

**THE MECHANISM MODEL OF THE SIMPLE PATENT REGISTRATION
(A CASE STUDY IN THE ENVIRONMENTAL SMALL INDUSTRIES SEMARANG)¹**

Waspiah

Faculty of Law, Semarang State University (SSU)
K1 1st Floor, Faculty of Law SSU
Raya Sekaran Street, Gunungpati . 50221. Indonesia
waspiahtangwun@gmail.com - Tel: 62 024. 8507891- HP.62. 081575203654

Dian Latifiani

Faculty of Law, Semarang State University (SSU)
K1 1st Floor, Faculty of Law SSU
Raya Sekaran Street, Gunungpati . 50221. Indonesia
dianlatifiani@gmail.com - Tel: 62 024. 8507891- HP.62. 08157608276

Andry Setiawan

Faculty of Law, Semarang State University (SSU)
K1 1st Floor, Faculty of Law SSU
Raya Sekaran Street, Gunungpati . 50221. Indonesia
andry_style@yahoo.co.id- Tel: 62 024. 8507891- HP. 62. 0818243332

ABSTRACT

The SME centers in the environmental small industry generally produce a simple patent. The simple patent is characterized by a discovery through a deep research, its form, configuration, construction or composition are categorized as *utility model* with a practical utility that has economic value. The utility patent only has the right to one (1) claim; direct substantive examination is conducted without the request of the inventor. Simple patent has legal protection if it is registered in the Directorate General of Intellectual Property. The focus of the study is on the mechanism model of the implementation of simple patent registration under the Law No. 14 of 2001 on Patents and its constraints. The goal is to find out the implementation mechanism model and the constraints of simple patent registration under the Law No. 14 of 2001 on Patents. The research approach is legal qualitative research and the type of the research is sociological - juridical research with a framework which criticize the existing policy (normative) at the same time provides a solution (sociological). The primary data is descriptive data in the form of written or spoken words and the behavior of people who can be observed at the location in the Environmental Small Industrial Semarang. The results showed that the exact mechanism model for the simple patent registration under the Law No. 14 of 2014 concerning patents includes the requirements for the acquisition of the simple patent should be simplified; the rules regarding the simple patent should be in part with the rules of ordinary patent. The costs which seem low at the beginning can be turned into an expensive one. The constraints of the simple patent registration mechanism are the Indonesian culture that considers the patent is jointly owned and lack of human resources who know and understand about the mechanisms of patent registration. Therefore, the right model for the simple patent registration mechanism is the assistance by the Institutes for Research and Community Service which are owned by some colleges or other competent institutions in the field of IPR. The conclusion of this research is an online registration mechanism, and it has been made simple and easy to understand for prospective inventors. It is recommended for all technological findings of the small industrial Semarang has the legal protection by registering in the patents.

Keywords: Model; mechanism; Registration; Simple Patents

¹ Research Institutional - 2014-DIPA Unnes-Higher Education-Indonesia

INTRODUCTION

Empowerment of Micro, Small and medium Enterprises as mentioned in the preamble of the Act No. 20 of 2008 on Micro Small Medium Enterprises need to optimally, sustainably and thoroughly organized through a favorable climate development, the supply of business opportunities, support, protection, and the widest development, in order to improve the position, role and potential of Micro, Small and Medium Enterprises in realizing the economic growth, equity and improvement of people's income, job creation, and poverty alleviation.

The development in the industrial sector is the main priority of economic development without neglecting the development in other sectors. The industrial sectors are divided into big and medium industries, and small and home industries. Definition which is used by the central bureau of statistics of Indonesia, big industry is a company which have 100 labors or more, the medium industry is a company which have 20 up to 99 labors, small and home industry, is companies which have 5 up to 19 labors, and home industry is a company which have 1 to 4 labors. According to The Department of Industry and Trade of the Province of Central Java, there were 644.3 thousand small and medium industrial enterprises in 2011. The number of workers who are employed as many as 1.93 million people. The Production Value of the small and medium industrial enterprises in the same year reached 6.3 trillion or increase of 15.31 percent from the previous year.² The SME centers generally produce simple patent. An invention is classified into simple patent because of its characteristics which is the discovery through a deep research and development. Although its form, configuration, construction or composition often known as "utility model", it has practical utility value so that it has economic values. Therefore, it remains to obtain legal protection. The utility model/simple patent only has the right to 1 (one) claim; the substantive examination is conducted directly without the request of the inventor. If there is a rejection of the application of this simple patent, it could not be a subject to the compulsory licensing and annual fee.³

It needs to be supported by the registration of the invention results by the inventor in the form of a simple patent. As known in general, small businesses with all the limitations are not infrequently also find some practical tools which are useful for the community. For examples, a coconut grater, seed corn threshing machine, flytrap tool, etc. The findings very rarely got the patents legal protection, it is due to some factors, but the most important issues relating to the requirements and procedures for the submission of registration. If this is neglected longer, practically, the utility models digit percentage of the utility models digit will not increase rapidly, as well as many small businesses, as the inventor, will very rarely get the legal protection of the simple patent.⁴ Because of the explanation above, the study focus on How is the mechanism model of the implementation of simple patent registration under the Act No. 14 of 2001 on Patents? What is the obstacle of the mechanism of simple patent registration under the Act No. 14 of 2001 on Patents? The concepts and theories which are used in analyzing the focus of the study, concept of patent research focus is in Act No. 14 of 2001, by using the theory of organizational management of IPR.

RESEARCH METHODS

The study approach used a legal qualitative approach which is a research that examines and analyzes the human life in the limited cases, casuistry nature, yet in-depth, thoroughly, means that it does not know the sorting of the symptoms conceptually into the aspect that is executive (called variable). Concrete form is reveal the symptoms of the community life itself and give description of their condition without any intervention from the researcher/naturalistic. The study is a juridical sociological research with critical paradigm which is a study that uses a framework that criticize policy (normative) that exist, at the same time provides a solution (sociological) with research that produces a descriptive data in the form of written or spoken words and the behavior of people who can be observed including how the implementation of a simple patent registration in the small industrial area of Semarang is.⁵ The collected data validity was tested by using the method of Triangulation⁶ (Berg, 1998: 4; Patton, 1989: 108-109; Miles and Huberman, 1992: 434; Brannen, 1997: 20).

² <http://jateng.bps.go.id>

³ Muhamad Djumhana and R. Djubaedillah. *Hak Milik Intelektual, Sejarah, Teori dan Prakteknya di Indonesia*. (Bandung: PT. Citra Adhya Bakti) 2003. Page 122

⁴ Budi, Santoso. *HKI (Hak Kekayaan Intelektual) Pengantar HKI*. (Semarang: Pustaka Magister). 2008. Page 40

⁵ (Esmi Warassih, 2011. and FX Adji Samekto, 2002. Moleong, 1990: 3; Bogdan and Taylor: 1992: 21).

⁶ (Berg, 1998: 4; Patton, 1989: 108-109; Miles and Huberman, 1992: 434; Brannen, 1997: 20).

RESEARCH FINDING

A. The profile of Small Industrial Area (LIK) Semarang

Small Industrial area in short is BuganganLIK in Semarang is one of the few existing industrial area in Semarang as the 'TerboyoMegah' industrial area, 'Terboyo' industrial area Semarang, 'WijayaKusuma', 'Candi', 'Tanjung Mas' and 'TambakAji' industrial area. 'BuganganBaru' Industrial Area is under the coordination of departments of industry and commerce of Semarang and Central Java. 'BuganganBaru' industrial area which is located in Kaligaweis a small industrial area for the SMEs.

As has been Noted, there are 246 (two hundred and forty- six) of SMEs that are located in 'BuganganBaru' Industrial Area. From approximately 246 (two hundred and forty- six) SMEs in the area, there have not any of them that register yet the patent of their innovations. It is caused by the socialization of patent and the complicated patent registration procedure that requires a lot of time, energy, thoughts and funds. The government, in this case as legislators, and patent registration procedures do not distinguish or not simplify the registration for SMEs who find simple innovations.

B. The Mechanism Model of the Implementation Simple Patent Registration of Based Act No. 14 of 2001 on Patents.

An invention should be submitted for a registration by the eligible party as the patent subject or by the authority of IPR Consultants who are listed in the Directorate General of IPR. The application can only be submitted for an invention or some inventions that are a unity of an invention⁷.

There are several procedures for registration of patents that have to be followed by the Simple Patent Applicant which typically includes the following phases:

1. Insert the registration document (filling application) ;
2. Examination of the registration document (examination on filing) ;
3. Examination of the formal requirements regarding to administrative documents (examination as to the formal requirements) ;
4. Search Results Reports (search report) ;
5. Announcement of registration (publication of application) ;
6. A patent granting or rejection (grant or refusal) ;
7. The publication on patent specification (publication on patent specification) .

Patent applications in some developed countries are done through the online system. As a proof of registration is the print out the filling date, as in the USPTO , JPO , and EUPO. Patent registration in Indonesia is still using manual systems written in Indonesian which are submitted to the Directorate General of Intellectual Property Rights.

Each application for patent applications in Indonesia which are submitted through the Directorate General of Intellectual Property Rights will be conducted in two examination phases of a patent application, which covers the of administrative examination (examination as a form) and substantive examination stages (examination as to substance). The first stage of examination is the administrative examination (examination as a form). Administrative examination is an examination of the patent application documents before it is stated as been given the date of receipt. Based on Article 24 paragraph (2) of the Patents Act that a patent registration application documents must contain some of the following:

1. the date , month and year of application;
2. The full and clear address of the Applicant;
3. the Inventor's full name and nationality ;
4. The name and full address of the authority if the application is filed by the authority;
5. The special volmacht in case the application is filed by an authority;
6. statement to be granted a patent application ;
7. The title of invention;

⁷What is meant by the unity of invention is some new inventions and still has a closer relationship in inventive step, for example, an invention in the form of new stationery with new ink. In such cases it is clear that the ink is a new invention that stationery and ink can be submitted in a single application. Another example is the invention in the form of a new product and process for making such products. Each application may be filed for one invention or a unity of invention which consists of several interrelated inventions (Explanation of Article 21 of the Patent Act).

8. The claims which are contained in the invention;
9. description of the invention, which contains a complete information on how to implement the invention;
10. drawings which are mentioned in the description which are required to clarify the invention; and
11. abstract of the invention .

Directorate General of IPR is going to check all of the administrative requirements (patent application documents and formal requirements). If it has been declared as fulfilled all, it will be noted as the priority date or the date of receipt (filling date)⁸. Filing date is the date which is crucial in patent protection as a measuring rod of the patent protection period.

If the administrative examination has been completed and it has been given a filing date, then the Directorate General of IPR will announce the patent application. In the case of ordinary patent, the announcement is made shortly after 18 months from the filing date or as soon as 18 months from the priority date if the application is filed with priority right and the announcement held for six months starting from the date of announcement of the application. In the case of a Simple Patent, the announcement is soon after three months of the filing date and the announcement was conducted over three months starting from the date of announcement of the Simple Patent Application. The announcements for regular patent can be done earlier at the request of the applicant with the charge.⁹

The process done by the Directorate General of Intellectual Property Rights in carrying out the substantive examination will include:

- 1 Examining the invention for which a patent with other existing invention is based on, such as patent application, patent documents and other documents that have been there before;
- 2 Consider the views and / or objection to the patent application as well as rebuttal or explanation to the view and or the objections; and
- 3 Consider the documents which are submitted as fulfillment deficiencies, or completeness and invite the applicant or his authority to provide additional explanation which is needed.

According to the explanation of Article 3 paragraph (3) of the Patent Act that substantive examination is an examination of the invention that has been stated in the application, in order to assess the fulfillment of the new requirements (novelty), involves an inventive step (inventive step), and can be applied in industry (industrially applicable) , as well as meet the requirements of unity of the invention, expressed clearly, and not included in the category of inventions that cannot be patented.

Act No. 14 of 2001 on patents can be concluded some things, especially concerning the simple patent, as follows:

- 1 the requirements for the acquisition of a simple patent which is gone illogical for those inventors who are mostly from traditional knowledge
- 2 The rules regarding to the utility models are merged into one with ordinary patent provisions in which their contents are so much different, for the requirements, procedures, costs, etc.
- 3 The lack of the number of articles in the patents Act on the simple patent which sometimes makes it non-operational.
- 4 Administrative requirements which are faced by the prospective simple patent applicant of SMEs, who since its inception has been faced with the difficulty of the fulfillment of making descriptions that seem very complicated, long-winded, something that seems cannot be met by a simple patent applicant himself that mostly individual businesses, who do not have special educational background.
- 5 Paper size, spacing, margins, code number making, the formulation of the claim, are seem unfamiliar for the SMEs.

⁸This filling date can also be given if it meets the minimum requirements. And what is meant by the minimum requirement is that it should contain some points as found in Article 30 paragraph (1), the application is submitted in written form in the Indonesian language to the Directorate-General and shall also contain: a. date, month and year of application; b. full address and clear address of the applicant; c. statement to be granted a patent application; d. description of the invention, which contains a complete information on how to implement the invention; and e. images mentioned in the description are required to clarify the invention; and after the payment of the patent registration request fee (Explanation of Article 30 paragraph (1) of the Patent Act).

⁹Article 42 and 44 paragraph (1) Patent Act.

- 6 The costs which seem low at the beginning can be turned into a very expensive, because the simple patent applicant must provide funds for the creation of descriptions that not everyone can make it. These costs can be high due to the profession of making description for some discoveries which to be filed for the ordinary or simple patent are still very rare.

Based on the above constraints, the government should create an ideal concept that appropriate to the capabilities of the SMEs so that simple patent registration will not be an obstacle for the SMEs, especially in the SMEs in Semarang Industrial Area. The ideal concept which is in accordance with the demand of SMEs society is that the government should, in terms of patent registrations particularly simple patent, distinguish between ordinary patents and utility models since the levels of regular patent are very different to the simple patent, such as the requirements, procedures, as well as the costs.

The number of articles on the simple patent should be increased or at least almost the same as the regular patent, because some great discoveries begin with the discovery of a simple patent. There is the most important thing that should become a special concern of the government is on the procedure for administrative request. Such as the difficulty of the fulfillment of the description making that is seemed very complicated, long-winded, something that seems cannot be met by a simple patent applicant himself who are mostly individual businesses, which do not have a specific educational background. Ideally for simple patent registration application is different from the regular patent application. Moreover, the simple patent protection period is only 10 years. This is an obstacle for the SMEs in registering their findings.

A simple, straightforward, simple description making of the simple patent registration that is expected by the SMEs so that every finding which they produce can easily registered then directly protected by the law. Therefore, it encourages the SMEs to create simple things which are always innovative.

The costs that seem low at the beginning can be turned into a very expensive, because the simple patent applicant must provide funds for the creation of descriptions that not everyone can make it. These costs can be higher due to the profession of description making for the discovery which will be filed for regular and simple patents is still very rare. Besides, the SMEs which are generally owned by individuals are often constrained by the capital. If they have to spend more money to enroll their simple innovation, it will be an obstacle for them. Making a simple description for a simple patent registration can be ideal for SMEs. From some things above, the SMEs are expected to be more encouraged to register any findings they produce.

Patent Application Filing Procedures (Effective August 1st, 2012)

The procedures of filing a patent application is steps that have to be passed by the applicant to obtain the proof of filing the patent application. After this stage, it will be further processed in accordance with the valid provisions in the legislation of each IPR regime until the issuance of a final decision. The analysis above became the background of the study of researchers to carry out the Construction of the Acceleration Model of the Patent Registration Mechanism. They are as follows:

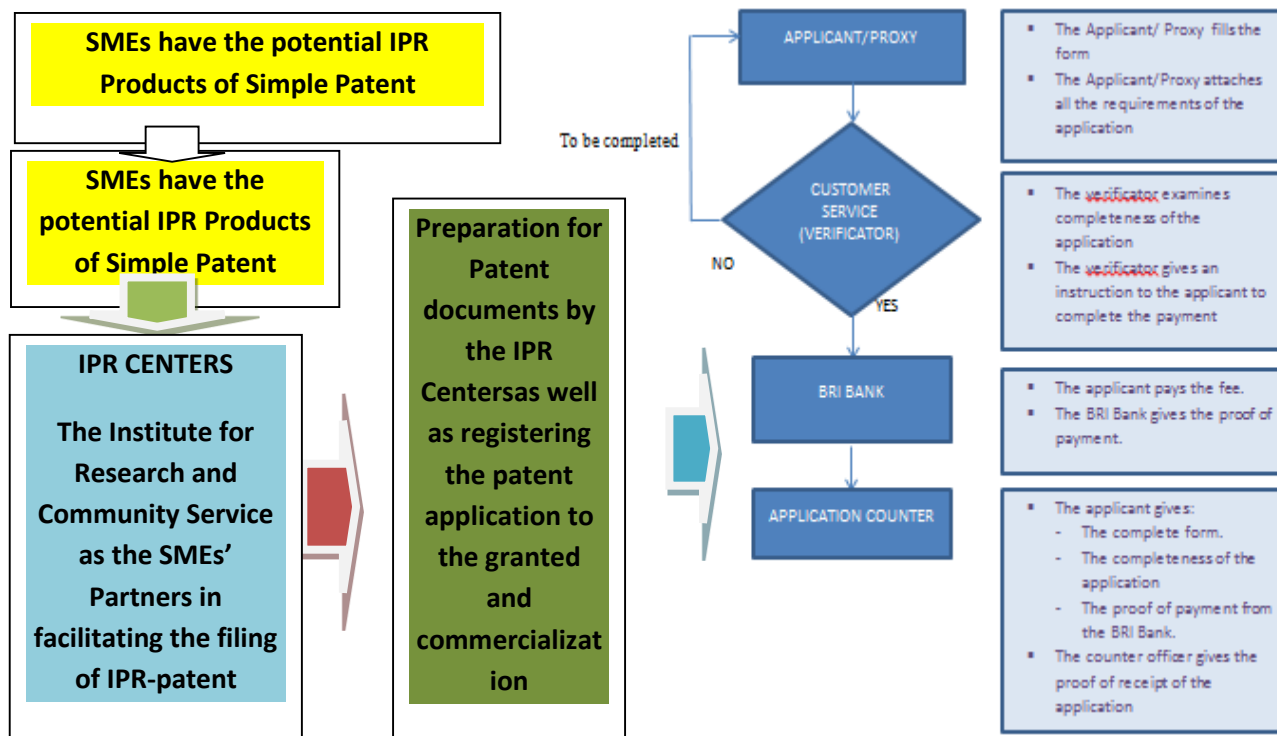


Diagram: 1. theAcceleration Models of the Patents Registration Mechanism

The IPR Center is the SMEs partners in facilitating the patent application. It is in line with the roles, responsibilities and functions of IPR Center which socialize, search and facilitate the registration of potential IPR, make efforts to accelerate the granted to the commercialization. The IPR Centers in Semarang include the IPR Centers of UNNES, Diponegoro University, UNTAG, PGRI University, Polytechnic, Udinus' Institute for Research and Community Service, and other IPR Centers which owned by the Research and Planning Board of the Regional Planning and Development Council of Central Java. That means that the IPR Centers have a strategic and important role to accelerate the registration and acquisition of granted patent.

One potential that is able to perform the acceleration is the IPR Center of Institute for Research and Community Service of UNNES which have been established since 2009, and has an important and strategic role in facilitating a patent application that if it is responded by the SMEs in Semarang.

C. The Constraints of the Simple Patent Registration Mechanism Based on Act No. 14 of 2001 on Patents.

1. Juridical Constraints in the Patent Act No. 14 of 2001

The Legislation Relating to the Patent Registration. Filing a patent application has to observe the basic rules which are written in the Act No. 14 of 2001 as follows:

- 1) Act No. 7 Year 1994 on Agreement Establishing the World Trade Organization (The Agreement of World Trade Organization)
- 2) Presidential Decree No. 16 1997 On Ratification of the PCT and Regulations Under the PCT.
- 3) Presidential Decree No. 15 of 1997 on the ratification of Paris Convention for the Protection Industrial Property.
- 4) Government Regulation No. 11 of 1991 on the form and content of the patent letter.
- 5) The decision of the Minister of Justice No. M.02.10 1991 on Simple Patents
- 6) The decision of the Minister of Justice No. M. 02 - HC No. M.01.10 1991 on the Implementation of Patent Publication.
- 7) The decision of the Minister of Justice No. M.04 - HC.02.10 1991 on the requirements, time frame and procedures of payment of the patent fees.

- 8) The decision of the minister of Justice No. M.06 - HC.02.10 1991 on the Implementation of the Patent Application Filing.
- 9) The decision of the Minister of Justice No. M. 07 - HC.02.10 1991 on the form and requirements of the patent substantive examination request
- 10) Decision of the Minister of Justice No. M.04 - PR.07.10 1996 on the Patent Appeal Commission Secretariat
- 11) Decision of the Minister of Justice No. M.01 - HC.02.10 1991 on the procedure for filing the patent appeal request.¹⁰

Based on the study of various Acts, Government Regulations, Presidential Decree, Ministerial Regulations, and instructions is mentioned above, the SMEs' understanding of the simple patent registration. The knowledge of the simple patent registration is obtained from the Local Government's socialization especially the Department of Industry and Commerce. The regulation of patent registration as simple as that is contained in the Act No. 14 of 2001 on Patents. However, in the Act are not differentiated on a regular patent and simple patent registration. The requirements which are not distinguished become an obstacle for the SMEs.

The description, specification, claims, drawings and its explanation, paper size, margins making, etc. become an issue that are very unfamiliar for the SMEs. It becomes an obstacle since the innovative works produced by the SMEs cannot be registered. Though the registration is a prerequisite for the innovation because only the registered innovation works which are automatically protected by the Act.

Simple patent protection period is only 10 (ten) years from the date of receipt and it can be extended. It means that it is less than the usual patent protection which is for 20 (twenty) years counting from the date of receipt and the time period which cannot be extended. The duration of simple patent protection which is shorter becomes one factor for the SMEs not to register the innovation.

The legal protection is provided by the registered innovation and is evidenced by the issuance of the patent certificate. The SMEs in Semarang do not question if their findings are used by the other parties or not, for those the most important thing is their works have market value. By registering the findings by other parties who imitate the findings without any permission from the owner then gets protections of laws is not a guarantee that the goods which are produced sold in the market.

In addition to the legislations that become obstacles in the registration of a utility, the role of government also became an obstacle in the simple patent registration. The lack of attention of the local government in terms of Intellectual Property Rights especially in the simple patent registration becomes the SMEs' difficulties for them in registering the findings of their innovations. However, if the local government, in this case the Department of Industry and Commerce of Semarang gives more attention to the simple patent registration for SMEs, it will provide more value and can increase local revenue in the industry.

The government, in this case the Department of Industry and Commerce of Semarang in their program has not provided material assistance yet for the simple patent registration. M. Agus Guntoro as an official in Industrial Department, especially agro industries in the Department of Industry and Commerce of the City said that there had not been any SMEs in the Bugangan Small Industrial Area yet which registered their findings for patent. The Department of Industry and Commerce of Semarang in this case facilitated through the socialization of patent application, for then cooperated with the Ministry of Law and Human Rights in Central Java province to follow up if there was a patent registration. This was related to the complexity of the patent filing process and the absence of adequate community resources related to the Intellectual Property Rights.

The lack of officers related to the Intellectual Property Rights in the Office of Industry and Commerce Department of Semarang became an obstacle in providing supervision and evaluation to the SMEs in Semarang, especially in performing the simple patent application, appropriate technology innovation for legal protection, so that the periodic monitoring cannot be implemented properly.

2. The Constraints of Legal Culture among the Small Industrial Society or SMEs Semarang

The law awareness of simple patent registration is low. It is seen from the SMEs in Semarang, based on the data which is taken in the Department of Industry and Commerce of Central Java Province, there have any of them which registered their patent. This is according to the results of interview with Mrs. Endang in the quality and standardization management. Once there was an inventor who registered his/her innovation in the form of a gallon cleaning tool, but not so in the list because it is constrained by the complex patent description which should be revised

¹⁰Dirjen HKI, Departemen kehakiman dan HAM. Buku Panduan HKI, DJ. HKI, Jakarta, page 24.

many times. As with the Department of Industry and Commerce of Semarang, the Department of Industry and Commerce of Central Java province also only facilitates the registration of patents which then cooperates with the Ministry of Law and Human Rights. Usually the owners of SMEs that produce simple patent have employed the IPR private consultant that is King Patents. It is considered easier, especially the SMEs who have more funds but it is different to the SMEs that do not have the funds to register using private IPR consultant.

Legal awareness becomes very important because the low legal awareness impacts to the least number of successful innovations which are patented. In addition to legal awareness, socialization is also one of the factors for the SMEs not to register their simple findings. Semarang city which is wide with the number of SMEs that are not affordable scattered with the socialization of the Department of Industry and Commerce due to the limited human resources who socialize the IPR, especially the simple patent registration for the SMEs in Bugangan Small Industrial Area Semarang.

The main function of patent is to protect the invention since the invention has an economic value. In addition, the patent also encourages the creation of innovation. Following this opinion, at first it is a patent which protects the interests of the individual, but on the other hand also provides many public welfare. Patents also encourage R & D (research and development) activity and motivate the economic and technology growth.¹¹

Generally, IPR basically represents ownership of the human mind or intellectual, in which the owner of the intellectual property has public recognition and awards which are received over the creative efforts so that one can possess, sell, license or grant the rights.¹² Intellectual Property Rights substantively can be interpreted as follows: Intellectual Property Rights which is arising or born since the human intellectual abilities.¹³

Ownership rights is the strongest rights and influences on an object (tangible and intangible that can be made as the object of the right).¹⁴ The right of ownership of this intellectual property rights is very abstract when it is compared to visible objects ownership, but these rights are approaching the rights of objects. However, both rights are absolute rights. Furthermore, there is an analogy that is, after the intangible objects comes out of the human mind, then transformed into a scientific creation, art and literature, so in the form of tangible objects which is in the use and reproduction can be a source of profit. This is what justifies the classification of such rights into the law of property.¹⁵

The different views of the communities appear with respect to IPR regime which is essentially reflects the difference in views between the traditional society and the western society. Western societies view from the development theory point of view (development theory) which views that the resources which are contained in the earth as something that can be exploited. In contrast, the traditional views that human society is just a custodian of the resources which are contained in the earth. The difference in views creates different concepts of ownership, property, creation and discovery or invention. What modern society think as the Individual property which is something that is a result of his own creations and discoveries by the traditional society is regarded as a joint belonging since it obtained and derived from their communities.¹⁶

The indigenous people of Indonesia are generally not familiar with the abstract concepts including the concept of intellectual property rights. The indigenous people of Indonesia have never imagined that the idea (intellectual creation) is a property as a way of western people think. The Indonesian' mindset about a material is concrete. Indonesian people are not familiar with the law concept of the material as the concept of *zakelijkerechten* and *persoonlijkerechten* that belong to the west.¹⁷

Regarding to the intellectual property rights, indigenous people of Indonesia never think of it as a wealth in the contexts of a property that can be owned individually, especially if the concept of intellectual property is within the TRIPs. This concept is the result of an international effort. The motivation behind the TRIPs Agreement is the protection of intellectual property belongs to the developing countries.¹⁸

The conclusion is that the SMEs in the Small Industrial Area in Semarang have not registered a simple patent invention yet, it is because of the complexity of the simple patent registration mechanism. The requirements of ordinary

¹¹Peter Mahmud Marzuki. *Op.Cit.* Page 28

¹²Nyoman Serikat Putra Jaya. *Op.Cit.* Page 1

¹³Husain, .*Op. Cit* Page 17

¹⁴Mariam, Darus Badruzaman *Op.Cit* page 51

¹⁵Muhamad, Djumhana and Djubaedillah. *Ibid* page 22

¹⁶Agus, Sardjono. *Op.Cit* page 142

¹⁷*Ibid*, page 217

¹⁸*Ibid*, page 218

patent registration in patent law are equated with ordinary patent terms that have many different characteristics. Therefore, to overcome this, the assistance of the parties involved in this case the role of the universities as a tri dharma function of college is needed. Therefore, it is hoped that the simple patents can be protected by registering them. There are two kinds of constraints of the simple patent registration mechanism; those are from the juridical and cultural aspects. The conclusion of this study is the assistance for SMEs; the juridical factors can be reduced by conducting juridical revision of the law and by changing the legal culture of society. The suggestions of this study are it is needed to simplify the Patent Act; the government motivates with the law media which encourages IPR product atmosphere as a form of legal aid; it is necessary to facilitate the legal assistance, for example the Local Revenue Agencies, the local government has the IPR Center and can also synergize with the universities which have IPR Centers. Next, use a simple model of patent registration mechanism by using a model that decided by the authors.

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