

# Vague Norm on Conditions: Article 60 of Law Number 13 Year 2016 Concerning Patents

*by Sagung Indradewi*

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# Vague Norm on Conditions: Article 60 of Law Number 13 Year 2016 Concerning Patents

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**ABSTRACT**—Revocation of Law Number 14 Year 2001 concerning Patents for the inception of a new patent law namely Law Number 13 Year 2016 concerning Patents automatically brings fundamental changes to the regulation patent rights in Indonesia. One of them is the stipulation in Article 60 of Law Number 13 Year 2016 concerning Patents which states that Patent Protection is proven by the inception of a Patent certificate which is retroactive from the Acceptance Date. Specifically, in the provision of Article 60 of Law Number 13 Year 2016 concerning Patents in the phrase "retroactive" in this case it is stated "retroactively from the Acceptance Date". The meaning of the phrase "retroactively applicable" is causing vague norm which results in legal uncertainty arising from the regulation of the article. That can be said to contain interpretations of a vague norm in this case reinforced by the absence of a significant explanation and or a straightforward and explanatory explanation to explain a meaning of "retroactive" in the Elucidation Chapter in Article 60 of Law Number 13 Year 2016 about Patents. The information in the Elucidation Chapter in Article 60 of Law Number 13 Year 2016 concerning Patents at the end of the law only mentions Article 60 sufficiently clear, without explaining the meaning of "Patent protection is evidenced by the issuance of Patent certificates which are retroactive from the Acceptance Date", it is obligatory to specifically explain the phrase "retroactively" in order not to cause confusion what is meant by "retroactive" in the provisions of article 60. The meaning of the phrase "retroactively applicable" can lead to a vague norm which results in legal uncertainty regarding the regulation of article 60. Therefore, a revision of article 60 of Law Number 13 Year 2016 concerning Patents is needed, especially in Elucidation Chapter of article 60.

**Keywords:** vague norm, article 60 of Law Number 13 Year 2016, patents

## 1. INTRODUCTION

Patents or oktroi have existed since the 14<sup>th</sup> and 15<sup>th</sup> centuries, for example in Italy and the United Kingdom, in this case the nature of patent rights at that time was not aimed at inventions or inventions (uitvinding), but preferred to attract experts from abroad. It is for the experts from abroad settle in the countries that invite them so they can develop their respective expertise in the inviting country to advance the population of the country concerned.

The patent or oktroi is in the form of a residence permit, but indeed the presence of the inventor (inventor) in the new country is based on expertise in a particular field. So, there are also similarities with the use of the term patent today. However, the royalties at that time took

the form of a residence permit in the country with special treatment because he could make a positive contribution to the progress of the people in the country.

The Government of Indonesia has revoked and declared that Law Number 14 Year 2001 regarding Patents is not applicable. This is based on the issuance of Law Number 13 Year 2016 concerning Patents as it has revoked and declared the enactment of Law Number 14 Year 2001 regarding Patents in the transitional article in the formulation of the article at the end of the chapter in Act Number 13 of 2016 concerning Patents. Patent is a right granted by a government in this case a country to one or several people who jointly carry out ideas that are poured activities that produce ideas that are poured into an activity in the field of technology in the form of products or processes.

Patents are part of the concept of intellectual property rights (IPR), these concepts include:

- 1) The intellectual property, attached to its owner, is permanent and exclusive.
- 2) The right that is obtained by other parties upon permission from the owner, are temporary.

The results of the ability to think humans are ideas that are then realized in the form of creation or invention. The idea is attached to the intellectual predicate that is abstract, the consequence is that IPR becomes separate from the material of its form, for example Patent is an idea in the field of Technology called Intellectual Property Rights.

Patents that are part of intellectual property rights (IPR) are basically private (civil) rights, in the sense that a person is free to apply for registration and protection of IPR or not. If it is not done, he will not be prosecuted for anything, but he will lose himself if others arbitrarily use or even acknowledge his work.

Intellectual property rights, which are abbreviated as IPR, are the equivalent words commonly used for Intellectual Property Rights, namely "a right that arises for the product of thought that produces a product that is beneficial to humans". Intellectual Property Rights is very related to Patents, this is because a Patent is a matter that arises from the results of thoughts and or ideas.

The definition of a Patent listed in the provisions of Law Number 13 Year 2016 concerning Patents in article 1 number 1 states:

"A patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time carrying out

the invention himself or giving approval to another party to implement it".

28 The legal subject matter of a patent is explained in Article 1 number 3 which states that:

"Inventor is a person or several people who jointly carry out ideas that are poured into activities that produce the Invention."

Revocation of Law Number 14 of 2001 concerning Patents for the issuance of a new patent law namely Law Number 13 of 2016 concerning Patents automatically brings fundamental changes to the regulation of copyright in Indonesia. One of them is the stipulation in Article 60 of Law Number 13 Year 2016 concerning Patents which states that Patent Protection is proven by the issuance of a Patent certificate which is retroactive from the Filing Date.

Specifically, in the provision of Article 60 of Law Number 13 Year 2016 concerning Patents in the phrase "retroactive" in this case it is stated "retroactively from the Acceptance Date". The meaning of the phrase "retroactively applicable" is causing vague norm which results in the emergence of legal uncertainty regarding the regulation of the article.

That can be said to contain interpretations of a vague norm in this case reinforced by the absence of a significant explanation and or a straightforward and explanatory explanation to explain a meaning of "retroactive" in the Explanatory Chapter in Article 60 of Law Number 13 Year 2016 About Patents.

The information in the Elucidation Chapter of Article 60 of Law Number 13 Year 2016 concerning Patents at the end of the law only mentions Article 60 Sufficiently clear, without explaining the meaning of "Patent protection is evidenced by the issuance of Patent certificates which are retroactively effective from the Acceptance Date", it should must specifically explain specifically to the phrase "retroactive" so as not to create confusion as to what is meant by "retroactive" in the provisions of article 60.

The meaning of the phrase "retroactively applicable" can lead to a vague norm which results in legal uncertainty regarding the regulation of article 60. Therefore, a revision of article 60 of Law Number 13 Year 2016 concerning Patents is needed especially in Elucidation Chapter of article 60. Based on the description of the background of the problem above, the writer in this study seeks to analyze with the title Vague Norm in the Provisions of Article 60 of Law Number 13 Year 2016 concerning Patents.

## 22 II. RESEARCH METHODS

This research uses a type of normative legal research that is studying and analyzing legal materials and issues based on statutory regulations. This research was conducted to solve legal problems that arise while the results to be achieved are prescriptions about what should be done. In this case the Vague Norm research on the

provisions of Article 60 of Law Number 13 Year 2016 concerning Patents.

The approach method in this study used the following techniques:

### 1) Statute Approach

It is the approach using legislation and regulation. Legal research at the level of legal dogmatic cannot escape from the legislative approach because the subject matter examined is derived from statutory regulations. The legal approach is carried out by examining all laws and regulations relating to Vague Norm in the provisions of Article 60 of Law Number 13 Year 2016 concerning Patents. In this case, to study whether there is consistency and compatibility between a law and other laws, or between a law and the constitution or between regulations and laws.

### 2) Conceptual Approach

It is an approach that moves from the views and doctrines that develop in the science of law, in order to find ideas that give birth to legal understandings, and principles of law or legal arguments that are the back of researchers to build legal arguments in solving issues factually. This conceptual approach is used to discover the views and doctrines that develop in the science of law, the study of legal principles relating to the Vague Norm in Provisions of Article 60 of Law Number 13 Year 2016 concerning Patents.

## 16 III. FINDINGS AND DISCUSSION

The law has determined certain patterns of behavior, so everyone should behave according to the predetermined pattern. In line with Hans Kelsen, Gustav Radbruch views that the law must contain 3 (three) values of identity, namely the principle of legal certainty (rechtmatigheid), the principle of legal justice (gerechtigheid), and the principle of legal usefulness (zwechtigheid).

The explanation of the legal theory related to the content of the substance of the regulation in Article 60 of Law Number 13 Year 2016 concerning Patents which states that Patent Protection is proven by the issuance of Patent certificates which are retroactive since the Acceptance Date. Then a legal certainty is needed for the meaning of the phrase "retroactive".

Specifically, in the provision of Article 60 of Law Number 13 Year 2016 concerning Patents in the phrase "retroactive" in this case it is stated "retroactively from the Acceptance Date". The meaning of the phrase "retroactively applicable" is causing vague norm which results in the emergence of legal uncertainty regarding the regulation of the article.

That can be said to contain interpretations of a vague norm in this case reinforced by the absence of a significant explanation and or a straightforward and clear explanation about the meaning of "retroactive" in the

Elucidation Chapter in Article 60 of Law Number 13 Year 2016 concerning Patents.

The information in the Elucidation Chapter of Article 60 of Law Number 13 Year 2016 concerning Patents at the end of the law only mentions that Article 60 is sufficiently clear, without explaining the meaning of "Patent protection is evidenced by the issuance of Patent certificates which are retroactively effective from the Acceptance Date", it must specifically explain to the phrase "retroactive" in order not to create confusion to the meaning of "retroactive" in the provisions of article 60.

From the explanation above, in the opinion of the author, it is necessary to revise the phrase, especially in the Elucidation Chapter article 60 of Law Number 13 Year 2016 concerning the Patent. The author's reason is based on the interpretation method or interpretation of juridical hermeneutics, which is a method for interpreting the text of unclear laws, so that these laws can be applied to certain concrete events, in this context the need for interpretation or interpretation is needed to interpret the text of the law invitation stated in the Elucidation Chapter article 60 of Law Number 13 Year 2016 concerning Patents, which previously was explained in the Explanatory Chapter is Sufficiently Clear, should be changed to: "The purpose of retroactivity means the right not to be prosecuted on the basis of law before a law is used or enacted"

This is based on the Ex post facto principle which means that what is done afterwards is a law that changes the legal consequences of the taken action or the legal status of the facts and relationships that is existed before a law is used or enacted.

The example refers to the provisions of Article 28I of the 1945 Constitution of the Unitary State of the Republic of Indonesia: "... the right which is not to be prosecuted on the basis of a law that applies retroactively is a human right that cannot be reduced under any circumstances. "

In addition, the need for legal exposition/construction methods is a method that explains the words or forms an understanding (law), the definition of law in question is the construction of law (rechts constructie) which are tools used to arrange legal material which is carried out systematically in the form good term.

Patent is given legal protection because it is part of intellectual property rights in this case IPR as a set of rights that are granted by law to be protected. By some phrases that cause the vague of norms in an article-related regulation of Patents, the intellectual property rights in Patents will not get maximum legal protection and legal certainty, a revision is needed to provide legal certainty.

The role of technology is a major concern in developed countries in answering the problems of national development and promoting economic growth. In various developed countries, economic and technological policies are increasingly integrated and harmonized to enhance national competitiveness. Thus, one of the policies is directed at increasing the utilization of technology in the production sector to improve the national economy and respect for domestic technology. Indonesia is a country that has a wealth of genetic resources and traditional

knowledge that is often used by domestic and foreign inventors to produce new inventions. Therefore, Law Number 13 of 2016 concerning Patents must be improved to provide legal protection in all aspects relating to Patents in the State of Indonesia.

#### IV. CONCLUSION

The information in the Elucidation Chapter of Article 60 of Law Number 13 Year 2016 concerning Patents at the end of the law only mentions that Article 60 is Sufficiently Clear, without explaining the meaning of "Patent protection is proven by the issuance of Patent certificates which are retroactively effective from the Acceptance Date", it should must specifically explain specifically to the phrase "retroactive" in order not to create confusion to the meaning of "retroactive" in the provisions of article 60. From this explanation, in the opinion of the author, it is necessary to revise the phrase, especially in the Elucidation Chapter article 60 of Law Number 13 Year 2016 concerning Patent. The author's reason is based on the method of interpretation or interpretation of juridical hermeneutics, namely the method to interpret the text of the law that is not clear, so that the law can be applied to certain concrete events, in this context the need for interpretation is needed to interpret the text of the law invitation stated in the Elucidation Chapter Article 60 of Law Number 13 Year 2016 concerning Patents, which previously was explained in the Explanatory Chapter is Sufficiently Clear, it should be changed to "the purpose of retroactivity means the right not to be prosecuted on the basis of law before the law is enacted or used " This is based on the Ex post facto principle which means that something done afterwards is a law that changes the legal consequences of the taken action or the legal status of facts and relationships that is existed before the law is enacted or used. The example refers to the provisions of Article 28I of the 1945 Constitution of the Unitary State of the Republic of Indonesia: "... the right not to be prosecuted on the basis of a retroactive law is a human right that cannot be reduced under any circumstances.

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**ABSTRACT**—Repeal of Law Number 14 Year 2001 concerning Patents for the inception of a new patent law namely Law Number 13 Year 2016 concerning Patents automatically brings fundamental changes to the regulation of patent rights in Indonesia. One of them is the stipulation in Article 60 of Law Number 13 Year 2016 concerning Patents which states that Patent Protection is given by the issuance of a Patent certificate which is retroactive from the Acceptance Date. Specifically, in the provision of Article 60 of Law Number 13 Year 2016 concerning Patents in the phrase "retroactive" in this case it is meant "retroactively from the Acceptance Date". The meaning of the phrase "retroactively applicable" is causing vague norm which results in legal uncertainty arising from the expiration of the article. This can be said to contain interpretation of a vague norm in this case evidenced by the absence of a significant explanation and a straightforward and explanatory explanation to explain a meaning of "retroactive" in the Transitional Chapter in Article 60 of Law Number 13 Year 2016 About Patents. The explanation in the Transitional Chapter in Article 60 of Law Number 13 Year 2016 concerning Patents at the end of the law only mentions Article 60 Sufficiently clear, without explaining the meaning of "Patent protection is evidenced by the issuance of Patent certificates which are retroactive from the Acceptance Date". It is obligatory to specifically explain the phrase "retroactive" in order not to cause confusion what it means by "retroactive" in the provisions of article 60. The meaning of the phrase "retroactively applicable" can lead to a vague norm which results in legal uncertainty regarding the regulation of article 60. Therefore, a review of article 60 of Law Number 13 Year 2016 concerning Patents is needed, especially in Transitional Chapter of article 60.

**Keywords:** vague norm, article 60 of Law Number 13 Year 2016, patents

#### I. INTRODUCTION

Patents of ideas have existed since the 14<sup>th</sup> and 15<sup>th</sup> centuries, for example in Italy and the United Kingdom, in this case the nature of patent rights at that time was restricted at inventions or inventions (existing) but preferred to artists, experts (even almost) it is for the experts (even almost) in the countries that invite them to they can develop their respective expertise in the inviting country to advance the population of the country concerned.

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Intellectual property rights which are abbreviated as IPR, are the equivalent words commonly used for Intellectual Property Rights namely "right but arises for the product of thought that produces a product that is beneficial to humans". Intellectual Property Rights is very related to Patents, this is because a Patent is a matter that arises from the results of thoughts and/or ideas.

The expiration of a Patent stated in the provision of Law Number 12 Year 2016 concerning Patents in article 1 number 1 states:

A patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time carrying out