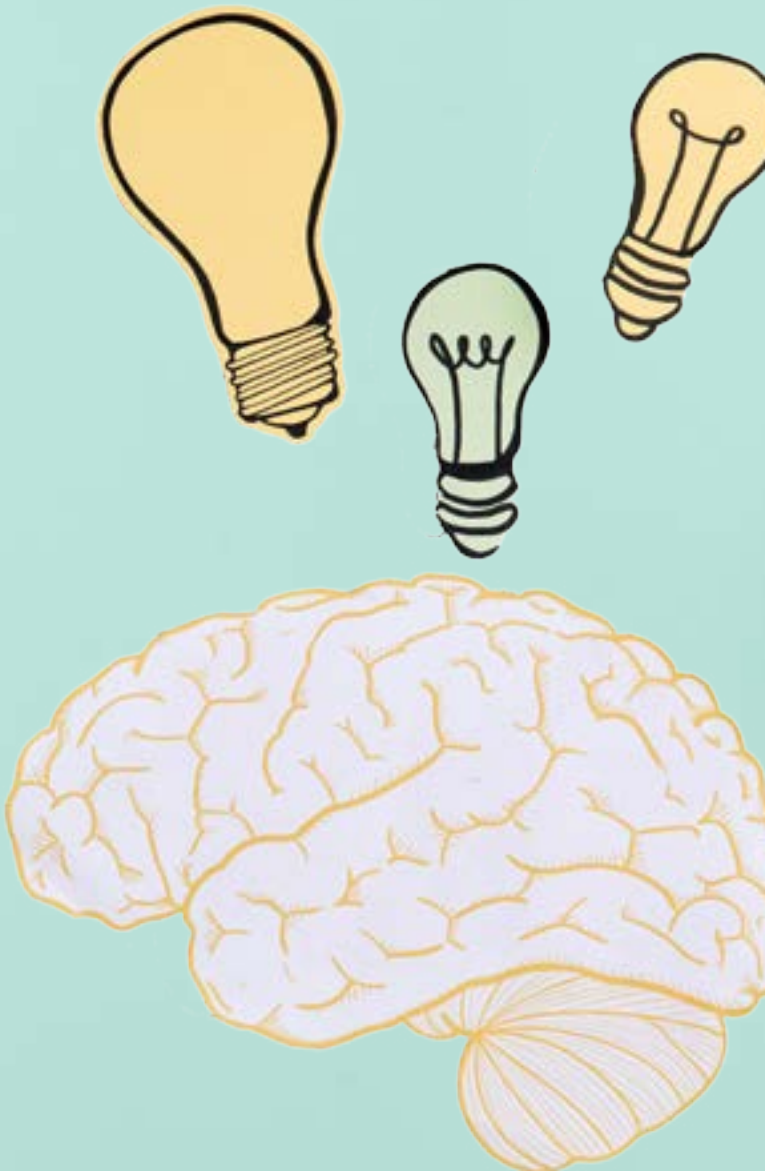
UPH FAKULTAS HUKUM

DARE DEBATE RESEARCH

anthology

Inside Intellectual Property Rights

Vol. 1 No. 1 (April 2023)



e-ISSN 2986-4879

ANTHOLOGY:

INSIDE INTELLECTUAL PROPERTY RIGHTS

Volume 1, Number 1 (February 2023)

The Legal Protection of Intellectual Property and its Implementation

Published By
FH UPH PRESS
Anthology

Anthology: Inside Intellectual Property Rights Vol. 1 No. 1
(February 2023)

e-ISSN : 2986-4879

Publisher:
FH UPH Press
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FOREWORD

DEAN OF FACULTY OF LAW UNIVERSITAS PELITA HARAPAN

Praise from the drafting team to the Almighty God for all His blessings and gifts during the process of drafting this anthology book titled "The Legal Protection of Intellectual Property and its Implementation", so that the preparation process can be done and published. I congratulate and welcome the publication of this anthology book. I realize that making this book a reality requires a lot of time and thought. Therefore, I would like to thank the contributors, writers, and editorial team who have been diligently in compiling this anthology book. Likewise, I would like to thank all those who have assisted in the publication of this anthology.

I hope that the publication of this anthology will provide many benefits in the development of legal development, especially in intellectual property protection, also motivate researchers to be creative based on their expertise, and provide additional information for readers. Not only that, I hope students continue to have the motivation to write scientific papers that can be useful for future legal developments in Indonesia.

Tangerang, January 2023

Dean of Faculty of Law Universitas Pelita Harapan

Dr. Velliana Tanaya, S.H., M.H.

PREFACE

Intellectual Property plays a role in providing protection to the law on the ownership of intellectual works both communal and personal which is the basis of economic creative development. Therefore, intellectual property is important in future national development and contributes significantly to the development of the national economy. Indonesia as a developing country must be able to take the right steps to anticipate all changes and developments as well as global trends so that national goals can be achieved. One important step is to socialize and provide full protection for intellectual property. This anthology book provides understanding and insight regarding the protection of intellectual property rights and the development of intellectual property in Indonesia and internationally.

Completion of the process of drafting this anthology will not happen without the cooperation and involvement of all members of the constituent team where the responsibility that has been vested and entrusted to each member has been completed astoundingly. Also, a huge appreciation ought to be given and presented to:

1. Dr. Velliana Tanaya, S.H., M.H., as Dean of Faculty of Law Universitas Pelita Harapan;
2. Dr. Fajar Sugianto, S.H., M.H., as Director of Faculty of Law Universitas Pelita Harapan and a lecturer in Intellectual Property Rights Law class;

3. Dr. Vincencia Esti Purnama Sari, S.H., M.Hum., as Department Chair of Law Study Program Universitas Pelita Harapan;
4. Jerry Shalmont, S.H., M.H., as Deputy Department Chair of Law Study Program Universitas Pelita Harapan;
5. Dr. jur. Udin Silalahi, S.H., LL.M., as Chief Editor of Fakultas Hukum Universitas Pelita Harapan Press;
6. All *civitas academica* who have contributed in writing this Anthology.

The editorial team with complete awareness realizes and recognizes the flaws or shortcomings of the article, material, and interpretation. We ensure that the article will be done with maximum capabilities to the extent of our capacity. Furthermore, we are willing to accept all forms of criticism and advice from our dear readers as stepping-stones that can improve our articles in the future. In the end, the drafting team expects many benefits to be learned and taken from this work. Hopefully, with this book anthology at hand, the insight and knowledge will be beneficial for us all.

Tangerang, January 2023

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The editorial team would like to thank the contributors who have contributed in making the Anthology of "The Legal Protection of Intellectual Property and its Implementation".

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Fighting Fake Fashion: Legal Protection Of Brand Owners Towards Counterfeit Branded Fashion Goods In The Lens Of Intellectual Property Law

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Abstract
The development of intellectual property rights is influenced by information and transportation technology development. Since intellectual property rights cover trademarks, the production of goods has been affected as well, especially luxury goods. This is evident in the increase of the production of counterfeit goods, due to an increase in demand for counterfeit goods. Apart from causing losses to both the producers and the consumers, the increase in the production of counterfeit goods has also caused an economic loss to the country. In response to this, the Government of Indonesia has made efforts in hopes of discontinuing the illegal conduct, preventing those activities from existing in the future, and providing legal protection as well as legal certainty for both the producers and the consumers, by enacting laws and regulations in relation to trademark, such as Law No. 20 of 2016 on Trademarks. This paper is aimed to observe the importance of the enactment of the Trademark Law pertinent to the production of counterfeit goods and the factors that hinder the implementation of Intellectual Property Rights.

Keywords: Trademark, Intellectual Property Rights, Counterfeit Goods

A. Introduction

The globalization of intellectual property rights has also been fueled by the quick development of information and transportation technology. A good or service that is currently produced in one nation may be produced easily in another nation. The existence of items or services that, throughout the course of production, made use of intellectual property rights, thereby also exhibiting those rights when the aforementioned goods or services are marketed. Thus, as the demand to safeguard goods or services as trade commodities develops, so does the necessity to protect intellectual property rights.

The evolution of the modern trading system necessitates modifications to the laws governing brand protection for traded goods. Given this reality, discussing brands must start with an examination of economic rationale and legal reason. In other words, rather than limiting oneself to an administrative perspective, such as trademark registration, trademark cancellation, and the like, it is necessary to examine the philosophy around the mark. Despite the fact that several trademark laws have been issued, many infractions still occur. Instances of imitation, piracy, reputation-passing, and other violations of intellectual property rights. In the world of business and industry, branding is crucial.

In addition to the fact that well-known brands don't have to worry about registering their numbers with the Director General of Intellectual Property Rights or shell out millions of rupiahs to develop their product image, one of the many reasons why many

industries use well known brands for their products is to make them easier to sell. The only thing they have to do is copy other people's products, and for marketing they typically use "dealers" who are willing to accept these copied products, so they don't even need to bother with creating a research and development division to be able to produce products that are always up to date. Utilizing well known brands economically results in significant earnings, as demonstrated by the reality. In addition, it is backed by the mediocre but fashionable spending power of customers[1].

Since brands play a crucial role in maintaining fair business competition in the age of global trade and in accordance with international conventions that Indonesia has ratified, Indonesia revised Law No. 14/1997 concerning Trademarks to Law No. 20/2016 concerning Trademarks, also known as the Trademark Law. It is hoped that when marks are set forth in statutory regulations, especially when one of them deals with the mark's definition, there will be agreement on how to apply them. Mark according to the Trademark Law Article 1 Number 1 is "*a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and/or 3 (three) dimensions, sounds, holograms, or a combination of 2 (two) or more of these elements to differentiate goods and/or services produced by persons or legal entities in trading activities of goods and/or services*". Based on the definition above, the most important elements of a brand can be drawn: A brand used as a sign; A brand must have the ability to differentiate itself from competitors; Brands are employed in the trade of goods and/or services.

[1] Maria Oktoviani Jayapurwanty, "Perlindungan Hukum Terhadap Pemegang Merek Dagang Asing Yang Ada Di Indonesia," *Lex privatum,* no. 3 (2013): 141

When trademark infringements are discovered throughout the course of commerce in goods or services, harming not only the legitimate brand owners but also consumers as users of goods or services, it becomes imperative to safeguard trademark rights, even those of well known companies. Facts demonstrate that trademark rights are still violated in Indonesian trading practices, such as copying and counterfeiting of well-known trademarks, particularly well-known foreign brands. When visiting Indonesia, well-known designer Piere Cardin expressed his displeasure that many of the products manufactured there were merely imitations of the trademarks he held. According to him, a well-known trademark cannot be used randomly for a variety of goods without the owner's prior consent. Genuine yet counterfeit branded (luxury goods) items like shirts, pants, jackets, and various other accessories are fairly simple to find in large cities, and their distribution ranges from street vendors to upscale shopping malls. The extremely low pricing of branded counterfeit goods is one of their appeals. Due to their great economic value, well-known international brands are frequently imitated (or, at the very least, business actors frequently capitalize on the fame of these well-known trademarks). A study from Masyarakat Indonesia Anti Pemalsuan (MIAP) showed that the circulation of counterfeit goods is likely to result in an economic loss amounting over Rp 294 Trillion[2]. Not only does it harm the country's economic climate, the circulation of counterfeit goods may inflict losses to both the producers and the consumers. As a result,

[2] Liputan6.com, "Hasil Studi: Peredaran Barang Palsu Rugikan Ekonomi Rp 291 Triliun", Liputan 6, March 04, 2022, https://www.liputan6.com/read/4903131/peredaran-barang-palsu-rugikan-ekonomirp-291-triliun

the real brand owners of well-known trademarks suffer losses in market share, goodwill, or a reputation for their products that have been meticulously and profitably developed. However, consumers are also injured since they purchase goods that do not live up to their expectations as a consequence of payments that have been made. This harms both customers and the interests of well-known brand owners.[3]

It is infamously known that a large number of products on the Indonesian market are blatant counterfeit of well-known brands. The phenomenon that is currently occurring in the market is related to the circulation of numerous well-known foreign branded goods (luxury goods), but the goods circulating are counterfeit versions of those luxury goods. Examples of these counterfeit goods include clothing (Zara, Hermes, Polo), bags (Channel, Furla, Gucci, Louis Vuitton, Zara), sandals/shoes (Nike, Adidas, Converse), watches (Nike, G-Shock, Rolex, Alba, Rip Curl. As opposed to the original price, which is between Rp. 4,000,000 to Rp. 20,000,000, the large number of enthusiasts for knockoff branded goods are indeed found at much lower prices, between Rp. 50,000 to Rp. 350,000. From each of these sales, the trader earns a profit of roughly 50% of the issued capital.

Brand infringements, such as copying and counterfeiting of brands, are actually driven by unfair or dishonest rivalry between business players who trade goods or services, using tactics that are against good faith and disregarding the importance of honesty in commercial operations. Legal protection for legitimate trademark

[3] Moh. Nafri, "Perlindungan Hukum Terhadap Pemalsuan Merek Dagang Terkenal Asing Di Indonesia," *Maleo Law Journal*, no. 1 (2018): 56.

owners is to give them exclusive rights so that other parties cannot use their marks or marks that are similar to them for the same or nearly identical goods or services. These exclusive rights are frequently monopolies, meaning that only brand owners may exercise them. Thus, based on the background of the problems stated aforementioned, the main issues in this paper are: How is Indonesian law protecting against the imitation of well-known international trademarks, and what are the elements that are impeding the application of brand protection against such imitation?

B. Discussion

B. 1. Legal Protection Against Counterfeiting Branded Foreign Fashion Goods

Trademarks can be in the form of pictures, words, numbers, letters, names or colors that are combined into something attractive and a differentiating tool in business activities to trade goods or services. A trademark is a logo that identifies a particular good as belonging to a particular company, and it preserves the goods' provenance while guaranteeing their high quality in order to compete with other businesses and make it easy to tell one product from another[4]. A trademark serves a number of purposes inside an organization, including product identification to set manufacturing results apart from those of rival companies, marketing support, assurance of product quality, and indication of country of origin. Because it is a privilege earned by the owner of the rights to the registered mark, other parties that use a registered mark without the

[4] Ni Made Dwi Ari Cahyani, Anak Agung Sagung Laksmi Dewi, Ni Made Sukaryati Karma, "Perlindungan Hukum bagi Pemegang Merek terhadap Pemalsuan Merek Fashion," *Jurnal Konstruksi Hukum*, no. 1 (2021): 177, https://doi.org/10.22225/jkh.2.1.2990.175-179.

owner's consent will be unable to do so. To utilize a well-known brand's mark, one must first enter into a formal agreement with the brand owner through a meeting, after which the agreement must be registered with the local mark office (kantor merk setempat). Because the party engaging in the forgery did not request authorization to engage into an official agreement with the owner of the brand, the kind of trademark infringement that takes the form of imitation or other phrases like brand counterfeiting is specified.[5] When business players compete unfairly or dishonestly in the exchange of products or services, they use practices that are against good faith and disregard the need of honesty in conducting commercial operations. This results in trademark breaches such as copying and counterfeiting of brands.

Some creators imitate trademarks in an effort to establish market control while maximizing their profit. The general public, consumers, and the real brand owner will all be harmed by the dishonest conduct of copying this trademark. This occurs because some places or regions in a nation can have a positive influence on an item since they are regarded as producing high-quality goods. If an entrepreneur uses false information regarding the nature and origin of their products in order to mislead customers and give the impression that the products are of high quality because they are produced in high-quality regions, such as England, they are engaging in dishonest competition. A counterfeit object is one that is a copy or copycat of the original, according to the Kamus Besar Bahasa Indonesia. Therefore, if it is related to counterfeit goods, it refers to anything that is produced, whether it be an object or a

[5] Ibid.

substance, by copying or doubling its characteristics or shape so that the sum exceeds the original.

By attempting to duplicate or falsify brands that are already well-known in the community, mark violations seek to make quick personal gains without giving consideration to the rights of other individuals whose rights have previously been safeguarded. Such events will undoubtedly seriously impair both the national and local economies. A solid reputation will inspire consumer trust, which is another factor that is equally vital. Building a brand's reputation takes a lot of money and time. Companies frequently work to stop other individuals or businesses from using the trademark on their goods. The brand owner suffers a great deal as a result of all these acts. Because dishonest competition will result in lower sales turnover and lower predicted revenues from more well-known brands due to copying and imitation of such trademarks. Because customers perceive that brands once thought to have high quality have actually started to degrade in quality, it may even cause them to have less trust in the brand.

The Trademark Law No. 21 of 1961, the Trademark Law No. 19 of 1992, the Trademark Law No. 14 of 1997, the Trademark Law No. 15 of 2001, and the Law of the Republic of Indonesia No. 20 of 2016 concerning Trademarks and Geographical Indications are the laws that regulate trademarks and are currently in effect. The idea of legal protection for trademark rights refers to the distinctive nature of those rights (exclusive). The special right is monopolistic, which means that only the owner of the brand may use it. Other persons are not permitted to use the unique rights without the brand owner's consent. It is a violation that may result in penalties if another party makes use of this unique right without first receiving

consent from the owner of the trademark right[6]. The Paris convention for the Protection of Industrial Property was the first convention on IPR in 1883 in Paris, where trademark protection began to be regulated internationally. This convention is an international agreement in the area of intellectual property rights, which is particularly significant since it establishes the framework for IPR protection and offers a roadmap for the range of IPR concerns for nations throughout the world.[7]

It is imperative that registered trademarks have legal protection, especially for well known brands. Commonly chosen as targets for imitation and counterfeiting are well-known brands, which are anticipated to see a boost in sales from careless brand infringers. A form of legal protection that is preventive and repressive in nature and is concentrated on measures to stop trademarks from being duplicated or counterfeited by others is required if a trademark has acquired a well-known title. Preventive measures are taken to stop or lessen the likelihood of violations, with the goal of lowering the number of trademark infringements. The objective is to reduce the likelihood of trademark infringement. This endeavor focuses more on keeping tabs on how the mark is being used, defending the exclusive rights of the trademark owners on well-known foreign trademarks, and encouraging brand owners to register their trademarks to ensure the protection of their rights.

On the other hand, repressive efforts are made to prevent or stop transgressions from happening again. Repressive actions are

[6] Kadek Yoni Vemberia Wijaya, I Gusti Ngurah Wairocana, "Upaya Perlindungan Hukum Terhadap Pelanggaran Hak Merek," *Kertha Semaya: Jurnal Ilmu Hukum*, no. 10 (2018): 3.

[7] Moh. Nafri, "Perlindungan Hukum Terhadap Pemalsuan Merek Dagang Terkenal Asing Di Indonesia," *Maleo Law Journal*, no. 1 (2018): 61.

taken as proof of legal protection following a trademark infringement. If trademark rights have been violated, this oppressive legal protection is offered. Legal defense against trademark infringement is available to owners of well-known foreign trademarks in the form of criminal prosecution or litigation for cancellation. Furthermore, the provisions of trademark law's fines must be severely and precisely imposed in order to have a deterrent impact on offenders who are anticipated to be able to repress similar offenses in the future.

If the trademark has been registered, it will be given both civil and criminal legal protection. In regards to criminal legal protection, specifically by enforcing fines against offenders who violate trademarks in accordance with Article 100 of the Law on Trademarks and Geographical Indications. Anyone who intentionally and without authorization uses a mark that is identical in its entirety to a registered mark belonging to another party for goods and/or services of a kind produced and/or traded is subject to a maximum prison sentence of five years and/or a maximum fine of one billion rupiahs. Legal trademark owners also receive civil legal protection. According to the Indonesian IPR legal system, the brand holder will receive legal protection if the trademark rights have been maintained. This means that if trademark rights are violated, the brand owner may bring a lawsuit to hold the offending parties accountable. The goals of this case are financial compensation and the end of all actions involving the use of the mark.[8]

[8] Rizka Aprilia, "Perlindungan Hukum Terhadap Hak Atas Merek Pada Perusahaan Startup Digital Yang Tidak Mendaftarkan Merek Dagang Di Bandung," *JOM Fakultas Hukum Universitas Riau*, no. 2 (2019): 9.

According to Civil Code Article 1365, "*Any unlawful act, which causes harm to other persons, obliges the person who, by mistake, issues the loss, compensates for the loss,*" the use of a mark without rights may give rise to legal action. As the plaintiff must demonstrate that he experienced a loss as a result of the defendant's illegal activities. Producers or business owners who possess the rights to well-known brands will undoubtedly suffer losses as a result of trademark breaches done by parties who have negative motives and are not accountable for the well-known marks they infringe. Of course, the owner of the rights to a well-known brand will file a lawsuit to address situations of trademark infringement as the aggrieved party. This is done in an effort to deter trademark infringers from using a brand that is conceptually similar to or identical to a well-known brand, or even from stopping its manufacturing. Acts of trademark infringement can result in punishments that can be examined from criminal, civil, and administrative law in addition to being governed by the Trademark Law.[9]

B. 2. Factors Inhibiting the Implementation of Intellectual Property Rights Against Counterfeiting Branded Foreign Fashion Trademarks

Infrastructure and auxiliary services will undoubtedly make the legal protection process easier to complete, which will reduce or eliminate instances of trademark infringement. The lack of a technology to make it simpler to tell if a product is real or fake has become a barrier in the law enforcement procedure for cases

[9] Moh. Nafri, "Perlindungan Hukum Terhadap Pemalsuan Merek Dagang Terkenal Asing Di Indonesia," *Maleo Law Journal*, no. 1 (2018): 63.

involving trademark infringement. At the moment, only trader/seller acknowledgements can make it simpler to determine whether an item is real or fake, and sometimes sellers are still evasive whether the products they are selling are phony. The availability of educational facilities is crucial for enhancing knowledge and understanding of brand instances. The procedure of teaching merchants and business actors is hampered by the shortage of brand experts. The process of obtaining legal goals undoubtedly plays a crucial part in society as a legal subject. It is undoubtedly a difficult task to bring out the nature of a community that is conscious of the law. Here, the general public, particularly customers, play a significant role in the exchange of counterfeit goods on the market.[10]

17 out of 20 people claim to profit from the sale of goods that are either counterfeit or produced as a result of trademark infringement. Consumers with middle-class or lower incomes believe that the availability of fake goods, which are of course less expensive than the real thing, allows them to continue living the way of today's society, which is frequently centered around well-known brands, without having to worry about the quality of those goods. Additionally, they believe that by sporting well-known brands, they will feel more at ease socializing without worrying about whether the items are real or not. From this, it can be inferred that buyers, in order to keep up with current lifestyle trends, are more concerned with a product's price than its quality.[11]

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[10] Lukman Kardiasa, "Pelaksanaan Perlindungan Hukum terhadap Merek Terkenal dari Tindakan Pelanggaran terhadap Merek Terkenal (Studi Implementasi Pasal 94 Undang-undang No. 15 Tahun 2001 Tentang Merek Studi di Pasar Besar Malang)," *Kumpulan Jurnal Mahasiswa: Universitas Brawijaya*, (2013).
[11] Ibid

Furthermore, the following are a number of issues that can prevent law enforcement from being used against trademark right holders, in addition to a brief explanation of the criteria that prevent the application of trademark rights protection above, including[12]:

1. Limited disclosure of information about a trademark registration application to the general public (consumers). When the grace period is determined depends on factors such as the notification of mark registration only lasting three months, the public may not be aware of the news despite it having been made, and other challenges. Because the trademarks have previously been registered by other parties, the rights holders to well-known international marks are often taken aback when they register their brands;
2. The challenge in identifying trademark infringers for the owners of well-known overseas brands. This typically occurs when goods produced as a result of trademark infringement by well-known foreign brands are sold on the open market without notice to the creator;
3. This inherent vulnerability is brought on by the apparatus of the Directorate General of Marks' socioeconomic and intellectual limitations, which prevent the registration of marks registered later with registered marks from being accepted;
4. The presence of lawsuits from owners of well-known foreign trademarks may impair the product's reputation

[12] Moh. Nafri, "Perlindungan Hukum Terhadap Pemalsuan Merek Dagang Terkenal Asing Di Indonesia," *Maleo Law Journal*, no. 1 (2018): 64.

because it is seen as a difficult product, which would ultimately lower the product's sales turnover.

It goes without saying that society's participation as customers is crucial for law enforcement in cases of trademark infringement. Based on the actual facts, there have been a variety of responses to trademark infringement cases, both positive and negative, which are, of course, influenced by education level, welfare/social economic level, environment, and mark related knowledge. The community's viewpoint that the selling of counterfeit goods is illegal and must be dealt with severely in order to be repressed in circulation is the positive response or supporting attitude. In contrast, the public's negative reactions or deterring attitudes include: the public's perception that brand violations are a common occurrence; the idea that brand violations do not always harm consumers; and the idea that occasionally, brand violations actually benefit consumers by enabling them to use well-known branded goods at lower prices.

C. Conclusion

Legal protection is required to prevent imitation or counterfeiting of a brand that has acquired a well-known predicate by third parties. a form of legal protection that is both preventive and punitive that aims to stop others from using a well-known mark improperly. Preventive measures are taken to stop violations from happening and lessen their chances, which are expected to lower the frequency of trademark infractions wherein its objective is to reduce the likelihood of trademark infringement. Repressive efforts are

made to prevent or stop transgressions from happening again and are taken as proof of legal protection following a trademark infringement. The public's (i.e. consumers specifically) lack of access to information about trademark registration applications, the difficulty for owners of foreign well known brand rights to identify trademark infringers, and, in some cases, legal action brought by owners of well-known foreign trademarks are the major factors that hinder the implementation of trademark protection will damage the product's reputation because it is viewed as a problematic product.

REFERENCES

Laws and Regulations

Indonesian Civil Code (KUHPerdata)
Law No. 20 of 2016 on Trademarks and Geographical Indications
The Supreme Court Circular No. 4 of 2016 (SEMA No. 4 Tahun 2016)
Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14th, 1967, and as amended on September 28th, 1979. UN Doc. No. 1-11851

Journal Articles

Aprilia, Rizka. "Perlindungan Hukum Terhadap Hak Atas Merek Pada Perusahaan Startup Digital Yang Tidak Mendaftarkan Merek Dagang Di Bandung." JOM Fakultas Hukum Universitas Riau, no. 2 (2019): 9.

Cahyani, Ni Made Dwi Ari, Anak Agung Sagung Laksmi Dewi, dan Ni Made Sukaryati Karma. "Perlindungan Hukum bagi Pemegang Merek terhadap Pemalsuan Merek Fashion." *Jurnal Konstruksi Hukum* 2, no. 1 (2021): 175–79. https://doi.org/10.22225/jkh.2.1.2990.175-179.

Jaya, Maria. "PERLINDUNGAN HUKUM TERHADAP PEMEGANG MEREK DAGANG ASING YANG ADA DI INDONESIA." *LEX PRIVATUM* 1, no. 3 (2013). https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/3045.

Kardiasa, Lukman. "PELAKSANAAN PERLINDUNGAN HUKUM TERHADAP MEREK TERKENAL DARI TINDAKAN PELANGGARAN TERHADAP MEREK TERKENAL (Studi Implementasi Pasal 94 Undang-Undang No. 15 Tahun 2001 Tentang Merek Studi Di Pasar Besar Malang)." *Kumpulan Jurnal Mahasiswa Fakultas Hukum*, 30 Desember 2013. http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/260.

Nafri, Moh. "PERLINDUNGAN HUKUM TERHADAP PEMALSUAN MEREK DAGANG TERKENAL ASING DI INDONESIA." *Maleo Law Journal* 2, no. 1 (2018): 52–67.

Putra, Fajar Nurcahya Dwi. "PERLINDUNGAN HUKUM BAGI PEMEGANG HAK ATAS MEREK TERHADAP PERBUATAN PELANGGARAN MEREK." *Mimbar Keadilan*, no. Jurnal Mimbar Keadilan Januari-Juni 2015 (2015). http://jurnal.untag-sby.ac.id/index.php/mimbarkeadilan/article/view/461.

Wijaya, Kadek Yoni Vemberia, dan I. Gusti Ngurah Wairocana. "UPAYA PERLINDUNGAN HUKUM TERHADAP PELANGGARAN HAK MEREK." *Kertha Semaya : Journal Ilmu Hukum* 6, no. 10 (2018): 1–6. https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/40003

International Conventions/Treaties

TRIPS Agreement (Trade Related Aspect of Intellectual Property Rights)

News

Liputan6.com. "Hasil Studi: Peredaran Barang Palsu Rugikan Ekonomi Rp 291 Triliun." liputan6.com, March 4 2022. https://www.liputan6.com/bisnis/read/4903131/hasil-studi-peredaran-barang-palsu-rugikan-ekonomi-rp-291-triliun

Revolution in Intellectual Property Rights: Artificial Intelligence as the Inventor of a Patent

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Abstract

The inevitability of the Exponential Development of Man-Made Technology is virtually apparent. Upon entry into Society 5.0 as initiated by the Japanese Government and now the Indonesian Government, the Sophistication of Artificial Intelligence in obtaining rights equivalent to that of humans should not be taken too lightly. Over the past 20 years, all of the Fruits that Artificial Intelligence had yielded result in nothing as the Provisions under the umbrella of Intellectual Property Law do not acknowledge the Inventions that were founded by a non-human Inventor. The reason behind this is because the Patent Law offers an exhaustive list of definitions for the subject of Patent, resulting in the incapacity of Artificial Intelligences in boarding the boat of Patent Right Law on which they can be legally recognized as Inventors or even Owners of the Patent. Cognizant of the dynamic nature of Law, it is reasonable to believe that Law will adapt to the prevailing circumstances and social phenomenon. That is to say, Indonesia's Patent Law will adapt to the new challenges presented before it, one of which is the right of Artificial Intelligence in generating Inventions that are Novel, Non-obvious, and Useful and to be recognized as its Inventor.

Keywords: Artificial Intelligence; Patent; Dynamic; Inventor; Invention

A. Introduction

Prefacing this Article with the statement asserted by

Hans Kelsen, a European Legal Philosopher which says "*Law is a Science that deals not with the actual events of the world (What is) but with norms (What ought to be)*.[1] Taking that into consideration, Law should not be taken in light of the contemporary or prevailing circumstances, however, one must go further than that by conceiving the events or circumstances that are to happen. In other words, as regards to the dynamic nature of Law, any reasonable person must not only approach the world with a view to the existing laws (*Lex Lata*) but also to the future law (*Lex Ferenda*).[2] With that in mind, nobody should be of the view that the Intellectual Property Law will remain incessant, such that no alterations or changes will be offered as such view will be contradictory to the dynamic nature of Law. Considering its dynamic nature, Law as a tool to maintain order in society has shown its developing nature from time to time.[3] A good example in relation to our Intellectual Property Law is the legislative authority vested in the People's Representative Council (DPR) to revise theprovisions of Law No. 14 of 2001[4] regarding Patent so as to include several stipulations that would be in line with the current circumstances, one of which is to be more aligned with the Agreement on Trade-Related Aspects of Intellectual Property

[1] Stanley Paulson, "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law," *Oxford Journal of Legal Studies* 12 (1992): 311–32.
[2] Noora Arajärvi, "Between Lex Lata and Lex Ferenda? Customary International (Criminal) Law and the Principle of Legality," *Tilburg Law Review: Journal of International and European Law* 15, no. 2 (2011): 163–83.
[3] Jimly Asshiddiqie and Muchamad Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Konstitusi Press, 2006)
[4] Law No. 14 of 2001 concerning Patent

Rights (hereinafter referred to as TRIPs).[5] For that reason, Law by its nature is ever-changing and dynamic with due regard to the prevailing issues arising within the Nation.[6] An old-fashioned view of law that emphasizes the function of maintaining order in a static sense, and emphasizes the conservative nature of law, assumes that law cannot play a significant role in the reform process.[7]

Cognizant of the dynamic nature of Law, recently, there has been a ground-breaking judicial decision upheld by the Australian Federal Court in the Thaler v Commissioner of Patents [2021] FCA 879 (hereinafter referred to as Thaler) through which Judge Beach held that Artificial Intelligence (AI) can be recognized as the inventor of Patent. [8] Such a decision 8 engendered numerous controversies over the eligibility of an AI in applying for a Patent before the IPR Institution.[9] Further, a question arises out of such a decision, that is whether AIs will also be accorded rights similar to how animals and humans have rights under the Constitution, such that any harm incurred by AIs will be prohibited by the Constitution? Such a question is in and

[5] "Sosialisasi Undang-Undang Paten (Baru) Nomor 13 Tahun 2016," Khairun Nisa Fauziah, accessed December 10, 2021, https://jdih.bppt.go.id/berita/10-sosialisasi-undang-undang-paten-baru-nomor-13-tahun-2016

[6] Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembinaan Hukum Nasional* (Bandung: Binacipta, 1995).

[7] Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat." *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012)

[8] Alexandra Jones, "Can Artificial Intelligence Be an Inventor? A Landmark Australian Court Decision Says It Can," ABC News, August 2, 2021, https://www.abc.net.au/news/2021-08-01/historic-decision-allows-ai-to-be-recognised-as-an-inventor/100339264

[9] BBC Technology News, "AI Cannot Be the Inventor of a Patent, Appeals Court Rules," BBC, September 23, 2021. https://www.bbc.com/news/technology-58668534.

of itself a Problem that must be dealt with, nonetheless, this Article will not entertain such a question as the Legal Question that will be addressed herein is the Rationae Personae of Intellectual Property Law. That is to say who can be deemed as an Inventor of a Patent. In addition to that, who will be entitled for the Patent Right? Can a Person or a Legal Person who is not the Inventor be accorded legally by the IPR Institution the Patent Right over the Invention thereof? These are questions that are going to be addressed as well. It is undeniable that AI is a non-human actor, meaning, the Indonesian Law does not acknowledge its existence as a protected Legal Entity or Person in Indonesia. As such, any invention that AI came up with cannot be given Patent pursuant to Law No. 13 of 2016 regarding Patent. [10] Turning now to the 10 general definition of AI, according to Professor Dalvinder Singh Grewal, the conventional definitions of AI only cover "the boundaries of intelligence at a mechanical level" which does not extend to the acquisition of intelligence through artificial means. For that reason, Professor Dalvinder offered a much more trailblazing and correct definition that incorporates the following aspects: 1) The term AI, 2) Actionable Knowledge, 3) Role of Knowledge of Entire Universe, 4) All Simulating Sensors with their platforms as their systems, and 5) All process-collecting, collating, interpreting, and dissemination. Such a recommended definition is: "*Artificial Intelligence is the mechanical simulation system of collecting knowledge and information and processing intelligence of the universe: (collating*

[10] Law No. 13 of 2016 concerning Patent

and interpreting) and disseminating it to the eligible in the form of actionable intelligence."[11] Following that definition, the scope of AI is not 11 merely limited to the intelligence of a machine or computer, however it also includes intelligence of the Universe, meaning AI is not limited to computers or machines. In a recently published scholarly book on Information Technology, the definition of AI offered by Professor Dalvinder is adopted, proving its significance in the world of Information Technology.[12] To put it simply, the Book, borrowing the explanation of AI provided by Romiszowski in his 1987 journal, offers a short and concise definition of AI that is "*A technology focused on improving people's well-being*."[13] Taking all of the definitions provided above into account, AI is basically a mechanical simulation that can be in the form of a computer that collects and processes knowledge of any kind on which it relies to make decisions, basis for reasoning, and other human characteristics.

Having defined AI, now this will bring us to the next question pertaining to the legal basis of AI. As to this date not even a single Law has been ratified as regards to AI,[14] Indonesia

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[11] Dalvinder Singh Grewal, "A Critical Conceptual Analysis of Definitions of Artificial Intelligence as Applicable to Computer Engineering." *IOSR Journal of Computer Engineering*, 1, 16, no. 2 (2014): 9–13.
[12] García Peñalvo and Francisco J. *Information Technology Trends for a Global and Interdisciplinary Research Community*. Hershey: IGI Global, 2021.
[13] Alexander Romiszowski, "Artificial Intelligence and Expert Systems in Education: Progress, Promise and Problems." *Australasian Journal of Educational Technology* 3, no. 1 (1987)
[14] Indra Cahya, "Indonesia Disebut Belum Siap Terapkan Kecerdasan Buatan Di Sektor Ekonomi," Merdeka.com, February 13, 2020, https://www.merdeka.com/teknologi/indonesia-disebut-belum-siap-terapkan-kecerdasan-buatan-di-sektor-ekonomi.html

or other Jurisdictions.[15] The Legal Practitioners in Indonesia are baffled and puzzled 15 by the introduction of AI into our Legal System.[16] Noting the fact that Law is dynamic and 16 ever-changing and in line with the objective of Intellectual Property Rights that is to promote economic well-being through technological innovation and the transfer or dissemination of technology as governed by Article 7 of TRIPs[17], the Legal System in Indonesia should be adaptive to the prevailing issue that is AI since the historic Australian Court Decision in 2021 has allowed the possibility of an AI to be recognized as an Inventor of its Invention[18]. Indonesian as a Civil Law country does not acknowledge the doctrine of State Decisis which allows the Judge to rely on precedents or case laws as its ultimate source of Law instead Indonesian Courts rely on the Codified Laws[19] pursuant to the hierarchy as set out in Article 7 of Law No. 12 of 2011 regarding Legislation Making[20]. Be that as it may, even if our Judicial System is not bound by the Legally Binding Decision of the Thaler case, as Australia and Indonesia are Members of TRIPs

[15] "AI Regulation: Present Situation and Future Possibilities," Jascha Galaski, accessed December 10, 2021, https://www.liberties.eu/en/stories/ai-regulation/43740

[16] "Wamenkumham: AI Sulit Dikategorikan Sebagai Subjek Hukum," Arundati Swastika Waranggani, accessed December 10, 2021, https://www.cloudcomputing.id/berita/wamenkumham-ai-sulit-dikategorikan-subjek-hukum

[17] Article 7 of TRIPs

[18] "DABUS: Decoding Australia's AI Decision," Richard Hamer, Lauren John, and Alexandra Moloney, accessed December 10, 2021, https://www.worldipreview.com/article/dabus-decoding-australia-s-ai-decision

[19] Nurul Qamar, *Perbandingan Sistem Hukum Dan Peradilan Civil Law System Dan Common Law System* (Makassar: Pustaka Refleksi, 2010)

[20] Article 7 of Law No. 12 of 2011 regarding Legislation Making

and Patent Cooperation Treaty (hereinafter referred to as PCT)[21] and the Judge of the aforementioned case referred to PCT to hold such *rationae decidendi*[22], it is in our argument that the Court's Decision will definitely affect the interpretation of Inventor pursuant to the Intellectual Property Law.

Over the past twenty years, machines have been autonomously developing patentable products and the pace of such invention will definitely increase. A number of Autonomous Computers or AIs able to generate Patentable outputs can be found throughout the past 28 years, however, the Patent Office never recognized such accomplishment and acknowledge AIs or Computers as the Inventor of the Patentable Inventions since the Owner of the AIs or Computer was the one who applied for the Patent, listing themselves as the Invention, although in reality their AIs or Computer were the true Inventors[23]. Examples of the AIs and Computers capable of generating Patentable outputs include but not limited to 1) The Creativity Machine, 2) The Invention Machine, and 3) Watson.

As regards to the Creativity Machine, in 1994, Computer Scientist named Stephen Thaler founded Creativity Machine which generates new ideas by utilizing a software concept known as artificial neural networks, which are simply collections of on/off switches that spontaneously connect to form software

[21] "The PCT now has 154 Contracting States," WIPO, accessed December 17, 2021, https://www.wipo.int/pct/en/pct_contracting_states.html
[22] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 92
[23] Ryan Abbott, "I Think, Therefore I Invent: Creative Computers and the Future of Patent Law." *Boston College Law Review* 2, 57, no. 4 (2016)

without the need for human participation. Dr. Thaler compared the Creativity Machine and its processes to the human brain and consciousness and found the two artificial neural networks mimic the human brain's major cognitive circuit, namely, the thalamo-cortical loop. Surprisingly, the Creativity Machine was able to autonomously invent a Patentable Output which Dr. Thaler called Device for the Autonomous Generation of Useful Information[24]. Be that as it may, he filed the Patent Application for Creativity Machine's 24 invention under his name as the Inventor in 1998 before the United State Patent Office. In other words, a Patent for an Invention made by a non-human Inventor has transpired as early as 1998.[25]

The next example is the Invention Machine developed by Dr. John Koza which is a software modeled after the process of biological evolution, known as Genetic Programming. [26] Such Program has succeeded in autonomously generating Patentable results. Similar to Creativity Machine, the Invention Machine managed to generate not only but a number of patentable outputs. Dr. Koza through a 2006 Article in Popular Science[27] even claimed that the 27 Invention Machine has earned a Patent for developing a system to make factories more efficient.

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[24] Stephen Thaler. "Synaptic Perturbation and Consciousness." *International Journal of Machine Consciousness* 6, no. 2 (2014): 75–107.
[25] Ibid.
[26] John Koza, "Human-competitive results produced by genetic programming." *Genetic programming and evolvable machines* 11, no. 3 (2010): 251-284.
[27] "John Koza Has Built an Invention Machine: Its creations earn patents, outperform humans, and will soon fly to space. All it needs now is a few worthy challenges," Jonathon Keats, last modified April 19, 2006, https://www.popsci.com/scitech/article/2006-04/john-koza-has-built-invention-machine/

Unfortunately, Mr. Koza did not list Invention Machine as the inventor as his Legal Counsel advised him to list his team as the Inventors.[28]

Lastly, Watson is an AI produced by International Business Machines (IBM) capable of computational creativity. Watson was able to generate recipes in response to users' selection of ingredients and dishes, on that basis, Watson then created a large number of food combinations. Upon evaluating the combinations, Watson will predict the final output. [29] Although the Output was never mentioned as Patentable, however, it has been hinted that the recipe or discoveries Watson made are Patentable. [30] Based on the foregoing examples, evidently, Machines and AIs have long been inventors of outputs to which the owner thereof claims. Although, our Inventor provision clearly says that Invention is an Inventor's idea and Indonesian Law only acknowledge human Inventor (the stipulation of the Clause will be explained further below). As such, Patent System, in the words of Ryan Abbott, one of the World's leading Patent Attorneys "*isn't a good system because as technology advances we're going to move from encouraging people to invent things to encouraging people to build AI that can invent*

[28] John Koza, "Human-competitive results produced by genetic programming." *Genetic programming and evolvable machines* 11, no. 3 (2010): 255
[29] "Our Supercomputer Overlord Is Now Running a Food Truck," Maanvi Singh, last modified March 4, 2014, https://www.npr.org/sections/thesalt/2014/03/03/285326611/our-supercomputer-overlord-is-now-running-a-food-truck
[30] "Can Recipes be Patented?", Inventors Eye, accessed December 17, 2021, https://perma.cc/EN3V-9DY4

things."[31]

The types of Intellectual Property Rights as provided by Part 2 of TRIPs comprise: 1) Copyright and Related Rights, 2) Trademarks, 3) Geographical Indication, 4) Industrial Designs, 5) Patents, 6) Layout Designs of Integrated Circuits, and 7) Protection of Undisclosed Information. Of all the types provided, this Article will only be addressing Patent as an Intellectual Property Right and how an Inventor can be granted patent over its Invention, especially for AI[32]. In light of the emergence of AI for Industry 5.0 which is claimed to have autonomous operation[33] and the groundbreaking decision in favor of the Applicant, holding that AI can regarded as Inventor over its Invention[34], A Research Question arises out of that trend, that is **to what extent is an AI regarded as an Inventor of a Patented Invention?**

The approach method used in writing this Article is a normative juridical approach, namely an approach that seeks to synchronize the applicable legal provisions or other legal regulations with their relation to the application of these legal

[31] Alexandra Jones, "Can Artificial Intelligence Be an Inventor? A Landmark Australian Court Decision Says It Can,"ABC News, August 2, 2021. https://www.abc.net.au/news/2021-08-01/historic-decision-allows-ai-to-be-recognised-as-an-inventor/100339264

[32] Part 2 of TRIPs

[33] "Memasuki Era Society 5.0, Menko Airlangga Sampaikan Untuk Membangun Talenta Digital Dan Meningkatkan Literasi Digital," Kementerian Koordinator Bidang Perekonomian Republik Indonesia, accessed December 17, 2021, https://www.ekon.go.id/publikasi/detail/3397/memasuki-era-society-50-menko-airlangga-sampaikan-untuk-membangun-talenta-digital-dan-meningkatkan-literasi-digital

[34] "Australian Court Says That AI Can Be an Inventor: What Does It Mean for Authors?", Rita Matulionyte, last modified September 29, 2021, http://copyrightblog.kluweriplaw.com/2021/09/29/australian-court-says-that-ai-can-be-an-inventor-what-does-it-mean-for-authors/

regulations on the field. Unlike an empirical juridical approach where the emphasis is on human behavior, the normative judicial approach focuses more on secondary data obtainable from the internet or library by way of Literature Study *(Studi Kepustakaan)*[35].

The Descriptive-Qualitative Analytical Method is used to interpret the truth of the research on the problem by conveying the quality of the results of the research data collected through the literature study method. The purpose of using a descriptive-qualitative approach is to evaluate the data accurately and coherently[36]. As such, this 36 Article will use such an approach to evaluate the data gathered and accumulated. Having briefly explained the Research Method used, subsequently the Discussion and Analysis will be presented to answer the Research Question posed previously

B. Discussion

B. 1. What is the extent to which an AI regarded as Inventors of its Inventions under the Umbrella of Intellectual Property Rights Law

B. 1. 1. Legal Basis of Ais and Intellectual Property Rights

Preliminarily, it is best to look into the issue of AI from a legal standpoint first, that is to say with the non-existent Law on AIs, how does any reasonable person treat them under the umbrella of

[35] Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: PT Raja Grafindo Perkasa, 2003)
[36] Ibid.

Indonesian Intellectual Property Rights? As far as the Legal System is concerned, contemporarily, the only Law that is the closest in governing AIs can be found in Law No. 19 of 2016 regarding Electronic Information and Transaction[37]. For the realization of AI usefully and practically in Indonesia, the Agency for the Assessment and Application of Technology (BPPT) has published the National Strategy for Indonesian Artificial Intelligence 2020-2045 (hereinafter referred to as NSAI).[38]

However, the arrangement is still at the policy direction in general terms and does not regulate in detail. According to NSAI, Indonesia's Artificial Intelligence is a statement to implement the initiative programs set out in the national strategy roadmap for artificial intelligence in achieving Indonesia's 2045 vision. Indonesia, through NSAI, has offered a Mission Statement to actualize AIs in Indonesia in line with Indonesia's 2045 vision. The Mission Statements provided in NSAI are as follows: 1) Realizing the Ethical Artificial Intelligence in accordance with the values of Pancasila, 2) Preparing Artificial Intelligence Talents that are competitive and of good character, and 3) Realizing a data ecosystem and infrastructure that supports AI's contribution to state interest. In pursuance of the Mission Statements provided, Indonesia plans on financing BPPT on its research on AIs and its role in the upcoming future for our Nation's Well-Being.[39]

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[37] Law No. 19 of 2016 concerning Electronic Information and Transaction

[38] "BPPT Siap Gelar Artificial Intelligence Summit 2020," Badan Pengkajian dan Penerapan Teknologi, accessed December 17, 2021, https://www.bppt.go.id/berita-bppt/bppt-siap-gelar-artificial-intelligence-summit-2020

[39] "Strategi Nasional untuk Kecerdasan Artifisial (STRANAS KA) Indonesia Tahun 2020-2045," Badan Pengkajian dan Penerapan Teknologi, accessed December 17, 2021, https://ai-innovation.id/server/static/ebook/stranas-ka.pdf

By reading Article 1 (8) of Law No. 11 of 2008 which says *"Electronic Agent is an automated electronic means that is used to initiate an action to certain Electronic Information, which is operated by Persons."* [40] Apparently, the definition provided therein can be commensurate with the definition of AIs as AIs is an automated machine used to collect electronic information and disseminate it to anyone.[41] The Clause "automated" was constructed as a bridge to categorize AIs as an Electronic Agent. Since no Express Provision about AIs is stipulated by our Law, it is in our argument to assume that Electronic Agent refers to AIs. Following such reasoning, now we have established that AIs is an Electronic Agent, such reasoning was also echoed by Pratidina (2017) on her Thesis[42] and also Hukum Online Article 42 titled "*Pengaturan Hukum Artificial Intelligence Indonesia Saat Ini*".[43] Turning now to Article 21 (2) of Law No. 11 of 2008 which stipulates:

"(2) Parties responsible for any legal effect in the conduct of Electronic Transactions as intended by paragraph (1) shall be regulated as follows:

a. if conducted in person, any legal effect in the conduct of Electronic Transactions shall become the responsibility of parties to a transaction;

[40] Article 1 (8) of Law No. 11 of 2008 regarding Electronic Information and Transaction
[41] Ibid.
[42] Ilhami Ginang Pratidina, "Keabsahan Perjanjian Melalui Agen Elektronik Dalam Sistem Hukum Kontrak Indonesia" (PhD diss., Universitas Airlangga, 2017)
[43] "Pengaturan Hukum Artifical Intelligence Indonesia Saat Ini," Zahrasafa P. Mahardika, and Angga Priancha, accessed December 17, 2021, https://www.hukumonline.com/berita/a/pengaturan-hukum-artifical-intelligence-indonesia-saat-ini-lt608b740fb22b7

b. if conducted by proxy, any legal effect in the conduct of Electronic Transactions shall become the responsibility of the grantors of the proxy; or

***c. if conducted by Electronic Agents, any legal effect in the conduct of Electronic Transactions shall become the responsibility of Electronic Agent providers**."*[44]

Highlighting Verse C of the aforementioned Article, any legal effect in the conduct of Electronic Transaction shall hold the providers of Electronic Agents liable. This verse is really fascinating to look into as this would mean an element of attribution is present as regards to AIs' conduct, meaning, the acts discharged by AIs shall hold the provider liable or in other words the Owners of the AIs will be liable for such conduct. By that provision, AIs' conducts can be attributable to the Owners of the AIs regardless of the conducts being lawful or unlawful and the legal consequences arising out of the conducts will be attributable to the Owner. Having explained the Provisions of AIs in Indonesia as inferred from Article 1 (8) of Law No. 11 of 2008,[45] the subsequent issue to be addressed is Patent Rights in Indonesia. Indonesia, upon ratifying Law No. 7 of 1994 regarding the Ratification of the Agreement Establishing the World Trade Organization (WTO)[46] in which there are attachments, one of which is the TRIPs Agreement, Indonesia as a matter of course is bound to the provisions of the TRIPs Agreement. The TRIPs Agreement is a complete agreement and with a higher standard

[44] Article 21 (2) of Law No. 11 of 2008 regarding Electronic Information and Transaction
[45] Article 1 (8) of Law No. 11 of 2008 concerning Electronic Information and Transaction
[46] Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the WTO

compared to the previous International Intellectual Property Rights Treaties. The Completeness can be seen in Part II of TRIPs, important regulatory standards are regulated in the areas of Copyright and Related Rights (also known as Neighboring Rights), Trademarks, Industrial Designs, Patents, Layout-Designs (Topographies) of Integrated Circuits, and Protection of Undisclosed Information (also known as Trade Secrets or Trade Secrets). The chapter even regulates the supervision of anti-monopoly practices in the license agreement. The Realization of the Provisions of Patent as provided by TRIPs can be found in Law No. 13 of 2016 regarding Patent amending Law No. 14 of 2001. Pursuant to Article 1(1) thereof, Patent is "an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time to carry out the invention himself or to give approval to another party to implement it."[47] The key factors that the Article will emphasize on are the subjects or ratione personae of Patent. Upon reading the stipulation of that Article, there are three subjects being mentioned: 1) State, 2) Inventor, and Another party. Further, Article 1 (2) of Law No. 13 of 2016 stipulates Inventor as "*One or several **people** who jointly implement the ideas that are poured into the activities that produce the Invention*."[48] As the definition of Inventor in this Article has stipulated that Inventor must be "**people**", any reasonable person would find that the AIs cannot be an inventor and only humans can be deemed as an Inventor.

As such, the Provision is clear and express in the Patent Law that Inventor must be human. However, that is not to say it is

[47] Article 1 (1) of Law No. 13 of 2016 regarding Patent amending Law No. 14 of 2001
[48] Article 1 (2) of Law No. 13 of 2016 regarding Patent

impossible for AIs to be an Inventor of a Patent granted over its inventions as we will explore into the Provisions that may be interpreted in favor of the AIs on the Grant of Patent in the later paragraph. Turning now to the definition of Invention, pursuant to Article 1 (5) of Law No. 13 of 2016, Invention is defined as "*an inventor's idea that is poured into a specific problem-solving activity in the field of technology in the form of a product or process, or the improvement and development of a product or process*."[49]

Thus, by definition, Invention must be derived from an Inventors' idea, any invention that arises out of people other than the inventors cannot be regarded as Inventions. Before going further into can AIs be granted Ownerships question, one must understand the principle of Novelty for an Invention to be given a Patent. First and foremost, it is important to define what Novelty is. According to the Oxford Dictionary, Novelty is defined as the quality of being new, different and interesting. As for the rationae materiae or subject matter of patent, Article 3 (1) of Law No. 13 of 2016[50] vis a vis Article 27 of TRIPs[51] provides that Patent shall be accorded to any inventions that are new, involve an inventive step, and are capable of industrial application. Moreover, the TRIPs further explain that inventive steps capable of industrial application are respectively deemed as "non-obvious" and "useful".[52]

Following that, "new" as mentioned previously refers to the criterion of Novelty. In both Common law and Civil law countries, the Novel test has prevailed when it comes to granting Patent to

[49] Article 1 (5) of Law No. 13 of 2016 regarding Patent
[50] Article 3 (1) of Law No. 13 of 2016 regarding Patent
[51] Article 27 of TRIPS
[52] Article 27 (1) of TRIPS

inventions as its *rationae materiae*.[53] Further, the principle of "non-obvious" and "useful" must be met as well as inventive steps as defined in Article 3 (1) of Law No. 13 of 2016 also refers to those two mentioned principles. Now in regards to the Novelty test, our nation has not yet determined what does the novelty test entail, however, pursuant to Article 107 of Omnibus Law on Job Creation, **noting that Patent can be divided into patent and simple patent** (is any new invention, development of an existing product or process, and can be applied in industry) the provision in the Omnibus Law adds another Clause in Article 3 (3) of Law No. 3 of 2016 which says the development of an existing product or process includes simple process, product, and method. That being said, 56 irrespective of it, the Novelty test did not receive any modification from the Omnibus Law. Instead, both types of Patent still require the Novelty test. With that in mind, patents can be granted only to inventions that are **new, non-obvious, and useful.** [54] These three requirements are cumulative as echoed by Article 27 of TRIPs.

As such, deviation from or the unfulfillment of one criterion would result in the non-applicability or non-conference of Patent to the Inventions. Conclusively, the novelty test or criterion in our Indonesian Law, namely, Law No. 13 of 2016 as revised in Article 107 of Omnibus Law on Job Creation[55] echoes the novelty test.

[53] Suzanne Scotchmer and Jerry Green, "Novelty and disclosure in patent law," *The RAND Journal of Economics* no. 1 (1990): 131-146
[54] Fernando Fernández, "The Non-Obviousness Requirement in the Chilean Patent Law: A Critical Assessment," *Revista Chilena de Derecho* 38, no. 3 (2011)
[55] Article 107 of Law No. 11 of 2020 on Job Creation

B. 2. Procedural Requirement for Application of Patent

Moving now to the Procedural Requirements for Patent to be granted, Article 24 (1) of Law No. 13 of 2016 governs that *"Patents are granted upon application."* Following that, Article 24 (2) of Law No. 13 of 2016 provides *"The application as referred to in paragraph (1) submitted by* ***the Applicant*** *or* ***His Mandatee (Kuasanya)*** *to the Minister in writing in Indonesian by paying a fee."* Interestingly, by reading these two Provisions, we are introduced 62 to two subjects, namely, Applicant and Mandatee. Fortunately, the Law is not silent on the definition of those two subjects as the Applicant, pursuant to Article 1(5) of Law No. 13 of 2016 is defined as *"****the party*** *applying for the Patent."* While Mandatee pursuant to Article 1792 of 63 Indonesian Civil Code (ICC) is defined as *"A mandate is an agreement, by which an individual assigns authority to* ***another person, who accepts it, to perform an act on behalf of such mandator****."* Taking the two definitions into account, very clearly the Mandatee as provided by Article 24 (2) of Law No. 13 of 2016 cannot be deemed as an AI since Mandatee is defined as a Legal Person according to the ICC. Nonetheless, as for the definition of Applicant, interestingly, the Law does not mention that the party applying for a Patent must be a Person or Legal Entity. Based on the wording of the Provision, any reasonable person, in view thereof, will find that the Provision does not limit the subject of Applicant to a Legal Person, but it includes anyone that submits an Application for a Patent to the Ministry in Indonesia.

Suffice to say that the Provision of Article 1(5) of Law No. 13 of 2016 does not entail exhaustive interpretation of the subject. Following this line of reasoning, a question will arise out of such wording in relation to AIs, that is whether AIs can be an Applicant

for the purpose of Article 24 (1) of Law No. 13 of 2016? Noting the fact that Indonesia had ratified Law No. 7 of 1994 regarding the Ratification of the Agreement Establishing the WTO[56], requiring Indonesia to abide by the Provisions set out in TRIPs. By looking into Article 29 (1) of TRIPs which says "*Members shall require that* ***an applicant*** *for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require* ***the applicant*** *to indicate the best mode for carrying out the invention known to* ***the inventor*** *at the filing date or, where priority is claimed, at the priority date of the application.*" Evidently, beginning from the phrase "*may require*", It can be interpreted that the second prong of this Provision provides that an Applicant and the Inventor may be two different persons. In other words, an Applicant need not to be an Inventor of the Invention to apply for a Patent over an Invention. Further, it is interesting to note that TRIPs do not provide any Provision requiring human Inventor, Applicant, and Owner of Patent. Additionally, Patent Corporation Treaty (PCT) as ratified by Presidential Decision No. 16 of 1997 does not expressly stipulate that Inventors or Applicants must be human.

B. 3. AI as an Applicant for Patent

Absent such Clauses requiring the Subjects of Patent to be human, nothing shall preclude any reasonable person from concluding that non-human can be deemed as Inventor, Applicant, and Owner of Patent unless the Domestic Law states otherwise (which Law No. 13 of 2016 does as regards to Inventor). On that note,

[56] Zulfikar Ali Butho, "Ratifikasi WTO dan Dampaknya pada Pembangunan dan Pembaharuan Hukum Ekonomi Indonesia (Suatu Tinjauan Ontologis)," *Keadilan Progresif* 2, no. 2 (2011)

as our Patent Law has provided exhaustive list of definitions for the subjects mentioned, except for Applicant, it is in our argument that AIs may be an Applicant for its Inventions, however, a question arises as to how an Applicant can file an Application for its Invention to the Ministry. If AIs are unable to file an Application on its own, it would be impossible for an AI to have its invention patented but if an AI is able to autonomously file an Application on its own, as our Law is silent on non-human Applicant, very clearly the AI filing the Application can be deemed as an Applicant. Contrary to Inventor wherein our Patent Law expressly requires human Inventors[57].

Nonetheless, as Article 1(1) of the Patent law mentions that Patent is "*an exclusive right* ***granted by the state to an inventor for his invention***". The only one capable of receiving Patent is the Inventor and not the Applicant. Therefore, an AI though by definition is able to file an Application, it would not still be recognized as the Inventor of its Invention, even if the AIs invented the Invention that fulfills the novelty, non-obvious, and useful requirements. Admittedly, the Respondent being the Commissioner of Patent rejecting the Application of Patent by the Applicant registering his AI as the Inventor in the Groundbreaking Case of Thaler v Commissioner of Patents [2021] even held that AIs may satisfy the requirements mentioned previously but Respondent argued that the Inventor must be human. In light of that, an AI may be an Applicant but still would not be acknowledged as the Inventor pursuant to Indonesian Patent Law as the Provision expressly requires Inventors to be human. Is this the extent to which AIs can

[57] Article 1(3) of Law No. 13 of 2016 regarding Patent

be granted Patent for its Inventions? Does the answer stop at the point in which AIs can only be deemed as an Applicant but cannot be acknowledged as an Inventor because the Patent Law requires humans to be the Inventors? Can AIs be deemed as Inventors although it is clear that the Patent Law disallows it? The Crux of the Discussion will begin from the elucidation on the Thaler case. Very briefly, the premise and the *rationae decidendi* of the case will be explained.

B. 4. World-First Decision: AI Recognized as a Patent Inventor under Australian Law

The Applicant, Dr. Stephen Thaler, had named DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) as the Inventor on an international application filed under the Patent Cooperation Treaty, designating Australia. DABUS' different goods and methods aimed at an improved fractal container, which claims to be a better food container for foods. The application had been denied by the Deputy Commissioner of Patents (Commissioner) or Respondent because it did not specify a human inventor. The Commissioner believed that the conventional sense of "inventor" (which is not defined in the Patents Act) was "inherently human," and therefore designating AI as the inventor was incompatible with section 15 of the Patents Act, which states that a patent may only be given to a person who: a) is the inventor; or b) would, on the grant of a patent for the invention, be entitled to have the patent assigned to the person; c) or derives title to the invention from the inventor or a person mentioned in paragraph (b); or d) is the legal

representative of a deceased person mentioned in paragraph (a), (b) or (c)[58].

Judge Beach found that there was no express or specific provision in the Patent Act requiring the Inventors to be human and that basically refutes the proposition that an Inventor cannot be non-human, in other words AIs can be inventors[59]. Judge Beach referred to the dictionary meaning of the word "Inventor" as an Agent noun and likened that to the word of "Computer" as in his own words "*one that might originally have been used only to describe persons, when only humans could make inventions, but can now aptly be used to describe machines which can carry out the same function.*"[60] Similarly, Judge Beach held that Inventor can also be used for machines that invent instead of a person that invents. Due to the dynamic nature of Law and recognizing the evolving nature of patentable inventions and their creators, any Inventor be it human or non-human should be granted rights to be an Inventor for the Inventions it creates. In a rhetorical manner, Judge Beach opined *"We are both created. Why cannot our own creations also create?"*

As regards to Section 15 (b) and (c) mentioned above, Dr. Thaler could bring himself within the scope of section 15(1)(b), according to Justice Beach. He explained that this Provision deals with a future conditional and that it does not necessitate the presence of an Inventor - all that is required is that he is eligible to have the patent assigned to him if a grant is made[61]. Additionally, he indicated that based on first impressions, Dr. Thaler would fall

[58] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 58
[59] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 165
[60] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 15
[61] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 176

under section 15(1)(c), because he has derived rights to the invention from DABUS. Despite the fact that DABUS is not a legal person who can legally assign the invention title can be derived from DABUS due to his ownership of DABUS, his copyright in the source code of DABUS, and his ownership and possession of the computer on which it lives.[62] Based on those reasons, Judge Beach held that an AI system, namely, DABUS can be an Inventor.

It is not disputable that the evolving nature of Law should be taken into account, specifically as regards to Intellectual Property Rights. It would be unfair for an Invention to not get patented just because the Inventor of such socially valuable Inventions fulfilling the Novelty, Non-obvious, and Useful requirements is non-human. Further, as Ryan Abbott put in his scholarly journal *"Preventing patents on computational inventions by prohibiting computer inventors, or allowing such patents only by permitting humans who have discovered the work of creative machines to be inventors, is not an optimal system."*[63] Would it be fair for computers or AIs to not be deemed as Inventors even after autonomously invented the outputs but were discovered by Humans and as such the Patent was granted to him or her? This is a rhetorical question posed to any person that plans on inhibiting the sophistication of AIs.

B. 5. Objections by United Kingdom Court of Appeal to Non Human Inventor

In a global battle against Courts ruling that Inventors must be human, Lord Justice on the Court of Appeal in Stephen Thaler v. Comptroller General of Patent Trademarks and Designs in United

[62] Thaler v Commissioner of Patents [2021] FCA 879, ¶ 193
[63] Ryan Abbott, "I Think, Therefore I Invent: Creative Computers and the Future of Patent Law." *Boston College Law Review* 2, 57, no. 4 (2016)

Kingdom (UK) (hereinafter referred to as Thaler UK) held that *"Only a person can have rights. A machine cannot."*[64] On that basis, Lord Justice opined that Inventor and the Owner of the Patent should not be non-human otherwise it would be contrary to Section 13 of the UK Patent Act which expressly requires Inventor to be human[65]. In other words, ab initio, at the time of applying for Patent Right over any Invention the Inventor must be human. With that in mind, this will direct us to the legal means in which AIs in Indonesia can be recognized as an Inventor, assuming that the identity of AIs is not debatable and Electronic Agent as defined by Article 1 (8) of Law No. 19 of 2016 regarding Electronic Information and Transaction is legally sound.

B. 6. AIs being acknowledged as Inventors in Indonesia

Now turning to the Clause through which the Australian Court found AI can be an Inventor, specifically section 15 (b) and (c) of the Australian Patents Act, stipulating that a Patent may only be given to (b) a person who would, on the grant of a patent for the invention, be entitled to have the patent assigned to the person; and (c) or derives title to the invention from the Inventor or a Person mentioned in paragraph (b).[66] Now the Key Clause here is the word "Derivation" in Verse (c) and "Entitled" in Verse (b). Pursuant to Article 24 (2) of Law No.13 of 2016, though, Indonesian Patent Law does not expressly mention the word "Derive" (verb) or " Derivation" (noun), however, it has been acknowledged by the Australian Federal Court that the word "Derive" implies *"to receive*

[64] Thaler v Commissioner of Patents [2021] UK, ¶ 102
[65] Thaler v Commissioner of Patents [2021] UK, ¶ 146
[66] Australian Patents Act 1990

or obtain from a source or origin, to get, gain or obtain, and emanating or arising from."[67]

Indonesian Patent Law does not acknowledge the notion of Entitlement and Derivation of Patent Right through which a person who is not the Inventor can be entitled to have the Patent assigned to him or her by operation of Law. Nonetheless, the Law is not silent on the issue of Assignment or Entitlement. In fact, Article 21 (2) of Law No. 11 of 2008 regarding Electronic Information and Transaction provides (as already laid out above):

"(2) Parties responsible for any legal effect in the conduct of Electronic Transactions as intended by paragraph (1) shall be regulated as follow:

…… ……

c. if conducted by Electronic Agents, any legal effect in the conduct of Electronic Transactions shall become the responsibility of Electronic Agent providers*."*

Thus, all of the conducts of Electronic Agent or AIs shall be attributable to the Provider, meaning the Owner. In the event that an AI invented an Invention, though the Law does not acknowledge Inventor can be non-human, our Law, similar to section 15 (b) and (c) of the Australian Patents Act, also opens the possibility of Entitlement by way of Law. The biggest hurdle impeding Indonesia from acknowledging AI as the Inventor of Patent is the Provision of Inventor in and of itself that is stipulated very restrictively, requiring human. In response to that, I would reemphasize the legal opinion asserted by Kelsen, that is Law *"is a Science that deals not with*

[67] Thaler v Commissioner of Patents [2021] UK, ¶ 179

the actual events of the world (What is) but with norms (What ought to be)."[68]

For that purpose, one must not interpret or view law in light of current matters only but also with the view of the future occurrences, one of which is the Growth of AIs and the fact that Legislation on Machine Rights might come sooner than expected. Thus, turning now to the definition of Inventor provided by our Indonesian Patent Law which says " *One or several people who jointly implement the ideas that are poured into the activities that produce the Invention."*[69] Clearly now, if we look into the Etymology of the word "Inventor", any Language Expert upon analyzing it will find that TRIPs being the International Agreement that binds all of its Member States including Indonesia has echoed the word " Inventor" in Article 29 thereof, Applicant and Inventor are separate Individuals as it recognizes that the Patent can be granted to Applicant by way of entitlement though he or she is the Inventor. As the agreed use of the word "Inventor" is in English, any reasonable person must first contrast and compare the definition of Inventor provided by the English dictionary and Indonesian Dictionary.

The Respondent in the Thaler case argued that based on the Dictionary definitions provided by Oxford, Macquarie, and Fowler Dictionaries, Inventor is defined as "someone or a person who invents". Going with such a definition, Inventor is human according to Respondent.[70] However, Judge Beach, being the sole Judge

[68] Stanley Paulson, "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law," *Oxford Journal of Legal Studies* 12 (1992): 311–32.
[69] Article 1(3) of Law No. 13 of 2016 regarding Patent
[70] Thaler v Commissioner of Patents [2021] UK, ¶ 97-100

adjudicating the case begged to differ by arguing that Dictionary definition is *"inclusive and exemplary"*[71] and opined that Dictionary by nature is developed from *"Historical Usage"*[72]. That is to say, there would be no definition for "something that invents" when the something has not existed yet. The Judge went further and compared the word "Inventor" with "Computer", saying that back then Computer was defined as a Person who makes computations or computes but now the word is used for a thing or something that computes when Computer as a machine came into existence.[73] Therefore, the word "Inventor" should not be limited to humans but also include non-human such as AIs as the Dictionary develops itself from "Historical Usage". Be that as it may, Definitions provided by the Dictionary cannot trump the Statutory Provisions and it has been acknowledged in Indonesia that Law overtrumps any definitions or provided outside of the Provision. For example, even a Provision in a Contract or Agreement that legally binds two parties can be dismissed if it is found contrary to the Civil Code. By that reasoning, we cannot substitute the definition of Invention with that from the Dictionary Definition.

Nevertheless, the Definition of Machine that invents is not yet provided by the Dictionary, instead to have AIs acknowledged as an Inventor, the Definition of Inventor as provided by our Patent Law as *"One or several **people**"*[74] should be amended accordingly to also 98 include Machine and AIs as it is undeniable that AIs will definitely be Inventors of its own Inventions, Further, the

[71] Thaler v Commissioner of Patents [2021] UK, ¶ 150
[72] Thaler v Commissioner of Patents [2021] UK, ¶ 152
[73] Thaler v Commissioner of Patents [2021] UK, ¶ 149
[74] Article 1(3) of Law No. 13 of 2016 concerning Patent

entitlement of Patent Rights to a person, on the grant of Patent, must also be regulated by our Law since it is possible for any person, not being the Inventor of the Invention, be entitled for the Patent if by Law he is entitled to it. If our Law does not construe the word "Inventor" restrictively and follows the definition provided PCT and TRIPs, very clearly, Machines and AIs can be acknowledged as Inventors in its own right and pursuant to Article 21 (2) of Law No. 11 of 2008 regarding Electronic Information and Transaction, the conducts of 100 an AI shall be borne by its Provider or Owner, as such, similar to the Rationae Decendi of Judge Beach in the groundbreaking AI Case, we submit that any person can derive a title to the Invention from an Inventor that is an AI by virtue of the AI being at their disposal.

Such Derivation should be distinguished from an Assignment as Derivation here refers to Possessory Title does not require Assignment[75]. Possession may arise from Ownership alone and does not expressly require the Assignment to be made first either by operation of law or Agreement[76]. By reading Article 21 (2) of Law No. 11 of 2008 regarding Electronic Information and Transaction, the fact that the conduct of Electronic Agent is attributable to the Provider is enough evidence that the Possession of Electronic Agent alone will attribute the Provider to all of its Agent or AI's legal consequences including Derivation of Title over the Invention may come by virtue of Ownership.

Similar to Australian Patent Law, as both Indonesia and Australia adopt provisions PCT and TRIPs, it is factual that our Law

[75] Thaler v Commissioner of Patents [2021] UK, ¶ 185
[76] Thaler v Commissioner of Patents [2021] UK, ¶ 189

allows the Patent right over the AI's Invention by virtue of Ownership be granted to the Provider or Owner of the AI. Such Entitlement or Automatic Derivation can also be found in the case of Employment Contract in which the fruits of the Employees will be taken by the Employer, including their Inventions.

Albeit absent such Clause in our Civil Code, however, generally most of the Employment Contracts in Indonesia contain the Specific Clause of Entitlement over the Employees' Inventions. In contrast to our Civil Code, Article 332 of the Swiss Federal Act on the Amendment of Civil Code provides "Inventions and designs produced by the employee alone or in collaboration with others in the course of his work for the employer and in performance of his contractual obligations belong to the employer, whether or not they may be protected." Through its similar disposition, without Assignment, the Employer or in this case the Owner of the Electronic Agent being an AI can derive the Patent Right over the Inventions produced by their Employee and Electronic Agent respectively.

Similarly, Article 12 (1) of Law No. 13 of 2016 regarding Patent Right provides that "The Patent Holder for the Invention produced by the Inventor in an employment relationship is the party providing the work, unless agreed otherwise." Therefore, our Law also governs the entitlement of Patent by way of possession and ownership. In short, the only hurdle being faced by AIs to be recognized as Inventors is the strict clause provided by Article 1 (3) of Indonesian Patent Law. Recognizing Lege Feranda as a principle in our Legal System, we truly implore the Government to expand the restrictive definition of Inventor provided in our Patent Law so as to include AIs as well.

C. Conclusion

Our legal system is dynamic by nature and always evolving according to the prevailing issues. Recently, the Omnibus Law was declared formally defective and has to be rectified by the DPR accordingly and this is a living proof that our Law will not cease to change[77]. The only constant in the world is a Change of Law, as such, no reasonable person should find that our Legal System will only treat Humans as the Inventors of their Inventions. The two Court's Decisions in South Africa and Australia ruling[78] that AIs can be inventors are strong and established evidences not merely established inferences that in the view of the world will be a starting point for AIs to be regarded as Inventors of its own Inventions. In short, AIs can be Inventors of its Inventions, however, by virtue of Article 21 (2) of Law No. 11 of 2008, in line with the notion of Derivation and Entitlement, the Patent Right over its Invention will be transferred to its Provider or Owners.

We are not entertaining the argument that AIs can be granted Patent Right, however, the only argument offered in this Article is the fact that AIs can be inventors and our Patent Law must acknowledge upon entering Society 5.0. If based on the Legal Reasoning above such Acknowledgement is possible then Changes to our Provisions in Patent Law should follow in response to the emergence of AIs within the world that is constantly developing.

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[77] Sania Mashabi, "Putusan MK: UU Cipta Kerja Harus Dinyatakan CACAT Formil," Kompas.com, November 25, 2021. https://www.bbc.com/news/technology-58668534

[78] BBC Technology News, "AI Cannot Be the Inventor of a Patent, Appeals Court Rules," BBC, September 23, 2021. https://www.bbc.com/news/technology-58668534

REFERENCES

Laws and Regulations

Law No. 7 of 1994 concerning the Ratification of the Agreement Establishing the WTO
Law No. 14 of 2001 concerning Patent
Law No. 11 of 2008 concerning Electronic Information and Transaction
Law No. 12 of 2011 concerning Legislation Making
Law No. 13 of 2016 concerning Patent
Law No. 11 of 2020 concerning Job Creation
Law No. 19 of 2016 concerning Electronic Information and Transaction
Presidential Decision No. 16 of 1997 regarding Ratification of Patent Cooperation Treaty (PCT)

Books

Asshiddiqie, Jimly, and Muchamad Ali Safa'at. *Teori Hans Kelsen Tentang Hukum*. Jakarta: Konstitusi Press, 2006.

Kusumaatmadja, Mochtar. *Hukum, Masyarakat dan Pembinaan Hukum Nasional*. Bandung: Binacipta (1995).

Peñalvo, García, and Francisco J. *Information Technology Trends for a Global and Interdisciplinary Research Community*. Hershey: IGI Global, 2021.

Qamar, Nurul. *Perbandingan Sistem Hukum Dan Peradilan Civil Law System Dan Common Law System*. Makassar: Pustaka Refleksi, 2010.

Sunggono, Bambang. *Metodologi Penelitian Hukum*. Jakarta: PT Raja Grafindo Perkasa, 2003.

Journal Articles

Abbott, Ryan. "I Think, Therefore I Invent: Creative Computers and the Future of Patent Law." *Boston College Law Review* 2, 57, no. 4 (September 28, 2016).

Arajärvi, Noora. "Between Lex Lata and Lex Ferenda? Customary International (Criminal) Law and the Principle of Legality." *Tilburg Law Review: Journal of International and European Law* 15, no. 2 (2011): 163–83.

Butho, Zulfikar Ali. "Ratifikasi WTO dan Dampaknya pada Pembangunan dan Pembaharuan Hukum Ekonomi Indonesia (Suatu Tinjauan Ontologis)." *Keadilan Progresif* 2, no. 2 (2011).

Fernández, Fernando. "The Non-Obviousness Requirement in the Chilean Patent Law: A Critical Assessment." *Revista Chilena de Derecho* 38, no. 3 (2011).

Grewal, Dalvinder Singh. "A critical conceptual analysis of definitions of artificial intelligence as applicable to computer engineering." *IOSR Journal of Computer Engineering* 16, no. 2 (2014): 9-13.

Koza, John R. "Human-competitive results produced by genetic programming." *Genetic programming and evolvable machines* 11, no. 3 (2010): 251-284.

Paulson, Stanley. "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law." *Oxford Journal of Legal Studies* 12 (1992): 311–32.

Ridlwan, Zulkarnain. "Negara Hukum Indonesia Kebalikan Nachtwachterstaat." *Fiat Justitia Jurnal Ilmu Hukum* 5, no. 2 (2012).

Romiszowski, Alexander. "Artificial Intelligence and Expert Systems in Education: Progress, Promise and Problems." *Australasian Journal of Educational Technology* 3, no. 1 (1987).

Scotchmer, Suzanne, and Jerry Green. "Novelty and disclosure in patent law." *The RAND Journal of Economics* no. 1 (1990): 131-146.

Thaler, Stephen. "Synaptic Perturbation and Consciousness." *International Journal of Machine Consciousness* 6, no. 2 (2014): 75–107.

Thesis or Dissertations

Pratidina, Ilhami Ginang. "Keabsahan Perjanjian Melalui Agen Elektronik Dalam Sistem Hukum Kontrak Indonesia." PhD diss., Universitas Airlangga, 2017.

International Conventions/Treaties

TRIPS Agreement (Trade Related Aspect of Intellectual Property Rights)
PCT (Patent Cooperation Treaty)
Australian Patents Act 1990
Swiss Federal Act on the Amendment of Civil Code

Court and/or Arbitration Rulings

Thaler v Commissioner of Patents [2021] FCA 879

News or Magazine Articles

BBC Technology News. "AI Cannot Be the Inventor of a Patent, Appeals Court Rules." BBC, September 23, 2021. https://www.bbc.com/news/technology-58668534.

Cahya, Indra. "Indonesia Disebut Belum SIAP Terapkan Kecerdasan Buatan Di Sektor Ekonomi." Merdeka.com, February 13, 2020. https://www.merdeka.com/teknologi/indonesia-disebut-belum-siap-terapkan-kecerdasan-buatan-di-sektor-ekonomi.html

Jones, Alexandra. "Can Artificial Intelligence Be an Inventor? A Landmark Australian Court Decision Says It Can." ABC News, August 2, 2021. https://www.abc.net.au/news/2021-08-01/historic-decision-allows-ai-to-be-recognised-as-an-inventor/100339264.

Mashabi, Sania. "Putusan MK: UU Cipta Kerja Harus Dinyatakan CACAT Formil." Kompas.com, November 25, 2021. https://www.bbc.com/news/technology-58668534

Website Contents

Badan Pengkajian dan Penerapan Teknologi. "BPPT Siap Gelar Artificial Intelligence Summit 2020." Accessed December 17, 2021. https://www.bppt.go.id/berita-bppt/bppt-siap-gelar-artificial-intelligence-summit-2020.

Badan Pengkajian dan Penerapan Teknologi. "Strategi Nasional untuk Kecerdasan Artifisial (STRANAS KA) Indonesia Tahun 2020-2045." Accessed December 17, 2021. https://ai-innovation.id/server/static/ebook/stranas-ka.pdf.

Fauziah, Khairun Nisa. "Sosialisasi Undang-Undang Paten (Baru) Nomor 13 Tahun 2016." Accessed December 10, 2021. https://jdih.bppt.go.id/berita/10-sosialisasi-undang-undang-paten-baru-nomor-13-tahun-2016.

Galaski, Jascha. "AI Regulation: Present Situation and Future Possibilities." Liberties.eu. Accessed December 10, 2021. https://www.liberties.eu/en/stories/ai-regulation/43740

Hamer, Richard, Lauren John, and Alexandra Moloney. "DABUS: Decoding Australia's AI Decision." Accessed December 10, 2021. https://www.worldipreview.com/article/dabus-decoding-australia-s-ai-decision

Inventors Eye. "Can Recipes be Patented?" Accessed December 17, 2021. https://perma.cc/EN3V-9DY4

Keats, Jonathon. "John Koza Has Built an Invention Machine: Its creations earn patents, outperform humans, and will soon fly

to space. All it needs now is a few worthy challenges." Last modified April 19, 2006. https://www.popsci.com/scitech/article/2006-04/john-koza-has-built-invention-machine/.

Kementerian Koordinator Bidang Perekonomian Republik Indonesia. "Memasuki Era Society 5.0, Menko Airlangga Sampaikan Untuk Membangun Talenta Digital Dan Meningkatkan Literasi Digital." Accessed December 17, 2021. https://www.ekon.go.id/publikasi/detail/3397/memasuki-era-society-50-menko-airlangga-sampaikan-untuk-membangun-talenta-digital-dan-meningkatkan-literasi-digital

Mahardika, Zahrasafa P., and Angga Priancha. "Pengaturan Hukum Artifical Intelligence Indonesia Saat Ini." Accessed December 17, 2021. https://www.hukumonline.com/berita/a/pengaturan-hukum-artifical-intelligence-indonesia-saat-ini-lt608b740fb22b7.

Matulionyte, Rita. "Australian Court Says That AI Can Be an Inventor: What Does It Mean for Authors?". Last modified September 29, 2021. http://copyrightblog.kluweriplaw.com/2021/09/29/australian-court-says-that-ai-can-be-an-inventor-what-does-it-mean-for-authors/.

Singh, Maanvi. "Our Supercomputer Overlord Is Now Running a Food Truck." Last modified March 4, 2014. https://www.npr.org/sections/thesalt/2014/03/03/285326611/our-supercomputer-overlord-is-now-running-a-food-truck

Waranggani, Arundati Swastika. "Wamenkumham: AI Sulit Dikategorikan Sebagai Subjek Hukum." Cloud Computing Indonesia. Accessed December 10, 2021. https://www.cloudcomputing.id/berita/wamenkumham-ai-sulit-dikategorikan-subjek-hukum.

WIPO. "The PCT now has 154 Contracting States." Accessed December 17, 2021. https://www.wipo.int/pct/en/pct_contracting_states.html.

Impact of Artificial Intelligence on Intellectual Property Rights in Indonesia

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Abstract
In light of the rapid advancements that have been made in the field of technology, Artificial Intelligence, sometimes known as "AI," has experienced an exponential growth that is valuable for a wide variety of fields, including the economy, health, education, communication, and a great number of other fields. Whereas the deployment of Artificial Intelligence is still a contentious topic of discussion, due to the fact that most people do not yet have a clear understanding of the potential risks and/or benefits that Artificial Intelligence may offer. There is not a single industry that will be immune to the impact of Artificial Intelligence, and the field of Intellectual Property Rights (IPR) is not an exception to this rule. An in-depth investigation into the effects that AI has had on intellectual property rights (IPR) will be carried out with the help of this research paper. This investigation will focus on the prospective role that AI will play in the future of IPR, as well as the positive and negative impacts that AI has had on creativity and innovation within IPR.

Keywords: Technology; Artificial Intelligence; Intellectual Property Rights**.**

A. Introduction

There has been a significant amount of progress made in a variety of areas thanks to the rapid advancement that has taken place

in the sector of information technology. Humans, in general, stand to benefit from the existence of a number of technologies, and this is evident across a wide range of sectors including the economy, health, education, communication, and a great deal of other areas. Community activities are able to be more productive and successful when they make appropriate and effective use of technological resources. This is because technological advancements have made it easier to obtain information, which in turn has allowed for technological advancements to be more successful. There is no way to halt the quick advancement of technology, and it goes without saying that there are possible drawbacks involved with making use of advancements like these. However, there is no way to stop the rapid advancement of technology. One technology whose deployment is still the topic of much debate is the application of a technology that is known as artificial intelligence (AI). In spite of this, the development of technologies including artificial intelligence is not a recent occurrence.[1] The term AI was coined by John McCarthy, who made remarkable contributions to both the field of computer science and the field of artificial intelligence, is often regarded as the "father" of artificial intelligence and is considered one of the most influential innovators in the field. John McCarthy was not only widely recognized as the "Father of Artificial Intelligence," but also as a major computer scientist and cognitive scientist. McCarthy gave a presentation on the meaningof artificial intelligence at a conference held on the Dartmouth College campus back in the summer of 1956, which marked the beginning of AI research. The attendees of the

[1] Nadia Intan Rahmahafida and Whitney Brigitta Sinaga, "Analisis Problematika Lukisan Ciptaan Artificial Intelligence Menurut Undang-Undang Hak Cipta," *Jurnal Pendidikan Dan Konseling* 4, no. 2 (2022): 2, https://doi.org/10.31004/jpdk.v4i6.9911

conference, including McCarthy himself, went on to become the leaders of AI research for many decades.[2]

In the beginning, McCarthy defined the term AI as "the science and engineering of making intelligent machines."[3] However, the definition of AI was broadened in a larger scope by several people who also gave contributions to the research of AI, namely Kaplan and Haenlin of whom expanded the definition as "a system's ability to correctly interpret external data, to learn from such data and to use those learnings to achieve specific goals and tasks through flexible adaptation".[4] Furthermore, Poole and Mackworth expressed AI to be defined as "the field that studies the synthesis and analysis of computational agents that act intelligently."[5]

From then on, the field of artificial intelligence has been at the forefront of technological advancement and continues to make progress even to this very moment. Due to the rapid progression of the development of AI, researchers predict that AI will outperform humans in many activities in the next ten years, such as translating languages which was predicted to be at the year of 2024, writing high-school essays by the year of 2026, working in retail by the year of 2031, writing a best-selling book by the year of 2049, ot even working as a surgeon by the year of 2053. Researchers believe there is a 50% of AI outperforming humans in all tasks in forty-five years and automation

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[2] "Penemu Kecerdasan Buatan (AI) John McCarthy," Widya, last modified December 1, 2022, https://widya.ai/penemu-kecerdasan-buatan-ai-john-mccarthy/

[3] Dalvinder Singh Grewal, "A critical conceptual analysis of definitions of artificial intelligence as applicable to computer engineering." *IOSR Journal of Computer Engineering* 16, no. 2 (2014): 9-13. https://doi.org/10.9790/0661-16210913.

[4] Michael Haenlein et al., "Artificial Intelligence (AI) and Management Analytics," "Artificial Intelligence (AI) and Management Analytics." *Journal of Management Analytics* 6, no. 4 (2019): 341–43. https://doi.org/10.1080/23270012.2019.1699876

[5] "Artificial Intelligence Definition," Nunung Nurul Qomariyah, last modified November 9, 2020, https://international.binus.ac.id/computer-science/2020/11/09/artificial-intelligence-definition/

of all human jobs within 120 years, with Asian respondents expecting the aforementioned dates to be much sooner in comparison to those from North America.[6]

Since AI is created for the purpose of emulating the capabilities of human-like functions, the degree to which an AI is able to replicate human capabilities is used as a criterion for determining the types of AI. Thus, with the criterion system of comparison to human capabilities, AI is able to be categorized under several types of AI in which the level of proficiency of an AI is measured by how proficient an AI is able to perform activities as well as a human does. The more human-like functions an AI has, the more evolved it is considered to be, whereas, an AI with more limited functions is considered to be a more simpler type that is less evolved.[7]

Based on the criterion mentioned above, there are four types of AI classifications based on their human-like functionalities such as their abilities to "think" or even "feel" like a human, namely reactive machines, limited memory machines, theory of mind, and self-aware AI.[8]

AI systems have been around for a long time, the type of AI that is the most basic and traditional variety is Reactive Machines. These machines have very few available functions as these systems are unable to "learn" and do not become more effective over the course of time since they are unable to create memories or draw on previous experience to inform their current decisions. Reactive Machines AI

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[6] Katja Grace et al., "When will AI exceed human performance? Evidence from AI experts," *Journal of Artificial Intelligence Research* 62 (2018): 729-754. https://doi.org/10.48550/arXiv.1705.08807

[7] Naveen Joshi, "7 Types of Artificial Intelligence," Forbes Magazine, October 12, 2022), https://www.forbes.com/sites/cognitiveworld/2019/06/19/7-types-of-artificial-intelligence/?sh=54ba88b2233e.

[8] Ibid.

have absolutely no knowledge or understanding of the past and they respond solely to the world as it is at that specific time, not to any internally formed perception of the world that they may have. They exist only in the ultimate moment of the present. The fact that reactive machines do not store memory or make use of previous experiences to determine future actions is one of their key characteristics as they simply take in the environment around them and respond to what they find.[9]

Limited Memory AI is able to learn from its own past mistakes and can acquire empirical knowledge by watching data or activities and processing them. This form of artificial intelligence derives its ability to make forecasts and carry out difficult classification jobs from the combination of historical data and information that has been pre-programmed. It is the variety of artificial intelligence that sees the most widespread application at the present time. For example, self-driving cars employ AI with Limited Memory to monitor the speed and direction of other vehicles on the road. This allows the cars to "read the road" and make adjustments as necessary. They are able to improve their driving safety through the process of comprehending and evaluating the incoming data. Nevertheless, artificial intelligence with Limited Memory is, as the name suggests, still restricted in its capabilities. The data that is utilized by autonomous vehicles is temporary in nature and is not stored in the vehicle's long-term memory.[10]

[9] "Understanding the Four Types of Artificial Intelligence," Arend Hintze, last modified April 23, 2021. https://www.govtech.com/computing/understanding-the-four-types-of-artificial-intelligence.html.
[10] "4 Main Types of Artificial Intelligence: Explained," David Petersson, last modified June 17, 2021, https://www.techtarget.com/searchenterpriseai/tip/4-main-types-of-AI-explained.

The two types of AI that was mentioned above were already being implemented and can be found in abundance. As for the third classification of AI, Theory of Mind, has yet to be completed yet, it is still currently in an ongoing development that the researchers are innovating. The Theory of Mind type of artificial intelligence will be able to understand whom they are interacting with by perceiving the thought process, needs, beliefs, and emotions of those the individuals or entities that the AI interacts with. In essence, Theory of Mind AI is an AI that is focused on the imputation of emotions, morality and empathy of which will become the next milestone that researchers wish to achieve. Thus, to achieve the Theory of Mind type of AI, the area of artificial emotional intelligence (wherein it is already a budding industry and also an area of interest for present AI researchers) would need more research and development, as well as in other branches of AI.[11]

Building systems that are capable of forming their own self-representations is the final step in the evolution of AI. The ultimate goal of those working in the field of artificial intelligence is to develop software capable not only of comprehending consciousness but also of producing machines that have the capacity to think for themselves. Self-Awareness is a type artificial intelligence only lives in fiction but as is common with stories, it fills the audience with both hope and anxiety. An intelligence that is self-aware but not limited to humans possesses its own autonomous intelligence; hence, it is likely that humans will have to negotiate terms with the creatures they create as

[11] Ibid.

nobody can predict what will take place, either positively or negatively.[12]

The concept of artificial intelligence, which for a while seemed like a far-off fantasy, has recently emerged from the realm of science fiction films and into our everyday lives. This trend has been gaining steam over the past few years, which has resulted in numerous advancements across virtually all industries. There is not a single industry that will be immune to the impact of artificial intelligence, and the field of intellectual property rights is not an exception to this rule. Artificial intelligence will have a dual effect on the field of intellectual property rights. On the one hand, AI will prove to be an asset in the areas of patent and patent search tools, accurate and timely research, providing a mechanism to sort out inventions and ideas, and providing the innovator with a mechanism on patents already existing that are similar to his idea, amongst many other things. On the other hand, AI might also be used to steal intellectual property from other people.[13]

Within this study paper will analyze in depth regarding the impact that artificial intelligence has had on Intellectual Property Rights (IPR), the positives and negatives that AI has had on creativity and innovation in IPR, and it will also address the potential role that AI will play in the future of IPR. AI is regarded as a technology development that is capable of performing a wide range of tasks, from those that are relatively straightforward, such as performing calculations, to those that are extremely complicated. In recent years,

[12] "Types of Functional AI," EITC, accessed December 16, 2022, http://www.eitc.org/research-opportunities/new-media-and-new-digital-economy/ai-machine-learning-deep-learning-and-neural-networks/ai-research-and-applications/types-of-functional-ai.
[13] Ibid.

we have witnessed the explosive growth of artificial intelligence. In essence, in the not-too-distant future, artificial intelligence will be capable of performing anything a human can do, and in fact, much more than that. There is still a great deal of mystery around AI, and the merits and drawbacks of AI are currently one of the most leading, contested topics in the world. Even though there is not a single definition of artificial intelligence that is universally recognized, the most fundamental concept is that it entails the creation of machines and software that are able to carry out tasks that typically need the intelligence of humans. There is no question that the industry of Intellectual Property has been and will continue to be impacted by AI, and the junction of AI and Intellectual Property may have two-sided aspects to it. On the one hand, it has the potential to turn out to be beneficial to the field of intellectual property, but on the other, it has the potential to be detrimental.

In this paper, we will discuss in detail the impact that AI has had on intellectual property, paying particular attention to how it has affected copyright, patents, and traditional knowledge. In addition, we will discuss in detail the liability that may be incurred in the event that intellectual property rights are violated.

B. Discussion

B. 1. Copyright

The products of human thought in the realms of science, art, and literature are what give birth to and give rise to the concept of copyright. The concept of copyright is inherently present the moment a new creation is made by a human mind. A creator has a civil right to copyright protection over their work, the right to copy is considered a private right. The argument is supported by the fact that a creation

is brought into existence by the creativity of a creator. The creativity that come forth as a result of the creator's thinking and innovative efforts. A copyright cannot be anything that already existing outside of human activity or outside of the fruits of human creativity; rather, it must originate from the creative act of humans.[14]

Through Article 1 Paragraph 1 of Law Number 28 of the year 2014 concerning Copyright (Undang-undang Hak Cipta), the Government of Indonesia has stated that, "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of the legislation." From the definition put out in the UUHC it can be concluded that copyright is a natural right; it is absolute and its rights are protected as long as the creator lives, as well as an additional several years after the creator dies, the protection period after the creator dies is 70 years as accordance in the Copyright Act. As an absolute right, that right can basically be defended against anyone, those who have that right can sue for any violations committed by anyone.

What is considered to be a creation can be seen in essence as in accordance with Article 1 Point 3[15] of *a quo* law, namely:

(a) **Originality,** that refers to one own's idea that the creation made is personal in nature being the only one in the world as it is borne from the human mind and innovation thus allowing for the unique personality of the creator to shape the creation to be one of a kind;

[14] Ok Saidin, *Aspek Hukum Hak Kekayaan Intelektual* (Jakarta: PT Raja Grafindo Persada, 2015)
[15] Law Number 28 of 2014 concerning Copyright

(b) **Creativity,** in which the creation would be distinctive to its own characteristics that even though it may have similarities with another product or invention but seeing as each person is unique due to the human intellectual ability of cipta (produce), rasa (sense), karsa (intention); and

(c) **Tangible form,** meaning that it is the raw idea or concept that the creator has thought of has already been manifested and expressed into a form that is materialized, as ideas or concepts cannot be protected under the IPR.

The notion of IPR is to protect the creation that is mind by the intellectual mind, wherein in this matter is generally humans. Creating works, whether it be of art, literature, music or more, using artificial intelligence could have vital implications for copyright law. As traditionally, the creator of which made a computer-generated program that creates works is not an issue due to the fact that the program is only a helping tool that assists in the making of a creative process[16], it may be compared to a simple tool such as pencil and paper. As stipulated in Article 2 point (a), it stated that the Indonesian IPR law only applies to all Creation and product related rights of the citizens, residents and legal entities of Indonesia. Thus, with the latest developments of AI, the computer program can no longer be defined as only a tool due to the reason being that AI is able to act intelligently based on the information and data that it has received. This means that artificial intelligence is able to act and perform in the creative

[16] "Mungkinkah Monyet Memiliki Hak Cipta Atas Suatu Karya?", Utomo Priyambodo, last modified July 15, 2019, https://kumparan.com/kumparannews/mungkinkah-seekor-monyet-memiliki-hak-cipta-atas-suatu-karya

process that humans do without requiring human intervention, it can no longer be called merely a tool.[17] This leads to the issue at hand wherein AI is able to go through a creative and innovative process that humans do in which it poses a gap in the laws as AI is not a rightful creator that is recognized under the law and neither it is a holder of copyrights, therefore, posing as an issue when AI does produce work.

A recent issue that arose due the advancement of AI is an infringement of copyright of art.[18] As elaborated above, AI softwares develop by receiving information and data in which it processes and uses it to further its own code or software by generating from what it has received. Previously, the software programs of AI were not a threat as it was only able to generate blurry images in the size of a blueberry. However, in the present year, any person that does not even need prior knowledge in technology is able to use an AI software to copy an artist's style in a matter of mere hours. This illustrates the pressing issue of the legality and ethics of artificial intelligence.[19]

In regards to artificial intelligence, the World Intellectual Property Organization (WIPO)[20] specifically discussed the matter of AI where each country member begins to accept new challenges in regulating the substance of Intellectual Property Protection policies in

[17] "Artificial Intelligence dan Perlindungan Kekayaan Intelektual", Kiky Amaruly Utami, last modified February 10, 2022, https://mucglobal.com/id/news/2759/artificial-intelligence-dan-perlindungan-kekayaan-intelektual

[18] "UU Hak Cipta Perlu Mengatur Perlindungan Hukum Dari Kemajuan Kecerdasan Artifisial," Gusti, last modified October 15, 2021, https://www.ugm.ac.id/id/berita/21816-uu-hak-cipta-perlu-mengatur-perlindungan-hukum-dari-kemajuan-kecerdasan-artifisial

[19] "The Scary Truth about AI Copyright Is Nobody Knows What Will Happen Next," James Vincent, last modified November 15, 2022, https://www.theverge.com/23444685/generative-ai-copyright-infringement-legal-fair-use-training-data

[20] Andres Guadamuz, "Artificial Intelligence and Copyright," WIPO Magazine, October 2017, https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html

relation to AI innovation. In a nutshell, current legal products must be able to keep up with the innovation and current developments of technology. Moreover, the Director General of Intellectual Property of the Ministry of Law and Human Rights (Kemenkumham) named Freddy Harris stated that the law will always develop in suit following the existing developments.[21]

One could say and argue that the issue of which artificial intelligence poses is not important but the way how the law is implemented will have overarching implications, especially for the industrial and commercial sector. This may lead to a legal milestone in regards to artificial intelligence in Indonesia as long as the laws regarding copyright in the field of AI that is established encapsulates wholly the scope that must be clear and evident in its provisions, as well as its threshold to limit the substantial similarity of works in their respective fields. The laws should not be what hinders the developments of technology in Indonesia but rather encourage digital innovation to improve the growth of the economy and boost the well-fare of the people as a whole with its ingenuities.[22]

B. 2. Liability of Infringement

The use of still-copyrighted material without the creator's or rights holder's consent is known as copyright infringement and in this case, it violates certain exclusive rights granted to copyright holders such as duplicating, reproducing, distributing, displaying, or

[21] "Menyoal Perlindungan Hak Cipta Dalam Pemanfaatan Artificial Intelligence," Mochammad Januar Rizki, last modified July 02, 2020, https://www.hukumonline.com/berita/a/menyoal-perlindungan-hak-cipta-dalam-pemanfaatan-artificial-intelligence-lt5efd7b7e3097a/?page=all.
[22] "Tiga Antisipasi Masalah Pemanfaatan Artificial Intelligence Terhadap Perlindungan Hak Cipta," KlikLegal.com, last modified July 3, 2020, https://kliklegal.com/tiga-antisipasi-masalah-pemanfaatan-artificial-intelligence-terhadap-perlindungan-hak-cipta/

exhibiting creations, or creating derivative works. To deter and punish copyright violators, copyright holders typically follow particular technological and legal guidelines. Infringements of intellectual property rights is still frequent in Indonesia[23], and there are numerous instances of actual but unintentional copyright infractions as there are still a lot of people who are unaware of or misunderstand this. Therefore, legal restrictions apply to all types of copyright infringement. Infringers of copyright and patent laws are subject to fines and imprisonment and this complies with Law No. 28 of 2014 Regarding Copyright. In terms of granting creators or owners the ability to profit from investments made in their intellectual labor in the fields of industrial property and copyrighted works, intellectual property rights (IPR) are fundamentally the same as other material property rights. It is important to recognize the prevalence of intellectual property rights (IPR) violations in Indonesia. Technological advancements, particularly those in digital technology, are seen to contribute to the rise of intellectual property rights abuses (IPR).

In addition to having a positive effect on the availability of media for copyrighted works, advances in digital technology also result in good and contemporary display quality of copyrighted works. However, the exploitation of digital technology by some parties in order to engage in illegal activities has a detrimental consequence. IPR in the technology industry is the first victim of the infringement since improvements in digital technology have made it simple to violate IPR. Computer use makes it simpler to violate

[23] "Pelanggaran HAKI," Rudi Ferdiansah, last modified October 5, 2022, https://internationaljournallabs.com/blog/pelanggaran-haki/.

Intellectual Property Rights. The process of duplicating is made considerably simpler to conduct by computers' ability to copy and print as well as their ability to offer information online.

Enforcing the law's intended purpose is the only method to get around this. Even though the government already has a set of rules, sanctions for violations of Intellectual Property Rights (IPR) have not yet had a deterrent effect on the offenders, causing the level of violations to rise. Other challenges include the small number of law enforcement officials who deal with matters involving intellectual property rights and the leniency of the judgments rendered against offenders in order to avoid having a deterrent impact. In addition, the general populace lacks awareness of the need to respect and follow IPR regulations, and their purchasing power is limited. In order to develop and implement targeted strategic policies that will decrease and eradicate IPR violations as well as raise public awareness of the need to respect others' IPR, collaboration between law enforcement officials and relevant agencies is required.[24]

Since copyright is an exclusive right that belongs to the author[25], so in theory, any use of the work by another party—including economic rights as defined by UUHC—must have the author's consent[26]. Reproduction and/or commercial use of the work is banned without the author's or copyright holder's consent[27]. This prohibition has both civil and criminal repercussions for breaking it as stipulated in Indonesia's Law no 28 of 2014 regarding Copyright.

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[24] "Pelanggaran Hak Kekayaan Intelektual," Direktorat Reserse Kriminal Khusus, last modified April 12, 2019, https://reskrimsus.metro.polri.go.id/2019/04/12/pelanggaran-hak-kekayaan-intelektual/.

[25] Article 4 of Law No. 28 of 2014 concerning Copyright.

[26] Article 9 paragraph 1 of Law No. 28 of 2014 concerning Copyright.

[27] Article 9 paragraph 3 of Law No. 28 of 2014 concerning Copyright

Reproduction, according to UUHC, is the act or process of making one copy or more of a phonogram in any way and in any format, either permanently or momentarily. Commercial Use, on the other hand, refers to the use of Works and/or Related Rights products with the intention of receiving money or other forms of compensation. It is possible to classify the utilization of works as input data for AI development as reproduction. It is regarded as commercial use if it is done for profit. As a result, when using someone else's creation as input data, Indonesian AI developers must first get consent from the creator or copyright holder.

However, UUHC also governs copyright restrictions, which, under some circumstances, permit the use of works created by other parties without their consent or the consent of the copyright owners. For example for the matter of education or research that doesn't harm the reasonable interest of the copyright holder.

Thus, without the creator's or the copyright holder's consent, Indonesia can basically create AI for educational and research purposes by using works protected by copyright as input data. However, consideration for the Author's or Copyright Holder's legitimate interests must still be given when using the Work. The use of the Work may constitute a copyright infringement if it comes out that doing so would be harmful to the reasonable interests of the Author or the Copyright Holder.

The issue which arises is that, despite the fact that "reasonable interest" has been defined as an interest grounded on balance in receiving economic benefits from a creation, there is no precise way to define this "balance." Additionally, there has not yet been a court ruling in Indonesia with binding legal precedence that may be utilized to assess the "balance" of these legitimate interests.

Additionally, according to the provisions of Article 43 letter (d) UUHC, it is not considered a copyright infringement when third parties' intellectual property is created and distributed through non-commercial information and communication technology media. In other words, this can support the production of works in digital format that can be used as input data for non-commercial AI development in Indonesia. However, if the author subsequently expresses opposition to the development of a digital format for his work, this action is seen as a copyright violation. Because the creator can at any moment voice objections to any factors that might impede the AI development program for non-commercial interests currently ongoing in Indonesia, this clause could be a barrier to the development of AI for non-commercial interests in Indonesia.

C. Conclusion

The rapid development of artificial intelligence grew vastly in many aspects of research in perfecting and improving the capabilities of its software to emulate human-like functions. AI is classified into four types based on their abilities to "think" and "feel" like a human, namely reactive machines, limited memory machines, theory of mind and self-aware AI. With the ability of AI to be able to act and perform in the creative process how a human does without needing human intervention in its "creative process", such as creating art, music, literature, or more. This arises an issue wherein the Article 2 Point A stated that the rights of IPR only applies to citizens, residents, and legal entities, whereas AI cannot fall in either category which poses a gap in the law.

With concern of AI, the World Intellectual Property Organization (WIPO) addresses the matter of artificial intelligence where each country must begin to accept the notion of AI by regulating the substance and policies in relation to AI. The concept of artificial intelligence should not be something that must be hindered or stopped but rather Indonesia should embrace AI and encourage it as it can be the milestone of Indonesia in its legal aspect in regards to artificial intelligence. The laws and regulations regarding technology encourage innovation in the field of artificial intelligence to improve the economy and welfare of Indonesia.

The regulations of Law No. 28 of 2014 respecting Copyright must nevertheless be taken into consideration while using Works as input data in the creation of AI in Indonesia. Therefore, in theory, any use of the Works by third parties requires the Author's consent, including the use of copyright-protected Works as input data for the creation of AI. If a work protected by copyright is used as input data in the creation of AI without the author's consent, there are civil and criminal penalties for those who do so as stipulated in Law No 28 of 2014. Indonesia's Law No. 28 of 2014 Concerning Copyright, on the other hand, also specifies provisions regarding the duration of copyright protection and provisions regarding copyright restrictions, which permit the use of copyrighted works without the author's consent under specific circumstances without being regarded as a copyright infringement. Thus, an individual can utilize the laws regarding copyright restrictions while still paying attention to the specified requirements. In addition, an individual can also use Works that have expired, as using Works as input data for the creation of AI does not require authorization from the Author. Besides that, an

individual can also use works with copyright protection or those with an open license, which don't need the author's consent.

There are still a few provisions that have not been clearly regulated, including how to measure "balance" in applying "reasonable interest," how to determine a part of a work is important and distinctive so that it becomes a characteristic of a work in assessing a "substantial part," and how long a copy of a work can be used as input data before it becomes subject to copyright restrictions. Due to the ambiguity of certain of these rules, conflicts regarding the applicability of these copyright restriction measures may arise between the party developing AI and the Creator or Copyright Holder.

REFERENCES

Laws and Regulations

Law No. 28 of 2014 concerning Copyright

Books

Saidin, Ok. *Aspek Hukum Hak Kekayaan Intelektual*. Jakarta: PT Raja Grafindo Persada, 2015.

Journal Articles

Grace, Katja, John Salvatier, Allan Dafoe, Baobao Zhang, and Owain Evans. "When will AI exceed human performance? Evidence from AI experts." *Journal of Artificial Intelligence Research* 62 (2018): 729-754. https://doi.org/10.48550/arXiv.1705.08807

Grewal, Dalvinder Singh. "A critical conceptual analysis of definitions of artificial intelligence as applicable to computer engineering." *IOSR Journal of Computer Engineering* 16, no. 2 (2014): 9-13. https://doi.org/10.9790/0661-16210913.

Haenlein, Michael, Andreas Kaplan, Chee-Wee Tan, and Pengzhu Zhang. "Artificial Intelligence (AI) and Management Analytics." *Journal of Management Analytics* 6, no. 4 (2019): 341–43. https://doi.org/10.1080/23270012.2019.1699876.

Rahmahafida, Nadia Intan, and Whitney Brigitta Sinaga. "Analisis Problematika Lukisan Ciptaan Artificial Intelligence Menurut Undang-Undang Hak Cipta." *Jurnal Pendidikan dan Konseling* 4, no. 2 (2022): 2. https://doi.org/10.31004/jpdk.v4i6.9911.

News or Magazine Articles

Guadamuz, Andres. "Artificial Intelligence and Copyright." WIPO Magazine, October 2017. https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html

Joshi, Naveen. "7 Types of Artificial Intelligence." Forbes Magazine, October 12, 2022. https://www.forbes.com/sites/cognitiveworld/2019/06/19/7-types-of-artificial-intelligence/?sh=54ba88b2233e

Website Contents

Direktorat Reserse Kriminal Khusus. "Pelanggaran Hak Kekayaan Intelektual." Last modified April 12, 2019. https://reskrimsus.metro.polri.go.id/2019/04/12/pelanggaran-hak-kekayaan-intelektual/.

Ferdiansah, Rudi. "Pelanggaran HAKI." Last modified October 5, 2022. https://internationaljournallabs.com/blog/pelanggaran-haki/.

Gusti. "UU Hak Cipta Perlu Mengatur Perlindungan Hukum Dari Kemajuan Kecerdasan Artifisial." Last modified October 15, 2021. https://www.ugm.ac.id/id/berita/21816-uu-hak-cipta-perlu-mengatur-perlindungan-hukum-dari-kemajuan-kecerdasan-artifisial.

Hintze, Arend. "Understanding the Four Types of Artificial Intelligence." Last modified April 23, 2021. https://www.govtech.com/computing/understanding-the-four-types-of-artificial-intelligence.html.

KlikLegal.com. "Tiga Antisipasi Masalah Pemanfaatan Artificial Intelligence Terhadap Perlindungan Hak Cipta." Last modified July 3, 2020. https://kliklegal.com/tiga-antisipasi-masalah-pemanfaatan-artificial-intelligence-terhadap-perlindungan-hak-cipta/.

Petersson, David. "4 Main Types of Artificial Intelligence: Explained." Last modified June 17, 2021.

https://www.techtarget.com/searchenterpriseai/tip/4-main-types-of-AI-explained.
Priyambodo, Utomo. "Mungkinkah Monyet Memiliki Hak Cipta Atas Suatu Karya?" Last modified July 15, 2019. https://kumparan.com/kumparannews/mungkinkah-seekor-monyet-memiliki-hak-cipta-atas-suatu-karya.
Qomariyah, Nunung Nurul. "Artificial Intelligence Definition." Last modified November 9, 2020. https://international.binus.ac.id/computer-science/2020/11/09/artificial-intelligence-definition/
Rizki, Mochammad Januar. "Menyoal Perlindungan Hak Cipta Dalam Pemanfaatan Artificial Intelligence." Last modified July 02, 2020. https://www.hukumonline.com/berita/a/menyoal-perlindungan-hak-cipta-dalam-pemanfaatan-artificial-intelligence-lt5efd7b7e3097a/?page=all.
Utami, Kiky Amaruly. "Artificial Intelligence dan Perlindungan Kekayaan Intelektual." Last modified February 10, 2022. https://mucglobal.com/id/news/2759/artificial-intelligence-dan-perlindungan-kekayaan-intelektual.
Vincent, James. "The Scary Truth about AI Copyright Is Nobody Knows What Will Happen Next." Last modified November 15, 2022. https://www.theverge.com/23444685/generative-ai-copyright-infringement-legal-fair-use-training-data.
Widya. "Penemu Kecerdasan Buatan (AI) John McCarthy." Last modified December 1, 2022. https://widya.ai/penemu-kecerdasan-buatan-ai-john-mccarthy/.

Protection of Intellectual Property Rights During Covid -19 Pandemic

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Abstract
The purpose of this analysis is to state the implementation of certain regulations in intellectual property rights during the COVID-19 pandemic. In addition, definitions and a review of the literature on intellectual property rights help ease the transition to intellectual property principles. Intellectual property theory also helps define the subject by explaining natural rights theory, labor theory, social exchange theory and others. Furthermore, the types of intellectual property as well as their legal basis are needed to interpret the discussion and analysis. The discussion and analysis mentioned several regulations and laws relating to intellectual property in Indonesia. First, the Protection Arrangements related to the Intellectual Property Regulatory Law in Indonesia, the Form of Intellectual Property Legal Protection against the Use of Information Technology during the Covid-19 Period, Protection of Intellectual Property Rights Regulations Related to Patents, Digital Copyright Legal Protection and Indonesia's Efforts to Improve Intellectual Property Rights during the pandemic. To conclude, the conclusion serves as a bridge between all the concepts and definitions mentioned, which concludes that intellectual property is a branch of law that has a positive impact on society and the legal system.

Keywords: Intellectual Property Rights; COVID-19; Legal Protection.

A. Introduction

Intellectual Property and it's rights are an important aspect within the world of law. Laws regarding intellectual property prove

crucial and show its importance during disputes and its effects stem positively from the implementation of its laws and regulations. However, since the COVID-19 pandemic sent the world through multiple lockdowns and increased safety precautions, there are matters regarding intellectual property and its rights that need to be properly addressed.

Intellectual property comes in many forms, the most well-known types include copyrights, patents, trademarks, and trade secrets. Furthermore, the way Intellectual Property rights are developed and enforced is designed to benefit the world. Intellectual property rights that are strong and enforced safeguard the consumers. Because of Intellectual property rights, consumers can make wise decisions about the safety, dependability, and effectiveness of their products. The protection of intellectual property rights ensures that things are genuine and of the high quality that buyers expect.

Intellectual property rights are a popular sort of legal IP protection for the persons who develop a product. These rights, on the other hand, have made a significant contribution to the world, particularly in terms of economics. Many businesses in a number of industries rely on the protection of their patents, trademarks, and copyrights, while consumers may be confident in the quality of IP-backed products.

When it comes to the use of information technology, legal protection is required and one of them is the protection of intellectual property rights. In terms of intellectual property, Indonesia has officially recognized its existence, ensuring that it is protected. However, given the current pandemic situation, it is evident that additional adaptations and understandings regarding intellectual property protection as a kind of support for the use of information

technology are very important. The emergence of new businesses based on digital platforms is influenced by the existence of new advances in the era of digital disruption during the pandemic. It shows that Indonesians have made extensive use of today's digital platforms and there has been a lot of innovation in the intellectual property industry. To add the public's demand for solutions to prevent Covid-19 has increased. As a result, new items with intellectual property values are beginning to emerge. For example, pharmaceutical products which are one of the most essential and developing sectors during this pandemic.

This study uses a normative juridical approach with descriptive analysis. Where, the author conducts research preparation by explaining and analyzing legal provisions and adapted to current conditions or phenomena.This study uses secondary source data which consists of primary legal materials,namely: Law Number 28 of 2014 Regarding Copyright, Law Number 4 of 2001 concerning Patents, Law Number 15 of 2001 concerning Trademarks, Law Number 31 of 2000 concerning Industrial Design, Law Number 32 of 20000 concerning Layout Design of Integrated Circuits, Law Number 8 year 2011 concerning Information and Electronic Transactions. In addition, this study also use secondary legal resources in the form of KBBI, then other compulsory reading sources in the form of studies and legal literature Data gathering techniques are carried out online in the current pandemic situation, with data analysis techniques starting from collecting, sorting, displaying, and drawing conclusions on the data to construct an analysis in this study.

B. Discussion

B. 1. Concept of Intellectual Property Rights

John Locke defines intellectual property as the rights that a human has, whether tangible or not, but the consequence of his intellectuality would automatically become his.[1] In this way, the term "intellectual property right" ("IPR") refers to the legal framework that governs all works created as a result of the ability to create intellectual property that has a connection to a person's personal rights, namely, human rights.[2]

Property rights refer to the concept of ownership, which includes social and legal institutions that are always linked to the owner and the property. In general, the concept of ownership and wealth is linked to rights; there are known rights connected to ownership and rights relating to materials from a legal standpoint. Ownership is constantly tied to particular items, both materially and immaterially, hence material rights include ownership rights.

Intellectual property rights are material rights, rights to an object that comes from the work of the brain, the work of ratios (mind). The result of his work is in the form of immaterial objects, intangible objects.[3] Intellectual Property Rights is made up of three main words: rights, property, and intellectual property. Property is a concept that

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[1] Syafrinaldi, "Sejarah dan Teori Perlindungan Hak Kekayaan Intelektual." *Al-Mawarid Journal of Islamic Law* 9 (2003): 1-14.

[2] The term Intellectual Property Rights (IPR) is a replacement term for Intellectual Ownership Rights (HMI) which has been used so far. According to Bambang Kesowo, the term Intellectual Ownership Rights does not describe the main elements that form the meaning of Intellectual Property Rights, namely intellectual rights and abilities. The term Intellectual Property Rights (HMI) is still widely used, because it is considered logical to choose steps that are consistent within a normative juridical framework. The term HMI originates from the conception of Property Rights listed in the Civil Code Articles 499, 501, 502, 503, 504. [Bambang Kesowo, *Pengantar Umum Mengenai Hak Kekayaan Intelektual (HKI) di Indonesia, Kumpulan Makalah.* (n.d.) p. 139].

[3] Roscou Pound, *Pengantar Filsafat Hukum (terjemahan Mohammad Radjab)* (Jakarta: Bharatara Karya Aksara, 1982), p. 21.

can be acquired, transferred, purchased, or sold. Intellectual property refers to the wealth created by the creation of intellectual power of thought, such as technology, art, literature, music, novels, caricatures, and so on. As a result, Intellectual Property Rights are the authority/power to do something with intellectual property that is governed by norms or regulations.[4]

In the concept of property, every object always has an owner, every owner of an object has the right to his property, which is usually called Property Rights thus the owner has the right to fully enjoy and control the object. Property rights are absolute, which means that anybody can challenge a person's right to an object, and everyone must respect it. As a result, there is a direct relationship between the person who has the right and the item in this material right. Intellectual property rights are very abstract compared to visible ownership rights, but these rights are material rights and are absolute. In the civil law system in Indonesia, Intellectual Property Rights is included in property law which consists of two parts, namely the law of engagement (Article 1233 of the Civil Code and Article 499 of the Civil Code).

Strong intellectual property rights protection, in addition to providing legal certainty, gives benefits that can be felt from a political, economic, socio-cultural standpoint, and even defense and security can benefit from intellectual property rights protection. Some of the advantages include:

1. Providing motivation for the technological base to develop faster technology;

[4] Adrian Sutedi, *Hak Atas Kekayaan Intelektual* (Jakarta: Sinar Grafika, 2009), p. 38.

2. Creating a better climate for passion to grow, create or find something in the fields of science, art, literature, and industry protection; and
3. Creating a healthy environment to attract foreign investment and facilitate international trade.

B. 2. Principle of Intellectual Property

Intellectual property is anchored on a few principles, including:

a. Principle of Law/Natural Justice

The creator of a work, or another person whose work produces results from his in tellectual abilities, deserves to be rewarded. The creator of a work is obligated to obtain royalties and decide on how their work will be exploited and to avoid damage and harm to their intellectual work.

b. Principle of Economy

Due to the economic nature of humans which makes it a necessity to support life in society. From the ownership, someone will get benefits, for example in the form of royalty payments and technical fees. According to which the creator has the right to profit from the intellectual property he created after putting in the effort.

c. Principle of Culture

The artist must always deserve acknowledgment, stimulates inspiration, enthusiasm, and interest to encourage the birth of new creations that would later add to society's cultural development.

d. Social Principle

There is a balance between rights and obligations, and to create social integrity toward improvement. Any rights recognized by law and granted to individuals or associations or other entities, may not be granted solely to fulfill their interests, but to be recognized by law and for the benefit of the whole community.

B. 3. Theory of Intellectual Property

Several theories circulating around intellectual property include:

e. Natural Right Theory

Humans are moral agents by nature. The human body itself is actually the wealth of the person concerned. Humans who have the freedom to act are free to do so. Humans become more creative as a result of their freedom, using their minds to develop a new creation, design, or invention. The creator's creation is his or hers naturally and immediately. It is the right of the creator to use it commercially, socially, and culturally.

f. Labor Theory

Everyone has a brain, but not everyone is able to utilize their brain function (intellect) to produce something. This means that producing a work is not completely automatic, but through stages that must be passed. You could say there is a process to create something. People need to think, work hard and have skills and intentions. When someone has done all the labor, it is only true if the creator has full rights to his work. So that other people may not

copy other people's creations, therefore the creator must be given legal protection.

g. Social Exchange Theory

The principle of economic transactions underpins social exchange theory. People that provide goods and/or services will, understandably, expect to receive a reward. Not all social transactions can be assessed in monetary or material terms. In a social setting, there are occasionally more vital factors to consider, such as respect and friendship. It is critical that the creator be rewarded for his or her efforts. People can gain from the work, but they must also give something in return. That way, the creator can feel more appreciated and respected.

h. Functional Theory

In order for a work to meet the requirements for protection of Intellectual Property Rights, it must be functional and make a positive contribution to people's lives. Creations or inventions that have a negative impact on society do not deserve to be protected and their existence can be ignored.

B. 4. Types of Intellectual Property Rights

Intellectual property has its classifications according to its types, including:

i. Copyright

According to Law Number 28 of 2014, Copyright is defined as an exclusive right of the author conferred automatically on the basis of declarative principle once Works are embodied in a tangible form without lessening by virtue of restrictions in line with the rules of laws and

regulations. On the other hand, there are also related rights, these rights are rights related to copyrights such as the rights of performing artists, sound recording producers, and broadcasting organizations. The declarative principle of IPR means that it does not require registration to get legal protection.

Examples of the works protected by copyrights are literary works, artistic works, architecture, technical drawings and maps. novels, poems, plays, reference works, and newspaper articles are examples of literary works while films, musical compositions, and choreography are examples of artistic works.

j. Brand/trademark Rights

Trademark Rights are regulated under Law Number 20 of 2016 concerning Marks and Geographical Indications. A trademark is a sign that can be graphically displayed—in the form of an image, logo, name, word, letter, number, color arrangement, in two-dimensional or three-dimensional form, sound, hologram, or a combination of two or more elements—to distinguish goods and or services produced by individuals or legal entities engaged in the business of trading goods and or services. A trademark serves two fundamental functions.

The first one is identifying and distinguishing the services or items supplied by one company or seller from those sold by other companies or dealers. The second purpose is to teach the audience about the logo, name, or brand's origins. A registered trademark's validity is determined by the jurisdictions in which it is registered.

Most jurisdictions have a 10-year validity period from the date of registration, and the protection is thus renewable every ten years after that, providing the mark was used in accordance with the applicable trademark rules.

k. Patent Rights

Patent rights are a type of IPR that are governed by Law No. 13 of 2016 on Patents. Patent rights are described in this law as exclusive rights provided by the state to inventors for their technological inventions. This inventor either carries out the innovation personally or gives permission to another party to do so for a limited time. The patent owner has the authority to select who may or may not use the patented product. Patent protections helps prevent others from using, commercializing, distributing, or selling the product or the innovation without the permission of the patent owner. The period of time for the patent protection is 20 years from the application's filing date.

l. Geographical Indications

Alongside trademarks, Geographical Indications are also regulated under Law Number 20 of 2016 concerning Marks and Geographical Indications. Geographical Indications is a sign showing the area of origin of an object is referred to as a geographic indication. Geographical environmental elements, such as natural and human causes, or a combination of both, influence the qualities of goods and products produced. Furthermore, the product's

qualities, characteristics, and reputation should be primarily based on its origin. There is an immediate connection between the product and its original location of production because the attributes are dependent on the geographical location of production. A geographical indication right allows those who have the right to use the indicator to prevent it from being used by a third party whose product does not meet the requirements. However, the holder of a protected geographical indication cannot prevent someone from creating a product using the same procedures as those specified in the indicator's specifications.

A geographical indication is normally protected by obtaining a right to the sign that makes up the indication. A geographical indicator can be protected in four ways, the first one is through the sui generis system, the example of which is unique protection regimes. The second one is collective or certification marks. The third one is business practices focused techniques and the last one is unfair competition legislation. There are differences in these methods when it comes to critical issues like the prerequisites for protection and the scope of protection. Sui generis systems and collective or certification mark systems, on the other hand, share some common qualities, such as the fact that they establish rights for collective use by those who comply with stated requirements.

m. Trade Secret

Trade secrets are the next form of IPR. Undisclosed information is another name for this phrase. Trade Secrets

in Indonesia are governed under Law No. 30 of 2000 on Trade Secrets. A trade secret is information in the field of technology and/or business that is not widely known to the public, has economic value because it is valuable in company activities, and is kept confidential by the owner of the trade secret. Unlike other forms of intellectual property (IP), trade secrets are not registered with any government or regulatory agency. The trade secret privilege is automatic if the conditions for protection are met. The following items are considered trade secrets according to Article 2 of the Trade Secret Law which are method of production method of processing, selling strategy, other technological or business-related knowledge, aave economic value and unknown to the general public.

Examples of information that are protected by trade secrets are Any sensitive business information that gives a company a competitive advantage and is kept secret from the public. Secondly, financial data, formulas, and recipes, as well as source codes. Thirdly, Technical information, such as manufacturing processes, pharmaceutical test results, computer program designs and drawings, and commercial information, such as distribution systems, lists of suppliers and clients, and advertising tactics, are all examples of trade secrets. In trade secrets, it is important to make sure that the number of people who have access to the data or information should be kept to a minimum. Also, make a written agreement with the individuals who have access to the trade secret and sign non-disclosure

agreements with everybody who comes into direct or indirect touch with the trade secret. Lastly, any written item containing a trade secret should be labeled as confidential.

n. Plant Variety Protection (PVT)

Plant Variety Protection (PVT) is based on Law No. 29 of 2000 on Plant Variety Protection (PVP Law). This term refers to a group of plants of the same type or species that can be distinguished from each other by at least one defining trait and do not change when reproduced, as defined by plant form, plant growth, leaves, flowers, fruits, seeds, and the expression of characteristics, genotypes, or combinations of genotypes. The conditions to apply for PVP, if their variety satisfies these following criteria which are firstly it have to be a brand new variety. Secondly, It must stand out among other types. Thirdly, It must be consistent, with definable variances, predictable, and commercially acceptable. Lastly, It must be stable. The Plant Variety Protection is similar to a patent in that it serves the same goal. It enables the owner to be rewarded for the costs associated with producing the variety.

o. Integrated Circuit Layout Design (DTLST)

In Indonesia, DTLST protection is given under Law No. 32 of 2000 on Integrated Circuit Layout Design. A three-dimensional layout design of various elements and some or all of the interconnections in an Integrated Circuit is known as an Integrated Circuit Layout Design. The

three-dimensional laying is used to prepare the Integrated Circuit for production.

p. Industrial Design

A creation including the shape, configuration, or composition of lines or colors, or lines and colors, or a combination of the two, is known as industrial design. The form might be three-dimensional or two-dimensional, and it can be utilized to make a product, a good, an industrial commodity, or a handcraft. This sort of IPR protection is governed by the Industrial Designs Law No. 31 of 2000 Industrial Styles. The protection period for Industrial Design Intellectual Property Rights is ten years from the date of registration. Industrial Design Intellectual Property Rights can be passed via grants, inheritance, wills, or written agreements that are legally valid.

The major requirements for registering Industrial Design Intellectual Property Rights include that the design must be new/original and have never been seen before. It has never been announced, advertised, or commercialized except for research, teaching, and development with a maximum time limit of 6 months since it was produced. Secondly, It takes the shape of a visible shape that can be seen with the naked eye (without a magnifying glass). The form might be two-dimensional (2D) or three-dimensional (3D) in nature. Thirdly, The works of design must be mass-produced. This indicates that the design must be capable of producing at least 50 pieces, with the same requirement for each design.

B. 5. Legal Basis Governing Intellectual Property

Intellectual property rights are determined by legislation in compliance with applicable regulations. The legal basis includes:

1. Law Number 19 of 2002 was replaced by Law Number 28 of 2014 Regarding Copyright which contains copyright, copyright protection and protected works.
2. Law Number 4 of 2001 concerning Patents which includes investors and patent holders.
3. Law Number 15 of 2001 concerning Trademarks which includes brand, trademark, service mark, collective mark, and the period of protection against the mark.
4. Law Number 31 of 2000 concerning Industrial Design which includes industrial designs, and the period of protection.
5. Law Number 32 of 20000 concerning Layout Design of Integrated Circuits which includes layout design, and also integrated circuits.
6. Law Number 30 of 2000 concerning Trade Secrets which includes trade secrets, the scope of trade secrets, and also the protection of trade secrets

Intellectual Property Rights can be applied based on these regulations. As a result, any individual or organization with the right to their creative thinking on a work or product can receive it by registering it with the implementing authority, which in this case is the Directorate General of Intellectual Property Rights, Ministry of Law and Legislation.

B. 6. Protection Arrangements concerning Intellectual Property Regulatory Law in Indonesia

Intellectual property is divided into two types which are industrial property rights (patents for inventions, trademarks, industrial designs, and geographical indications) and copyrights (literary works such as poetry and novels, paintings, architectural designs and even performances by artists, phonogram producers, radio announcers in their broadcasts and broadcast programs on television). As defined by the World Intellectual Property Organization, the basis of intellectual property is the creations of the mind such as literary, artistic, inventions and so on that are used in the world of commerce. Moreover according to Laurence M. Friedman the implementation of Intellectual property shall include a structure in the form of an institution or institution created through a legal system with various functional types in supporting its enforcement, a substantive component (the systematic external aspect of the law or norms born of this system) and lastly, culture being the form of behavior that directs society to the law.

Different kinds of intellectual property have different laws that stipulate its protection. For example the protection of science, arts and literature regulated under Law Number 28 year 2014 concerning Copyright. The points regarding the protection in which the law stipulates are legal protection (Article 1 Paragraph (1), exclusive rights and moral rights (Article 4), dispute resolution (Article 95), personal commercialization that are able to harm creators (Article 7 (3) and Article 52).

Another example would be juridical protection related to technology as stipulated in Law Number 13 year 2016. As in this law there are points of protection such as protection for patent holders

(Article 160), in addition there is also regulation regarding the punishment for violators who without the rights or approval of the patent holder have generally used the product and production process of the patent (Article 161).

Furthermore, discussing Trade Secret is under Law Number 30 year 2000. As this article further explains about the legal protection of an industrial or business climate that can compete nationally and internationally. In this law it states the consequence to those who disclose and obtain the contents of trade secrets in Article 17. Still in accordance with the trade secret field, Law Number 32 Year 2000 about Integrated Circuit Layout Design. The purpose of this law is to regulate the maximization of intellectual property protection and to create creations including innovations found by the community in the Integrated Circuit Layout Design sector in order to improve in the industry, especially in the trade sphere.

Lastly there is the protection of plant variety protection, as it protects plants, with the stated objectives in order to protect plant breeders. The law that regulates plant variety is under Law Number 29 year 2000.[5]

B. 7. Forms of Intellectual Property Legal Protection Against the Use of Information Technology during COVID-19

With the objective of ensuring the integrity of public services and achieving good governance via the use of information technology, the Directorate General of Intellectual Property has launched an online intellectual property registration system since August 17, 2019. The online intellectual property registration system is a way to

[5] Ahmad M. Ramli et al., "Pelindungan Kekayaan Intelektual Dalam Pemanfaatan Teknologi Informasi Di Saat Covid-19." *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 45-58.

improve public services by utilizing information technology to protect intellectual property. Since the system's deployment, DJKI has reported that the number of intellectual property applications has surged to 42,501 from January to June 2020, which corresponds with the Covid-19 pandemic. The government, through DJKI, immediately launched a Virtual Counter (LokVit) as an alternative when the Integrated Service Counter was closed due to the implementation of physical distance on May 20, 2020. This was done to protect innovation throughout the spreading pandemic and to encourage DJKI to make service adjustments.

This increase in the number of people registering for intellectual rights reflects in increasing people's awareness and concern for the value of their intellectual property, which began during the pandemic Covid-19. The global and massive impact of the Covid-19 epidemic is undeniable. As a result, it has a significant impact on the activities of the entire community. As a result, given the current pandemic situation, appropriate policies are required to guide decision-making. Given the growing number of inventions whose protection rights were applied to DJKI throughout the pandemic, the government should be able to reconcile these advancements with more reliable and accurate protection.

B. 8. Protection of IPR Regulation related to Patents

In accordance to patent, the government issued a new regulation that stipulates the implementation of the IP regime, patents that is set out in Presidential Regulation No. 77 year 2020 concerning Procedures for Implementing Patents by the Government, which acts as a complementary tool for the Indonesian Patent Law. In the midst of a pandemic, the protection for patents is further stipulated in article

16 paragraph 3. Beforehand, article 16 regulates a protection for the holder of the right to be able to have exclusive rights in the implementation of the patent and prohibits other parties from exercising it without the holder's consent. Paragraph 3 of the article further discusses that there are several provisions that are not applicable where the execution involves a research, experiment, or other similar activity. Despite the limitation as stated in article 16 (3), in the field of patent for pharmacy the limitation of provisions is not applicable. Due to the importance of medicine in the current situation, it is also necessary because of its widespread usefulness. With that said, the implementation of patents for pharmacy under article 16(3) is not limited as regulated by the government. Without the limitation the government also participates in implementing patents without prohibiting patent holders from doing so.

In addition there are four aspects that the government should be attentive to regarding the protection for a new innovation during Covid-19 in Indonesia. Those four elements are: institutional and individual inventors, royal arrivals to inventors, patent annual fee incentives, and lastly would be commercialization and institutionalization. Not only being attentive to those four elements, but to also support investors to create a sense of trust along with to increase the productivity of its research activities. The outcome of trust and increment of productivity can create valuable innovations and have high competitiveness. The actions that are proposed to the government in order to support investors are: protection of intellectual property rights during the pandemic, updating

information systems online, adjusting regulations, giving more attention to inventors, and providing incentives.[6]

B. 9. Legal Protection of Digital Copyrights

Application services, content services, and application-content services are all categorized as computer programs under the Copyright Law, as stated in Article 1 point 9 UUHC. If a copyright holder's economic rights are violated, or if an account is pirated, it will be in violation of the provisions of Article 1 Number 17 of the Copyright Law, which regulates distribution. For example, the sale of illegal premium accounts will be classified as piracy, which is governed by Article 1 Number 23 of the Copyright Law. Article 95 paragraph (1) of the copyright law repressively regulates the form of legal protection provided by the copyright law on the object of copyright protection, which is carried out through alternative dispute resolution, arbitration, or courts. When an element of infringement is shown that violates Article 113 paragraph (4) paragraph (3) of the copyright law, there is also a criminal provision. According to Article 25 of the ITE Law, it is focused on the protection of intellectual property rights on Electronic Information and/or Electronic Documents combined into intellectual works, internet sites, and intellectual works contained within. Because electronic information and/or electronic documents have economic and moral worth for the creator, they should be protected.[7]

[6] Ibid.
[7] Ibid.

B. 10. Indonesia's Effort to Improve Intellectual Property Rights during the Pandemic

During a four days conference of the 61st World Intellectual Property Organization (WIPO) General Assemblies meeting at Geneva Switzerland from the 21st to 25th September year 2020 Indonesia Minister of Law and Human Rights gave out a statement regarding the increment of intellectual property protection in Indonesia, stating that "*in the midst of the pandemic, Indonesia has adapted the national intellectual property system through the launch of a virtual counter for copyright registration and registration of patents, trademarks and industrial designs.*" A virtual counter was established on 13th May 2020 by the Directorate General of Intellectual Property, Ministry of Law and Human Rights. The purpose of this establishment is in order to carry out public services in the current pandemic that is happening. Virtual counters act as a tool where the citizens can input any document data related to registration. The virtual counter is regulated in accordance with Law 25 year 2009 concerning public services where there is a lock which can also be interpreted as a key. With that key the public can open anything, given the convenience.

The Director of Information Technology DJKI highlights that with the virtual counter there will no longer be barriers of creativity for the people of Indonesia to register, however it can protect the creations of the people of Indonesia. Sucipto the Director of Information Technology DJKI states that "There are no obstacles for DJKI to serve. The DJKI website is the key to registering their creativity to try to run their creativity. The public can go to the URL

loketvirtual.dgip.go.id.[8] With virtual counters, it is not only limited to several registrations but it is able to collect data and documents for copyright registration and registration of patents, trademarks, and industrial designs. In addition to an effort of protecting intellectual property in industrial design, Indonesia underlines during the conference the importance of the members of the World Intellectual Property Organization to agree on a Design Law Treaty. As a sign of commitment Indonesia is willing to host the Diplomatic Conference for Design Law Treaties.

C. Conclusion

Intellectual property, and its rights have proven to be a vital branch of law. It's implementation and its uses are invaluable and indispensable for citizens of the world. IP protection specifically, helps companies and businesses grow through protection of their patents, trademarks, and copyrights. Indonesia, like almost every other country in the world, has recognized its importance and implementation.

Intellectual property and its history dates back centuries as early mentions of its doctrine were stated by John Locke, and later officially ruled as Intellectual Property Rights on the Ratification of the WTO (World Trade Organizations) Agreement. This was due to the advancement of science and technology that spanned around the past 300 years, and the nations of the world took the first step into prioritizing this new rule of law. The types of intellectual property

[8] "DJKI Luncurkan Loket Virtual Untuk Pelayanan Kala Pandemi," Direktorat Jenderal Kekayaan Intelektual, last modified May 13, 2020, https://www.dgip.go.id/artikel/detail-artikel/djki-luncurkan-loket-virtual-untuk-pelayanan-kala-pandemi?kategori=

such as patents, copyrights and trademarks are also important aspects of the branch of law, as it defines intellectual property being tied to more than just one concept. It means that these terms help individuals differentiate issues through different legal standpoints.

Furthermore, Protection Arrangements related to Intellectual Property Regulatory Law in Indonesia and the Forms of intellectual property legal protection against the use of information technology during Covid-19 are detrimental towards intellectual property in Indonesia, especially throughout the pandemic. Along with that, it is also important to note on the Protection of the IPR Regulation Related to Patents and the Legal Protection of Digital Copyrights and how those play a role in entrusting and practicing their function.

In conclusion, Indonesia's effort to improve Intellectual Property Rights during the pandemic relating it to the regulations that were implemented along with it have proven helpful in maintaining and even improving welfare and economy within the country. There is no doubt, as the years go on, and as technology and science continues to develop, intellectual property will improve along with it ensuring safety for citizens around the world.

REFERENCES

Books

Kesowo, Bambang. *Pengantar Umum Mengenai Hak Kekayaan Intelektual (HKI) di Indonesia, Kumpulan Makalah.* (n.d.)

Locke, John. *Two Treatises of Government.* England: Cambridge University Press, 1967.

Pound, Roscou. *Pengantar Filsafat Hukum (terjemahan Mohammad Radjab)*. Jakarta: Bharatara Karya Aksara, 1982.

Sunaryati, Hartono. *Hukum Ekonomi Pembangunan Indonesia.* Bandung: Binacipta, 1982.

Sutedi, Adrian. *Hak Atas Kekayaan Intelelktual*. Jakarta: Sinar Grafika, 2009.

Journal Articles

Bagja, Hafied Noor, Fitra Zuanda, Tejo Reno Indratno, and Obsatar Sinaga. "Intellectual Property Rights as an indicator of business success during a pandemic." *Review of International Geographical Education Online* 11, no. 7 (2021).

Ramli, Ahmad M., Rika Ratna Permata, Ranti Fauza Mayana, Tasya Safiranita Ramli, and Maudy Andreana Lestari. "Pelindungan Kekayaan Intelektual Dalam Pemanfaatan Teknologi Informasi Di Saat Covid-19." *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 45-58.

Syafrinaldi. "Sejarah dan Teori Perlindungan Hak Kekayaan Intelektual." *Al-Mawarid Journal of Islamic Law* 9 (2003): 1-14.

Website Contents

Direktorat Jenderal Kekayaan Intelektual. "DJKI Luncurkan Loket Virtual Untuk Pelayanan Kala Pandemi." Last modified May 13, 2020. https://www.dgip.go.id/artikel/detail-artikel/djki-luncurkan-loket-virtual-untuk-pelayanan-kala-pandemi?kategori=

The Objectivity of Intellectual Property Rights in Indonesia

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Abstract
Indonesia as a rechtsstaat, all positive laws must be obeyed and enforced to protect the interests of the people and the State. It is the duty of law enforcement officers to enforce the law in a bold and fair manner. The word objectivity we assert is defined as the lack of favoritism toward one side or another. Our group chose this topic because we have seen and read many cases in Indonesia where it is debatable whether verdicts are made fairly and that goes against the principle of legal certainty. We find that objectivity should be at the very center of Intellectual Property Rights ("IPR"). Our group feels that the Law of IPR in Indonesia in both enforcement and substance has failed to achieve justice, and rather has served to create confusion and has greatly harmed the corporate climate of Indonesia. This article will attempt to clarify the exact factors that are behind this issue and explain all the implications of a faulty IPR law, be it social, economic or political

Keywords: Justice, Right, Enforcement, Objectivity, Confusion

A. Introduction

Intellectual property ("**IP**") is concerned with any basic human cognitive structure, such as artistic, literary, technological, or scientific constructs. Intellectual Property Rights ("**IPR**") are the legal rights provided to an inventor or manufacturer to protect their innovation or product. These legal rights give an exclusive right on the inventor/manufacturer or its operator who fully utilizes his

invention/product for a specified time. In other words, the legal rights forbid anybody else from utilizing the IP for commercial reasons without the prior approval of the IP rights holder. Trade secrets, utility models, patents, trademarks, geographical indications, industrial design, layout design of integrated circuits, copyright and associated rights, and novel plant varieties are all examples of intellectual property rights. It is widely acknowledged that IP which currently plays a vital role in the modern economy.

IPR is a powerful instrument for protecting the inventor or creator of the IP's investment, time, money, and effort, since it grants the inventor or creator an exclusive right to utilize its invention or creation for a certain period of time. Thus, IPR influences a country's national economic development by supporting healthy competition and boosting industrial and economic progress reflecting the State's Constitution.

Illustrating the protection behind IPR, IPR works as legal mechanisms namely copyright, trademark, patent, and allows people to get recognition or financial profit from what they innovate or produce. The IP system attempts to establish an environment in which creativity and innovation exists and flourish. This is done through striking the correct balance between the interests of inventors and the greater public interest.

The scope of the IP protection is broad can be copyright or industrial property. Human innovation (creation of anything original) through human creativity must be protected and will be protected through the ius constitutum namely Law No. 28 of 2014 concerning copyright, Law No. 13 of 2016 concerning patents, Law No. 20 of 2016 concerning trademarks, Law No. 30 of 2000 concerning trade secret, Law No. 31 of 2000 concerning Industrial design, Law No. 29 of 2000

concerning plants, Law No. 32 of 2000 concerning circuit design jo. The Omnibus Law No. 11 of 2020 which is inline with the 1945 Constitution arguably to a certain extent. These laws provide each person with fundamental human rights mentioned under the 1945 Constitution Section XA, Article 28A – 28J, where through this protection, every person can enjoy the economic value and at the same time contribute to build national economy and potentially brings social welfare discussed in Section XIV of the 1945 Constitution granted by the State through the government. In other words, this IP protection in given in form of exclusive right (moral rights and economic rights) in accordance with the declarative principle if we refer to the Indonesian Copyright Law No. 28 of 2014 Article 1 Paragraph 1 which is different for example with Law No. 30 of 2000 concerning trade secret because this need to be seen case by case basis and what is the interest of the parties. On the other hand, IP protection is recognised by international treaties such as in Article 27 Declaration of human rights.

The purpose of IP protection is simply so that other people who do not own the right make economic use of other people's copyrighted works without the permission of the creator per se. This rationale works because human innovation arises from the results of human thought that produces a product or process that is useful for humans themselves in relation to building the State's economy and appreciating the creator, generating creativity's motivation. The creation of these laws itself encourages the peoples to be creative and gives the knowledge on how important creativity is.

There are 4 principles respected namely Economic principle, Legal certainty principle, Cultural principle, and social principle. The Economic principle explores the fundamental rights the human is

given where the human innovation through creativity shall offer economic values in terms of economic rights which will potentially give benefit to the copyright owner. Therefore, it can be used economically and not be abused by other parties who are not entitled. The Legal certainty principle allows the owner to get justice which means in the form of protection that guarantees the owner has full rights over the use of his work. The Cultural principle existence of state protection on intellectual property rights aims to encourage the development of literature, art, and science. Therefore, it can improve the standard of living, and bring economic benefits to the entire community, nation, and state. The Social principle regulates human interests as citizens, so that the rights that have been given by law to a work are a unit that is given protection based on a balance between the interests of the individual and the community creating social integrity.

In short, both copyrights and patents respect (in terms of acknowledgement) first to file system. Both patent and copyrights have their scope where for example you can protect a map in copyright but in patent you cannot because it is not novelty. Copyright and patent are different, to receive the exclusive rights, copyright get the right automatically and to propose or to file the application for protection is just a secondary to ensure the works is protected and for evidence in the court as well different with patent where it is granted based on the submission of an application to the Minister and later it will be decided whether the application will be accepted or rejected. In a patent, the first to file principle applies, meaning that a patent right will be granted to the person who first applies for patent protection for his invention.

B. Discussion

B. 1. Intellectual Property Rights in Indonesia as an Instrument For Legal Mechanisms

B. 1. 1. Intellectual Property Rights in Indonesia

Indonesia has ratified 5 international conventions in the field of intellectual property rights, which are as follows[1]:

1. Paris Convention for the Protection of Industrial Property and Convention Establishing the World Intellectual Property Organisation (Presidential Decree No. 15 of 1997 concerning Amendments to Presidential Decree No. 24 of 1979);
2. Patent Cooperation Treaty (PCT) and Regulation under the PCT (Presidential Decree No. 16 of 1997);
3. Trademark Law Treaty (Presidential Decree No. 17 of 1997);
4. Berne Convention for the Protection of Literary and Artistic Works (Presidential Decree No. 18 of 1997);
5. WIPO Copyright Treaty (Presidential Decree No. 19 of 1997).

The Intellectual Property Rights Act which was first enacted in Indonesia was a product of Dutch law, which was transferred and implemented in Indonesia by the colonial government of the Dutch East Indies during the colonial period. The Dutch colonial government implemented a pluralistic legal system in Indonesia. Customary law itself does not recognize the existence of Intellectual Property Rights, so that most Indonesian people rarely or at all have no dealings with the IPR law, except for the Trademark Law. Changes in political policy on Intellectual Property Rights in Indonesia began with the ratification of TRIPs ("Agreement on Trade Related Aspects

[1] Kementerian Perindustrian Republik Indonesia, "Hak Atas Kekayaan Intelektual", Departemen Perindustrian, https://kemenperin.go.id/download/140 /Kebijakan-Pemerintah-dalam-Perlindungan-Hak-Kekayaan-Intelektual-dan-Liberalisasi-Perdagangan-Profesi-di-Bidang-Hukum 2007.

of Intellectual Property") which is part of the agreement to establish the world trade organization WTO ("World Trade Organisation"). Indonesia's participation in the WTO requires Indonesia to make adjustments to national legislation governing Intellectual Property Rights. Various norms and standards for the regulation and protection of Intellectual Property Rights contained in the TRIPS agreement must be nationalized as soon as possible into our Intellectual Property Rights legislation, so that there will be harmonization of the regulation and protection of Intellectual Property Rights in Indonesia with those applicable in Indonesia.

World Intellectual Property Organisation ("WIPO"), has the main criterion of invention such as it must be useful, show the elements of novelty, it shall have unique feature characteristic that is not known in the existing body of knowledge in its technical sector. The invention must demonstrate an inventive step that a person with average technical understanding would not be able to discern. Therefore, it is patentable. What WIPO did was develop an international legal instrument that would give traditional knowledge, generic resources, and traditional cultural expressions effective protection. Under Article 4 regarding Patents, Utility models, Industrial designs, Marks, Inventors' Certificates, Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

Copyright Law, governed under Law Number 28 of 2014 concerning Copyright. Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work

is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations. Related Rights are rights related to Copyright which is an exclusive right for performers, phonogram producers, or broadcasting institutions. Trademark, governed under Law Number 20 of 2016 concerning Trademarks and Geographical Indications.

Trademark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, color arrangement, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) dimensions or more of these elements to distinguish goods and/or services produced by persons or legal entities in the activities of trading goods and / or services. While Geographical Indication is a sign indicating the area of origin of an item and/or product which due to geographical environmental factors including natural factors, human factors or a combination of these two factors gives a certain reputation, quality, and characteristics to the goods and/or products produced. Signs used as Geographical Indications can be in the form of labels or labels attached to the goods produced. The sign can be the name of a place, area, or region, words, pictures, letters, or a combination of these elements.

Patent, governed under Law Number 13 of 2016 concerning Patents. Patent is the exclusive right of the inventor to the invention in the field of technology for a certain period of time to carry out himself or give approval to other parties to carry out his invention.

Industrial design, governed under Law Number 31 of 2000 concerning Industrial Design. Industrial Design is a creation about the shape, configuration or composition of lines or colors, or lines and colors, or a combination thereof in the form of three or two dimensions

which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a design. products, goods, industrial or handicraft commodities

Trade Secret, Governed under Law Number 30 of 2000 concerning Trade Secrets (State Gazette of the Republic of Indonesia Year 2000 Number 242). Trade Secret is information that is not known by the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret.

Integrated Circuit Layout Design (DTLST), governed under Law Number 32 of 2000 concerning layout design or integrated circuit. Integrated Circuit Layout Design is a creation in the form of a three-dimensional layout design of various elements, at least one of these elements is an active element, as well as part or all of the interconnections in an integrated circuit and the three-dimensional layout is intended to prepare for the manufacture of an integrated circuit.

B. 1. 2. The Philosophy

From a philosophical standpoint, the discussion over the notion and the new IPR system began in the 18th century. The notion of safeguarding intellectual property rights known as the flow of Natural Law was inspired by the opinions of John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778). According to Locke, everyone has an inherent right to oneself and, as a result, the outcome effort (labor), since they have made sacrifices in the form of discovering, digesting, and contributing "personality" to anything, as articulated as follows: "*…yet every man has a "property" in his own 'person'. This nobody*

has any right to but himself. The 'labor' of his body and the 'work' of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labor with it, and joined to it something that is his own, and thereby makes it his property."

B. 2. The Objectivity

B. 2. 1. Concept of Objectivity

Let us start off by saying that the concept of objectivity by itself is shrouded with controversy, many scholars, legal, philosophical and others, have debated on two very key points with regards to objectivity. Its attainability, and its desirability. Learning from our predecessors, it has long been concluded that Objectivity is an ideal, meaning it is something that can never exist in reality and only in theory but there are some forms of conceptualisation that we can follow as well. Namely, that objectivity can be perfected through different means, first faithfulness to facts, second, the absence of commitments to norms and a freedom from values and third the absence of personal bias.

The first concept ascribes to the theory that objectivity comes from the choosing to only accept information that arises from proven facts. This is because facts are independent of perspective, a tree remains a tree no matter who views it. As such, much of the information that is accepted per se are observations rather than opinions. However, criticism remains because as mentioned previously, true objectivity is ultimately unobtainable and that most facts are facts until proven otherwise.

The second concept refers to the prerequisite in objectivity in that values must not exist, because values are subjective to each

person. Objectivity requires a certain disconnection from worldly concepts such as prejudice. If such a principle is followed, all objective judgments would be very easy to accept. The third concept, absence of personal bias, is the theory of objectivity being based on a generally accepted fact. For example, the length of 1 meter is objective but an arm's length is subjective. This represents the fact that objectivity can arise from generally accepted facts or norms.[2]

With that established, in terms of IPR, our group wants to use these concepts of objectivity to reshape the legal regime such that justice is more likely to be achieved. It is important to establish the relationship between objectivity and justice, our group feels that the more objective a judgment, the fairer it is and as such, a greater justice is achieved. As stated, true objectivity cannot be achieved, but in attempting to improve the system to its utmost, an objective verdict is much more likely to be reached and therefore, a fairer legal regime can be achieved to ensure legal certainty for all persons before the law.

B. 2. 2. Legal, Economic and Political objectivity

We find that there are several points in IPR that we as a group find confusing starting with some of the legal substance followed with the comments on economic and political objectivity in Indonesia. Our group has found that IPR law in general (not in Indonesia) is very clear in distinguishing the various different IPRs, however, this has not exactly brought about clarity on the issues of IPR.

Our group finds that there are overlapping areas between the various IPRs and this overlapping nature serves to convolute IPR

[2] Stanford Encyclopedia, "Scientific Objectivity", Stanford, https://plato.stanford.edu/entries/scientifi%20c-objectivity/

disputes. Maybe as a result of only learning IPR for one semester, our group cannot fully comprehend the exact legal regime of IPR, but through our understanding right now, we have come to the consensus that it would be beneficial not only for legal students, but more importantly the laymen. We claim that such complications do not provide objectivity to the extent at which the law does not provide certainty to the very property it is supposed to protect. In our point of view, entrepreneurs are usually the owner or holders of IPRs and by having such a complicated system, they have no choice but to rely on the lawyer to resolve their issues as there is no easy way to understand IPR. This dependent relationship in our view is a detriment to the corporate climate as now the entrepreneurs are at the mercy of the competence of their lawyer, as we find that not only are there few expert lawyers in IPR, there are even fewer judges who are knowledgeable in the field of IPR. As a result, our group finds that there are many cases with questionable outcomes that do not follow basic principles such as good faith. We find that the law is not exactly objective or unbiased when it comes to enforcement because of the many cases that we will list down in a later section. As for the economic aspect, we find that the system implemented in IPR also lacks economic objectivity. Economics is generally considered a social science and as such it is necessary for its assessment to be objective.

Looking at the economics of IPR in general, it is similar to a public good but differs in two ways, in that it is non-rivalrous, and it is non-excludable. Non-rivalrous refers to the notion that one person's use of the IP does not diminish another's use. Non-excludable means that it may not be possible to prevent others from using the information without authorization. To elaborate, this means that if the IP were to be copied illegally, there will be no sanctions and usage is

permitted. As such, there may be no incentive to create an IP in the first place. On the one hand, static efficiency requires wide access to users at marginal social cost, which may be quite low. On the other hand, dynamic efficiency requires incentives to invest in new information for which social value exceeds development costs. These are both legitimate public goals, yet there is a clear conflict between them. In Indonesia in particular, our group is of the opinion that the IPR laws are too strong, and that the laws encourage monopolies to form, suffering from inadequate dissemination of new information. This means that innovation from such companies are at the expense of the consumer currently, in exchange for payoffs to innovation that would benefit the consumer in the future.[3]

Looking at the political aspects of IPR in Indonesia, realizing that Indonesia recognizes and has ratified the WTO/ TRIPS Agreement, Indonesia is a sovereign State stated under the 1945 Constitution, this means Indonesia has the freedom to independently provide for the needs of its people. Additionally, this annunciate that Indonesia per se is not required to comply with all conventions to the maximum extent stipulated in the WTO / TRIPS. We note that the WTO/ TRIPS does not require signatory States to stipulate broader provisions than those included in the international agreement.

[3] Keith. E. Marcus, "Globalization and the Economics of Intellectual Property Rights: Dancing the Dual Distortion," *Peterson Institute for International Economics (2022),* https://www.piie.com/publications/chapters_preview/99/3iie2822.pdf.

B. 2. 3. Relevant Intellectual Property Cases

1. Onitsuka Tiger:[4]

   Onitsuka Tiger is a basketball sneaker and running shoes brand in Japan that has been under ASICS Corporation, Onitsuka Tiger's parent company since the 1950s. In Indonesia, two men namely: Theng Thing Djie and Liog Hian Fa registered a logo that looks like Onitsuka Tiger in 1994 for their own sneaker company. ASICS Corporation brought a lawsuit before the Central Jakarta Commercial Court and the Supreme Court in 2010 but the Commercial Court rejected ASICS Corporation demands and ruled that Djie and Fa were the rightful owners of Onitsuka Tiger in Indonesia.

2. Polo Ralph Laureno[5]

   Polo, owned by Richemont International S.A, Ralph Lauren, was in dispute with an Indonesian local businessman, Hartafadjaja Mulai, who claimed to file Polo on 19 February 2004. Polo Indonesia won the case against Richemont International S.A, therefore the Indonesian POLO is authentic as Only Indonesia has exclusive rights to manufacture original Polo for the Indonesian local market; resulting Polo by Ralph Lauren unable to open any distributor in Indonesia.

[4] Renaldo Gabriel, "How Two Indonesian Men Stole a 70-Year-Old Sneaker Logo", VICE, June 8, 2017, https://www.vice.com/en/article/3kzkyw/why-do-brands-like-asics-and-ikea-keep-loosing-copyright-complaints-to-local-companies.
[5] Patenin.com, "Richemont Menang Sengketa Merek Piaget Polo", Paten Indonesia, April 15, 2013, https://www.patenindonesia.com/?p=673.

3. Ikea[6]

   The Swedish furniture company IKEA lost the right to use its own brand name in Indonesia since a local company in Indonesia claimed the trademark. In 2014, the Jakarta Commercial Court granted the rights to use the Ikea brand to a company named PT Ratania Khatulistiwa that sells its own furniture with the acronym for Intan Khatulistiwa Esa Abadi. In short, Ikea lost a trademark case, but did not lose their right to the Ikea trademark all together because the Inter Ikea still has the right, the exclusive rights to use Ikea brand in Indonesia since the Indonesia company claimed that those registration were never used within the statutory period of 3 years after registration under the Trademark Law year 2001.

4. Toyota Lexus v. Prolexus[7]

   Toyota, Jidosha Kabushiki Kaisha, a Japanese businessman, lost a lawsuit against Welly Karlan, a local businessman regarding the Prolexus trademark. Toyota claimed that "Prolexus" that belongs to the Indonesian businessman has similarity in essential parts of "Lexus" which may confuse the public in general. The advocate from Mulia & Partners representing the Indonesian Businessman contends that Toyota is way too excessive since the famous mark is "Toyota" and not "Toyota Lexus". Furthermore, "Prolexus"

[6] Ipeg.com, "IKEA trademark in Indonesia, What Really Happened?", Intellectual Property Expert Group, December 16, 2021, https://www.ipeg.com/ikea-trademark-in-indonesia-what-really-happened/.
[7] Jiii. or.jp , "IP News in Indonesia", Japan Institute for Promoting Invention and Innovation, October 6, 2014, http://www.jiii.or.jp/chizaiyorozuya/pdf/kawara/ID_IPNews021_20141006.pdf.

is the mark for class 25 which is for clothing and not automotives. Therefore, they contend that it is impossible for the public world to get confused. These relevant case examples show how powerful the Indonesian Intellectual Property Right Law is without realizing how this system actually has a devastating impact towards the Indonesian corporate climate where foreign companies would contemplate before investing in the Indonesian local market. Furthermore, these decisions upheld by the Indonesian court encourages squatting where local businesses who registered foreign companies' trademarks try to offer to sell a company back its own brand when that company tries to set up an Indonesian office.

C. Conclusion

There are many other things that can be explored further and applied in the IPR protection system in Indonesia. The discourse of IPR as a custom in Indonesia, can be developed further by taking into account the current state of Indonesian society. Taking a glance at the concept of objectivity, Indonesia current IPR is still lacking in terms of protecting future foreign companies. To a certain extent foreign companies are detrimental to Indonesia since it contributes to national economic growth. We contend that the IPR system in Indonesia is not enforced properly, therefore, the International Treaties are not reflected precisely at the current practice.

REFERENCES

Journal

Maskus, Keith E. "Intellectual Property Rights in the Global Economy." *Peterson Institute for International Economics*, t.t.

Website

Gabriel, Renaldo. "How Two Indonesian Men Stole a 70-Year-Old Sneaker Logo." *Vice* (blog), 8 Juni 2017. https://www.vice.com/en/article/3kzkyw/why-do-brands-like-asics-and-ikea-keep-loosing-copyright-complaints-to-local-companies.

"IKEA Trademark in Indonesia, What Really Happened? – Intellectual Property Expert Group." 2022. https://www.ipeg.com/ikea-trademark-in-indonesia-what-really-happened/.

Japan Institute for Promoting Invention and Innovation. "IP News in Indonesia," 6 Oktober 2014. http://www.jiii.or.jp/chizaiyorozuya/pdf/kawara/ID_IPNews021_20141006.pdf.

Patenin.com. "Richemont Menang Sengketa Merek Piaget Polo." 2022. https://www.patenindonesia.com/?p=673.

"Stanford Encyclopedia of Philosophy.". https://plato.stanford.edu/entries/scientifi%20c-objectivity/.

The Debate on Copyright Term Extension in the US

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Abstract
Since the beginning of US copyright law, a prevalent interest in increasing the term of protection has predominated in court decisions as the value of intellectual property has strengthened. However, the ever-changing legislature that continually extends copyright term has raised controversy among critics who believe the law has become too broad. The aim of this paper is to examine the progression of copyright extension in the United States as well as to compare the arguments for and against such extension. The paper will also briefly look at the progression of copyright extension in Indonesia.

Keywords: Copyright, Copyright Term Extension, Copyright Duration, Us Copyright Law, Indonesia Copyright Law.

A. Introduction

The Copyright Clause under the United States Constitution states that Congress shall have the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries".[1] This preamble provides the purpose of copyright law in the US. The "limited times" provision should be of particular note as it provides some constraint on the powers of Congress to change

[1] Article 1, Section (8), Clause 8, *United States Constitution.*

copyright law. As the law changes, Congress and US courts must always keep this constitutional basis in mind as the goal of a legislation must fall in line with the purpose of "promot[ing] the progress of science and useful arts".

The interpretation of the language is often debated in court and used by both sides of the argument in relation to copyright extension. Both sides differ in opinion as to what promotes "progress of science and useful arts" as well as what constitutes "limited times". Other points of debate such as the economic incentive given by copyright are extensively argued by both sides.

In Indonesia, copyright term has seen a similarly upward trend since copyright laws were first introduced in the country. The increased interest in broader copyright protection as reflected in its laws has been undoubtedly influenced by its participation in international law treaties and a move to harmonize with the upward trend in many jurisdictions around the world including the United States.

The debate surrounding the extent of copyright protection continues well after the 1998 Copyright Term Extension Act, which largely presides as the current law for copyright protection in the US. Several cases following the act have tried and failed to challenge the law in respect to copyright duration. The latest copyright act enforced in 2018, the Music Modernization Act, modified the duration of certain sound recordings

B. Discussion

B. 1. History of Copyright Extension Prior to the Copyright Term Extension Act

The first federal copyright act establishing copyright laws in the US provided a term of merely 14 years.[2] Since then, there has been a prevailing general and economic interest to strengthen copyright protection, not only in scope but also duration. Such interest has pervaded in the changing US legislation throughout the following years, with omnibus revisions continually increasing copyright duration in the Copyright Acts of 1831[3] , 1909[4] and 1976[5]. The Berne Convention of 1886 required participating countries to provide copyright protection for a minimum of the life of the author plus 50 years. [6] Although the United States did not ratify the Berne Convention until March 1, 1989[7], the same duration of copyright protection had been provided under the Copyright Act of 1976. Congress has historically exercised much greater caution in increasing copyright term. Prior to the 1976 act.

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[2] Section 1 of *Copyright Act of 1790* provided a 14-year term of protection with a possibility for the copyright holder to renew protection for an additional 14 years, provided that at least one author was alive at the expiration of the first term.

[3] The Copyright Act of 1831, the first major statutory revision of US Copyright Law, extended term of protection from 14 to 28 years and extended the right to claim the 14- year renewal to the author's heirs.

[4] The Copyright Act of 1909 extended the copyright renewal term of 14 years to 28 years, which with the 28-year protection from the date of publication, totals to a maximum of 56 years of protection. Protection "may be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author is not living".

[5] Section 302 in the U.S. Copyright Act of 1976 revised copyright duration, extending protection to "a term consisting of the life of the author and fifty years after the author's death.

[6] Article 7 Section (1) *Berne Convention for the Protection of Literary and Artistic Works.*

[7] The Berne Convention Implementation Act of 1988 ratified the Berne Convention in the United States. Historically, the US had refused to join the Berne Convention for 102 years because it would require significant changes to its copyright law, particularly regarding moral rights and copyright formalities.

Congress has only changed copyright term twice. Since then they have changed it numerous times.[8] The report on the Copyright Act of 1909 demonstrates Congress' understanding of adhering to the purpose stated in the Copyright Clause' preamble and that unless an act was designed to accomplish such purpose, "it would be beyond the power of Congress".[9] In the report, Congress also implied the necessity of cost-benefit analysis to balance the extent of copyright protection, considering two questions: "first, how much will the legislation stimulate the producer and so benefit the public; and, second, how much will the monopoly granted be detrimental to the public"[10].

Following that, however, Congress stated very different rationales in justifying the 1976 Act, which are "almost entirely for the benefit of the author".[11] One of these rationales argued that "The 56-year term under the 1909 Act was not long enough to assure an author and his dependents a fair economic return, given the substantial increase in life expectancy".[12] Another accounted for the growth in communication media, which "substantially lengthened the commercial life of a great many works". In line with a more economic interest, another rationale reasoned that "the public does not benefit from a shorter term…as the prices the public pays for often remain the same after the work enters into public domain". Additionally, the life-plus-fifty year term would align with most nations' law and thus

[8] Darren Fonda, "Copyright's Crusader," The Boston Globe Magazine, August 29, 1999, quoting Lawrence Lessig.
[9] Copyright Act of 1909, The House Report 1.
[10] Edward C. Walterscheid, "Defining the Patent and Copyright Term: Term Limits and the Intellectual Property Clause." *Journal of Intellectual Property Law*, no. 2 (March 2000): 315–94.
[11] Ibid 386, quoting Melville B. Nimmer & David Nimmer, Nimmer on Copyright Section I.03[B].
[12] Ibid.

"expedite international commerce" and "open the way for membership in the Berne Convention".[13] In the report on the Berne Convention Implementation Act of 1988, Congress once again expressed the need to balance the societal costs and benefits of copyright extension. "The primary objective of our copyright laws is not to reward the author, but rather to secure for the public the benefits from the creations of authors." Thus despite the continual extensions recurring in US legislation, Congress seemingly does have the public interest in mind.

B. 2. Copyright Term Extension Act (CTEA) of 1998

In 1998, the United States Congress passed the Copyright Term Extension Act (CTEA), also known as the Sonny Bono Copyright Term Extension Act. Currently, it is the latest act in the United States to extend copyright term, amending the provisions of Title 17 in the United States Code with respect to copyright duration.[14] The act extended the term to the life of the author plus 70 years, and for a work of corporate authorship, 120 years from creation or 95 years from publication, whichever expires earlier. This effectively delayed the date of works made in 1923 or afterwards to enter into public domain as they would not do so until January 1, 2019 or later. Unlike copyright extension legislation in the UK and EU, the CTEA did not revive expired copyrights. Importantly, works such as the Mickey Mouse character, which made its first appearance in 1928 would not enter into public domain until 2024. The involvement of copyright owners

[13] Ibid.
[14] Section.505, *Sonny Bono Copyright Term Extension Act*.

such as The Walt Disney Company in lobbying in support of the act gave it its nickname, the Mickey Mouse Protection Act.

The Senate Report detailed the official reasons for passing the term extension, stating that it "ensure[s] adequate copyright protection for American works in foreign nations and the continued economic benefits of a healthy surplus balance of trade in the exploitation of copyrighted works".[15] The 21-year extension will "provide significant trade benefits by substantially harmonizing U.S. copyright law to that of the European Union".[16] It also ensures fair compensation for American creators, which will in turn stimulate the creation of new works and enhance economic incentives to preserve existing works.[17] As such, the extension will "enhance the long-term volume, vitality and accessibility of the public domain".[18]

B. 2. 1. Support for CTEA

Prior to the CTEA, Disney had been a major force on the legislation, employing lobbyists in Washington from 1990.[19] Among others, the proponents in favor of the act include California congresswoman Mary Bono[20] as well as companies such as Time

[15] Congress.gov, "Copyright Term Extension Act Of 1996.". Accessed December 10, 2021, https://www.congress.gov/congressionalreport/104th-congress/senate-report/315.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Alan K. Ota, "Disney In Washington: The Mouse That Roars." CNN. Cable News Network, Accessed December 9, 2021, https://edition.cnn.com/ALLPOLITICS/1998/08/10/cq/disney.html.
[20] Mary Bono is Sonny Bono's widow and successor in Congress. She was one of the original sponsors of the CTEA. The late Salvatore "Sonny" Bono was a California congressman whom the act was alternatively named after. Before he died, he had been a sponsor of a similar bill.

Warner, Viacom, Universal and major professional sports leagues (NFL, NBA, NHL, MLB).[21]

One of the arguments supporting the act is restated from a rationale of the 1976 Copyright Act in respect to the increased life expectancy of humans and how copyright extension is necessary to ensure appropriate remuneration for copyright holders. Another reasoned that copyrighted works brought significant monetary gain to the US and forms of media including VHS, DVD, Cable and Satellite have further increased the value and commercial life of movies and television series. It is also argued that there was a need to match US copyright term to in accordance with European law, otherwise the difference would negatively impact the international commerce of the entertainment industry. In a global marketplace copyrighted works that entered into public domain earlier in the US could be freely exploited internationally.[22] Furthermore, the Copyright Clause as stated in Constitution merely provides that copyright must only last for "limited times"and does not expressly state a substantive limit on the powers of Congress. Therefore, further extension of duration so long as it is finite and enacted "to promote the progress of science and useful arts"[23] is arguably constitutional.

Proponents assert the rationalization that copyright encourages such progress in the arts, and that with copyright extension, authors are encouraged to create original works rather than reuse old works. This does not take into account works that

[21] Linda Greenhouse, "Justices To Review Copyright Extension", New York Times, February 20, 2002, https://www.nytimes.com/2002/02/20/business/justices-to-review-copyright-extension.html

[22] Scott M. Martin, "The Mythology of the Public Domain: Exploring the Myths Behind Attacks on the Duration of Copyright Protection." *Loyola of Los Angeles Law*, no. 1 (2002): 275.

[23] Article 1, Section (8), Clause 8, *United States Constitution.*

incorporate from others and artists such as Andy Warhol, who would not likely have been able to exhibit or monetize from his works had the act taken place in the 1960s.

Additionally, artistic inspiration does not only come from the public domain. Copyright merely covers the expression of an idea and not the idea itself, therefore authors are free to take inspiration from previous works so long as they do not infringe.[24] Borrowing ideas is commonplace in the entertainment industry and works such as parody are protected under the fair use doctrine.[25]

In opposition, the First Amendment[26] is often used as an argument. However, Harper & Row v. Nation Enterprises[27] has decisively set a high bar to this argument as courts have held that copyrights are "categorically immune from challenges under the First Amendment".[28] Following the CTEA, Eldred v. Ashcroft failed to overcome the decision set in Harper in regards to the use of the First Amendment as a valid argument.

B. 2. 2. Opposition against CTEA

Before the CTEA was passed, Professor Dennis S. Karjala testified before the Committees on the Judiciary, contending that "extending the term of copyright protection would impose substantial costs on the United States general public without supplying any

[24] Martin. op. cit., p. 268.
[25] Section 107, Title 17, United States Code: fair use is a limitation to copyright
[26] First Amendment, *US Constitution*: "Congress shall make no law…abridging freedom of speech"
[27] The decision was held in Harper & Row v. Nation Enterprises deemed a magazine's advanced publication of excerpts from former President Gerald Ford's memoirs to be an infringement of his copyrights. Thus essentially, copyright laws do not restrict freedom of speech.
[28] Victoria A. Grezlak, "Mickey Mouse & Sonny Bono Go to Court: The Copyright Term Extension Act and Its Effect on Current and Future Rights." *UIC Review of Intellectual Property Law*, no. 2 (2002): 105.

public benefit. The extension bills represent a fundamental departure from the United States philosophy that intellectual property legislation serves a public purpose". A criticism of the CTEA also argues that the US traditionally has held a much narrower interpretation of the Copyright Clause, and that unlike many European nations, it does not consider copyright a "natural right".[29] Thus, opponents view that copyright extension "weakens the public domain and make public access to works more difficult".[30]

Opponents had tried to challenge the act's constitutionality, claiming that it does not "promote the progress of science and useful arts" and is instead a display of corporate welfare. Along with the 1976 Act extending copyrights, the CTEA is an arguable step closer to a perpetual copyright term, which violates "limited times" under the copyright clause.

A rebuttal to the life expectancy argument is that life expectancy had approximately only doubled from 35 years in 1800 to 77.6 years is 2002, in contrast to copyright term, which has tripled. Furthermore, life expectancy has historically been skewed due to infant mortality rates.[31]

In an amicus brief opposing the CTEA, seventeen prominent economists including five Nobel Prize winners estimated that the extension provided an incrementally improved present value of less than 1% for authors, while the additional transaction costs of term extension of existing works is much larger, especially for works with

[29] Professor Peter Jaszi, "The Copyright Term Extension Act", (Hearings on S. 483 Before the Senate Judiciary Comm., 104th Cong., 1st Sess, (1995).
[30] Jenny L. Dixon, "The Copyright Term Extension Act: Is Life Plus Seventy Too Much?" *Hastings Communications and Entertainment Law Journal*, no. 4 (1996): 977.
[31] "Life Expectancy by Age, 1850?2011, Infoplease, Accessed December 10, 2021, https://www.infoplease.com/us/mortality/lifeexpectancy-age-1850-2011 .

copyrights that will soon expire or would have already expired without the CTEA. With so little commercial benefit, the economic incentive provided by copyright extension is questionable.

Additionally, it is argued that copyright extension would encourage offshore production. For instance, derivative works could be created outside of the US where the copyright of the works would have been expired and the law would deny US residents access to these works. Finally, many authors would not be able to afford licenses nor have the resources to even meet a copyright owner if copyright was perpetual. As such, rather than stifling the creation of new works, proponents argue that an extensive public domain is actually necessary to sustain artistic creation.

B. 3. Challenges to CTEA

B. 3. 1. Eldred v. Ashcroft (2003)

The first decisive case to challenge the CTEA was Eldred, in which the Supreme Court upheld the constitutionality of the act. The petitioners represented were groups who relied on the public domain for their work including Eric Eldred, an Internet publisher who led the petition. They were accompanied by a large number of amici including the Free Software Foundation, the American Association of Law Libraries, the Bureau of National Affair as well as numerous copyright law and constitutional law professors as well as other academics. On the other hand, the amici in support of the law included Motion Picture Association of America, the Recording Industry Association of America, ASCAP and Broadcast Music Incorporated. The plaintiffs brought the challenge using three main arguments. First, the CTEA violated freedom of expression under the

First Amendment. Second, the retroactive term disregarded the originality requirement of copyright, granting monopolies to "unoriginal" works. Third, it violates the Copyright Clause' preamble, "To promote the Progress of Science and useful Arts", as well as the "limited times provision".

Relying on Harper, the court dismissed the First Amendment challenge. The court also held that the originality requirement from Feist Publications, Inc., v. Rural Telephone Service Coz[32] only applies to the initial eligibility of the subject matter. As such, a work will remain sufficiently "original" for the purposes of renewal if it was so in the first place. Finally, the court rejected that the language of the Copyright Clause placed a limit on Congressional power. The Court of Appeals affirmed that the CTEA was a "rational exercise of legislative authority". Justice Ruth Ginsburg agreed with Eldred and CTEA, restating the rationale behind the CTEA: the need to harmonize laws with the EU and the preservation and reissue of previous works.[33] The decision made in Eldred served as a decisive precedent in a number of copyright cases in which the courts firmly upheld Eldred and the CTEA favor of the law.

B. 3. 2. Empirical Tests

A 2012 study conducted by Christopher Buccafusco and Paul J. Heald investigated three justifications of copyright extension: that public domain works will be underused and less available, that common ownership will lead to the overuse and degradation of

[32] Feist Publications v. Rural Telephone Service Co. held that telephone directory listings compiled in white pages directories are uncopyrightable facts.
[33] *ELDRED et al. v. ASHCROFT, ATTORNEY GENERAL certiorari to the united states court of appeals for the district of columbia circuit.*

works[34], and that the reputation of the original works will be tarnished by poor quality derivative works. The experiment compared the sales of audiobooks of novels in two decades on either side of the public domain divide.[35] The results revealed that works in the public domain were almost twice as likely to be available than copyrighted works[36], found no evidence of overexploitation in public domain works[37], and found that the quality of the audiobook recordings did not undermine the cultural and economic value of works.[38] Heald later conducted another experiment assessing a random sample of new books on Amazon.com and interestingly, the results showed that public domain books from 1880 were sold at double the rate of copyrighted books from 1980.[39] He concluded that "copyright term extensions have prevented the development of a market for re-printing a massive number of 'missing' works from the 20th century".[40]

Additionally, Buccafusco and Heald dismiss the incentive-to-create rationale of extending copyright (i.e. that the author would be incentivized to create more works if his copyright generated more money), as such incentive would not apply in the case of already existing works.[41] There would be no point to provide incentive to a dead author, for example.

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[34] Christopher Buccafusco and Paul J. Heald, "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension." *Berkeley Technology Law Journal*, no. 1 (2013): 15-16.
[35] Ibid
[36] Ibid, p. 22
[37] Ibid, p. 31
[38] Ibid, p. 26
[39] Paul J. Heald, "How Copyright Keeps Works Disappeared", *Journal of Empirical Legal Studies* , no. 4 (2014): 829–66. https://doi.org/10.1111/jels.12057.
[40] Ibid p. 49
[41]Christopher Buccafusco and Paul J. Heald, "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension." *Berkeley Technology Law Journal*, no. 1 (2013): 3

B. 4. Copyright Extension in Indonesia

Current legislation for copyright in Indonesia is set out in Law No. 28 of 2014. The notion of copyright is defined in Article 1 point 1 as "Copyright means an exclusive right of the author vested automatically on the basis of declaratory principle after Works are embodied in a tangible form without reducing by virtue of restrictions in accordance with the provisions of laws and regulations". Essentially, it is a legal framework which allows entrepreneurs alike to operate with protection on their intangible, proprietary assets. The Indonesian government, specifically via the Patent Office or Directorate General of Intellectual Property (DGIP) under the Ministry of Law and Human Rights of the Republic of Indonesia (MOLHR) is an agency responsible for enforcing copyright regulations with its name and structure having changed multiple times since independence.

The enactment of the 2014 Copyright Law follows prior amendments beginning in 1982 when the Indonesian government revoked the Dutch Copyright act and replaced it with Act No. 6 of 1982, again amended by Act No. 7 of 1987, Act No. 12 of 1997, Act No. 19 of 2002 and the latest one being the current legislation or Undang Undang Hak Cipta Baru. The new laws did not remove copyright infringement on music, movies and softwares but instead revamped the old fashioned ones through key adjustments.

Initially, in Act No. 6 of 1982 on Copyright, the regulations regarding duration of copyrights are stipulated under Article 26(I), which states that "Any copyright shall be valid for the lifetime of the author concerned and 25 years after his demise." Therefore, when the law was first introduced in Indonesia, the regulations regarding the copyright terms were limited to 25 years. This term has been extended

throughout the updated regulations and laws regarding Copyright, until the most recent act, which is 'Undang Undang Hak Cipta Baru' (Law no. 28 / 2014 on copyrights). Within the newest provision, under Article 58(2), it states that "In the event that the Works as referred to in Section (1) is owned by 2 (two) or more persons, Copyright protection will endure for a term consisting of the life of the last surviving Author and 70 (seventy) years after such last surviving author's death, commencing from 1st January of the year following the event.", and moreover in Article 58(3), it states that "Copyright protection to the Works as referred to in section (1) and section (2) owned or held by a legal entity endures for 50 (fifty) years since its first Publication."

The law stipulates the applicable regulations more specifically, and divides the duration into two separate situations, where the durations are 50 and 70 years respectively to the situations stated in each article. Therefore, we can see the development of the duration of copyrights, and how the term has now been extended from 25 years to 50 and 70 years each.

A change in the time frames for the legal protection of copyright and other intellectual properties had been decided in the 2014 law. For original creators, the protection period for their work applies for 70 years after their passing, beginning 1st of January in the following year. If it is owned by a legal organization, the protection applies for 50 years. Regarding economic profits, the creator has full rights which extends to official beneficiaries that inherit the works. The addition of this law also limits the transfer of economic rights through flat selling as this will ease the process in the case that the beneficiaries cannot be contacted immediately after the passing of a creator. In terms of dispute settlements, the new law offers a wider

range of plausible solutions such as arbitrage, mediation, criminal lawsuits and court settlements.

The improved legislation now extends intellectual property protection to marketplaces such as stores, shopping centres and other retailers. The owners and managers are in charge of making sure there are no copyright or trademark infringements in their establishment. Intangible movable objects count as copyrights and trademarks which can now be used as fiduciary warranties. Any copyrights and trademarks that the Indonesian government have deemed as violation against moral norms, public orders, national security and other formal and legal aspects will be abolished. Original creators, trademark/brand owners and official beneficiaries will have the royalties generated from commercial uses of the intellectual properties. The Collective Management Association will welcome original creators, brand and trademark owners, and official beneficiaries automatically for profits.[42] Lastly, the new law alters the use of copyrights and other intellectual properties. It regulates the use of IPs as parts of responses towards the development of communication and information technologies.[43]

Changes in legislation also coincide with Indonesia's participation in international treaties. In Law No. 7 of 1994, the government ratified the establishment of the World Trade Organization, which includes the Agreement on Trade-Related Aspects of Intellectual Property Rights. The TRIPS agreement

[42] Cekindo Business International, Ltd. "Copyright Indonesia: Its Important Role in Business." accessed December 10, 2021, https://www.cekindo.com/blog/copyright-lawindonesia.
[43] BpLawyers "Indonesia's New Copyright Law, Great Way Deal with Copyright Infringement.", accessed December, 2021, https://bplawyers.co.id/en/2018/01/30/indonesias-new-copyright-law-great-way-deal-copyright-infringement/

incorporated provisions of the Berne Convention on copyright including those on copyright duration. In 1997, the government ratified the Berne Convention through Presidential Decree No. 18 of 1997 and also ratified the World Intellectual Property Organization Copyright Treaty through Presidential Decree No. 19 of 1997.

B. 5. Recent Legislation

The latest change in US copyright law, The Music Modernization Act (MMA) was signed into law by President Donald Trump on October 11, 2018. The Act sought to modernize copyright-related issues in regards to music and audio recordings to adapt to technology such as digital streaming. The act received strong support from members of the music industry as well as digital streaming services and related industry groups. It consisted of three separate consolidated bills introduced during the 115th United States Congress. Of these bills, the CLASSICS Act is notable in relation to copyright terms.

The Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act, or the CLASSICS Act, was introduced by Congress on July 19, 2017. The Act sought to "provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes".[44] The copyrights of these recordings would now have an expiry date of 2067 or later, providing a total term of protection of 144 years. Previously, sound recordings made before February 15, 1972

[44] Congress.gov, "All Information (Except Text) for H.R.3301 - CLASSICS Act." Accessed December 10, 2021. https://www.congress.gov/bill/115thcongress/house-bill/3301/all-info?r=1

were not covered under federal copyright law, which left protection to be handled in individual states. This consequently complicated procedures of copyright enforcement and royalty payments. The act was eventually consolidated into MMA on April 10, 2018.

Upon introduction, the CLASSICS Act had been met with some criticism from a vocal group of law professors, more than forty of whom had signed a letter pleading Congress to reject the act.[45] They argued that the act did not serve the purposes of copyright law and was not introduced to incentivize the creation of new works but simply to "provide new rewards to existing copyright owners".[46] Professor Lawrence Lessig, who had been forthright in his position against the CTEA and notably a lead counsel for Eric Eldred voiced his dissenting opinion, anticipating other copyright owners to complain in the future about the "unfairness" of the protection given to creators of legacy recordings. With its drastic reforms on copyright law, the enactment of the MMA has substantial ramifications for the music.

C. Conclusion

Both sides of the debate surrounding copyright extension present extensive arguments. The support for copyright extension largely favors copyright owners. In addition to providing economic benefits, proponents cite the Copyright Clause to argue that fair

[45] Alexander MB and others to Chairman Grassley, Ranking Member Feinstein, and members of the Senate Judiciary Committee, "Public Knowledge", accessed March 24, 2019
https://www.publicknowledge.org/assets/uploads/documents/Classics_Act_IP_Professors_L etter_5.14.18.pdf
[46] Ibid, p. 1

compensation to the author will inevitably incentivize creation. Such arguments have prevailed in court, though it is unquestionable that lobbying from interest groups has had a significant influence on the presiding law. On the other hand, critics of copyright extension contend that with less works in the public domain creation will not be incentivized, but rather, stifled. They reason that a shorter duration is in public economic interest. Arguments against copyright extension have been supported by numerous law professors, distinguished economists and other academic groups. More importantly, empirical evidence that has surfaced debunks the grounds of many of the arguments underlined by proponents of extension. For example, there is reason to assume copyright extension has not substantially benefited copyright owners. Such evidence brings a more compelling argument to the opposing side of the debate.

Presently, however, Congress and US courts appear to side overwhelmingly in favor of extending protection to copyright owners. With the MMA and the CLASSICS Act further extending the rights of certain works, it can be expected that copyright terms would continue to be extended. The current state of the law does not look optimistic for opponents of copyright extension. Harper and subsequently Eldred deny the use of the First Amendment to legally challenge the constitutionality of copyright extension. Eldred also asserts that the Copyright Clause does not impose any limit to the powers of Congress, signifying that Congress is free to enact any further change to copyright duration.

Nonetheless, the debate surrounding copyright extension continues. While Congress and courts show no signs of changing their position, voices of opposition can still clearly be heard.

REFERENCES

Journal Article

Buccafusco, Christopher, dan Paul J. Heald. "Do Bad Things Happen When Works Enter the Public Domain?: Empirical Tests of Copyright Term Extension." *Berkeley Technology Law Journal* 28, no. 1 (2013): 1–43.

Dixon, Jenny. "The Copyright Term Extension Act: Is Life Plus Seventy Too Much." *Hastings Communications and Entertainment Law Journal* 18, no. 4 (1 Januari 1996): 945.

Grzelak, Victoria. "Mickey Mouse & Sonny Bono Go To Court: The Copyright Term Extension Act and its Effect on Current and Future Rights, 2 J. Marshall Rev. Intell. Prop. L. 95 (2002)." *UIC Review of Intellectual Property Law* 2, no. 1 (1 Januari 2002). https://repository.law.uic.edu/ripl/vol2/iss1/6.

Heald, Paul J. "How Copyright Keeps Works Disappeared." *Journal of Empirical Legal Studies* 11, no. 4 (2014): 829–66. https://doi.org/10.1111/jels.12057.

Martin, Scott. "The Mythology of the Public Domain: Exploring the Myths Behind Attacks on the Duration of Copyright Protection." *Loyola of Los Angeles Law Review* 36, no. 1 (1 September 2002): 253.

Walterscheid, Edward. "Defining the Patent and Copyright Term: Term Limits and the Intellectual Property Clause." *Journal of Intellectual Property Law* 7, no. 2 (28 April 2016): 315.

International Conventions/Treaties

Berne Convention for the Protection of 'Literary and Artistic Works (1886)

Berne Convention Implementation Act (1988) US Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act US

Copyright Act 1911

Copyright Act of 1790 US

Copyright Act of 1831 US

Copyright Act of 1909 US

Copyright Act of 1976 US

Copyright, Designs and Patents Act 1988

Copyright Term Extension Act (1998) US Duration of Copyright and Rights in Performances Regulations 1995

Music Modernization Act (H.R. 1551, Pub.L. 115–264)

Case

ELDRED et al. v. ASHCROFT, ATTORNEY GENERAL certiorari to the united states court of appeals for the district of columbia circuit.

News

Greenhouse, Linda. "Justices to Review Copyright Extension." *The New York Times*, 20 Februari 2002, bag. Business. https://www.nytimes.com/2002/02/20/business/justices-to-review-copyright-extension.html.

Website

Corporate Law Firm In Jakarta. "Indonesia's New Copyright Law, Great Way Deal with Copyright Infringement," 30 Januari 2018. https://bplawyers.co.id/en/2018/01/30/indonesias-new-copyright-law-great-way-deal-copyright-infringement/.

International, PT Cekindo Business. "Copyright Indonesia: Its Important Role in Business." *Cekindo Indonesia* (blog). accessed December 10, 2021. https://www.cekindo.com/blog/copyright-lawindonesia.

Issa, Darrell E. "All Info - H.R.3301 - 115th Congress (2017-2018): CLASSICS Act." Legislation, 19 Juli 2017. 2017/2018. http://www.congress.gov/.

"Life Expectancy by Age, 1850?2011." Accessed December 10, 2021. https://www.infoplease.com/us/mortality/lifeexpectancy-age-1850-2011.

Ota, Alan. K. "Disney In Washington: The Mouse That Roars - August 10, 1998." Accessed December 9, 2021. https://edition.cnn.com/ALLPOLITICS/1998/08/10/cq/disney.html.

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.

REFERENCES

Laws and Regulations

Law Number 13 of 2016 concerning Patents

Books

Philipus M. Hadjon. *Perlindungan Hukum bagi Rakyat di Indonesia*. Surabaya: Bima Ilmu Surabaya, 1987.

Budi Agus Riswandi and M. Syamsudin. *Hak Kekayaan Intelektual dan Budaya Hukum*. Jakarta: PT. RajaGrafindo Persada, 2004.

Candra Irawan. *Politik Hukum Hak Kekayaan Intelektual Indonesia*. Bandung: CV. Mandar Maju, 2011.

David Bainbridge. *Intellectual Property*. England: Financial Times Pitman Publishing, 1999.

Journal Articles

Scotchmer, Suzanne, and Jerry Green. "Novelty and Disclosure in Patent Law." *The RAND Journal of Economics, no.* 21 (1990): 131. https://doi.org/10.2307/255549

International Conventions/Treaties

Trade Related Aspects of Intellectual Property Right 1995

News or Magazine Articles

Media, Kompas Cyber. 2021. "Hak Cipta: Pengertian, Fungsi, Hukum, Pendaftaran, Dan Pelanggarannya." KOMPAS.com. March 25, 2021. https://www.kompas.com/skola/read/2021/03/25/123247469/hak-cipta-pengertian-fungsi-hukum-pendaftaran-dan-pelanggarannya.

Website Contents

"Ministry of Industry: Kebijakan Pemerintah Dalam Perlindungan Hak Kekayaan Intelektual Dan Liberalisasi Perdagangan Profesi Di Bidang Hukum." n.d. Kemenperin.go.id. Accessed December 31, 2022. https://kemenperin.go.id/artikel/176.

Infringement of Copyright Laws on Books and Documents

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Abstract
Copyright is a legal concept that provides creators with exclusive rights to their original works, including the right to reproduce, distribute, and create derivative works based on their original works. However, systems for protecting unpublished works remain fragmented internationally. Primary copyright infringement occurs when a person directly infringes on the copyright holder's exclusive rights, while secondary copyright infringement involves contributing to or facilitating the primary infringement of a copyrighted work by someone else. The debate over the balance between the protection of intellectual property and the public's right to access and share information continues to be an important issue in the development of copyright law. In our paper we will be assessing the legal workings of Copyright and analysing cases in regards to Copyright to further explain on the concept.

Keywords: Copyright; Intellectual Property; Exclusive Rights

A. Introduction

Copyright is a legal concept that provides creators with certain exclusive rights in relation to their original works of authorship. These rights allow creators to control how their works are used and distributed, and to receive financial compensation for the

use of their works[1]. In most countries, copyright protection applies to a wide range of creative works, including literature, music, art, film, and software. In order to be protected by copyright, a work must be original and fixed in a tangible form, such as being written down or recorded. Under copyright law, creators have the exclusive right to reproduce their works, distribute copies of their works, and to create derivative works based on their original works. They also have the right to perform or display their works publicly. Copyright protection typically lasts for a specific period of time, after which the work becomes part of the public domain and can be used freely by anyone. The length of copyright protection varies depending on the type of work and the laws of the country where the work was created.

The Statute of Anne, which was passed in England in 1710, is considered to be the first copyright law in the world. The idea that the creator of a piece of work is also the owner of the rights to that work's copyright was established as a legal principle for the first time by this act, which also outlined the parameters for legal protection. In the years that followed the passage of this Act, it became mandatory for works protected by copyright to be submitted to designated copyright libraries and registered at Stationers Hall. There was no provision for automatic copyright protection for works that had not yet been published[2].

Legislation that was based on the Statute of Anne gradually appeared in other countries, such as the Copyright Act of 1790 in the United States; however, copyright legislation did not become

[1] "What is copyright?," U.S. *Copyright* Office, accessed December 10, 2022, https://www.copyright.gov/what-is-copyright/.
[2] "A brief history of copyright," I.P.R. Office, accessed December 18, 2022, https://www.iprightsoffice.org/copyright_history/.

coordinated on an international level until the 19th century. The protection of works and the rights of their authors was the subject of the Berne Convention, which was signed into law in the year 1886. It provides creators with the means to control how their works are used, who uses them, and on what terms. Some examples of creators include authors, musicians, poets, painters, and so on. It is based on three fundamental principles and includes a series of provisions that determine the minimum protection that is to be granted. Additionally, it includes special provisions that are available to developing countries that wish to make use of them. The Berne Convention, which has been adopted by almost all of the world's countries, does away with the requirement that works be registered separately in each and every one of those countries (over 140 of the approximately 190 nation states of the world). As a result of the United States' participation in the Convention in 1988, it now encompasses virtually all of the world's most important nations. The Berne Convention has not been repealed and continues to serve as the foundation for international laws governing intellectual property and copyright.

The adoption of the Berne Convention brought about a number of significant changes, one of the most significant being the extension of copyright protection to unpublished works and the elimination of the requirement for registration. This means that in nations that are parties to the Berne Convention, an individual (or the organisation that the individual is working for) is deemed to be the owner of the copyright to any work that they produce as soon as it is recorded in some manner, whether it be by writing it down, drawing

it, filming it, or any other method[3]. Even though the adoption of the Berne Convention has resulted in a great many benefits for the creators of original works, the systems for protecting unpublished works remain fragmented internationally. For example, while some states offer optional registration services within their own jurisdiction, other states offer no registration services at all. In the absence of registration, it can be challenging to determine who the legitimate owner of a copyrighted work actually is. There is a possibility that the national registration systems will refuse to provide support in the event of a dispute in another country. Through its Copyright Registration Service, the Intellectual Property Rights Office (also known as the IP Rights Office and the IPRO) was established with the intention of establishing a central international point of deposit for unpublished works originating from all over the world. Other names for this organisation include the Intellectual Property Rights Office and the IPRO. It is hoped that this will be able to provide a standardised point of registration for all citizens of nations that are parties to the Berne Convention.

Copyright infringement is a violation of intellectual property protection where the creator's rights are infringed upon. Sometimes known as piracy, copyright infringement happens when the rights given to the holder of the copyright, are breached by a third party[4]. This can be seen in pirated software, movies, music, and books, which are distributed illegally, or screen illegally in the case of movies. There

[3] "Berne Convention for the Protection of Literary and Artistic Works," World Intellectual Property Organization, accessed December 18, 2022, https://www.wipo.int/treaties/en/ip/berne/.
[4] Will Kenton, "Copyright Infringement: Definiton, Meaning, Example and Criteria," Investopedia, July 10, 2022, https://www.investopedia.com/terms/c/copyright-infringement.asp.

are two primary types of copyright, those being primary and secondary copyright infringement. The difference between primary and secondary copyright infringement can be seen in the intention of the perpetrator[5]. To further explain:

A. Primary copyright infringement does not require the intention to cause a copyright infringement and usually results in a liability offence. This occurs when a person directly infringes on the copyright holder's exclusive rights, such as reproducing, distributing, or displaying the copyrighted work. This can be seen in the form of plagiarism, the distribution of plagiarised works, making an adaptation of copyrighted works, performing, displaying, and playing copyrighted works in public. For example, if a person creates a book that plagiarises another copyrighted book and sells them, it is primary copyright infringement.

B. Secondary copyright infringement on the other hand requires the intention to cause a copyright infringement as the person has intention to possess, distribute or import a copy of copyrighted material that infringes on the rights of the author. This can include selling or distributing pirated copies of a copyrighted work, or providing a platform that allows others to access and download copyrighted works without permission[6].

[5]"Copyright Infringement," Justia, accessed December 17, 2022, https://www.justia.com/intellectual-property/copyright/infringement/#:~:text=There%20are%20two%20t%20ypes%20of,in%20infringing%20on%20a%20copyright.

[6]"Copyright Primary and Secondary Infringement," Redmans Solicitors, accessed December 17, 2022, https://redmans.co.uk/insights/copyright-primary-and-secondary-infringement/Redmans.

There are 8 types of different copyrights with each one having a different purpose, these types of copyrights are as stated below:

- ***Literary Works:*** In most cases, the creator or author of a literary work is the owner of the copyright to that work; nevertheless, this ownership might change based on conditions such as employment or licensing agreements[7].
- ***Musical Works/Sound Recordings:*** Along with any words that may accompany it, the basic composition of a song that was developed by a songwriter or composer is considered to be a musical work[8]. The owner of the copyright of a musical composition is the only person who may manufacture and distribute copies of the work, as well as publicly perform or exhibit it, and create derivative works based on it (including interpolations, remixes, or even videos using the musical work). Whoever else wishes to engage in these activities is required to get a permission from the owner of the copyright, make use of a statutory licence, or demonstrate that an exception applies, such as fair use. A statutory licence is not formed through a contract but rather through the operation of the law. With a statutory licence, the owner of the copyright of a work cannot refuse permission for it to be used in any way, provided that the licensee complies with any and all applicable legal conditions.

[7]"Types of copyright," Melbourne University, accessed December 18, 2022, https://copyright.unimelb.edu.au/shared/types-of-copyright-material/literary-works.
[8]"Musical Works, sound recordings & copyright," U.S Copyright office, accessed December 18, 2022, https://www.copyright.gov/music-modernization/sound-recordings-vs-musical-works.pdf

- ***Dramatic Works:*** Included in the category of dramatic works are stage plays, screenplays, scripts, choreographic notation, performances of choreography, and cinema scenarios (but not the film itself). A piece of writing is considered to be dramatic if it was written with the intention of being staged dramatically[9].
- ***Pantomimes and Choreographic Works:*** Copyright protection can also be granted for theatrical works such as choreography and pantomimes. The design and organisation of dance moves and patterns, choreography is often intended to be performed while music is playing in the background. The skill of copying or playing out various scenarios, characters, or other occurrences is known as pantomime. This is a different art form from choreography. Pantomimes and choreography do not need to express a story in order to be protected by copyright, nor do they need to be performed in front of an audience. However, in order for the job to be completed, it must first be fixed in some real medium of expression[10].
- ***Pictorial, Graphic and Sculptural Works:*** Works of graphic, fine, or applied art that are two-dimensional or three-dimensional and are eligible for copyright protection are referred to as pictorial, graphic, and sculptural works, respectively. This fits into one of the eight broad categories that are protected by copyright law. Globes, architectural

[9]"Dramatic Works Copyright," University Of Melbourne, accessed December 18, 2022, https://copyright.unimelb.edu.au/shared/types-of-copyright-material/dramatic-works.
[10]"Pantomines and Choreographic Works Copyright," U.S. Copyright Office, accessed December 18, 2022, https://www.copyright.gov/register/pa-pantomime.html.

drawings, pictures, and models are all examples of works that fall within the categories of pictorial, graphic, and sculptural art. In common usage, this is shortened as PGS[11].

- ***Motion pictures and other audiovisual works:*** A motion picture is an audiovisual work that consists of a sequence of connected pictures that convey the sense of motion when exhibited in succession together with accompanying sounds. This impression of motion is created when the series of images is shown in conjunction with the noises. The work may be incorporated in tangible items like as films or cassettes, and it may be designed to be exhibited through the utilisation of machinery or devices such as projectors, viewers, or electronic equipment[12].
- ***Architectural Works:*** An architectural work that is protected by copyright is described as "the design of a building as embodied in any physical medium of expression," which can include the actual structure itself, architectural plans or drawings, or any combination of the three. The work consists of the general shape as well as the organisation and composition of spaces and elements in the design. However, specific standard features are not included in the work[13].

[11]"Find a legal form in minutes, Pictorial, Graphic, and Sculptural Work Law and Legal Definition," US Legal Inc, accessed December 18, 2022, https://definitions.uslegal.com/p/pictorial-graphic-and-sculptural-work/.
[12]"Find a legal form in minutes," US Legal, accessed December 18, 2022, https://copyright.uslegal.com/motion-pictures-audiovisual-works/.
[13]Richeson, "Copyright protection of architectura," Phelps, April 14, 2022, https://www.phelps.com/insights/copyright-protection-of-architectural-works.html.

B. Discussion

B. 1. Copyright in Indonesia

Copyright is a part of intellectual property with the broadest scope of protected objects because it includes science, art and literature, and computer programs. The development of the creative economy, which is one of the mainstays of Indonesia and various countries and the rapid growth of information and communication technology, requires the renewal of the Copyright Law, considering that Copyright is the most important basis of the national creative economy[14].

With the Copyright Law that fulfils the elements of protection and development of the creative economy, it is hoped that the contribution of the Copyright and Related Rights sector to the country's economy can be more optimal[15]. In Indonesia, books, computer programs, pamphlets, layouts of published works, and all other written works; lectures, lectures, speeches, and other creations like that; visual aids made for the benefit of education and science; songs or music with or without subtitles; drama or musical drama, dance, choreography, wayang, and pantomime; fine art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, and applied art; architecture; map; batik art; photography; as well as translations, interpretations, adaptations, compositions, and other works resulting from the transformation are protected under the

[14]"Pengenalan Hak Cipta," Ministry of Law and Human Rights of Indonesia, accessed December 19, 2022, https://www.dgip.go.id/menu-utama/hak-cipta/pengenalan.
[15]"Industri Kreatif Terkait Hak Cipta," BINUS University Bussiness Law, accessed December 19, 2022, https://business-law.binus.ac.id/2018/04/02/industri-kreatif-terkait-hak-cipta/.

copyright law[16]. The duration of copyright protection depends on what is being protected.

Copyright protection is throughout the creator's Lifetime +70 Years, a computer program is 50 years since it was first published, a performance by a performer is 50 years since it was first shown, a record production from a record Producer is 50 years since the work was fixed, and broadcasting institutions have 20 years of protection since it was first broadcasted.

B. 1. 1. History of Copyright and its Legal Basis in Indonesia

Historically, laws and regulations in the field of IPR in Indonesia have existed since the 1840s. The Dutch Colonial Government introduced the first law regarding the protection of IPR in 1844. Subsequently, the Dutch Government promulgated the Trademark Law (1885), the Patent Law (1910), and the Copyright Law (1912). Indonesia, which at that time was still called Dutch East-Indies, had been a member of the Paris Convention for the Protection of Industrial Property since 1888 and a member of the Berne Convention for the Protection of Literary and Artistic Works since 1914[17].

During the Japanese occupation era, from 1942 to 1942, 1945, all laws and regulations in the field of IPR remain in force. On August 17, 1945, Indonesia proclaimed its independence. As stipulated in the transitional provisions of the 1945 Constitution, all laws and

[16] Article 26, 43-51 *Law Number 28 Year 2014*
[17]"Sejarah Copyright," Cloud Host ID, accessed December 19, 2022, https://idcloudhost.com/apa-itu-copyright-pengertian-sejarah-fungsi-dan-manfaatnya/.

regulations from the Dutch colonial heritage remain in effect as long as they do not conflict with the 1945 Constitution.

The Copyright Law and the Dutch Heritage Law are still in effect, however, the same doesn't apply to the Patent Law, which is deemed to be in conflict with the Indonesian government. As stipulated in the Dutch Heritage Patent Law, patent applications can be filed at the patent office located in Batavia (now Jakarta), but the examination of the patent application must be carried out at Octrooiraad in the Netherlands. In 1953 the Minister of Justice of the Republic of Indonesia issued an announcement that was the first set of national regulations governing patents, namely, the Minister of Justice Decree No. J.S. 5/41/4, which regulates the filing of domestic patent applications, and the Minister of Justice Decree No. J.G. 1/2/17 which regulates the provisional filing of foreign patent applications[18]. On October 11, 1961, the Indonesian government promulgated Law no. 21 of 1961 concerning Company Marks and Commercial Marks (1961 Trademark Law) to replace the Dutch colonial Trademark Law. The 1961 Trademark Law was the first Indonesian law in the field of IPR.

Based on article 24, Law no. 21 Years 1961, which reads "This law may be called the Trademark Law 1961 and comes into effect one month after this law is promulgated", this law came into force on November 11, 1961. The 1961 Trademark Law was enacted to protect the public from counterfeit/pirated goods. On May 10, 1979, Indonesia ratified the Paris Convention for the Protection of Industrial Property (Stockholm Revision 1967) based on Presidential Decree No.

[18]"Hak Cipta," Directorate General of Intellectual Property, accessed December 19, 2022, https://www.dgip.go.id/menu-utama/hak-cipta/pengenalan.

24 of 1979. Indonesia's participation in the Paris Convention at that time was not full because Indonesia made exceptions (reservations) against a number of provisions, namely Articles 1 to 12, and Article 28 paragraph (1). On April 12, 1982, the Government passed Law No. 6 of 1982 concerning Copyright (Copyright Law 1982) to replace the Dutch legacy of Copyright Law. The ratification of the 1982 Copyright Law was intended to encourage and protect the creation, and dissemination of cultural products in the fields of scientific, artistic, and literary works and to accelerate the growth of national intelligence.

1986 can be called the beginning of the modern era of the IPR system in Indonesia. On July 23, 1986, the President of the Republic of Indonesia formed a special team in the field of IPR through Decree no. 34/1986 (This team is better known as the Presidential Decree Team 34). The main task of the 34th Presidential Decree Team is to cover the formulation of national policies in the field of IPR, the drafting of laws and regulations in the field of IPR, and the dissemination of the IPR system among relevant government agencies, law enforcement officials and the wider community. The Presidential Decree 34 team then made a number of breakthroughs, including taking a new initiative in handling the national debate about the need for a patent system in the country. After the Presidential Decree Team 34 revised the Patent Bill which was completed in 1982, finally, in 1989 the Government passed the Patent Law. On September 19, 1987, the Government of the Republic of Indonesia passed Law no. 7 of 1987 as an amendment to Law no. 12 of 1982 concerning Copyright. The explanation of Law no. 7 of 1987 clearly states that changes to Law no. 12 of 1982 were carried out because of the increasing number of

copyright infringements that could endanger social life and destroy people's creativity.

Following the ratification of Law no. 7 of 1987, The Government of Indonesia signed a number of bilateral agreements in the field of copyright as the implementation of the law. In 1988 based on Presidential Decree No. 32 it was decided to establish the Directorate General of Copyright, Patents, and Trademarks (DJ HCPM) to take over the functions and duties of the Directorate of Patents and Copyright which is an echelon II unit within the Directorate General of Law and Legislation, Ministry of Justice. On October 13, 1989, the House of Representatives approved the Bill on Patents, which was subsequently ratified as Law no. 6 of 1989 (1989 Patent Law) by the President of the Republic of Indonesia on November 1, 1989. The 1989 Patent Law came into effect on August 1, 1991. The ratification of the 1989 Patent Law ended a long debate about the importance of the patent system and its benefits for the Indonesian nation.

As stated in the considerations of the 1989 Patent Law, legal instruments in the field of patents are needed to provide legal protection and create a better climate for technological invention activities. This is because, in national development in general and in particular in the industrial sector, technology has a very important role. The ratification of the 1989 Patent Law was also intended to attract foreign investment and facilitate the entry of technology into the country. However, it was also emphasized that efforts to develop an IP system, including patents, in Indonesia were not solely due to international pressure, but also because of the national need to create an effective IPR protection system. On August 28, 1992, the Government of the Republic of Indonesia passed Law no. 19 of 1992

concerning Trademarks (1992 Trademark Law), which came into force on April 1, 1993. The 1992 Trademark Law replaced the 1961 Trademark Law. On April 15, 1994, the Government of Indonesia signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations, which includes the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Three years later, in 1997 the Government of the Republic of Indonesia revised the set of laws and regulations in the field of IP, namely the 1987 Copyright Law jo. Law no. 6 of 1982, the 1989 Patent Law, and the 1992 Trademark Law.

At the end of 2000, three new laws were passed in the field of IP, namely Law no. 30 of 2000 concerning Trade Secrets, Law No. 31 of 2000 concerning Industrial Design, and Law No. 32 of 2000 concerning Layout Designs of Integrated Circuits. In an effort to harmonise all laws and regulations in the field of IP with the TRIPS Agreement, in 2001 the Government of Indonesia enacted Law no. 14 of 2001 concerning Patents and Law no. 15 of 2001 concerning Brands. These two laws replace the old laws in related fields.

B. 2. Copyright in the Digital Era

Since the beginning of the technological era, there has been an explosion of new copyright concerns brought before the courts. Copyright law has had to adapt to deal with a variety of new challenges brought about by the proliferation of new technologies and channels. The protection afforded by copyright laws has significantly

been broadened as a result of the proliferation of new digital and multimedia technologies[19].

B. 2. 1. Risks in the Digital Era

The development of digital technology has been one of the most remarkable achievements that the intellect of man has ever produced. The advent of technology has made available a vast number of opportunities in a variety of spheres, including the media, entertainment, communication, advertising, and educational systems. On the other hand, the fact that content is readily available on the internet has raised significant concerns over the infringement of copyright[20]. Copyright is one of the most significant Intellectual Property Rights, and it symbolizes the rights that the producers of literary and creative works are entitled to own.

Copyright protects authors and artists against infringement on their rights. It contains works from a variety of mediums, such as novels, paintings, computer programs, movies, databases, and maps, to mention a few. Because of digitalization, it is now far simpler to duplicate, recreate, and sell the works of a copyright owner without the owner's consent, and it is also more difficult to discover instances of copyright infringement. This has created a significant challenge to the rights of those who are entitled to copyright protection, sometimes known as creators.

[19]"Copyright Law In The Digital Era," Taschner Law Firm, accessed December 19, 2022, https://www.taschnerlaw.com/copyright-law-in-the-digital-era#:~:text=On%20October%2028%2C%201998%2C %20the,and%20encryption%20and%20decryption%20technologies.

[20]Marybeth Peters, "The Challenge of Copyright in The Digital Age", 59, University of Colombia.

B. 2. 2. Importance of Protection in the Digital Era

It is currently far simpler than it ever was in the past to produce and distribute digital material because of the proliferation of social media platforms such as YouTube, Facebook, and Instagram. New "creators" are developing digital material in a variety of novel file formats. The end consequence is that the general public has a greater understanding of copyright law and the difficulties it raises. In the event that users of social media submit digital content without permission, they may get notifications of copyright infringement. Alternatively, their social media postings may be removed. In addition, the duplication or replication of an original work without the artist's permission is a problem for the copyrights of many artists who use social media platforms. As a consequence of this, a number of academics believe that the existing copyright rules are not keeping up with the quickly developing digital culture in our society[21].

B. 3. Shadow Libraries

A shadow library is a collection of digital copies of books that are made available online for free, often without the permission of the copyright holder. Shadow libraries are typically created and maintained by individuals or organizations that belief in the free sharing of knowledge and information and that may have a political or ideological opposition to the concept of intellectual property[22]. These collections may include books that are in the public domain, as

[21]Marybeth Peters, "The Challenge of Copyright in The Digital Age", 61, University of Colombia.
[22]W Master, "A list of the world's largest Shadow Libraries," Grey Coder, August 12, 2022, https://greycoder.com/a-list-of-the-largest-shadow-libraries/.

well as books that are still under copyright protection but are made available without permission from the copyright holder.

Shadow libraries can be controversial because they may be seen as a form of copyright infringement, although there are also arguments in favour of their existence. Some people believe that shadow libraries provide a valuable service by making knowledge and information more widely available to those who may not have access to it through traditional channels, while others argue that they undermine the ability of authors and publishers to make a living from their work and discourage the creation of new content.

There are a lot of well-known Shadow Libraries such as Library Genesis, Sci-Hub, Z-Library, etc. Here we will be discussing specifically on Z-Library and the downfall of the website.

B. 3. 1. Z-Library

Z-Library is a digital library and online platform that provides access to a collection of books, articles, and other documents that have been digitized and made available online. It is a shadow library, which means that it provides access to books and other materials that are often made available without the permission of the copyright holder. Z-Library offers a wide range of books in various languages and genres, including fiction, non-fiction, academic texts, and more.

On November 3rd of 2022, two Russian men, Anton Napolsky and Valeriia Ermakova, were arrested in Cordoba, Argentina at the request of the United States Federal Government Agency under the grounds of Criminal Copyright Violations. This was further confirmed on the 16th of November 2022 when the 2 Russian Nations

were indicted with Criminal Copyright Violations, money laundering, and wire fraud[23].

According to Vice, Napolsky and Ermakova were taken into custody not long after the Authors Guild, a group of authors that promotes the protection of copyrights, lodged a complaint with the Office of the United States Trade Representative on October 7th. The Authors Guild is an organization that exists to advocate for the protection of copyrights[24].

According to the indictment and the documents filed with the court, Z-Library promotes itself as "the world's largest library" and asserts that it makes available for download more than 11 million electronic books. Z-Library, which has been operational since approximately 2009, provides users with access to e-book files in a variety of file formats, all of which have had any copyright protections removed. Additionally, users are encouraged to upload and download titles. Z-Library does not have the legal authority or a license to distribute many of the e-books it sells because those e-books are protected intellectual property.

The authors of those books own the copyrights, and the publishers own the exclusive distribution rights. Z-Library does not have those rights or licenses, and the books can be found elsewhere only with anti-circumvention measures in place. As a result, one of the primary goals of Z-Library is to give users the ability to download

[23] "Two Russian nationals charged with running massive e-book piracy website," The United States Department of Justice, accessed December 10, 2022, https://www.justice.gov/usao-edny/pr/two-russian-nationals-charged-running-massive-e-book-piracy-website.
[24] E Maiberg, "Feds arrest two Russians behind 'world's largest library' of pirated books," VICE, November 17, 2022, https://www.vice.com/en/article/n7z5m7/feds-arrest-two-russians-behind-worlds-largest-library-of-pirated-books?utm_source=motherboard_twitter.

copyrighted books for free, which is against the law in the United States. In addition to its main website, Z-Library functions as a complex network consisting of approximately 249 web domains that are connected to one another. As a consequence of this action, the United States government has taken control of those domains and rendered them inaccessible online.

While members of the public compare this case to the "Modern day burning of the Library of Alexandria"[25], we know that the website was a gross violation of Intellectual Property Rights, specifically Copyright.

B. 3. 1. 1. Educational Accessibility

It is frequently unclear, according to Steven Tapia, a distinguished practitioner in residence at the law school of Seattle University, whether the content on these websites is posted illegally or not. Tapia maintains that it is the responsibility of the owners of the copyright to monitor who is using their content, despite the fact that some people believe Z-Library is responsible for hosting stolen works[26]. Tapia provided the following explanation: "Someone who opens a platform like Z-Library is not responsible for what third parties post on a website until they are informed."

Lydia Bello, a science and engineering librarian, agrees with Tapia that the presence of websites such as Z-Library is both an

[25] Wrathsemilia, "Library of Alexandria," Twitter, November 4, 2022, https://twitter.com/wrathsemilia/status/1588475791897395200?s=12&t=LZzuei-uv5wN06kq-Bu_Cg.
[26]N Schorr, "Z-library shutdown raises questions about educational accessibility," The Spectator, November 16, 2022, https://seattlespectator.com/2022/11/16/z-library-shutdown-raises-questions-about-educational-accessibility/.

indication of the need for students to have access to academic resources and a component of the information ecosystem.

According to what Bello said, "The world of textbooks is costly and not in the best interest of students." We are making an effort to address the problem and improve the overall experience for the students. According to Tapia, the existence of shadow libraries compels publishers to reassess the prices that they charge for their products.

Z-library provides access to more than just books; it also has a collection of scholarly articles. Students in countries located in the northern hemisphere frequently have access to academic papers because their educational institutions subscribe to journals. According to Khaled Faisal, a Ph.D. student who is conducting fieldwork at the Bangladesh University of Professionals, this is in stark contrast to the global south, where educational institutions in developing countries frequently cannot afford the cost of the programme. According to him, online resources such as Z-library help to close the knowledge gap that exists between the global north and the global south[27].

B. 3. 1. 2.Federal Charges

a. Title 17, United States Code, Sections 506(a)(l)(A) and 23l9(b)(l) [copyright];
b. Title 18, United States Code, Sections 2 and 3551 [copyright];
c. Title 18, United States Code, Sections 1349 and 3551 [conspiracy to commit wire fraud];

[27] N Rajalakshmi, "Z-Library was a lifeline for students on shoestring budgets-until the FEDS shut it down," Slate Magazine, November 15, 2022, https://slate.com/technology/2022/11/z-library-pirated-books-papers-school-tor.html.

d. Title 18, United States Code, Sections 1343,2 and 3551 [wire fraud];
e. Title 18, United States Code, Sections 1956(h) and 3551 [Money Laundering Conspiracy].

B. 3. 2. Illegal Book Reprints

Illegal book reprints are copies of books that are produced and distributed without the permission of the copyright holder. These copies of books are also referred to as pirated books. These copies are typically of a lower quality than the original, legally produced copies, and may be offered for sale at prices that are noticeably more affordable.

Infringing on someone's copyright, which includes the production and distribution of illegally copied books, is against the law in the majority of countries. The owners of the copyright to a work have the sole and exclusive right to reproduce and distribute that work; anyone who does so without the owner's permission is infringing on those owners' rights.

B. 3. 2. 1.Piracy in Indonesia

It is not difficult to locate counterfeit copies of books in Indonesia. Those who are interested can find inexpensive versions of practically any title, whether it is old or new, foreign or Indonesian, in a variety of locations, including kiosks and outlets in shopping centres, as well as a variety of online commerce platforms that host vendors carrying illicit goods.

Books that have been illegally copied can range from obvious photocopies to black-and-white scanned prints to high-quality reproductions. These books can be found in a wide range of price points and quality levels.

There are a lot of people who sell illegal copies of e-books online, and a lot of them use digital messaging apps like Telegram to do it. On the other hand, book clubs typically share original e-book files or PDF copies among their members[28].

Many people consider it a victory when they are able to acquire high-quality reading material at the most affordable price possible, or even for no cost at all. However, this is precisely the reason why the creative industry is engaged in a never-ending battle against piracy, which is frequently carried out by literary fans who ought to be supporting authors and the industry that provides them with a living.

B. 3. 2. 2.Piracy in India

Book pirates have a sixth sense for what will be most popular with customers. According to them, the books that are most popular in India are textbooks for schools and colleges, novels written in Hindi by well-known authors, and works of English fiction that have been published in the West. It is difficult to determine the scope of the piracy problem due to the clandestine nature of the activity and the dispersed nature of its operations. In 1970, a publishing executive looked into the issue, and based on his findings, he estimated that it

[28] V Evan, "Book piracy: Cash-strapped and hungry for knowledge, or simply fraud?," The Jakarta Post, May 5, 2021, https://www.thejakartapost.com/life/2021/05/21/book-piracy-cash-strapped-and-hungry-for-knowledge-or-simply-fr aud.html.

accounted for seven percent of the overall publishing trade[29]. Because textbooks are such a lucrative business, pirates are interested in them. Every year, there must be millions of copies produced. About 200,000 copies of a single book are required to fulfill a print order for that book to be used in primary schools. Because the demand is so great, both private and public publishers are working together, but they still can't meet it completely. When schools reopen for the year, there is almost always a shortage of the required textbooks that have been ordered. This is the point at which the pirate enters the picture.

The months of March and April are typically the busiest for pirates. They only need to make a copy of a real book to satisfy this requirement. This is carried out on the same offset presses that are utilized in the production of movie posters. These presses can be found in almost all of the major and minor towns. The economy necessitates the printing of at least 5,000 copies, but the majority of pirates print twice that number. The expense of printing the book amounts to no more than one-quarter of the cost of the original copy.

The second trick of the trade involves the distribution and sale of these types of books. They sell these counterfeit copies to the same bookseller who is also selling the genuine copies within the same geographical area. But you should offer a profit margin that is unmatched by any traditional publisher. Therefore, the margin is so appealing for the bookseller, and he cannot afford to risk losing the goose that lays the golden egg if he wants to keep eating. In exchange, he shields the pirate publisher from any nosy investigators who may show up.

[29]Irro, "The book piracy game out," Indian Reprographic Rights Organisation (IRRO). October 26, 2022, https://www.irro.org.in/the-book-piracy-game-out/.

In Delhi, The police in Ghazipur got a tip that he was publishing illegal copies of National Council of Educational Research and Training (NCERT) textbooks, so they went to investigate. According to the police, a college dropout who was operating an illegal printing press in Ghazipur, located in east Delhi, had nearly 4,000 counterfeit copies of NCERT books in his possession. The man who was arrested, identified as Abhishek Chaudhary (28), was taking "advantage of the increased demand for the books after the government's efforts to make NCERT textbooks mandatory in CBSE-affiliated schools," according to Rajiv Ranjan, additional commissioner of police (crime branch)[30].

According to the officer, Chaudhary was taken into custody on Tuesday of this week after the police in Ghazipur received information that he was publishing counterfeit textbooks written by the National Council of Educational Research and Training (NCERT). The officer claimed that the suspect "was using the latest machines for printing these textbooks and procuring the NCERT watermark paper from Chawri Bazar in central Delhi and selling the books all over the country."

In addition to printing machines, the alleged recovery included 3,165 printed textbooks and 700 books that were still in the process of being completed.

Conclusion

In conclusion, copyright law is a legal concept that provides creators with exclusive rights to their original works of authorship,

[30]D News, "Pirated books seized from illegal printing press in Delhi," Hindustan Times, October 21, 2022, https://www.hindustantimes.com/delhi-news/pirated-books-seized-from-illegal-printing-press-in-delhi/story-uZK9jP NOjigWbTl3ffUz7O.html.

from books, to articles, to movies. These rights allow creators to control how their works are used and distributed, and to receive financial compensation for the use of their works. While copyright law aims to protect the rights of creators and ensure that they are fairly compensated for their work, it causes issues to those who want to access literary works for education, especially ones that are less fortunate. Z-Library provided a space for everyone to freely access educational works, articles, and other forms of documents. At the same time Z-Library also infringes on the rights of authors who have created original works causing them to receive damages. It is important to also balance these protections with the need for access to information and the public's right to use and build upon the work of others.

REFERENCES

Laws and Regulations

Law Number 28 Year 2014 concerning Copyright

Website Contents

U.S. Department of Justice. "Two Russian Nationals Charged with Running Massive E-Book Piracy Website." Accessed November 16, 2022. https://www.justice.gov/usao-edny/pr/two-russian-nationals-charged-running-massive-e-book-piracy-website.

Hein Online "The Challenge of Copyright in the Digital Age 9 Revista La Propiedad Immaterial 2006." Accessed November 17, 2020. https://heinonline.org/HOL/LandingPage?handle=hein.journals/revpropin9&div=6&id=&page=.

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 country[1]. 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://creativeconomy.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 printing[2] . 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 value[3]. 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 required[4]. 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 ekraf[5]. 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 Law[6].

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.

[5]Daniel 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 ecraf 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.

Brand as one works closely related 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 brands. In the Trademark Act, the scope of protected brands includes also sound brands, three- dimensional brands, brands holograms, which fall under the brand category of the nontraditional.

The Copyright Act, on the one hand, provides fulfillment of economic rights for creators and owners of related rights and on the other hand remain maintains and opens public access to all content contained in multimedia information and communication technology. The law also provides for more severe sanctions for the pirates, because piracy does not only harm the economic interests of the parties creators and the creators themselves 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 legal subjects in the form of

instruments both preventive and repressive in 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. According to Article 1 number 1 of Law Number 8 Year 1999 regarding Consumer Protection that stated, "Consumer Protection is all efforts that guarantee legal certainty to give consumers a sense of security"[7].

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.atlantis-press.com/article/125940483.pdf

Legal Protection for Musical Work Copyright Holders Pertaining to the Fulfillment of Economic Rights in the Form of Royalties

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Abstract
The legal right of the owner of intellectual property is referred to as copyright. Simply put, copyright is the right to copy. This implies that the only people who have the exclusive right to replicate the work are the original authors of the items and anybody they give permission to. Copyright law grants original content producers the exclusive right to further use and replicate that work for a certain period of time, after which the copyrighted object becomes public domain. Moreover, Copyright arises automatically after the creator realizes his idea into a tangible form so that the creation will get legal protection without having to be registered. The problem that often occurs today is that there are other parties who use the creation without rights and permission of the creator or copyright holder causing economic harm. This article aims to find out what are the legal protections for copyright holders if there are illegitimate users that use copyrighted works for commercial purposes without permission and are not paying royalties. Further, this article will also look into what are the legal consequences for users who do not fulfill the economic rights of the copyright holder in the form of royalties. From the results of this study, it can be concluded that the form of legal protection for copyright holders is the fulfillment of the economic rights in the form of royalties and criminal penalties for those who without rights and permission use the work for commercial purposes. The legal consequences for users who do not fulfill the economic rights as aforementioned are subject to imprisonment or criminal fines as stated in Article 113 paragraph (1) to paragraph (4) of Law Number 28 of 2014 pertaining to Copyright.

Keywords: Legal Protection; Copyright; Economic Rights

A. Introduction

Indonesia is a diverse country with many ethnicities, languages, cultures, and customs. Along with the rapid development of the arts, many individuals began to develop abilities in sculpturing, painting, dance, music, and so on in order to preserve Indonesia's identity as a country. According to Gatot Soepramono, a person who makes anything is the work of his creation in general, which is not only utilized for himself but is also reproduced so that it may be shared with others.[1] A copyrighted work may generally be reproduced by others since the individual who developed it has limited competencies and cannot do it alone in large quantities in response to community demand.[2]

Every human being has a capable mind which enables them to produce science, technology, and works of art. In this case, works of art that are successfully created must receive respect and appreciation that is a form of creative expression from the creator.[3] The creation that has been developed is the work of a person or group of people that must get legal protection, namely copyright. When someone makes a product that is regarded as unique and requires substantial conceptual effort to create, that product becomes intellectual property that must be secured from unlawful imitation. Computer software, art, poetry, graphic designs, musical lyrics and

[1] Gatot Soepramono, *Hak Cipta dan Aspek-Aspek Hukumnya* (Jakarta: P.T. Rineka Cipta, 2010), 1.
[2] *Ibid.*
[3] Emma Valentina Teresha Senwe, "Efektifitas Pengaturan Hukum Hak Cipta Dalam Melindungi Karya Seni Tradisional Daerah," *Jurnal LPPM Bidang Ekosobudkum*, no. 2 (2015): 12.

compositions, books, films, original architectural designs, website content, and so on are examples of one-of-a-kind inventions. Copyright is one legal protection that may be utilized to protect an original production.[4]

Intellectual Property Right (**"IPR"**) is an intangible movable object resulting from human intellectual activity, expressed in copyrighted works or in the form of discovered works, that must be protected under Indonesian law. [5] Copyright is one type of intellectual property right that exists because of human creativity and must be protected both economically and morally. The exclusive right of the creator emerges immediately based on the declarative principle once an invention is realized in a tangible form without decreasing restrictions in line with the rules of the laws and regulations is known as copyright. Not all sorts of work can be protected by copyright. Ideas, discoveries, concepts, or theories are not protected by copyright. Copyright law does not protect brand names, logos, slogans, domain names, or titles. An original work must be in physical form in order to be copyrighted.[6] This means that in order to be protected by copyright, any speech, discovery, musical score, or idea must be written down in tangible form.

In Indonesia, there is Law Number 28 of 2014 addressing Copyright as a legal umbrella for a person or a group of individuals who desire legal protection or legal certainty regarding their work so that their rights are not infringed by other parties that

[4] U.S. Copyright Office. "Copyright Authorship: What Can Be Registered", U.S. Copyright Office, January 28, 2021, https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf
[5] Nurjannah, Kekayaan Intelektual, http://nurjannah.staff.gunadarma.ac.id/
[6] U.S. Copyright Office. "What Does Copyright Protect?", U.S. Copyright Office, https://www.copyright.gov/help/faq/faq-protect.html

purposefully or inadvertently breach their rights.[7] Copyright is an important basis for the development of the national creative economy. Copyright consists of two rights, namely moral rights and economic rights. Moral Rights are regulated under Article 5 to 7 of Law Number 28 of 2014, which are rights that are eternally attached to the creator himself. The following is the moral right of the creator:[8]

1. To include or not to include his name on the copy in connection with the use of his work for the public;
2. Use aliases or pseudonyms;
3. Change his creation according to propriety in society. Change the title and subheading creation;
4. Defend their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation.

It shall be known that moral rights cannot be transferred as long as the creator is still alive. However, the exercise of moral rights can be transferred by will or other reasons after the creator dies. If the exercise of moral rights is transferred, the recipient can release or refuse by making a refusal to exercise the rights stated in writing.[9] Further, Economic rights in copyright are the exclusive rights of creators or copyright holders to obtain economic benefits from their works. The economic rights attached to creators or copyright holders are: a) Publishing works; b) Reproduction of creation in all its forms; c) Creation translation; d) Adapting, arranging or transforming

[7] Article 9 Paragraph (3) of Law No. 28 of 2014
[8] Monica Ayu Caesar Isabela, "Moral Rights and Economic Rights in Copyright", Kompas, March 26, 2022, https://nasional.kompas.com/read/2022/03/26/03000031/hak-moral-dan - economic-rights-in-copyright
[9] *Ibid.*

works; e) Distribution of creations or copies thereof; f) Showcasing the Creation; g) Creation communication; and h) Leasing the Creation. Everyone who exercises the economic rights of the creator must obtain permission from the creator or copyright holder.[10] Commercial reproduction of works is prohibited if there is no permission from the creator. In addition, the copyright law also regulates economic rights over photographs or portraits. Everyone is prohibited from commercially using, duplicating, and distributing portraits made without the written consent of the person being photographed or their heirs.

In this case, the government's lack of socialization regarding copyright law can be attributed to a number of factors, namely; written regulations are exclusively created by a group of people, there is a lack of public interest in reading regulations, and the government's role in providing legal counseling is limited. As a result, many Indonesians are unaware that artists or producers, as creators or copyright holders of a musical work, have rights over the economy that is produced. Economic rights are the ultimate rights of authors or copyright holders to profit economically from their works.[11] The economic benefits in issue can exploit his inventions to generate economic benefits that a creator or copyright holder can enjoy.

Since the government has not socialized the Copyright Law, many individuals are unaware that a work contains legal economic rights of the author of the musical work and cannot be used for commercial reasons without the consent of the music copyright

[10] *Ibid.*
[11] Article 8 of Law No. 28 of 2014

holder. As in the case of Halilintar Anofial Asmid and Lenggogeni Umar Faruk (in this case as the Defendant) or commonly known as Gen Halilintar, who was sued by PT. Nagaswara Publisherindo, Yogi Adi Setyawan, and Pian Daryono (in this case as Plaintiffs) for failing to fulfill the economic rights of copyright holders in the form of royalty payments. According to the case in Decision Number 82/Pdt.Sus-HKI /Cipta/2019/PN Niaga Jkt.Pst, the Defendant violated economic rights by utilizing without rights and without consent from the Plaintiffs.

In Decision No. 82/Pdt.Sus-HKI/Cipta/2019/PN Niaga Jkt.Pst, it was stated that the Defendant did not commit an unlawful act (PMH) in the form of violating song/music copyrights because he had carried out performance (*pengumuman*) activities without permission from the Plaintiff, but this contradicts the fact that the Defendant did not ask permission from the composer of the song in advance so that it was considered that the Defendant did not fulfill the economic rights of the creator or copyright holder for his musical work. The lawsuit was brought because the Defendant modified, reproduced in digital form, published, and distributed the work on social media without the permission of the Creator or Copyright Holder of the musical work and did not pay royalties, since this is a form of commercial use of the work.

Commercial economic rights of authors or copyright holders include performing creations, announcements of creations, and creation communications, as per Article 9 of Law No. 28 of 2014 concerning Copyright jo. Article 2 paragraph (1) Government Regulation No. 56 of 2021 concerning Management of Song and/or

Music Copyright Royalties.[12] While the publication of a music is a sort of commercial public service, anyone who wishes to use the music for commercial reasons must pay royalties to the Author and Copyright Holder via the National Collective Management Institute (**"LMKN"**).[13] Moreover, following Article 9 paragraph (2) of Law No. 28 of 2014, a person can use a musical work if he obtains permission from the author or copyright holder [14] and pays royalties to the creator or copyright holder through LMKN. This must be done if you wish to utilize a musical piece commercially in order to give the creator of the musical work economic rights. This is consistent with Article 35 paragraph (2) of the Copyright Law, which provides that the owner of a copyrighted work in the form of music has the right to royalties from the use of the work.

To earn economic rights in the form of royalties, producers and copyright holders must join the LMKN so that they may extract these benefits from users of their copyrighted works in a reasonable manner. Furthermore, because many artists are unaware of Copyright, the copyright holder of a musical piece is frequently unable to enjoy the economic rights to the work he has made. As a result, even if the work has not been recorded or published, the author or copyright holder of a musical work must make the work evident in a concrete form so that the artist's moral and economic rights are not violated by others.

[12] Article 9 of Law No. 28 of 2014; Article 2 paragraph (1) Government Regulation No. 56 of 2021
[13] Article 2 paragraph (1) Government Regulation No. 56 of 2021
[14] Article 9 paragraph (2) of Law No. 28 of 2014

B. Discussion

The advancement of technology in the globalization era simplifies a wide range of activities, allowing many things to be easily accessed online in a matter of seconds. Of course, this has both positive and negative consequences for society. This phenomenon enables anyone to freely and effortlessly conduct research, business transactions, and communications; access journals; and so on.[15] However, it is also inevitable that men will most likely misuse and manipulate the freedom it offers for personal gain, such as profit and satisfaction—for example, piracy.

In this regard, *Kamus Besar Bahasa Indonesia* defined piracy as taking other people's creations without their permission or knowledge. Further, the Black's Law Dictionary established that piracy is commonly associated with the theft of IPRs through some form of copying the original.[16] From the two definitions above, piracy simply means an illegal act or crime that always aims to exploit the Creator's work without acknowledging his creation.

In the context of the musical industry, Goldman Sachs predicts that global music market revenue - including recorded music, music publishing, and live events - will exceed $87.6 billion by the end of this year and reach $153 billion by 2030.[17] This proves that the music industry is growing rapidly over the years, and will continue to grow. This is because songs are a common form of

[15] Syed Shah Alam, Nik Mohd. Hazrul Nik Hashim, Maisarah Ahmad, Che Aniza Che Wel, Sallehuddin Mohd Nor, Nor Asiah Omar, Negative and positive impact of internet addiction on young adults: Empirical study in Malaysia Intangible Capital, no. 3 (2014): 619-638.

[16] Piracy is "the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law." Black's Law Dictionary 1169 (7th ed. 1999)

[17] Retrieved from https://gulfbusiness.com/the-rapidly-changing-music-industry-landscape/, 11 December 2022

entertainment that many people enjoy throughout time. Especially in this modern era, songs have a great impact on their creators because they have business potential that can benefit the songwriters.[18]

Through the overwhelming violations pertaining to copyright in the musical industry, this paper aims to discuss the (1) legal protection for copyright holders against illegal users who uses their works for commercial purposes without permission and does not pay royalties, and the (2) the legal consequences for illegal users who do not fulfill economic rights of the copyrights holder in the form of royalties.

B. 1. Legal Protection for Copyright Holders Against Illegal Users Who Uses Their Works for Commercial Purposes Without Permission and Does Not Pay Royalties

In the domain of musical works, there are typically two kinds of users, namely, non-commercial and commercial users. Non-commercial users refer to those who listen or use the music for their own enjoyment, whole commercial users are those that use the musical works for commercial purposes to attain economic benefits.

All musical products are covered by copyright. The legal protection of intellectual property rights, particularly copyright, for songwriters is governed by Law Number 28 of 2014. The law acknowledges that copyright has existed since the work was completed. That is, once the creation is finished, it is realized in a real

[18] Bambang Kesuo, *Pengantar Umum Mengenai Hak Atas Kekayaan Intelektual (HAKI) Di Indonesia* (Jakarta: Rineka Cipta, 1987), 76.

or material form according to the creator's wishes.[19] As a result, the creator of his creation now has legal protection because the creation has been completed in a tangible form. This notion is stipulated under Article 1 number 1 of Law no. 28 of 2014, which said:

> "*Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions.*"

In regards to exclusive rights, Article 4 of Law no. 28 of 2014 elucidated that copyright is an exclusive right consisting of moral and economic rights. Moral rights are rights that are eternally attached to the Creator, [20] whereas Economic Rights are the Copyright Holder's exclusive rights to obtain economic benefits from Works. These rights are granted through licenses and royalties. The economic rights that copyright holders can exercise in accordance with Article 9 paragraph (1) for their creations are:

a. Publishing;
b. Reproducing;
c. Translating;
d. Adapting, arranging;
e. Sharing;
f. Showing;
g. Announcing;
h. Communicating; and

[19] Henry Soelistyo, *Hak Cipta Tanpa Hak Moral* (Jakarta: PT Raja Grafindo Persada, 2011), 12.
[20] Article 5 (1) of Law no. 28 of 2014

i. Renting.

To exercise the economic rights of the copyright holder in accordance with Article 9 paragraph (2) of Law Number 28 of 2014, the user must obtain permission from the creator, and when used for commercial purposes other than those requiring a permit, the user is required to pay royalties or compensation to the creator in accordance with Article 80 paragraph (3) of Law Number 28 of 2014 concerning Copyright, and the amount of royalties is regulated in accordance with Article 80 paragraph (3) of Law Number 28 of 2014 concerning Copyright. This is because songs and music are legally protected as objects or creations, and they cannot be used arbitrarily. Hence, any actions contrary to this may result in legal action.

Therefore, when it comes to legal protection for the copyright holder against Illegal Users Who Uses Their Works For Commercial Purposes Without Permission And Does Not Pay Royalties, it can be found in Law Number 28 of 2014 concerning Copyright in Article 40 paragraph (1) letter d, which states that protected works include works in the scientific field, arts, and satra consisting of songs and/or music with or without text. However, if the musical work's copyright protection period has expired, the song will no longer have copyright protection. The referred to work is protected as a separate work, without prejudice to the original work's copyright. This is in accordance with Article 58 paragraph (1), which states that the copyright protection period for songs is said to be valid for the creator's life and continues for 70 years after the creator's death, beginning January 1 of the following year.

Furthermore, copyright holders' protection piracy and reproduction. The notion is emphasized in Article 1 number 23 of Law No. 28 of 2014, which stipulated that piracy is the illegal

reproduction of Works and/or Related Rights products, as well as the widespread distribution of goods resulting from the duplication for economic gain. Any party who then illegally uses it is infringing on your rights as a creator. Piracy is also commonly linked with reproduction or duplication. Article 1 number 12 of Law No. 28 of 2014 defined illegal reproduction as the process, act, or method of making one or more copies of a work and/or phonogram in any way and in any form, permanently or temporarily. Such protection against any actions relating to piracy or duplicating a creation without permission are listed in Article 113 paragraph (3) and (4) of Law No. 28 of 2014, which elaborated the sanction posed to the users. These laws act to guarantee the creator's exclusive control and enjoyment of the results of his work, and, if necessary, with the assistance of the state, to enforce the law. As a result, legal protection is critical for copyright owners, both individually and collectively, because the law ensures that society's interests are protected.[21]

B. 2. Legal Protection for Copyright Holders Against Illegal Users Who Uses Their Works for Commercial Purposes Without Permission and Does Not Pay Royalties

Every copyrighted work contains economic rights. This means that if there are any other parties or users who want to use the music for commercial purposes are obligated to fulfill the economic rights by paying royalties to the LMKN or Yayasan Karya Cipta Indonesia (**"YKCI"**) as well as acquire the permission of the creator or the copyright holder.[22] The reason behind such requirements is due to the fact that music is a human intellectual work that is legally

[21] Tim Lindsey et al., *Hak Kekayaan Intelektual Suatu Pengantar* (Bandung: PT Alumni, Bandung, 2005), 59.
[22] Tim Lindsey, *Hak Kekayaan Intelektual* (Bandung: PT Alumni Bandung, 2006).

protected by the law. Thus, asking permission and paying royalties is an obligation that arises from using musical works for commercial purposes.[23]

Copyright infringement towards musical works, does not only damage the local or domestic music industry, but also has a direct negative impact on the creators or copyright holders. This is due to the fact that the creators or copyrights holders have exerted their energy, creative thinking, hard work, and production costs in order to produce their musical works, but parties who uses these copyrighted musical works for commercial purposes illegally are able to reap the economic benefits without having to exert any efforts, which is unfair for the creators. Within this context, there are three types of illegally using copyrighted musics, namely:[24]

1. Plagiarism is usually carried out by duplicating an artist's entire album that is in the market by exactly copying the contents, cover, and packaging of the album.
2. Piracy is a form of reproduction or remake by compiling various copyrighted musical works from recording albums that sell well in the market.
3. Bootleg is carried out by making or distributing a video or audio recording of a performance that is not released yet by the artist or under any other legal authority.

If a user was found to have violated the economic rights of a creator or copyrights holder, LMKN or YKCI as its endorsee is authorized to issue a letter notifying that the musical works used by a party is protected by the law, and thus subject to a royalty payment.

[23] *Ibid.*
[24] *Ibid.*

Within this context, letters that can be issued by LMKN or YKCI are:[25]

1. **Introduction Letter (*surat pemberitahuan*)**

   A letter consisting of an introduction that the musical works used by the user is a song/music that is protected by the law.

2. **Reminder Letter (*surat untuk mengingatkan*)**

   A letter that is aimed to remind users that they have an obligation to pay royalties that is regulated under Law No. 28/2016 concerning Copyrights, which will have legal consequences, if the user refuses to do so.

3. **Warning Letter (*surat peringatan*)**

   A letter of warning will be issued by the LMKN or YKCI, if the previous letters are disobeyed or ignored.

If after the issuance of the series of letter, the user still refuses to fulfill the payment of royalties or to takedown the copyrighted musical works, then LMKN or YKCI has the authority to report the user to the authorities for violating the economic rights of the creator or copyrights holder that are protected under Article 9 paragraph (1) of Law No. 28/2016, in which paragraph (3) of the same article explains that if a party was to use the musical works for commercial purposes without permission, then they will be considered to have violated the economic rights of the creator or copyrights holder. The consequences of violating the aforementioned articles are regulated under Article 113 paragraph (1), (2), (3) and (4) of Law No. 28/2016, which states that:

[25] Yosepa Resent and Siti Mahmudah, ed. Etty Susilowati, Implementasi Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai Collecting Society Dalam Karya Cital Lagu (Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta), no.2 (2016).

Article 113 paragraph (1)

"*Every person who violates the economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use is punishable by imprisonment for a maximum of 1 (one) year and/or a maximum fine IDR 100,000,000 (one hundred million rupiah).*"

Article 113 paragraph (2)

"*Everyone who without rights and/or without permission of the creator or copyright holder violates the creator's economic rights as intended in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000.000,00 (five hundred million).*"

Article 113 paragraph (3)

"*Everyone who without rights and/or without permission of the creator or copyright holder violates the creator's economic rights as intended in Article 9 paragraph (l) letter a, letter b, letter e, and/or letter g for commercial use shall be punished with a maximum imprisonment of 4 (four) years and/or criminal fine amounting to Rp. 1,000,000,000.00 (one billion rupiah).*"

Article 113 paragraph (4)

"*Everyone who meets the elements as referred to in paragraph (3) which is carried out in the form piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp 4.000,000,000.00 (four billion rupiah).*"

C. Conclusion

In conclusion, the implementation of copyrights in Indonesia is based upon the declarative principle, which means that creations that are in tangible forms will receive legal protection. This legal

protection is regulated under Law No. 28/2016 which ensures and guarantees the economic rights of creators and copyright holders. Through this particular law, it is regulated that other parties who use copyrighted musical works for commercial purposes must pay a royalty fee and acquire the permission of the creator or copyright holder. In addition to that, Law No. 28/2016 also regulates upon the consequences of not fulfilling the aforementioned requirements, which are imprisonment and fines. However, even though such clear laws and regulations have been established, there are still a lot of people that commit piracy and overlook the need to fulfill the economic rights of creators.

A suggestion that the author has to the government is to socialize more on the proper method of using a copyrighted work. By doing so, the authors hope that the public will become more aware of the economic rights that the creator holds over their creation and appreciate the hard work that is put into these musical works by paying royalty fees and asking the creator or copyright holders permission before using their works.

REFERENCES

Laws and Regulations

Law Number 28 Year 2014 concerning Copyright.
Government Regulation Number 56 Year 2021 concerning Song and/or Music Copyrights Royalties Management

Books

Soelistyo, Henry. *Hak Cipta Tanpa Hak Moral*. Jakarta: PT Raja Grafindo Persada, 2011.
Lindsey, Tim et al. *Hak kekayaan intelektual suatu pengantar*. Bandung:PT Alumni, 2005.
Lindsey, Tim. *Hak Kekayaan Intelektual*. Bandung:PT Alumni, 2006.

Soepramono, Gatot. *Hak Cipta dan Aspek-Aspek Hukumnya*. Jakarta: PT Rineka Cipta, 2010.

Journal Articles

Senwe, Emma Valentina Teresha. "Efektifitas Pengaturan Hukum Hak Cipta Dalam Melindungi Karya Seni Tradisional Daerah." *Jurnal LPPM Bidang Ekosobudkum*, no. 2 (2015).

Resent, Yosepa and Siti Mahmudah, ed. Etty Susilowati. "Implementasi Lembaga Manajemen Kolektif Nasional (LMKN) Sebagai Collecting Society Dalam Karya Cital Lagu (Menurut Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta)." no. 2, (2016).

Websites Contents

U.S. Copyright Office. "Copyright Authorship: What Can Be Registered." https://www.copyright.gov/comp3/chap300/ch300-copyrightable-authorship.pdf.

Nurjannah, "Kekayaan Intelektual." http://nurjannah.staff.gunadarma.ac.id/.

U.S. Copyright Office. "What Does Copyright Protect?" https://www.copyright.gov/help/faq/faq-protect.html.

Monica Ayu Caesar Isabela, "Moral Rights and Economic Rights in Copyright." https://nasional.kompas.com/read/2022/03/26/03000031/hak-moral-dan-hak-ekonomi-dalam-hak-cipta

Legal Protection of Film Copyright Holders' Rights Against Media Piracy Through Illegal Streaming Websites

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Abstract
Protection against creation and inventions is necessary as it protects one's ideas and intellectual creation in their work. For this, the government has arranged laws and regulations governing intellectual property rights. Intellectual property rights refer to a right that is obtained by a person or legal entity that results in innovation in creativity. Covering human work that is derived from intellectual thought in science, art, literature, technology, design, and other forms of work that can be utilized economically. Even w copyright holders' rights are protected under the Copyright Law No. 28 of 2014. However, it is still common to see people pirating creative economics like movies, TV shows, music, and other protected creations. Technological developments in the realm of the film industry have detrimental consequences, particularly media piracy by irresponsible individuals. Society thinks that watching or downloading movies through illegal streaming websites for free without having to pay is not a significant offense. This research aims to analyze the reason for the violation of the copyright holder's rights and emphasize the significance of the government's role in order to guarantee that the copyright holders will receive their reserved rights.

Keywords: Media Piracy; Copyright Holder's Rights; Illegal Streaming Websites

A. Introduction

Indonesia is a state based on the rule of law as affirmed in the 1945 Constitution Article 1 (3) "The State of Indonesia shall be a state based on the rule of law".[1] Whereby, every state's activities and power must be exercised based on the law.[2] The state has an obligation to protect its citizens according to laws and the constitution. Moreover, Indonesia has a welfare state governing system, hence, the state is responsible for its citizens. It can be seen under the fourth paragraph of the preamble of 1945 constitution which states that "to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on Pancasila".[3] Then, in Articles 26, 27, 28, and 29, the concept of the welfare of the people is further elaborated. The government is responsible to protect the public welfare, both including economic and social welfare of its citizens through creating institutions, laws, and regulation to protect it.[4] The state must actively pursue prosperity and conduct itself in a way that is fair to all citizens and balanced. Hence, the laws and regulations are a set of rules that plays a major part which are designed to protect basic rights, freedom, justice, and fairness in the society. One of the government efforts in

[1] Article 3 of the 1945 Constitution
[2] Nikodemus Thomas Martoredjo, "Indonesia Sebagai Negara Hukum," Character Building, December 17, 2020, https://binus.ac.id/character-building/2020/12/indonesia-sebagai-negara-hukum/.
[3] Preamble of the 1945 Constitution
[4] Will Kenton, "Understanding the Welfare State and Its History." Investopedia. Investopedia, April 07, 2022. https://www.investopedia.com/terms/w/welfare-state.asp.

protecting economic welfare and commercial activity in Indonesia is through enacting laws and regulations on intellectual property rights.

In general, Intellectual property is the result of thought in the form of ideas which are realized or expressed. It can be an invention, works of science and art, designs, certain symbols/signs, layouts of semiconductor components and other varieties. The expression will become a legal product and be attached to what is called Intellectual Property Rights if it goes through the applicable procedures in the provisions.[5] Ultimately, it's used in the world of trade, generating moral and economic value for the creator of the creation. Every creator would want their creation to be legally protected. Humans are God-created creatures with the ability to create things creatively in their daily lives to fulfill their needs. Making a creation is a difficult task as it is the result of the creator's creativity. Creators are to create their creation by involving their own intellectual process out of their own creative expression of ideas. The obstacle that the creator needs to face when employing their creativity makes creating a creation a complex process that requires time and effort. Therefore, each creator has the right to the result of their own work, with each step of thinking or creativity taken into consideration in order to honor and protect the creators' hard work.

Intellectual property rights ("IPR") or *Hak Kekayaan Intellektual* in Indonesian (**"HAKI"**) is defined as the rights to obtain legal protection of intellectual property. The World Intellectual Property Organization (**"WIPO"**) has defined intellectual Property as the

[5] Tim Redaksi. 2018. *Himpunan Lengkap undang-Undang Hak Cipta, paten, Merek, Dan Indikasi geografis, Serta Hak Kekayaan intelektual (Hki)*. Laksana.

creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce.[6] Intellectual property is protected under the law which allows people to earn recognition or financial benefit from what they create. It includes several aspects, including copyrights, patents, trademarks, geographical indications, etc. Each is governed under its own laws. In essence, Intellectual property rights enable creators to be creative to make new innovations or inventions without worrying that their ideas will be stolen. Nations have collaborated in creating conventions to tackle IPR protection issues, such as the TRIPS agreement and the Berne Convention which are all administered by the WIPO. However, intellectual property still has its issue, commonly involving infringements by others. According to the United States Trade Representative (USTR) in 2016, Indonesia is the fourth largest country in terms of high rates of IPR.[7]

With this age of globalization, technological development has made it simpler for people to obtain information. People are increasingly accessing the internet for education, social networking, or entertainment purposes. Technology has facilitated people in all areas of life providing a better quality of life for human beings. However, as it continues to evolve, more legal issues continue to emerge. Internet sites or websites that increase over time present more potential for copyright infringement. For instance, to watch movies/films where people back then needed to queue at the cinema

[6] "What Is Intellectual Property (IP)?" WIPO. Accessed December 14, 2022. https://www.wipo.int/about-ip/en/.
[7] Pramita Tristiawati, "Pembajakan Hak Intelektual Di Indonesia Masuk 4 Besar Dunia." liputan6.com. Liputan6, June 10, 2016. https://www.liputan6.com/news/read/2527345/pembajakan-hak-intelektual-di-indonesia-masuk-4-besar-dunia.

to see a new film, nowadays people prefer to stream it through illegal websites available on the internet or download it from torrent sites. There is the urgency to increase legal protection efforts in protecting copyrighted work from being infringed arbitrarily. One aspect of copyrights that must get protection and legal certainty is towards films. The presence of digital platforms and streaming services increases unauthorized streaming services which fostered film piracy. Especially due to the recent COVID-19 social restriction, tempt several Indonesians to seek free watching film by visiting illegal streaming sites that offer films.[8]

Film, as a work of creation, is a form of intellectual property rights that are attached to the creator. As defined in Law No. 33 of 2009 on Film, is "Film is a work of art and culture in social institutions and media communication media which is made based on cinematographic rules that use sound or without sound which can then be shown". Film is therefore a form of media communication that conveys important concepts to the general public or audience. There are various advantages that can be obtained from movies/film, which were first used solely for entertainment but are now extensively employed as a method of education, knowledge, and promotion of creative works. As protected works, Article 40 letter m of the Law no 28 of 2014 concerning Copyright governed film as cinematographic works. Which elucidates that cinematographic works means a "Work in the form of moving images, including documentary films, advertising

[8] Reska K. Nistanto, "Di Balik Layar: Bagaimana Pembajakan Digital Melukai Industri Film Indonesia Halaman All." KOMPAS.com. Kompas.com, March 9, 2022, https://tekno.kompas.com/read/2022/03/09/10020057/di-balik-layar-bagaimana-pembajakan-digital-melukai-ind ustri-film-indonesia?page=all.

films, reportage or feature films made with a scenario, and cartoons. Cinematographic work may be made on celluloid tape, videotape, video discs, optical discs and/or other media that allow for screening in cinemas, on wide screen, television, or other media".

In this sense, film is a byproduct of cinematographic processes. Films derived from cinematic works are the result of a person's or a group's ability in mastering technology, art communication, and organizational management. Hence, as a creation that comes as a result of human's intellectual process in the form of ideas that are expressed in the form of creation is protected under intellectual property rights, specifically copyrights. This is because it is created by the creator's creative expression of ideas involving their own intellectual process which is expressed in a tangible form which is the creation of the film itself. Film creators have the copyright of the creation of their film and have exclusive rights. Film creators have the right to monopolize their creation to protect their copyrighted works from other parties or rights to release and distribute their work to gain economic benefit.

Copyright laws should protect films that already hold the copyright. However, cases of piracy of copyrighted films continue to be common, with little respect for the copyright itself. Film piracy on online streaming websites is often carried out by downloading or accessing websites that offer illegal streaming of original films. Some websites broadcast illegally free of charge. The ease with which individuals may access or search for anything on the internet—including film—has both detrimental and beneficial effects on the film industry. The existence of movie or film piracy activities is certainly detrimental to film creators since their expensive and labor-

intensive creations are shared without their permission in order to profit from those that are not their creations. Even though there are laws and regulations that protect film copyright which is Law no 28 of 2014 regarding Copyright but this is not a significant barrier for film pirates.

There are still many pirated films being circulated in Indonesia, which means the use of the internet provides illegal websites that can be accessed free by the public without considering the right of the creator of the film rights being harmed. In 2020, Kominfo blocked pirated or illegal movie streaming websites such as IndoXXI and other illegal websites because it harms intellectual property rights. However, unscrupulous website makers which provide film pirates alter their way by changing their name or website domain to deceive the authorities who enforce the law. Whilst people who have seen pirated films are continually looking for ways to watch pirated films by illegally accessing websites. This might cause Indonesia a slew of legal and economic issues, particularly in relation to copyright. Society still thinks that actions that violate copyright, especially in the context of streaming illegal movies is not something serious. Unlike other crimes, there is almost little publishing and no legal enforcement activities to address piracy, which does not enhance public awareness. Although it violates the moral rights and economic rights of the creator and copyright holder.

In this regard, this research analyzes the following formulation of issues:

1. How is the implementation of Indonesian Copyright law protecting the exclusive rights of Film copyright holders

against digital piracy through online streaming?

2. Whether the Indonesian Copyright law has effectively provided legal protection for the exclusive rights of Film copyright holders?

B. Discussion

B. 1. Moral and Economic Rights of An Author or A Copyright Holder

A copyright owner is entitled to exclusive rights, namely the moral right and the economic right. The moral rights that are rights that are eternally inherent to the Author to: a. continue to include or to exclude their name on the copy with respect to the public use of their Works; b. use an alias or pseudonym; c. change their works to comply with appropriateness in society; d. change the title and subtitle of their works; and e. defend their rights in the event of a distortion of works, mutilation of works, modification of works, or other acts which will be prejudicial to their honour or reputation.[9] Further, the moral rights can't be transferred as long as the author is still alive but the exercise of these rights is transferable by testament or other reasons in accordance with the provisions of laws and regulations after their death. To protect their moral rights, the Author may obtain copyright management information and/or copyright electronic information.

Economic rights of the Author or Copyright Holder are the exclusive right of the Author or the Copyright Holder in order to gain

[9] Article 5 of Law No. 28 of 2014

economic benefits from the Works.[10] The economic rights allows the Author or the Copyright Holder to a. publication of the Works; b. Reproduction of the Works in all its forms; c. translation of the Works; d. adaptation, arrangement, or transformation of the Works; e. Distribution of the Works or their copies; f. performance of the Works; g. Publication of the Works; h. Communication of the Works; and i. rental of the Works.[11]

B. 2. The Core of the Problem

In this modern era, the vast technological advances could assist filmmakers to create better movies that are closer to what they imagined. However, the advantages brought by technology comes with negative impacts like allowing people to commit copyright infringement easier than before. Irresponsible people utilize their phones to be used to access streaming sites like Amazon, Netflix, and Disney+, then proceeded to screen record the premium content effortlessly. Although some streaming sites have anticipated these crimes, those irresponsible individuals could also record movies in cinemas and post them on their personal websites, group chats like telegram and even sell the copies in the form of discs for the sake of their commercial interest. It is common in Indonesia to find people selling movies in malls without the permission of the copyright owners.

The Association of Film Producers of Indonesia ("APROFI") claimed that each year, film piracy costs the industry Rp. 5 trillion. The Head of APROFI, Edwin Nair, said that piracy is equal to theft,

[10] Article 8, op. cit.
[11] Article 9, op. cit.

and in this case, the object that is being stolen is the intellectual property rights. Filmmaker and the supervisor for APROFI, Mira Lesmana, mentioned that film piracy should be acknowledged to be more serious because this problem puts producers, directors, actors, and other workers at the film industry at a disadvantage. Adding on, she realized that the film pirates and the general public lack respect for intellectual property rights.[12] They emphasized that it's time for all filmmakers to have a voice and they suggested that the rule of law must be upheld to protect intellectual property rights from the creative works of all Indonesians which have been Indonesian cultural heritage.

The serious economic loss suffered by the laborers working in this industry needs to be acknowledged by the government and they should maintain the effort at protecting the exclusive rights of the Author or the Copyright Holder of a work. The problem is not the positive law, the Indonesian government has enacted laws that are protecting such rights however, the implementation is where the government needs to improve.

B. 3. Copyright Law No. 28 of 2014

Even though the general public might think that copyright infringement is only a misdemeanour, the Copyright Law regulates that those types of action are deemed as criminal actions. The perpetrators of these actions can be sentenced to prison and/or given fines. Articles that govern copyright infringement that many are still

[12] Dwi Murdaningsih, "Industri Film Rugi RP 5 Triliun Gara-Gara Pembajakan," Republika Online, November 10, 2020, https://republika.co.id/berita/qjjzkl368/industri-film-rugi-rp-5-triliun-garagara-pembajakan.

committing are:

a. Article 113(4) explicitly states that anyone who commits copyright piracy shall be subject to a maximum imprisonment of ten years and/or a maximum fine of Rp. 4 billion.
b. Article 115 states that the commercial use of a portrait without the consent of the person being photographed or their heirs for the purposes of billboards or advertising in electronic or non-electronic media is punishable by a maximum fine of Rp. 500 million.
c. Article 119 states that any collective management institution that does not have an operational permit from the minister in carrying out royalty collection activities shall be subject to imprisonment for a maximum of four years and/or a maximum fine of Rp. 1 billion.

Although the Copyright Law has already attempted to protect the exclusive rights of the Author or Copyright Holder, there are still irresponsible people who are selling pirated movies online and in stores in Indonesia. Article 10 of a quo law stipulates that managers of business premises are prohibited from allowing the sale and/or reproduction of goods resulting from Copyrights and/or Related Rights infringements in the location under their management. This article explains that even the managers of these market premises should also be responsible to prohibit the sale and/or reproduction of goods resulting from Copyrights and/or Related Rights infringements. However, what is idealized isn't always what is realized. The law enforcers in Indonesia lack the effort to enforce the law that is protecting these exclusive rights. Compared to the law enforcers that are responsible for PPKM, they will approach and

remind people to wear their masks properly and conduct social distancing. The small but noticeable behaviour of the law enforcers shows that the government doesn't think that copyright infringement crimes are as serious as it seems.

The United States is one of the countries that is best at respecting the intellectual property rights of its citizens. If anyone gets caught violating the intellectual property rights of an Author, they could be sentenced up to 5 years in prison and/or be given a fine of $ 25,000. Infringing on a third party's intellectual property may result in civil lawsuits (in which case the third party's rights holders sue the downloader directly) or criminal prosecution in the United States (where individuals involved in illegal file sharing can face fines and jail terms).

One person was fined $220,000 for stealing music and video files, according to a Forbes report.[13] Indonesia should learn from other countries like the United States on how as a state, they can guarantee the protection of the exclusive rights possessed by their citizens. In the United States, federal agencies could use the perpetrator's internet protocol ("IP") address, to track the perpetrator down. If that is not enough, the internet provider is obligated to inform the law enforcers what kind of device was used for illegal streaming and your location, this information could be subpoenaed.[14] In August 2019, two individuals pleaded guilty after eight of them were accused by the FBI of a number of offenses, including copyright infringement and

[13] Pritam Banik, "What Happens If You Get Caught Downloading Movies Illegally?" StrictlyLegal, December 21, 2021, https://strictlylegal.in/what-happens-if-you-get-caught-downloading-movies-illegally/.
[14] Dalvin Brown, "Is Streaming Video from Sketchy Websites Illegal?" USA Today. Gannett Satellite Information Network, December 17, 2019, https://www.usatoday.com/story/tech/2019/12/16/can-get-arrested-streaming-illicit-movies-its-complicated/2662 072001/.

conspiring to break the law by unlawfully reproducing and disseminating footage obtained through multiple pirate networks. The US Copyright Office emphasized that distributing and/or reproducing copyrighted work is a crime.

Until the time of the writing of this paper, popular websites like LK21 and IndoXXI are still up and accessible on the internet. These websites provide free streams of movies that they fill up with excessive advertisements for their financial interest. Although the government's effort in 2020 to ban these types of sites, the owner of these websites could easily just rename their domain. The Indonesian government has not taken significant action to prevent these times of crimes, only some cases are processed by law enforcers.

C. Conclusion

In conclusion, in terms of enacting the law to protect the rights of the Author or a Copyright Holder, Law No. 28 of 2014 has encapsulated all aspects to protect the Copyright Holder. However, the implementation of the law needs to be further improved, hence, it is undoubtedly that film piracy still occurs in Indonesia. Articles 113(4), 115, and 119 of Law No. 28 of 2014 explicitly prohibit the commercial use of pirated works; however, the government has yet to take further actions to guarantee the protection of the moral right and the economic right of the Author and the Copyright Holder. Furthermore, society is still unaware that film piracy is actually destructive to filmmakers, leading one culture to assume that film piracy is normal. Especially when people feel that watching films through illegal streaming sites is favorable because it is free and

conveniently accessible. The general public needs to fix their mindset and realize that intellectual property cannot be created in just a split second. Creating intellectual property requires hard work and a difficult process. The government needs to intervene to tackle the problem of intellectual piracy. They aren't taking this issue as seriously as other problems like PPKM where the law enforcers pay attention and try with their full effort to prevent the problem from becoming worse.

Our suggestion would be to increase the awareness of the general public about the negative impact of film piracy in order that the society would perceive film piracy as illegal and not the right thing to do. This could be done by having an open organized educational events such as seminars regarding copyright infringements. Further, we suggest that the Indonesian government takes intellectual property rights violations as seriously as the United States government where people are genuinely scared of getting caught by law enforcers that they are selling pirated or copyrighted works without the permission or consent of the original Author or the Copyright Holders. We believe that the government should encourage law enforcers to take legal action in markets or malls where their managers neglect their duties to prohibit the selling or reproduction of copyrighted works without the consent of the Author, as regulated in Article 10 of the *a quo* law. Also, they need to be stricter against these types of irresponsible sellers because their crimes put laborers who work in the entertainment industry at a disadvantage.

REFERENCES

Laws and Regulations

Indonesian 1945 Constitution
Law Number 28 Year 2014 concerning Copyright.

Books

Himpunan Lengkap Undang-Undang Hak Cipta, Paten, Merek, Dan Indikasi Geografis, Serta Hak Kekayaan Intelektual (HKI). Baturetno, Banguntapan, Yogyakarta: Laksana, 2018.

Website Contents

Himpunan Lengkap Undang-Undang Hak Cipta, Paten, Merek, Dan Indikasi Geografis, Serta Hak Kekayaan Intelektual (HKI). Baturetno, Banguntapan, Yogyakarta: Laksana, 2018.

Banik, Pritam, and Pritam Banik. "What Happens If You Get Caught Downloading Movies Illegally?" StrictlyLegal, December 21, 2021. https://strictlylegal.in/what-happens-if-you-get-caught-downloading-movies-ille gally/.

Brown, Dalvin. "Is Streaming Video from Sketchy Websites Illegal?" USA Today. Gannett SatelliteInformation Network, December 17, 2019. https://www.usatoday.com/story/tech/2019/12/16/can-get-arrested-streaming-illicit-movies-its-complicated/2662072001/

Kenton, Will. "Understanding the Welfare State and Its History." Investopedia. Investopedia,November 22, 2022. https://www.investopedia.com/terms/w/welfare-state.asp.

Martoredjo, Nikodemus Thomas. "Indonesia Sebagai Negara Hukum." Character Building, December 17, 2020. https://binus.ac.id/character-building/2020/12/indonesia-sebagai-negara-hukum.

Murdaningsih, Dwi. "Industri Film Rugi RP 5 Triliun Gara-Gara Pembajakan." Republika Online. Republika Online, November 10, 2020. https://republika.co.id/berita/qjjzkl368/industri-film-rugi-rp-5-triliun-garagara-pembajakan.

Nistanto, Reska K. "Di Balik Layar: Bagaimana Pembajakan Digital Melukai Industri Film Indonesia Halaman All." KOMPAS.com. Kompas.com, March 9, 2022. https://tekno.kompas.com/read/2022/03/09/10020057/di-balik-layar-bagaimana-pembajakan-digital-melukai-industri-film-indonesia?page=all.

Tristiawati, Pramita. “Pembajakan Hak Intelektual Di Indonesia Masuk 4 Besar Dunia.” liputan6.com. Liputan6, June 10, 2016. https://www.liputan6.com/news/read/2527345/pembajakan-hak-intelektual-di-indonesia-masuk-4-besar-dunia.
“What Is Intellectual Property (IP)?” WIPO. Accessed December 14, 2022. https://www.wipo.int/about-ip/en/.

Legal Analysis Regarding the Protection of the Original Work of Music Towards Music Cover That is Posted on Youtube

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Abstract
Intellectual property right is classified universally as a right that falls into the notion of human rights, where the state is obliged to ensure the fulfillment of such right. One of the major intellectual property rights that is commonly utilized in this modern day is copyright. Due to the advancement of technology that leans towards a digital society, many people have obtained economic benefit from copyright as a new source of income. Yet, technological advancement needs to be assisted with dynamic legal provisions that promote continuous refinement, in which Indonesian Copyright Law fails to do so. In the context of protecting the original work of music towards music covers that is posted on Youtube, there are still many cover artists that enjoyed the economic right of the creator without any form of valid permission. Additionally, YouTube's policy on resolving such issues is limited only to the extent if there is a valid request from the creator. Departing from such fact and issue, this paper will display a comprehensive discussion on the legal protection that given by the Indonesian Copyright Law and Youtube's policy as well as effort to create a more thorough and certain legal protection is needed as a solution, which can be realized through registering the copyright work and obligating the creator to make a thorough legal agreement in regards to the utilization of economic rights by other parties.

Keywords: Intellectual Property Rights; Indonesian Copyright Law; Music Works

A. Introduction

In this era of globalization, society has evolved and has figured out modern ways to fulfill their needs. One of the things that is modernized is through the utilization of intellectual property rights ("IPR") as a new source of income to fulfill economic needs. Such modernization has been acknowledged by many countries, one of which is Indonesia. Article 1 paragraph 3 of the 1945 Constitution stating that "The State of Indonesia is a state based on law". As a state that is based on law, there exists a concept called the rule of law. A.V. Dicey has once stated that the rule of law shall consist of three elements, which are the supremacy of law, equality before the law, and due process of the law.

One of the universal thresholds of a state that is based on law is the recognition and protection of human rights, where in regards to such threshold, intellectual property is considered as an inherent right that shall be protected by the state.[1] This is ensured in Article 28c paragraph 1 of the 1945 Constitution, in which the state shall acknowledge the protection of each individual's right for self-development and to obtain the benefit of science and technology, arts and culture, for the sake of enhancing his/her quality of life and for the sake of the welfare of mankind.

According to Article 1.2 the Trade Related Aspects of Intellectual Property Rights ("TRIPs") agreement, which has been ratified by Indonesia, intellectual property consists of copyright, trademark, patent, industrial design, geographical indication, integrated circuit layout, and trade secret. The protection of these

[1] Taufik Simatupang, "Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual dalam Perspektif Negara Hukum," *Jurnal Ham*, no. 1 (2021): 115-116.

IPR would also bring a positive paradoxical effect. Each individual will not only be able to utilize intellectual property as an instrument for self-development and welfare, but the state will also benefit from intellectual property, especially in regards to the country's economic development through the implementation of optimal and high level of protection of IPR. When each individual feels secure regarding their work in scope of IPR, it can boost innovation that also serves as a stimulus for raising better quality of goods and services in various economic sectors.[2]

One of the most well-known IPR in Indonesia is copyright. Due to the advancement of technology, copyright can now be a new source of income, where such rights have generated new job opportunities, such as being a content creator, film maker, photographer, etc. Copyright is regulated under Law No. 28 of 2014 regarding Copyright ("Indonesian Copyright Law"), where it is stated in Article 1 paragraph 1 that "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions". A trend that has been going on in Indonesia within the scope of copyright is music covers that are posted on social media platforms, such as youtube (a well-known international platform that could connect people from different parts of the world to enjoy videos and music published in it).

Nowadays, people use YouTube to boost the publication of their work and to receive monetary rewards from their work. As a

[2] A. Sattar, "Intellectual Property Rights and Economic Growth: Evidence from High, Middle, and Low Income Countries," *Pakistan Economic and Social Review* no. 2 (2011): 164.

result, Youtube has become a major business industry where music and video creators compete to market their work and obtain the most profit out of it. Article 40 paragraph 1d of the Indonesian Copyright Law stated that "songs and music are protected inventions in the field of art". The Indonesian Copyright Law also guarantees the fulfillment of the economic rights of the music creator and those who possess the related rights in the form of royalties as stipulated under Article 58 and Article 89 of the Indonesian Copyright Law.

Furthermore, music copyright is divided into two parts; music compositions and sound recordings. Music compositions consist of music, including verses/lyrics. The musical composition may be a copy of the notes or a prerecorded form of music on a tape or CD. Composer or songwriter is considered as the creator of a musical composition. On the other hand, sound recording is a refinement of a series of music sounds and other sounds such as human voice. Thus, the creator of sound recording are the performers who own related rights and/or record label who have processed the sounds and perfected them into a final recording.[3]

However, there is still a barrier within the Indonesian positive law in regards to protecting the copyright of music from presumably illegal music covers that are posted on Youtube. Within the platform, people are given the liberty to not only publish their own music work, but also a new recording of a previously released song that someone else wrote which is called a cover. This could eventually result in an unfair competition between the original artist under a music label and individual cover artist, where the cover artist could

[3] Setiawati Lucky, "Apakah Menyanyikan Ulang Lagu Orang Lain Melanggar Hak Cipta?" Hukumonline, https://www.hukumonline.com/klinik/a/apakah-menyanyikan-ulang-lagu-orang-lain-melanggar-hak-cipta-lt506e c90e47d25.

obtain more profit than the original music creator. This is further worsened when the cover artist violated the copyrights of the original music by posting the cover without the permission over the economic and the mechanical rights of the creator.

Hence, questions are raised on (1) the legal certainty of Indonesian copyright law in protecting music works and (2) whether there is a difference between the protection that is given by the copyright law and the policies that are implemented by Youtube towards the original creator and the cover artists. Taken from Youtube official policy regarding copyright protection, "Creators may only upload their own videos or those of others they have permission to use. That means they may not upload videos they don't own, or use other people's copyrighted content, such as music tracks, copyrighted program snippets, or videos created by other users, in their videos without obtaining the necessary permissions."[4] At a glance, the policy seems to be in accordance with the Indonesian Copyright Law, but factually there are still many illegal music covers that have not been suspended or given any sanctions by the platform, leaving Youtube's protection policy questionable.

Thus, from the questions that are raised, the writer of this paper will first display the history and theories that formulate the existence of intellectual property and copyright law in Indonesia. Second, the writer will further emphasize on how the Indonesian Copyright Law protects the original work of music when a cover of that original work is posted on Youtube without the permission to obtain economic as well as mechanical rights from the original

[4] YouTube, "Apa itu Pengecualian Hak Cipta?" Youtube, https://www.youtube.com/intl/ALL_id/howyoutubeworks/policies/copyright/#copyright-exceptions.

owner. Lastly, this paper aims to answer whether Youtube protection policies regarding the copyright of the original work of music is in compliance with the Indonesian Copyright Law.

B. Discussion

B. 1. History and Theories that Formulate the Existence of Intellectual Property and Copyright Law in Indonesia

Intellectual Property is the set of legal rights applying to intellectual activities in the field of industry, science, literature, and the arts. It arises from the creative effort of the human mind and results in products of all kinds being brought to market.[5] Thus, intellectual property rights are the exclusive right given over the creation of their mind for a certain period of time.[6] Philosophically speaking, the notion of exclusive rights over one's own work emerged in the 18th century by John Locke.[7] John Locke emphasized that by nature everyone has the right to himself, the results of the work done by him require sacrifice in finding, processing, and adding personality to a work or creation. Thus, everyone has natural rights to the work or creation.

John Locke emphasizes the importance of giving awards to people who have made sacrifices to find and cultivate something that comes from nature, in the form of property rights. In terms of

[5] Sherri L. Schornstein, *Criminal Enforcement of Intellectual Property Rights US Perspective* (San Fransisco: LexisNexis, 2013), 3.
[6] World Trade Organization, "What are intellectual property rights?" https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm
[7] John Locke, *The Second Treatise of Government* (USA: Barnes & Noble Publishing, 2004), 17-19.

intellectual property, this concept is known as Labour Theory.[8] In line with that, John Locke emphasizes that "...Labor often creates social value, and it is this production of social value that deserves 'reward', not the labor that produced it." [9] Specifically for the history of copyright, it started in the midst of the 15th century when Guttenberg created the first printing machine. With this new creation, works could be mechanically reproduced easily. This then leads to the notion of copyright.[10] In England, copyright is introduced to protect the publisher from those who duplicate the books. This protection is not given to the author but to the publisher of the book.[11] After England, the granting of certain rights to authors also happened in France which arose as a result of the French revolution. In its further development, copyright is transformed into an exclusive right for the author, both for economic exploitation and rights for other facilities related to his work.[12]

Indonesia also has a long history regarding copyright protection. Copyright was made known in Indonesia in 1912 by the Dutch during the colonization era. Based on the concordance principle, the Dutch law regarding copyright called Auterswet 1912 is applicable in Indonesia. After the Independence Day of Indonesia in 1945, Auterswet 1912 remains applicable through the transitional rule. In

[8] William Fisher, *Theories of Intellectual Property*. Dalam Munzer, New Essays in the Legal and Political Theory of Property, (Cambridge: Cambridge University Press, 1987), 170-172.
[9] Justin Hughes, *The Philosophy of Intellectual Property*, (Georgetown: Law Journal, 1988), 12.
[10] Yusran Isanaini, *Hak Cipta dan Tantangannya di Era Cyber Space* (Bogor: Ghalia Indonesia, 2009), 8.
[11] Muhammad Djumhana, R. Juabaedillah, *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia* (Bandung: PT Citra Abadi Bakti, 2014), 48.
[12] Sudargo Gautama, *Segi-segi Hukum Hak Milik Intelektual* (Bandung: PT Eresco, 1990), 7.

1982, the government of Indonesia repealed Auterswet 1912 and created Law No. 6 Year 1982 regarding Copyright. However, within five years upon the creation of this new law, the government revised this law as the spread of copyright infringement was massive and encouraged greater infringement to obtain large economic benefits quickly by ignoring the interests of copyright owners or holders.[13]

Furthermore, in 1997, the government enacted a new copyright law called Law No. 12 Year 1997 regarding copyright law due to the low level of public understanding of the meaning and function of copyright, the attitude and desire to obtain trade benefits in an easy way, coupled with the insufficient development of common understanding as well as unsupportive attitudes and actions of law enforcement officials in dealing with copyright infringement. This 1997 Copyright law is the first law that Indonesia enacted after the ratification of TRIPs, which is an international legal agreement signed by all World Trade Organization member countries (WTO). This agreement is critical because it establishes minimum standards for the availability, scope, and use of seven types of intellectual property, including copyright. TRIPS, in essence, establishes standards for the entire scope of Intellectual Property Rights, including the application of those standards through administrative and legal actions. Indonesian 1997 copyright law is tailored upon TRIPs. In addition, the Indonesian government also ratified Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention") to further complete the protection of intellectual property in Indonesia. However, there are still a number of things that need to be perfected to provide protection for intellectual works in the field of copyright.

[13] *Ibid*, 58.

Therefore, the government reissued a new law, namely Law No. 19 of 2002 concerning copyright and finally Law No. 28 of 2014 concerning copyright.

The development of the creative economy and the rapid development of information and communication technology require the renewal of the copyright law, bearing in mind that copyright is the most important basis of the national creative economy. Reflecting on developed countries, adequate protection of copyright has succeeded in bringing about significant growth in the creative economy and making a real contribution to the economy and people's welfare. Proportional arrangements in copyright law are needed so that positive functions can be enhanced and negative impacts minimized.

B. 2. Legal Certainty of The Indonesian Copyright Law in Protecting the Original Work of Music from Unauthorized Music Cover

Legal certainty is important towards the justitiabelens or citizens that abide by the laws, where it has a function of protecting these citizens from arbitrary actions (tindakan sewenang-wenang) by other irresponsible parties for the sake of public order. This would mean that there will be certain sanctions given by the authorities whenever there is an action that violates certain laws and regulation. A detailed, clear, and comprehensive law and regulation is important to give a thorough legal certainty towards the citizens.[14] In the scope of copyright, it would then be vital to have a detailed regulation that covers all of the possibility of violation from other

[14] Moho, H. Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan, *Jurnal Warta* (2019): 7

irresponsible parties so that the creator of the work is able to obtain a secure protection from the state. The principle of legal certainty must be adhered by the state in protecting the copyrights of every creator of the work. If the state fails to provide full and sufficient protection, then according to Widyopramono, it will not only lead to the failure of the state to protect the individual's right of self-development, but it will also affect economic growth of the nation.[15] Thus, it is important to analyze whether the Indonesian Copyright Law has a given thorough protection towards intellectual property works in the scope of copyright, which can be seen from the case of unauthorized music covers that is posted on Youtube.

Before moving towards the analysis, it is crucial to understand the basic understanding of copyright, such as the definition, rights related to copyright, and the intellectual property works within the scope of copyright. According to Article 1 paragraph 1 of the Indonesian Copyright Law, copyright is the exclusive right of the creator (pencipta) that arises automatically based on the declarative principle after a creation (intellectual property work) is realized in a tangible form without reducing restrictions in accordance with statutory provisions. Within exclusive rights, there consist two other related rights, which are moral rights and economic rights. Moral rights is defined as the right that is eternally attached to the creator to (a) continue to include or not include his name on the copy in connection with the use of his work for the public; (b) use aliases or pseudonyms; (c) change his creation according to the decency in society; (d) change the title and subtitles of creation; and (e) defend

[15] Widyopramono, *Tindak Pidana Hak Cipta, Analisis dan Penyelesaiannya* (Jakarta: Sinar Grafika, 1992), 4.

their rights in the event of creation distortion, creation mutilation, modification of creation, or things that are detrimental to self-respect or reputation (Article 5 paragraph 1). Moral rights within the scope of the Indonesian Copyright Law adopted the principle stipulated in the Berne Convention, where copyright is considered to be perpetual towards the creator, it cannot be revoked (inalienable) and flows as an inheritance right to the creator, even if the economic rights are transferred to a company or other party. Copyright work is the personality of the creator, an extension of the character and personification of the creator in which such personality cannot be transferred to other parties even until the death of the creator.[16]

On the other hand, economic right is defined as the exclusive right of the creator or Copyright Holder to obtain economic benefits for copyright works (Article 8 paragraph 1). In this context, economic rights are rights to commercialize or utilize copyright works in certain methods based on the permission of the creator or copyright holder. Referring to the elucidation of Article 4 of the Indonesian Copyright Law, exclusive right can only be granted towards the creator of the work and there aren't any other eligible parties that can obtain such right without the permission from the creator. Even if there is a permission from the creator, the copyright holder (pemegang hak cipta) is only qualified to acquire a portion from the exclusive right through economic rights. Furthermore, Article 40 paragraph 1 of the Indonesian Copyright Law also recognizes several types of intellectual property work that falls into the lens of copyright, namely books, pamphlets, literary works that published,

[16] Haryono. "Prinsip Perlindungan Hak Cipta Sebagai Hak Kekayaan Intelektual Dalam Kajian Filosofi dan Teori", (Seminar Nasional Keindonesiaan VI, March 2022), 12.

seminary, photography works, architectural works, music and songs, cinematography works, etc in which they must all be protected in an equal manner.

Next, it is needed to understand that many copyright violation cases in Indonesia revolve around the economic rights that are obtained illegally without the permission of the creator. One of which can be seen in the case of unauthorized or illegal music covers that are posted on Youtube, where it has become a new trend nowadays as a new source of income. In some cases, there are even cover music artists that earned more profit than the original creator. This can be seen in the case of Zinidin Zidan and Tri Suaka, where they both posted a music cover on YouTube with viewers reaching up to millions. However, they did not pay the royalty fee towards the original creator of the music, which is Kangen Band, even though they have already received monetization (compensation for their work) from YouTube. Zinidin Zidan and Tri Suaka have enjoyed the economic rights of Kangen Band without their permission. Another case example can be seen revolving around the famous singer, Hanin Dhiya, where she commercially published a music cover titled "Akad" in YouTube without the formal permission of the original creator. Even though she has changed the lyric within the cover music, it should also be done with a valid permission from the original creator.[17]

As mentioned in the introduction, there are two types of legal intellectual work in the scope of music, namely music compositions and sound recordings. Music compositions consist of music that

[17] Rahmadhanty C. et al., "Aspek Hukum Dalam Penggunaan Hak Cipta Lagu Oleh Pelaku Pertunjukan pada Kanal YouTube," *Jurnal Krisna Law* 3, no.3 (2021), 64-66.

includes verse or lyrics. The musical composition may be a copy of the notes or a prerecorded form of music on a tape or CD. Composer or songwriter is considered as the creator of a musical composition. On the other hand, sound recording is a refinement of a series of music sounds and other sounds such as human voice. Thus, the creator of sound recording are the performers who own related rights and/or record label who have processed the sounds and perfected them into a final recording. This would mean that music cover falls into sound recording.

To be eligible to create and post cover music on YouTube for commercial purposes, there needs to be a license from the original creator, which is in the form of mechanical rights, performing rights, synchronization rights, and print rights. Mechanical rights is defined as the right to obtain royalties from the reproduction of songs on several media, for example CDs, cassettes, etc. Next, performing rights is defined as the right to announce a song/musical composition, including singing, playing, either in the form of a recording or being performed live, via radio and television, including through other media such as the internet, live concerts and programmed music services. Then, synchronization rights are defined as the right to get royalties from songs that are used in various other forms of creation, for example, advertisements, films, videos, etc. Lastly, print rights is defined as the right to obtain royalties if the song is sold in a printed form.[18] Every individual should be aware of such a right and they must utilize it depending on the form of music reproduction they want to produce. If it is in the form of music cover that is posted on Youtube, they must have

[18] Ibid., 64.

mechanical and performing rights related to the original work of music.

If the cover artists enjoyed the economic right of the original creator without their permission, the Indonesian Copyright Law has provided sanctions that can be imposed towards the violators. According to Article 113 Paragraph 2 of the law, it is stated that every person that committed the act of (1) publishing certain work; (2) reproduction of the work in all of its form; (3) distribute the work or its copies; and (4) communicate the work without any permission shall be punished with maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). In addition, according to Article 113 Paragraph 3 of the law, it is stated that every person that has committed (1) translation of the work; (2) adaption, arrangement, or transformation of the work; (3) performing the work; and (4) announcing the work without permission from the creator, they could be imposed with maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

In a sense, the law has given a legal certainty regarding the rights of the original creator, the mechanism to transfer the rights, and the sanctions that can be imposed towards the violators. However, the law has not given any preventive measures to hinder copyright violation, especially in the scope of music covers. The Author suggests that even though copyright does not adopt the first to file system, creators of copyright works should still be obliged to register their work to the Directorate General of Intellectual Property (**"DGIP"**) so that there is record of ownership that is able to strengthen the legal protection of the work whenever disputes occur. Next, it is also important to stipulated a clause within the Indonesian

Copyright Law that require the creator to make certain agreement regarding the transfer of rights, the utilization of the creation by other parties, and form of acts that could endanger the economic and moral rights of the creator with a rigid and specific format so that there won't be any legal holes that can be exploited by other parties (e.g. cover artists). With a more specific and rigid substance within the Indonesian Copyright Law, there will be a stronger legal certainty in which it could help in bringing equality, justice, and fairness towards all of the related parties.

B. 1. Youtube Protection Policies regarding The Copyright of The Original Work of Music

As referred to in the introduction above, in Youtube, "Creators may only upload their own videos or those of others they have permission to use. That means they may not upload videos they don't own, or use other people's copyrighted content, such as music tracks, copyrighted program snippets, or videos created by other users, in their videos without obtaining the necessary permissions". [19] However, YouTube allows a conditioned relaxation for this rule called fair use. Fair use is a legal statement where a non-copyright owner can reuse copyrighted material under certain circumstances without obtaining permission from the copyright owner. Several factors must be taken into account in order to classify a usage of someone else's work as a fair use such as firstly, the purpose and characteristics of use. A video posted for educational purposes may be categorized as fair use unlike a copy of an original work for commercial use. Secondly, the nature of the copyrighted work. Using fictional work

[19] Youtube, op.cit.

created by someone may not be classified as fair use compared to factual work. Thirdly, the portion of the work being used. The more material being used, the more likely it would not constitute fair use. Lastly, if the content harms the potential market value of the original copyrighted work, it would not be treated as a fair use. Thus, before an applicant would file a claim of copyright infringement, YouTube would ask the applicants to recheck if their work is being fairly used.[20]

Accordingly, YouTube provides two ways to make a claim when the owner's copyrighted work is being illegally published without their permission, namely copyright claim and content ID claim. First, A copyright claim allows copyright owners to request to Youtube for the takedown of their work in other channels if they find their work was posted without their permission. This is known as a copyright claim. After YouTube reviews the official notification from copyright owners, Youtube will take down the work in compliance with Copyright law.[21] On the other hand, content ID claims will automatically appear if the uploaded video matches another video or a segment of another video in YouTube's Content ID system. Depending on the copyright owner's Content ID settings, Content ID claims can block videos from being viewable, monetize videos by running ads on them, which sometimes the copyright owner may share revenue with the uploader in question, and track video views

[20] "Fair Use on YouTube," Google, accessed December 16, 2022, https://support.google.com/youtube/answer/9783148#zippy=%2Csifat-karya-berhak-cipta%2Cjumlah-dan-bany aknya-porsi-yang-digunakan-terkait-dengan-karya-berhak-cipta-secara-keseluruhan%2Cpengaruh-penggunaan-t erhadap-potensi-pasar-atau-nilai-karya-berhak-cipta%2Ctujuan-dan-karakteristik-penggunaan-termasuk-apakah- penggunaan-semacam-itu-memiliki-sifat-komersial-atau-untuk-tujuan-pendidikan-nonprofit.

[21] "Dasar Dasar Teguran Hak Cipta," Google, accessed December 16, 2022, https://support.google.com/youtube/answer/2814000?hl=id&ref_topic=9282678.

statistics.[22]

YouTube compliance with Copyright law is only limited to the taking down of the content upon a valid copyright removal request and the person whom the content was taken down may provide counter notification. However, further effort by the parties such as resolving the issue in the court remains the free choice of the parties. Accordingly, looking at YouTube regulations explained above, it can be concluded that YouTube has adhered to the protection of original work of copyright holders. However, this requires the active participation of the copyright holder to make sure that their works are not being illegally used for the economic benefit of the cover artist.

The Author would propose two methods to tackle this issue. First, the original copyright holder of the song could publish their songs in YouTube and obtain Content ID. The YouTube system will take down any similar published content to the original work. To track who is the original creator of the song, YouTube and the creator could utilize the data from the DGIP as the Author has also suggested above that it should be obliged to register the copyright work towards the DGIP as a proof of ownership. Thus, the work of the original copyright holder will be protected if the cover artist did not ask for permission. Second, in a context where the cover artist asked for permission, the copyright holder must create an agreement with the cover artist regarding the share of economic rights from the compensation the cover artist receives from YouTube. Thus, this will ensure the full protection of economic and moral rights of the copyright holder of music and songs.

[22] "Mempelajari Claim Content ID," Google, accessed on December 16, 2022, https://support.google.com/youtube/answer/6013276?hl=id&ref_topic=9282678.

C. Conclusion

Intellectual Property Right is acknowledged as a basic human right that should be protected at all cost by the state. In Indonesia, this is ensured within the 1945 Constitution, where it falls under the right for self-development. However, the inability of the government to create an effective and thorough legal protection within the scope of copyright works could endanger the fulfillment of the citizens for their right of self-development. Such issues can be seen within the lens of the original work of music and cover music that is posted on YouTube. There are still many cover artists that enjoyed the economic rights of their cover music without the consent or permission from the original creator. This is worsened by YouTube's policy that only limits video takedown from the valid request of the creator, which would mean that YouTube is unable to takedown videos arbitrarily (even knowing that the video is a copyright violation). Thus, the solution that is needed to create a thorough protection and legal certainty is by obligating the creator to register his/her copyright work to the DGIP as well as requiring the creator to establish a written contract with other parties in regards to the utilization of his/her economic rights.

REFERENCES

Laws and Regulations

Indonesian 1945 Constitution
Law Number 28 Year 2014 concerning Copyright.

Books

Djumhana, Juabaedilla, et al., *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia.* Bandung: PT Citra Abadi Bakti, 2014.

Fisher. W, *Theories of Intellectual Property. Dalam Munzer, New Essays in the Legal and Political Theory of Property*. Cambridge: Cambridge University Press, 1987.

Gautama. S, *Segi-segi Hukum Hak Milik Intelektual*. Bandung: PT Eresco, 1990.

Hughes. J, *The Philosophy of Intellectual Property*. Georgetown: Law Journal, 1988.

Isanaini. Y, *Hak Cipta dan Tantangannya di Era Cyber Space*. Bogor: Ghalia Indonesia, 2009.

Locke, J. *The Second Treatise of Government.* USA: Barnes & Noble Publishing, 2004.

Schornstein, S. *Criminal Enforcement of Intellectual Property Rights US Perspective.* San Fransisco: LexisNexis, 2013.

Widyopramono, *Tindak Pidana Hak Cipta, Analisis dan Penyelesaiannya.* Jakarta: Sinar Grafika, 1992

Journal Articles

Ramadhanty, C, et al. "Aspek Hukum Dalam Penggunaan Hak Cipta Lagu Oleh Pelaku Pertunjukan pada Kanal YouTube." *Jurnal Krisna Law* 3, no.3, (2021).

Moho, H. "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan." *Jurnal Warta* 59 (2019).

Sattar, A. "Intellectual Property Rights and Economic Growth: Evidence from High, Middle, and Low Income Countries." *Pakistan Economic and Social Review* 49, no. 2 (2011).

Simatupang, T. "Hak Asasi Manusia dan Perlindungan Kekayaan Intelektual dalam Perspektif Negara Hukum." *Jurnal Ham* 12, no. 1 (2011).

Haryono. "Prinsip Perlindungan Hak Cipta Sebagai Hak Kekayaan Intelektual Dalam KajianFilosofi dan Teori." *Seminar Nasional Keindonesiaan* VI (2022).

Website Contents

Banik, Pritam, and Pritam Banik. "What Happens If You Get Caught Downloading Movies Illegally?" StrictlyLegal, December 21, 2021. https://strictlylegal.in/what-happens-if-you-get-caught-downloading-movies-illegally.

Brown, Dalvin. "Is Streaming Video from Sketchy Websites Illegal?" USA Today. Gannett Satellite Information Network, December

17, 2019. https://www.usatoday.com/story/tech/2019/12/16/can-get-arrested-streaming-illicit-movies-its-complicated/2662072001/.
Kenton, Will. "Understanding the Welfare State and Its History." Investopedia. Investopedia,November 22, 2022. https://www.investopedia.com/terms/w/welfare-state.asp.
Martoredjo, Nikodemus Thomas. "Indonesia Sebagai Negara Hukum." Character Building,December 17, 2020. https://binus.ac.id/character-building/2020/12/indonesia-sebagai-negara-hukum.
Murdaningsih, Dwi. "Industri Film Rugi RP 5 Triliun Gara-Gara Pembajakan." Republika Online. Republika Online, November 10, 2020. https://republika.co.id/berita/qjjzkl368/industri-film-rugi-rp-5-triliun-garagara-pembajakan.
Nistanto, Reska K. "Di Balik Layar: Bagaimana Pembajakan Digital Melukai Industri Film Indonesia Halaman All." KOMPAS.com. Kompas.com, March 9, 2022. https://tekno.kompas.com/read/2022/03/09/10020057/di-balik-layar-bagaimana-pembajakan-digital-melukai-industri-film-indonesia?page=all.
Tristiawati, Pramita. "Pembajakan Hak Intelektual Di Indonesia Masuk 4 Besar Dunia." liputan6.com. Liputan6, June 10, 2016. https://www.liputan6.com/news/read/2527345/pembajakan-hak-intelektual-di-indonesia-masuk-4-besar-dunia.
"What Is Intellectual Property (IP)?" WIPO. Accessed December 14, 2022. https://www.wipo.int/about-ip/en/

Legal Protection Against Trade Secrets in Indonesia

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Abstract
Intellectual property protection is a critical component in fostering creativity and economy. Indonesia has ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights and passed the Trade Secrets Law No. 30 of 2000. Every citizen's rights are protected by the law, whether they were acquired as a result of a transfer or arose as a consequence of their own creation. Shared rights in the form of copyrighted works fall under the category of Intellectual Property Rights in the legal world (IPR). As a result, IPR might be defined as an abstract right that pertains to immaterial objects. Copyrights, Patents, and Trademarks, as well as Confidentiality Trade, are examples of ideas that require legal protection from an economic standpoint.

Keywords: Trade secrets; IPR; Law No. 30 of 2000

A. Introduction

As part of the Intellectual Property Rights system, trade secrets, like other IPR items, ought to be protected. Industrialization and a competitive environment has resulted in the development of trade secrets. The right to use their own trade secrets, as well as the right to license or prohibit others from using or disclosing their trade secrets to third parties for commercial purposes, are all examples of

trade secret rights. In Western society, trade secrets are regarded as "private rights" because they are derived through the human intellect's sacrifice of effort, energy, and expensive costs. Eastern culture, on the other hand, views trade secrets as "public rights" that are shared property.[1]

Around 3000 BC, the Chinese were aware of the concept of trade secrets. This can be found in the Chinese tale, which refers to Princess Hsi-Ling-Shih, the golden emperor's wife, as the Goddess of Silk. The Princess presides over the silk-making ceremony at the start of each spring. The kingdom maintains great secrecy over the technology and procedure of manufacturing silk. Anyone who disclosed the secret or smuggled silkworm cocoons or eggs out of China would be executed. They kept it a secret for the next 2000 years.[2]

Around the 18th century, the first cases of trade secrets arose in England, involving hidden prescription remedies and economic competition. In the early nineteenth century, trade secret laws in America accommodated company secrets, rivalry, technology, and job management trends. The topic of trade secrets or trade secrets was taken by America from British common law about protection through doctrines created by judges through jurisprudence in trade secret cases.[3]

Today's industry is dependent on intellectual property.

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[1] Venantia Hadiarianti, "Rahasia Dagang: Informasi Komersial Di Bidang Teknologi/Bisnis". Hak Kekayaan Intelektual, 2010, https://atmajaya.ac.id/web/KontenUnit.aspx?gid=artikel-hki&ou=hki&cid=artikel-hki-rahasia-dagang.

[2] *Ibid*.

[3] *Ibid*.

Business actors' intellectual property is a highly prized asset. Experiment, research, and development are all examples of how intellectual property is developed. As a result, intellectual property is not a cheap commodity, but rather a commodity with economic worth that supports the products produced by business actors. To establish an advanced industry capable of competing in the global market, national and international environments that stimulate creativity and innovation must be created, alongside legal protection for trade secrets as part of the Intellectual Property Rights framework.

Considering trade secrets are valuable assets in a company, they must be kept private and protected. If the trade secret is leaked to third parties outside of the agreement, the creator of the trade secret may suffer financial losses. Trade secrets are protected under Law No. 30 of 2000 Concerning Trade Secrets, which aims to reduce any potential losses (hereinafter referred to as the Trade Secret Law). The following definition of trade secrets is found in Article 1 number (1) of the Trade Secrets Law: "In the field of technology and/or business, trade secrets are information that is not widely known to the public, has economic value because it is valuable in business activities, and is kept confidential by the owner of the trade secret".

In Indonesia, trade secret protection is still a new concept. This arrangement is based on the ratified World Commerce Organization (Formation permission World Trade Organization or WTO), which is also covered by the Trade Agreement Intellectual Property Related Aspects Rights (TRIPs Agreement) with Law No. 7 of 1994, therefore

it must be put up for secret trade.[4] Trade secrets are regulated for the first time in Indonesia under Law No. 30 of 2000 on Trade Secrets. Initially, signs and regulations in Article 1365 Civil Code and Article 382 bis KUHP controlled legal protection against all forms of unfair competition.

This law is critical in encouraging sectors of businesses in Indonesia to enter in national and international trade, as well as encouraging company creativity and innovation. The Trade Secret Law was promulgated in order to protect the rights of trade secret owners and provide legal clarity for them. Despite the fact that the Trade Secret Law has been passed and is in effect, there are still gaps in terms of lowering the types of trade secret theft offenses from a technological and business perspective.

B. Discussion

Difference Between Patent and Trade Secrets

To be able to establish a good economic development, a country needs a good Intellectual Property Rights system. With the promulgation of Law Number 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization, by law Indonesia has been bound by the provisions on IPR in the General Agreement on Tariffs and Trade or General Agreement on Tariffs and Trade. One of the attachments to the Tariff and Trade Agreement is the Agreement on Trade Related Aspects of Intellectual Property Rights or abbreviated as TRIPs. TRIPs is an international standard that

[4] Taufik Effendy. "RAHASIA DAGANG SEBAGAI BAGIAN DARI HAK KEKAYAAN INTELEKTUAL". Al' Adl VI, no. 12 (2014): 54.

must be used with respect to IPR. For developing countries like Indonesia, developing TRIPs is of course not easy because there are many factors that influence Indonesia in providing protection for IPR as desired by developed countries. Although the TRIPs agreement was set to come into effect on January 1st 1995, In Indonesia, TRIPs came into effect on January 1 2000. From there we can see that the introduction of new technology in the economy fosters economic growth and enhances community welfare. As we all know, IPR consists of Copyrights and related rights, Trademarks, Patents, Geographical Indications, Industrial Designs, Integrated circuit layout designs, Trade Secrets, Protection of Plant Varieties, and Cultural Conservation[5].

In terms of protecting their company's Intellectual Rights, people are often still confused in choosing between Patent Rights and Trade Secrets. The difference between the two is:

By definition, a patent is an exclusive right granted by the state to investors for their inventions in the field of technology for a certain period of time to carry out the invention themselves or to give approval to other parties to implement them (Law No.13 of 2016 concerning Patents). Trade secrets according to Law No.30 of 2000 is referred to as information that is not known to the public in the field of technology and/or businesses, has economic value because it is useful in business activities, and is kept confidential by the owner of the trade secret. The period of protection is also a differentiating aspect. The maximum term of patent protection is 20 years for ordinary patents and 10 years for simple patents. The maximum

[5] Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) (1994)

period of protection cannot be extended. After the expiration, the invention of the formula in the patent becomes a public property. On the other hand, a trade secret does not have a maximum period of protection. Given its secret nature, protection can continue to be used as long as the secret is not disclosed. Usually, trade secrets are related to information or invention that holds commercial value and are not known to the public. The commercial value of a trade secret is that the confidentiality of the invention must be maintained so it does not leak. While patents can be easily recognized that, the monopoly rights are limited to a certain period of time.[6]

PATENT

Understanding and Legal Basis

Article 1 paragraph (1) of Law Number 13 of 2016 stated that a patent is an exclusive right granted by the state to an inventor for his invention in the field of technology for a certain period of time to carry out the invention himself or to give approval to other parties to implement it. An exclusive right is an underlying right that already exists, and can be applied in industry. A simple patent is granted for an Invention in the form of a product which not only differs in technical characteristics, but must have a function/usage that is more practical than the previous Invention due to its shape, configuration, construction, or components thereof including tools, articles, machines, compositions, formulas, uses, compounds, or systems. A simple patent is also granted for an invention that is a new process or method. Patents are granted for works or invention

[6] "Apa Beda Paten Dan Rahasia Dagang? Penjelasan Ini Perlu...," https://www.hukumonline.com/berita/baca/l t5e7f549855b13/apa-beda-paten-dan-rahasi a-dagang-penjelasan-ini-perlu-anda-simak.

ideas (inventions) in the field of technology, in the form of products or processes, then when utilized will get economic benefits. This is the basis that patents get legal protection. The legal protection provided is not automatic, there must be a prior application. Patent rights are special, because they are only granted to investors to carry out their inventions or to give approval to other people to carry out their inventions, it means that other people may only use the invention if there is approval or permission from the investor as the owner of the rights. In other words, the specificity lies in its nature which excludes people other than the investor as the owner of the right from the possibility to use or carry out the invention, such properties are said to be exclusive.

Types of Patent

There are 2 types of patent rights based on Article 2 Law Number 13 of 2016 concerning Patents. Namely ordinary patents and simple patents. An ordinary patent is a patent granted for an invention that is new, contains an inventive step and can be applied in the industry. A simple patent is a patent granted for any new invention, developed of an existing product or process, and can be applied in the industry (Article 3 (2) Patent Law). A simple patent is granted for an invention in the form of a product which not only differs in technical characteristics, but must have a function or usage that is more practical than previous invention due to its shape, configuration, tools, goods, machines, composition, formulas, uses, compound, or system.[7]

[7] "Ini Lho Perbedaan Paten Dan Paten Sederhana." Smart Legal ID, 25 Mar. 2020, https://smartlegal.id/hki/pendaftaran-paten/2 020/03/26/ini-lho-perbedaan-paten-dan-pate n-sederhana/.

There are at least 3 conditions for an invention to be granted a parent:

1. The findings must be new

   In accordance with the provisions of the Patent Law, the novelty of an invention is measured internationally and not nationally. So the findings must be new to the world. However, for simple patents it is still using local novelty. In practice, to measure the novelty of an invention, laboratory tests are rarely carried out besides it is done by comparing documents or searching to various leading patents offices in other countries; JPO (Japan Patent Office), USPTO (United States Patent and Trademark Office), etc.

2. Contains inventive steps

   Inventive steps relate to creative thinking and distance. An invention must be one or two steps ahead from the original state. In other words, progress from the state of art.

3. Can be applied in industry (industrially applicable)

   This means that findings can be produced or used in the production process. Thus, patents can be in the form of product patents and process patents. This provision demands that the patent must be applicable in the industry or production of goods. A patent must have a physical dimension, not just an idea or concept.

We should also keep in mind that not all finding and/or inventions can be given a patent. inventions that shouldn't be

patented includes:[8]

1. Findings about production processes or product whose use is contrary to the public order legislation, decency
2. The discovery of the method of examination, treatment, surgery which is applied in animals or humans
3. The discovery of theories and methods in the fields of science and mathematics
4. All living things except micro-organism
5. Biological processes that are essential for the production of plants or animals except non-process biological or microbiological processes.

TRADE SECRET

Understanding Trade Secret

According to Article 1 paragraph (1) of Law Number 30 of 2000 concerning Trade Secrets, it is explained that trade secrets are information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities and is kept confidential by the owner of the trade secret.

Article 3 of the Trade Secret Law stated that:

1. Trade secrets are protected if the information is confidential, have economic value, and are kept confidential through appropriate efforts;
2. Information is considered confidential if the information is only known by the third party, certain or not generally known by the public;

[8] Budi Santoso, "PRINSIP-PRINSIP DASAR PATEN." pp. 1–14., https://lppm.unisbank.ac.id/files/2017/01/PA TEN-DAN-HAK-CIPTA-Materi-Prof.-Budi-Sa ntoso.pdf. Accessed 15 December, 2021.

3. Information is considered to have economic value if the confidential nature of the information can be used to carry out activities or businesses that are commercial in nature or can increase economic profits;
4. Information is considered to be kept confidential if the owner or the parties who master it have taken appropriate and appropriate steps.

Based on the articles above, it can be seen that trade secrets are rights to trade secrets that arise based on Law Number 30 of 2000 concerning Trade Secrets. The trade secret is considered confidential if the information is only known to a limited extent by certain parties, both those who discover it and those who use it for activities that generate profits or commercial interests. Trade secrets must have economic value to be categorized as trade secrets, the information must be kept confidential. Information is considered to have economic value if the confidentiality of the information can be used to carry out commercial activities or businesses and increase economic profits. If the information is leaked or intercepted by other parties, the confidentiality will be lost and the owner will suffer losses. Confidentiality of information is an effort to cover information in order to protect it from being known by other parties. Trade secrets are protected by strict supervision and strict legal regulations.

The contents of Law Number 30 of 2000 concerning Trade Secrets are divided into eleven chapters:

1. GENERAL REQUIREMENTS
2. SCOPE OF TRADE SECRETS
3. OWNER'S RIGHTS OF TRADE SECRETS

4. PENGALIHAN HAK DAN LISENSI (First part Transfer of Rights, Second part Licence)
5. COST
6. DISPUTE RESOLUTION
7. TRADE SECRET VIOLATION
8. INVESTIGATION
9. CRIMINAL PROVISIONS
10. OTHER PROVISIONS
11. CLOSING

The contents of Law Number 30 of 2000 concerning trade secrets covers all areas of Trade secret. In general, the trade secret law may be seen as a supplement to Law No. 5 of 1999, which prohibits monopolistic practices and unfair business competition.

Examples of Trade Secret

Many worldwide food and beverage industry firms, such as Coca-Cola implement Trade Secret protection mechanisms to secure their creative recipe formulations. Coca-Cola's secret drink formula is kept in a vault. Because the formula had not been patented, it was never made public.

The Coca-Cola Company, founded in 1892 that specializes in the production and marketing of syrup and concentrate for Coca-Cola, a sweetened carbonated beverage that has become a cultural icon and a lifestyle in the world today. Coca-Cola has a 127-year history and is still the most widely consumed drink in the world, with 1.9 billion servings every day in 200 countries.[9] Coca-Cola has

[9] Always Coca-Cola: World's Favourite Soda Tops Brand https://brandfinance.com/press-releases/always-coca-cola-worlds-favourite-soda-tops-br and-ranking

a 125-year-old secret recipe for its renowned drink mix, which is packaged in red cans and beautifully styled bottles. The original formula recipe is presently preserved in a home in The World of Coca-Cola in Atlanta, while it was formerly held at SunTrust Bank in Atlanta since 1925, according to its website www.thecoca-colacompany.com. Only a few executives have access to the formula, according to Coca-Cola.

Coca-Cola uses brand protection procedures to protect its well-known trademarks, emblems, logos, slogans, and beverage packaging, in addition to trade secret protection measures. Trademark registration can protect the owner of a trade secret from third parties that seek to profit from the renown or reputation of their unique product by exploiting the product's name or identifying feature. Trademark protection, unlike trade secrets, is secured by registration. The owner of a trademark registration can keep it for as long as he wants as long as he renews it every ten years.

Google, founded on September 4, 1998. is a global technology corporation based in the United States that specializes in Internet-related services and products such as online advertising technologies, a search engine, cloud computing, software, and hardware. Along with Amazon, Apple, Meta (Facebook), and Microsoft, it is considered one of the Big Five businesses in the American information technology sector.

An algorithm is a method or technique for solving a problem that is based on performing a series of steps. A computer program may be thought of as a complex algorithm. Algorithms are employed in almost every aspect of IT (information technology). The algorithms employed by Google to extract material from its search

index and offer the best possible results for a query are a complicated system. On its search engine results pages, the search engine employs a combination of algorithms and several ranking parameters to offer webpages rated by relevance (SERPs).

Its algorithm is a closely kept trade secret, however it mainly relies on correlating search queries to noun phrases in Web pages, as well as a site's popularity and the frequency with which other sites link to it. Google may be compared to a Web's version of a supercharged, automated reference librarian. Google's search algorithm is a trade secret. The algorithm was created by the firm in 1997, and it is still being refined and updated, with the most recent version occurring in January 2020.

Sony Ericsson, Ericsson or Sony Mobile Communications Inc is a multinational is a telephone company provider was established in 2001 between two large company which are distinctive: Sony, a Japanese company that create electronics goods and a Swedish company in the field of telecommunications. In 2012, the Ericsson portion of the corporation was bought in its entirety by Sony.

Sony Mobile was the leading mobile phone manufacturer in the first quarter of 2012. ninth in the entire globe.[10]

Based on the text above, then it is clear that the Trade Secret exists. Information is traded between these two giant companies. It is really beneficial as a result, the business needs to be kept confidential. At that time this product differed significantly from other products at the market. Their product for example, the battery

[10] IDC says Sony sold 9.8 million smartphones in Q4; now ranks in fourth place | Xperia Blog". www.xperiablog.net.

safety or an advanced processor was a solid trade between these two giants, This information has been gathered because the data is available from both sides and as a result they are able to profit from it.

Trade Secret Legal Protection

By definition, protection can be interpreted as a way, procedure, process of making legal protection. This is a form of effort regulated by law to prevent violations of rights by unauthorized parties and defend rights of trade secrets in the event of a breach. In trade secret information there is the concept of protection of the owner of the secret. The concept of protection of Trade Secrets is regulated in Article 1 number (2) Trade Secret Law (TRIPs) which is an appendix of Agreement Establishing the World Trade Organization on Trade Organization, has been ratified by Indonesia with Law no. 7 of 1994. which states that the right to trade secrets is the right to trade secrets arising under the Trade Secret Law. Legal protection of trade secrets against trade secrets is provided by the state through the the Trade Secret Law, protection filing can be made with civil or criminal lawsuits, but this law regulates the forms of violations that can be committed by other parties who can be prosecuted in accordance with Article 13 and Article 14 of the Trade Secret Law.

The Trade Secret Law regulates the transfer process according to Article 15 of the law and Article 16 regulates the granting of license. In accordance with Article 3 paragraph (4) of the UURD which states that information is kept confidential if the owner or the controlling

parties have taken steps worthy and obedient.[11]

To see the concept of legal protection in trade secrets, we need to consider the priority scale for prevention of trade secret violations, namely:

1. Civil Threats, which can be in the form of the obligation of the parties to compensate the violators against the owner of the trade secret with consideration of the direct and indirect consequences of legal events (Article 11 of the Trade Secret Law).
2. Criminal Threats in accordance with Article 17 of the Trade Secret Law states that violations of Article 13 and Article 14 of the Trade Secret Law can be punished with imprisonment of two years or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

To manage Administration of Trade Secrets, the government is currently appointing the Ministry of Justice and Human Rights, Directorate General Intellectual Property Rights to perform services in the Property Rights field Intellectual. Protection of secrets Trade is regulated in Law Number 30 of 2000 on Trade Secrets (UURD) and comes into effect from 20 December 2000.

Trade Secret Law No. 30 of 2000 provides scope of trade secret protection which includes production methods, processing method, method sales, or other information on technology and/or business bidang which has economic value and is not known by the general public.

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[11]Agus Iskandar. "Perlindungan Hukum Rahasia Dagang Menurut Undang-Undang Nomor 30 Tahun 2000 Tentang Rahasia Dagang." 1–14., https://media.neliti.com/media/publications/2676 1-ID-perlindungan-hukum-rahasia-dagang-menu rut-undang-undang-nomor-30-tahun-2000-tent.pdf. Accessed 15 Dec. 2021.

A Trade Secret will obtain protection when the information is:

1. Confidential, means that information only known by a certain party or not generally known by the general public;
2. Have an economical value, meaning that the confidential nature of the information can be used to carry out business activities commercially or can improve economic advantage;
3. Information is kept confidential when the owner or the parties who own it have done proper steps.

Trade Secret Principles

To assess the level of confidentiality that must be possessed knowledge in order for it to be classified as a trade secret, three factors must be considered:[12]

1. The generalia principle, which states that secrecy is contingent on how many people are aware of the knowledge;
2. The principle of difficulty, which refers to the difficulty of obtaining secret information. Because this procedure is complex and complicated, it necessitates time and effort rather than a minimal charge;
3. Contractual concept, implying that the information must be kept confidential as written on agreement.

Case of Trade Secret

Hitachi sued over trade secrets published in the 21st edition of the Harian Bisnis Indonesia in October 2008.

[12] Susilo, Agus. "Laporan Akhir Tim Analisa Dan Evaluasi (AE) Tentang Rahasia Dagang (UU Nomor 30 Tahun 2000)". *Rahasia Dagang*, 2010, 58.

PT Basuki Pratama Engineering filed a claim for compensation through Bekasi District Court against PT Hitachi Construction Machinery Indonesia for Rp127 billion, allegedly violating trade secrets. Apart from PT Hitachi Construction Machinery Indonesia HCMI, other parties who are used as defendants in that case were Shuji Sohma, in his capacity as former President Director of PT HCMI. The other defendants are Gunawan Setiadi Martono, Defendant III, Calvin Jonathan Barus Defendant IV, Defendant Faozan V, Yoshapat Widiastanto Defendant VI, Agus Riyanto Defendant VII, Aries Sasangka Adi Defendant VIII, Defendant Muhammad Syukri IX, and Roland Pakpahan, Defendant X.

Insan Budi Maulana, attorney for PT Basuki Pratama Engineering BPE, said a follow-up hearing was scheduled for November 28 with an agenda mediation judge. According to Insan, the lawsuit was made in connection with violation of trade secrets, the use of production methods and or sales methods of boiler engines without rights.

PT BPE is engaged in the production of industrial machinery, with initial production of wood drying machines. The plaintiff, he said, was the owner and the holder of the rights to the trade secret of the production method and the sales method of the machine boilers in Indonesia "The production process method is a company secret," he said. He explained that Defendants IV to Defendant X were former employees PT BPE, but it turns out that since the defendants no longer work at the company, they have worked at the defendant's company PT HCMI.

The defendant, he said, about three to five years ago began

manufacturing boiler machines and uses production methods and sales methods belonging to the plaintiff which has been a trade secret of PT BPE. PT BPE, according to him, strongly objected to the actions of Defendant I, both individually and jointly producing boiler machines using the production and sales method of the plaintiff's boiler machine without permission and without right.

It was stated that "The defendants are obliged to pay immaterial compensation" and materially around Rp. 127 billion for the violation of the boiler engine trade secret". Previously, PT BPE also sued PT HCMI through the Central Jakarta Commercial Court in case of violation of the industrial design of the boiler engine. PT BPE's lawsuit was granted by the panel of judges. However, PT HCMI is known to have filed an appeal to the Court Supreme Court on the decision of the Central Jakarta Commercial Court.

Meanwhile, PT HCMI's attorney, Otto Hasibuan, said that the filing of a trade secret violation lawsuit by PT BPE against its former employees and PT HCMI is in principle the same as the previous BPE complaint or lawsuit. The lawsuit, according to Otto Hasibuan, in his statement that was accepted by Bisnis, based on BPE's allegations against its former employees that they have stolen trade secrets in the form of production methods and sales methods boiler machines. In fact, he said, it was former BPE employees who chose to move work only to seek and earn a decent living and peace of mind at work, and absolutely no breach of secret trade or BPE company regulations. In fact, according to him, the employee had contributed a lot to BPE in designing boiler machines. He explained the constitution and laws of Indonesia, especially Law No. 13 of 2003 concerning Manpower, has provided guarantees and protections for workers' human rights,

including the right to change jobs. HCMI is optimistic about BPE's lawsuit "HCMI believes that the panel of judges will be objective, so that The BPE lawsuit will be rejected," he said.

Case Secret Violation

Trade secret breach or violation occurs when someone intentionally discloses a trade secret, reneges on an agreement or a written or unwritten obligation to guard the trade secret. Another possibility of trade secret violation is when a person obtains or controls a trade secret in a way that is contrary to the applicable laws and regulations.[13]

To resolve a trade secret case, we first need to determine in advance whether the information is a trade secret or not. If the information is a trade secret, then it is necessary to see whether the party has permission to use it or not. Second, according to Article 1 point 5 of the Trade Secret Law, the permit is in the form of a license granted by the holder of a trade secret to another party through an agreement based on the granting of rights to enjoy the economic benefits of a trade secret that is protected. If the suspected individual has permission to trade secrets, then it is not a trade secret violation. Third, settlements of trade secret disputes can be found in Article 11 of Law No.30 of 2000 which states: The Trade Secret Right Holder or Licensee may sue anyone who intentionally and without rights commits the acts as referred to in Article 4, in the form of: a. claim for compensation; and/or, b. termination of all actions as referred to in Article 4. In addition to a lawsuit to the District Court, the parties

[13] "Apa Yang Termasuk Dalam Pelanggaran Rahasia Dagang?" Legalku Digital Teknologi, https://www.legalku.com/knowledge-base/ap a-yang-termasuk-dalam-pelanggaran-rahasi a-dagang/

can resolve the dispute through arbitration or alternative dispute resolution.[14]

Not Considered a Trade Secret Violation

There are actions that are not considered Trade Secret infringement if:

1. Disclosure act Trade Secret or usage The Trade Secret based on interests defense and security, health or safety of the general public; and
2. Reengineering actions on products produced from Use of Trade Secrets from someone else's solely for the sake of product further development. What is meant by reengineering? In this case it is an act of analysis and evaluation to find out information about a technology which has existed.

C. Conclusion

In Indonesia, we could conclude that the movement for the Legal Protection on Intellectual Property Rights (HAKI), which includes copyrights, patents, trademark rights, and trade secrets, has grown in strength. Production methods, processing procedures, sales tactics, or other knowledge in the field of technology and/or business that has economic worth and is not known by the general public since it is covered by the Law No. 30 Year 2000 concerning Trade secrets. Since a trade secret contains a component of confidentiality, it has no time limit for protection; the most important thing is that as long as

[14] "Cara Penyelesaian Sengketa Rahasia Dagang," Klinik Hukumonline. https://www.hukumonline.com/klinik/detail/ul asan/lt5fd2626a0ba82/cara-penyelesaian-se ngketa-rahasia-dagang.

the owner of the trade secret continues to make efforts to keep the knowledge confidential, the information is continuously protected by the trade secret. As part of the Intellectual Property Rights system ought to be protected. Many people in the Republic of Indonesia do not understand the concept of Trade secrets. If a lot of people are aware of Trade secrets, they can utilize more profits from their produce goods/products and it will make the nation's economy move better.

With that in mind legal protection against trade secrets in Indonesia is an important aspect to be known and studied not just for those individuals who are active in the legal world but also for the general public.

REFERENCES

Books

Djumhana, Juabaedilla, et al., *Hak Milik Intelektual Sejarah, Teori, dan Praktiknya di Indonesia.* Bandung: PT Citra Abadi Bakti, 2014.

Journal Articles

Hadiarianti, Venantia. "Rahasia Dagang : Informasi Komersial Di Bidang Teknologi/Bisnis". Hak Kekayaan Intelektual, 2010, https://atmajaya.ac.id/web/KontenUnit.aspx?gid=artikel-hki&ou=hki&cid=artikel-hki-rahasia-dagang.

Effendy, Taufik. "RAHASIA DAGANG SEBAGAI BAGIAN DARI HAK KEKAYAAN INTELEKTUAL". Al' Adl VI, no. 12 (2014), 54.

Anastasia E Gerugan. "Perlindungan Hukum Terhadap Rahasia Dagang Ditinjau Dari Aspek Hukum Perdata Dan Pidana di Indonesia." Jurnal Hukum Unsrat 22, no. 5 (2016).

Dody Syafnul. "Perlindungan Rahasia Dagang Dari Tindakan Persaingan Curang." Warta Dharmawangsa 56 (2018) no.2, (2016).

International Conventions/Treaties

TRIPS Agreement (Trade Related Aspect of Intellectual Property Rights)

News

"Hitachi sued over trade secrets" published in the 21st edition of the Harian Bisnis Indonesia in October 2008.

Website Contents

Dody Syafnul. "Perlindungan Rahasia Dagang Dari Tindakan Persaingan Curang." Warta Dharmawangsa 56 (2018) no.2, (2016).

Apa Beda Paten Dan Rahasia Dagang? Penjelasan Ini Perlu... https://www.hukumonline.com/berita/baca/lt5e7f549855b13/apa-beda-paten-dan-rahasia-dagang-penjelasan-ini-perlu-anda-simak.

"Ini Lho Perbedaan Paten Dan Paten Sederhana." Smart Legal ID, March 25, 2020, https://smartlegal.id/hki/pendaftaran-paten/2020/03/26/ini-lho-perbedaan-paten-dan-paten-sederhana/.

Santoso, Budi. "PRINSIP- PRINSIP DASAR PATEN." 1–14, https://lppm.unisbank.ac.id/files/2017/01/PATEN-DAN-HAK-CIPTA-Materi-Prof.-Budi-Santoso.pdf.

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Florence Hermawan is a third-year undergraduate law student of Universitas Pelita Harapan. She currently serves as a member of the Academic Department in the faculty's student council (referred to as Himpunan Mahasiswa Fakultas Hukum or HMFH). Having entered law school by virtue of prayer instead of initial passion in the legal field, delighting in the dynamics of the legal study is done by modestly taking each day as it comes. While her ideal is ultimately set on philanthropy, she links it to the reality of her legal journey by taking interest in further exploring the career potential in the areas of environmental law, medical law, intellectual property law and/or cyber law.

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Universitas Pelita Harapan Faculty of Law Student Association (also known as Himpunan Mahasiswa Fakultas Hukum Universitas Pelita Harapan "HMFH UPH") is an executive organization for the faculty of law students at Universitas Pelita Harapan Lippo Village campus that was established based on Pancasila and The 1945 Constitution. Since its establishment on the 20th of September 1996, HMFH UPH has been a platform for aspirations and a channel for law students to express their interests and talents, both academically and non-academically. Working side-by-side with the Faculty, HMFH UPH helps the progress of learning and teaching activities by creating programs that could improve students' quality in terms of legal knowledge and education to prepare them for the future. In terms of non-academic talents and interests, HMFH UPH provides a platform for the law students at Universitas Pelita Harapan to express their talents and interests, especially on sport by creating programs such as soccer competition, basketball competition, and futsal competition. HMFH UPH also carries out one of the mandates from the Tridharma of the Higher Education, which is community service by doing charity events and donations to places in need. Last but not least, HMFH as a student organization also voices opinions regarding the legal issues that occur in society in order to continuously improve the quality of law in Indonesia.

Debate and Research (DARE)
Engaged in the academic field under HMFH, DARE stands for Debate and Research which was built in 2013. DARE is a student activity unit that is specially compiled for national debate and research competitions to sharpen the legal thinking, legal writing and legal research of each DARE member who is incorporated in it. DARE is built on the principle of family which can directly build connections between cohorts and generations in order to strengthen ties and help to develop in every competition and event in DARE with one another. DARE itself has won several national competitions between universities and even had the opportunity to represent Banten province to appear in the national debate and research event. Not only participating in competitions, DARE also holds various comparative studies, workshops and even training by inviting various competent sources in their fields for DARE members to prepare students to enter the world of work later.

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ISSN 2986-4879