PATENT RIGHTS AS INHERITANCE RIGHTS

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Abstract

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Possessions or objects that are immaterial (intangible) so has the benefit or usefulness. Even scholarly besides Hanafiyah mention property that has benefits including property owned. Patent ownership issues in the perspective of Islamic law, legal Personality 'and state law (legislation). While the alcohol and tirkah equally incorporate the rights as something that can be inherited, in the form of a patent can be inherited in a manner similar to the division of inheritance distribution on tangible objects (material) to the division engineering division of the rules contained in the Islamic law.

Keywords: Islamic Law, Inheritance treasure, and Patents

A. INTRODUCTION

a. Ownership of Patent Rights in Islamic Law

In the past it has been described about rights and objects. That is that between the scholars of Hanafiyah and the number of scholars there are difference in defining objects that cannot be touched like benefits. The essence of the difference is that the Hanafiyah clerics view that benefits include something that can be owned, but

not treasure. The scholars besides Hanafiyah argue that benefits include property, because the important thing is the benefit and not on the substance. This opinion is an opinion that more commonly used by most humans. If it is associated with patents, then in this case, more tend to choose the opinion of the religious scholars who say that benefits including assets, because what is important is the benefits not on the substance. Despite the opinion of Hanafiyah and Jumhur Ulama

different, but in principle the opinions of both have similarities which is a meeting point, namely that objects or benefits from an object can be owned equally. Because of patents has benefits that are intangible and cannot be touched, i.e. benefits in the fields of technology and industry, then this, more follow the opinion of Jumhur Ulama as a basis for conclusions. Then from it is inserted into the category of objects, namely immaterial objects

can have. The conclusion is that patents in Islamic law are included in the category of objects also the author strengthens in the realm of positive law. It is stated that IPR is also part of objects, namely Intangible objects (immaterial objects). Understanding objects juridical here is anything that can be the object of rights.

Whereas objects that can become objects of rights are not just objects tangible, but also intangible objects. 8 But if the above is correlated with the law UUP Article 16, it is found that the patent holder has exclusive rights to his patent. This contains intent that other people are prohibited from using from and / or implement the patent without the consent of the patent holder. In other words, the patent holder has a monopoly right to use or give permission to others to carry out the results of his invention. Even though according to

Islamic law practice monopoly is strongly opposed because it can harm the rights of others even society in general. This also needs to be peeled and analyzed to establish the law.

Monopoly is holding goods so they don't circulate in the market to increase the price. Monopoly is also one element the support of capitalism. If the monopolistic practice is carried out collectively, the greater the sin of the person who does it, the greater then before it is set valid or not the patent is owned personal according to Islamic law, first review some things that are closely related to ownership, especially ownership in Islam and the patent itself. Some Fiqh experts limit the prohibition of monopoly only staple food ingredients. Imam Al-Ghazali said: "As for which is in addition to staple food and which is not a support staple foods such as medicines, herbs, fragrances, and so it is not subject to prohibition even though it includes goods eaten But the prohibition on monopolies cannot be limited to only basic ingredients. The prohibition must also be applied to every item needed by humans, both in the form of food principal, drugs, clothing, school equipment or objects immaterial though. The reason is because of basic need humans differ according to differences in time and place.

The reason is based on the rules of fiqh, namely: "Cannot it is denied that there has been a change in law due to changing times" ¹⁰ In a different editorial mentioned: It is undeniable that change law due to changes in times and places, ¹¹ Ibn Qayyim¹² too states: "Changes to fatwas are due to changes in the times, place, behavior, and habits" Of course what he means is that a condition is the community will influence the fatwa issued by a mufti. But this does not mean that the law will change just like that, without regard to the norms found in the source the main law, the Qur'an and the Sunnah. ¹³ Whatever the form, monopoly will still harm others and society. Especially if the monopoly is carried out in the fields of economics and business as is the case now this, what happens is only the accumulation of economic wealth on certain people / groups, without concern for people others are weak. Indeed, most of the monopolists do not know that in fact in his property there is also the rights of others which must be given as a manifestation of concern for others and social equity. This is what is very worrying if it occurs in the system Islamic economy especially in the business world. Of course not will directly lead to unfair competition between the ones one another. If this happens, it will have an impact also on

market imbalances, which means it will make people's lives are also not balanced. Herein lies the problem of why Islam forbids monopoly.

b. Patent Rights as a Heritage in Islamic Heritage Law In Islamic inheritance law there are several terms

vary in referring to inheritance. But actually between the terms one with another term has the intention the same one. The terms used are among others tirkah and miras (al-irs). Both terms certainly have different elements so that the term appears. The first definition is the use of the term tirkah. Tirkah is all inheritance of people who died before being taken for the sake of maintaining corpses, paying debts, and implementation of a will. ²² While the inheritance form is in the form Of whatever is left by people who die well in the form of assets or rights. ²³ as explained in the book of the Majmu'ah ar-Rawiyah bible: من الميت خلفه ما هي التركة ²⁴ حق او مال

While al-miras in Arabic is a form of masdar (infinitive) from the words warasa-yurisu-irsan wamirasan. ²⁵ Definition of alcohol(al-irs) is an inheritance that is ready to be shared by the following heirs

B. CONCLUSION

The description above, patent rights are included in the category of assets or objects although immaterial (intangible). The reason is because patents have benefits or uses. Opinion of the scholars besides Hanafiyah who said that benefits included property owned. Whereas in the matter of ownership of patents according to the view of Islamic law is lawful sharia and law country (law). Based on an explanation of alcohol and tirkah which together entitles rights as something that can be inherited, then 29 OK. Saidin, the conclusion is that patents can be inherited, and in a way the division is the same as the distribution of inheritance on the object tangible (material). While the model and the rules of distribution may be choose one of the various rules for the distribution of inheritance contained in Islamic law. However, it should be noted that in the case of patent transfer due inheritance as is well known that in the field of law inheritance still applies diverse (pluralism) legal systems, namely Civil Code, Islamic law and customary law.

C. CONCLUSION

Kesimpulan dari materi ini adalah ....(minimal 150 kata)

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