



Transfer of Patent Rights through Inheritance in the Perspective of Inheritance Law in Indonesia

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Abstract

Law Number 13 of 2016 concerning Patents does not regulate in detail the procedure for the transfer of rights that are due to inheritance. In inheritance, there is a transfer of rights, therefore an analysis is needed regarding the transfer of patent rights, which can be transferred to three inheritance law. The formulation of the problem used in this research is how is the procedure for transferring patent rights through inheritance based on Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents? and what law system is used in the transfer of patent rights in terms of inheritance law in Indonesia? This study uses a normative legal research method with a statutory approach and a conceptual approach. The results of the study show that the transfer procedure through inheritance is not regulated detail in Law Number 13 of 2016 concerning Patents. Indonesia have 3 inheritance legal systems, namely customary, Islamic and civil inheritance. The inheritance law system used in the transfer of patent rights is civil inheritance law, because it is easier to do than through customary inheritance law or Islamic inheritance law. The civil inheritance law does not distinguish between male heirs and female heirs and does not distinguish birth order with the legal basis of the Civil Code. Law Number 13 of 2016 concerning Patents must regulate in more detail the procedures for transfer through inheritance and distribution for Patent Rights with the establishment of implementing regulations in the form of Government Regulations.

Keywords: Transfer, Patent Rights, Inheritance, Law, Civil.

I. INTRODUCTION

I.1 Background of The Problem

Intellectual property (IP) is the right to enjoy economically the results of intellectual creativity. Intellectual Property is a right that is born as a result of the ability or work of human creativity. An item/product is created from the result of intellectual creativity, so that the product is attached to 2 (two) rights, namely moral rights and

economic rights.¹ Basically Intellectual Property (Intellectual Property) is divided into two things, namely industrial property rights and copyrights.² The industrial property rights are further divided into several rights which include Patent Rights

¹ Much Nurachmad. (2012). *Segala tentang HAKI Indonesia*. Yogyakarta: Buku Biru, h.15.

² Thalib, P. (2013). PERLINDUNGAN HUKUM TERHADAP PEMEGANG HAK CIPTA DAN PEMILIK LISENSI REKAMAN BERDASARKAN UNDANG-UNDANG TENTANG HAK CIPTA. *Yuridika*, 28(3), 351-360. DOI: 10.20473/ydk.v28i3.351. p.352

(Patents/Simple Patents), Trade Secrets, Trademarks, Industrial Designs, Plant Variety Protection, Integrated Circuit Layout Designs, and Geographical Indications. Every Intellectual Property must be registered with the Directorate General of Intellectual Property Rights, except Copyright. Copyright (Copyright / HC) is a legal protection given to authors, art workers or creators, for creations or works in the fields of science, literature and art.³

Legal protection for patents is obtained through a registration system, which in this case is followed by a constitutive system, or also known as the first to file system. According to the constitutive system, patent rights are granted on the basis of registration, namely the registration process by going through the stages of application by the inventor and inspection by the Directorate General of Intellectual Property.

This constitutive system focuses on the registration process through the application and examination stages. Article 24 paragraph (4) of Law Number 13 of 2016 concerning Patents regulates that patent applications can be carried out in two ways, namely electronically and non-electronically. With an electronic system, filing a patent application is simple, fast, and the costs incurred by the applicant (in addition to the patent registration fee) are cheaper.

Based on Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents, patent rights can be transferred or transferred either in whole or in part due to: inheritance, grant, waqf, will, written agreement, or other reasons justified in accordance with the provisions of the regulations legislation. Each process of transferring rights to a patent must be accompanied by the original document of the patent along with other rights related to the patent, and the transfer must be recorded and announced for a fee. The transfer of patent rights does not invalidate the inventor's right to keep his name and identity included in the Patent certificate.

Inheritance is the granting of rights by the testator to the heirs as recipients of rights who have marital relations or blood relations. Inheritance is regulated in the second book of CHAPTER XII of the Criminal Code concerning inheritance due to death. Provisions regarding inheritance are regulated in Article 830 of the Civil Code to Article 873 of the Civil Code. Inheritance only takes place by death. Rights that are transferred by way of inheritance can occur on condition that the owner or right holder has died. The transfer of rights by way of inheritance is given by the testator as the right holder to the heir as the recipient of the right. The inheritance can be transferred orally without the need for a certificate of inheritance (deed of inheritance) in advance, where all the inheritance of a

³ Kariodimedjo, D. W. (2010). Perlindungan Hak Cipta, Hak Terkait, dan Desain Industri. *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, 22(2), 265-282. DOI: <https://doi.org/10.22146/jmh.16222>. p.265

person who dies belongs to all his heirs according to the law.⁴

The regulation of inheritance law is quite complicated. Inheritance law is a law that regulates the transfer of ownership rights to the assets / assets inherited by the heirs and determines who is entitled to become heirs. Until now in Indonesia there is no inheritance law that applies nationally, but in Indonesia there are three inheritance laws, namely customary inheritance law with patrilineal, matrilineal and parental patterns, Islamic inheritance law which has absolute influence on native Indonesians in various regions, and inheritance law. Civil law applies to non-Muslim communities. Each inheritance law has different rules.

In principle, everyone has a family and has wealth, even if the value of the property is not much. In addition, sometimes the heir during his life has debt. Debts left by the testator are also his assets, because the so-called assets include assets and liabilities in the form of rights and obligations. A patent is a right that can be an object of inheritance. The transfer of patent rights must be filed with an application for registration at the Directorate General of Intellectual Property announced in the Official Gazette at the Directorate General of Intellectual Property.

Law Number 13 of 2016 concerning Patents does not regulate in detail the procedure for the transfer of

rights that are transferred due to inheritance. In inheritance, of course, there is a transfer of rights, therefore an analysis is needed regarding the transfer of patent rights, which can be transferred with the customary inheritance law system, Islamic inheritance or civil inheritance because Indonesia adheres to 3 inheritance legal systems.

I.2 Research Objectives

Based on the description above, the issues to be discussed are: what is the procedure for transferring patent rights through inheritance based on Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents and what inheritance law system is used in the transfer of patent rights in terms of inheritance law in Indonesia?

I.3 Research Method

Research This uses normative legal research methods because the focus of the study departs from the existence of ambiguity in norms. The approaches used in this research are the statutory approach and the conceptual approach. A statutory approach that includes research on law, legal sources, or statutory regulations that are theoretical in nature and can be used to analyze problems that will be discussed correctly.

A conceptual approach is used to understand the concepts of transferring patent rights through inheritance. The primary legal materials used in this research are the Civil Code, Law Number 13 of 2016 concerning Patents. The secondary legal materials used in this research are books and research journals related to the issues to be discussed. The technique used in collecting legal materials in this research is document and library techniques.

⁴ Murniati, R. (2015). Tinjauan Yuridis Pengalihan Hak Kekayaan Intelektual Berdasarkan Undang-undang Dibiidang Hak Kekayaan Intelektual. *Fiat Justisia*, 4(3), 21-32. DOI:<https://doi.org/10.25041/fiatjustisia.v4no3.271>, p. 24-25

Both primary legal materials and secondary legal materials are collected based on problem topics that have been formulated based on a snowball system and classified according to sources and hierarchies to be studied comprehensively. Processing of legal materials is carried out deductively, namely drawing conclusions from a general problem to the concrete problems faced.

II. DISCUSSION

II.1 Procedure for the Transfer of Patent Rights through Inheritance Based on Law Number 13 of 2016 concerning Patents

Based on Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents it can be observed that Patent Rights as well as other groups of Intellectual Property Rights can be transferred and transferred, either in whole or in part, due to inheritance, grant, will, waqf, written agreement, or other reasons justified in accordance with statutory provisions.⁵

Elucidation of Article 74 paragraph (1) what is meant by "can be transferred or transferred" is only economic rights while moral rights remain attached to the inventor. The transfer of this patent must be made clearly and in writing, either with or without a notarial deed.⁶ The transfer of patent rights must be registered and announced in the General Register of Patents, if the transfer of the patent is not registered and announced in the

General Register of Patents, the effect is not binding on third parties.⁷ Inheritance, testament, grant, and agreement are common terms used and the meaning of these terms has been understood, while what is meant by other causes that are justified by laws and regulations, namely as long as they do not conflict with the law.

Ownership of the Patent Right can be transferred to another party, but the moral rights remain with the inventor. Ownership can also be transferred for reasons justified by legislation. For example, based on a court decision that has permanent legal force. The concept of Patent Rights is that moral rights are eternally attached to the inventor, while economic rights recognize a time limit to enjoy the economic benefits of the invention. In other words, it is the limit of the monopoly tenure and the opportunity to exploit the invention. When the time limit expires, the monopoly power also ends. The status of the invention thus becomes a public domain and the public is free to exploit it without requiring a license.

Article 75 of Law Number 13 of 2016 concerning Patents, stipulates that the transfer of rights does not invalidate the right of the inventor to keep his name and identity on the Patent certificate.

Patent rights are basically handed over to other people through transfer or licensing. In order for the patent to be valid and binding, both must be in writing. Several problems then arise when an invention is owned by several inventors together. In order to avoid problems that complicate the position of inventors, Law Number 13 of 2016 concerning Patents has clearly

⁵ Dharmawan, N.K.S, dkk. (2018). *Harmonisasi Hukum Kekayaan Intelektual Indonesia*. Bali:SWASTA NULUS. h.86

⁶ Langitan, C. F. (2019). *PERLINDUNGAN HUKUM PENGALIHAN HAK EKONOMI ATAS HAK CIPTA MENURUT UNDANG-UNDANG NOMOR 28 TAHUN 2014 TENTANG HAK CIPTA*. *LEX ET SOCIETATIS*, 7(1). p.85

⁷ Suka, P. S. G., Wiryawan, I. W., & Mudana, I. N. Hak Paten Sebagai Objek Jaminan Kebendaan. *Kertha Semaya: Journal Ilmu Hukum*, 4(1). p.4

regulated, the transfer of Patent Rights must be done in writing without a notarial deed as stated in the explanation of Article 74 paragraph (1) of Law Number 13 Year 2016 on Patents. So that agreements are made clearly and prevent disputes at the implementation stage.

Any transfer of Intellectual Property through inheritance, grant, will, license agreement must be submitted to the Directorate General of Intellectual Property⁸, supported by a document of transfer of rights. Patent Rights are part of Intellectual Property. This means that the transfer of Patent Rights through inheritance, grants, wills, endowments, written agreements, or other reasons justified in accordance with the provisions of the legislation must be submitted to the Directorate General of Intellectual Property, supported by documents for the transfer of rights.

The transfer of Patent Rights, in addition to having to be based on the provisions stipulated in Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents, must also be based on the provisions concerning the conditions that must be met for the validity of the agreement as regulated in the Civil Code (KUH Perdata).

Transfer of Patent Rights through inheritance in Article 74 paragraph (1) of Law Number 13 of 2016 concerning Patents which reads that patent rights can be transferred or transferred, either in whole or in part due to: inheritance, grant, waqf, will, written agreement, or other reasons. other permitted in accordance with the provisions of the legislation. However, Law Number 13 of 2016 concerning Patents does not regulate in detail the procedures or procedures for the transfer of such rights. The rights that can be transferred

are only economic rights, while moral rights remain attached to the inventor.

The procedure that can be carried out by heirs to obtain their rights as heirs is to make an inheritance deed as authentic evidence of ownership of rights accompanied by a death certificate and a certificate of inheritance. The heir as the owner of the patent is required to register with the Directorate General of Intellectual Property, it must be accompanied by a document regarding the transfer of rights. Documents regarding the transfer of rights by way of inheritance are documents that prove the occurrence of the transfer of rights, namely an inheritance deed made or issued by a notary or official/institution authorized to make an inheritance deed. Any transfer of rights must also be registered with the Directorate General of Intellectual Property and announced in the official news for each type of IP.

II.2 Inheritance System Used in the Transfer of Patent Rights Viewed from Inheritance Law in Indonesia

The nature of ethnic pluralism and Indonesian citizens has led to various inheritance law systems in Indonesia, due to the various types of inheritance law systems in Indonesia, there is no clear conclusion regarding the law. which inheritance to use. In practice, Indonesia recognizes the applicability of three inheritance systems: customary inheritance law, Islamic inheritance law and inheritance law based on western civil law.⁹ This is in accordance with the classification of Indonesian citizens as determined by Article 163 of the

⁸ Murniati, R. op.cit. p.22

⁹ Puspita, S. D., & Fadhly, F. (2015). LEGITIEME PORTIE DALAM HUKUM WARIS ISLAM DI INDONESIA. *Veritas et Justitia*, 1(2), 356-374. DOI: <https://doi.org/10.25123/vej.1692>. p.356

Indische Staats Regeling. The following is an explanation of the inheritance law system in Indonesia, namely:

1. Western Civil Inheritance Law Western Civil Inheritance Law

(BW) is intended for Chinese and European descendants as stated in Book II of the Civil Code concerning inheritance from Chapter 12 to Chapter 18 of the Civil Code. Inheritance only occurs by death. If several people who have an inheritance relationship, die due to the same accident, or die on the same day, without knowing who died first, they are considered to have died at the same time, and there is a transfer of inheritance from one person to another. In addition, the Western Civil Inheritance Law also applies to native Indonesian citizens who submit to BW, with the exception of Book II Chapter 13 and Chapter 14 concerning the making of wills in addition to applying to people of Eastern descent who are not Chinese and also their respective customary laws.

Inheritance Law according to BW as contained in Article 830 of the Civil Code essentially states that Inheritance Law is a law that regulates the legal position of a person's assets after he dies, especially the transfer of that property to another person. The nature of BW inheritance law generally includes individual, bilateral and grading systems.

The inheritance system in BW does not distinguish male and female heirs, nor does it distinguish birth order.¹⁰

¹⁰ Moechthar, O. (2017). Kedudukan Negara Sebagai Pengelola Warisan Atas Harta Peninggalan Tak Terurus Menurut Sistem Waris Burgerlijk Wetboek. *Yuridika*, 32(2), 280-309. DOI: 10.20473/ydk.v32i2.4851. p.286

This means that the western civil inheritance law, the share of a woman and a man is the same. The division of inheritance according to the civil inheritance law (KUHPerdara) is as follows:

- a) After the heir dies, the distribution of the inheritance is attended by officials of the Heritage Hall;
- b) The distribution of inheritance is carried out in front of a notary chosen by the heirs, if there is no agreement between the heirs about the notary to be appointed, the District Court will appoint the notary;
- c) The distribution of inheritance can be canceled if the distribution is carried out under pressure, coercion, there is an element of fraud, and there are heirs who are harmed up to part due to an error in the estimation of the value of the inheritance;
- d) The cancellation of the inheritance distribution is carried out within three years after the testator dies.

2. Islamic Inheritance Law Islamic

Inheritance law is the law that regulates the transfer of ownership rights to the inheritance (tirkah) of the heirs to determine who is entitled to become heirs and how much of each.¹¹ Islamic inheritance law applies to Indonesians, both native and Muslim. The provisions of Islamic inheritance are contained in Book II on Inheritance Law of the Compilation of Islamic Law

¹¹ Basri, H., & Azani, M. (2018). ASAS KEADILAN DAN AHLI WARIS PENGGANTI DALAM PRAKTIK KEWARISAN MASYARAKAT BERDASARKAN HUKUM ISLAM DIKECAMATAN BANTAN KABUPATEN BENGKALIS. *Perspektif Hukum*, 17(1), 1-14. h.2

based on Presidential Instruction No. 1 of 1991. In general, the nature of Islamic inheritance law adheres to a bilateral-patrilineal system, namely placing men in more than women. This provision is a logical consequence that men have the obligation to provide for the family.

Islamic law based on the Al-Qur'an, hadith, and ijhtihad of the scholars regulating inheritance law. The division of inheritance according to Islamic inheritance law is carried out in the following ways:

- a. Payment of the debts of the testator is made in advance, including hospital fees and funeral costs;
- b. At the time of distribution of inheritance, it is attended by officials from the Balai Harta Peninggalan and carried out in front of a notary chosen by the heirs themselves. If there is no agreement on which notary to choose, the Religious Court shall appoint a notary to record the distribution of the inheritance;
- c. One heir to another can apply for the cancellation of the distribution of inheritance for the distribution of inheritance which is carried out by pressure, coercion, fraud and can cause losses of up to part due to an error in the estimation of the value of the inherited property.¹²

3. Customary Inheritance Law Customary Inheritance

Law is intended for indigenous Indonesian citizens, namely ethnic groups living in the territory of Indonesia. Customary Inheritance Law

¹² Wicaksono Satriyo. F. (2011). *Hukum Waris: Cara Mudah & Tepat Membagi Harta Warisan*. Jakarta: Visimedia. h. 85-128

System, regulated based on customary law in each region. Applies to indigenous peoples who live and subjugate themselves in the area of customary law. The nature and system of Indonesian customary inheritance law is quite diverse because it is influenced by the existing ethnic nature, but in general the nature and system of customary inheritance law is divided into three major systems, namely patrilineal (according to the father's line), matrilineal (according to the mother's line), parental (according to the father's line). paternal line). As we know, in Bali the inheritance system is patrilineal (father line).¹³ The division of inheritance is based on different customary law provisions in each region.¹⁴ In Indonesia, which upholds deliberation for consensus, stipulates the distribution of inheritance according to deliberation among the heirs, in the following manner:

- a) The distribution of inheritance is carried out in time according to the customs of the local community, some 40 days after the testator dies and some 100 days after the testator dies. This is done for the peace of the deceased heir and reflects the non-materialistic nature of society;
- b) Before the inheritance is divided among the heirs, the heirs are responsible for paying off the debts of the heirs. The inheritance is used to pay off the debt of the heir after it is divided among the heirs. The

¹³ Udytama, I. W. W. W. (2015). Status Laki-Laki dan Pewarisan dalam Perkawinan Nyentana. *Jurnal Advokasi*, 5(1). h.77

¹⁴ Ardika, I. N. (2016). Pemberian Hak Waris bagi Anak Perempuan di Bali dalam Perspektif Keadilan. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 5(4), 639-649.DOI: <https://doi.org/10.24843/JMHU.2016.v05.i04.p01>. p.640

grant that has been made by the testator during his lifetime can be used to pay off the debt of the testator if the inheritance is not sufficient. However, in some areas the adat cannot be used to pay off the debts of the heirs.

Transfer of Patent Rights in Indonesia, most people transfer rights through the western civil inheritance law system (BW) because in the western civil inheritance law system (BW) in the distribution of inheritance there is no distinction between the heirs and there is no distinction between the male heirs. -men and women, also do not differentiate birth order with the legal basis of the Civil Code (Burgerlijk Wetboek).

III. CLOSING

III.1 Conclusion

The conclusions that can be drawn from the results and discussion regarding the Transfer of Patent Rights through Inheritance in the Perspective of Inheritance Law in Indonesia are as follows:

Regarding the procedure for transferring patents through inheritance, it is not regulated in detail in Law Number 13 of 2016 concerning Patents. While regarding the transfer of Patent Rights in Indonesia, most people transfer patent rights through the civil inheritance law system because in the civil inheritance law system in the distribution of inheritance there is no distinction between the heirs and there is no distinction between male and female heirs. nor does it discriminate against birth order. With the legal basis of the Civil Code (Burgerlijk Wetboek).

III.2 Suggestions

To the government, Law Number 13 of 2016 concerning Patents should regulate in more detail the procedures

for transfer through inheritance and distribution of inheritance for Patent Rights with the establishment of implementing regulations in the form of Government Regulations.

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