GENERAL INTEREST IN PATENT PROTECTION

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Abstract

This article aimed at studying provisions in TRIPs Agreement and Law Number 14 of 2001 regarding Patent, particularly provisions reflecting criteria of public interest. The approach used is statutory and conceptual approaches by analysing TRIPs Agreement and Law Number 14 of 2001. It is concluded that public interest has been stipulated generally in TRIPs Agreement and Law Number 14 of 2001 in their provisions regarding kind and scope of the use of limitation and exception of patent holder's exclusive rights. Law Number 14 of 2001 basically has implemented limitation and exception provisions stipulated in TRIPs Agreement. However, it does not provide further and clearer elaborations on some provisions that need to be elaborated further. In addition, both TRIPs Agreement and Law Number 14 of 2001 do not provide criteria as to public interest.

Keywords: public interest, criteria, exception, limitation, patent.

A. INTRODUCTION

Public interest in patent protection, as part of IPR, can also be analogous to the justification of public interest in property rights because basically HKIs, despite the existence of differences of opinion, have been accepted as one property rights regime. 11 In Law Number 5 of 1960 concerning Basic Regulations Agrarian Principles (hereinafter

referred to as Law No.5 / 1960) in Article 6 are determined, that "All land rights have a social function".¹² Furthermore, in the explanation of Article 6 stated, that: any land rights that exist in someone, cannot be justified, that the land will be used (or not used) solely for his personal interests, especially if it causes harm to the community. Land use must be

adapted to its circumstances and the nature of its rights, to benefit both the welfare and happiness that has it and beneficial to society and the State. But in these provisions it does not mean, that individual interests will be pushed at all by public interest (community). According to Boedi Harsono, from the explanation of the article there are several things which are can be taken as an understanding of how the social functions of land are intended in Law No.5 / 1960, among others:

1) That the social function of this land applies to all rights over land, both property rights, building use rights and other rights

2) Social functions in the Act No. 5/1960 means that land use is not solely used for personal gain, especially harming society. This means that in the use or utilization of land there is a need for a guarantee that is guaranteed the realization of mutual interests

3) Social functions are not placed to eliminate the interests of landowners but must be aligned. 13 From the explanation of the article and the description presented by Boedi Harsono above if associated with the use of IPR can be analogous to the use of IPR by IPR owners are not

solely used for personal gain, let alone harm society. Therefore it is necessary to guarantee the use of IPR arrangements the realization of mutual interests. Public interest in IPR protection is not eliminate the interests of IPR owners but must be placed in parallel. More or less the same ideas are regulated in Law No. 39/1999. In Article 36 determined, that:

1) Every person has the right to have ownership rights, both alone and together with others for the development of themselves, their families, the nation, and community in a way that does not violate the law

2) No one can be confiscated arbitrarily and illegally

3) Ownership rights have social function. Furthermore, in the explanation of Article 36 Paragraph (3), what is stated is stated with property rights having a social function that every use of property rights must pay attention to the public interest. If the public interest desires is right true need, the ownership rights can be revoked in accordance with the provisions of the regulations legislation. If this provision is associated with IPR, then the owner sex clusiverights IPR as a form of personal property rights in its use is limited by interests general. Even if the public interest requires, in accordance with the provisions of the regulations

applicable laws, the exclusive rights of IPR owners can be revoked.¹⁴ Public interests also get their justification from the constitution the Indonesian economy, namely the 1945 Constitution, which basically is the realization of the values of Pancasila.¹⁵ The principles of Pancasila are manifested in the Opening The 1945 Constitution which contains the main ideals of the country, namely the State based on the One Godhead based on just humanity and civilized, state sovereignty based on representative consultations, the state realize social justice for all the people of Indonesia, and the state protects all the people of Indonesia and Indonesia's bloodshed based on unity. Therefore, Pancasila and the Opening of the 1945 Constitution can be seen as axioms legal efforts for Indonesia, among others, to regulate intellectual property, which includes several aspects, namely: the purpose of law, the source of law, social justice, and legal protection. The first goal of the country, namely the state based on the Supreme Lord One based on civilized humanity in the frame of the unitary state of Indonesia, refers to legal objectives governing community interests or which gives rise to rights and obligations as determined by God. In this harmonious relationship between rights and obligations is a must, hence

legal protection is needed. This shows the relationship strong between moral and positive law.

Criteria for Public Interest in Patent Protection

Criteria for public interest in patent protection can basically be abstracted from the provisions of the Paris Convention, TRIPs Agreement, and Law No.14 / 2001. Because Law No.14 / 2001 is basically an implementation of Paris Convention and Agreement TRIPs, the discussion of this article only focuses on the provisions of Law No.14 / 2001 which reflect the criteria of internal public interest patent protection. Criteria for public interest in patent protection contained in the Act No.14 / 2001 reflected in the provisions of restrictions and exception and several other provisions. First, in Article 7 of Law No. 14/2001 determined that Patent not given for Inventions related to the process or product announcement and the use or implementation is contrary to the laws and regulations applicable, religious morality, public order or morality; inspection method, care, treatment and / or surgery that is applied to humans and / or animal; theories and methods in the field of science and mathematics; or all beings

life, except microorganisms; biological processes that are essential for producing plants or animals, except non-biological processes or microbiological processes. Provisions of Article 7 of Law No. 14/2001 is basically appropriate and in line with provisions stipulated in Article 27 (2) Agreement TRIPs . There is nothing substantially problems with this limitation. But the problem is what is intended to be contrary to the applicable laws and regulations. Not there is further explanation about these words. Unlike the case with in Australia, although there is no understanding in legislation about contradictory words with the applicable legislation, this is regulated in the Guidebook Examiner. Even in addition to providing understanding and explanation about it, The Examination Handbook also provides examples of inventions that are categorized as "contrary to legislation". 30

In the absence of explanation or guidebook, determining whether the invention is contrary to the law applicable can be seen through the specifications and written claims submitted. Problem the definition of "contrary to the applicable laws and regulations" above too as well as determining the meaning of the words "public order" and "religious morality". This is also not given an understanding

in Law No. 14/2001 and the explanation. Thus the determination of the meaning of the words depends on the interpretation of the employee Patent Office and commercial judge. public interest has been regulated in conventions, agreements and legislation - invitation in the field of patents. Constitutionally, public interests can be seen from country destination. While philosophically it can be studied from expert opinions regarding the principle of balance of rights and obligations and principles of justice.

B. CONCLUSION

Public interest in patent protection has normative justification, constitutional, and philosophical. Justification of public interest in patent protection based on the criteria of public interest in IPR protection, namely criteria state intervention, patent designation, and appropriate remuneration. Criteria of interest general patent protection is reflected in provisions governing licenses mandatory, patent protection period, substantive requirements (standard of patentability),implementation of patents by the government, restrictions on inventions that cannot be granted patents, non-commercial use related to education, research and

experiments, and requirements for the contents of the license agreement. From the explanation of the article and the description presented by Boedi Harsono above if associated with the use of IPR can be analogous to the use of IPR by IPR owners are not solely used for personal gain, let alone harm society. Therefore it is necessary to guarantee the use of IPR arrangements the realization of mutual interests. Public interest in IPR protection is not eliminate the interests of IPR owners but must be placed in parallel.

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