Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)
Vol.67, 2017
www.iiste.org

Legal Protection of System Knowledge and Technology Developed by Papuan Indigenous People in the Perspective of the Law No. 13/2016 Concerning Patent

Eddy Pelupessy
Associate Professor on Legal Study Program Faculty of Law, University of Cendrawasih, Papua

Abstract
Legal protection of system knowledge and technology developed by the indigenous and other societies in Papua in the perspective of the Law No. 13/2016 on Patent is to follow an application, while the form of the legal protection can be identified from the implementation of Articles 19, 20, 71, and 76 of the Law No. 13/2016. Copying of the Papuan indigenous or other societies' invention is an act against Article 1365 of the Civil Code. In order to give a permanent legal protection for the invention, therefore, the judge shall treat it as a violation against the law and he or she must identify the law that will not automatically make an analogue for the statement of Article 1365 as it is.
Keywords: Legal protection for knowledge system and technology; Patent.

1. Introduction

A new phenomenon in the global community is the intensive use of technology that is growing the fastest in the history of mankind, namely "the information technology". In the twenty-first century, interaction and cooperation of various local cultures and communities will strengthen the values that can be received together towards the development of values (core values) that are universal. Thus, it is stimulating the formation of a more independent community.

In line with changes in the economic, financial and technological, globalization is also propagate traditional community life in Papua province for creativity to develop various types of drugs. According to Agus Budi Riswandi and M. Syamsudin, the debate on the legal protection of various types of drugs in international level is more likely to lead to Patent Law regime.[1] For Papuan traditional society, they understand the richness of plants and animals and to operate the ecosystems and the techniques for using and managing the plant and the animal species. The plant and the animal species, then, is detailed as a traditional system of knowledge and technology.

In relation to the protection of traditional knowledge, Tim Lindsey, et.al[2] states that the indigenous communities and rural areas around the world often protests the existence of legal Intellectual Property Rights (IPR) whose only purpose is to protect creation and invention of developed countries but IPR fails to protect their traditional works and knowledge. Most governments of developing countries and the traditional community members expect the recognition of traditional knowledge in IPR law universally. Their various arguments are very reasonable to show their sense of disappointment. IPR system is based on the idea of western liberal to own various intellectual properties to be more profitable for the products of art and western invention. Therefore, a lot of work and traditional knowledge is created or derived from rural communities to become popular all over the world. An example of it is the works of art Asmat including basic needs like traditional medicines. For the commercial side of IPRs' perspective, it can be said that it is quite valuable. However, most of the revenue from the sale of the work and traditional knowledge is finally in the hands of companies from outside the area of origin of the work and the more often it is a foreign company.

The United States often accuses the developing countries to do IPR piracy. Estimated loss of royalties is US $ 202 million per year for patent infringement for agriculture chemicals and $ 2.5 billion per year for patent medicines. In 1986, the US Department of Commerce Study indicated US companies claimed a loss of US $ 23.8 billion per year due to the enforcement of IPR protection was less effective.[3] Conversely, if the contribution of the farmers of the developing countries and traditional societies were accumulated, then the position was reversed. The US owed US $ 302 million for agricultural royalties and US $ 5.1 billion for drugs.[4]

Patents on traditional knowledge have much cause controversy among the developing countries. Traditional societies are often disadvantaged because the use of traditional knowledge is owned by other parties without the consent of traditional communities as the inventor. Many medical plants are grown in residential areas are filed as a patent by the giant pharmaceutical industry and multinational of the industrialized countries after conducting

[1]Budi Agus Riswandi and M. Syamsudin. 2004. Intellectual Property Rights and Legal Culture (*Hak Kekayaan Intelektual dan Budaya Hukum)*. PT. RajaGrafindo Persada. Jakarta. p. 106.
[2] Tim Lindsey at al. 2003. Intellectual Property Rights (*Hak Kekayaan Intelektual)*. PT. Alumni. Bandung. p. 270.
[3]Shiva Vandama. 1996.Deprivation of Nature and Traditional Knowledge (*Perampasan Alam dan Pengetahuan Tradisional).* PT. Alumni. Bandung. p. 56.
[4] Tim Lindsey at al. op.cit., p. 270.

deep research to those traditional knowledge. Large profits obtained by the pharmaceutical companies for patented drugs are sold with high prices to cover the cost of research and the pursuit of profits for the company.

The failure of modern IPR system to protect knowledge and intellectual work comes from the attitude of view to be more concerned with the protection of individual rights rather than to protect the right people. IPR can usually be owned by an individual or group of individuals or companies. The requirements of obtaining the property rights of individuals are reflecting the basic belief of most of western countries. Although it can be questioned, the economic benefits are the main reference for the work. Private property rights are then introduced to allow economic use. Most of the traditional works created by traditional communities is conducted in groups. It means that people contribute to the final product. Basically, the traditional knowledge is often discovered by a chance. Moreover, the works and traditional knowledge can also be developed by different people over the long term. According to Lindsey et al,[1] most of the traditional society does not recognize the concept of individual rights, where wealth and social functioning is common property. Thus, the creator and inventor in traditional communities are not interested to attach great importance to individual rights or the ownership of the works and their invention.

There is sometimes a representative of the people who hold and control the information or work on behalf of society. However, it can be said also that the ownership seriously cannot be transferred to a representative in accordance to the terms of the legal systems of non-traditional, for example through a contract, where most government recognizes non-traditional legal system. Thus, it is difficult to establish the owners of the traditional knowledge to be protected by IPR legal system.

This weakness is an important impediment and causes almost all forms of IPR not to be applied to protect the works and traditional knowledge. One of the main issues relating to violations in the field of patents today is bio-prospecting or bio-piracy. Many indigenous or traditional people as if in Papua over the years has developed various drugs that help treat human health and even cure of serious diseases. Various ways of treatment have been developed to exploit the properties of plants and other natural resources in the area of traditional communities, as well as the efficacy of red fruit (tawi) in the surrounding mountains of Puncak Jayawijaya, Keerom, Nabire, and several other areas in the province of Papua.

In addressing the various issues relating to the basic rights of indigenous or traditional people over intellectual works born from the creativity and the taste, the Government of Papua Province has set up briefly and firmly legal protection of intellectual property of indigenous people and other residents in Papua in the Law No. 21 of 2001 concerning Special Autonomy for Papua Province, which in Article 44 states that: "The Provincial Government is obliged to protect the intellectual property rights of indigenous Papuans in accordance with legislation".

In the general explanation of the law furthermore states that IPR of the indigenous people of Papua in the form Copyright covers the rights in the field of art consisting of sound art, dance, sculpture, carving, painting, weaving, dressmaking and design of traditional building and the types other arts, as well as the rights associated with the system of knowledge and technology developed by the indigenous people of Papua, for example traditional medicines. These protections include also the protection of IPR other community members in the province of Papua. Regarding the definition of a system of knowledge and technology developed by the indigenous people of Papua, there is no explanation literally in the Law No. 21 of 2001.

If the definition of a system of knowledge and technology developed by the indigenous people of Papua interpreted as the traditional knowledge, it can be translated as the traditional knowledge of the very broad scope which may include the areas of copyright, industrial designs, and patents. Therefore, the system of knowledge and technology developed by the Drafter of the Law No. 21 of 2001 is intended only in the field of patents.

It is necessary to be understood that the object of Article 44 of the Law No. 21 of 2001 is not a specific rule on intellectual works of indigenous and other community members in the province of Papua. The intellectual works of indigenous and other community members in the province of Papua still applies to national IPR laws. Basically, from various traditional herb medicine developed by the indigenous people and other community members in Papua has met the criteria/requirements for Patent. It is also some inventors comes from higher education institutions like the inventor of "red fruit" – I Made Budi MS - and other research institutions outside the universities.

Regarding the inventor of "red fruit", Muhilal, a nutrition expert, states that the "red fruit" has a huge efficacy. In terms of deficient in vitamin A, the prevalence of patients in Papua is much smaller than in Java. The answer of the prevalence of deficient in vitamin A is the daily life of the people of Papua accustomed to eating the red fruit containing 7000 ppm. In addition, "Kuansu" also contain 11,000 ppm tokoferul to ward off free radicals. Some degenerative diseases such as diabetes mellitus, hypertension, and cancer can be cured through the "red fruit".[2] Chairul, researchers at the Center for Biology LIPI, states further that the antioxidant of the red

[1] Ibid.p. 271.
[2] Karjono. 2004. Intellectual Property Rights (*Hak Kekayaan* Intelektua)l. PT. Citra Aditya Bakti. Bandung. p. 71.

fruit can overcome degenerative diseases, free-radical such as cadmium, aging, and eyes problems. Under the Law No. 13 of 2016, simple patent no longer provides protection against the process, as well as the food and beverage process. The simple patent is more focused on something tangible in the form of practical household appliance or in the form of objects.[1]

Legal issues arise in connection with the invention of the traditional society is a further development and registration. Unlike the Copyright that does not require registration, the invention need to be registered prior before commercial use. Therefore, the must be filed to obtain patent. As well as other traditional communities, the indigenous people and other community members in Papua are not aware of the need to register and may not have access to the necessary expertise to deal with the IPR system and its registration to get patent rights.

The fees charged for the registration of patents and maintenance of a Patent may be too expensive and difficult including its process for traditional communities. According to Government Regulation No. 45 of 2016, the charge of the filling patent can be seen in tbale below.

Table 1 the Charge of Filling Patent According to the Governmental Regulation No. 45 of 2016

No.	Patent	Charge of Filling (Rupiah)
1	Patent for Micro, Small, and Medium Enterprises; for Educational Institution; and for Governmental Development and Research.	Online : 350.000 Manual: 450.000
2	Patent for the Community	Online : 1.250.000 Manual :1.500.000
3	Simple Patent for Micro, Small, and Medium Enterprises; for Educational Institution; and for Governmental Development and Research.	Online : 200.000 Manual: 250.000
4	Simple Patent for the Community	Online : 800.000 Manual :1.250.000
5	Substantive Examination	Patent : 2.000.000 Simple Patent: 350.000
6	Amendment of the Type of Filling Patent	450.000
7	Patent transfer of the listing application	500.000
8	Request a copy of the patent certificate	150.000
9	Request a copy of the patent document	100.000/sheet
10	Request for implementation of Patent Regionally	3.000.000

Acceleration of the filing of patent applications as registration fees at the Ministry of Justice and Human Rights Office of the Province of Papua, Consultancy Clinic IPR, Commerce and Small and Medium Industries Department of Trade and Industry of Papua Province are set at Rp. 15.000.000, -, to patent something. It becomes unaffordable for most traditional communities in Papua.

To provide a permanent legal protection against system knowledge and technologies developed by indigenous peoples and other communities in Papua, provincial government has spent a significant amount to help the registration fee IPRs owned by indigenous peoples and other communities who live in Papua since for Fiscal Year 2002/2003. In this case, the allocation of funds managed by IPR Consultancy Clinic of Commerce and Small and Medium Industries Department of Industry and Trade of Papua Province. In addition, the Papua provincial government also established and financed team of Consultancy Clinic IPR, Commerce and Small and Medium Industries Papua province, whose membership consists of staff of the Legal Bureau of Papua province, staff Clinic IPR, Commerce and Small and Medium Industries Department of Trade and Industry of Papua Province, Investigation IPR Officer (PPNS) the Ministry of Justice and Human Rights, Papua Province, and Sentra staffs of HKI "KEMAPA", and Cendrawasih University.

Although the Government of Papua Province has maximized the protection of the law to the system of knowledge and technology developed by the indigenous people of Papua through socialization and registration (registration of rights), but the range of the problem is still wide open. Therefore, the focus of this paper is whether the imitation of system knowledge and technology developed by the indigenous people of Papua is an unlawful act. If yes, can it be held accountable by Article 1365 of the Civil Code; and how the legal protection of knowledge systems and technologies developed by indigenous Papuans in the perspective of Law No. 13 of 2016 on Patent.

2. Legal Protection of Knowledge Systems and Technology Developed by the Indigenous People of Papua

Regarding definition of the system of knowledge and technology developed by the indigenous people of Papua, there is no literal explanation in the Law No. 21 of 2001. However, the drafter of the Law No.21 of 200 states

[1]Budi Santoso. 2004. Legal Protection of Intellectual Property Rights (*Perlindungan Hukum Hak Kekayaan Intelektual*). Klinik HKI Fakultas Hukum UNDIP. Semarang. p. 5.

the definition of it as related patent rights. The scope of the indigenous people of Papua expanded to include members of other communities in the province of Papua. Article 44 of the Law No. 21 of 2001 states that: "The Provincial Government is obliged to protect the intellectual property rights of indigenous Papuans in accordance with the legislation". Thus, article 44 refers to the enactment of various laws and regulations that apply nationally in the field of intellectual property rights laws, including the Law No. 13 of 2016 on Patents. According to the Civil Law system underlying the Indonesian national law, every human being has a natural right to intellectual property, which is a product of human thought. This means that the human beings have rights that are natural material or products derived from intellectual work and to be recognized ownership. The concept of every human being has a natural right to intellectual property is the most essential foundation owned by an inventor because of his or her intellectual work produces invention in the field of technology.

Article 1 paragraph 3 of the Law No. 13 of 2016 stipulates that an inventor is a person or several persons acting jointly implementing an idea poured in an activity that produces the invention. The invention is defined further as an inventor's idea that is poured into a specific problem-solving activities in the field of technology either in the form of products or processes, or the improvement and development of products or processes.[1] To produce the invention, it will take sacrifice of time and considerable expense of its Inventor.

The invention and the development of a process to think of human and naturally sticky as a richness of the inventor has got knowledge of adequate legal protection because it is one of human rights. Chapter Three of Article 13 of the Law No. 39 of 1999 on Human Rights states that "everyone has the right to develop and benefit from science and technology, art and culture in accordance with human dignity for the sake of his personal welfare, nation and mankind". Thus, the legal protection of systems of knowledge and technology developed by the indigenous people of Papua are basically cored recognition of property rights in the field of patents and the right to enjoy within a certain time or exploit those patent rights during the specified time. Other people can only enjoy or use or exploit such rights with the permission of the owner of rights.

The existence of such legal protection is intended for owners of patent rights to may use or exploit the rights safely. In turn, a sense of security later creates a climate or atmosphere that allows people to work together resulted in the following invention. In contrast to the legal protection, the rights owners are asked to reveal the types, forms and ways of working as well as the benefits of the invention. The inventor can safely reveal (disclouse) his or her invention because of the guarantee of legal protection. People can use it on the basis of permission or even develop further.

Basically, Papua people do not understand the meaning and function of the patent. They are not even aware of the results of research that produced it are superior products that can be Patented. The objective conditions of the inventors and developers of traditional medicines show that:

1) Most people (Inventor) not to know and understand the importance of the Patent Law;
2) The invention in the field of traditional technology wants to be enjoyed together with others without having to keep it a secret invention;
3) Papuans do not too emphasize the commercial nature of Invention. The most important of the moral side can lift the name and dignity of the family or clan. Moreover, if it is publicized through print and electronic media (newspapers and television media);
4) The inventors are generally not aware of any obligation of registration to obtain legal protection; and
5) The limited cost of transportation fee to Jayapura and the registration fee sizeable of Patents make the inventors are reluctant to file the patents.

In terms of university or research institute, it is only concerned with "the numerical value of credit for the sake of promotion / position. In fact, the benefit of the research either individually or in groups teaching staff is not only concerned to the value of credit, but also the economic interests. The economic interest basically is very precious but in some how it has been ignored. The center of IPRs "Kemapa" Cendrawasih University as a IPR clinic or the Center for the IPR Study has been carrying out in anticipation by analyzing the potential of IPRs to the results of the research activities of faculty in the University. One of the “Kemapa” activities is to assist identification and to get the patent of the Red Fruit.

Research and development the "Red Fruit" done by I Made Budi since 6 years ago has produced "Healthy Planta Products" through a series of tests of “phytopharmaca” including:

a) Toxicity tests. It is performed on experimental animals (broilers) is to determine whether the phytopharmaca has a toxic of not to be given within a certain time;
b) Experimental pharmacological tests. It is conducted to chicken to determine the efficacy phytopharmaca; and
c) Clinical tests. It is performed in humans (for example to a woman with HIV during a period of six months) to ensure their pharmacological effects, safety, and clinical benefit for disease prevention, treatment of disease, or treatment of disease symptoms.

[1] See Article 1 paragraph 2 of the Law No. 13 of 2016

The same research activity also has been done by laboratory Faculty of Science and Math Cenderawasih University to do the research on some traditional medicines of the indigenous peoples and other communities who live in Papua. The application fee is handled entirely by the Government of Papua Province through IPR Consultancy Clinic, Commerce, and Small -Medium Industries Department of Trade and Industry of Papua Province. To activities list of developers of traditional medicines conducted by individual or groups of the indigenous peoples who domiciles in rural areas of Papua, the implementation is done by the "Mandala Foundation" and "Baliem Foundation", which is under the auspices of Sentra HKI "Kemapa" Cendrawasih University, in cooperation with IPR Consultancy Clinic, Commerce, Small and Medium Industries Department of Industry and Trade of Papua Province.

The efforts of legal protection for the system of knowledge and technology developed by the indigenous people of Papua through registration have not maximized. For example in December 2004, the IPR Consultancy Clinic, Commerce, Small and Medium Industries Department of Trade and Industry of Papua Province have filed three (3) patents application at the Patent Office in Jakarta. Three (3) the results of the discovery and development of medicines and traditional food still in the process of making the description of the invention, which contains a complete information on the procedures for carrying out the invention and the claims contained in the invention. This is an improvement and refinement of the application for patent filed by the inventor in order to qualify formal or completeness of the requirements referred to Article 24 and 25 of Law No. 13 of 2016 on Patents. It refers also to Article 4 and Article 5 of the Government Regulation No. 34 of 1991 concerning Procedures Patent Application. Formal requirement is a requirement of an administrative nature covering patent application documents. Requirements have been met if the letter enclosed with the application and it completes the description regarding technical explanation, technical drawings of the invention claimed his Patent. Patent application documents completeness check is performed to determine whether or not the shortcomings that still must be met.

According to the expert staff of the registration at the IPR Consultancy Clinic, Commerce, Small and Medium Industries Department of Industry and Trade of Papua Province and investigators Intellectual Property Office of the Ministry of Justice and Human Rights Papua Province, it is known that the applicant patents not yet understand the manufacture of the abstract, the description, a brief description of the invention, and the claims to be submitted in order registration of the invention of its technology. These requirements are quite complex eventually lead to the impression that the patent registration procedure convoluted and time-consuming as well as considerable cost, when compared to other types of intellectual property rights. Even as the executor of registration in the area, there are still some technical guidelines such as administration, classification, inspection, and automation are not yet fully adequate to support the maximum work.

An invention patent grouped into simple patent because of its characteristics, which is the invention that is not resulted from deeply research and development. In terms of it, the configuration, construction, or composition is often known as the "utility model" and still have practical utility value that has economic value. The simple patent only has the right to one (1) claim. The substantial direct examination conducted without the request of the inventor. In the event of a rejection of a request this Simple Patents, licenses shall not be mandatory and not subject to annual fees.

There is no registration of Patent in Papua before the policy of the Papua Provincial Government for Fiscal Year 2002/2003 through Team IPR Consultancy Clinic, Commerce, Small and Medium Industries Papua Province. This fact indicates that the Ministry of Justice and Human Rights Office of Papua Province has not provided its function as closely as possible to the public (inventor). Socialization of patent law impressed uncoordinated and carried out only at a particular place like a hotel in the city center. It is not touching the interests of the inventors and developers of traditional medicines intended.

Form of patent protection on systems of knowledge and technology developed by the indigenous people of Papua in substance can be seen from the application of Article 71 as well as Article 19 and Article 20 of the Law No. 13 of 2016, which states that the patent holder shall have the exclusive right to carry out his or her patent, and prohibit others who without his or her consent to make, sell, import, deliver, wear, and provide it for sale or rental or delivery of a given product patent. In relation to the application of Article 19, the patent holder has the right to transfer ownership of his Patent through a license (Article 76).

There are 3 (three) types of licenses that are often encountered in practice. Those types can be described as follows:

1) Exclusive License. In this Agreement, the only licensees are authorized to use a patented invention. After this agreement, the patent holders are no longer eligible to run invention. This is what is meant by "unless agreed otherwise".
2) A single license. In this agreement, the patent holders divert his or her Patent to the other party, but the patent holder may still exercise their right as a patent holder.
3) Non-exclusive License. In this agreement, the patent holder is transferred his or her ownership to other parties and also remains entitled to run or use his Patent.

For the inventor, protection of an invention is a guarantee for his or her life because of its ownership interests in full force and can be passed on to offspring, including a reward for his invention. It is clear that if there is no protection, then the intellectual creativity to make discoveries and knowledge in the industry do not develop. If these results of the intellectual property can be freely copied and reproduced by any person, then the new intensively invention will not be developed although the invention is still traditional nature. Therefore, it is very important to do an integrated and a continuous socialization of the patent to the inventor of the indigenous Papua people, either conducted by the centers of IPR or the Regional Office of the Ministry of Justice and Human Rights of the Province of Papua. It must be also supported facilities by the Provincial and district governments.

3. Imitation of the System of Knowledge and Technology Developed By Papuan Peoples: is it an Unlawful Acts??

Indonesian society in the context of international relations is known as people who lack respect to IPR. Reality in society still shows the number of patent infringement and allegedly has reached a dangerous level and can be destructive to the lives of the people in general, especially the creativity to give birth to new inventions Although weaknesses in legal substance and legal structure has been improved over time, but the indicators of legal culture society against the validity of the Law No. 13 of 2016 has not received serious attention. The Patent Law would work well if the legal culture of society support, from culture disregards patent rights to turned into a culture of respect patent rights.

Imitation or plagiarism or impersonation is conducted due to the mental attitude of the researchers who want to acquire something easily and cannot appreciate the work of others. It can be concluded that there is no respect for the ethics of science and intellectual property in Indonesia. This is because the education system from the beginning does not educate people to be creative. Regardless of the business philosophy of "pursuing profit as much as possible with the sacrifice as small as possible", the actor behind the act of imitation of patents and patent applications already registered or temporarily registered is mostly from the educated people, either for personal gain or profit company where he worked.

Another phenomenon causes the imitation of registered patent is Patent Mafia. The mafia refers to inventions that have obtained a patent, but it is not directly used by the inventor. The patent owner is instead of waiting and expecting his or her patent is used by another party through a patent licensing agreement. On the other hand, he or she also expects that his or her patent is violated by a third party. With the occurrence of violations of his or her patent, he or she would file a compensation lawsuit over the use of a patent without rights. In fact, a lot of companies suffer a loss on the patent mafia.

There is no a system full data base on the previous invention (prior art). The consequence of it, it finds some difficulties in the process of comparing an invention that would be categorized as having novelty, where the novelty is an absolute requirement for an invention to be patented. Imitation of the system knowledge and technologies developed by the indigenous people and other community members in Papua today involves microorganisms (preservation pure) and development of benefit of the "red fruit". They have already started to unfold conducted by fellow local community, the pharmaceutical industry in Jakarta, and tourists foreign.

To know how sacred the basic rights of the indigenous people on the invention and use of natural materials as well as development for the benefit of mankind in the field of pharmaceutical industry, there is briefly comparison in the case of "neem tree" in India. The position of the case is the traditional Indian communities find and use the "neem tree" for a variety of medicinal purposes for centuries. Bark, leaves, flowers, seeds, and fruit plants are used for treating various kinds of diseases and health problems such as malaria, leprosy, diabetes, ulcers, skin disorders and constipation. The branch of the "neem tree" is used as a toothbrush disinfects and oil "neem" is used to produce toothpaste, soap and methane. Moreover, "the neem tree" can be used as a means of birth control, building materials (because the termites resistant) and harsh pesticides. The "neem tree" is an important part of Indian culture. In some areas, local people started the New Year by eating part of the “neem tree” and in other areas of the tree are considered sacred and worshiped.

However, a number of Indian and foreign companies have patented the "neem tree". For example, a US company - WR Grace - has obtained several patents for pesticides produced from the neem tree. This has caused much controversy among Indian farmers and to oppose the patent rights acquired by US pharmaceutical company - WR Grace, the farmers had demonstrations in India. A petition demanding that all patents on the "neem tree" is canceled, has been signed by 500,000 residents of India to be submitted to the European Patent Office, which is competent to implement the European Patent Treaty.

In Jayapura and some other areas, local communities both personal and community groups do impersonation on "Benefits of the Red Fruit (SBM) products Planta Healthy"produced and developed by I Made Budi. According to I Made Budi, in the end of 2004, a pharmaceutical company in Jakarta has produced the finished drug in the form of a pill of the Red Fruit (SBM) Planta Products Healthy. Complain of him to the Pharmaceutical Company then has been resolved through a mediator, which is sufficient compensation has been received. The company will not produce a pill in question until the patent of the I Made Budi related to the Red

Fruit is coming. It expects to do a non-exclusive license agreement.

Imitation of Red Fruit (SBM) Planta Products Healthy increasingly prevalent done by local people and even has been commercialized out of Papua with a quite expensive price. The imitation of Red Fruit (SBM) Product Planta Healthy endangers around 8 consumers in Jayapura. It is likely the same thing will happen in other areas outside of Papua. Similarly, the ingredients in the preservation of "mummy" of Chief Big Valley Balliem form preparations “sarian” (galenic) which are hereditary been used for the purposes of preservation "mummy". The “galenic” has been investigated by foreign experts in the field of chemistry and biology. They bring the “galenic - potions ingredients – to be registered to obtain patent protection laws in their country.

The cases as mentioned above is blurred portrait of the imitation of the system knowledge and technologies developed by the indigenous people and other community members in Papua, which is in private law perspective, it is against the law even if the invention has not been registered. Patents are deemed as an object in the material sense if linked to the provisions of Article 570 of the Civil Code. Therefore, it is part of the invention from those who have it.

Article 143 of the Law No. 13 of 2016 states inter alia:

(1) The patent holder or licensee is entitled to file a claim for compensation to the local Commercial Court against anyone who deliberately and without rights commits acts as referred to in Article 19 paragraph (1).

(2) A lawsuit for damages filed against the acts referred to in paragraph (1) may only be accepted if the product or process is proven to be made using the invention for which a patent has been given.

Thus, Article 143 as mentioned above is only legal facility for the system of knowledge and technology developed by the indigenous people of Papua that has been patented. For the sake of invention that has not patented, it is the right material attached to a personal or group inventor under Article 570 of the Indonesia Civil Code. Therefore, the owner of the goods entitles to sue anyone who controlled the goods in order to restore the state as the original (jo. Article 574 Indonesia Civil Code). Charges against anyone who control the goods can only be carried out pursuant to Article 1365 of the Indonesia Civil Code. The plaintiff must prove that he or she suffers losses. The owner can file a lawsuit against the person or legal entity that violates his or her rights. Indonesia Civil Code does not expressly or do not regulate in detail the compensation given (including compensation for the tort) or about one aspect of the compensation. In this context, the judge has the freedom to apply for compensation in accordance with the equitable principle, in so far as it is requested by the Plaintiff. Justification for this freedom is because of a very broad interpretation of the word loss and can also include almost all things concerned with compensation.

4. Conclusion

Legal protection of system of knowledge and technologies developed by the indigenous people and other community members in Papua, according to Law No. 13 of 2016 provided upon request. IPR Consultancy Clinic, Commerce, Small and Medium Industries Department of Trade and Industry of Papua Province has been submitted to the Patent Office in Jakarta invention on traditional medicine for three (3) request. The form of legal protection can be seen from the application of Article 19, Article 20, Article 71, and Article 76 of the Law No. 13 of 2016. In addition, the imitation of the system of knowledge and technology developed by the indigenous people and other community members in Papua is an act that is contrary to the rights of others (property rights), and includes one of the acts prohibited by Article 1365 of the Indonesia Civil Code. For those who have not yet registered invention, the problem is in terms of evidence in court if the alleged infringement. Patent interpretation issues also will be a problem because in the practice of the Indonesian judicial, an interpretation will be conducted by the judge. Therefore, it is potential to create legal uncertainty.

Bibliography

Budi Agus Riswandi and M. Syamsudin. 2004. Intellectual Property Rights and Legal Culture (*Hak Kekayaan Intelektual dan Budaya Hukum)*. PT. RajaGrafindo Persada. Jakarta.

Budi Santoso. 2004. Legal Protection of Intellectual Property Rights (*Perlindungan Hukum Hak Kekayaan Intelektual*). Klinik HKI Fakultas Hukum UNDIP. Semarang

Karjono. 2004. Intellectual Property Rights (*Hak Kekayaan* Intelektua)l. PT. Citra Aditya Bakti. Bandung.

Shiva Vandama. 1996.Deprivation of Nature and Traditional Knowledge (*Perampasan Alam dan Pengetahuan Tradisional)*. PT. Alumni. Bandung.

Tim Lindsey at al. 2003. Intellectual Property Rights (*Hak Kekayaan Intelektual)*. PT. Alumni. Bandung.