The Execution Of Intellectual Property Rights in Indonesia

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Abstract

Intellectual Property Rights are rights to riches that develop or are born as a result of a human brain's cognitive process that produces a product or procedure that is helpful to humans. The right is the ability to profit from the fruits of intellectual creation. Works that develop or are born as a result of human intellectual powers are among the controlled things. The first set of Intellectual Property Rights is Copyright, and the second is Industrial Property Rights, which includes Patents, Trademarks, Industrial Designs, Integrated Circuit Layout Designs, and Trade Secrets. The World Trade Organization (WTO) is the cradle of international agreements including TRIPs (Trade Related Aspects of Intellectual Property Rights), the Paris Convention, and the Madrid Protocol, among others.

Keywords: Invention; Intellectual Property Right; Copyright

A. Introduction

Intellectual Property Rights (IPR) are rights relating to property arising from human intellectual abilities. These Abilities can be in the form of works in the fields of technology, science, art and literature. The conception of intellectual property rights is based on the idea that intellectual works that have been produced by humans require sacrifice of energy, time, and money. With these sacrifices, the work that has been produced has economic value because of the

benefits that can be enjoyed. Broadly speaking, the scope of intellectual property rights is divided into two, namely copyright and industrial property rights. Copyright consists of science, art, and literature. Industrial property rights consist of patents, trademarks, industrial designs, integrated circuit layout designs, trade secrets, and protection of plant varieties. In other words, IPR rights come from the results of creative activities, an ability of human thought that is expressed to the general public in various forms, which have benefits and are useful in supporting human life, and have economic value. Works in the fields of science, art, literature, and works in the field of technology are examples of copyrighted works as a result of the creativity of the human brain[1].

The resulting work creates property rights for the inventor or creator through the sacrifice of energy, thought, time, feeling and cost. Through these sacrifices, the resulting work has value. Intellectual Property Rights will exist if the work of human creation has formed something that can be seen, heard, read or used. Intellectual Property Rights consist of different types of protection, depending on the object or intellectual work being protected. Broadly speaking, there are two divisions of intellectual property rights, namely copyrights and industrial property rights. The scope of copyright is copyrighted works in the fields of science, art and literature. Industrial property rights include patents (patents), industrial designs (industrial designs), trademarks (trademarks) and geographical indications (IG), administrative designs[2].

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[1] "Buku Panduan Hak Kekayaan Intelektual," Directorate General of Intellectual Property Rights, accessed December 17, 2022, http://jip.jogjaprov.go.id/dokumen/panduan_hki.pdf.

[2] Muhammad Djumhana and R Djubaedillah, *Hak Milik Intelaktual dan Praktiknya di Indonesia* (Bandung: PT.Citra Aditya Bakti, 2014).

The concept of Intellectual Property Rights is tailored to the idea that intellectual works that have been created or produced by humans require the sacrifice of time, energy and money. Understanding Intellectual Property Rights (HaKI)or Intellectual Property Rights (IPR) is the right to enjoy economically the results of an intellectual creativity[3]. Based on this understanding, it is necessary to have an appreciation for the work that has been produced, namely legal protection for the intellectual property. First and foremost, before I describe the objective and principles of Intellectual PropertyProtection or Rights (hereafter referred to as IPR), allow me to briefly sketch the international regulatory framework of IPRto which Indonesia has agreed and is so legally obliged. The Paris Union, the Berne Convention, the Universal CopyrightConvention, the Agreement on Trade Related Aspects of Intellectual Property Rights (Hereinafter referred to as TRIPS),and the World Intellectual Property Organization are among these treaties or conventions (WIPO). Indonesia has formally announced the transposition of the Paris Convention for the Protection of Industrial Property (Paris Union) and the Convention on the Establishment of the World Intellectual Property Organization (WIPO) pursuant to Keputusan Presiden or Presidential Decision No. 24 of 1979. Indonesia likewise ratified its assent to the World Trade Organization under Law No. 7 of 1994. (WTO)[4].

Indonesia has now legally obligated itself to the provisions of the aforementioned Conventions as a result of its transposition. According to Indonesian IPR classifications, IPR is divided into two

[3] David Bainbridge, "Intellectual Property," (England: Finacial Times Pitman Publishing, 1999).
[4] Saidin, *Aspek Hukum Kekayaan Intelektual* (Depok: PT. Radjawali Grando, 2004).

categories: copyright and industrial property. The latter can be further divided into: 1) Patent, 2) Trademark, 3) Industrial Design, 4) Trade Secret, 5)Layout-Designs of Integrated Circuits, 6) Geographical Indications, 7) Protection of Undisclosed Information, and 8)Control of Anti-Competitive Practices in Contractual Licenses, all of which are covered by Part 2 of TRIPS regardingStandards Concerning The Availability, Scope, and Use Of Intellectual according to TRIPS and the, the purpose ofIntellectual Property Law is to encourage innovation, technology transfer, and dissemination, as well as to achieve mutual benefits between producers and users of technological knowledge, by promoting socio-economic welfare and a balance of rights and obligations[5].

The goal or purpose is to encourage and develop the spirit of continuing to work and create[6]. By reading TRIPS preambles too, we can find out that the purpose of IPR is for developmental and technological objective and *reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade*. It is within our law that IPR must be granted to inventions and as such there are principles for IPR consisting: 1) Moral and Economic right principle, 2) Balance of rights and obligations principle, 3) Legal Certainty, and 4) Equality of Law Principle[7].

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[5] Part 2 of *Trade Agreement on Trade Related Aspects of Intellectual Property Rights*
[6] "Kebijakan Pemerintah dalam Perlindungan Hak Kekayaan Intelektual dan Liberalisasi Perdagangan Profesi di Bidang Hukum," Directorate General of Small and Medium Industries, accessed December 18, 2020, https://kemenperin.go.id/artikel/176.
[7] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia* (Surabaya: Bima Ilmu Surabaya, 1987).

For moral and economic right principle, this is governed within our hak cipta law specifically article 4 of UU No. 28 of 2014, granting inventors the moral and economic rights. Moral rights are rights attached to the creator or copyright holder. Moral rights cannot be transferred to anyone as long as the creator is still alive. Unless transferred if there is a will and refers to the law after the creator dies. Economic rights are the exclusive rights of the Copyright Holder to obtain economic benefits from the work. If there are other parties outside the Copyright Holder who wish to obtain economic rights from the work, then he/she is required to obtain permission from the Copyright Holder. Now for balance of rights and obligations, simply in article 7 of TRIPS, the objective of IPR is to balance those two belonging to any parties. Next, for legal certainty, the IPR law was made to ensure legal certainty of everyone. Lastly, based on the equity principle, the TRIPS provides national treatment and MFN clause requiring state to protect not only inventions from its nationals but also foreigners[8].

The classification of IPR into copyright and industrial property rights is necessary because of the differences in the nature of the creation and the findings. Protection of a copyright is automatic, meaning that a work is recognized automatically by the state from the first time the creation is finished or appears, even though the work has not been published and has not been registered. On the other hand, industrial property rights, which consist of patents, trademarks, industrial designs, DTLST, trade secrets, and PVP, contain the first to file principle, which is determined based on the party who first

[8] Budi Agus Riswandi and Syamsudin, *Hak Kekayaan Intelektual dan Budaya Hukum* (Jakarta: PT. RajaGrafindo Persada, 2004).

registered the results of his intellectual work with the competent authority and it was successfully approved. Based on this first to file principle, the applicant for the right must immediately register his/her intellectual work to the competent authority so that it is not preceded by another party. The topic of Intellectual Property Rights will relate to human life in various aspects such as technological, social, cultural, industrial and various other aspects. The most important aspect when it comes to the protection of intellectual works is the legal aspect[9]. The law is able to resolve disputes that arise related to the Intellectual Property Rights. The law is expected to provide protection for intellectual works, both those originating from human creations and creations as well as from nature, so as to be able to develop creative human thought that is useful for society. Intellectual Property Rights exist to protect our creative right[10]. As everything has been explained above, now the question is how are Intellectual Property Rights specifically Copyright and Patent executed in our Country? This will be thoroughly answered below.

B. Discussion

At first the problem of IPR was a very simple problem, but as time went on from year to year the problems in IPR became more complex. The presence of goods or services which in the production process have used Intellectual Property Rights, thereby also presenting Intellectual Property Rights at the same time when the goods or services in question are marketed. The need to protect

[9] Candra Irawan, *Politik Hukum Hak Kekayaan Intelektual Indonesia* (Bandung: CV. Mandar Maju, 2011), 49.
[10] *Ibid*

Intellectual Property Rights thus also grows along with the need to protect goods or services as trading commodities. The need to protect goods or services from possible counterfeiting or from unfair competition, also means the need to protect Intellectual Property Rights used in or to produce these goods or services. The Intellectual Property Rights are no exception for brands. This condition is felt by the Indonesian people when their goods or services require brand protection. Therefore, based on this awareness in Indonesia, a law has been made that specifically regulates trademarks. Indonesia already has one product of the Trademark Law, namely Law Number 20 of 2016 concerning Trademark Rights and Geographical Indications[11].

Copyright serves to respect a work and encourage the creator of the work to produce new works. The purpose of implementing copyright law is to protect the exclusive rights, moral rights, and economics of the creator of the work. The following is the explanation: Exclusive rights are the rights of the creator of the work to control the mechanism of ownership as well as distribution of use. Exclusive rights mean that anyone who wants to use, copy, reproduce, and sell a copyrighted work must first obtain permission from the author. Moral rights mean that even if the work has been purchased, the buyer must still choose the name of the creator of the work. The moral right to make a work will always be attached to who made it. Economic rights means that the creator of the work has the right to get an imbalance from the parties who use economics.

Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after Works are

[11] Muhammad Djumhana and R Djubaedillah, *Hak Milik Intelaktual dan Praktiknya di Indonesia* (Bandung: PT.Citra Aditya Bakti, 2014).

embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations according to article 1 (1) of law no. 28 of 2014. Now for the wider perspective, International copyright law has been regulated in the Berne convention, the Rome Convention, the WIPO Copyright Agreement, the WIPO Performance and Phonogram Agreement, and the Fair Access to Science and Technology Research Act of 2015. Reporting from the Indonesian Information Portal, online copyright registration can be done in the following ways: 1) Accessing the website of the Directorate General of Intellectual Property at the address e-hakcipta.dgip.go.id, 2)Registering Login using the username obtained after registration, 3) Uploading required documents. 4) Making registration payments copyright, 5)Waiting for copyright checking, and 6) Get copyright certificate[12].

Copyright infringement is a violation of the exclusive rights of the creator such as reproducing, selling, and exhibiting the work without the permission of the creator. In the Law of the Republic of Indonesia no. 28 of 2014 also regulates the types of activities that do not violate copyright. For example, use and reliance for education, research, writing scientific papers, reports, criticism, reviews, lectures and performances as long as the complete source of the work is included. For profitable use, the author's permission must first be obtained[13].

So what it means is that copyright is given to the author who and anyone who copies and sells the product without their

[12] *Ibid*

[13] Adisumarto and Harsono, *Hak Milik Intelektual Khususnya Hak Cipta* (Jakarta: Akademika Pressindo, 1990).

authorization shall receive a penalty accordingly. The works of copyright in article 40 consist of:

"Books, pamphlets, and all other written works;
Lectures, lectures, speeches, and other similar creations;
Props made for the benefit of education and science;
Songs or music with or without subtitles;
Drama, musical drama, dance, choreography, wayang, and mime;
Works of art in all forms such as paintings, drawings, carvings, calligraphy,
sculptures, sculptures, or collages; Architectural works;
Map; and Batik art or other motif art."

The book was made by an Indonesian author named Pramoedya Ananta Toer and even in his book, copyright was written, accordingly, no one was allowed to copy, transmit, sell, and translate the product without his permission, meaning, this product is a protected product by copyright. Copyright has both moral and economic rights and these rights are protected by the copyright law. Another example of work that can be contrasted is the water bottle Aqua. The water bottle aqua is a copyright protected product because one the company has economic and moral rights. Any person who copies the logo or design of Aqua will be violating the law. Of course, this would mean Aqua's brand is protected. This ends my comparison between the two copyright products[14].

Next, I'll be comparing books and artwork that have been granted Copyright for this question. Although movies uploaded to YouTube are not governed by our national legislation, Indonesia is required to handle artworks on YouTube in the same way that it treats

[14] "Pusat Data", Hukum Online, accessed December 20, 2022, https://www.hukumonline.com/pusatdata.

its natural citizens under TRIPS and the national treatment clause dictated by it. However, Indonesia must recognize the videos submitted to YouTube by its citizens as copyright-protected artwork or video. YouTube has a copyright policy under which it will prohibit and demonetize channels that do not follow it. If the content thief does not follow the rules, YouTube will issue a strike; after three strikes, the channel will be permanently banned from YouTube, and the YouTuber will no longer be able to upload videos. As a result, the following works are subject to Copyright under the YouTube Guideline:

1. Audiovisual works, including television episodes, films, and web videos
2. Musical compositions and sound recordings
3. Lectures, essays, books, and musical compositions are examples of written works.
4. Paintings, posters, and ads are examples of visual works.
5. Computer software and video games, Plays and musicals are examples of dramatic works.

Copyright does not apply to ideas, facts, or procedures. A work must be creative and fixed in a tangible medium to be eligible for copyright protection, according to copyright law. Regardless, our IPR law applies to films created by YouTube content creators.

Although no copyright claim has been brought before Indonesia's intellectual property right court, it is legitimately possible for the court to exercise jurisdiction over claims arising from YouTube videos in the event that one person steals the content of another. However, such disputes are usually resolved by YouTube because both parties are required to resolve disputes amicably, according to their guidelines. When contrasting and comparing this to the

copyright on a book, such as Lukman Hakim's "Asas-Asas Hukum Pidana," the prohibition is incorporated on the page below the title. By doing so, they can seek legal remedy if people use their books without permission and as such infringe their copyrights[15].

Now we will move to Patent, Article 1(1) of Law No. 13 of 2016 says patent is an exclusive right given by the state to an inventor for its invention in technology for a certain period of time or to give consent to another party to execute it. Although the omnibus law has revised the patent law, however, the novelty requirement has not changed. Article 3(1) says The patent as referred to in Article 2. letter a is granted for an Invention that is new, contains inventive steps, and can be applied in industry. Now novelty here is defined as new so new inventions that don't exist prior can be given patents. Moreover, article 27 of TRIPS which Indonesia has ratified provides that patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. So the novelty test here requires newness and the invention basically must be new and not exist before[16].

Referring to our omnibus law which revised our law no. 13 of 2016 about Patent, Patent should be granted for an Invention that is new, contains inventive steps, and can be applied in industry. While simple patent as referred to in Article 2 letter b of the patent law is granted for every new invention, development of an existing product or process, has practical uses, and can be applied in industry. Now a

[15] Silmi Nurul Utami, "Hak Cipta: Pengertian, Fungsi, Hukum, Pendaftaran, dan Pelanggarannya", Kompas News, March 25, 2021, https://www.kompas.com/skola/read/2021/03/25/123247469/hak-cipta-pengertian-fungsi-hukum-pendaftaran-dan-pelanggarannya.

[16] Article 27 of *The Agreement on Trade Related Aspects of Intellectual Property Rights.*

new verse is added which stipulates the development of an existing product or process as referred to in paragraph includes: a. simple product; b. simple process; or c. simple method. It is evident that new here refers to novelty and accordingly, novelty can only be granted to new inventions. While if we look at trips, specifically article 27 where it stipulates that patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Clearly, the TRIPS also requires the invention to be new too. The novelty criteria according to both laws have been explained briefly. Patents shall be granted to any inventions that are new, include an inventive step, and are capable of industrial application, according to Article 3 (1) of Law No. 13 of 2016 in relation to Article 27 of TRIPS. Furthermore, the TRIPS state that "non-obvious" and "useful" creative actions are defined as "non-obvious" and "useful," respectively. Following that, as previously said, new pertains to the Novelty criterion. When it comes to giving or issuing patents to inventions, the novel test has prevailed in both common law and civil law countries. Furthermore, the concept of non-obviousness, as defined by TRIPS, is a legal requirement in most common law nations; but, for the purposes of this inquiry, clarification is not required[17].

In terms of the novelty test[18], our country has yet to decide what it entails; nonetheless, Article 107 of the Omnibus Law on Job Creation states that patents can be classified into patent and simple patents (is any new invention, development of an existing product or process, and can be applied in industry) Article 3 (3) of Law No. 3 of

[17] Scotchmer And Green, J, "Novelty and Disclosure in Patent Law," *The RAND Journal of Economics*, no. 21 (1990): 131–146, https://doi.org/10.2307/2555499.
[18] *Ibid*

2016 adds additional clause to the Omnibus Law, which states that the development of an existing product or process includes simple process, product, and method. Nonetheless, the Omnibus Law made no changes to the novelty test. The novelty test is still required for both types of patents. With this in mind, patents can only be granted to innovative, non-obvious, and beneficial inventions.

A great case to be covered would be the Nokia case against Lenovo. Nokia filed a lawsuit against Lenovo in 2019 regarding the alleged infringement of 20 video compression technology patents that occurred in various countries such as the US, Brazil, India, and Germany. Based on the lawsuit, the Munich Court decided that Lenovo as the Defendant had been proven to have violated one of Nokia's patents. The court then ordered Lenovo to cancel and recall its products from the retailer. In addition, Nokia also said that Lenovo would make a net balance payment to Nokia. Although the current name is not as popular as it used to be, Nokia still holds about 20,000 patent groups. Some of them are even considered important for 5G technology standards which cover more than 3,500 patent groups[19].

Therefore, it is important for all circles, including companies that hold patents, to know how to protect their patents. So what legal remedies can be taken to defend patent rights? Rhetorical question raised here. As with the legal remedies taken by Nokia, the legal remedies that can be taken by patent holders in Indonesia to defend their rights are to file a lawsuit. The lawsuit in question is a claim for compensation submitted to the Commercial Court (Article 143 paragraph (1) Law Number 13 of 2016 concerning Patents (Patent

[19] Wahyu Widodo, "Nokia Akhirnya Menangkan Gugatan Paten Teknologi Atas Lenovo," Reuters, April 7, 2021, https://internasional.kontan.co.id/news/nokia-akhirnya-menangkan-gugatan-paten-teknologi-atas-lenovo.

Law)). The lawsuit in question can only be accepted if the plaintiff has received a patent for his invention (Article 143 paragraph (2) of the Patent Law). Meanwhile, Article 107 of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) stipulates that inventions that can be patented are in the form of: new inventions; Contains inventive steps; or Can be applied in industry. In addition, some inventions can also be granted a simple patent if the invention is: Development of an existing product or process (including: simple product, simple process, or simple method); Has practical uses; or Can be applied in industry[20].

To file a lawsuit, the patent holder must register his lawsuit with the commercial court in the jurisdiction where the defendant lives or domiciles. However, if one of the parties resides outside the territory of Indonesia, the lawsuit can be registered with the Central Jakarta Commercial Court (Article 144 paragraphs (1) and (2) of the Patent Law). During the process in this court, Article 145 paragraph (1) of the Patent Law stipulates that the obligation of proof is borne by the defendant if: The product produced through the patented process is a new product; or Products that are alleged to be the result of a process being granted a patent if the patent holder is unable to determine what process was used to produce the product. However, the judge can still order the patent owner to first submit a copy of his patent certificate and the initial evidence on which the lawsuit is based. In addition, the judge can also order the defendant to prove that the

[20] Article 123 Paragraph (1) *Law Number 13 Year 2016.*

product he produces does not use the process that was granted a patent (Article 145 paragraph (2) of the Patent Law)[21].

Meanwhile, acts that can be considered as infringement of patent rights based on Article 160 of the Patent Law are acts in the form of: Making; Sell; Import; Rent; or Providing for sale/rent/handover products that have been granted a patent; and Acts using a production process that has been granted a patent.

C. Conclusion

Based on the description above, it can be concluded that the implementation of intellectual property rights is a process for registering IP by the public either individually or in groups so that it can be protected by the Government. In this case, the implementation authority lies in:

1. Directorate General of Intellectual Property of the Ministry of Law and Human Rights of the Republic of Indonesia as a representative of the Central Government who is given the authority to assist provide implementation to the community about the important role of IP in the economic growth of the people so that the community. Thus, it is hoped that the public will have the awareness to register their IP in order to get legal protection.

[21] "Buku Panduan di Bidang Hak Cipta," Ministry of Law and Human Rights Directorate General of Intellectual Property Rights, accessed December 20, 2022, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjI6fD6oZz8AhXh9zgGHXKxA6wQFnoECBAQAQ&url=https%3A%2F%2Fwww.dgip.go.id%2Funduhan%2Fdownload%2Fmodul-kekayaan-intelektual-tingkat-dasar-bidang-hak-cipta-edisi-2020-4-2021&usg=AOvVaw2Viw1Q9sqMAbB6OA48mX5x

2. Local governments such as the Trade and Industry Office and the UMKM Service to raise awareness of the local community in protecting their IP.
3. Law Enforcement Officials, in this case the PPNS in charge of IP and Polri as its Korwas, universities and legal institutions engaged in IP to be able to carry out the mandate of the law to protect IP from taking KI by other parties.

As a state of law, in addition to having its own rules related to IP, Indonesia is also bound by international agreements related to IP, of which Indonesia is a member, such as the Marrakech Treaty and the TRIPs Agreement. Protection of intellectual property rights in relation to the role of the state is how the state realizes the ideal of law, which is further formulated in the ideal of protection with the concept of the government's responsibility to protect all its people, this has been explicitly regulated in the 1945 Constitution which has provided regulations that are protection and promotion of people's welfare. The role of the government in implementing the implementation to the community is a form of protection given by the state to realize the welfare of the community for their IP. The main asset in creative development is the intellectual property owned by creative actors.

However, the level of awareness and understanding of creative actors towards IPR is not evenly distributed and relatively minimal. This has an impact on creative actors who often do not realize that there has been a violation of their intellectual property rights, so that creative actors cannot optimally receive economic benefits from their intellectual property. Therefore, both central and regional governments

need to intensify socialization of IPR understanding and facilitate IPR registration for creative and creative actors.

To develop the Creative Economy evenly and fairly throughout Indonesia, institutional and regulatory support at the regional level is needed. Until now, not all local governments have supported the development of Creative Economy, because there is no obligation to make Creative Economy a priority program in the region or to make Creative Economy a nomenclature of budgeting in the regions. However, the distribution of creative economy actors is found throughout the territory of the Republic of Indonesia and requires local government support/participation both in terms of institutions and budgeting. At the central level, the formation of the Law on Creative Economy which has been included in the 2014-2019 National Legislation Program becomes very relevant as a form of support for creative and creative development in Indonesia.

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