The Ius Constituendum Implementation of Simple Patents for the Management of Traditional Medicines

Abstract

Traditional medicine in Indonesia actually has the potential to be developed and has economic value for society. One effort to develop it is by optimizing aspects of intellectual property, especially through simple patents. This research aims to answer two legal issues, namely: the urgency of a simple patent orientation for traditional medicines in Indonesia and the formulation of a simple patent orientation for traditional medicines in Indonesia. This research method uses normative legal research with a conceptual and statutory approach. The research results confirm that the urgency of a simple patent orientation for the management of traditional medicines in Indonesia has three benefits at once, namely from the aspect of technology development, developing types of traditional medicine products, to increasing economic value. In the aspect of technology development, a simple patent for traditional medicine entrepreneurs can increase the value of creativity and innovation to always develop existing technology. Future arrangements that can be made are by establishing special regulations that regulate increasing the economic value of traditional medicines through the development of simple patents. Ideally, this regulation must also regulate three main substances, namely: an inventory of the potential for traditional medicines in a place, the potential for technological development through simple patents, and an effective and efficient marketing network for traditional medicines.

Abstrak

Obat tradisional di Indonesia sejatinya memiliki potensi untuk dikembangkan dan bernilai ekonomis bagi masyarakat. Salah satu upaya untuk mengembangkannya adalah dengan mengoptimalkan aspek kekayaan intelektual, khususnya melalui paten sederhana. Penelitian ini bertujuan untuk menjawab dua isu hukum yaitu: urgensi orientasi paten sederhana bagi obat tradisional di Indonesia dan formulasi orientasi

Kata Kunci: Kekayaan Intelektual, Obat Tradisional, Paten Sederhana.
I. Introduction

Traditional medicine is an alternative source of community treatment that comes from nature or through traditional processing that is special and unique to the local community. (Cahyono, Marsitiningsih, and Widodo 2020) The term traditional medicine is to differentiate it from medical medicine in general which is usually processed using certain medical technology and utilizes various chemical substances. (Kurnianingrum 2018) In Indonesia itself, traditional medicine is actually part of the wealth of society where the existence of traditional medicine grows and develops along with the level of civilization of society. (Suhartini. Haidir 2020) Before the advent of modern medical medicine, Indonesian people tended to use traditional medicine as the main solution to deal with their illnesses. Referring to data from the Ministry of Health, up to 2022 alone there will actually be more than 200 types of traditional medicine either already in use or with the potential to be developed. (Maulana 2022) Even so, the potential for many traditional medicines in Indonesia has not been utilized optimally because it refers to data from the Ministry of Health that in 2021, exports of traditional medicines in Indonesia will still rank 19th in the world. (Komunikasi 2021) This confirms that in the context of optimizing traditional medicines as part of biopharmaceuticals, Indonesia is still below India, Japan and Malaysia.

One of the causes of the lack of optimal use of traditional medicine in Indonesia is that aspects of traditional medicine have not been integrated with the development of traditional medicine through technological developments that can improve the quality of traditional medicine. In several countries such as Japan and India, traditional medicines are integrated with intellectual property orientation in the form of special patents so that apart from traditional medicines remaining sustainable as part of the local wisdom of the community, traditional medicines also gain a potential market share in the international arena. (Azis et al. 2020) In Indonesia itself, although there are no provisions regarding specific patents relating to traditional medicines, referring to Law no. 13 of 2016 concerning Patents (Patent Law) actually emphasizes the existence of simple patents as an effort to develop various aspects that require technological development but are not as complex as patents in general.

A simple patent orientation for traditional medicines in Indonesia is actually a relevant solution, especially in increasing the selling value of traditional medicines while optimizing the potential of traditional medicines in Indonesia. This research aims to analyze the absence of regulations regarding simple patent orientation for traditional medicines in Indonesia which can facilitate the
optimization of traditional medicines, especially into profitable export commodities. This research aims to answer two legal issues, namely: the urgency of a simple patent orientation for traditional medicines in Indonesia and the formulation of a simple patent orientation for traditional medicines in Indonesia. This research, which discusses patents and traditional medicines in Indonesia, has actually been carried out by several previous researchers, such as: research conducted by Purwaningsih and Ariyanti (2021) which focuses its discussion on the important aspects of patents as an effort to improve technological inventions.(Endang Purwaningsih 2021) The novelty in Purwaningsih and Ariyanti’s research (2021) is that there is a need for legal empowerment for MSMEs/local communities to obtain optimal patent registration and development facilities.

Further research was conducted by Wei, et al. (2022) whose discussion focuses on aspects of patent optimization for the manufacture of Goyong Woven Sarongs.(Rohmat, Waspiah, and Wei 2022) The novelty of research conducted by Wei, et al. (2022) that there needs to be a certain legal policy so that the manufacture of Goyong Woven Sarongs can optimize the patent aspect as part of intellectual property rights. Similar research was also conducted by Bintoro (2023) who discussed patent services at DJKI.(Febriyanti and Bintoro 2023) The novelty of Bintoro’s research (2023) confirms that socialization and efforts to facilitate patent services at DJKI are something that continues to be done to further improve technological inventions based on patent rights. From the three previous studies above, it can be concluded that the previous research has not discussed the orientation of simple patents for traditional medicines in Indonesia so that the research that the author conducted is original research.

2. Research Method

This research which discusses the orientation of simple patents for traditional medicines in Indonesia is normative legal research.(J. Efendi 2016) As normative legal research, this research uses primary legal materials in the form of statutory regulations, namely: Law no. 13 of 2016 concerning Patents (Patent Law) and Minister of Health Regulation no. 6 of 2012 concerning the Traditional Medicine Industry and Business (Permenkes of Traditional Medicine). Secondary legal materials in this research used books, journal articles, and research results discussing patents and traditional medicine. Non-legal materials are language dictionaries. The approach used in this research is a conceptual and statutory approach.
3. Results and Discussion

The Urgency of Simple Patent Orientation for the Management of Traditional Medicines in Indonesia

Based on Black's Law Dictionary, a patent is a legal document that provides protection for an idea or engineering in the field of technology which is generally a patent issued by a state patent office or similar. (Garner and Black 2019) Patents are actually part of intellectual property rights which emphasize the discovery and creativity aspects of each individual. (Mafulah 2020) As part of intellectual property rights, patents are of course attached to two basic aspects of intellectual property rights, which include moral aspects and economic aspects. The moral aspect is a fundamental aspect of intellectual property rights which emphasizes that an intellectual property right is attached to the creator or discovery of an intellectual property work. (Harnowo 2022) This moral aspect is universal and cannot be transferred. This confirms that intellectual property is morally attached to the inventor or creator.

The next aspect of intellectual property rights is the economic aspect. The economic aspect emphasizes that the creator or inventor and parties who are legally entitled to intellectual property have economic rights to the use of intellectual property. (Rahmi 2022) In contrast to the moral aspect, this economic aspect is not permanent but is limited to a certain time by statutory regulations. In relation to patents, as part of intellectual property rights, patents are also attached to two important aspects of intellectual property rights, namely moral and economic aspects. (Kanti Rahayu, Kus Rizkianto 2023) Specifically related to patent rights, the economic aspect is the dominant aspect because patents are specifically related to the use and utilization of technology that is directly beneficial to human life. (Risqiyana and Oktaviani 2023)

Article 1 number 1 of the Patent Law actually provides an understanding that an intellectual property right in the form of a patent has several characteristics, namely: exclusive rights, inventions in the field of technology, as well as granting approval to other parties regarding the use or exploitation of the invention. In the aspect of exclusive rights, patents, like other intellectual property rights, also emphasize exclusive rights, namely rights where every creator or inventor of an intellectual work has the right to exploit or use his work optimally. (Atmaja, Santoso, and Irawati 2021) In this context, the state as the party that grants and guarantees this exclusive right formulates various laws and regulations that guarantee this exclusive right. In the context of patents, in Indonesia the state formulated the Patent Law and its derivative
regulations to facilitate the exclusive rights of patent holders.

In the aspect of inventions in the field of technology, it can be understood that referring to Article 1 number 2 of the Patent Law, an invention is an idea expressed as an effort to overcome practical problems which are manifested in the form of new technology or the development of previous technology. Referring to Article 1 number 2 of the Patent Law, it can be understood that a patent does not have to be the latest technology and be original in nature. Patents referring to Article 1 number 2 of the Patent Law can originate from existing technological developments.

In the aspect of granting approval to other parties regarding the use or utilization of the invention, this is intended as part of technology transfer as well as an effort to make economic use for the parties holding patent rights to obtain economic benefits from their invention.(Maulidda Hafsari 2021) Based on this orientation, it can be concluded that apart from being synonymous with the use of technological aspects, patents also have an orientation to protect the economic rights of creators and parties related to patent rights. Referring to Article 2 of the Patent Law, in general protection related to patents is divided into two, namely general patents and simple patents. A simple patent referring to Article 3 paragraph (2) actually only emphasizes two aspects, namely the development of previous technological products and can be applied in industry.

The existence of regulations regarding simple patents in the Patent Law can be understood as a means to facilitate technological engineering that is developing in society which has implications for the industrial world and in general the manufacturing process does not require large costs as in general.(Barizah 2020) Based on this view, it can be concluded that a simple patent is a simpler form and a more efficient form compared to patents in general. Regarding the differences between patents and simple patents, they can be distinguished in at least three aspects, namely: first, from an economic aspect, simple patents can be said to be more economical and affordable for middle to lower industrial communities because the development of simple patents is only enough to develop existing technology. exists as long as it has benefits in the industrial world.(Murtala Ismail Adakawa 2022) This is certainly different from patents in general, where the creation process requires quite large costs because the orientation is complex technological development.

Second, regarding standards regarding simple patents, it can also be said to be easier, namely that it is quite a development of previous technology and has practical benefits in the industrial world. This is certainly different from patents in general which emphasize novelty in the form of new inventions and are also required to be useful in the industrial world. (Sinaga 2020) Third,
regarding the protection period by referring to Articles 22 and 23 of the Patent Law, it can be seen that there is a significant difference regarding the protection period between patents and simple patents. The protection period for a simple patent is only for ten years and after that it cannot be extended. (Hakim and Kurniwan 2020) Meanwhile, the term for patents is generally twenty years and cannot be extended. From the description above, it can be seen that simple patents have a shorter protection period than patents in general, so that simple patents can be developed more massively because they are developments of previously existing technology.

Referring to the analysis above, it can be concluded that simple patents are actually relevant for the development of lower-middle industries, apart from the easier requirements, namely only developing existing technology. (Muchtar Anshary Hamid Labetubun and Narwadan 2022) Apart from that, simple patents are also useful for lower-middle industries to increase economic value. If it is related to traditional medicine management businesses, of course the development of simple patent-based intellectual property rights also has relevance to traditional medicine management businesses. There are at least three potentials that can be oriented in managing traditional medicines based on simple patents, namely: first, the orientation of developing simple patents in traditional medicine management businesses can increase the creativity and technological development of traditional medicine management entrepreneurs. This orientation towards developing creativity and technology is intended as a means for traditional medicine management entrepreneurs to stay up to date with technological developments and be able to develop technology in managing their industry.

Second, the orientation of simple patent development in traditional medicine management efforts can also increase the types and development of traditional medicine products themselves. This can be illustrated that with massive technological developments it is possible that various types of traditional medicine preparations can become more varied and of course can improve the economic level of traditional medicine entrepreneurs. (Sujatmiko 2021) Third, the orientation of simple patent development in the economic management of traditional medicines can also increase income from sales of traditional medicines. This is because the development of simple patent-based technology in the management of traditional medicines can masssively increase the types and productivity of traditional medicines, thereby increasing economic value.

Based on the analysis above, it can be concluded that the urgency of a simple patent orientation for the management of traditional medicines in Indonesia has three benefits at once, namely from the aspect of technology development, developing types of traditional medicine products, to increasing economic value. In the aspect of technology development, a simple patent for traditional
medicine entrepreneurs can increase the value of creativity and innovation to always develop existing technology. In the aspect of developing types of traditional medicinal products, simple patents also have the potential to give rise to various types of traditional medicinal product development so that traditional medicinal products can compete in the market. In the aspect of increasing economic value, simple patents also enable increasing economic value in the management and sale of traditional medicines.

The Simple Patent Orientation Formulation for Management of Traditional Medicines in Indonesia

Referring to the Minister of Health Regulation on Traditional Medicine, in fact the special characteristic that differentiates traditional medicine from medical medicine in general is that traditional medicine has characteristics that are identical to traditional society, both in the form of ingredients and processing methods. (Verawaty, Dewi, and Kota 2022) Thus, the characteristics that differentiate traditional medicine from medical medicine in general are the ingredients and methods of making traditional medicine which rely on the local wisdom of the community. As a country with abundant culture and biodiversity, this means that Indonesia also has various potentials, especially related to the potential for developing traditional medicines. (Priya and Kurian 2018)

The development of traditional medicine itself can be seen in two aspects, namely the development of the quality of the traditional medicine itself and the related development of its economic selling value in society. (Li 2020) The development of the quality of traditional medicine itself can of course be improved through technological developments without changing the traditional aspects of a traditional medicine. In this context, technological developments only become a means and help traditional medicine to improve its quality. (Susanti et al. 2023) In the development aspect related to economic selling value in society, this is also an orientation for traditional medicines so that they can compete in existing business competition. (Yunita et al. 2022) Efforts to develop economic selling value in the community for traditional medicines are important at least aimed at two goals, namely maintaining the existence of traditional medicines and making traditional medicines a "superior value" for the nation's potential and can be used as superior products that can be introduced and exported to other countries.

Efforts to maintain the existence of traditional medicines as part of efforts to increase the economic selling value of traditional medicines also need to be made because the number of sellers and parties producing traditional medicines can be said to be decreasing in number. It can also be seen that the
The majority of traditional medicine producers are dominated by people aged 30 years and over. (Suharti, Kartika, and Sugiyanta 2021) This means that traditional medicine is still underestimated by the millennial generation, in particular it is still considered to not have significant economic implications. Apart from that, efforts to increase the economic value of traditional medicines are also needed as a potential export product to other countries. Various efforts to increase the economic value of traditional medicines can actually be realized if they are linked to existing technological developments.

One of the efforts to optimize technological developments in traditional medicine can be done through simple patent optimization efforts. As explained in the Patent Law, simple patents are oriented towards potential patent products that are more efficient and simple, which means they are sufficient for the development of existing technology and have an impact on the industrial world. Due to the production of traditional medicines in Indonesia which is dominated by small, micro and medium industries, the use of intellectual property in the form of simple patents for traditional medicines is actually a positive step in order to increase the economic value of these traditional medicines.

If we refer to the Patent Law and various existing laws and regulations, there are no specific regulations that mandate efforts to increase the economic value of traditional medicines through the development of simple patents. Therefore, the main solution from this analysis is that special regulations are needed regarding legal policies to increase the economic value of traditional medicines through the development of simple patents. In this context, the role of government, both central and regional, is paramount in facilitating traditional medicine producers to optimize the development of simple patent-based traditional medicines.

Specific regulations regarding increasing the economic value of traditional medicines through the development of simple patents can be formed through Presidential Regulations (Perpres) or Government Regulations (PP) which are then followed up in relevant Ministerial Regulations. This related Ministerial Regulation also explains further the government’s facilitation efforts to ensure that traditional medicine producers can take advantage of developments with simple patents. The relevant Ministerial Regulation can also detail the duties of regional governments to help facilitate traditional medicine producers to take advantage of developments with simple patents, including helping to provide relevant facilities and infrastructure and assisting with such development.

Efforts to issue special regulations regarding increasing the economic value of traditional medicines through the development of simple patents as proposed above should also pay attention to various aspects such as an inventory of the potential for traditional medicines in a place, the potential for
technological development through simple patents, as well as an effective and efficient marketing network for traditional medicines. In an effort to inventory the potential of traditional medicine in a place, it is important to map and describe the potential of traditional medicine in the community. This inventory of traditional medicine potential also includes mapping the potential for future development of traditional medicine in the community. In developing technology through simple patents, outreach efforts are also needed to the public, especially traditional medicine producers, regarding the importance of developing traditional medicines through simple patents. Apart from that, it is also important to determine partners who are technology experts who can be invited to help the community develop traditional medicines through simple patents. What the government also needs to strive for in regulations related to increasing the economic value of traditional medicines through the development of simple patents is the provision of facilities in the form of facilities and infrastructure that support traditional medicine marketing networks on a local, national and even international scale.

Based on the results of the analysis above, there is a legal vacuum related to increasing the economic value of traditional medicines through the development of simple patents, which requires future regulation regarding formulation in the form of establishing special regulations that regulate increasing the economic value of traditional medicines through the development of simple patents. Ideally, this regulation must also regulate three main substances, namely: an inventory of the potential for traditional medicines in a place, the potential for technological development through simple patents, and an effective and efficient marketing network for traditional medicines.

4. Conclusion

The urgency of a simple patent orientation for the management of traditional medicines in Indonesia has three benefits at once, namely from the aspect of technology development, developing types of traditional medicine products, to increasing economic value. In the aspect of technology development, a simple patent for traditional medicine entrepreneurs can increase the value of creativity and innovation to always develop existing technology. In the aspect of developing types of traditional medicinal products, simple patents also have the potential to give rise to various types of traditional medicinal product development so that traditional medicinal products can compete in the market. In the aspect of increasing economic value, simple patents also enable increasing economic value in the management and sale of traditional medicines.

The legal vacuum related to increasing the economic value of traditional medicines through the development of simple patents requires formulation in the form of establishing special rules that regulate increasing the economic value of
traditional medicines through the development of simple patents. Ideally, this regulation must also regulate three main substances, namely: an inventory of the potential for traditional medicines in a place, the potential for technological development through simple patents, and an effective and efficient marketing network for traditional medicines.

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