

License Agreement of Technology Transfer for Technology Development in Indonesia

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Abstract: Developments in science and technology is very significant in the efforts to improve life standard, civilization and human dignity as well as providing benefits to the community, state and nation. The nature of the implementation of national development is an integral to human development and the entire people of Indonesia, not only as efforts to create an atmosphere which is able to generate enthusiasm and interest but also to encourage the birth of a work and or new findings which can be used as supporting national development. Each country has its own technique in technology transfer arrangement in accordance with the level of its technological advances. There are countries that have advanced level of technology which are still underdeveloped. Technology transfer needs to be done to obtain all the economic benefit of the nation. Technology transfer mechanism also includes international trade transactions which depends on the political and economic situation as well as the level of technological advancement of the country concerned. In this connection, it should be studied carefully to provide input to the government in creating legal rules that govern the economic field. The main problem to be studied is the license agreement on the transfer of technology between the recipient and the donor/owner of the technology in relation to the Patent Law.

Key words: Technology transfer, legal law, patent, science, protection

INTRODUCTION

For developing countries such as Indonesia, efforts to make a development works are not conducted by finding or creating technology. Instead, it would be more efficient by taking over the technology from other countries which have advanced technology through foreign investment from those countries. As a developing country, Indonesia is determined to improve the success of development in the industrial sector, in addition to the agricultural sector. Thus, the transfer of technology is the most efficient in terms of time and cost.

It is known that there are several alternatives which can be taken regarding the technology transfer such as whether it is needed to involve the government to organize the field, or leave it to the public in accordance with prevailing custom. If the second alternative is adopted, then the way to do the technology transfer is to examine the prevailing custom in business and industry practices. The fact can be understood due to the demands for the organization to create more adequate legal regulations. In conjunction with this fact, the need to observe the law of treaties related to the transfer of technology especially the license agreement which has been alluded to in passing in the patent law which is set out in part two of the licenses Article No. 76 through

Article 80 of the patent law. General explanation of Indonesian Law Number 13 year 1997 on patents, paragraph III states that GATT (General Agreement on Tariffs and Trade) agreement is a multilateral trade agreement which is basically aimed to create free trade, namely equal treatment between nations around the world. Thus, the GATT will help to create economic growth and development in order to promote the general welfare, according to the opening paragraph 4 Number 2 of the Act 1995 which is to involve in implementing world order based on freedom, lasting peace and social justice. In line with it and to support national development, Indonesia Act Number 6 year 1989 and Indonesian Patents Act Number 13 year 1997 on the Amendment of Indonesian Act Number 6 year 1989 on patents are the focus of this research.

Literature reviews: An agreement creates rights and obligations for the parties and must comply with the obligations promised. In case one of the parties denies, then it is said as “broken promises”. Thus, there are chances of a lawsuit by the other party. An agreement bores a relationship to the parties in order to comply. Content of the agreement is in the form of a promise regarding the regulation of rights and obligations. It happened because the agreement had started the

enactment of the principle of attachment to the promise (*pacta sunt servanda*). It also happens in the case in relation to technology transfer contract law. Of course, the process is similar to what happens in the legal relations in general, namely in terms of rights and obligations that bind the parties. According to Allot (1980) with regard to its form, law can be grouped into three, namely law which means law principals, law which means rules and law which means judicial decision. Friedman (1975) mentioned that the law can work, must be met in three requirements: first, the regulation must be communicated to the subjects being regulated; second, it governs the subject has the ability to enforce it; third, the subject must have the motivation to implement the rules.

On the basis of these views can be argued that law reform is not just the substance of the law but a renewal of orientation and values that underlie these laws. In other words, the reform of the law should be interpreted as raised new values that live in society.

Through his book, Hart (1961) has analyzed the relation between law, coercion and morality and has also attempted to clarify the question of whether all laws may be properly conceptualized as coercive orders or as moral commands. Hart says that there is no rationally necessary correlation between law and coercion or between law and morality. According to him, classifying all laws as coercive orders or as moral commands is oversimplifying the relation between law, coercion and morality. He also explicates that to conceptualize all laws as coercive orders or as moral commands is to impose a deceptive appearance of uniformity on different kinds of laws and on different kinds of social functions which laws may perform. Hence, it will be mischaracterization of the purpose, function, content, mode of origin and range of application of some laws.

According to Daniel (1973), the process of technology transfer forms good transformation in society through five manners, namely by producing more goods with cheaper price, creating new group of people, creating new definitions about functionality and quantitative measures, revolutionary development in communication and aesthetics perception especially regarding changing in space and time. It is in accordance with the definition of technology according to Gambiro defined technology as a whole "know-how", knowledge (knowledge), experience and skills required to make (manufacture) of a product or products and for the establishment of a an enterprise for the purpose.

It should be understood that in Indonesia, technology transfer process is necessary to support its application throughout the field of industry and to develop the economic structure. In the Act of 1945 there

are two fundamental provisions which can be used as economic structure, namely Article 27 and 33. If these provisions are studied further, there are five principles are summed up in it, namely. Principle of kinship, principle of equality under the law, principle of humanity, principle of balance and 5. The principle of benefit. The fifth principle is the main characteristic of the national economic system. Judging of Article 33 of Act 1945, the authority remains in the state. The implementation will not be separated from the "authority" that exist in the country; namely that the implementation is done by the government. Related to this, according to Dunn (1994), in public policy, there exist relationship between policy maker and its environment related to the policy. It means that public policy can be interpreted as decision made to do or not to do by institutions or government agencies.

In connection with this authority, the license agreement needs to be assessed in relation to the process of technology transfer. This is because through licensing agreements, it can be pursued terms containing restrictions of favorable terms for both parties. The point is that in order to obtain clarity about the positions of the parties involved in the licensing agreements of the process of technology transfer and the rights and obligations of each party. It is important to note about the rights and obligations of the parties, responsibilities and duties of the government when faced with the technology transfer contract. In another terms, the object of the license agreement is what is included in terms of intellectual property as well as other rights related to technology issues. Based on its form, Indonesia recognizes three types of intellectual property rights, namely copyrights, patents and trademark rights. Meanwhile, Argentina recognize five kinds of intellectual property rights, namely: trade mark, trade naame, patens, industrial designs and models and copy right. The same opinion was also expressed by Ehrbar (1993) on licensing and transfers of technology quoting from The National Institute of Industrial.

Contrary to the agreement as the essence of license agreement, in relation to Article 78 of Law Number 6 of 1989 on Patents and supported by the majority of the number of patents registered in the patent office Indonesia is that patents owned by foreigners are necessary to arrange licensing agreements in the form the rule of law (in this case is legislation). When it is given to the legislation, it has advantages when compared with other norms.

In this paper, the following approaches are used: first, a technology transfer agreement which is assessed by a reference to the law of treaties and government policies.

Secondly, the provisions Article 78 of the existing Act, namely: 1. Law Number 6 of 1989 on Patents. 2. updated with Law Number 13 of 1997 and 3. Indonesian Convention on Patents. This study considers economic conditions of Indonesia in the era industrialization by the Guidelines 1993. The license agreement will be reviewed by the approach of freedom of contract as one of the principles of the agreement in addition to the government's role in patent registration obligations regarding the transfer of technology.

MATERIALS AND METHODS

Research method is a tool to assist and answer the problems in basic research through the procedures and techniques using research steps. In this study, the research method is normative, to describe the science of law at the law dogmatic layer. In this research, theoretical discussion about the law license agreements and technology transfer in relation to Article 78 of the Patent Law are conducted. Therefore, the main focuses are to determine the occurrence of a license agreement and the legal principles relating to the technology transfer process and the role of government in patent registration system.

Important step in conducting a research is the process of observation of research objects to explore the primary decisions (ie., legislation, jurisprudence and treaties containing the rule of law) and the secondary decision (in order to seek material from expert analysis) (Churchill, 1991). The second step in the study is to the search legal theories, related to contract law, economic law, commercial law and government policy. And the third step is to observe the rule of law. In examining the legislation, it is needed to obtain good interpretation. Interpretation method is used to understand the law by seeking the suitability of the existing legal principles, relating to the cases in this study. In step four, descriptive analysis of the positive law with regard to the issues to be investigated through theories of legal reasoning is conducted. Meanwhile, the fifth step is to do comparative study on law. The comparative study is done especially about its patent Act in examining the contents of positive laws since they vary with regard to time and place. Regarding the positive law, it is needed to follow Apeldoorn. It is relevant to the function of comparative law is used as an auxiliary science for dogmatic legal science. That is, taking into account the rules and settlement-specific completion of another legal law and assess their adequate.

RESULTS AND DISCUSSION

Legal agreements are related to the transfer of technology which is focused on the license agreement. With this research, we expect to find some progress in the implementation of the agreement also includes the development of agreements in Indonesia. All of it is designed to build and grow the economic life of the nation in the welfare of its people as well as to prevent industrialists or economists tend to drain profits by means of technology transfer. Thus, the implementation of the agreement and the establishment of agreements were also discussed. In order to have better understanding on this matter, assess on the internal and external dynamics within the law should be done. Next, it will be described about the use of foreign patents under license associated with philosophical and theoretical aspects.

When the law serves as a control for the entry of technology through foreign investment channels, the law in question is none other than contract law. This means that the patent laws can serve as filter of the entry of foreign technologies. The government try to do a lot of efforts to counteract unbalanced clause, between the state of technology providers and the technology recipient country (contained in the license agreement), by way of power imbalances. Then, legal empowerment with the selection and consideration as well as the coordination between the relevant institutions needs to make or create act and implement regulations in protecting the public.

In order to achieve these objectives, regulations that force (*dwingedrecht*) are needed. In this regard, the establishment of regulations which are implementing the Act patent can be realized. At any technology transfer contract, we should pay attention to grant back clauses and restrictive which are limiting the government as the principal essence of the agreement implementation.

Through the above description is expected to provide a comprehensive insight, so as to foster the existence of new forms of contract which involves an element of the role of government through a system of patent registration. This is a dilemma for the inclusion of technology. From here is expected to show specific forms of a contract though to stick to the basic elements of the agreement that are closed (that is only tied to the parties to the contract). But it is no longer a secret that current economic development has been so rapid and globalizing so that it is important to empower small thing to be great. If the parties do not take care themselves, the implementation of the contract associated with the contract will be detrimental to the public as users. Then, there should be a policy to be taken by the recipient in the

transfer of technology in economic growth. All government policies, regardless of their form, intended to influence and control human actions in accordance with the rules and objectives set by government. Outlines of state policy is a form of basic state policy that is binding for all citizens and must be implemented by every citizen in every social strata and any group. It appears that, the role of government agencies can jointly with the private sector in order to formulate a policy as guidance in achieving the goal which is the process of transfer of technology in the form of licenses, patents, rights and obligations under a patent agreement.

The license agreement for technology transfer in the context of technological development of Indonesia conceived from two viewpoints. First, it examines the legal agreement without neglecting the influence of the common law and civil law system which both run and apply to each which are relevant to the agreement. Second, it assesses the importance of technology transfer for the Indonesian nation. It has raised the scope of transfer of technology as the basis in preparing the theoretical framework of the technology transfer arrangement.

Meanwhile, the development of the Law of Treaties on understanding of the two viewpoints in the perspective mentioned above in relation with the transfer of technology, juridical transfer of technology is a form of licensing agreements. To be able to transfer and implement the technology in Indonesia, there are three important matters, namely agreements, technology transfer arrangements and patents. In the logical framework, three aspects of the law will give direction to the transfer of technology.

In developing a political framework, it is important to pay attention in the rules of written law for developing countries such as Indonesia since the country still applies various laws (written, some unwritten and religious law), setting agreements can occur via two ways, namely arrangements in writing in the laws made by the government and submitted to the customs unwritten commonly prevailing among businesses.

Recently, the principal of legal device for the process of technology transfer in Indonesia is referring to Act Number 6 of 1989 on Patents. Through the government regulation in the form of Implementing Regulation Act, it is expected that legal arrangements provide the benefit politically and economically for the Indonesian people. The law setting on the transfer of technology leads to an increase in the ability of the Indonesian nation. The provisions of Article 78 of the Patent Law Number 6 year 1989 jo. Law Number 13 of 1997 opens the opportunity to allow the transfer of technology. Article 78 point set should be no obstacles to the development of the national

economy due to the need for technology transfer. Patent Law opened up opportunities for the entry of technology to recipient's technology. Meanwhile, forms of license agreements contain clauses that are going to ensnare receiver technology by technology providers. In reality, the position of the provider and receiver of the technology for technology transfer is not balanced where giving technology at a higher position is a natural thing for him as the inventor and owner of the technology. However, in equality, it is fair if receivers of the technology also seek equilibrium position. It can be done by looking at clauses that ensnare such as Grant Back and Restrictive. Provider of the technology (licensee) had a purpose to bind thereceiver technology (licensor) in order not to be a competitor. However such clauses may impede receiver technology in the field of economy.

CONCLUSION

In general, this study aims to find restrictions to the freedom of contract in accordance with the Civil Code in executing a license agreement regarding the transfer of technology. We also tried to reveal the relationship between the science of law and economic aspects, in connection with legal protection for the inventor of the technology.

RECOMMENDATIONS

Some of the recommendations arising from this study are as follows: The parties who are involved directly or indirectly in the license agreement must fully understand the formulas and contents of the agreement to be implemented. The parties should also need to understand the good things which are related to regulation which serves as the setting. It should be issued by the government, either in the form of legislation and of the regulations implementing the legislation. In order to clarify the relationship between parties during the process of technology transfer, in national level, it is necessary to arrange contract laws in the form of legislation, in addition to technology transfer laws. In the settings placed on legal provisions, it is needed to ensure so that transfer of technology can occur to facilitate the ability of the Indonesian people for mastering technology. So far there are no laws on technology transfer. It is suggested to have provisions in governing the quality of the technology. If the country wants a quick technology transfer process such as in Japan, human factor should be the benchmark in considering it.

In addition, it is important to establish term of a patent licensing agreement due to the patent does not always get royalty. Thus, it should be made a law which regulates the agreement includes a license agreement that harm the nation's economy which includes restrictions

usually done by the licensor. It should be made immediately, especially government regulation as the implementing regulations of Article 78 of Law Number 6 of 1989 jo. Law Number 13 of 1997, to be clear limits that potentially to hamper the Indonesia's economic and the Indonesian people's ability to master and develop the technology in general.

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