



# International Journal of Law, Justice and Jurisprudence

E-ISSN: 2790-068  
P-ISSN: 2790-0673  
IJLJJ 2023; 3(2): 35-38  
Received: 06-07-2023  
Accepted: 13-08-2023

**Duarte Tilman Soares**  
Master of Law Program,  
Faculty of Law, Udayana  
University, Indonesia

**I Gusti Agung Mas Rwa  
Jayantiari**  
Faculty of Law, Udayana  
University, Indonesia

## Discovery arrangements in intellectual property law in Indonesia

**Duarte Tilman Soares and I Gusti Agung Mas Rwa Jayantiari**

### Abstract

This study aims to examine the legal protection of the state, entrepreneurs and inventors (individuals who make discoveries). In addition to providing ideas for the Indonesian state and people to protect inventors in Indonesia, which is part of how to help this country develop through this special legal aspect in accordance with statutory regulations. The method used in this research is juridical-normative with a statutory approach. The findings from this study are that there are no regulations related to discovery in Indonesia in particular, giving rise to a void in norms related to discovery in Indonesia. This is unfortunate because discovery is something that existed before and was discovered at a later date. Where this is something that often exists in Indonesia with its natural wealth and is something of economic value. Furthermore, regarding dispute resolution in the event of discovery, it can be resolved through the Commercial Court. The commercial court itself does not have a general understanding, but it can be seen that the commercial court has its own authority. One of the powers of the Commercial Court is to handle IPR disputes.

**Keywords:** Copyright, discovery, commercial court

### Introduction

Intellectual property law is a branch of law that protects certain manifestations or inventions made by people. Society must respect intellectual property rights, in other words, a free translation of W.R Cornish's opinion that explains the importance and urgency of intellectual property rights in protecting people's inventions, the way to protect people's inventions is to protect what the law says. Intellectual property rights and the process. (Sinaga, 2020) <sup>[13]</sup>

The concept of IP is based on the idea that "intellectual work produced by humans requires the sacrifice of labor, time and money". The existence of these sacrificed things changes the economic value of the work done in order to get profit. Based on this concept, it encourages the need for appreciation of works in the form of IP rights. IP rights can essentially be interpreted "as wealth that arises or arises because of human intellectual abilities" (Ferdian, 2020) <sup>[5]</sup> IP rights are classified as property rights which then create IP in the form of "knowledge, art, literature or technology". (Ferdian, 2020) <sup>[5]</sup>

In the 21st century, international trade is rapid and usually leads to trade liberalization, which forces all countries to open their markets. The globalization of international trade, which is known by the increasingly blurred boundaries between countries, has led to an increase in trade, so that the opening of domestic and foreign markets as one of the consequences of globalization/liberalization of trade has drastically increased the "production and demand" for IPR products. Quickly become legal and illegal in Indonesia. With more than 200 million citizens, Indonesia has a good market opportunity for pirated goods, especially cheap pirated goods.

In addition to previous intellectual property issues, the protection of intellectual property is now the responsibility of the international community. Especially after the signing of the World Trade Organization (WTO) agreement and its annexes: Annex 1A, BM C; According to Articles 2, 3 and 4, the protection of intellectual and industrial property rights has become stricter internationally, and legal protection can be carried out through a body under the WTO system called the Dispute Settlement Body (DSB).

Problems arise when there are disputes that are not governed by intellectual property law, but are also related to intellectual property rights. In this case, discovery, namely: "The action or process of discovering or being discovered". (Indriani, 2018) <sup>[6]</sup> In this regard, until now there has been no specific regulation in the Intellectual Property Rights Law, especially the Patent Law, which can be discussed further in the world of Law.

**Correspondence**  
**Duarte Tilman Soares**  
Master of Law Program,  
Faculty of Law, Udayana  
University, Indonesia

Thus, this study will discuss several points, namely, first, how is the regulation related to discovery in Indonesia? How is dispute resolution in the event of discovery?

This research is an original research that is expected to participate and play a role in the process of improving or developing science. Some studies from the past that have conducted studies on discovery or discovery of something that actually already exists include the first, found in the Journal of Judicial Review Wahyuni, entitled "Legal Politics of the Establishment of Article 20 of the Law on Patents in Indonesia in the Perspective of Intellectual Property Rights". (Kurnianingrum, 2022) <sup>[8]</sup> Second, found in the Bina Mulia Hukum Journal entitled "The Urgency of Regulating Patent Valuation for Start Ups in Order to Improve the Economy in the Industrial Era 4.0". (Prasetyo & Kansil, 2021) <sup>[10]</sup> The third is the Journal of Law & Development titled "Comparison of Regulations Regarding Legal Protection of Invention in the Field of Information and Communication Technology between Indonesia and Japan". (Purwaningsih, 2020) <sup>[11]</sup>

The purpose of this research is to examine the legal protection of the state, entrepreneurs and inventors (individuals who make discoveries). In addition to providing ideas to the state and people of Indonesia to protect inventors in Indonesia, which is part of how to help this country develop through this particular legal aspect in accordance with the legislation.

### Research Methods

The method of writing this law itself uses the juridical-normative method because this research is based on analyzing legal norms, both law in the sense of "law as it is written in the books" (in regulations and court decisions). (Amiruddin, 2006) <sup>[2]</sup> The normative juridical method in question is a method which, according to Hans Kelsen, has the following characteristics (Qamar *et al.*, 2017) <sup>[12]</sup> Finding the truth in legal research is carried out solely through deductive thinking, and the truth criteria are consistent; The truth of the research is considered reliable without any test or verification. The object of analysis is the legal norms contained in laws and regulations, which are specifically determined by judges and other institutions involved in intellectual property rights disputes. This research examines this research problem using a statutory approach. This legal problem research uses legal material sources in the form of primary, secondary and tertiary legal materials. The nature of this research is descriptive analysis, i.e. presenting a picture of the problems discussed in this research and analyzing the relevant provisions to find answers to the problems formulated.

### Results and Discussion

#### Discovery-related arrangements in Intellectual Property Rights in Indonesia

The right to IP is a material right, a right to an object that results from the work of the brain, the work of relationships. The result of the work of the mind of human relations, the work is in the form of immaterial objects. These intellectual works, whether in "the fields of science, art, literature or technology, are born with the sacrifice of energy, time and even money". Owning these sacrifices makes the work valuable. Along with economic benefits, ownership of these intellectual works contributes to their inherent economic value. (Darusman, 2016) <sup>[3]</sup>

Another dimension of the notion of intellectual property rights can be found in the "TRIPS Agreement", where IP rights are defined as "the right (of the creator) to prevent others from using his invention, design or other creation". This definition focuses on the "absolute and absolute" nature of intellectual property ownership, i.e. the exclusive right granted by the government to the creator, inventor, designer, or other inventor in owning or granting others the right to use his/her creation. In addition, exclusive rights have economic as well as moral content. From a financial perspective, intellectual property owners are entitled to compensation for the commercial use of their inventions. At the same time, intellectual property owners have the right to be recognized and acknowledged as inventors or creators. In addition, social content in the form of socialization, enrichment and support is beneficial for human resource development. (Whindari, 2018) <sup>[14]</sup>

In fact, intellectual property law is "a system that provides legal protection to intellectual works covering a wide range of traditional knowledge to computer programs and the Internet in today's digital business era". In short, a conclusion can be drawn if that "Intellectual Property Rights are rights granted to the results of creative thought or innovation of mankind" (Darwance *et al.*, 2021) <sup>[4]</sup> In this era, the use of intellectual property rights is more focused on commercial interests, where companies compete to find and discover IP as part of the company's assets. It can be seen how transnational companies can grow rapidly only by relying on the intellectual property rights they control. "Intellectual property rights are assets of unquantifiable value and produce billions of dollars for their owners".

IP taken from the English term "intellectual property" by the World Intellectual Property Organization (WIPO) is defined "as creations produced through intellectual ability ("creation of mind"), namely inventions, written works and works of an artistic nature, symbols, names, images, and designs used in trade activities". (WIPO, n.d.) Meanwhile, Intellectual Property Rights (IPR) as a translation of the same language "Intellectual Property Rights (IPR)" is given the meaning of "the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time". There are also those who say that the law on the protection of IP Rights, in essence, is a medium for the struggle of the parties who want to control their works of creation to fight against other parties who want to separate the power of the creator from his creation.

A detailed description of rights related to "creation of mind" is mentioned in "Article 2 paragraph viii of the Agreement Establishing the World Intellectual Property Organization", namely: 1. "Written works, art and works in the field of science; 2. Performances by artists, through sound recording and broadcasting; 3. Creation of something new (Invention) in various fields; 4. Discovery or understanding for the first time (Discovery) in the field of science; 5. Industrial design; 6. Trademarks, service marks, commercial names and nicknames; 7. Protection against fraudulent competition; and 8. All kinds of other rights that arise from intellectual activities in the world of industry, science, written works or art. It can be interpreted that the types of IPR are not limited to those that are currently known, but can also mean types that have never existed or been known before." (Organization, 2001) <sup>[9]</sup> "Article 1 Point 3 of the 1945 Constitution of the Fourth Amendment (hereinafter referred

to as the 1945 Constitution) reads that Indonesia is a state of law". This statement means that everything must be regulated or based on law, one of which is in the aspect of Intellectual Property Rights, one of which is "Article 9 of Law No. 13 of 2016" which reads:

**Inventions that are not patentable include**

- a) "Processes or products whose announcement, use, or implementation is contrary to laws and regulations, religion, public order, or decency;
- b) Methods of examination, treatment, medication and/or surgery applied to humans and/or animals;
- c) Theories and methods in the fields of science and mathematics;
- d) Living beings, except for microorganisms; or
- e) Biological processes essential for producing plants or animals, except non-biological processes or microbiological processes".

From ancient societies to the present, history tells us that governments recognize and respect the people's right to control land and goods to protect their interests and property. As technology changed, so did the concept of wealth. This era, the legal system divides wealth into 3 categories. "First, most people recognize private ownership of personal property known as tangible things; second, wealth in the true sense, such as land and buildings; and third, assets called intellectual property". In this regard, all countries recognize property rights in the form of product ideas such as "copyrights, patents, trademarks and trade secrets, integrated circuit arrangements, plant varieties". (Albar, 2019) <sup>[1]</sup>

In general, there is continuity between the standards contained in the TRIPS Agreements and the previous IPR regime that has been established over time through domestic processes. The domestic drive to develop and implement an IP rights protection system continues. From a regulatory perspective, IPRs are not recognized and protected just for the sake of IPRs, or just as an indirect response to international obligations, but as an important part of the legal and business infrastructure needed to increase investment and make businesses more profitable. The purpose of this discussion is to provide intellectual property rights protection against infringement of "innovative works in literature, art, technology or science". The signing of the TRIPS agreement brings new consequences that require continuous adaptation to follow the dynamics of the development of legal instruments that regulate new matters that were not originally regulated by domestic regulations.

For Indonesia, it is quite difficult and very dilemmatic, although there are opportunities and challenges. Considered rich in natural resources, Indonesia will certainly attract investors with an impact on legal developments, including legal and regulatory policies, namely how the provisions of international treaties are harmonized with national regulations to provide protection of existing IP rights. A more important issue is how the Indonesian government, both central and local, can sensitize the public on the registration of innovative works and how not to illegally duplicate the works of others.

From the perspective of intellectual property, the development of rules is in line with the "attitude of appreciation, respect and protection", which not only provides a sense of security, but creates an atmosphere

conducive to the growth of enthusiasm in creating more, better and more beautiful works. Many developments of IP rights have expressed the need for multiple legal protections by recognizing the IP right as well as the right to use, market or enjoy the property itself or at a certain time. For a certain period of time, the right can be enjoyed or used or exploited by other parties only with the permission of the right owner. IP itself is very closely related to the ownership of an intellectual work, therefore the "protection and recognition" of these rights is given specifically to the individual who owns the property, therefore these rights are often said to be exclusive.

Keep in mind that there is a difference between discovery and other intellectual property rights, discovery is something that already exists and is discovered at a later date. This is something that often exists in Indonesia with its natural wealth and is something of economic value. Secondly, keep in mind that companies and researchers from abroad have done a lot of research in Indonesia, and explained to the world about something that was previously unknown and explained its function, such as roses in Kalimantan which are a cure for cancer, then they patented it. This is something that has a very high economic value, and it really explains how important intellectual property rights are in terms of discovery. Another example is "patents on the manufacture of tempeh and tempeh-related products 35 belong to the United States and 6 belong to Japan, Indonesia has only 2 and even then it is still registered and has not received a patent. The patents from the United States are owned by the companies Z-L Limited Partnership, Gyorgy, Pfaff, and Yueh and friends. Z-L Limited Partnership has eight patents, Gyorgy has two patents on tempeh oil, Pfaff has two patents on incubator equipment and how to make food ingredients, and Yueh and friends have a patent on making snacks with tempeh mixture." (Kompasiana, 2018) <sup>[7]</sup> Until now, there has been no special regulation related to discovery related to the context of intellectual property rights in Indonesia, including regulating discovery procedures in IPR disputes in Indonesia. Therefore, to fill the void of existing norms, it is necessary to carry out legal construction related to discovery related to intellectual property rights in Indonesia.

**Dispute Resolution in the Event of Discovery**

It should be noted that Indonesians who live in an environment that is "rich in natural resources" should remember that the main wealth of this country lies in inventions discovered in nature. Here is an explanation of discovery and invention "In simple terms inventions means something that is created. An invention can be a device or a process or anything for that matter while on the other hand discovery means something that is already in existence but you find it." In the event of a dispute, the question arises as to where the dispute resolution will take place in a discovery dispute. The most appropriate answer to this question is the Commercial Court, the Commercial Court as one part of the general judiciary certainly has differences with criminal and civil courts. The Commercial Court itself does not have a general definition, but it can be seen that the Commercial Court has its own authority. One of the powers of the Commercial Court is "to handle bankruptcy and postponement of debt payment obligations (PKPU), disputes in the field of intellectual property rights (IPR) and disputes in the bank liquidation process carried out by the Deposit Insurance Corporation (LPS)".

**Regarding the duties and authority of the Commercial Court in "Article 300 of Law Number 37 Year 2004", it is stated that**

1. The court as referred to in this Law, in addition to examining and deciding on applications for bankruptcy declarations and postponement of debt payment obligations, is also authorized to examine and decide on other cases in the field of commerce which are determined by law.
2. The establishment of the Court as referred to in paragraph (1) shall be carried out in stages by Presidential Decree, taking into account the needs and availability of the necessary resources.

The difference regarding commercial court judges is that commercial court judges are heard by a panel of judges (not individual judges) at both the first and highest levels. Only other business cases, i.e. those that are not first instance bankruptcy disputes, can be heard by a single judge according to "Article 283 of the Supreme Court of Bankruptcy Law". The jury consists of commercial court judges, i.e. district courts that are appointed as commercial court judges based on the decision of the Chief Justice of the Supreme Court. However, for the settlement of other intellectual property disputes, agreements made in the commercial court itself are more appropriate than those provided for in each intellectual property law. In addition, due to the absence of specific arrangements regarding discovery in Indonesian Law in the context of Intellectual Property Rights, the methods that can be used include:

1. **Negotiation and mediation:** Before entering the formal trial process, the parties involved in an IPR dispute can settle the dispute by negotiation or mediation. In this process, parties can negotiate with each other and find a joint solution to resolve the dispute. In the context of discovery, the injured party can request the other party to disclose relevant evidence as part of the negotiation or mediation process.
2. **Arbitration:** Arbitration is an out-of-court dispute resolution method that involves a neutral third party, the arbitrator. In IPR arbitration, the arbitrator can provide guidance on the process of gathering relevant evidence and information. The parties can present evidence and submit discovery requests to the arbitrator to obtain the required evidence.
3. **Litigation in Court:** If an IPR dispute cannot be resolved through negotiation, mediation, or arbitration, the parties involved may choose to take the case to court. Parties can use the evidentiary procedures stipulated in civil procedure law or criminal procedure law. During the trial process, the aggrieved party can apply to the court to obtain relevant evidence through the investigation or trial process.
4. Salah satu alasan perlunya diatur terkait discovery dalam peraturan perundang-undangan di Indonesia juga untuk memperjelas tindakan yang dapat diambil dalam hal penyelesaian sengketa.

**Conclusion**

Regulations related to discovery in Indonesia specifically do not yet exist, resulting in a vacuum of norms related to discovery in Indonesia. This is unfortunate because discovery is something that has existed before and was

discovered at a later date. Where this is something that often exists in Indonesia with its natural wealth and is something of economic value. Furthermore, regarding dispute resolution in the event of discovery, it can be resolved through the Commercial Court. The Commercial Court itself does not have a general definition, but it can be seen that the Commercial Court has its own authority. One of the powers of the Commercial Court is to handle IPR disputes.

**Reference**

1. Albar AA. Dinamika Mekanisme Alternatif Penyelesaian Sengketa Dalam Konteks Hukum Bisnis Internasional. *Otentik's: Jurnal Hukum Kenotariatan*. 2019;1(1):18-32.
2. Amiruddin AZ. *Pengantar Metode Penelitian Hukum* Jakarta: Raja Grafindo Persada. Cet. Ke-1; c2006.
3. Darusman YM. Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten dalam Kerangka Hukum Nasional Indonesia dan Hukum Internasional. *Yustisia Jurnal Hukum*. 2016;5(1):202-215.
4. Darwance D, Yokotani Y, Anggita W. Politik Hukum Kewenangan Pemerintah Daerah Dalam Pengaturan Hak Kekayaan Intelektual. *Journal of Political Issues*. 2021;2(2):124-134.
5. Ferdian AS. Implementasi Hak Kekayaan Intelektual Pada Bidang Usaha Mikro Kecil Dan Menengah (Study Kasus Di Kota Metro). *Humani (Hukum Dan Masyarakat Madani)*. 2020;10:44-61.
6. Indriani I. Hak Kekayaan Intelektual: Perlindungan Hukum Terhadap Hak Cipta Karya Musik. *Jurnal Ilmu Hukum*. 2018;7(2):246-263.
7. Kompasiana. Tahukah Anda Hak Paten Tempe Bukan Milik Indonesia; c2018. <https://www.kompasiana.com/nawawimnoer/5b94a150677ffb5ea968f392/heboh-tempe-tahukah-anda-hak-paten-tempe-bukan-milik-indonesia>
8. Kurnianingrum TP. Dampak Hukum Penghapusan Pasal 20 UU No. 13 Tahun 2016 tentang Paten (Legal Impact of Abolishing Article 20 of Law No. 13 of 2016 on Patent). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*. 2022;13(1):61-82.
9. Organization WIP. Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999). WIPO; c2001, 768.
10. Prasetyo BA, Kansil CST. Pelindungan hukum terhadap inventor pemegang hak paten TNI angkatan darat dalam pendaftaran hak paten di Indonesia. *Jurnal Hukum Adigama*. 2021;4(1):49-72.
11. Purwaningsih E. Patent Law and Its Enforcement in Indonesia, Japan and the USA. *Jurnal Media Hukum*. 2020;27(1):1-22.
12. Qamar N, Syarif M, Busthami DS, Hidjaz MK, Aswari A, Djanggih H, *et al*. Metode Penelitian Hukum (Legal Research Methods). CV. Social Politic Genius (SIGn); c2017.
13. Sinaga NA. Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia. *Jurnal Hukum Sasana*; c2020, 6(2).
14. Whindari Y. Pengaturan Invensi Pegawai (Employee Invention) Dalam Hukum Paten Indonesia. *El-Mashlahah*; c2018, 8(2).
15. WIPO. (n.d.). What is Intellectual Property? <http://www.wipo.int/about-ip/en/>