

The Effect of Work Flexibility and Stress on the Performance of Civil Servants during the Covid-19 Pandemic (Study on Employees Aceh Watershed Department)

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Abstract

Intellectual property is not only beneficial for the creator, but also the community as users of products and/or services protected by intellectual property. The more intellectual property created, the better for legal subjects or business entities that are legal entities or not legal entities because they can increase the intellectual capital value of the person and/or company. The author's purpose in analyzing this is to qualitatively examine the relationship between intellectual property and the addition of the intellectual capital value of a company and whether some changes in the regulations in Law Number 11 of 2020 concerning Job Creation can affect the intellectual capital of a company. This research method is normative juridical which will explore some secondary literature, which consists of Law Number 11 of 2020 concerning Job Creation, laws and regulations related to intellectual property, books, journals, and papers related to intellectual property and intellectual capital. Research shows that the more intellectual property owned by a company that is sold in the community can increase the intellectual capital of a company. Changed arrangements related to patents and trademarks in Law Number 11 of 2020 concerning Job Creation can affect the company's intellectual capital in terms of capital structure and changes to the regulation on patent implementation can increase intellectual capital for all categories, namely human capital, structure capital, and physical /customer capital.

Keywords

intellectual property; intellectual capital; company



I. Introduction

Humans who live certainly need to develop in a better direction. Along with these circumstances, human needs for something can become more complex, so humans need something to make their needs simpler. Work that is usually done conventionally, having to go to work is no longer necessary because there are already applications or media to connect people from various parts of the world or learning can be done from home, teaching staff make teaching materials in the form of videos and upload them to the school or college learning system high school or youtube so that students can study from home. Technological developments help us in getting the job done. This increasingly advanced technology will not be created without research and development, which has an impact on various sectors, such as technology that can make content more interesting, gadget processors are faster and more stable, and others. Examples of technology or content created by creators may be protected by intellectual property. Intellectual property consists of 7 (seven) branches, namely copyrights, patents, trademark rights, industrial designs, integrated circuit layout designs, trade secrets, and protection of plant varieties.

There are changes in the regulation of patents and marks which are regulated in Law Number 11 of 2020 concerning Job Creation. Intellectual property is related to intellectual capital (intellectual capital) in terms of capital structure. Structure capital is the ability of an organization or company to fulfill routine company processes and structures that support employees' efforts to produce optimal intellectual performance and overall business performance, company operational systems, manufacturing processes, organizational culture, management philosophy, and all forms of intellectual property owned company. The success of leadership is partly determined by the ability of leaders to develop their organizational culture (Arif, 2019). Intellectual capital is information and knowledge that can be applied to a job that can create value in the company. Intellectual capital is generally divided into 3 (three) components, namely customer capital, human capital, and structure capital. The author wants to examine the role of intellectual property in positively influencing (adding) the value of a company from a legal perspective so that this research does not contain quantitative data. In addition, the regulation of each of these laws contains several changes in Law Number 11 of 2020 concerning Job Creation. The amendment includes several articles related to patents and trademarks. The author wants to examine the impact of changes to several articles related to intellectual property in Law Number 11 of 2020 concerning Job Creation when it is associated with the intellectual capital of a company.

Based on the description above, the author is interested in discussing further the relationship between intellectual property and intellectual capital which will be included in the research entitled "Juridical Review of Intellectual Property Associated with Company Intellectual Capital". The formulation of the problem in this study is 1) How is intellectual property related to intellectual capital so that it can add value to a company? and 2) What is the impact of changes in intellectual property regulations in Law Number 11 of 2020 concerning Job Creation on the intellectual capital of a company?.

II. Research Method

The data obtained both primary and secondary data were analyzed by qualitative methods and then presented descriptively. Qualitative research is research that is descriptive and tends to use analysis. Process and meaning (subject perspective) are more highlighted in qualitative research. The theoretical basis is used as a guide so that the research focus is in accordance with the facts on the ground. In addition, this theoretical basis is also useful for providing an overview of the research background and as material for discussing research results. There is a fundamental difference between the role of theoretical foundations in quantitative research and quantitative research. In quantitative research, research departs from theory to data, and ends in acceptance or rejection of the theory used; whereas in qualitative research the researcher starts from the data, uses existing theories as explanatory material, and ends with a "theory".

III. Results and Discussion

3.1 Intellectual Property Links with Intellectual Capital So it Can Add Value to a Company

There are seven types of intellectual property which are categorized into 2 (two) major sections, namely:

- a. Copyright, (*copyright/author rights*). Copyright governs the arts, literature, and science and related rights (performers, record producers, and phonogram companies); and
- b. (*industrial property*), which consists of:
 1. Trademark rights which regulate the sign to distinguish goods or services;
 2. Patent rights governing technological inventions;
 3. Integrated Circuit Layout Design which regulates the design of laying integrated circuits or *integrated circuits* ;
 4. Industrial Design which regulates the appearance design of a product;
 5. Trade Secret which regulates confidential information that has economic value; and
 6. Plant Variety Protection regulates plant varieties produced through plant breeding activities.

The seven branches of intellectual property have moral rights and economic rights, which are called *natural rights theory*. This theory gives a creator or inventor the right to control the use and profit of the idea, even after the idea is disclosed to the public. This theory has two elements, namely: 1) *the First occupancy* which looks at the moral rights of someone who invents or creates an invention for the exclusive use of the invention, and 2) *A labor justification* which looks at the economic rights that are the rights of someone who seeks to create an intellectual property as a result of his efforts. Companies that have suitable intellectual property will affect the quality of the company.

A company is said to have a competitive advantage if the company can create higher economic value compared to other companies in its industry, so the company must rely on intangible assets, such as the creation of innovation, employee competence, and others. According to Rose et al., capital (*intellectual capital*) includes all processes and assets that do not normally appear on the balance sheet and all *intangible assets* (*trademarks, patents, and brands*) that are of concern to modern accounting methods. Intellectual capital has 3 (three) components, namely:

- a. *Human capital*. This component reflects the collective ability to produce the best solutions based on the knowledge possessed by the people in the company to add value to the company.
- b. *Structure capital*. *Structure capital* is a facility and infrastructure that supports employees to create optimal performance, including organizational capabilities, market reach, *hardware, software*, organizational structure databases, patents, brands, and all organizational capabilities to support employee productivity. *The capital structure* consists of:
 1. *Innovation capital*, namely intangible assets in the form of employee creativity in taking advantage of opportunities that exist within the company environment, to be able to create innovations that provide added value and meet consumer needs;
 2. *Process capital*, namely intangible assets that play a role in the production process itself, starting from receiving orders to delivering products or services to consumers, so that in the end it can create high-value *output in the eyes of consumers*; and

3. *Relationship capital*, namely the company's ability to maintain good relations with internal and external companies because it can determine their assessment of the company's *performance*.
- c. *Physical capital* shows a harmonious relationship between the company and its partners, suppliers, customers, government, and the surrounding community.

The following is a further description of the three components of intellectual capital. First, is *human capital*. *Human capital* is a human resource that makes a positive contribution to the company, which can be seen from the recruitment, and selection process, and then the company provides training to these resources. The positive contribution that comes from the knowledge of workers is very important for the company because human resources are the driving force to arrive at the company's goals. The role of human resources in the company is divided into managerial and executor. Company management requires technical expertise, communication and interaction with the community, conceptual, decision making, time management, global management, and technology. Value can only be done by the company's *human capital*, namely employees who have certain skills, competencies, and *knowledge*. There are 3 (three) levels of management when viewed from the organizational level, namely:

- a. Top management, who has conceptual expertise, such as director, deputy director, chief executive officer, or what is commonly called the C-suite level, namely Chief Executive Officer (CEO), Chief Operational Officer (COO), Chief Financial Officer (CFO), managing director, and the president director ;
- b. Middle management, who has interpersonal skills, such as area manager, product director, division head , or department head, branch head, or branch manager ; and
- c. Lower management, who has the technical expertise, such as supervisor, foreman, or office manager, section manager

The second is the *capital structure*. *Structure capital* is the knowledge and skills of *human capital* that have been transformed and owned by the company, such as in the form of systems, procedures, know-how methods, technology, and so on. Companies need to build a working system that is comfortable for employees, build a good system in terms of planning, design, to execution of a policy or product and/or service that is sold to the public, and provide programs for periodic self-development of human resources so that productivity in the company is good and even increasing. Productivity in terms of intellectual property is creating innovations or updating services that can be sold to the public. Of course, this needs to be formulated by the management to see the prospects for the results in the market. If the prospect is good, the management asks the executor to realize the concept.

Concerning the holders of realized or fixed intellectual property, it is necessary to discuss between the company and the resources that realize the intellectual property. If intellectual property is created in an employment relationship or official relationship, the law in the field of the intellectual property defines that the party who is entitled to obtain the intellectual property is the party providing the work (in this case the company), unless agreed otherwise. Workers who realize ideas into intellectual property have the right to have their names included in the certificate and are entitled to appropriate compensation for the intellectual property they produce. This is a form of legal protection for creators or inventors or designers by fulfilling moral rights and economic rights to the resulting copyrighted works, namely:

- a. Intellectual property theory. John Locke said that the property rights of a human being to the objects he produces have existed since the human was born. The object is in the sense of tangible and abstract or intangible objects which are the result of human intellect.
- b. The theory of personality rights (*moral rights*) and rights to intangible objects (rights that are material or economic). This theory is divided into 3 (three) views:
 1. In intellectual property rights, there are aspects of personality rights and rights to intangible objects which are one unit, but between these two aspects, the personality aspect is more dominant because of the close relationship between the creator and his creation. This theory is known as the theory of monasticism in which a copyrighted work is the result or product of human intellect;
 2. The second view is known as the dualistic theory where personality and economics are two separate things from each other and copyright is a right that contains only economic value; and
 3. These two theories gave birth to the modern monistic theory in which the personality and economic aspects of intellectual property rights are a unified whole, both of which receive legal protection from positive law both by national and international state law.

In addition, there are reasons why respect for intellectual property is necessary, namely:

- a. Intellectual work is always born from hard work that requires energy and thought and not everyone can do it;
- b. Awareness of respect for intellectual property can motivate people to compete to be creative and work.

On the other hand, this opinion is in line with increasingly stringent globalization, both at the regional and international levels, which requires increasingly fierce competence and competition.

Intellectual property for Hegel is seen as an *ongoing expression of its creator not as a free, abandonable cultural object*. Intellectual property can create an atmosphere that is conducive from an economic and social perspective for the creation of intellectual works which are ultimately very important for human development.

Third, physical or customer capital. Physical capital or customer capital is a positive relationship with every external, not only with customers or consumers, but with stakeholders, shareholders, government, communities, and others. The company's output, whether goods or services, is directed at the community. The community is not only consumers (intermediate or final) who use services or buy products sustainably from the company, but there are also elements of the government as a regulator or shareholders and stakeholders where the company needs to be responsible for the performance of the company. The better the company's performance, which can be seen from the income statement, feedback from consumers, and minimal or even no disputes related to the company (consumer disputes, licensing, etc.), the higher the value of the company.

Firm value is an investor's perception of the company's performance appraisal, which can be linked to stock prices. The company can be said to have good value if the company's performance is also good. The value of a publicly-traded company can be assessed narrowly from the company's shares which tend to be stable outside of external economic conditions, such as a pandemic. Besides being important to the company's value, the company's output, especially those protected by intellectual property can be an added

value for the company. Added value means having an irreplaceable role and its existence has a significant impact on the progress of the company. Each component is assessed whether there is added value based on the extent of its contribution to the organization or company. The company's added value that can increase from the intellectual property owned by the company can be seen from the example of the distribution of intellectual property for several areas of the company:

- a. Technology companies: patents, trade secrets, integrated circuit layout designs, industrial designs, copyrights, and brands. An example of a technology company is Apple Inc. The Apple company produces a variety of technologies that can help work productivity or education with the products it produces;
- b. Companies selling *fast-moving consumer goods* (FMCG): trade secrets and brands. An example of an FMCG company is Unilever. Unilever companies sell a wide range of products for the daily needs of people in Indonesia; and
- c. Companies engaged in agribusiness, especially the agricultural industry: protection of plant varieties, brands and trade secrets. An example of a company engaged in agricultural agribusiness is the Agri Makmur Pertiwi company which is engaged in vegetable seeding.

Based on the example above, most potential technology companies can hold almost any area of intellectual property and all companies have trade secrets and names that can also be trademarks of that company. A good company name, which can be seen from products that are well known and good sales in the community, can increase the value of the company and become an added value for the company. If the company is increasing intellectual property according to their respective fields, it can increase the value of the company by increasing the value of shares and fundamental analysis can be of good value too. Companies can produce good products or services if *human capital* and *capital structure* can be in the form of a system from the company so that the company can still produce innovative technology. These trade secrets are well guarded, without harming any party internally or externally, increasing the company effectively. The results of the company's intellectual property such as the image of the company. Companies that continue to innovate following the needs of the community by maintaining quality certainly have a good image for the company. Company innovation can be maintained by applying intellectual capital properly and effectively.

3.2 The Impact of Changes in Intellectual Property Regulations in Law Number 11 of 2020 concerning Job Creation on the Capital Capital of a Company

There are changes in the regulation of intellectual property in Law Number 11 of 2020 concerning Job Creation. Changes to these settings are regulated in the third and fourth parts of Chapter VI regarding Ease of Doing Business, namely:

- a. Article 107 regulates several changes to Law Number 13 of 2016 concerning Patents
 1. Article 3 which regulates the requirements for a simple patent is added with conditions that have practical uses as well as the addition of a paragraph that regulates the criteria for the development category of an existing product or process which includes a simple product, a simple process, or a simple method;
 2. Article 20 which regulates the implementation of patents is changed from the obligatory patent holder to manufacture products or use processes in Indonesia by supporting technology transfer, investment absorption, and/or providing employment opportunities into mandatory patents in Indonesia by dividing the implementation based on the type of patent, namely:

- a) Application of product-patent which includes making, importing, or licensing the patented product;
 - b) The patent-process exercise which includes manufacturing, licensing, or importing products resulting from the patented process; or
 - c) Application of patent methods, systems, and uses which include making, importing, or licensing products resulting from the patented methods, systems, and uses;
 - 3. Article 82 which regulates compulsory licenses contains an affirmation that compulsory licenses are for patents that are not implemented in Indonesia is regulated in Article 20;
 - 4. Article 122 regulates the substantive examination of simple patents. The option to conduct a substantive examination of a simple patent no later than 6 (six) months from the date the simple patent application is deleted;
 - 5. Article 123 which regulates the period for the announcement of a simple patent application contains 3 (three) changes, namely:
 - a) The announcement of a simple patent application is accelerated from 7 (seven) days after 3 (three) months from the date of receipt of a simple patent application to 14 (fourteen) days from the date of receipt of a simple patent application;
 - b) The announcement of the patent application is accelerated from 2 (two) months from the date of the announcement of the simple patent application to 14 (fourteen) working days from the announcement of the simple patent application;
 - c) Addition of a paragraph that stipulates that except for the provisions of Article 49 paragraph (3) and paragraph (4) regarding objections during the announcement period, objections to simple patent applications are directly used as additional consideration for substantive examinations; and
 - 6. Article 124 regulates the decision on an accelerated patent application which was originally no later than 12 (twelve) months from the date of receipt of a simple patent application to 6 (six) months from the date of receipt of a simple patent application.
- b. Article 108 regulates several changes to Law Number 20 of 2016 concerning Marks and Geographical Indications
- 1. Article 20 adds a category of marks that cannot be registered, which contains a functional form;
 - 2. Article 23 regulates the substantive examination of marks consisting of:
 - a) The period for conducting a substantive examination is expedited if there are no objections, which was originally 30 (thirty) days from the end date of the announcement, to the date the announcement ends;
 - b) The period of substantive examination is accelerated and divided into 2 (two) conditions, namely if there is an objection and there is no objection. The substantive examination as regulated in Article 25 paragraph (5) for an application for a mark with an objection or no objection at first is 150 (one hundred and fifty) days, but the period is changed to 30 (thirty) days if there is no objection to the application for a mark. and 90 (ninety) days if there are objections in the mark application process;
 - c) The abolition of Article 23 paragraph (8) which regulates further arrangements in the Ministerial Regulation regarding experts for trademark examiners outside the examiner; and
 - 3. Article 25 which regulates trademark certificates has a paragraph that has been deleted. The paragraph that is deleted is Article 25 paragraph (3) which regulates the

abolition and/or withdrawal of an application for a registered mark if the issued mark certificate is not taken by the mark owner or his proxies within a maximum period of 18 (eighteen) months as of since the issuance of the trademark certificate.

Changes in intellectual property arrangements in Law Number 11 of 2020 concerning Job Creation are only arrangements regarding patents and marks. Changes in brand regulation are more directed at adding categories of marks that cannot be registered, substantive examination of marks, and the abolition of regulations for taking trademark certificates while changing patent regulations is more directed at simple patents and patent implementation. Based on the formulation of the first problem of this research, intellectual property is part of a company's capital, which is more precisely in the category of *structure capital*, but the added value of the existence of this intellectual property affects the intellectual capital as a whole, namely *human capital*, *structure capital*, and also *physical/customer capital*. Changes in patent and trademark arrangements as regulated in Law Number 11 of 2020 concerning Job Creation may not all affect the *capital structure*.

Amendments to patent arrangements in Law Number 11 of 2020 concerning Job Creation add flexibility to regulations related to patents, simple patent redefinition, and reduction of the simple patent examination period. About the amendment to Article 20, the new regulation regarding the implementation of patents is given flexibility, not rigidity. The regulation of Article 20 in Law Number 13 of 2016 concerning Patents requires that the patent be produced or made in Indonesia for product patents and that the patent is implemented or used in Indonesia for process patents. At least there are several positive points of change related to the change in the patent arrangement:

- a. Changes in patent regulations provide more space for patent implementation in Indonesia. Patent holders do not need to set up a factory to produce/manufacture products for product patents or implement/use processes for process patents. The change in the patent arrangement is aimed at *a win-win solution*. If the product protected by the patent is *marketable*, the patent holder does not need to build a factory in other marketable countries, so that he can import or license it to be categorized as implementing a patent, there is no need to build a factory first to be categorized as implementing a product patent. Of course, if a product protected by a patent is to be protected in another country, the product needs to be registered in the destination country as well;
- b. The TRIPS rule stipulates that there should be no discrimination, which in this case is a patent, whether a patent is made locally or imported. As long as the product patent product is available in Indonesia, either through production in Indonesia or import or licensing, this includes the implementation of the patent. What is to be avoided is that there should be no misuse of patents where there are many patents but the products are not available in Indonesia, especially if the product is needed in Indonesia;
- c. Changes in the regulation of simple patents were redefined and the period until the decision on a simple patent application was accelerated from a maximum of 12 (twelve) months to 6 (six) months; and
- d. Regarding technology transfer, the first patent arrangement was in 1898 although there was little flexibility. The fact is that there has never been a transfer of technology. What makes it even better is the license. Licensing makes technology transfer happen. Forcing technology transfer to occur is simply not going to happen and could further hinder investment.

The amended regulation in Law Number 11 of 2020 concerning Job Creation relating to simple patents can also increase the value of the company's *capital structure*, which in this case is more Micro, Small, and Medium Enterprises because by accelerating the time for substantive examination of simple patents, it can make The simple patent application is protected faster and in the end legal certainty regarding the simple patent application is getting faster. In connection with the amendment of the patent implementation regulations in Law Number 11 of 2020 concerning Job Creation, it may affect the intellectual capital as a whole, namely:

- a. *Human capital*. Human resources in the company can be more creative to design the technology needed by the community and can be protected by patents with the transfer of technology that can be carried out through licensing and facilitated patent implementation.
- b. *Structure capital*. Companies can be counted as having implemented a patent by licensing, importing, or without the need to establish a factory (for product patents).
- c. *Physical/customer capital*. The expansion of the scope of patent implementation can make it easier for the public to purchase or gain access to patent-protected products and/or processes.

IV. Conclusion

Intellectual property is related to intellectual capital which can ultimately add value to a company. Increasing innovation in various aspects protected by intellectual property can increase intellectual capital because innovations are created by employees who are human capital and these innovations are produced or run by the company as a capital structure to be accessible to the public as customer capital. Companies can produce good products or services if human capital and capital structure can be in the form of a system from the company so that the company can still produce innovative technology. These trade secrets are well guarded, without harming any party internally or externally, increasing the company effectively. The results of the company's intellectual property such as the image of the company. Companies that continue to innovate following the needs of the community by maintaining quality certainly have a good image for the company. Intellectual property and intellectual capital are intangible assets of the company but are of great value to the company.

The acceleration of substantive examination and the registration system for intellectual property applications, especially in this case are trademarks and patents regulated in Law Number 11 of 2020 concerning Job Creation, which are increasingly simple, effective, and efficient, which can encourage companies to be more enthusiastic about registering assets intellectual property that has been created and in the end can increase the structure of capital. Changes in the regulation regarding the implementation of patents can increase intellectual capital for all categories, namely human capital, structure capital, and physical/customer capital.

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