REGULATION OF PATENT RIGHTS AS AN OBJECT OF FIDUCIARY GUARANTEE

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Abstract

The aim of this research is to understand the regulation of patent rights as an object of fiduciary guarantee and to know and understand the process of executing patent rights as an object of fiduciary guarantee. The type of research used is normative legal research using a statutory approach and a conceptual approach. The result of this research is that the regulation of patent rights as an object of fiduciary guarantee is regulated in the provisions of Article 108 paragraph (1) of the Patent Law. Furthermore, related to the process of executing patent rights as an object of fiduciary guarantee, it refers to the Patent Law. Patent rights cannot be sold at public auction. The patent rights execution process can be carried out through the transfer of patent rights with a written agreement outlined in the form of a notarial deed, which must then be registered and announced through the Director General of Intellectual Property Rights. The economic value attached to the patent can be used by creditors to pay off debtors' debts.

Keywords: *Patent Rights, Regulation, Process, Execution*

1. INTRODUCTION

The rapid advancement of technology has led to changes in positive law. Philosophically, the development of law must align with societal progress, and conversely, if the law no longer fits societal changes, it should be repealed (Nasution & Albani, 2016). One such legal development is related to patents. Initially, patents were rights granted for new inventions that could be traded; they have now evolved into objects of fiduciary collateral.

According to Article 1 of Law No. 13 of 2016 on Patents (Patent Law), "A patent is an exclusive right granted by the state to an inventor for a certain period to carry out the invention or to authorize others to do so." A patent represents an exclusive right held by the inventor concerning their technological invention (Ulinnuha, 2017). An inventor is defined as one or several people who collectively execute an idea turned into an invention (Article 1, number 3 of the Patent Law). An invention is an idea of the inventor realized in a specific technological problem-solving activity, which could be a product or process, or an improvement and development of a product or process (Article 1, number 2 of the Patent Law).

Referring to this definition, the object of a patent is the invention of the inventor. An invention can be a product or process developed by the inventor. Patented products have high economic value. Therefore, a patent can be sold or transferred to another party.

In its development, a patent can also serve as fiduciary collateral. When a patent is used as fiduciary collateral, it can be used as security for a loan from a bank. In applying for a bank loan, the inventor acts as the fiduciary provider, and the bank as the fiduciary recipient. As the fiduciary recipient, the bank must assess the patent object (Setianingrum, 2016). This assessment is an economic evaluation to determine the economic value

contained in the patent object. The economic value must not exceed the amount of the loan.

Based on this phenomenon, patents used as fiduciary collateral require a strong legal foundation. This legal basis is crucial for determining the validity of a credit agreement made by the fiduciary provider and the fiduciary recipient. If patents are allowed to be used as fiduciary collateral, then the credit agreement made is considered valid. Furthermore, if this is permitted, the next issue that arises is related to the execution of fiduciary collateral and the process of its execution.

Based on the background above, the research addresses two primary issues. First, how the regulation of patents as fiduciary object organized and the process for the execution of patents used as fiduciary object.

2. RESEARCH METHODS

This research uses normative legal research to analyze laws related to the study's issues (Marzuki, 2010). The approaches used are the statutory and conceptual approaches. The legal sources include primary sources like the Civil Code, Patent Law, and Fiduciary Guarantee Law, secondary sources like literature, journals, and the internet, and tertiary sources like dictionaries. The legal materials are processed systematically and descriptively.

3. RESULTS AND DISCUSSION

3.1. Regulation of Patent Rights as Fiduciary Guarantee Objects

In the provisions of Article 1 number 1 of the Patent Law, the definition of a patent has been explained as described above. Patents have elements of subjects and objects. The subject of the patent is the inventor, while the object of the patent is an invention in the form of a product in the field of technology (Mufidah & Saini, 2023). Thus, it can be said that the object of a patent is the product produced by the inventor. The product produced is used as an object of fiduciary guarantee. So that it can provide legal protection to the invention (Awatari & Purwanto, 2020).

Regarding fiduciary guarantees, Article 1, paragraph 1 of Law No. 42 of 1999 on Fiduciary Guarantees defines fiduciary as the transfer of ownership rights of an object based on trust, with the condition that the object remains in the possession of the owner. Furthermore, Article 1, paragraph 2 of the same law states that a fiduciary guarantee is a security right over movable objects, both tangible and intangible, and immovable objects like buildings that cannot be encumbered with mortgage rights. This provides a priority position to the fiduciary recipient over other creditors. Given this, patents, being tangible movable objects, can be used as fiduciary collateral.

According to Article 108, paragraph (1) of the Patent Law, patent rights can be used as fiduciary collateral. This provision legally permits patents to serve as fiduciary guarantees, expanding their use beyond mere transactions. It ensures that patents not only can be bought and sold but also can be used as collateral, providing legal certainty and strength to the patent rights (Nugraha, 2022). Therefore, if a credit agreement uses patent rights as collateral, the agreement is legally valid.

The validity of a contract, as outlined in Article 1320 of the Civil Code, requires both subjective and objective conditions. Subjective conditions include mutual consent

and capacity, while objective conditions involve halal cause and halal objects (Jayadinata et al., 2020). Patents as fiduciary collateral meet these objective conditions, making the credit agreement between the fiduciary giver and the fiduciary recipient legally valid.

In relation to the agreements made by the parties, Article 5, paragraph (1) of the Fiduciary Law states that the imposition of fiduciary collateral must be documented with a notarial deed in Indonesian, which serves as the fiduciary deed. This fiduciary deed must then be registered with the Ministry of Law and Human Rights to obtain a fiduciary certificate (Ramli & Putri, 2018). The fiduciary deed creates rights and obligations for each party involved. The fiduciary giver has the right to receive a specified amount of money according to the approved credit from the bank and is obligated to provide the patent rights to the fiduciary recipient or bank and repay the debt. Conversely, the fiduciary recipient has the right to receive the patented object from the inventor and is obligated to provide the agreed amount of money. The credit agreement is binding on both parties, and each must adhere to the terms of the agreement or fulfill their obligations accordingly.

3.2. Execution Process of Patent Rights as Fiduciary Collateral

The execution process of patent rights as fiduciary collateral is closely tied to the agreements made by the parties involved. Conceptually, a consensual agreement is binding as soon as both parties reach a consensus, as outlined in Article 1338, paragraph (1) of the Civil Code, which states that agreements made legally are binding as law for those who make them. This means that agreements between fiduciaries and fiduciary recipients are legally binding. If one party fails to fulfill their obligations, it is considered a breach of contract, known as " default / *wanprestasi*" (Ardana et al., 2021).

Regarding fiduciary collateral, if a party is in breach, the object of the fiduciary collateral can be executed. Article 15, paragraph (2) of the Fiduciary Guarantee Law (UUJF) states that a fiduciary guarantee certificate has the same execution power as a final court decision. Paragraph (3) allows the fiduciary recipient to sell the collateral at their discretion if the debtor breaches the agreement. For patents used as fiduciary collateral, the patent can be executed by the fiduciary recipient (Neltje et al., 2023).

Article 29, paragraph (1) of the UUJF specifies that execution is carried out by the fiduciary recipient, including selling the collateral through public auction or private sale, with the proceeds going towards settling the debt. If the collateral is intangible, like shares, it can be sold on the stock market. The legal power of this execution is based on the debtor's breach of contract.

Executing patent rights differs from executing tangible collateral in fiduciary guarantees. Patents cannot be sold at auction or on the market. However, the Patent Law provides for patent transfer methods. According to Article 74, paragraph (1) of the Patent Law, patents can be transferred through inheritance, donation, will, endowment, written agreements, or other legal means. This allows the inventor (debtor) to transfer patent rights.

Referring to the transfer of patent rights, if the debtor defaults, the execution process carried out is by way of transfer of patent rights. The transfer of patent rights that is most related to the fiduciary guarantee is the transfer through a written agreement. The written agreement, of course, is made in the form of a notarial deed (Adjie, 2017). The deed, which is made before a notary, contains the transfer of patent rights which is certainly made by not contradicting the law. The transfer of patent rights through a written

agreement is basically done to grant patent rights to the patentee to enjoy the economic benefits of the patent under certain conditions and within a certain period of time. The moral rights inherent in the patent remain with the inventor. Even if the patent has been transferred to another party, the moral rights remain with the inventor until the expiration of the patent. The transfer of patent rights does not change the owner as the identity of the patent right (Fadillah, 2024).

The next step involves registering and announcing the notarial deed agreed upon by the debtor and creditor with the Director General of Intellectual Property Rights (HAKI) (Lestari et al., 2017). Patent rights must be registered as they are state-granted property (Oktavira, n.d.). Failure to register and announce the patent in the Patent Registry will have legal consequences for the transferor. Specifically, all rights and obligations remain with the original patent holder. In other words, even if a patent transfer agreement is formalized in a notarial deed, it lacks full legal effect if not registered and announced by HAKI. The legal force of a patent transfer through a written agreement depends on its registration with HAKI, not just the notarial deed. In case of a dispute, the notarial deed only binds the parties involved (debtor and creditor), while the transfer of patent rights becomes invalid if not registered and announced by HAKI. Conversely, if the patent transfer is registered and announced by HAKI, the patent certificate issued can be used as valid and strong evidence in court. The patent certificate thus serves as a robust legal basis for proving the case in court.

4. CONCLUSION

Based on the discussion above, the conclusion is as follows: The regulation of patent rights as fiduciary collateral is governed by Article 108(1) of the Patent Law. This provision serves as the legal basis allowing patents to be used as fiduciary collateral. Furthermore, regarding the execution of patents as fiduciary collateral, it cannot be based on the Fiduciary Guarantee Law (UUJF), as patents cannot be sold at public auctions. The execution of patent rights can be carried out through the transfer of patent rights via a written agreement in the form of a notarial deed, which must then be registered and announced by the Director General of Intellectual Property Rights (HAKI). The economic value attached to the patent can be utilized by the creditor for the repayment of the debtor's debt.

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