

Legal Protection of Inventor Employees through Patent Ownership Agreements in Indonesia

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Abstract

Intellectual property born in the production process in a company is usually a patent produced by inventor employees through research and development activities. However, arrangements regarding the ownership of patents generated by inventor employees in employment or service relations in Article 12 and Article 13 of the Patent Law grant the patent ownership rights automatically to the employer so as not to provide adequate legal protection to the inventor employee. Legal protection for an employed inventor is important to note because it will spur IPR productivity and motivate inventors' creativity to produce intellectual property work. This research used normative juridical methods with analytical descriptive research specifications. Data collection was done through interviews together with company representatives at PT. Martina Berto (Tbk) and PT. Bio Farma (Persero). The results showed that the practice of patent ownership produced by inventor employees at PT. Martina Berto (Tbk) and PT. Bio Farma (Persero) based on Article 12 and Article 13 of the Patent Law is contrary to the principle of alter ego. Inventor employees can negotiate with the company by forming a patent ownership agreement that will clarify the ownership rights and the number of rewards that will be obtained by inventor employees based on Article 12 paragraph (1) and Article 153 of the Patent Law.

Keywords: *Employed Inventor, Patent, Patent Ownership*

INTRODUCTION

The development demands of Science and Technology are the main issues and focus for developed and developing countries to compete to meet the needs of people who are always dynamic. Not only developed countries, but developing countries have also spurred technological development in their respective societies, so that technology gains an important position for the progress of a nation. As one of the priorities of a country, technology is important because it becomes one of the vital resources in an effort to revive the industrial sector. The development of the technology industry is not only one of the domestic economic activities, but also able to provide an important role in the world industry.

In fact, developed countries have more advanced technology and at the same time have better patent protection when compared to developing countries. The industry is now growing

to be very modern, making supporting technology more complicated and diverse. Thus, the invention of technology requires the support of adequate facilities, qualified equipment and the sacrifice of energy, time, and costs that are not small. This explains why most inventions today are created by companies and research institutes, whereas the work of individual inventors has become rare (Whindari, 2018).

The development of human living needs not only demands new products, but also demands improvement of existing products. The new product will usually be tested for the level of excess it has, whether more practical, faster, more environmentally friendly or other sizes. This condition then causes the company to need special employees who are tasked with researching and producing new innovations that have not been found before. This confirms how important *research and development* activities in a company are to produce new products that excel and also realize how important and strategic the role of research employees in this regard.

As an effort to support the company's business activities, there are generally special departments in charge of *Research and Development* (*research and development*) activities. This is done to optimize the running of the company's business and produce new innovations that have not been found before. In the invention process, research and development activities are generally carried out by research employees who are knowledgeable and experienced in their fields. Generally the research is done based on ideas or work plans made individually or in groups and not based on ideas or work plans made by companies or employers (Amirulloh, 2015).

As is the case with PT. Martina Berto (Tbk) and PT. Bio Farma (Persero) which has a *Research and Development* division that is tasked with carrying out research and development activities in the company. The production process of both companies allows that their employees produce inventions that can then be registered for patents. However, there is no clause that discusses the ownership of patents generated by employees in a legal document either in the form of company regulations or employment agreements at PT. Martina Berto (Tbk). Different from PT. Martina Berto (Tbk), patent ownership status generated by employees of PT. Bio Farma (Persero) has been predetermined in the company's internal regulations related to the management of innovation or intellectual property rights generated by employees who mention that "the innovation of employees whose acquisition process is financed or uses facilities both all and partly provided by the company, then the results of intellectual work will belong to PT. Bio Farma (Persero)". Nevertheless, PT. Bio Farma (Persero) and PT. Martina Berto (Tbk) has not fully protected the rights of inventor employees. The rights that have not been obtained by inventor employees are the interest for inventor employees during the invention is still empowered and also the potential for dismissal of inventor employees in the future.

Like other forms or types of Intellectual Property, patents are the result of intellectual work produced through creativity and the ability of personal intellectual inventors. The principle of *the alter ego* recognizes that the inventor has a very close relationship with the invention he produces (Amirulloh, 2021). That is, an invention will not be realized without the inventor as the producer of invention. Thus, the inventor has a natural thing over the ownership of patents produced by his *mental labour*.

Based on this, there are differences regarding the purpose referred to by the principle of *alter ego* with the provisions of articles 12 paragraphs (1) and (2) that automatically assign the employer as the owner of the patent. Article 12 paragraph (1) and paragraph (2) of the Patent Law position inventor employees as parties who have a lower position when compared to the company as an employer. This is very contrary to the principle of *alter ego* which actually gives the highest position and appreciation to inventor employees by stating that it would not be possible to exist or the birth of a patent without the creativity of the inventor employee in invention activities. The principle of *alter ego* has not been so reflected in the laws and regulations in Indonesia.

Although the phrase "unless otherwise promised" contained in the end of the sentence of Article 12 paragraph (1) of the Patent Law allows for inventor employees to obtain patent ownership, but in reality in the employment relationship employees have a *bargaining position* (bargaining position) that is weaker than the position of the company as a patent the employer. In addition, the Company may use the phrase "Patent Holder for Invention produced by Inventor in employment relations is the employer" contained in Article 12 paragraph (1) of the Patent Law without preceded by the transfer of rights from employees to the company. This is feared to cause uncertainty over the ownership of patents that will be produced by the company's inventor employees.

When viewed from data managed by the Directorate General of Intellectual Property in the Intellectual Property Database, the number of patent applications based on the country of origin of Indonesia decreased in 2019. It was noted that in 2019 only 1,311 applications were submitted for patent registration, while previously there were 2,780 applications. Based on data on the number of registered patents owned by the Directorate General of Intellectual Property does not contain details about the amount of patents produced by individuals, universities or by companies. Nevertheless, WIPO patent statistics in 2019 mentioned that the company is the highest patent subject to register a patent. The companies that ranked in the top five in the highest patent registries were from China, South Korea, Japan, the United States and Sweden. This can be evidence that the invention produced by inventor employees is an important thing that should get attention.

The Patent Law as a patent protection system in Indonesia has not been disseminated properly and thoroughly, and has not given a serious award to inventor employees in Indonesia. This is evidenced by the existence of rules that actually protect the company as an employer and less in providing better protection to inventor employees as a form of appreciation for the results of their intellectual ability to produce patents. Legal protection for an inventor is important to note because it will spur IPR productivity and motivate inventor creativity to generate intellectual property. Lack of attention to the legal protection of an inventor is feared to make intellectual creativity in the technology and knowledge industry becomes undeveloped, and will affect the productivity of IPR. Therefore, it is important to provide adequate legal protection to inventor employees to ultimately build the national economy in Indonesia.

The focus of the problem in this study is about the status of patent ownership generated by inventor employees in the employment relationship associated with the principle of *alter ego* and legal actions that should be taken by the inventor employee to protect the right to the

invention. The purpose of this research is to determine the status of patent ownership generated through working relationships and to determine what legal actions should be taken by inventor employees in a company.

RESEARCH METHOD

The research method used in this research was normative juridical, which is a method by which law is conceptualized as norms, rules, principles, and dogmas (Soekanto, 1986). This method of approach emphasized the science of law, in addition to also study the rules of law that apply in society (Soemitro, 1990). Furthermore, this study used *statute approach*, *conceptual approach*, and *comparative approach*. The approach method was carried out by reviewing the provisions of the Law and regulations related to legal issues being addressed in this study, namely Law No. 13 of 2016 on Patents, Civil Code and comparison with the Japan Patent Law number: Act No. 121 of 1959, Amendment of Act No. 3 of 2019. The research objects studied by researchers focus on legal norms contained in the laws and regulations and various results of previous research that discussed issues related to patent protection in Indonesia.

The specifications used in this study were analytical descriptives that focus on applicable laws and regulations associated with theories and implementation of positive laws or laws that apply today, especially regarding patents. Descriptive analytical research is intended to provide as accurate data as possible about humans, keadaan or other symptoms (Nawawi, 2003).

This research was conducted by the author through the literature research and field research stage. Literature research was conducted by tracing and finding secondary data, which are primary legal materials, secondary legal materials and tertiary legal materials. While field research was conducted to support and complement secondary data, the authors conducted interviews on sources related to research objects to obtain primary data. In this case, the author has conducted a joint interview with company representatives at PT. Martina Berto (Tbk) and PT. Bio Farma (Persero).

Data analysts were carried out in qualitative juridical manner by reviewing and analyzing data based on legal aspects and without using formulas. This research is guided by legislation which is a positive law and data analysis derived from information from interviews conducted to support this research. The data that has been obtained will be classified into the classification of problem formulations that have been described and analyzed qualitatively which will then be drawn a conclusion.

DISCUSS AND ANALYSIS

Comparison of Patent Ownership Rules Generated by Inventor Employees in Indonesia with Japan

In Japan there is a term *employee invention* that refers to inventions produced by employees in a company. Japan's Patent Law regulates specifically the so-called *employee invention* in Article 35 of the Japan Patent Law number: Act No. 121 of 1959, Amendment of Act No. 3 of 2019 (*hereinafter* referred to as the Japanese Patent Law). Article 35 paragraph (1) of the Japanese Patent Law states that:

"An employer i.e. a state or local public entity (hereinafter referred to as an "employer") has a non-exclusive license to the patent in question, in which an employee, executive officer of a legal entity or national or local public official (hereinafter referred to as an "employee") has obtained a patent for an invention that by its nature falls within the scope of the employer's business and an action or action that results in an invention. Is part of the current or past duties of employees, performed on behalf of the employer (hereinafter referred to as "*employee invention*") or where the successor in possession of the right to obtain a patent to obtain a patent on invention from the employee."

Under Japan's Patent Law, "employers, legal entities, or states or public bodies" employing an inventor are called "employers" and "employees, executive officers of national or local public officials" are referred to as "employees". An invention categorized as an "*employee's invention*" under Japanese law must meet two conditions:

1. An invention that by its nature falls within the scope of the employer's business; and
2. One or more actions that result in inventions that are part of the duties of current or past employees admitted on behalf of the employer (Japan Patent Office Asia-Pacific Industrial Property Center, 2006).

Inventions made by an engineer belonging to a company and involved in research and development, design or manufacturing, are commonly referred to as "*worker's invention*". Worker's invention includes inventions made by company executives, regardless of any rules that a company has. Worker's invention is then divided into 3 (three) categories, namely:

1. Free Invention

That is, inventions that do not fall into the scope of duties of an employee.

2. Service Invention

That is the invention that belongs to the scope of the employer's business.

3. Employee's Invention

Inventions are included in the business scope of an employee and are the result of current or past duties (Japan Patent Office Asia-Pacific Industrial Property Center, 2006).

Under the Japanese Patent Law, the right to obtain a patent in connection with an invention takes precedence over its inventor (main clause of Article 29(1) of the Japanese Patent Law), so that the one who can apply for the patent is the inventor. In addition, Japan's patent law also recognizes an employer's right to have a non-exclusive license for patents granted to its employees.

However, in many cases patent applications filed by the company where the inventor works because the right to obtain the patent can be transferred. The amendment to Japan's Patent Law of 2019 changes the old rules that have been established and stipulates that employers can first choose whether the right to obtain a patent on *an employee's invention* belongs to the employer or the employee who invented the invention. Article 35 paragraph (3) of the Japanese Patent Law states that:

"in the case when in any agreement, employment regulations or other provisions governing that the right to obtain a patent from *an employee invention* by an employee is held by the employer, then the right to obtain the right to the patent is the property of the employer"

The right to obtain a patent on *an employee invention* may be the property of the employer if there are provisions that first regulate the *employee invention* is transferred. When the employee transfers the right to *employee invention*, then the employee is entitled to receive a reasonable reward from the employer. Thus, patents on *employee inventions* can be transferred from employees to employers through agreements, labor regulations or other provisions.

As for patents for *free invention* and *service inventions* resulting by employees, employers are not entitled to obtain patents that are not included in the *employee's invention*. Article 35 paragraph (2) of the Japanese Patent Law states that:

"in the event that an invention made by an employee, who is not an *employee's invention*, in the case of a contract provision, employment regulation, or other previously regulated provision for obtaining a patent or patent must be granted to the employer by having an exclusive license to the invention, it shall be null and void."

Under these provisions, contracts, labor regulations or other provisions governing *free invention* and *service invention* will be null and void. While with respect to inventions made within the direct scope of the employee's employment duties, through contracts, labor regulations or other provisions, the right to obtain a patent is allowed to be granted to the employer. According to a recent decision, the only null and void part of the contract, employment regulations, or other provisions governing the transfer of all *worker's inventions* to companies is those relating to *free invention* and *service invention* (Japan Patent Office Asia-Pacific Industrial Property Center, 2006). In contrast, any inventions made within the direct scope of the employee's employment duties are still subject to the agreement.

Unlike Japan, the rule of law in Indonesia does not define what is called *employee invention*. Article 12 paragraph (1) of the Patent Law only states that "the patent holder of inventions generated by inventors in employment relations is the party who provides the work, unless otherwise promised.". In article 12 paragraph (2) of the Patent Law also states that the provision also applies to the resulting inventions, both by employees and workers who use the data and / or means available in their work. So that *the employee invention* referred to in article 12 of the Patent Law is an invention generated by an employee in an employment relationship or who uses the data and / or means available in his work even if the agreement does not produce inventions. Regulation in Indonesia, needs to be associated with the principle of *alter ego* so that the rights of inventor employees can be more guaranteed.

Legal Protection Related to Ownership of Patents Generated by Inventor Employees under Employment Agreements between Employees and Employers is Associated with The Principle of *Alter ego*

One company whose research employees have produced many patents is PT. Mertina Berto (Tbk). In carrying out research and development activities, PT. Martina Berto (Tbk) has at least 30 research employees who are under the auspices of the Research and Development division. Employees of the research team are recorded to have produced at least 28 inventions that are already protected by patents. Research employees at PT. Martina Berto (Tbk) works together by forming a team in conducting various studies. Ideas from research conducted usually come from employees who conduct plant *research*, seminars, exhibitions, formulators and others. Based on the results of interviews conducted with Mr. Yogo Suro and

Ms. Maily as *The Research* Section in the Research and Development division, explained that there is no clause in the employment agreement that regulates the obligation for research employees to produce an invention.

The provisions regarding patents generated through working relationships are stipulated in Article 12 of the Patent Law. Article 12 ayat (1) until paragraph (6) of the Patent Law. In article 12 paragraph (1) states that the one who is entitled to the right to invention is the party who gives the work. Furthermore, the meaning of the phrase "promised another" in Article 12 paragraph (1) of the Patent Law is to ensure that between employees and companies have the basis of a patent ownership agreement as a sign that there is a transfer of rights from the inventor to the company.

The party entitled to obtain the patent has previously been regulated in Article 10 paragraph (1) of the Patent Law i.e. inventor or person who received further the rights of the inventor concerned. The provisions of the article actually prioritize the inventor as a party who is entitled to obtain a patent. However, in a subsequent phrase mentioning that "or the person who further receives the rights of the inventor concerned" does not rule out the possibility that the other party is also entitled to obtain the right to the patent as long as the right has been transferred from the inventor concerned. Therefore, the ownership of patents generated by inventor employees does not necessarily become the property of the company, but must go through the process of transferring rights first from the inventor to the company.

Based on the results of interviews with inventor employees at PT. Martina Berto (Tbk) mentioned that the inventor employee will sign a statement of transfer of rights to the invention he produces, so that the resulting invention will belong to the company and this is in accordance with Article 12 paragraph (1) and paragraph (2) of the Patent Law. In addition, the name of the inventor employee also remains included in the patent certificate as mandated by Article 12 paragraph (6) of the Patent Law.

Although the ownership of patents has been transferred to the company in accordance with the provisions of applicable laws and regulations, the provisions regarding the ownership of patents generated through working relationships in Article 12 of the Patent Law have not been fully in accordance with the nature of the principle of *alter ego*. Basically the principle of *the alter ego* puts the inventor as the owner of the place or the owner of the highest position because humans are the most important asset in the process of creating an invention in the field of technology. Employedor research employees who are knowledgeable and experienced in their field become one of the main and most important factors in R &D activities. However, article12 paragraph (1) and paragraph (2) of the Patent Law positions inventor employees as parties who have lower conditions and positions when compared to companies as employers. This is very contrary to the principle of *alter ego* which actually gives the highest position and appreciation to the inventor for his hard work.

An inventor employee often must have the special skills or qualifications needed in the process of creating an invention that distinguishes it from other workers. Patents resulting from an invention must meet the requirements and criteria of patentability, namely *novelty*, contain inventive steps (*inventif steps*) and can be applied in industry (*industrial applicable*). Inventors must produce inventions that differ in form and technical function from previously expressed inventions (*prior art* or the state of art) based on creativity

and the ability of personal intellectual inventors (Amirulloh et.al., 2021). So that the inventor has a very close relationship with the invention he produces because it is able to channel his intellectual ability in answering technical problem solving.

In addition, the existence of data and / or means as stipulated in Article 12 paragraph (2) of the Patent Law is not the main factor of the creation of a patent, but the idea of inventors who become the most important factor in a problem-solving activity. In practice, patents resulting from research and development activities are the result of individual or group employee ideas and not derived from work plans created by the company. In this case, the invention produced by the inventor employee will not be realized without the idea of creativity of an inventor, so that the right to the patent should not only belong to the company, but also can be owned together with the inventor employee. Thus, the rights of inventor employees as invention producers as well as companies that are investors in research activities can equally enjoy the benefits of the patent.

When compared with the provisions regarding the use of data and / or the means stipulated in Article 12 paragraph (2) of the Patent Law, then the provisions of Article 12 paragraph (1) of the Patent Law actually apply very broadly, including the invention produced by inventor employees who in the process do not use the data and / or facilities owned by the company or even the invention has nothing at all to do with the scope of work of the company. Unlike the provisions applicable in the State of Japan that the company can obtain the right to the patent if the invention meets two conditions of *the employee's invention*, namely:

1. An invention that by its nature falls within the scope of the employer's business; and
2. One or more actions that result in inventions that are part of the duties of current or past employees are admitted on behalf of the employer (Japan Patent Office Asia-Pacific Industrial Property Center, 2006).

Thus, employers are not entitled to obtain patents that are not included in *employee's invention* such as *free invention* and *service invention* (Article 35 paragraph (2) of the Japanese Patent Law). Boss-limitations regarding inventions generated by inventor employees are needed to better appreciate the inventor employees who will one day produce inventions that have nothing to do with the company's business activities. So article 12 paragraph (1) of the Patent Law does not apply widely.

Although inventor employees agree to transfer ownership of their patents to the company, it should be noted that inventor employees are in a lower position when negotiating with the company. In fact, employees as workers have *abargaining position* that is weaker when compared to employers (Sridadi, 2013). The low bargaining position of these employees can occur one of them is due to the needs of employees for employment. Thus, this can result in inventor employees having weaker negotiating power when compared to the company.

Weak bargaining positions owned by inventor employees can affect him in signing agreements made with the company. As in Article 1320 of the Civil Code mentions that the agreement between the parties becomes one of the legal conditions of the agreement. However, in certain circumstances there are some things that do not reflect the realization of the agreement due to the defect of the will (*wilsgebreke*) that affects the emergence of the agreement, one of which is coercion or *dwang* (Article 1328 of the Civil Code). In this case,

the inventor employee may feel compelled to sign an agreement made by the company even though the agreement does not provide benefits for the inventor employee and is more profitable for the company. Thus, there is a discrepancy with the agreement referred to in article 1320 of the Civil Code due to coercion in obtaining the agreement.

Based on the provisions of Article 10 paragraph (1) of the Patent Law indirectly gives the highest position to the inventor as a party entitled to obtain a patent. This is in line with what is meant by the principle of *alter ego* that highly values the position of inventor. In contrast, the focal point of patent ownership arrangements in Articles 12 paragraphs (1) and (2) gives a lower position to inventor employees by prioritizing the employer as a patent holder for inventions generated by inventor employees in employment relations.

The state through the provisions of the Law is actually more in favor of the company as the employer by giving the patent ownership rights automatically to the employer by ruling out inventor employees as patent producers. This provision once again ignores the position of inventor employees who according to the principle of *alter ego* have natural rights (*natural rights*) there are patents that have been produced.

Meanwhile, PT. Bio Farma (Persero) has had 3 inventions that have been granted patents. Different from PT. Martina Berto (Tbk), despite the ownership of patents generated by inventor employees of PT. Bio Farma (Persero) was not previously regulated in the employment agreement, but the provision is already regulated in the company's internal regulations. Mr. Fariz Pramaputra mentioned that the ownership of patents produced by research employees at PT. Bio Farma (Persero) refers to the provisions of Article 12 of the Patent Law where the employer is designated as a patent holder. In addition, the provision of ownership of intellectual works produced by employees of PT. Bio Farma (Persero) also refers to internal regulations owned by PT. Bio Farma (Persero), which is related to the management of innovation or intellectual property rights produced by employees. In the regulation mentions that "the innovation of employees whose acquisition process is financed or uses facilities both all and partly provided by the company, then the results of intellectual work will belong to PT. Bio Farma (Persero)". Thus, the status of patent ownership has been determined in advance in the company's internal regulations that state that the invention generated through the working relationship then the patent ownership status will be granted to PT. Bio Farma (Persero) as an employer.

In the regulation mentions that "the innovation of employees whose acquisition process is financed or uses facilities both all and partly provided by the company, then the results of intellectual work will belong to PT. Bio Farma (Persero)". Therefore, employees of PT. Bio Farma (Persero) is required to comply with internal regulations that have been made by the company in its employment agreement. So that ownership of patents generated by inventor employees at PT. Bio Farma (Persero) was regulated before the patent was discovered.

Inventor employees at PT. Bio Farma (Persero) is also possible to have the right to ownership of the patent it produces. However, it needs to be proven in advance that the patent or invention is not generated through a process financed or using facilities provided by the company and not the scope of work of the company. The costs and facilities in question are not only material such as funding and laboratories, but also with imateriil such as *know-how* and confidential information from the company. According to the author, this is a good step

for the company to better respect the rights of inventor employees as patent owners. There are still employment agreements for inventor employees who do not provide certainty, such as work facilities and are not fired as long as the invention can still be empowered.

Legal Action that Inventor Employees can Take against Patent Ownership They Generate under the Patent Law

In essence, inventor employees have ownership rights to the inventions they produce. However, patents as a material right can be transferred or transferred either entirely or in part to other parties. The transfer will result in switching or being handed power over the patent. However, what is switched or handed over is only economic rights, while moral rights do not participate in switching because moral rights are attached to the inventor (Ramli & Putri, 2018).

If the rights to patents generated by inventor employees will be owned by the company, then the legal action that can be taken by inventor employees at PT Martina Berto (Tbk) is to carry out negotiations by forming a patent ownership agreement. As Article 153 paragraph (1) of the Patent Law states that in addition to dispute resolution as referred to in article 143, the parties can resolve disputes through arbitration or alternative dispute resolution. Negotiation is one of the alternatives to dispute resolution as referred to in Article 153 of the Patent Law. Negotiations can be one of the best settlements because the settlement is done alone by the disputing parties so as to obtain favorable results for both parties.

The patent ownership agreement may contain details of all elements relating to the rights and obligations of the parties in order to avoid conflict in the future. Inventor employees can do legal acts in the form of transfer of rights by making written agreements with the company. In this case, the company as an employer also performs legal actions in the form of receiving rights granted by inventor employees.

The agreement is written evidence that can be used as a solid basis to prove the granting of rights and can be a protective effort in preventing patent infringement. As mentioned in Article 74 paragraph (1) of the Patent Law that the written agreement is one of the procedures for transferring patents.

In making a treaty there is freedom to draft and make any agreement that will give birth to obligations for the parties because of the principle of freedom of contract. Although an agreement is based on the principle of freedom of contract that assumes that the parties have a balanced *bargaining position*, but in practice there is an inequality to the *bargaining position* owned by the company with inventor employees. As a result, parties who have a *stronger bargaining position* tend to control the party that has a *weaker bargaining position*. Weak *bargaining position* can lead to the inprotection of the rights owned by inventor employees so that they are forced to follow the requirements made by the company even though the requirements are very detrimental to themselves.

In this case, the inventor employee is entitled to claim his rights as the owner of the invention he produced. Inventor employees can negotiate with the company about the ownership of the patent it produces and demand to remain his name on the patent certificate. Appreciation in the form of moral rights in the form of the inclusion of the name of the inventor employee in the patent certificate is an absolute thing that must be done.

In addition to moral rights, companies must also respect the economic rights owned by inventor employees for the creations they produce. Affidavit of transfer of the right to invention alone is not enough to protect rights other than the moral rights of inventor employees. If the resulting patent will be transferred ownership rights to the company, then the inventor employee at PT. Martina Berto (Tbk) may demand a number of rewards as a form of appreciation given by the company to inventor employees as mandated in Article 12 paragraph (3) of the Patent Law.

When examined further, there is the principle of *alter ego* contained in Article 12 of the Patent Law, where economic rights are a right owned and attached to the inventor. Based on this principle, rewarding inventor employees is a form of reward to someone who has carried out specific problem-solving activities in the field of technology. This is supported by a reward *theory* that states that the inventor should be given an award as a balance for his creative efforts in finding / or disbursement of an intellectual work (Amirulloh & Muchtar, 2016). The rewards referred to in Article 12 paragraph (3) of the Patent Law may be paid based on:

1. A certain amount and at the same time;
2. Percentage;
3. Combined between a certain amount and at once with a prize or bonus; or
4. Other forms agreed upon by the parties.

Although both employers and employees are given the freedom to negotiate with each other and agree on the amount of benefits that will be obtained by employees, there are several other considerations that need to be considered in determining the rewards. According to the authors, the amount of rewards should also be determined taking into account the amount of profit the employer will derive from the invention, the employer's expenses and contributions and how the employer treats the employee as well as other circumstances that support the creation of the invention. Referring to the provisions of Article 12 paragraph (5) of the Patent Law states that in the event that there is no conformity regarding the way of calculation and determination of the amount of rewards, the parties can file a lawsuit with the Commercial Court.

In addition to the rewards, Article 12 of the Patent Law does not regulate the royalties that will be given by the employer to the inventor employee if the patent is commercialized to a third party. Article 12 paragraph (3) of the Patent Law only states that inventor employees are entitled to be rewarded under agreements made by employers and inventors. Meanwhile, inventor employees as referred to in Article 13 of the Patent Law also get royalties for the commercialization of patents carried out with third parties. Supposedly, both inventor employees in a private company are also entitled to royalty as an economic benefit for the commercialization of the patents they generate. When rewards are given to inventor employees as a form of appreciation for their ability to generate patents, then royalties are given to strive for useful research activities according to *incentive theory*. Incentives given to inventor employees are material rewards for their hard-earned results for being able to use their intellectual ability to produce inventions.

Different from PT. Martina Berto (Tbk), so far PT. Bio Farma (Persero) has given the award it gives to its employees who innovate or produce patents. During this time, the form of appreciation given by PT. Bio Farma (Persero) is in the form of "reward". Almost every year

PT. Bio Farma (Persero) organizes the Innovation Award event, which is an awarding event for the results of innovations made by research employees, whether the innovation can be patented or not. There is a diversity of forms of awards given by PT. Bio Farma (Persero) to its employees, which can be in the form of cash, formal or non-formal education or certificate of appreciation. Regarding the nominal amount of cash will be determined based on the policy of the HR division of PT. Bio Farma (Persero), so there is no negotiation for the determination of nominal amount together with inventor employees.

However, until now there are no rules regarding the procedure of calculating the amount of rewards that can be agreed or still in the discussion stage so there is no definite provision to regulate it. In this case, the results of the interview stated that PT. Bio Farma (Persero) as a State-Owned Enterprise has its own arrangements regarding the calculation of rewards that will be given to inventor employees. Even so, PT. Bio Farma (Persero) as a state-owned company can also refer to the provisions of the Regulation of the Minister of Finance related to the Distribution of Rewards to Inventors that have been regulated in the Regulation of the Minister of Finance no. 72 / PMK.02 / 2015 on Rewards Derived From State Revenues Not Patent Royalty Taxes to Inventors.

So far the patent is owned by PT. Bio Farma (Persero) is still being further developed by researchers, so there are no patents specifically commercialized. Research employee pt. Bio Farma (Persero) also has concerns that the company's regulations should regulate related to the system of rewards and royalties for investments generated by employees. In the event that the patent can be commercialized, it is possible to make an agreement between the company and the inventor employee, one of which will regulate the benefitssuch as the distribution ofroyalties, so that the economic right to the invention produced by the employee can be well protected. If the patent has been applied in the industry and produces economic value then it is appropriate for inventors to get awards and protection in terms of morals and economics.

CLOSURE

Conclusion

The practice of patent ownership produced by inventor employees at PT Martina Berto (Tbk) and PT Bio Farma (Persero) under Article 12 and Article 13 of the Patent Law is contrary to the principle of *alter ego* because it has not placed the inventor employee as a high-ranking party for the invention it produces. At PT. Martina Berto (Tbk) has no clause that discusses the ownership of patents generated by employees in a legal document in the form of company regulations or employment agreements. While the status of patent ownership generated by inventor employees at PT. Bio Farma (Persero) has been predetermined in the company's internal regulations related to the management of innovation or intellectual property rights generated by employees who mention that "the innovation of employees whose acquisition process is financed or uses facilities both all and partly provided by the company, then the results of intellectual work will belong to PT. Bio Farma (Persero)".

Suggestion

The Company shall take the initiative to make a patent ownership agreement that will contain in detail all elements related to the rights and obligations for the inventor and company employees in order to create legal certainty and legal protection for inventor employees. In addition, the company must also understand that the discovery of an invention in the field of technology born by inventor employees is the embodiment of personality reflection (*alter ego*). So that the company should respect the rights owned by inventor employees as the owner of the invention it produces by negotiating related to the ownership of patents and the amount of decent rewards. In determining the amount of rewards, companies and inventor employees can refer to the Regulation of the Minister of Finance no. 72 / PMK.02 / 2015 on Rewards Derived From State Revenues Not Patent Royalties To Inventors or taking into account the amount of profits that the employer will get from inventions, employer expenses and contributions and how employers treat employees and other circumstances that support the creation of inventions.

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