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THE STUDY OF THE RELATIONSHIP BETWEEN PATENT LAW AND CIVIL LAW IS SEEN FROM DISPUTE RESOLUTION IN THE MEDIATION STAGE

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Abstract

Patent dispute resolution is currently regulated in Law Number 13 of 2016 concerning Patents, but there are still legal uncertainties, especially rules regarding dispute resolution obligations through mediation as an Alternative to Dispute Resolution pursued by the parties in patent civil cases. This article describes the implementation of the principle of legal certainty in the arrangements regarding the civil settlement of Patent Infringement in the Patent Act and to define a legal theory that can be used to require mediation in the settlement of civil disputes of Patent Infringement for the purpose of legal expediency. Normative juridical and qualitative normative approach methods are used to analyze problems so that the result is that the principle of legal certainty in resolving patent civil disputes has not been implemented in the Patent Law. The mediation stage for the settlement of civil disputes is only as a governing norm, not coercive, so that it only depends on the initiative of the parties will be resolved through alternative dispute resolution including mediation or through the courts. This study discusses the comparison of legal protection against simple patents in the patent law system in Indonesia. The normative juridical research method with a descriptive approach is supported by a theoretical approach, namely by reviewing and reviewing the provisions of Law Number 13 of 2016 concerning Patents with legal theory.

Keywords: Patent Law, Civil Law, Mediation; Alternative Dispute Resolution

1. Introduction

In the digital era and the Internet of Things (IoT) like now, where all data can be digitized and depicted from anywhere and even in real terms, of course, artificial intelligence is developing very rapidly throughout the world.

Intellectual Property Rights are rights derived from the work, character, and copyright of human intellectual abilities that have benefits and are useful in supporting human life and have economic value. The real form of the work, character, and creative power of human intellectuality can be in the form of science, technology, art and literature. Innovation or creation of a job using its intellectual abilities is natural if the inventor or creator gets a reward. The reward can be material or non-material such as a sense of security because it is protected, and recognized for its work.

With innovations that have received legal protection, inventors will benefit if they are used. These benefits can be in the form of royalty payments and technical fees, with the reward or recognition of creations, works, karsa and human creations in IPR regulations, expected to be able to arouse enthusiasm and interest to encourage the birth of new creations or innovations that are sustainable.

Humans in meeting all the needs of life for their survival are by using intellectual abilities,

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science and technology. Intellectuals are the result of man's noble work in adapting himself to real life. In maintaining their survival, humans have different intellectual abilities from one another. In a larger scope, a nation has a different degree in terms of intellectual ability from other nations.

Referring to the definition of IPR, the nature of Intellectual Property Rights is:

a. has a limited period of time, meaning that after the expiration of the protection period for innovation, then some can be extended (brand rights), but there are also after the expiration of the protection period become public property (Patent Rights),

b. is exclusive and absolute, meaning that the right can be defended against anyone, and the owner has a monopoly right, that is, the inventor can exercise his rights by prohibiting anyone without his consent from creating or using the technology he owns, and

c. is an absolute right that is not material.

Wealth or assets in the form of works produced from human thought or intelligence have economic value or benefits for human life so that they can also be considered as commercial assets. Works that are born or produced on human intellectual abilities either through the outpouring of energy, thoughts and creative power, taste and taste which can be in the form of science, technology, art and literature are naturally secured by developing a legal protection system for the property known as the Intellectual Property Rights (IPR) system. IPR is a way of protecting intellectual property by using existing legal instruments, namely Copyright, Patents, Trademarks and Geographical Indications, Trade Secrets, Industrial Design, Integrated Circuit Layout Design, and Plant Variety Protection.

Some of the reasons why IPR should be protected. First, the right given to a creator in the fields of science, art and literature, or an inventor in a new field of technology that contains inventive steps, is a form of giving an award and recognition of man's success in producing his innovative works. The legal consequence is that the inventor and creator must be given legal protection. Thus, those who desire creativity by exerting all abilities should be awarded the exclusive right to explore the IPR in return for their efforts. With the protection of Intellectual Property Rights, there is a guarantee to the public to respect the right of initiative and reaction and provide protection for their copyrighted works. The higher the state's appreciation of IPR, the better the future of a nation.

Incentives are given as an effort to stimulate creativity in an effort to create new works in the field of technology. This is also in line with the principle that IPR is a tool to achieve and develop technology. Second, there is a human rights protection system that is easily accessible to other parties, for example, such as open patents, where the inventor is obliged to describe or disclose his invention in detail, which allows others to learn or carry out the invention. Therefore, as an incentive and reward to the inventor must be given a special (exclusive) right to within a certain period of time master and exploit his invention.

Intellectual Property Rights (hereinafter referred to as IPR) is a form of creative economy in

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an intangible form born from the results of human creations using their intellectual abilities to meet human needs and welfare. These works born from the results of human creativity have a very high economic value so that they become a source of one's wealth. Wealth that comes from the results of human creativity is called intellectual property. This legal protection of new and unique works born of the results of human creativity is protected in the intellectual property legal regime.

For now the issue of IPR protection is no longer a matter for one country alone, but has become a matter for the international community. Especially since the signing of the Agreement Establishing the World Trade Organization (WTO) and its appendices. International IPR protection is increasingly stringent and law enforcement can be implemented through a body under the WTO system called the Dispute Settlement Body (DSB). To realize efficient, effective and beneficial IPR protection for all WTO members, cooperation between WTO members is needed both regionally and internationally.

In ASEAN countries, a forum has been established that discusses the issue of IPR protection. Likewise, the Asia Pacific Region has established a forum consisting of experts in the field of IPR to improve IPR protection to comply with the protection standards set by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). As one of the countries that has a very strong commitment to IPR protection, Indonesia has long been actively involved in frameworks both regional and international in the field of IPR. TRIPS as an annex to the WTO Agreement is a binding document in which Indonesia has ratified the agreement with Law Number 7 of 1994.

Based on TRIPs (Trade Related Aspects of Intellectual Property Rights), agreements that provide protection for intellectual works under the WTO (Word Trade Organization) there are several main elements of the protection of intellectual works. One of them is a patent. Patent is an exclusive right granted by the State to the inventor for the results of his invention in the field of technology, who for a certain time carries out his own invention or gives his consent to other parties to carry it out (Law Number 13 of 2016 concerning Patents). Patents like other forms / types of IPR are the result of works / creations with the intellectual ability of the inventor. The principle of alter ego recognizes that between the inventor and his work (patent) is a single entity. There would be no work/invention/patent without an inventor.

Although Indonesia already has complete laws and regulations in the field of Intellectual Property Rights including the field of Patents and has ratified international agreements regarding Intellectual Property Rights, there are still frequent disputes between the parties that cause losses both domestically, regionally and internationally.

2. Research Methods

The research method used in this research is a normative juridical research method, which is a method that is carried out by prioritizing researching data or library materials in the form of primary legal materials, secondary legal materials and tesier legal materials. The research conducted by the author has a descriptive nature. A descriptive study is intended to provide as

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precise data as possible about humans, circumstances or other symptoms, in this study the data source used is a secondary data source. Secondary data sources are data obtained not directly from the public but from documents, laws and regulations, reports, archives, literature, and other research results that support primary data sources.

In this study, the author collected secondary data from laws and regulations, books, official documents, scientific papers, magazines, articles, newspapers, and other literature materials related to the problems that the author researched. Analysis of the main data is carried out qualitatively using the deductive approach method and in its discussion is adjusted to the subject matter presented to obtain conclusions on the problem under study.

3. Result and Discussion

1. Intellectual Property Rights Regulation on Patents

a. Patent Definition

The term Patent used now in Indonesian law regulations is derived from the Dutch octrooi, and octrooi comes from Latin from the word actor/auctorizare, which means opened. The point is that an invention that gets a patent becomes open and publicly known. Patents in English are called Patents. According to WIPO (World Intellectual Property Organization) definite a patent: "A Patent is a legally enforceable right granted by virtue of a law to person to exclude, for limited time, other from certain acts in relation to describe new invention; the privilege is granted y a government authority as a matter of right to the person who is entitled to apply for it and who fulfils the prescribed condition"

From the definition above, we can see the important element of a patent, namely that a patent is a right granted by the government and is exclusive. The exclusive right of the patent holder is the production of patented goods (manufacturing) use (using) and selling of the goods and acts related to the sale of goods such as importing and stocking. To obtain a patent, an invention must have certain substantive requirements, namely: novelty, practicable and industrial applicability (industrial applicability) have inventive steps and meet formal requirements.

Patent in the legal sense is a special right granted under the law by the government to a person or legal entity who obtains an invention in the field of technology. So that the inventor for a certain period of time can carry out his own invention or prohibit other parties from using a way of doing or loading the goods (method, proces) the patent is given on the basis of request. A patent is a person entitled.

Obtaining a Patent, i.e. the inventor or who receives further the right of the inventor. The granting of patents is basically based on certain motivations, for example to develop science and technology. In addition it is intended to:

a. Appreciation for a work in the form of a new invention (rewarding inventive) The basis for granting a Patent to a sipenemu is based on a sense of fairness and feasibility for his efforts, so it is appropriate for him to obtain a Patent.
b. Insentive to invent and innovative inventions and works There are fair and reasonable

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incentives for research and development activities to enable rapid development of technology. This incentive can be given to the inventor with the guarantee of granting uninterruptible rights to an invention and entitled to withdraw the real remuneration benefit if the invention is used in commercial production.

c. Patents as a source of information The patent system not only preserves the interests of the inventor. Patents and their particulars are published to the public, so that they become common knowledge that can stimulate the next invention.

There are 4 (four) advantages of the patent system if it is associated with its role in increasing technological and economic development, namely:

1. Patents help promote a country's technological and economic development;
2. Patents help create an atmosphere conducive to the growth of local industries;
3. Patents help the development of science and technology and the economy of other countries with licensing facilities;
4. Patents help achieve technology transfer from developed to developing countries.

There are several disadvantages of patents, namely related to the relatively expensive cost of patents and the relatively short term and term of protection, which is 20 years for ordinary patents and 10 years for simple patents. In addition, not all inventions can be patented under the applicable patent law.

The patent system is the meeting point of various interests, namely:

a. The interests of patent collectors;
b. The interests of investors and their rivals;
c. The interests of consumers;
d. The interests of the general public;

2. Patent Subject

The one who is entitled to obtain the Patent is the inventor or who receives further the right of the inventor. This confirms that only the inventor or the inventor who further receives the right of the inventor is entitled to obtain a patent for his invention. Under certain conditions an invention can be born, for example because of official work, employment contracts and so on. According to Law Number 14 of 2001 concerning Patents article 11 to article 15 is regulated as follows:

a. If a discovery is made by several persons jointly then those who further receive their rights are jointly entitled to the discovery.
b. In an employment agreement, those who are entitled to obtain a Patent for an invention produced are the people who give the work, unless otherwise agreed.

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3. Types of patents

The types of patents known today are:

a. Stand-alone patents do not rely on other patents (independent Patent);

b. Patents related to other patents (dependent Patent) the linkage of bias occurs when there is a relationship of ordinary licenses or compulsory licenses with other patents and the two patents are in different fields;

c. Patent of addition or Patent of improvement;

d. Patent importation or patent confirmation or patent revalidation (Patent Revalidation), this patent is special because the patent has been known abroad and the country that grants the patent.

In Indonesia, according to the provisions of Law Number 14 of 2001 concerning patents, it is divided into two forms, namely:

a. Ordinary patents

b. Simple Patents

An invention can be grouped into simple patents because the invention does not go through an in-depth research and development process. A simple patent has only the right to one claim; direct substantive examination is carried out without a request from the inventor's side. This is different from ordinary patents, which go through an in-depth research and development process and can have many rights to claim. Not every invention gets a patent protection facility.

There are some exceptions – exceptions both absolute and limited. Exceptions that are absolute have definite criteria including:

a. Discovery of conflicting production processes or results with applicable laws and regulations, morality religion, public order or decency;

b. Discoveries about theories and methods in the field of Science and Mathematics

c. Discovery of methods of examination, treatment, treatment, and or surgery applied to humans and or animals;

d. Discovery of living things except for bodies;

e. Discovery of biological processes essential for producing plants or animals except no biological or microbiological processes.

Limited patent exemptions are patent grants, for example, suspended because for general consideration, this provision is essentially a delay in granting patents, meaning that if an invention is considered important for the people or for the smooth implementation of certain development programs, the government can postpone the granting of patents for a certain period of time, in Indonesia no later than 5 years from the establishment of the government decision.

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2. Legal Protection of Intellectual Property Rights regarding Patent Validity Period

Patents in each country are different depending on the provisions of the Law that apply in the country concerned. Some provide patent protection of 5 years, 10 years, 15 years to 20 years depending on economic conditions and applicable regulations. In Indonesia, according to the provisions of Law Number 14 of 2001 concerning patents, the term of article 8 paragraph (1) of the protection period is 20 years from the date of receipt and cannot be extended. And article 9 provides for a protection period for simple patents for 10 (ten) years and cannot be extended.

a. Transfer of patents

Patent rights as property rights can be transferred either in whole or in part through several means:

a. Inheritance
b. Grants
c. Will
d. Agreement (license agreement)
e. What is justified under the Act?

All forms of this transfer must be registered with the Directorate General of Intellectual Property Rights and recorded in the general register of patents, if they are not registered; the transfer process is invalid and null and void. The transfer of a patent does not remove the right of the inventor (inventor's right) to remain included in his name and identity in the patent in question, the right is a moral right (moral raight).

b. Transfer of patents through license agreements

The transfer of patents through agreements can take the form of a license agreement (Lisencing Agreement). This Agreement contains that the patent holder gives permission (license) to the other party based on the letter of agreement to carry out the exclusive deeds of the patent owner. The license agreement must be registered with the Directorate General of IPR in order to be prevented by agreements that contain unfair and unreasonable requirements. The License Agreement is not allowed to cause adverse consequences for the Indonesian economy or contain restrictions that hinder the ability of the Indonesian nation to control and develop technology in general and related to the patented invention in particular.

There are three forms of licensing encountered in practice, namely:

1. Exclusive license

Exclusive license, the patent holder agrees not to grant licenses to other parties /or the license is only granted to one party only. So that the patent holder is no longer entitled to carry out his invention (article 70)

2. Non-Exclusive License

This license the patent holder transfers to a number of parties and also remains entitled to run or use

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3. Single License

In this Agreement, the patent holder transfers the patent to another party, but the patent holder may still exercise his rights as the patent holder.

The License Agreement shall include the following:

a. The party who will pay the annual fee for the continuity of the patent;
b. The party who will deal with if there is a lawsuit against patent infringement;
c. There is a guarantee from the patent holder that the patented invention is new;
d. There is a guarantee from the licensor that the patent is valid according to patent law.

c. Compulsory Lisence

Requests for compulsory licenses can be submitted by each party to the Directorate General of IPR after a period of 36 (thirty-six) months from the date of grant of the patent. The application for a license must be made on the grounds that the patent is not implemented or implemented not fully in Indonesia. It is intended that the invention is not stored and not utilized and keeps the patent from being degenerated only into an import controlling device without stimulating the economic and industrial development of the patenting State. A mandatory license can be carried out if it meets certain conditions and conditions:

1. The patent is within 3 years from the time the patent grant is not implemented in Indonesia by the patent holder, even though the opportunity to carry out itself commercially should be pursued.

2. The party making the request may present convincing evidence that:

a. The ability to self-execute the patent in question in full;
b. Have its own facilities to execute the patent in question as soon as possible;
c. Have taken steps within a sufficient period of time to obtain a license from the patent holder on the basis of reasonable terms and conditions but have not obtained results.

According to Article 82 of Law number 14 of 2001 concerning patents, a mandatory license request can be made by the patent holder himself on the grounds that the implementation of his patent is impossible without infringing other existing patents. The decision on the provision of compulsory licensing from the Directorate General of Human Rights contains the following provisions:

1. Non-exclusive compulsory license;
2. Reasons for granting compulsory licensing;
3. Evidence, including information or explanations believed to be made mandatory licensing;
4. The term of the compulsory license;
5. The amount of royalty fees that the licensee must pay to the patent holder and

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the method of payment thereof;

6. The terms of the expiration of the mandatory license and the thing that can cancel it.
7. Compulsory licenses are mainly used to meet the needs of the domestic market;
8. Miscellaneous as necessary to maintain the interests of the parties concerned fairly.

d. Terms of granting patents

In granting this Patent not all inventions will get it. To obtain an invention, certain substantive requirements must be made, namely novelty, can be practiced in industry (industrial application), have an inventive step value (inventive step), and also meet formal requirements. According to Article 56 of Government Regulation Number 34 of the Year 1991 on Procedures for Requesting Patents, the determination that an invention requested by a Patent can be granted or cannot be granted a patent is made, among other things, by making it difficult

a. Novelty aspects of discovery (novelty)
b. Inventive steps contained in the discovery (inventive step)
c. Whether or not inventions can be applied or used in industry (industrial acability)
d. Whether the invention in question belongs to or does not belong to the group of inventions for which a Patent cannot be granted.
e. Whether the inventor or the person who further receives the inventor's rights is entitled or not entitled to a Patent for the invention.
f. Whether the findings are contrary to legislation, public order and decency. An invention can be said to be Patentable if it meets the three substantive requirements, namely novelty, inventive step and industrial application.

The explanation of each patent mentioned above is:

1. Novelty

The novelty requirement, namely that the invention for which the patent is requested must not be known in advance anywhere and in any way. Regarding the terms of novelty, it can be absolute or relative. It is absolute or known as worldwide novelty. On the other hand, because of the interests of developing countries, there is a form of local novelty or national novelty that is relative. The Patent legal model for developing countries issued by Bivieaux International Reunis pour la Protection de la Propriete Intectuelle (BIRPI) (1964) adheres to the absolute terms of novelty. Indonesia in the new system adheres to word wide novelty in accordance with article 3 of Law Number 14 of 2001 concerning patents that an invention is not new if at the time of filing a patent request the invention is announced in Indonesia and outside Indonesia in a writing or demonstration or in other ways that allow an expert to carry out the invention

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before the date of receipt or priority date.

2. Inventive steps

That an invention is an unforeseen matter is provided for in section 2 (3) of Law 14 of 2001 on the patent of the first application obtaining priority rights.

3. Application of Industrial field

An invention to obtain a patent must meet the requirements that the invention can be applied in industry. The application criteria that patents related to products can be made repeatedly with the same quality and process patents, the process must be able to be run and used in practice.

4. Formal Requirements

Formal requirements are administrative requirements that include patent application documents. The requirements are met if the application letter is complete and there are attachments regarding technical explanations, technical drawings, of the invention requested by the patent. This can be seen in article 4 of Law Number 14 of 2001 concerning patents.

e. Patent Registration Procedure

In the case of a patent request, it is necessary to distinguish between the syurat of the patent application and the letter of application for obtaining a patent. A letter to obtain a patent is a separate document called a "request for patent" while a patent application letter is commonly called a "patent application" which contains documents.

Completeness in patent request:

1. Application letter for obtaining a patent,
2. Description of the invention,
3. One or more claims contained in the invention,
4. One or more images called descriptions to clarify,
5. Abstraction about invention.

3. Patent Relations and Civil Law

In addition there is another rule, that the patent holder may license another person to use the fruits of the mind contained in that patent, in whole or in part. With the transfer or submission of patents to other people, transfer or transfer of power over the patents. Here what is transferred or given up is only his economic rights, while his moral rights do not participate in switching or being handed over, because they remain attached to his Inventor. A patent as a right granted to a person for an invention that contains an inveritive step (necessity) can be transferred to another person. The definition of transfer of rights is the transfer of power / power (over something) to a legal entity, person, and state (other party). According to Civil Law, what is meant by surrender is, "the surrender of an object by the owner or on his behalf to another person so that the other person acquires possession of the thing." The surrender can be

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distinguished again by "manifest surrender and juridical surrender". A manifest surrender is to transfer power over a treasury in a real way, whereas a juridical surrender is a legal act on which or because of which property rights (or other material rights) are transferred. The difference between the two is obvious in the surrender of immovable objects and moving objects. In the registration of immovable objects the surrender must go through registration on a deed in the general register; on the contrary the surrender of movable objects in the form of surrender is carried out at once, meaning that the actual surrender and juridical surrender are carried out jointly.

4. Implementation of the Principle of Legal Certainty in Resolving Civil Disputes of Patent Infringement in Law Number 13 of 2016 concerning Patents

IPR is the result of human thought that needs to be given protection. The concept of IPR protection is in line with the theory proposed by Robert M. Sherwood, especially Risk Theory. The theory suggests that IPR is the result of a study and contains risks. Therefore, it is natural that IPR is given protection against efforts or activities that contain these risks. Protection of IPR, especially against patents in the territory of Indonesia, is very important to do. If these protections are not implemented properly, talented people (inventors) in the field of technology and computers will move to other countries that value copyrighted works. This is because violation of patent rights will be very detrimental to inventors, agencies and companies that have financed research that has been carried out to produce new findings.

In resolving disputes in the field of IPR, especially Patents, the parties can resolve disputes outside the court (non-litigation) or in the Commercial Court (litigation). For the settlement of patent civil disputes as stated in Article 142 that the party who feels entitled to a patent can sue the patent holder party to the Commercial Court. Then Article 153 of the Patent Law states that, in addition to dispute resolution through the Commercial Court, the parties can resolve the dispute through Arbitration or Alternative Dispute Resolution, so that for the settlement of civil disputes patents are not required to take mediation first and can be directly filed in the Commercial Court only. Unlike the case with Article 154 of the Patent Law, the settlement of patent criminal disputes requires the parties to undergo mediation before a criminal lawsuit is finally made. The object of an IPR is an object of economic value and is closely related to the business world. Therefore, IPR needs to be protected because it has a high probability of a dispute occurring. As part of a civil dispute, the right way and method for the parties to resolve the dispute is through Alternative Dispute Resolution, especially mediation because the mediation process is carried out behind closed doors and requires negotiations. Of course, settlement with this method basically prioritizes the agreement of the parties to the dispute at the time before the start of dispute resolution or when the dispute resolution process has ended. The settlement of patent civil disputes is also private, so the focus is on regulating the interests of individuals or parties to the dispute. It is different from a settlement through a court where the hearing is open to the public. The confidentiality nature of the mediation process is an attraction in itself, because the parties to the dispute basically do not like it if the issues they face are made public. Then, one of the reasons for the acceptance of mediation as an alternative to dispute resolution is because basically mediation allows the parties to the dispute to sit

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together to discuss their problems and try to resolve the problem by way of deliberation, this method has been known in various cultures. In Indonesian culture, deliberation is an effort to resolve disputes that have been known for a long time and live in traditional societies. Dispute resolution through deliberation is not new because it has become known and lived in various indigenous peoples. Mediators who are considered capable of resolving disputes are usually traditional elders or community leaders.

From several articles listed in the Patent Law regarding the settlement of patent disputes, there are differences in legal norms. The settlement of patent criminal disputes as stated in Article 154 of the Patent Law has a legal norm that is coercive (dwingend) because this article requires the parties to undergo mediation before finally a lawsuit is filed in the Commercial Court. Unlike the case with the settlement of patent disputes in the realm of civil lawsuits as stated in Article 142 and Article 143 of the Patent Law, it has legal norms that only regulate (aanvullen) only, so it is not enough to provide legal certainty. As stated above that the IPR system is a private right, because the settlement of civil disputes is private, then in its settlement it should also be started with mediation first in order to find a common ground between the parties before finally a lawsuit is filed in the Commercial Court as the rules given for the settlement of patent criminal disputes that are public.

In line with the legal theory proposed by Richard Posner, namely the Theory of Economic Analysis of Law, this theory is a theory that uses an economic science approach based on three principles, namely value, expediency, and efficiency (value, utility and efficiency). Richard Posner states that efficient law is the allocation of responsibility between people engaged in interacting activities in such a way as to maximize shared value, or some amount to the same, minimizing the cost of joint activities. Efficient law enforcement favors the quality control of a process (quality control assessment) and not solely in favor of effectiveness that focuses on quantity solely. Dispute resolution through Arbitration and Mediation of Intellectual Property Rights is a way of resolving a civil dispute in the field of IPR, which is based on a written agreement by the parties and is resolved according to the provisions and procedures of Law Number 30 of 1999 concerning arbitration and alternative dispute resolution. The first stage of dispute resolution procedure, which is the submission of a dispute resolution request, then the administrator, sees whether the application meets the civil requirements. The application is communicated with the opposing party, and then the parties select an arbitrator. When compared to Article 153 paragraph (1) of the Patent Law other than the settlement of civil disputes as stated in Article 143 of the Patent Law, the parties can resolve disputes through arbitration or alternative dispute resolution. From the formulation contained in Article 143 of the Patent Law, the rules for resolving civil disputes are no longer coercive, but only limited to regulating (aanvullen) and mediation becomes an ability, even though patent civil disputes are more closed than criminal disputes. Although dispute resolution is returned to the parties, it is not in line with the principle of quick, simple and low-cost dispute resolution which positions alternative dispute resolution as the first and main step, especially in patent civil dispute resolution. If the settlement of a patent civil dispute is pursued through mediation first before a lawsuit is filed in the Commercial Court, there are a number of benefits that will be obtained by the parties, including:

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1. Mediation can resolve disputes appropriately and relatively inexpensively compared to taking the dispute to court or to an arbitral institution.
2. Mediation will focus the parties' attention on their real interests and on their emotional or psychological needs, so that mediation is not just focused on its legal rights.
3. Mediation provides an opportunity for the parties to participate directly and informally in resolving their disputes.
4. Mediation gives the parties the ability to exercise control over the process and its outcome.
5. Mediation can change outcomes that in litigation and arbitration are difficult to predict with certainty through a consensus.
6. Mediation provides test-proof results and will be able to create better mutual understanding among the parties to the dispute because they decide it themselves.

With the advantages in the mediation, of course, it will also provide great benefits for the parties in resolving patent civil disputes, so that if the mediation route has been successfully pursued and the dispute has been resolved, then the parties no longer need to take the litigation route. If in a dispute resolution does not provide benefits and satisfaction for the parties to the dispute, of course, a principle of expediency is not fulfilled because good law is a law that can benefit every legal subject because society as a legal subject expects benefits in the implementation and enforcement of the law.

4. Conclusion

Different from the transfer of a Patent whose ownership of rights is also transferred, a License through an agreement is basically only a grant of the right to enjoy the economic benefits of a Patent within a certain period of time and conditions. Unlike other IPR products such as copyrights and brands, patents are basically immaterial individual property rights that arise due to human intellectual abilities. As a proprietary, patents may also be transferred or submitted by their Inventor or by those entitled to the Invention to individuals or legal entities. The ideal principle of patent protection is the same as other IPR protections as long as all of them intend to protect someone who finds something so that the fruits of their thoughts and work are not used casually by others and enjoy the results by forgetting the hard work of those who have worked hard, thought and spent money to get it. When compared between copyright and patents, the difference between the two is that the form of copyright by law in principle is recognized from the very beginning, and the law only regulates in its protection. While a patent is a right granted by the state to someone who finds something (invention) in the field of technology that can be applied in the industrial field, against the only (exclusive) person who finds it through the fruit of the mind or the fruit of the work, and others are prohibited from using it, except with the permission of the patent owner.

The principle of legal certainty in resolving civil patent disputes has not been implemented in Law Number 13 of 2016 concerning Patents. This can be seen in Article 142, Article 153, and Article 154 of the Patent Law, which discusses the settlement of patent disputes. The mediation stage for the settlement of civil disputes is only as a governing norm, not coercive, so that it

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only depends on the initiative of the parties will be resolved through alternative dispute resolution including mediation or through the courts. The Theory of Economic Analysis of Law proposed by Richard as the basis for the need to regulate mediation norms as an obligation that must be taken by parties in resolving patent disputes civilly in the Patent Law considering that efficient law enforcement favors the quality control of a process (quality control assessment) and not solely in favor of effectiveness that focuses on quantity alone. Through mediation it proves to be more effective as a method that should be mandatory for the parties to resolve disputes.

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