

ABSTRAK

Kasus pelanggaran hak kekayaan intelektual antara Amerika Serikat dengan Tiongkok berupa pelanggaran hak kekayaan intelektual yang terjadi dalam konteks *Joint Venture* berkenaan dengan perlindungan hak kekayaan intelektual suatu paten asing. Dikarenakan Tiongkok merupakan negara peserta TRIPS maka berlaku kewajiban guna mematuhi ketentuan-ketentuan dalam TRIPS. Dalam kendalanya, ketentuan yang dibuat Tiongkok berupa *The Joint Ventures Law of People's Republic of China* dan *Patent Law of People's Republic of China* bertentangan dengan ketentuan dalam TRIPS. Sejalan dengan permasalahan tersebut berimplikasi terhadap pemegang hak kekayaan intelektual asing di Tiongkok untuk tidak memiliki kemampuan guna melindungi hak kekayaan intelektual mereka di Tiongkok serta secara bebas menegosiasikan persyaratan berbasis pasar dalam perizinan dan kontrak terkait dengan teknologi lainnya.

Tujuan dari penulisan ini adalah untuk mengetahui dan menganalisis pengaturan paten asing dalam usaha *joint venture* di Tiongkok dan untuk mengetahui serta menganalisis sistem penegakan hak paten negara Tiongkok sesuai dengan Pasal 28 TRIPS, metode penelitian yang digunakan yakni berupa metode yuridis normative yang dilakukan melalui studi kepustakaan.

Hasil dari penulisan ini berupa adanya pengaturan paten asing dalam usaha *joint venture* yang didasarkan pada rumusan Pasal 18 dan Pasal 19 *Patent Law of People's Republic of China* yang yakni apabila berkenaan dengan pendaftaran pelaksanaan paten asing yang tidak berasal dan berkedudukan di Tiongkok maka harus tunduk dalam ketentuan peraturan di Tiongkok dan diwajibkan untuk memerintahkan atau memintakan agensi formal untuk melakukan pendaftaran hak paten berdasarkan kuasa permintaan pendaftar paten asing. Serta ketentuan dalam Pasal 43 *The Joint Centures Law of People's Republic of China* tidak sesuai dengan ketentuan Pasal 28 TRIPS. Akan tetapi dalam ketentuan Pasal 1 dan Pasal 41 TRIPS yang bermuatan tentang *enforcement* perlindungan hak kekayaan intelektual mengatur ketentual vital yang sifatnya fleksibel. Sehingga pemerintah Tiongkok yang berlandaskan asas *par in parem nor habet imperium* tidak dapat dipaksakan untuk menafsirkan aturan yang berkonotasi luas sesuai dengan pandangan yang dianggap umum dan awam oleh negara anggota TRIPS.

Kata Kunci: *TRIPS, Hak Kekayaan Intelektual, Joint Ventures Law of People's Republic of China*

ABSTRACT

Intellectual property infringement cases between the United States and China are in the form of intellectual property rights infringements that occur in the context of a Joint Venture relating to the protection of intellectual property rights of a foreign patent. Because China is a TRIPS participating country, there is an obligation to comply with the provisions of the TRIPS. In the constraints, the provisions made by China in the form of The Joint Ventures Law of People's Republic of China and the Patent Law of People's Republic of China contradict the provisions in the TRIPS. In line with this problem, it implies that foreign intellectual property rights holders in China do not have the ability to protect their intellectual property rights in China and freely negotiate market-based terms in licensing and other technology-related contracts.

The purpose of this paper is to identify and analyze foreign patent arrangements in joint ventures in China and to find out and analyze the Chinese state patent enforcement system in accordance with Article 28 TRIPS. While the research method used is in the form of normative juridical methods carried out through literature study.

*The result of this writing is in the form of a foreign patent arrangement in a joint venture which is based on the formulation of Article 18 and Article 19 of the Patent Law of the People's Republic of China, which is that if it is related to the registration of foreign patents that are not originating and domiciled in China, they must comply regulations in China and are required to order or request a formal agency to register a patent based on the power of a foreign patent applicant's request. And the provisions in Article 43 of The Joint Centures Law of People's Republic of China are not in accordance with the provisions of Article 28 TRIPS. However, the provisions of Article 1 and Article 41 of the TRIPS, which contain enforcement of intellectual property rights protection, regulate vital provisions which are flexible in nature. So that the Chinese government, which is based on the principle of *par in parem non habet imperium*, cannot be forced to interpret the broad connotation rules according to the views that are considered general and common by the TRIPS member countries.*

Keywords: *TRIPS, Intellectual Property Rights, Joint Ventures Law of People's Republic of China*