development in the Public Interest states that the Implementation of Land Procurement in the Public Interest considers the balance between development and community interests. In order to purchase land for the public good, adequate and reasonable pay is paid. The concept "fair" appears in the provision of compensation in land acquisitions for the public good. The government has attempted to strike a compromise between the public interest and the rights of the landowner as the entitled party while purchasing property for the public good. In contrast, in the provision of reasonable compensation in the implementation of patents by the government, there is no "fair" phrase.

The government itself determines compensation for implementing a patent based on Article 115 or a Third Party appointed by the Government to implement the patent as stipulated in Article 116 of the Patents Act. Meanwhile, in land acquisition, Article 31, Article 34, and Article 37 of Land Procurement for Development in the Public Interest Act stipulates that "the Land Agency determines the Appraiser by the provisions of the legislation. After being determined by the Appraiser, the Compensation Value based on the results of the appraiser's assessment becomes the basis for deliberation to determine compensation. The next stage is that the Land Agency conducts deliberation with the Entitled Party within a maximum period of 30 (thirty) working days since the results of the appraisal from the Appraiser are submitted to the Land Agency to determine the form and/or amount of compensation based on the results of the Compensation assessment".

Legal efforts are also provided for Rightsholders in Patents and Patents if the Patent Holder does not agree with the amount of compensation given by the Government as referred to in Article 115 of Act Number 13 of 2016 concerning Patents, the Patent Holder may file a lawsuit to the Commercial Court. A lawsuit must be filed within a maximum period of 90 (ninety) days from the date of sending a copy of the Presidential Regulation concerning the implementation of Government Patents. If the Patent Holder does not file a lawsuit as referred to in paragraph (1), the Patent Holder is deemed to have received the amount of compensation that has been determined. In land acquisition, the Entitled Party may submit an objection to the local district court within 14 (fourteen) working days following the discussion on the

determination of compensation if there is no agreement on the form and/or amount of compensation.

4. CONCLUSION

Intellectual property rights are derived from the English word intellectual property rights. In material law, rights are a portion of intangible or immaterial substances. Article 499 of the Civil Code stipulates that objects comprise both things and rights. Article 503 of the Civil Code further states that objects are made up of both physical and immaterial elements. Thus, intellectual property rights, especially patents, can be classified in Article 499 and Article 503 of the Civil Code. The government itself determines compensation for implementing a patent based on Article 115 or a Third Party appointed by the Government to implement the patent as stipulated in Article 116 of Act Number 13 of 2016 concerning Patents. Meanwhile, in land purchase, Articles 31, 34, and 37 of Act No. 2 of 2012 Concerning Land Procurement for Development in the Public Interest state that the appraiser is chosen by the land agency based on the legislation's stipulations. The Compensation Value based on the outcomes of the appraiser's evaluation forms the foundation for consideration to decide compensation when it is determined by the Appraiser. The Land Agency then conducts deliberation with the Entitled Party within a maximum of 30 (thirty) working days after the appraiser's results are submitted to the Land Agency in order to establish the form and/or amount of compensation based on the Compensation assessment's conclusions. As a result, the right holder is involved in calculating compensation in land acquisitions for the public good.

REFERENCES

- [1] Basic, S. 1984. *Civil Law*. Jakarta: Intermasa.
- [2] Hadjon, P. M., Djatmiati, T. S. 2005. *Legal Argumentation* Yogyakarta: Gadjah Mada University Press.
- [3] Hassim, R. A. 2009. *Compilation of the Intellectual Property Rights Consultation Rubric*, Jakarta: RAH & Partners Law Firm.
- [4] Muhammad, A. 1990. *Indonesian Civil Law*, Bandung: Citra Aditya Bakti.
- [5] Muhammad, A. 2007. *Economic Law Study of Intellectual Property Rights*. Bandung: Citra Aditya Bakti.
- [6] Sembiring, S. 2002. *Procedures and Procedures for Obtaining Intellectual Property Rights in the Field of Copyright, Patents and Marks*, Yrama Widya, Bandung.
- [7] Syah, M. I. 2007. *Basics of Land Acquisition for Public Interest*, Jakarta: Jala Permata Aksara.
- [8] Sumadi, P. S. 2017. *History of Law and Future Law of Property and Contracts*, Publication and Documentation Unit of the Faculty of Law Universitas Udayana, Denpasar.
- [9] Santoso, A. 2012. *Law, Morals and Justice*, Jakarta: Kencana Prenada Media Group.
- [10] Wesna, P. A. S. 2020. *Patent Law (Theories of Patent Protection as Exclusive Rights and Amendments to Act 13 of 2016 concerning Patents in Act Number 11 of 2020 concerning Job Creation)*. Malang: Literasi Nusantara.