

Intellectual Property Rights Legal Protection for Creative Economy Products

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Abstract

Advances in science and information technology have resulted in countries in the world as if without partition. As an archipelagic country that has its own knowledge, traditions and culture and a tropical climate that produces, Indonesia should have a wide range of goods or products that have high economic potential that has a concept of legal protection for the existing goods or products so that they have economic values that can create prosperity for its people. Problems that occur in the field of intellectual wealth in several countries including Indonesia that really need legal protection for their intellectual assets. The protection is intended for the owner or holder of the intellectual property, whether personal, group or entity business that can use their rights or explore their wealth safely with the objective of increasing or creating an economic climate from the result of their intellectual property that can also create an economic climate that the state can provide benefits and welfare for the nations from the intellectual property protection. Especially for creative economic products related to the creativity of society and the state economy, it is obligatory to have laws that protect the people's goods or products.

Keywords: Intellectual Property Rights; Legal Protection; Creative Economy Products

A. Introduction

Advances in science and information technology have resulted in countries in the world as if without partition. Various

developments that exist in a country quickly spread and are easily accessible to people all over the world. This condition is directly proportional to the development of Intellectual Property Rights (IPR). Intellectual Property Rights are one of the main pillars of the economic development of a country. Economic development in knowledge-based (knowledge-based economy). In the current era, the state directly is required to strengthen Intellectual Property Rights in the presence of globalization and free markets. Current globalization and the free market can only be damned by building a protection system of IPR. To deal with this, it is necessary to have a legal transplant and take the most appropriate steps.

The concept coined by Alan Watson about legal transplants assumes the enactment of intellectual property rights in national law. However, there are weaknesses in this implementation, namely forgetting the prevailing values in certain groups of people that have an impact on piracy intellectual property in a communal society. The European Union countries understand this condition that was first issued at the Convention on Biological Diversity (United Nations Convention Regarding Biodiversity) or CBD. Regulated in Article 8 Letter J CBD has regulated the Sui Generis System for example, the Self-regulating concept of intellectual property protection according to the needs of countries that have intellectual property rights. This system recognizes the existence of a rights community.

The Act sets out the national legislation for respect, protection and defend, and also aims for a fair distribution of the benefits obtained as well as utilization, practices, and innovation of the indigenous peoples that reflect the local lifestyle and take advantage of diverse life and apply it more broadly International Intellectual Property Protection is based on the Trade Agreements Related

Aspects of Intellectual Property Rights (TRIP's) in the World Trade Organization (WTO) which is a world trade organization Trips Agreement is one of the 15 approvals of the final act embodying the result o The Uruguay Round of Multilateral Trade Negotiations with the Agreement Establishing the World Trade Organization. TRIP's have been ratified by more than 150 countries in the world. This agreement expands the scope of IPR protection and strengthens the law enforcement of the previous agreements.

Creative Economy is a series of economic activities originating from the utilization of creativity, skill, and individual talent to create wealth as well as jobs which produce and exploit creativity and creative individuals. Unlike the characteristic of this industry in general, the Creative Economy is included in the category of various industrial groups, where each type of industry has involvement in the process of the embodiment of an idea or ideas into an intellectual property that has a high economic value for welfare and field community work as well as can improve the economic growth of a country¹. Thus the creative economy is a system of productions, exchanges, and use of creative products.

Creative Products are a wealth of intellectual property produced and owned by a creator in the fields of arts, literature, and science knowledge or inventions in the field of technology (inventors). Therefore very naturally if an eco-friendly product is a treasure to be rewarded as a work that has an economic value at the same time it needs protection on its intellectual property rights. The fact that the market potential of creative works within and abroad is very large and

¹ "What is the creative economy?," British Council, accessed 15 December, 2022, <https://creativeeconomy.britishcouncil.org/guide/what-creative-economy/>.

has the trend continues to grow, increasingly strengthening the reasons for the importance of protecting intellectual property rights (IPR) on the products of a creative activities, with the aim of creating creative ideas and innovation benefits of economics of an intellectual work.

The domestic creative work market is developing due to an increase in people's purchasing pers and a growing middle-class increase, the pattern of consumption of creative works that changes as the consumers become the co-creators of the creative work, as well as growth in the number of residents. For data from the Central Bureau of Statistics (BPS) quoted by Mari Pangestu shows that the household consumption of creative products in 2014 reached IDR 977.2 Trillion or 17.2 percent of household consumers nationally with the first rank occupied by the culinary sector, followed by fashions, crafts, and publishing and printing². A creative economy is basically a form of effort to seek sustainable development through creativity, where development is sustainable in a powerful economic competitive climate and has sufficient reserves of renewable resources. A creative Economy also opens opportunities for the community to develop their business.

In Indonesia, the role of the creative industry in Indonesia's economy is quite significant. Data from Ecraf 2016 statistics show, in the period 2010-2015, the amount of creative economy GDP increased from IDR 525.96 trillion to IDR 825.24 trillion (an average increase of 10.14% per year). While the three commodity export destination countries the biggest economy in 2015 is the United States with 31.72%,

²"Statistik Ekonomi Kreatif," Central Bureau of Statistics, accessed December 16, 2022, <https://www.bps.go.id/publication/2018/04/09/74b5c165025132e98a36c8f0/ekspor-ekonomi-kreatif-2010-2016.html>.

Japan 6.74%, and Taiwan 4.99%. For creative labor sector 2010- 2015 experienced a growth of 2.15% by the number of creative workers in the year 2015 as many as 15.9 million people.

Brand as one work closely related to human intelligence with economic and trade activities plays a very important role in a nation's economy and trade. One of the developments in the field of a brand is the emergence of protection against brand new type or so-called nontraditional brand. In the Trademark Act, the scope of protected brands includes also sound brands, three-dimensional brands, and brands holograms, which fall under the brand category of nontraditional brands.

The Copyright Act on the one hand provides fulfillment of economic rights for creators and owners related rights and on the other hand, remains to maintain and open public access to all content contained in multimedia information and communication technologies. This law also provides for more severe sanctions for the pirates, because piracy is not only harm the economic interest of the creator's parties but could also weaken and even eliminate the creator's motivation and creativity.

Compliance with consumer protection in relation to brands, that every Indonesian citizen has the right to legal protection. Legal protection is an obligation for the state itself, that the intended legal protection is a protection given to the legal subjects in the form of an instrument both has characteristic of preventive and repressive in its nature, both verbal and written. Legal protection for consumers in this case related to brands, the public as users of goods and/ or services. People who feel their rights have been violated must be protected. In Article Number 1 of Law Number 8 Year 1999 regarding Consumer

Protection stated that “Consumer Protection is all efforts that guarantee legal certainty to give consumers a sense of security”.

This consumer protection provided must be in accordance with the information or instructions obtained. Consumer protection related to IPR (Intellectual Property Rights) which includes product brands. Intellectual Property Rights are rights granted to business actors. This is when consumer rights are violated, and if it is proven to have violated IPR, then the imposing sanctions on business actors/producers, criminal and civil sanctions are applied. Consumer has interest in this matters specially in trademarks, that are one of the rights that are closely related to consumer protection. The need to protect products marketed from various legal acts of obligation to protect from brand counterfeiting. Fo consumers who are used to using certain brands they know, so that when counterfeiting occurs, consumers experience losses because they consume certain products of different quality and goods compared to the one that they used to use that were genuine products.

B. Discussion

B.1. Definition of Consumer Protection

Everyone, at any time, in a single position/alone, or in a group with other people, under any circumstances must become a consumer for a particular product or service. This universal situation on several sides indicates a weakness in consumers so that the consumers do not have a “safe” position. Therefore fundamentally, consumers also need universal legal protection. Given the weak position of consumers in general compared to the relatively stronger position of producers in many respects, for example in terms of

economy and knowledge, bearing in mind that it is producers who produce goods while consumers only buy products that are already available on the market, discussion on consumer protection will always feel current and always important. To be reviewed and consumer protection issues occur in everyday life.

Protection of consumers is seen both materially and formally as very important, given the increasing pace of science and technology which is the driving force for the productivity and efficiency of producers of the goods and services they produce in order to achieve business goals. In order to pursue and achieve these two things, ultimately either directly or indirectly, it is the consumer who generally feels the impact.

Thus efforts to provide adequate protection for the interest of consumers are an important and urgent matter, to find a solution immediately, especially in Indonesia, given the complexity of problems relating to consumer protection, especially in welcoming the era of free trade that will come in order to protect consumers rights that are often neglected by the producers who only focused about profits and are inseparable from protecting honest producers.

In the era of free trade where the flow of goods and services can enter all countries freely, what should happen is fair competition. Fair competition is a competition where consumers can freely choose goods or services because of the guaranteed quality at a fair price. Therefore the pattern of consumer protection needs to be directed at patterns of cooperation between countries, and between all interested parties in order to create a model of harmonious protection based on fair competition, this is very important not only for consumers but for the producers themselves, both of them can benefit with an equal position between producers and consumers, consumer protection is

very important in many countries, even in developed countries, for example, the United States, which is listed as a country that contributed a lot to consumer protection issues.

B. 2. Intellectual Property Rights

Intellectual Property Rights are rights derived from the results of a creative activity an ability of the human mind to express to the general public in useful forms as well as useful in supporting life. Humans also have economic value³. IPR is a property right that arises from works, initiatives, and human creations in society it is recognized that the masterful creation is for the purpose which benefited him. Creation as property is based on the postulate of property rights in a sense as wide as possible which also includes the property of which intangible.

One example of intellectual property right is copyright. Copyright is an exclusive right given by a country to its creator just given the state in the field of science, knowledge, arts, and literature holds a strategic role in supporting the nation's building and advancement of the general welfare as mandated by the 1945 Constitution of the Republic of Indonesia.

Copyright consists of economic rights and moral rights. Economic Rights are the rights to obtain economic benefits from the creation of the products and related rights products. Whereas Moral Rights are inherent rights for the creator that cannot be removed for any reason even though the right has been diverted. In contrast to

³"Intellectual Property Rights," Journal of Advanced Pharmaceutical Technology & Research, accessed December 16, 2022, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>.

patents and brands, required by the law to be registered to get legal protections, copyright is not required⁴. Copyright may also be registered may or may not, because the creations that are not registered also get legal protection.

One form of legal arrangement of intellectual rights is Trade Related Aspect of Intellectual Property Rights also known as “TRIPs” discussed in the Uruguay round. TRIPs are an international agreement that was the most complete in regard to the protection of the IPR. TRIPs agreement also adopted other conventions that were still in the field of IPR namely the Paris Convention and the Berne Convention (two of the main conventions in the field of copyrights and industrial property). History of its formation, TRIPs shows that IPR has an important role in trade in particular to gain economic advantages. Normatively, the purpose of the TRIPs Agreement contained is to give IPR protection and enforce producer’s law by implementing measures that create a trade that were healthy, to spur new inventions in the field of technology, and facilitate technology transfer and steady development of technology taking into account the interest of producers and knowledge users are made to support social and economic welfare and the balance between rights and obligations.

B. 3. Previous Results Studies

Research conducted by (Suryasaladin, 2012). This writing discusses some of the research findings regarding IPR related to creative discourse, creative industries, and cultural industries

⁴“Copyright and Related Rights,” WIPO, accessed December 17, 2022, https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_5_learning_points.pdf.

focusing on the utilization of the IPR system to encourage enthusiasm, innovation and creativity of business actors in micro and small fields in some areas of Indonesia which has heritage culture and cultural heritage.

Research with the title “Creative Economy and Brands” conducted by Daniel Hendrawan, examining how the relationship between the creative economy with trademark rights with reference to Law Number 15 Year 2001 regarding Brands with the conclusion that brand is something important to note at the time implementation of ekraf⁵.¹⁵ Thus this research only discusses the deep creative economy related to the brand regulated in the old brand law, namely Law Number 15 Year 2001 concerning brand which has now been replaced by the Trademark Law⁶.

In principle, research is different from research on the Protection of Intellectual Property Rights at Creative products, because they have different problems to be studied. Two research has raised the problem differently, namely regarding the efforts to use the IPR system to encourage the spirit of innovations and creativity of micro and small business actors in the craft sectors and the creative sectors, creative relationships with trademarks are regulated under the Law Number 15 Year 2001, with the formation and the institutional role of HKI.

⁵Daniel Hendrawan, “Ekonomi Kreatif dan Merek,” Maranatha University, October 18, 2016, <https://repository.maranatha.edu/21125/>.

⁶*Law Number 15 Year 2001*

B. 4. Implementation of Intellectual Property Right

In Indonesia, the role of creative industries in Indonesia's economy is quite significant. The data statistics from ecrat 2016 show, in the period 2010-2015, the amount of creative economy GDP increased from IDR 525.96 trillion to IDR 852.24 trillion (an average increase of 10.14% per year). While the three commodity export destination countries The biggest economy in 2015 is America States 31.72%, Japan 6.74%, and Taiwan 4.99%. For the creative labor sector, 2010- 2015 experienced a growth of 2.15% by the number of creative workers in the year 2015 as many as 15.9 million people.

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C. Conclusion

The consumer protection provided must be in accordance with the information or instructions obtained. Consumer protection related to IPR (intellectual property rights) which includes product brands. Intellectual Property Rights are rights granted to business actors. This is when consumer rights are violated, and if it is proven to have violated IPR, then imposing sanctions on business actors/producers, criminal law and civil law sanctions may be applied. Consumers have interests, especially in trademarks, which are one of the rights that are closely related to consumer protection. The need to protect products marketed from various legal acts of obligation to protect brand counterfeiting. For consumers who are used to using certain brands they know, so that when counterfeiting occurs, consumers experience losses because they consume certain products of different quality and goods.

⁷ Article 1 Number 1 *Law Number 8 Year 1999*

REFERENCES

Journal Articles

- Mashdurohatun, Anis. Et al. "The Effectiveness of Intellectual Property Rights Protection to Improve Creative Economy Realization in Semarang District." *Journal of Southwest Jiaotong University*, Vol 56, No 2 (2021).
<https://jsju.org/index.php/journal/article/view/858>.
- Suryansyah. "Legal Protection on Intellectual Property Rights in the Development of Creative Economy in Mamuju Regency." *Substantive Justice International Journal of Law*. Vol 2, Issue 1 (2019): 54-70.
<https://doi.org/10.33096/substantivejustice.v2i1.30>.
- Tyaswasti, A. "Model of Legal Protection of Creative Economics in Obtaining Intellectual Property." *International Conference on Law, Economic and Health* (2020): 618-626. <https://www.atlantispress.com/article/125940483.pdf>