

Patent Protection For Micro, Small and Medium Enterprises (MSME) Inventions in Indonesia

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ABSTRACT

Patent ownership, especially for inventions produced by Indonesian MSMEs, can help increase MSME competitiveness through research and development of new products. In addition to increase competitiveness, the use of patents will also increase the selling value and indirectly have the potential to develop the production of MSMEs themselves and stay competitive in the domestic market and export market. The problems are how MSME inventions as the subject of granting patent rights and how is the legal protection for MSME inventions according to Law Number 13 of 2016 about Patents. This research uses a normative juridical approach using a descriptive analytical method which aims to explain, describe and correlate legal regulations and theories with the problems that occur. The result of this research indicates that legal protection of MSMEs inventions can be carried out by first registering the invention to obtain legal force. Law Number 13 of 2016 about Patents give complete the previous law weaknesses especially concerning preventive protection includes registration procedure and registration fee through online registration system (*e-filing*).

Keywords: Protection, Patents, Invention, MSMEs.

1. INTRODUCTION

Recently, the appreciation for the result of knowledge, art and culture is accommodated through granting of exclusive rights for inventors/opinions (*uitvinder*)^[1], that is called as intellectual property rights (hereinafter referred to as IPR). Indonesia has regulated IPR through various laws. The various arrangements regarding IPR also function as a complement to Article 5 paragraph (1),^[2] Article 20 paragraph (2) ^[3] and Article 33 ^[4] of The Constitution of the Republic of Indonesia year 1945 and Law Number 7 of 1994 about the ratification of *Agreement Establishing the World Trade Organization* (Approval for the establishment of the World Trade Organization).^[5] on an attempt to give legal protection to the inventors, the government has published Law Number 14 of 2001 about Patents and has been updated through the Law Number 13 of 2016 about Patents. ^[6]

Article 28C paragraph (1) of the Republic of Indonesia Constitution year 1945 is closely related to the patents` regulation. It`s because the patent is the result of human intellectual skill exercise which is sourced from the knowledge and technology

development as the invention or the inventions in the field of new technologies that have inventive steps and are applied in the industrial field. It is the country`s responsibility to give legal protection to the inventor or the patent owner so the invention or patent can give benefits to the wide community and improve the life quality and prosperity of the inventors. The importance of legal protection and recognition to the inventor is the real form for the country to increase state prosperity and life quality of the inventors. Through the protection and recognition, the country can increase the inventor ability to produce inventions and the rise of another inventors.

The patent application is not working maximally and effectively because the technologies that want to obtain patents usually are only for the technology exhibition which is held by certain institutions or departments. It`s rarely the inventions are functionalized by the industrial sector, especially that related to the Micro, Small, and Medium Enterprises (hereinafter referred to as MSMEs).

There is a concern that it will fail when using domestic technology or inventions which are submitted by MSME inventors. Furthermore, the lack of commerciality of the patented technology and invention is the reason why there is a lack of empowerment to those invention and technology. The empowerment of those patented invention and technology purposes is to commercialize the patented technology or invention by the inventors especially those which are submitted by the MSMEs.

Based on the description above, it is necessary to study several things which then become the formulation of the problem. It is how MSME invention become the subject to give patents and how the legal protection to the MSME invention based on Law Number 13 of 2016 about Patents.

2. RESEARCH METHOD

The research method used in this paper is normative legal research^[7]. It is by analyzing legal materials and then conducting a literature study that linked in such a way as to be able to answer the problems that have been formulated.

3. DISCUSSION

1.1. MSMEs Invention as The Subject of Patent Grant

Patent is a special right granted by the State to an inventor for his invention in the field of technology, for certain period of time to carry out the invention himself or to give his consent to other people to carry it out.^[8]

Indonesia's Patent system is using the first to file principle, this principle believes that the first inventor who apply to obtain the Patent Grant is the one who will legally own it. That's why the patent application should be done as soon as possible.^[9]

Invention according to the definition of the word is a creation which is a tangible form of a creation, which contains the meaning that it can be read, heard, or seen in accordance with the form of the creation^[10], refers to Law Number 13 of 2016 about Patents, based on Article 1 Paragraph (2), Invention is an Inventor's idea that is poured into a specific problem-solving activity in the field of technology in the form of a product or process, or improvement and development of a product or process.^[11]

In the connection between invention and MSMEs, increasing the competitiveness of MSMEs can be done through two aspects, namely internal factors which include research and development institutions, HR capabilities, HR development and technology. Meanwhile, external factors include partnership support in the capital, government support for research, and development, IPR and interaction with outside parties. Besides those two factors, the role of innovation, and partnership capabilities is also an important factor in

increasing the competitiveness of MSMEs. In addition, the size of the company and the experience of operating the company are also significantly important.^[12]

Indonesia MSMEs' potency is amazing. It is because the development of the MSMEs to produce its product and the efficiency of the production processes, this cannot be separated from the intellectual and creative ability of the business actors who can express their ideas creatively and innovatively. In this context, this aspect is related to IPR, especially about patents.^[13]

Article 10 of Law Number 13 of 2016 about Patents explicitly states that patent subjects are inventors or people who further receive the rights of the respective inventors. If the invention is produced by several people jointly, the rights to the invention are jointly owned by the inventors concerned. Television is proven otherwise, the party considered as the inventor is one or several people who are first declared as inventors in the request.^[14]

In the patent jargon, an invention is usually defined as a new and inventive way of dealing with technical problems. It relates to creation which is generally a new tool, product, method, or process, or maybe simply an addition to a well-known product or process. Merely discovering things that already exist in nature is generally not included, or classified as an invention; an adequate amount of human ingenuity, creativity, and inventive value must be included.^[15]

The inventions which are produced by MSMEs that are widely spread in Indonesia are the subject of granting patents. Most of the inventions nowadays are the result of real efforts and are a long-term investment process in research and development carried out by MSMEs, many simple and inexpensive technical additions, as well as the impact of high market value, have provided significant income and profit to the concerned inventors and MSMEs.

Patent registration by MSMEs can provide a long-term benefit for the existence of MSME themselves so that the products produced are not easy to imitate. Ownership of patents is one of the mirrors of technological mastery in a country. This can lead to a lower competitiveness value of a nation than other countries. The main reasons why an MSME invention must be patented are:^[16]

1. Strong market position and competitive advantage, a patent grant the owner exclusive right to prevent and stop others to use commercially the patented invention. Thereby it will reduce ambiguity, risk, and competition from cheaters and pirates. If an MSME owns or obtains permission to utilize an important patented invention, then this can become a barrier to market access for competitors who have the same or similar inventions. This will help MSMEs become the first major players in the relevant markets.
2. High return on investment if an MSME has invested a significant amount of time and money in research and

development. Patent protection from the related invention will help the production and research fee and give high return from the patent license. The patent owner can license their rights to an invention to other parties, to obtain payment and/or royalties, to generate additional income from the company. Selling a patent implies surrender of ownership whereas licensing means only permitting to use the licensed invention under certain conditions.

3. Access to technology through cross-licensing if an MSME is interested in a technology owned by another party, the patent held by the MSME can be used to negotiate a cross-licensing agreement, in which case, an MSME and the other party give approval to the other party to use one or more patents owned by a company with the terms agreed in an agreement.
4. Access to new market opportunities patent licensing (or pending patent applications) to other parties can provide access to enter new markets that were not previously accessible. The inventions must also be protected in the relevant foreign market to access the new market opportunities patent licensing. Reducing the risk of infringement by obtaining patent protection will prevent other parties from patenting the same invention and also reduce opportunities for infringement by other parties when marketing the product. While the patent itself does not provide "freedom to use" it is effective in preventing other parties from patenting a similar or the same invention and provides a reasonable indication that the patented invention is a new product and is completely different from the previous invention.
5. Increasing the ability to obtain assistance and/or obtaining funds with sufficient amount of patent ownership (or license to use patent owned by other parties) can increase the ability possessed in increasing the amount of capital to bring the product to market. In some sectors (such as biotechnology), a strong patent portfolio is often required to attract firms with strong capital.
6. An effective tool for cracking down on counterfeiters and fraudsters to effectively enforce the exclusivity afforded by a patent, sometimes litigation is necessary or bringing the infringed-patent to the attention infringers. Owning a patent can increase the ability to take successful legal action against counterfeiters of an already protected invention.
7. A Positive image for the company, business partners, investors, shareholders, and customers can view the patent portfolio as a reflection of the company's already high level of expertise, specialization, and technological capacity. This has indeed proven useful for raising funds, gaining business partners, and increasing company profile and market value. Some companies usually disclose their list of patents through advertisements to provide an innovative image to the public.

1.2. Legal Protection to The MSMEs` Invention Based on Law Number 13 of 2016 about Patents

Philipus M. Hadjon said that basically legal protection includes two things, namely preventive legal protection and repressive legal protection. Preventive legal protection includes action that lead to effort to prevent disputes from occurring while repressive protection means protection that is directed more towards efforts to resolve disputes, for example, dispute resolution in court.^[17]

IPR as a legal protection system also have two types of protection as expressed by Hadjon. IPR recognizes the existence of a registration system that tends to prevent legal protection and a criminal system for repressive protection, considering that crime is basically a last act to enforce the law.

Legal protection of intellectual property rights is basically built on a basic assumption that a creation or invention is the result of human thought and creativity which does not require a small amount of sacrifice, so that the inventor is entitled to an award for the work he has produced, considering the work he has produced, considering the work is also useful for human life.^[18]

MSMEs have a strategic role in national economic development because apart from playing a role in economic growth and employment, they also play a role in the distribution of development outcomes. In the economic crisis that has occurred in our country since a while ago, where many large businesses have stagnated and even stopped their activities, the MSME sector has proven to be more resilient in dealing with the crisis. Therefore, the empowerment of MSMEs needs to be carried out by the Government so that MSMEs can be more developed and competitive with other economic actors.^[19]MSMEs are still not getting adequate treatment from the government. Even though there are partnership programs, credit guarantees, soft loans for MSME, it is honestly acknowledged that MSMEs are still a marginalized party. This is very ironic, considering that MSMEs have a vital role in economic growth and development.^[20]

The enactment of Law Number 13 of 2016 about Patents, containing the principles of strengthening, protecting and empowering MSMEs through patent registration, it is hoped that the MSME group will be able to develop in order to build an economy based on just economic democracy as mandated by Article 3 of Law Number 20 of 2008 about MSMEs. The provisions of Article 24 of Law Number 13 of 2016 about Patents provide guarantees for legal protection of MSME inventions, although not explicitly stated.

The firmness on legal protection for MSME inventions can also be seen in the general explanation of Law Number 13 of 2016 about Patents. It is explained that patent applications made by MSMEs, educational

institutions, and government research and development institutions can be applied for registration through intellectual property clinics or intellectual property centers.

The legal protection provided by the Government for MSME inventions based on Law Number 13 of 2016 about Patents is in the form of convenience for MSMEs to register their inventions electronically (*e-filling*).^[21]

The implications of Law Number 13 of 2016 about Patents on state finances can be seen from the expectations of future conditions. The condition that the government wants is an increase in domestic patent applicants. To increase the number of patent applicants, effort need to be made, namely improving patent registration services by increasing *e-filling* technology facilities.

The enactment of Law Number 11 of 2008 about Information and Electronic Transactions, among others, providing legal protection and certainty for transactions carried out through electronic systems. The development of the new law should be able to improve Government services in the field of patents by using electronic transactions or *e-filling*.

E-filling services will be very effective and efficient to increase the number of domestic applications and increase patent protection in the country. An e-filling patent application is a requirement that has not been explicitly regulated in Patent Law Number 14 of 2001 is regulated in law Number 13 of 2016 about Patent.

The E-Filling arrangement is a form of adjustment to the Industrial Property Automation System (IPAS). IPAS is an assistance from WIPO (World Intellectual Property Organization) to Indonesia for automation system in registration, intellectual property registration application process including patents, certificated and annual fee payment. With the automation system, it is hoped that it will make easier for applicants to submit applications and obtain information about the application process until the status of the application is granted or rejected. It also makes it easier for the public to access information about intellectual property.

4. CONCLUSION

Inventions produced by MSMEs are generally new tools, products, methods, or processes which are the result of real effort and are a long-term investment process in research and development carried out by MSMEs in which the invention must contain elements of inventive steps and can be applied in the industry so that it fulfills the requirement as the subject of granting patents. Legal protections for MSME inventions can be carried out by first registering the invention to obtain legal force.

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- [4] (1) The Economy is structured as a joint effort based on the principle of kinship. (2) Production branches which are important to the state and which affect the livelihood of the people are controlled by the state. (3) The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. (4) The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.
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