

Aspects of Justice, Legal Certainty and Benefit in the Settlement of Patent Disputes

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Abstract

Introduction: Patent rights are rights granted to individuals who have successfully created new inventions, where the rights and responsibilities of the inventor arise when the invention is registered in accordance with applicable regulations and protected by Law Number 13 of 2016 concerning patents. In the resolution of patent disputes, the regulations mandate the use of litigation remedies. Nonetheless, it is important to remember that mediation is an alternative dispute resolution before taking litigation steps, and is a win-win solution, but it is not a mandatory stage in the settlement of patent civil disputes. Of course, this is contrary to the implementation of the legal aspects which are not only justice, and legal certainty but also expediency.

Purposes of the Research: This research aims to improve understanding of the implementation of the legal objectives aspect in patent dispute resolution in Indonesia.

Methods of the Research: In this research, normative legal research methods were used. The data taken consists of primary legal materials and secondary legal materials.

Results of the Research: The results of this study reveal a new perspective on the concept of justice, which was previously only seen as "right and wrong", to "risks and benefits". This is due to the principle of expediency that lies between the point of legal certainty and the point of justice.

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INTRODUCTION

A patent is the exclusive right of an inventor to an invention in the field of technology for a certain period of time, which can be implemented by himself or give approval to other parties to implement his invention. Patent rights are a form of legal recognition for creators of new innovations in the field of technology using the first to file principle, where the rights and responsibilities of the inventor arise after the innovation is registered with the Directorate General of Intellectual Property Rights.¹ In the context of patent law, fairness may refer to the protection of the rights of the patent holder and other parties involved in the dispute.² This includes ensuring that patent rights are respected, not infringed, and that

¹ Ramadhan Fajar Prasetyo and Waluyo, "Tinjauan Yuridis New Novelty Dalam Pengajuan Permohonan Hak Paten" 2, no. 4 (2023): 84-103, <https://doi.org/https://doi.org/10.30640/dewantara.v2i4.1692>.

² Erlina and Melisa Safitri, "Analisi Komparasi Antara Perlindungan Paten Biasa Dengan Paten Sederhan Berdasarkan Undang-Undang Paten," 2020, 1-23.

any patent infringement is dealt with appropriately and fairly.³ However, there are various cases where patent rights are infringed upon or disputed, leading to patent disputes.⁴ An increase in patent applications has the potential to increase the risk of patent disputes related to infringement or seizure of patent rights.⁵ According to data from the Directorate General of Intellectual Property (IPR) and the Ministry of Law and Human Rights of the Republic of Indonesia patent applications in Indonesia have recorded the second highest number of Intellectual Property applications in 2019-2020.⁶

According to data from the Directorate General of Intellectual Property (IPR) and the Ministry of Law and Human Rights of the Republic of Indonesia patent applications in Indonesia have recorded the second highest number of Intellectual Property applications in 2019-2020.⁷ As stated in Law Number 13 of 2016 concerning patents (hereinafter referred to as the Patent Law).⁸ These disputes can cover a wide range of issues, such as patent infringement, ownership claims, and patent validity.⁹ The phenomenon of many disputes in the field of IPR being resolved through litigation has led to an increase in the workload of the Commercial Court, which in turn has resulted in a buildup of cases and hampered the settlement process.¹⁰ This will ultimately have a negative impact on the parties to the dispute, because the litigation process tends to generate new problems due to its win-lose nature, unresponsiveness, time consuming in the litigation process, and open to the public. Finally, patent dispute resolution is not a place to seek justice and truth, but as a battleground for victory.¹¹

The implementation of aspects of the theory of legal objectives in patent dispute resolution is believed to offer solutions in helping to strengthen justice, legal certainty and expediency.¹² Aspects of the theory of legal purpose can provide a framework for understanding and applying legal principles, and assist judges in making fair and consistent decisions.¹³ Especially the aspect of the theory of legal objectives put forward by Gustav Radbruch that the rules made must aim for justice, legal certainty and expediency. Substantive justice is related to fair, equitable and beneficial law enforcement, while formal justice is related to the application of proper legal procedures, which is why between justice

³ Mutia Denti Armala Zuami and Bakti Tresnawati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Akibat Dihapusnya Kepemilikan Hak Paten Dari Daftar Umum Paten," *Jurnal JURISTIC* 1, no. 01 (April 4, 2020): 95, <https://doi.org/10.35973/jrs.v1i01.1486>.

⁴ Dimas Akbar Iqbal Azis, "Akibat Hukum Berlakunya Undang-Undang Nomor 13 Tahun 2016 Tentang Paten Terhadap Perkembangan Dan Perlindungan Paten Di Indonesia," 2021, 1689-99, <http://journal.unilak.ac.id/index.php/JIEB/article/view/3845%0Ahttp://dspace.uc.ac.id/handle/123456789/1288>.

⁵ Cindy Valencya Tumbel, "Perlindungan Hukum Terhadap Pemegang Paten Dalam Pembekuan Sementara Paten," no. July (2022): 1-23, <https://repository.unhas.ac.id/id/eprint/20601/>.

⁶ DJKI, "Laporan Tahunan Direktorat Jenderal Kekayaan Intelektual 2020," 2020, <https://ppid.dgip.go.id/file/1745999650.pdf>.

⁷ Mieke Novice Rulendari, "Perlindungan Hukum Terhadap Pemegang Hak Paten Konstruksi Sarang Laba-Laba Yang Digunakan Tanpa Izin Oleh Perusahaan Lain," 2020.

⁸ Prasetyo and Waluyo, "Tinjauan Yuridis New Novelty Dalam Pengajuan Permohonan Hak Paten."

⁹ Maulana Saputra Savala, "Pembaharuan Hukum Penggunaan Hak Paten Sebagai Objek Jaminan Fidusia Dalam Perspektif Hukum Jaminan Di Indonesia Berbasis Nilai Keadilan Bermartabat," 2019, <https://repository.unissula.ac.id/15644/>.

¹⁰ Revita Nurahmasari, Muhamad Amirulloh, and Anita Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum" 5 (2021): 123-38, <https://doi.org/https://doi.org/10.23920/acta.v5i1.712>.

¹¹ Jean Neltje et al, "Pengertian Hak Paten-2," *Jurnal Pendidikan Tambusai* 7, no. 3 (2023): 22125-31, <https://jptam.org/index.php/jptam/article/view/10039/8128>.

¹² Hari Agus Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU 'PTB,'" *JATISWARA* 36, no. 3 (November 29, 2021): 325-34, <https://doi.org/10.29303/jtsw.v36i3.341>.

¹³ Maulana Rizki Nov and Simona Bustani, "Perlindungan Hukum Hak Paten Alat Sterilisasi Untuk Pengolahan Tandan-Tandan Kelapa Sawit" 5, no. 3 (2023): 571-80.

and legal certainty must reflect expediency.¹⁴ In the context of patent disputes, this means being able to consider whether patent rights have been violated (substantive justice) or whether proper legal procedures have been followed in the registration and granting of patent rights (formal justice)¹⁵. This study, the main goal is to gain better knowledge, clearer explanations, and a more fundamental understanding of the implementation of the aspects of legal objectives being studied.¹⁶ Basically, legal objectives discuss aspects related to legal conceptions, legal principles, and schools or thoughts in law.¹⁷ Aspects of legal objectives, namely justice, legal certainty and benefits, have a significant role in shaping legal construction regarding how the law should be (*das sollen*) and how the law is related to reality in the real world or based on its application (*das sein*).¹⁸

There is one patent case that went through the litigation stage, one of which is a patent dispute case between Nokia Technologies Oy and PT Selalu Bahagia Bersama, according to Nokia Technologies Oy that PT Selalu Bahagia Bersama has infringed on a patent owned by Nokia Technologies Oy with Registration Number IDP000031184 entitled Additional Modulation Information Signaling for High-Speed Derivative Linkage Package Access. This is evidenced by the production, sale and provision for sale of Oppo's products that use Nokia patents intentionally and without rights. From several articles listed in the patent law regarding patent dispute resolution, there are different legal norms.¹⁹ The settlement of patent criminal disputes as stated in Article 154 of the Patent Law has legal norms that are compelling (*dwingend*) because this article requires the parties to go through mediation before finally filing a lawsuit to the Commercial Court so that it is different from the settlement of patent disputes in the realm of civil lawsuits as stated in Article 142 and Article 143 of the Patent Law has legal norms that only regulate (*aanvullen*), so it is not enough to provide legal certainty.²⁰ As stated above, the IPR system is a private right, because the settlement of civil disputes is private, the settlement should also begin with mediation first in order to find common ground between the parties before finally filing a lawsuit in the Commercial Court as is the rule given for the settlement of public patent criminal disputes.²¹ Therefore, what is currently stated in the Patent Law is contrary to the aspect of legal objectives put forward by Gustav Radbruch that the rules made must aim for justice, legal certainty and expediency. By understanding and applying aspects of legal objectives properly, the dispute resolution process can strengthen justice, provide legal certainty, and benefits for all parties involved.²² Patent dispute resolution based on aspects of legal

¹⁴ Muhammad Faizal Abdillah, Joko Sriwidodo, and Marni Emmy Mustafa, "Penyelesaian Sengketa Terhadap Hak Paten Yang Tidak Memiliki Unsur Kebaharuan Di Indonesia," *PERFECTO: Jurnal Ilmu Hukum* 01, no. 4 (2023): 319-36, <https://doi.org/10.32884/jih.v1i4.1629>.

¹⁵ Azis, "Akibat Hukum Berlakunya Undang-Undang Nomor 13 Tahun 2016 Tentang Paten Terhadap Perkembangan Dan Perlindungan Paten Di Indonesia."

¹⁶ Jean Neltje et al, "Pengertian Hak Paten-2."

¹⁷ Endang Purwaningsih and Evie Rachmawati Nur Ariyanti, "Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan Volume 11 Nomor 1 Maret 2020 53" 11, no. 2 (2021): 53-70, <http://openjournal.unpam.ac.id/index.php/sks%0AKebijakan>.

¹⁸ RR. Lyia Aina Prihardiati, "Teori Hukum Pembangunan Antara Das Sein Dan Das Sollen" 5, no. 1 (2021), <https://doi.org/10.33603/hermeneutika.v5i1.4898>.

¹⁹ Lukman Hakim and Nalom Kurniawan, "Perlindungan Hak Konstitusional Ekonomi Warga Negara Melalui Hak Paten Di Indonesia," *Jurnal Konstitusi* 17, no. 3 (2020): 582-604, <https://doi.org/10.31078/jk1736>.

²⁰ Erlina and Safitri, "Analisi Komparasi Antara Perlindungan Paten Biasa Dengan Paten Sederhan Berdasarkan Undang-Undang Paten."

²¹ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

²² Rahmad Anwar Lubis, "Perlindungan Hukum Terhadap Pemegang Hak Paten Sederhana Yang Terdaftar Lebih Dahulu Di Direktorat Paten (Studi Putusan Mahkamah Agung No. 437K/PDT.SUS-HK/2018" I, no. I (2021): 13-23, <https://doi.org/https://doi.org/10.47709/cnipc.xxxx>.

objectives is not only about upholding justice, but also providing legal certainty and benefits for patent holders and related parties.²³

The settlement of IPR disputes is considered better through non-litigation channels or through mediation institutions because it is faster and the costs are lighter than if it is resolved through litigation.²⁴ Therefore, the author creates a view of the application of the Legal Objectives aspect proposed by Gustav Radbruch in the Settlement of Patent Disputes based on the patent law which should aim for justice, legal certainty and expediency. This is because looking at the phenomenon that occurs in the settlement of patent disputes with existing redactions, the stages of resolving civil disputes currently only depend on the parties.²⁵ This makes it seem as if dispute resolution outside and inside the court is only an option, so that many patent cases in Indonesia end up in the Commercial Court, but some end up only at the mediation stage. Although the IPR always prioritizes the mediation step with the litigants, in the patent law mediation is not a requirement.²⁶ Whereas patents are private and out-of-court dispute resolution should be a required step for the parties, that way it will certainly reduce the accumulation of cases in court with a win-win solution.²⁷ Therefore, according to the author, out-of-court dispute resolution can be used as something that is required to be pursued so that in the future it provides legal certainty for the parties²⁸. Given that the function of law is to direct people's behavior, so that if mediation is affirmed in writing to become a necessity in resolving patent civil disputes, then later people's behavior in resolving patent civil disputes will change as well as the settlement of all patent civil disputes will take mediation first because litigation has the potential to damage business relationships or the reputation of the parties²⁹.

Previous research related to patent dispute resolution research has been conducted by: 1) Dimas Akbar Iqbal Azis in 2021 which focuses on the legal consequences of the enactment of the patent law on the development and protection of patents in Indonesia;³⁰ 2) Jean Neltje, Andini Camelia, Nasywa Laffaiza, Tazkia Tunnafsia Siregar and Dandi Herdiawan Syahputra who focused on the legal protection of patent holders under the Patent Law;³¹ 3) Muhammad Faizal Abdillah, Joko Sriwidodo and Marni Emmy Mustafa which focuses on dispute resolution against patents that do not have elements of novelty in Indonesia.³² Based on previous research, this research has a similar theme, namely examining fundamentally the regulation of IPR, especially regarding patent dispute resolution, but this research

²³ Mochammad Bambang Ribowo and Kholis Roisah, "Perlindungan Hukum Terhadap Paten Sederhana Dalam Sistem Hukum Paten Di Indonesia (Studi Komparasi Dengan Sistem Hukum Paten Di Negara China)," no. July (2020): 1-23.

²⁴ Rulendari, "Perlindungan Hukum Terhadap Pemegang Hak Paten Konstruksi Sarang Laba-Laba Yang Digunakan Tanpa Izin Oleh Perusahaan Lain."

²⁵ Indra Padillah Akbar and Asep Sarifudin, "Legalitas Kecerdasan Buatan (Artificial Intelligence) Sebagai Subjek Hukum Pemegang Hak Paten," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 11, no. 2 (2024): 779-88.

²⁶ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

²⁷ Amalia Nurafifah and Devi Siti Hamzah Marpaung, "Mediasi Sebagai Alternatif Penyelesaian Sengketa," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 5 (August 13, 2022): 2303-17, <https://doi.org/www.dx.doi.org.10.31604/justitia.v9i5.2303-2317>.

²⁸ Miftahul Qodri, "Benang Merah' Penalaran Hukum, Argumentasi Hukum Dan Penegakan Hukum," *Jurnal Hukum Progresif* 7, no. 2 (2019): 182, <https://doi.org/10.14710/hp.7.2.182-191>.

²⁹ Dewi Sukma Kristianti, "Kajian Model Penalaran Hukum Yang Dilakukan Hakim Atas Denda Ta'zir Pada Akad Pembiayaan Murabahah," *Pandecta Research Law Journal* 16, no. 2 (2021): 300-318, <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/31815>.

³⁰ Azis, "Akibat Hukum Berlakunya Undang-Undang Nomor 13 Tahun 2016 Tentang Paten Terhadap Perkembangan Dan Perlindungan Paten Di Indonesia."

³¹ Jean Neltje et al, "Pengertian Hak Paten-2."

³² Abdillah, Sriwidodo, and Mustafa, "Penyelesaian Sengketa Terhadap Hak Paten Yang Tidak Memiliki Unsur Kebaharuan Di Indonesia."

focuses more on the application of aspects of legal objectives in resolving patent disputes in order to strengthen justice, legal certainty and legal benefits. In the realm of legal studies, if analyzed in various contexts, it can be found that the aspect of legal objectives is a reflection of the foundations of law and legal practice as a whole.³³ In line with what Gustav Radbruch stated that one of the meanings of legal certainty is that a positive law must be based on a fact, meaning that the laws that apply in society must be based on the reality that exists in that society.³⁴ The problem to be investigated in this research is the inconsistency in the implementation of aspects of legal objectives in the settlement of patent disputes and the not optimal application of the principles of justice, legal certainty and expediency in the settlement³⁵. The relevance of this research to the current legal context is related to the rise of patent disputes in Indonesia, which requires decisions that are fair, certain and guarantee benefits³⁶.

This research is interesting to investigate because it can provide recommendations to improve the quality of patent dispute resolution, strengthen patent law enforcement, and IPR protection in Indonesia³⁷. In addition, this research can also fill the lack of knowledge about the application of aspects of legal objectives in patent dispute resolution, as well as enrich academic studies regarding the relationship between justice, legal certainty, and expediency. Therefore, this research has significance and is worth doing because it has the potential to contribute both theoretically and practically in the field of patent law in Indonesia. Based on the background of the problems that have been described, the objectives to be achieved in this study are, how to find out the Application of Patent Law in Indonesia and how the Implementation of Aspects of Justice, Legal Certainty in Patent Dispute Resolution. As for some of the obstacles and limitations of this research, namely, the diversity of interpretations of perspectives by legal practitioners and differences in approaches in various jurisdictions can be another factor that limits the generalization of research findings. The results of this study may not be universally applicable in all legal contexts related to patent dispute resolution.

METHODS OF THE RESEARCH

The specification of this research is 'doctrinal' by using the type of normative legal research method. This type of research is legal research that analyzes between a law as norms that become a reference in behavior and an inventory of positive law. The approach used in this research is a statutory approach because this research examines and examines the regulations governing the settlement of patent disputes. In addition, a conceptual approach is also used because this research focuses on analyzing the suitability of the patent law based on doctrine and views of aspects of legal objectives, namely the value of justice,

³³ Taufik Hidayatullah, Yachlam Pudayana Fitriani Gulo, and Ujang Badru Jnman, "Analisis Yuridis Perlindungan Hukum Terhadap Korban Pelecehan Seksual Verbal," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 4, no. 2 (2022): 12–22, <https://doi.org/10.52005/rechten.v4i2.100>.

³⁴ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

³⁵ Aji Mulyono, Budi Sutrisno, and Dwi Martini, "Perlindungan Hukum Terhadap Pemakai Terdahulu Suatu Invensi Yang Sama Dalam Sistem Paten (Studi Putusan PN Niaga Surabaya Nomor 1/PDT.Sus-Paten/2019/PN.Niaga.SBY)" 1 (2021), <https://doi.org/https://doi.org/10.29303/>.

³⁶ Sadino Sadino and Julia Astuti, "Penerapan Hak Paten Di Indonesia," *Jurnal Magister Ilmu Hukum* 3, no. 2 (2021): 41, <https://doi.org/10.36722/jmih.v3i2.755>.

³⁷ Haposan Lambelouis Valentino Aruan, "Perlindungan Hukum Pemegang Paten Di Indonesia Studi Kasus No 46/Pdt.Sus-Paten/2021/PN.Niaga.Jkt.Pst" (Universitas Kristen Indonesia, 2023), <http://repository.uki.ac.id/12453/>.

legal certainty and benefit. Normative legal research is research that examines secondary data, namely data obtained indirectly such as library materials and research sources so that it is also referred to as theoretical / dogmatic legal research. This research is a normative research that examines secondary data, so the data is obtained through literature study techniques. The secondary data used is divided into primary legal materials, secondary legal materials and tertiary legal materials. The primary legal material used is "Law Number 13 of 2016 concerning patents", and secondary legal materials in the form of previous research, papers, and online articles related to the research theme, as well as tertiary legal materials that support primary legal materials and secondary legal materials. The analysis method used in analyzing the data obtained uses a descriptive-qualitative analysis method that analyzes data sourced from legal materials in the form of regular and coherent sentences.

RESULTS AND DISCUSSION

A. Legal Arrangement of Patent Rights in Indonesia

The relationship between people and intangible objects (*immateriaries gut*) was explained by Josef Kohler in his famous theory, "*immaterialguterrecht*".³⁸ According to Josef Kohler, IPR is an immaterial right, namely the right to something that comes from the work of the brain and ratio, or the work of the human ratio that reasons, which is then defined as intellectuality. People who are educated, able to use ratios, and able to think rationally using logic (a method of thinking, a branch of philosophy) are called educated people. The results of their thinking are called rational or logical. People in this group are referred to as intellectuals.³⁹ Currently, Indonesia has made improvements to the regulations on IPR, one of which is patent rights.⁴⁰ Before Law No. 13 of 2016 came into force as an amendment to Law No. 14 of 2001 concerning patents, we were already familiar with Law No. 13 of 1997 and even earlier Law No. 6 of 1989 which was effective on August 1, 1991. The improvement of the patent regulation is intended as an adjustment to international agreements such as the Trade Related Aspects of Intellectual Property Rights Agreement (hereinafter abbreviated as TRIPS Agreement) that Indonesia has signed.⁴¹ If examined fundamentally, the improvement of the patent law is carried out covering several aspects of the approach, namely: 1). Optimizing the presence of the state in the best government services in the field of intellectual property; 2). Favoring Indonesia's interests without violating international principles; 3). Realizing economic independence by driving strategic sectors of the domestic economy by encouraging national inventions in the field of technology to realize technological strengthening; 4). Building a national patent foundation through a pragmatic legal realism approach.⁴²

³⁸ Whendy Pratama Hutagalug, "Tinjauan Yuridis Aspek Hak Moral Terhadap Cover Version Lagu Pada Platform Youtube (Studi Kasus Mahkamah Agung Putusan Nomor 910 K/Pdt.Sus-HKI/2020)" (Universitas Jambi, 2022), <https://repository.unja.ac.id/id/eprint/37729>.

³⁹ Yoyon M Darusman, "Kedudukan Serta Perlindungan Hukum Bagi Pemegang Hak Paten Dalam Kerangka Hukum Nasional Indonesia Dan Hukum Internasional," *Yustisia Jurnal Hukum* 5, no. 1 (2016): 203–15, <https://doi.org/10.20961/yustisia.v5i1.8732>.

⁴⁰ Raihana et al., "Analisis Yuridis Pengaturan Tentang Hak Cipta Di Indonesia," *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 1466–77, <https://doi.org/https://doi.org/10.31004/innovative.v3i2.456>.

⁴¹ Andi Muhammad Reza Pahlevi Nugraha, "Tinjauan Yuridis Hak Paten Di Dalam Kerangka Hukum Nasional Di Indonesia," *Binamulia Hukum* 11, no. 1 (July 1, 2022): 1–14, <https://doi.org/10.37893/jbh.v11i1.668>.

⁴² Luluk Indarinul Mufidah and Mukhamat Saini, "Perlindungan Dan Permasalahan Hukum Bagi Pemegang Hak Paten Di Indonesia," *Kartika: Jurnal Studi Keislaman* 3, no. 1 (May 24, 2023): 61–71, <https://doi.org/10.59240/kjsk.v3i1.34>.

Based on the Patent Law, patent protection is divided into 2 types, namely ordinary patents and simple patents, ordinary patents as referred to in Article 2 letter a are granted for Invention that is new, contains inventive steps, and can be applied in industry.⁴³ Meanwhile, a simple patent as referred to in Article 2 letter b is granted for any new Invention, development of an existing product or process, and can be applied in the industry.⁴⁴ Furthermore, the law also explains that ordinary patents are granted for an Invention in the form of a product that is not merely different in technical characteristics, but must have a function/use that is more practical than the previous Invention due to its shape, configuration, construction, or components, which includes tools, goods, machines, compositions, formulas, compounds, or systems. Meanwhile, a simple patent is granted for an Invention in the form of a new process or method.⁴⁵ Regarding the period of legal protection for ordinary patents based on Article 22 paragraph (1) of the Patent Law, the period given is 20 years from the date of receipt, while the period of legal protection for simple patents based on Article 23 paragraph (1) of the Patent Law, the period given is 10 years from the date of receipt.⁴⁶ In general, the protected product or device is obtained in a relatively short time, in a simple way, at a relatively low cost, and technologically simple.⁴⁷ So that the protection period of 10 (ten) years is considered sufficient to obtain reasonable economic benefits.⁴⁸ In addition, it should also be understood that the right to a patent can be transferred or assigned in whole or in part based on Article 74 paragraph (1) of the Patent Law on the grounds that: "1). Inheritance; 2). Grant; 3). Testament; 4). Waqf; 5). Written agreement; or 6). Other reasons justified by the provisions of laws and regulations" (Law of the Republic of Indonesia Number 13 of 2016 concerning Patents, 2016). The purpose of a written agreement is that the patent holder has the right to grant a license or permission to another party based on a license agreement during the term of the license granted and applies to the entire territory of the Republic of Indonesia, this is in accordance with Article 76 paragraph (3) of the Patent Law.⁴⁹ If agreed, the patent holder may also grant licenses to other third parties. Based on article 130 of the patent law, a patent may be partially or wholly revoked if the patent holder does not fulfill the obligation to pay the annual fee within the period specified in this law.⁵⁰ A patent may be revoked by the Directorate General in whole or in part at the request of the patent holder submitted in writing to the Directorate. Patents can also be canceled by the Commercial Court if there is a patent lawsuit.⁵¹

In addition, there is a provision in Article 20 paragraph (2) of the Patent Law that requires patent holders to manufacture products or use the process of the right in Indonesia. It must

⁴³ Akbar and Sarifudin, "Legalitas Kecerdasan Buatan (Artificial Intelligence) Sebagai Subjek Hukum Pemegang Hak Paten."

⁴⁴ Julius Ariel Putra, "Mekanisme Pembatalan Paten Sederhana (Studi Putusan Pengadilan Negeri Jakarta Pusat Nomor : 61/PDT.Sus-Paten/2018/ PN.Niaga.JKT.PST JO. Putusan Kasasi Nomor : 802 K/PDT.Sus-HKI/2019)," *Jurnal Darma Agung* 32, no. 1 (2024): 494–507, <https://doi.org/https://dx.doi.org.10.46930/ojsuda.v32i1.4067>.

⁴⁵ Rahman et al., "Pembuktian Kebaruan Suatu Invensi Dalam Gugatan Pembatalan Paten Sederhana," *Jurnal Hukum Dan HAM Wara Sains* 03, no. 01 (2024): 42–50, <https://doi.org/https://doi.org/10.58812/jhhws.v3i01.967>.

⁴⁶ Yogi Saputra and Pasha Aizani, "Aspek Hak Kekayaan Intelektual Dalam Hukum Perdata: Perlindungan Terhadap Karya-Karya Seni Dan Inovasi Teknologi" 2, no. 2 (2024): 161–69.

⁴⁷ Lu Sudirman and Hari Sutra Dismadi, "Comparing Patent Protection in Indonesia with That in Singapore and Hong Kong," *Legality : Jurnal Ilmiah Hukum* 29, no. 2 (June 18, 2021): 200–222, <https://doi.org/10.22219/ljih.v29i2.15680>.

⁴⁸ Niru Anita Sinaga and Tiberius Zaluchu, "Tinjauan Yuridis Tentang Perlindungan Hak Kekayaan Intelektual Di Bidang Paten," 2021, <https://doi.org/https://doi.org/10.35968/jti.v4i0.676>.

⁴⁹ Hutagalug, "Tinjauan Yuridis Aspek Hak Moral Terhadap Cover Version Lagu Pada Platform Youtube (Studi Kasus Mahkamah Agung Putusan Nomor 910 K/Pdt.Sus-HKI/2020)."

⁵⁰ Zuami and Tresnawati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Akibat Dihapusnya Kepemilikan Hak Paten Dari Daftar Umum Paten."

⁵¹ Rahman et al., "Pembuktian Kebaruan Suatu Invensi Dalam Gugatan Pembatalan Paten Sederhana."

also support technology transfer, invention absorption and/or employment.⁵² If analyzed fundamentally, the obligation to implement the patent in Indonesia aims to stimulate the industry and economic development of the patent granting country. If he does not properly implement his patent in Indonesia, someone else can apply for a compulsory license to the IPR, this is in accordance with Article 82 paragraph (1) of the Patent Law.⁵³ This compulsory license is intended to prevent the invention from being stored, so that it is not utilized in order to keep the patent from becoming just an import control tool, without contributing to stimulating economic or industrial development for the country that grants the patent. With the priority rights of patent holders, protection is provided by national law (Patent Law) and international law (Paris Convention and TRIPS Agreement) as the first applicant (first to file) to obtain rights as a patent holder.⁵⁴ Registration, of course, refers to the registration procedures specified by the Patent Law. The patent holder (Inventor) is also given protection by the law against new inventions in the field of technology that may harm the Inventor. And if that happens, the Inventor can file a dispute settlement to the commercial court. Based on the explanation of patent regulation according to the Patent Law, it can be understood that patent holders (inventors) are given protection on the basis of national and international law as a priority right to implement their own or jointly their inventions or authorize others to implement them.⁵⁵

B. Settlement of Patent Dispute Cases in Court Decisions at the Supreme Court level

Protecting IPR, especially patents in Indonesia, is very important.⁵⁶ If such protection is not implemented properly, it is possible that individuals who are talented in technology and computers (such as inventors) will choose to move to other countries that value IPR more.⁵⁷ The reason is the violation of patent rights which can have a very detrimental impact on inventors, institutions, and companies that have invested funds to conduct research to produce new innovations.⁵⁸ In resolving IPR disputes, especially patents, the parties can choose to settle the dispute out of court (non-litigation) or through litigation in the commercial court.⁵⁹ To resolve patent disputes, Article 142 of the Patent Law stipulates that a party claiming to be entitled to a patent can file a lawsuit against the patent owner to the Commercial Court.⁶⁰ Article 153 of the Patent Law also stipulates that the parties to the dispute may choose to resolve the dispute through arbitration or alternative dispute resolution methods other than examination by the Commercial Court.⁶¹ Thus, in resolving

⁵² Nugraha, "Tinjauan Yuridis Hak Paten Di Dalam Kerangka Hukum Nasional Di Indonesia."

⁵³ Sinaga and Zaluchu, "Tinjauan Yuridis Tentang Perlindungan Hak Kekayaan Intelektual Di Bidang Paten."

⁵⁴ Sulasno, Lolitawati, and Putri Pratama Ayu Ningsih, "Pengembangan Produk Usaha Mikro Kecil Menengah Dan Kekayaan Intelektual Atas Batik Di Sanggar Batik Krakatoa Kota Cilegon" 1, no. 2 (2024): 121-44, <https://doi.org/https://doi.org/10.30656/jhak.v1i2.8066>.

⁵⁵ Lu Sudirman and Hari Sutra Disemadi, "Reconciling Conflicting Norms: Addressing Patentability Challenges in Indonesia's Virtual Workspaces," *Jurnal Akta* 11, no. 1 (2024): 1-18, <https://doi.org/http://dx.doi.org/10.30659/akta.v11i1.35694>.

⁵⁶ Dwi Intan Permatasari Tamara, Dientje Rumimpunu, and Karel Yossi Umboh, "Aspek Hukum Eksistensi Perjanjian Lisensi Dalam Pelaksanaan Alih Teknologi Berdasarkan Undang-Undang No 13 Tahun 2016 Tentang Paten," no. 13 (2020).

⁵⁷ Ribowo and Roisah, "Perlindungan Hukum Terhadap Paten Sederhana Dalam Sistem Hukum Paten Di Indonesia (Studi Komparasi Dengan Sistem Hukum Paten Di Negara China)."

⁵⁸ Ida Nur Azizah, "Pertentangan Pemberian Perlindungan Hak Paten Terhadap Invensi Penggunaan Teknologi CRISPR-Cas9 Pada Gen Manusia," *Unes Law Review* 5, no. 4 (2023): 3001-14, <https://doi.org/10.31933/unesrev.v5i4>.

⁵⁹ Dewi Sulistianingsih and Mumammad Shidqon Prabowo, "Problematis Dan Karakteristik Penyelesaian Sengketa Kekayaan Intelektual Melalui Badan Arbitrase Nasional Indonesia," *Qistie* 12, no. 2 (2019): 166, <https://doi.org/10.31942/jqi.v12i2.3135>.

⁶⁰ Alifia Devi Erfamiati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Ditinjau Dari UU No 14 Tahun 2001 Tentang Hak Paten" 1, no. 2 (2019): 106-75.

⁶¹ Sudjana, "Makna Mediasi Dalam Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Veritas et Justitia* 7, no. 1 (2021): 91-114, <https://doi.org/10.25123/vej.v7i1.3716>.

patent civil disputes, there is no regulation that specifically requires mediation, and can even immediately file a lawsuit with the Commercial Court without any mediation at all.⁶² Unlike Article 154 of the Patent Law, in resolving patent disputes in criminal cases, the parties involved must first mediate before filing a criminal case.⁶³ Attention is drawn to this given that civil disputes relating to patents are of a more private nature when compared to criminal disputes.⁶⁴ Although dispute resolution is still given to the parties involved, this is not in accordance with the principles of fast, simple, and low cost dispute resolution.⁶⁵ Given that patents are private and out-of-court dispute resolution should be a step that is required and specifically regulated for all parties, this will certainly reduce the burden of cases piling up in court by providing decisions that benefit all parties. The object of IPR is an object that has economic value and has a close relationship with the business world.⁶⁶ Therefore, it is very important to maintain and protect these IPRs given the high possibility of disputes.⁶⁷

In the litigation stage, the settlement of patent disputes does not recognize appeals, but goes directly to cassation at the Supreme Court. Cassation is a legal remedy from the parties who do not accept the decision of the commercial court in the settlement of the compensation claim case.⁶⁸ Through cassation to the Supreme Court, the parties to the dispute can have legal certainty regarding their legal position in the settlement of patent infringement cases.⁶⁹ Thus, it is expected to create justice, legal certainty, and mutually beneficial benefits for all parties.⁷⁰ However, the fact is that cassation decisions often still undermine the principle of benefit compared to non-litigation. Therefore, the author still believes that mediation should be regulated by written regulations that are mandatory in the settlement of patent civil disputes.⁷¹ With this mandatory mediation, it is expected that the behavior of the parties in the settlement of patent civil disputes will undergo significant changes.⁷² In addition, all patent civil disputes will pass through the mediation settlement stage first before entering another settlement stage.⁷³ One example of a case that has been at

⁶² Jean Neltje et al, "Pengertian Hak Paten-2."

⁶³ Diana Putri Natalia et al., "Analisis Sengketa Hak Paten Apple VS Samsung Dalam Hal Pengajuan Gugatan Dan Penyelesaian Sengketa," *Lontar Merah Vol. 6 Nomor 2 (2023) E-ISSN: 2829-2464 Analisis 6 (2023): 736-49*, <https://jom.untidar.ac.id/index.php/lontarmerah/article/view/4260>.

⁶⁴ Andrewnov Margurata and Elfrida Ratnawati Gultom, "REFORMASI HUKUM DIBIDANG KEKAYAAN INTELEKTUAL TERKAIT PENGATURAN PERCEPATAN LAYANAN PATEN SEDERHANA," *Ensiklopedia of Journal 6*, no. 1 (2023): 662-67, <https://doi.org/https://doi.org/10.33559/eoj.v5i3.1892>.

⁶⁵ Handoyo Prasetyo, Bambang Waluyo, and Subakdi, "Penggunaan Kartu Khusus Pendamping Pekerja : Upaya Penguatan Keselamatan Pekerja Menghadapi Sindikat Perdagangan Orang," *Proceeding: 5TH NATIONAL CONFERENCE on Law Studies 2023*, 2023, 550-69.

⁶⁶ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

⁶⁷ Syamhadi, Muhammad Fauzen Adiman, and Retno Sari Dewi, "Analisis Penyelesaian Sengketa Secara Litigasi Paten Terhadap Perkembangan Inovasi Teknologi Di Indonesia," *Jurnal Hukum Dan HAM Wara Sains 02*, no. 12 (2023): 1191-1200, <https://doi.org/10.58812/jhhws.v2i12.873>.

⁶⁸ Jeferson David Rompas, Godlieb N. Mamahit, and Fernando J. M. M. Karisoh, "Hak Pemegang Paten Dalam Gugatan Ganti Rugi Melalui Pengadilan Niaga Menurut Undang-Undang Nomor 13 Tahun 2016 Tentang Paten," *Lex Privatum VI*, no. 3 (2018): 1-26, <https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/view/20417>.

⁶⁹ Savala, "Pembaharuan Hukum penggunaan Hak Paten Sebagai Objek Jaminan Fidusia Dalam Perspektif Hukum Jaminan Di Indonesia Berbasis Nilai Keadilan Bermartabat."

⁷⁰ Tumbel, "Perlindungan Hukum Terhadap Pemegang Paten Dalam Pembekuan Sementara Paten."

⁷¹ Nov and Bustani, "Perlindungan Hukum Hak Paten Alat Sterilisasi Untuk Pengolahan Tandan-Tandan Kelapa Sawit."

⁷² Lompoh Egia Nuansa Pinem and Ni Luh Dwik Suryachyani Gunadi, "Analisis Penyelesaian Sengketa Terhadap Hak Merek Atas Putusan Geprek Bensus Melawan I Am Geprek Bensus," *Jurnal Pacta Sunt Servanda 2*, no. 1 (2021): 24-35, <https://doi.org/10.23887/jpss.v2i1.452>.

⁷³ Radhyca Nanda Pratama, Dilla Nurfiana Astanti, and Muh. Ali Masnun, "Implikasi Kewajiban Pelaksanaan Paten Terhadap Penyelenggaraan Alih Teknologi" 17, no. 2 (2019): 158-73.

the Supreme Court stage is a case experienced by one of the large companies that was once the largest telecommunications company in the world originating from Finland, the company is Nokia. Nokia was also once the best telecommunications equipment manufacturer in Indonesia during its time. However, this company has begun to decrease from the telecommunications market or what we are more familiar with cellphones and is currently developing into smartphones. Departing from the case that occurred in this giant Nokia company, one of which is in the field of innovation and technology. Actually, the Nokia company or with its original name Nokia Technologies Oy has several times sought settlement and justice for the innovations and technologies it has developed, namely by filing a civil patent lawsuit against the company PT Selalu Bahagia Bersama with Decision Number 40/Pdt.Sus-Paten/2021/PN Niaga Jkt.Pst, and ended in the Supreme Court Cassation Decision Number 1849K/Pdt.Sus-HKI/2022. Not only civilly suing PT Selalu Bahagia Bersama for patent rights, but Nokia Technologies Oy also filed a civil patent lawsuit against the company PT Bright Mobile Telecommunication with Decision Number 41/Pdt.Sus-Paten/2021/PN Niaga Jkt.Pst, and ended in the Supreme Court cassation decision Number 132K/Pdt.Sus-HKI/2023.

Case Chronology

Basically, the two decisions have similar objects of dispute and case chronology. Based on the Court Decision, Nokia Technologies Oy has made many efforts to develop innovation and technology to get out of the downturn caused by the onslaught of smartphone innovation and technology from several of its business rivals at this time. One of the technological innovations developed by the Finnish telecommunications company is HSDPA Technology Innovation with support for 64QAM which is a feature of HSPA+ and is usually marked with H+ on mobile phones and registered a patent on its technological innovation findings with Registration Number IDP000031184 entitled "Signaling of Additional Modulation Information for High-Speed Drop-Link Packet Access and Method and Apparatus for Conveying Antenna Configuration Information Through Masking". It didn't take long for one of Guangdong's major companies OPPO Mobile Telecommunications Corp., Ltd. and Realme Chongqing Mobile Telecommunications Corp., Ltd. to glance at Nokia Technologies Oy's latest innovations and technologies, so the two major companies entered into a license agreement with Nokia Technologies Oy in order to use Nokia Technologies Oy's patents.

But it turns out that according to Nokia Technologies Oy, there are two other companies using its patents, namely PT Selalu Bahagia Bersama and PT Bright Mobile Telecommunication, which the two companies are business rivals who have not entered into a license agreement with Nokia Technologies Oy directly, so without long consideration Nokia Technologies Oy immediately took advantage of this moment to attack its business rivals, namely by filing a civil lawsuit until the cassation stage at the Supreme Court against the two companies, although based on its statement it had tried to communicate negotiations and mediation, but this was not resolved until the completion of the mediation, according to Oppo's opinion "We are negotiating with Nokia to renew the patent license and continue to coordinate to reach an agreement. We are disappointed that in the middle of the process, Nokia chose to settle through the courts," said OPPO

Indonesia's PR Manager, Aryo Meidianto A in a press release received by detikcom.⁷⁴ This was done because the lawsuit was considered to be a way to win the telecommunications market from other business rivals in Indonesia. Given that the settlement of patent civil disputes through court decisions will be "win-lose", so as we know that Nokia Technologies Oy suffered a drastic decline in the telecommunications market in Indonesia after the defeat of its own lawsuit.⁷⁵ Of course, launching a lawsuit without mediation settlement is not prohibited in the Patent Law, given that the regulation of the obligation to settle mediation is still very poorly regulated in the Patent Law as explained by the author above.⁷⁶

Judge's Decision/Consideration

Based on the Supreme Court Decision that has permanent force, it is explained that the panel of judges rejected Nokia Technologies Oy's lawsuit. Because according to the judge's consideration, it cannot be proven that there is an indication of illegal imitation of patent rights, this is reinforced by the existence of a Letter of Appointment by Guangdong Oppo Mobile Telecommunications Corp., Ltd., and Realme Chongqing Mobile Telecommunications Corp., Ltd., to PT Selalu Bahagia Bersama and PT Bright Mobile Telecommunication, in which the two companies only act as assemblers of communication equipment (mobile assembling) according to orders and specifications which are entirely determined / provided by Guangdong Oppo and Realme Chongqing, while Guangdong Oppo Mobile Telecommunications Corp., Ltd., and Realme Chongqing Mobile Telecommunications Corp., Ltd., appointed PT Selalu Bahagia Bersama and PT Bright Mobile Telecommunication as mobile assemblers on the basis of a license agreement with Nokia Technologies Oy to use Nokia Technologies Oy patents.

Application of Aspects of Justice, Legal Certainty and Benefit

Based on the explanation above, it is certainly unfortunate that Nokia Technologies Oy did not prioritize ADR such as mediation until an agreement was reached, and was too ambitious to step into the realm of litigation, this is common because the regulation of patent dispute resolution contained in article 142 of the Patent Law does not provide special regulations for mediation obligations (*aanvullen*). as in patent complaints in the criminal realm contained in article 154 of the patent law which requires mediation before entering the realm of court or litigation (*dwingend*). So that business people take advantage of this opportunity to attack their business rivals with a lawsuit, but this has actually become a boomerang for the Nokia Technologies Oy company and made the name nokia increasingly disappear in the circulation of the telecommunications market in Indonesia. Of course, this is closely related to whether the settlement of patent disputes in Indonesia has reflected the benefits for entrepreneurs, as we know that the majority of exclusive patent rights are used by entrepreneurs to protect their innovations and technologies so that they can compete fairly in the business and technology competition market. However, it seems that what is happening at this time because Article 142 of the Patent Law does not regulate specific regulations on the obligation to mediate before going to the realm of litigation or court can

⁷⁴ Andi Saputra, "Sengketa Paten, Gugatan Rp 2,3 Triliun Nokia Vs Oppo Kandas," *Detik News*, 2022, <https://news.detik.com/berita/d-6353023/sengketa-paten-gugatan-rp-2-3-triliun-nokia-vs-oppo-kandas?single=1>.

⁷⁵ Rani Pajrin, "Prinsip Small Claim Court (SCC) Dalam Penyelesaian Sengketa Hak Kekayaan Intelektual Di Indonesia (Fokus Kajian Hak Merek Dan Hak Cipta)," *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum* 1, no. 2 (2019): 163-75, <https://doi.org/10.37631/widyapranata.v1i2.47>.

⁷⁶ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

instead be used to attack other business rivals, so that the justice and legal certainty created is still lacking coupled with expediency. Alternative dispute resolution should be a top priority in resolving patent civil disputes. The current wording in the Patent Law still provides options for dispute resolution inside and outside the court (*aanvullen*). Although the IPR tends to give priority to mediation as a way of resolving disputes between the disputing parties, but what is stated in the patent law, mediation is not an obligation before the litigation step.⁷⁷

From the analysis of the case at the Supreme Court stage, there was a big mistake made by Nokia Technologies Oy, namely not resolving the problem through mediation, considering that reputation in the business world is very important, especially in the field of innovation and technology. This could have happened because what is stated in the Patent Law related to civil lawsuits is not required to mediate (*aanvullen*), so Nokia utilizes this as a form of competition in the field of innovation and technology, whereas if only Nokia resolves through mediation, it is certain that Nokia will not spend a lot of funds to litigate through the courts, and Nokia's business reputation will expand its scope. The article is that the two companies that have been sued are only assembly companies that have orders from the Guangdong OPPO Mobile Telecommunications Corp. , Ltd. and Realme Chongqing Mobile Telecommunications Corp., Ltd, which previously Nokia Technologies Oy has cooperated in licensing the use of technology and innovation, namely additional modulation information signaling technology for high-speed downlink packet access. However, because Nokia uses litigation which results in a win-lose verdict, of course this defeat is one of the factors of a bad image for giant companies that are now rarely seen in Indonesia. Of course, mediation is not required in the settlement of patent civil disputes because it is not in line with the reality of the situation in society, which is that patents are very economically valuable, and this will greatly impact the business world and business competition. Therefore, the Patent Law that does not require mediation in the settlement of patent civil disputes will be inconsistent with the implementation of the aspects of the basic objectives of law put forward by Gustav Radbruch, namely justice, legal certainty and expediency.

The view expressed by Gustav Radbruch is that legal certainty can be interpreted as a situation where positive law must be based on existing facts. In this situation, the law that applies in society must be based on the reality that exists in society itself, which is why certainty must go hand in hand with justice and expediency.⁷⁸ In the case of a patent dispute between Nokia Technologies Oy and PT Selalu Bahagia Bersama and PT Bright Mobile Telecommunication, it was considered too hasty and lacked consideration in taking steps to resolve the dispute. This could have happened because the Patent Law does not require (*dwingend*) to conduct mediation before filing a lawsuit, but only an optional rule (*aanvullen*). Had Nokia Technologies Oy completed mediation first, Nokia would not have needed to continue the dispute through litigation or court. Therefore, in order to create regulations that are in line with the values of justice, legal certainty and usefulness, special regulations are needed for the obligation to mediate in the settlement of patent disputes considering that patent innovation has economic rights that are closely related to the business world and business competition. This legal certainty is based on Legal Certainty in the Use of

⁷⁷ Nov and Bustani, "Perlindungan Hukum Hak Paten Alat Sterilisasi Untuk Pengolahan Tandan-Tandan Kelapa Sawit."

⁷⁸ Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU 'PTB.'"

Certification of Trustworthiness published by the Indonesian E-Commerce Business Journal when a regulation is made clearly and logically. Of course, the regulation does not cause doubts (multi-interpretation) and is logical. It is clear that the regulation is a system of norms that goes hand in hand with other norms, so that no conflict or conflict of norms occurs.⁷⁹ Legal certainty refers to the clear, consistent, and fair application of the law, which cannot be influenced by subjective factors or personal circumstances.⁸⁰ Certainty and justice are not only moral demands, but also essential aspects of the legal system.⁸¹ Laws that cannot guarantee certainty, justice, and expediency are not quality laws.⁸²

C. Ideal Patent Dispute Resolution based on Aspects of Justice, Legal Certainty, and Benefit

Based on the above description, it can be concluded that the Implementation of Aspects of Justice, Legal Certainty, and Benefit can be an idealization of the basic values of Normative Law in Indonesia. However, based on this research, researchers found the fact that the implementation of patent law in Indonesia as stipulated in the Patent Law has not yet reached the idealistic aspects based on the values of Justice, Legal Certainty, and Benefit. Especially for the aspects that the author examines, namely in the settlement of civil patent disputes which have been fundamentally explained in the clauses of the articles in the Patent Law, and take examples of discussion of court decisions at the Supreme Court level that have permanent legal force (*inkrah*) in Discussion 2 (two) above. Therefore, in Discussion 3 (three), the author will only explain fundamentally about aspects of Justice, Legal Certainty, and Benefit, as well as existing Doctrines and Legal Theories, in order to achieve recommendations for idealist patent civil dispute resolution (*Ius Constituendum*).

Normative legal certainty occurs when a regulation is clearly regulated and structured. Clear in the sense that the regulation does not cause doubts and can be well understood by all parties involved. In addition, regulations must also not contradict or conflict with other norms.⁸³ Legal certainty refers to the implementation of laws that are clear, fixed, consistent, and consequential. This means that the implementation of the law should not be influenced by subjective circumstances or certain situations.⁸⁴ Legal certainty and justice are not only moral demands, but also the hallmark of the legal system itself. In the concept of legal certainty theory according to Gustav Radbruch, legal certainty is defined as the existence of regulations that are made and promulgated clearly, surely, and logically.⁸⁵ Clear means that there is no ambiguity or doubt in the interpretation of the regulation, while logical means that the regulation must be in accordance with the existing norm system, so that there is no clash or conflict between these norms.⁸⁶ Thus, normative legal certainty is a very important

⁷⁹ Pratama, Astanti, and Masnun, "Implikasi Kewajiban Pelaksanaan Paten Terhadap Penyelenggaraan Alih Teknologi."

⁸⁰ Lubis, "Perlindungan Hukum Terhadap Pemegang Hak Paten Sederhana Yang Terdaftar Lebih Dahulu Di Direktorat Paten (Studi Putusan Mahkamah Agung No. 437K/PDT.SUS-HK/2018)."

⁸¹ Trias Palupi Kurnianingrum, "Pelindungan Hak Paten Atas Pengetahuan Obat Tradisional Melalui Pasal 26 UU No. 13 Tahun 2016 Tentang Paten Protection," *Trias Palupi Kurnianingrum: Pelindungan Hak Paten Atas Pengetahuan Obat Tradisional* 10, no. 1 (2019): 49-65, <https://doi.org/10.22212/jnh.v10i1.1222>.

⁸² Saputra and Aizani, "Aspek Hak Kekayaan Intelektual Dalam Hukum Perdata: Perlindungan Terhadap Karya-Karya Seni Dan Inovasi Teknologi."

⁸³ Mulyono, Sutrisno, and Martini, "Perlindungan Hukum Terhadap Pemakai Terdahulu Suatu Invensi Yang Sama Dalam Sistem Paten (Studi Putusan PN Niaga Surabaya Nomor 1/PDT.Sus-Paten/2019/PN.Niaga.SBY)."

⁸⁴ Akbar and Sarifudin, "Legalitas Kecerdasan Buatan (Artificial Intelligence) Sebagai Subjek Hukum Pemegang Hak Paten."

⁸⁵ Savala, "Pembaharuan Hukum Penggunaan Hak Paten Sebagai Objek Jaminan Fidusia Dalam Perspektif Hukum Jaminan Di Indonesia Berbasis Nilai Keadilan Bermartabat."

⁸⁶ Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU 'PTB'."

principle in the legal system to ensure that all parties can understand and follow the rules clearly and without doubt. Currently, there are differences in the legal provisions that apply to intellectual property laws, one of which is patents.⁸⁷ The provision emphasizes that mediation must be carried out before the criminal prosecution process is carried out. However, in the settlement of civil disputes, the provision is still not detailed and only emphasizes the obligation for the parties to mediate before filing a lawsuit with the Commercial Court.⁸⁸ The legal relationship between the inventor or creator and the perpetrator is a relationship between private parties that can cause harm to the right holder.⁸⁹ Therefore, in this case, no state interests are disturbed. Thus, the resolution of IPR disputes through mediation aims to restore the victim to his original position, rather than imposing criminal penalties on the perpetrator. In this mediation, parties who have exclusive rights who experience infringement will be given compensation according to an agreement and kinship for the losses suffered.⁹⁰ In the national legal system, all laws and regulations are considered as a unified whole. Consistency in laws and regulations plays an important role in creating legal certainty. This consistency does not happen by itself, but must be pursued⁹¹. Therefore, it is important to clearly include the obligation to implement mediation in the patent law, because the law is not created by itself, but must be created to avoid overlaps, clashes, or even contradictions between regulations that can result in a loss of legal certainty in society and to ensure the implementation of better legal certainty.

IPR is a right granted to owners of intellectual works to protect the results of their thinking. This principle of IPR protection is in line with the theory proposed by Robert M. Sherwood, especially Risk Theory. This theory concludes that IPR is the result of research activities carried out and has risks that may arise.⁹² Therefore, it is only natural that IPRs are given protection against efforts or activities that carry these risks. In resolving patent disputes, there are two options that can be done, namely through Alternative Dispute Resolution (non-litigation) and the Commercial Court (litigation).⁹³ However, settlement through litigation with a decision that results in a winning party and a losing party can provide satisfaction for one party, but not for the other.⁹⁴ In this case, new problems may arise between the parties to the dispute. In addition, the dispute resolution process, which is slow, takes a long time, and requires relatively high costs, is also an obstacle that needs to be overcome.⁹⁵ Dispute resolution through court channels has weaknesses that need to be considered. The litigation process used in dispute resolution does not always reflect the

⁸⁷ Rulendari, "Perlindungan Hukum Terhadap Pemegang Hak Paten Konstruksi Sarang Laba-Laba Yang Digunakan Tanpa Izin Oleh Perusahaan Lain."

⁸⁸ Pajrin, "Prinsip Small Claim Court (SCC) Dalam Penyelesaian Sengketa Hak Kekayaan Intelektual Di Indonesia (Fokus Kajian Hak Merek Dan Hak Cipta)."

⁸⁹ Purwaningsih and Ariyanti, "Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan Volume 11 Nomor 1 Maret 2020 53."

⁹⁰ Saputra and Aizani, "Aspek Hak Kekayaan Intelektual Dalam Hukum Perdata: Perlindungan Terhadap Karya-Karya Seni Dan Inovasi Teknologi."

⁹¹ Tumbel, "Perlindungan Hukum Terhadap Pemegang Paten Dalam Pembekuan Sementara Paten."

⁹² Syamhadi, Adiman, and Dewi, "Analisis Penyelesaian Sengketa Secara Litigasi Paten Terhadap Perkembangan Inovasi Teknologi Di Indonesia."

⁹³ Chrisna Bagus Edhita Praja, Budi Agus Riswandi, and Khudzaifah Dimiyati, "Urgensi Mediasi Sebagai Alternatif Penyelesaian Sengketa Hak Cipta," *Kertha Patrika* 43, no. 3 (2021): 275-95, <https://doi.org/10.24843/kp.2021.v43.i03.p04>.

⁹⁴ AAA. Ngr. Sri Rahayu Gorda, Putu Eva Ditayani Antari, and Ida Ayu Ketut Artami, "Sosialisasi Hak Cipta Dan Hak Merek Pada Kelompok Usaha Kecil Dan Menengah (UKM) Sebagai Aset Bisnis Di Era Industri Kreatif (Sosialisasi Hak Merek Dan Hak Paten Pada Masyarakat Desa Celuk Kabupaten Gianyar)," *PARTA: Jurnal Pengabdian Kepada Masyarakat* 1, no. 1 (2020): 27-31, <http://journal.undiknas.ac.id/index.php/parta>.<http://journal.undiknas.ac.id/index.php/parta>.

⁹⁵ Prasetyo, Waluyo, and Subakdi, "Penggunaan Kartu Khusus Pendamping Pekerja: Upaya Penguatan Keselamatan Pekerja Menghadapi Sindikat Perdagangan Orang."

values of peace and kinship that should be upheld in accordance with the IPR system.⁹⁶ The purpose of the IPR system is to reward individual work or creativity and encourage others to develop it further. The development of science and technology, art culture, and literature also has a close relationship with the IPR system.⁹⁷ Therefore, IPR protection in a country has a significant influence on the progress and development of science, technology, art, and literature in that country. In handling Patent disputes under the Patent Law, there are several out-of-court settlement options, and one of them is through mediation which can be an efficient alternative.⁹⁸

Mediation is a process that takes place in private and prioritizes negotiations between the parties.⁹⁹ In resolving disputes using this method, agreement between all parties involved is the main priority, both before and after the dispute resolution process is carried out.¹⁰⁰ Patent civil dispute settlement has private characteristics, with the aim of regulating the interests of individuals or parties involved in the dispute. Unlike court settlements that are conducted openly to the public, there are different approaches in this method.¹⁰¹ One of the interesting things about confidentiality in the mediation process is that the parties involved in the dispute do not want the problems they face to be disclosed to the public.¹⁰² By maintaining confidentiality, mediation becomes more interesting and effective in resolving disputes.¹⁰³ In resolving Patent disputes, there are differences in legal norms regulated in several articles of the patent law.¹⁰⁴ One of the articles that needs to be considered is Article 154 of the Patent Law which regulates the settlement of patent disputes that are compelling (*dwingend*). This article requires the parties involved in a patent dispute to undergo a mediation process before finally filing a lawsuit with the Court.¹⁰⁵ In resolving patent disputes, there is a difference between the civil procedure regulated in Article 142 and Article 143 of the Patent Law and the way patent disputes are resolved criminally. The legal norms contained in the patent law only function as additional arrangements (*aanvullen*), so they cannot provide adequate legal certainty.¹⁰⁶ As mentioned earlier, the IPR system is a personal right, therefore civil dispute resolution is private. Thus, it is advisable to start with mediation as the first step in resolving public patent disputes.¹⁰⁷ The goal is to reach an agreement between all parties involved before deciding to file a lawsuit with the Commercial Court in accordance with applicable regulations. The importance of Alternative Dispute Resolution Institutions in supporting the development of Alternative Dispute

⁹⁶ Tumbel, "Perlindungan Hukum Terhadap Pemegang Paten Dalam Pembekuan Sementara Paten."

⁹⁷ Hari Sutra Disemadi and Cindy Kang, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 54-71, <https://doi.org/10.23887/jkh.v7i1.31457>.

⁹⁸ Asep Iwan Iriawan, "Kepastian Hukum Kompetensi Pengadilan Niaga Dalam Penyelesaian Sengketa Bisnis," *Action Research Literate* 7, no. 10 (2023): 102-13, <https://ar.lidwaninstitute.co.id/index.php/arl>.

⁹⁹ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

¹⁰⁰ Syamhadi, Adiman, and Dewi, "Analisis Penyelesaian Sengketa Secara Litigasi Paten Terhadap Perkembangan Inovasi Teknologi Di Indonesia."

¹⁰¹ Aruan, "Perlindungan Hukum Pemegang Paten Di Indonesia Studi Kasus No 46/Pdt.Sus-Paten/2021/PN.Niaga.Jkt.Pst."

¹⁰² Nurafifah and Marpaung, "Mediasi Sebagai Alternatif Penyelesaian Sengketa."

¹⁰³ Iriawan, "Kepastian Hukum Kompetensi Pengadilan Niaga Dalam Penyelesaian Sengketa Bisnis."

¹⁰⁴ Irfawandi et al., "Analisis Jenis Jenis Dan Penyebab Kekerasan Seksual Di Lingkungan Kampus," *Jurnal Pendidikan Indonesia* 4, no. 04 (2023): 383-92, <https://doi.org/https://doi.org/10.59141/japendi.v4i04.1747>.

¹⁰⁵ Pinem and Gunadi, "Analisis Penyelesaian Sengketa Terhadap Hak Merek Atas Putusan Gepek Benu Melawan I Am Gepek Benu."

¹⁰⁶ Zuami and Tresnawati, "Perlindungan Hukum Terhadap Pemegang Hak Paten Akibat Dihapusnya Kepemilikan Hak Paten Dari Daftar Umum Paten."

¹⁰⁷ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

Resolution (ADR) practices in the community cannot be ignored. In this context, the institutionalization of ADR is very important so that disputes related to IPR, especially in the field of patents, can be resolved through the ADR route.

Dispute resolution through mediation has the potential to achieve "win-win solutions" because it involves agreement and deliberation between the parties involved.¹⁰⁸ In this process, a joint decision acceptable to both parties can be produced, and the confidentiality of the dispute can be guaranteed as the proceedings are not open to the public and are not publicized.¹⁰⁹ Resolving intellectual property disputes through ADR first has several advantages. In an effort to face the challenges of commercializing IPR assets, entrepreneurs need to rely on institutions that can assist them in resolving IPR-related disputes. One institution that can be trusted is the Mercantile Arbitration Board (BAM), a private institution that specifically handles IPR disputes. With its experience and expertise, BAM can provide fair and effective solutions for entrepreneurs in protecting their intellectual property rights. Companies recognize that IPR is one of their most important assets. They increasingly understand that protecting and properly utilizing intellectual property rights can provide significant long-term economic benefits. Disputes that occur can disrupt or even hamper the company's business activities, especially in matters relating to IPR assets. Therefore, resolving intellectual property disputes through BAM HKI has advantages, one of which is a faster resolution time with a maximum time limit of 180 days. With this time limit, cases can be resolved more efficiently and effectively.¹¹⁰

This actually provides more certainty and expediency to all parties involved in the dispute.¹¹¹ The dispute resolution is easier to do at a more affordable cost, the decision is final and binding on all parties involved in the dispute.¹¹² This is in accordance with the principle of IPR which is a personal and civil right.¹¹³ One of the factors that makes mediation accepted as a dispute resolution option is its ability to facilitate the parties to the dispute to discuss deliberately. In mediation, parties can sit together and discuss their issues with the aim of reaching a mutually beneficial agreement. This approach has been recognized in various cultures, including in Indonesian culture where deliberation has been part of dispute resolution efforts for a long time and is still alive in traditional societies. In various indigenous communities, deliberation has been a commonly used way to resolve disputes.¹¹⁴ This practice has been around for a long time and has proven successful in creating peace and mutually beneficial agreements for all parties involved. Apart from going through the BAM IPR, the parties can also appoint the Board of Patent and Intellectual Property Guarantees (DJKPI) as an ADR. Although the DJKPI is a state institution, it also has a function in resolving IPR disputes. DJKPI officers and/or officials can be requested as

¹⁰⁸ Wizna Gania Balqis, "Perlindungan Merek Sebagai Hak Kekayaan Intelektual: Studi Di Kota Semarang, Indonesia," *Journal of Judicial Review* 23, no. 1 (2021): 41, <https://doi.org/10.37253/jjr.v23i1.4360>.

¹⁰⁹ Prasetyo and Waluyo, "Tinjauan Yuridis New Novelty Dalam Pengajuan Permohonan Hak Paten."

¹¹⁰ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

¹¹¹ Lubis, "Perlindungan Hukum Terhadap Pemegang Hak Paten Sederhana Yang Terdaftar Lebih Dahulu Di Direktorat Paten (Studi Putusan Mahkamah Agung No. 437K/PDT.SUS-HK/2018.)"

¹¹² Saputra and Aizani, "Aspek Hak Kekayaan Intelektual Dalam Hukum Perdata: Perlindungan Terhadap Karya-Karya Seni Dan Inovasi Teknologi."

¹¹³ Abdillah, Sriwidodo, and Mustafa, "Penyelesaian Sengketa Terhadap Hak Paten Yang Tidak Memiliki Unsur Kebaharuan Di Indonesia."

¹¹⁴ I Gusti Ayu Agung Ratih Maha Iswari Dwija Putri, "Permasalahan Dalam Implementasi Ketentuan Trips Agreement Berdasarkan Undang Undang Nomor 13 Tahun 2016 Tentang Paten," *Jurnal Kertha Semaya* 8, no. 7 (2020): 1005-16.

witnesses in IPR cases in court. Thus, DJKPI can act as a mediator if there is an agreement from both parties.¹¹⁵ As a rule that applies in society, the Patent Law must provide strict provisions by considering the benefits that will be provided to society.¹¹⁶ Furthermore, the Patent Law also needs to consider the philosophical aspects of the patent itself. From a philosophical point of view, the actual settlement of civil disputes should be left to the parties involved, but because patents have a strong relationship with the business world, resolving them through the courts is not suitable because it will take a long time, cost a lot, and be open.¹¹⁷ Supposedly, in solving cases related to the business world, the time needed is not long, the costs are more affordable, and provide solutions that benefit all parties to support business effectiveness between business actors.

In line with the legal theory proposed by Richard Posner, namely the Theory of Economic Analysis of Law, this theory uses an economic science approach based on three principles, namely value, usefulness, and efficiency.¹¹⁸ According to Posner, efficient law is the allocation of responsibilities between individuals involved in economic interactions designed to maximize shared value or its sum, while minimizing the costs of joint activities. Efficient law enforcement focuses more on controlling the quality of the process rather than just quantitative effectiveness. In the author's view, if the dispute resolution taken by the parties involved is inefficient, this will certainly not provide benefits for them.¹¹⁹ The importance of laws that can provide benefits to all legal subjects, namely justice and legal certainty (Yasmine et al., 2021). Law is considered good if it can provide happiness to most people. The benefits obtained by the community in the implementation and enforcement of law are highly expected. This is due to the fact that the law exists for the benefit of humans (Pratiwi et al., 2021). Therefore, the implementation and enforcement of the law must provide benefits and usefulness for the community. The main purpose of the applicable laws and regulations is to provide maximum benefits for all parties involved. With effective and efficient regulations, it is expected to create a legal environment that is fair and beneficial to society as a whole. In the author's view, by prioritizing mediation as a method of resolving patent civil disputes, it can provide meaningful benefits to the parties in dispute.¹²⁰ Dispute resolution through mediation has the advantage of accelerating the dispute resolution process and providing freedom for the parties to determine the desired solution, so that it can produce a decision that is favorable to all parties involved.¹²¹ However, it is unfortunate that in the Patent Law, mediation is not required as a step to resolve patent disputes for the parties to the dispute. If the parties directly file a lawsuit with the Commercial Court without going through the mediation stage first, there will be an increase in the time required and the costs that must be incurred. Andi Kurniawan, who serves as the legal services division of the patent directorate at the IPR, stated that resolving

¹¹⁵ Nurafifah and Marpaung, "Mediasi Sebagai Alternatif Penyelesaian Sengketa."

¹¹⁶ Savala, "Pembaharuan Hukum Penggunaan Hak Paten Sebagai Objek Jaminan Fidusia Dalam Perspektif Hukum Jaminan Di Indonesia Berbasis Nilai Keadilan Bermartabat."

¹¹⁷ Ribowo and Roisah, "Perlindungan Hukum Terhadap Paten Sederhana Dalam Sistem Hukum Paten Di Indonesia (Studi Komparasi Dengan Sistem Hukum Paten Di Negara China)."

¹¹⁸ Nurahmasari, Amirulloh, and Afriana, "Mediasi Sebagai Kewajiban Penyelesaian Sengketa Perdata Pelanggaran Paten Di Indonesia Demi Kepastian Dan Kemanfaatan Hukum."

¹¹⁹ Prihardiati, "Teori Hukum Pembangunan Antara Das Sein Dan Das Sollen."

¹²⁰ Muh Ali Masnun and Dina Roszana, "Persoalan Pengaturan Kewajiban Pemegang Paten Untuk Membuat Produk Atau Menggunakan Proses Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 26, no. 2 (2019): 326-48, <https://doi.org/10.20885/iustum.vol26.iss2.art6>.

¹²¹ Abdul Kadir Jaelani, Alexander A Kurniawan, and Lusia Indrastuti, "Abdul Kadir Jaelani, Alexander A. Kurniawan, Lusia Indrastuti Pelaksanaan Standarisasi Pemberian Paten Dalam Invensi Bidang Obat-Obatan Di Indonesia" 27, no. 2 (2020): 259-74.

patent disputes through mediation provides greater benefits for patent holders.¹²² If the settlement of patent civil disputes is carried out through mediation before filing a lawsuit to the Commercial Court, there are several advantages that can be obtained by the parties involved, namely: 1). Mediation is an effective method to resolve disputes at a more affordable and targeted cost when compared to submitting the dispute to a court or arbitration institution; 2). Mediation will divert the parties' attention to their real interests and emotional or psychological needs, so that mediation does not focus solely on the legal aspects; 3). Mediation provides all parties with the opportunity to be directly and informally involved in resolving their conflict; 4). Mediation gives all parties the ability to control the process and outcome; 5). Mediation has the ability to transform outcomes that are difficult to predict in litigation and arbitration into certainty through the achievement of consensus; 6). Mediation produces tested results and creates a better understanding between the disputing parties because decisions are made by them.

Significant benefits will be obtained by all parties involved in patent dispute resolution through the advantages of mediation. If the mediation is successful and the dispute is successfully resolved, then the parties no longer need to take the litigation route which is time-consuming and costly.¹²³ However, if dispute resolution does not provide benefits and satisfaction to the disputing parties, then the principle of expediency in law is not fulfilled.¹²⁴ An effective law is a law that provides benefits to all parties involved, because the community as a legal subject expects fair benefits in the implementation and enforcement of the law.¹²⁵ However, the patent dispute resolution regulated in the current Patent Law is still considered not fully fulfilling the principle of expediency which has an impact on justice.¹²⁶ People generally choose to use alternative dispute resolution because there are several factors that provide advantages to this method.¹²⁷ One of these factors is the economic factor, where alternative dispute resolution can save costs that must be incurred by the parties to the dispute.¹²⁸ In addition, this method also has advantages in terms of the broad scope of issues that can be discussed. In alternative dispute resolution, the parties have the opportunity to discuss various aspects related to their dispute, making it possible to reach a more comprehensive solution. Therefore, if mediation is made mandatory for all parties in resolving patent disputes, it will provide positive benefits for all parties involved.¹²⁹ As previously explained regarding the theory of legal objectives explained by Gustav Radbruch, legal objectives must not only be oriented towards justice and legal

¹²² I Gusti Ayu Eviani Yuliantari, I Gede Agus Kurniawan, and Ni Putu Dian Puspita Dewi, "Perlindungan Hukum Pemegang Hak Cipta Terhadap Pembajakan Potongan Film Pada Aplikasi Tiktok," *Jurnal Hukum Sasana* 9, no. 1 (2023): 81-90, <https://doi.org/10.31599/sasana.v9i1.1866>.

¹²³ Muhamad Amirulloh Mayesha Andriana Yasmine, U. Sudjana, "Kewajiban Mediasi Sebelum Gugatan Ganti Rugi Perdata Atas Pelanggaran Hak Cipta Di Indonesia," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 10, no. 2 (2021): 157-72, <https://doi.org/10.28946/rpt.v10i2.1432>.

¹²⁴ Disemadi and Kang, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0."

¹²⁵ Kevin Indra Bhaskara Winshery Tan, Ampuan Situmeang, "TV Broadcasts Piracy Through Illegal Live Streaming Application: Challenges and Legal Protection for Copyright Holders" 9, no. 1 (2024): 66-79.

¹²⁶ Maman Lukman and Happy Yulia Anggraeni, "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 10, no. 6 (2023): 2971-81.

¹²⁷ Anthon Fathanudien, "Peranan Perlindungan Kekayaan Intelektual Dalam Bidang Teknologi Pada Era Revolusi Industri 4.0," *Universitas Kuningan* XIX, no. 2 (2023): 1-16.

¹²⁸ Praja, Riswandi, and Dimiyati, "Urgensi Mediasi Sebagai Alternatif Penyelesaian Sengketa Hak Cipta."

¹²⁹ Nuraini Endah Suryani, "Perlindungan Hukum Inventor Di Bawah Suatu Hubungan Kerja Atas Suatu Invensi Ciptaannya," *Fakultas Hukum Universitas Sebelas Maret Surakarta*, 2020.

certainty, but must also pay attention to the principle of expediency.¹³⁰ The approach based on the theory of legal objectives provides a new perspective on law related to patterns of human behavior. Previously, law was only seen as "right and wrong", but now this approach changes it to "risks and benefits". In this theory, it is considered that the purpose of law involves expediency, in addition to certainty and justice. Basically, the principle of expediency is between the principle of legal certainty and the principle of justice. Laws are basically formed to protect human interests. Therefore, in the Patent Law, specific regulations must provide maximum benefits for the welfare of society.

CONCLUSION

The Legal Arrangement of Patent Rights in Indonesia today has improved the regulations on IPR, one of which is patent rights, which is currently outlined in Law Number 13 of 2016 concerning patents. The improvement of the patent regulation is intended as an adjustment to international agreements such as the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) that Indonesia has signed. If examined fundamentally, the improvement of the patent law is carried out covering several aspects of the approach, namely: 1). Optimizing the presence of the state in the best government services in the field of intellectual property; 2). Favoring Indonesia's interests without violating international principles; 3). Realizing economic independence by driving strategic sectors of the domestic economy by encouraging national inventions in the field of technology to realize technological strengthening; 4). Building a national patent foundation through a pragmatic legal realism approach. Unfortunately, the principles of legal certainty, justice, and expediency in patent dispute settlement have not been properly applied in the Patent Law. This discrepancy can be seen in Article 142 and Article 153 of the Patent Law which regulate the settlement of patent civil disputes. The mediation stage regulated in the settlement of patent civil disputes is only a norm that regulates (*aanvullen*), not as a binding obligation (*dwingend*). Therefore, the settlement of patent civil disputes depends on the initiative of the parties to use alternative dispute resolution, namely directly through the court (litigation) or through ADR such as mediation (non-litigation). The Theory of Legal Objectives proposed by Gustav Radbruch explains that the law in its purpose needs to be oriented towards three things, namely certainty, justice, and expediency. Therefore, the regulations contained in the Patent Law must be oriented towards these 3 legal objectives, and it will be a problem if existing regulations such as the Patent Law in resolving patent civil disputes actually deviate from what is stated in the theory of legal objectives, namely the principle of usefulness. This is also in accordance with the example of the case in the Court Decision at the Supreme Court level belonging to Nokia Technologies Oy who filed a lawsuit with a "win-lose" result which interprets uselessness in the midst of justice and legal certainty. In an ideal dispute resolution based on the implementation of the aspects of justice, legal certainty, and usefulness, mediation is the best alternative dispute resolution before entering the realm of litigation, this has proven to be more effective as a method that should be pursued by all parties involved because of its win-win solution. Therefore, as a suggestion, the Government should review the Patent Law, especially Article 142 and Article 153 relating to civil dispute resolution, by requiring mediation as a mechanism that

¹³⁰ Mayesha Andriana Yasmine, U. Sudjana, "Kewajiban Mediasi Sebelum Gugatan Ganti Rugi Perdata Atas Pelanggaran Hak Cipta Di Indonesia."

must be carried out by all parties, in accordance with the norms that apply in criminal patent dispute resolution. This is important considering that Intellectual Property Rights (IPR), especially patents, are personal rights and are closely related to the business world and have high economic value. The theory of legal objectives put forward by Gustav Radbruch states that law is not only oriented towards justice, and legal certainty but must be efficient and useful. Therefore, in revising the Patent Law, the government should not only prioritize justice and legal certainty, but also consider the benefits for all parties involved, including the obligation to conduct mediation.

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