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A Brief Review: Implementation Of Intellectual Property For Several Sectors In Indonesia

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Abstract

This review focuses on reporting several recent publications on Intellectual Property (IP) in Indonesia. This review is a brief description of the progress on IP implementation in several sectors, particularly in Indonesia. These include, how to apply the field of electronic intellectual property, the application of intellectual property from a legal perspective, the recognition of intellectual property in cyber law, the protection of intellectual property law on creative economic products, the protection of intellectual property to enhance the economic development of free trade in the Association of Southeast Asian Nations (ASEAN) countries. Implementation of IP from Small and Medium Industry products, and food commodities so that they can compete in the ASEAN economic community, the paradigm of justice in communal IP, legal protection of traditional knowledge in Indonesia, utilization, and management of IP as a strategy for developing entrepreneurship, legal protection of

traditional knowledge to gain profits economy, the effectiveness of copyright law arrangements in protecting traditional regional artworks, legal protection for people's intellectual property, and legal aspects of patents in Indonesia.

Keywords

intellectual property; protection; rule of law; creative economy.

I. Introduction

Intellectual property (IP) is understood as rights that arise from ideas that produce a product or process, which is beneficial to humans. In essence, IP is the right to relish the economic results of intellectual creativity. The objects arranged in IP are works that arise or are born by human intellectual abilities. The IP scope IP covers patents, trademarks, copyrights, industrial designs, integrated circuit layout designs, trade secrets, and geographical indication.

A patent is an exclusive right granted by the state to an inventor for his invention in technology for a certain period, who carries out the invention himself or agrees with a third party to implement it. The invention is an inventor's idea that is translated into specific problem-solving activities in technology, which is proposed in the form of a product or process, or the improvement and development of the product or process. Inventions must meet three criteria for obtaining a patent: novelty, fulfilling inventive steps and being industrially applicable (Direktorat Jendral Kekayaan Intelektual, 2022).

A trademark is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, or color arrangement. The form can be 2 (two) dimensions and/or 3 (three) dimensions, sound, hologram, or a combination of 2 (two) or more of these elements to distinguish goods and/or services produced by persons or legal entities in goods trading activities and/or services. A trademark is a mark used on goods that are traded by a person or several people jointly or a legal entity to differentiate from other similar goods. A service mark is a mark used for services traded by a person or several people jointly or a legal entity to distinguish it from other similar services. Collective marks are marks that are used on goods and/or services with similar characteristics regarding properties, general characteristics, and quality of goods or services and their supervision to be traded by several people or legal entities jointly to distinguish other types of goods and/or services (Direktorat Jendral Kekayaan Intelektual, 2022).

Industrial design is a creation of a shape, configuration, or composition of lines or colors, or lines and colors, or a combination hence in the form of three dimensions or two dimensions which gives an aesthetic impression and can be realized in three-dimensional shapes or two-dimensional patterns and can be used to produce a product, item, industrial commodity or handicraft, (Direktorat Jendral Kekayaan Intelektual, 2022).

Copyright is the exclusive right of the creator that arises automatically based

on the declarative principle after the creation is embodied in a real form without reducing the limitations following statutory provisions. Creation is every work of copyright in fields of science, art, and literature that results from inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form (Direktorat Jendral Kekayaan Intelektual, 2022).

The geographical indication is a sign that indicates the area of origin of goods and/or products due to geographical environmental factors including natural and human factors, or a combination of two factors that give a certain reputation, quality, and characteristics of goods and/or products produced. The right to a geographical indication is an exclusive right granted by the state to the holder of a registered geographical indication right, as long as the reputation, quality, and characteristics underlying the protection of the geographical indication are maintained (Direktorat Jendral Kekayaan Intelektual, 2022).

The international IP organization is known as the "World Intellectual Property Organization," abbreviated as WIPO. Besides, every country at the ASEAN level also has an IP organization. All countries in ASEAN carry out IP data collection and mapping. IP management in Indonesia is handled by the Ministry of Law and Human Rights of the Republic of Indonesia. The institution that specifically deals with IP is the Directorate General of Intellectual Property/ Direktorat Jenderal Kekayaan Intelektual (DJKI). The DJKI is tasked with encouraging the registration of IPs throughout Indonesia (Darmalaksana, 2017). This review aims to describe brief conditions regarding the implementation of intellectual property for various sectors in Indonesia.

IP implementation

IP Registration Process and Institutional

Application for copyright, patent, and other IP can be done electronically by establishing an IP center at a university and submitting account registration to the DJKI, Ministry of Law and Human Rights of the Republic of Indonesia. The application for copyright on intellectual property electronically can be done by IP centers within the tertiary institution supported by sufficient regulatory instruments for the realization of ideal governance (Darmalaksana, 2017).

The management of IP as an entrepreneurial development strategy, through the University with various aspects related to intellectual property owned by each lecturer, is an asset of economic value and is beneficial for national development and local government. This asset can be seen based on the result of research, findings (inventions), engineering, and community service conducted by the lecturers. Appreciation for these results must be implemented by the lecturer concerned, not waiting for or expecting others to appreciate it. Appreciating one's intellectual property means respecting one's work while avoiding conflicts of work ownership in the future. Appreciating one's work is an indication of the entrepreneurial mental attitude of the individual concerned. Besides, this thought

should also be a concern, this thought can be implemented by everyone at the university, which in turn will improve the quality of the University. Therefore, its management in tertiary institutions is by forming an IP Center at University (Arif and Rosni, 2018).

Legal Protection

The implementation from IP in the perspective of the rule of law, especially in Indonesia, must have a concept of legal protection for existing goods or products so that with economic value and can realize welfare for their people. Legal protection of intellectual property so that the owner of intellectual property whether individual, group or business entity can use their rights or explore their resources carefully. Next, it can create an economic climate from the result of his work and can create an economic climate also for the country so that it can provide benefits and welfare for its people because of the protection. Providing intellectual property protection to the community is a concept of *rechtsstaat*, which prioritizes the *wetmatigheid* principle. In addition to the concept of *rechtsstaat* there is also the concept of the rule of law which protects human rights through the institutionalization of a free and non-binding judiciary, by prioritizing equality before the law (Alfons, 2017).

The existence of intellectual property rights in cyber law has a special position, considering that cyber activities are very closely related to the use of information technology based on Copyright, Trademark, and Trade Secret law. This is still experiencing difficulties in conducting law enforcement related to proof in the event of legal cases such as Trade Secrets contained in computers and internet networks, Industrial design protects with displays such as the homepage. Application of the principles of Jurisdiction in cyberspace according to International Law, among others, by using three types of Jurisdiction to establish the law (the jurisdiction to prescribe), the jurisdiction to enforce, and the jurisdiction to adjudicate (Febriharini, 2016).

The legal paradigm of justice in communal intellectual property rights, law, and justice is a synthesis, so it is inseparable. Indonesian people do not recognize the conflict. Global developments in the application of laws have introduced the vocabulary of "conflict" to Indonesian society. The IP regime, for example, which was born of free trade will certainly not be far from the principles of free trade that demand equality. All parties are considered "Gladiators" who must be able to survive in battle (survival of the fittest). In this kind of competition, traditional society does not care about the economic value of culture. But once they are "forced" to fight the potential IP conflict, especially copyright (Fathoni, 2014).

Legal protection of IP for traditional knowledge in Indonesia, discussion of normative methods that analyze traditional knowledge that is not included in the protection of intellectual property, this is detrimental to some traditional societies. In response to this, the urgency of protecting traditional knowledge can no longer be limited to waiting for international-level consensus, but there must be some

national protection regulations. The government must react quickly so that traditional knowledge in Indonesia immediately gets legal protection (Putra and Suarbha, 2017).

Economic Sector Implementation

Legal protection of IP on creative economic products, as a work of creativity, creative economic products (EKRAF) is intellectual property that needs to be regarded as an intellectual work that has economic value and obtains legal protection. Regulations established by the Government in providing IP protection for EKRAF products and the application of these regulations in several cities such as Surakarta City and Denpasar City - Indonesia have been reported through normative and empirical juridical research methods, secondary and primary data are processed and analyzed qualitatively. The policy on IP protection of EKRAF products has been carried out by the government through legislation in the field of IP and regional policies related to IP protection for eccentric products referring to national-level policies. Preventive protection is provided through a law in the form of economic benefits for EKRAF actors who register their IPs. However, the level of public awareness and understanding of the importance of IPs, the communal nature of EKRAF actors in Indonesia, and the nature of IPs that must be registered to obtain legal protection have caused IP protection for EKRAF actors to be suboptimal. At the implementation level, the awareness and understanding of EKRAF actors for their intellectual property is the key to the success of IP protection by the government. The lack of support for local governments has resulted in suboptimal economic benefits received by EKRAF actors. Therefore the government needs to intensify IP socialization and facilitate IP registration for EKRAF actors. Institutional and regulatory support at the local government level is also important to develop and protecting EKRAF products (Rongiyati, 2018).

Protection of IP to increase economic development in the ASEAN free trade era, IP is the fundamental economy of a nation. Intellectual properties are assets for economic growth based on science in the ASEAN free trade era. Many obstacles are encountered in the implementation of intellectual property in Indonesia due to differences in the characteristics of the local community with the existing intellectual property regime. Improvements need to be made by the government and stakeholders to establish a system of intellectual property that is following the culture of the Indonesian people to encourage economic development in the ASEAN free trade era based on intellectual property (Nugroho, 2015).

The implementation of IP in leading products of the small-medium enterprise (SME) in the food sector in various regions in Indonesia can encourage business development and provide a competitive advantage when entering ASEAN free trade. In the Industrial Sector, the Office of Labor in implementing IP on superior products of the SME food sector in various cities in Indonesia to compete in the Economic Community (AEC) is less effective. SMEs in the food sector assume that IP is not so important to compete in the AEC. The obstacle faced in the

application of IP in the superior products of the SME food sector is to compete in the AEC. SME data in the food sector is incomplete, limited SME food sector in IP registration, IP socialization is ineffective, lack of understanding of SME actors about IP, and lack of SME actors' appreciation of IP, lack of understanding of Small and Medium Industry (SMI) actors about IP, and lack of appreciation of SME actors towards IP (Sanjaya, 2016).

Legal protection of IP over traditional knowledge towards the acquisition of economic benefits, traditional knowledge is the result of innovation and creation from humans both in terms of knowledge, art, and literature. Traditional knowledge can be used economically for the betterment and welfare of society. Indonesia's efforts to protect intellectual property from traditional knowledge in Indonesia, particularly the Indonesian government is preparing a draft on Traditional Knowledge and Traditional Cultural Expressions. Another effort that can be done is by way of an inventory or documentation of traditional knowledge in an area which can be done by publishing the traditional knowledge to the broadest scope. Factors underlying traditional knowledge have not been used optimally as economic resources, namely the lack of public knowledge about the protection of traditional knowledge and the cost of producing intellectual property is quite high (Sofyarto, 2018).

Copyright and Patent Protection

The effectiveness of copyright law regulation in protecting regional traditional artworks, one of the potential communities that can be managed for economic development is the understanding and skills of managing their traditional artworks. The effectiveness of copyright law arrangements in protecting regional traditional works has been investigated through descriptive normative law. The type of data used is secondary data consisting of primary legal materials, especially legislation, and secondary legal materials which include relevant books. The legislative approach is a data collection procedure with a literature study that is processed deductively and analyzed qualitatively so that ultimately it can be known about the effectiveness of legal arrangements for regional artworks as well as the weaknesses and strengths of these copyright law arrangements. There are laws and regulations governing traditional works of art in the region. In Indonesia, legal arrangements regarding regional traditional artworks have been regulated in Law No. 28 of 2014 concerning Copyright. After reviewing and finding several weaknesses and strengths contained in the legislation governing the traditional regional art that is expected to be a study material for improvement in subsequent legislation (Senewe, 2015).

Legal protection of the IP community, the condition of the development model of IP law protection through empirical juridical using statute approach, comparative approach and historical approach, and using descriptive qualitative analysis have been discussed. Very large potential in the protection of IP because it has a diversity of cultures and the results of creative industries that can live and

develop in the face of the era of free trade and modernization that is happening at this time. But no one has received IP protection because there are several obstacles, including first, the low level of public knowledge and even the government about intellectual properties themselves, starting from the scope, registration process, and what benefits are obtained from the acquisition of intellectual property. Second, the relatively low incentive or appreciation of the government for public works, which in the end did not trigger artists, researchers, or inventors to produce innovative works. Third, the lack of information about IP is caused by the distance of the location of the inventor/craftsman to IP information centers. Whereas the model for developing intellectual property protection can include: 1) The establishment of a legal umbrella in the form of regulations governing intellectual property, 2) Documenting community IP, 3) The active role of related parties/government to protect and raise awareness of the craftsmen/inventors/artists. the importance of IP, 4) Building a legal culture for the community through cultural seminars or workshops, and 5) Training on IP registration and registration (Yusuf and Hasima, 2018).

Legal protection for simple patents in Indonesia, a form of legal protection for simple patent holders based on the Patent Law and Trade-Related Aspects of Intellectual Property Rights (TRIPs) to determine the suitability of legal protection for simple patents if it is related to MA Decree No. 167 K/Pdt. Sus.HKI/2017. Discussion through normative legal methods, conceptual approaches, legislation approaches, and case approaches. The legal protection provisions for simple patents are regulated in Act Number 13 of 2016 concerning Patents which are specifically regulated in several articles, namely Article 121 to Article 124, and generally stipulated in a Simple Patent agreement. Granting a simple patent must be based on the application, the requirement to obtain a simple patent both regulated by the law and TRIPs is to have a novelty value, inventive step, and can be applied in the industry. The implementation of granting simple patent protection in Indonesia follows a first-to-file system , first to protect, which means who registers first in an invention, then the first one to register is accepted (Arrozi, 2018).

III. Conclusion

Copyright applications for intellectual property in Indonesia can be done electronically by IP centers within the tertiary institution supported by adequate regulatory instruments for the realization of ideal governance. Legal protection of IP for people in Indonesia who have not received IP protection because there are several obstacles, including first, the low level of public knowledge and even the government about intellectual properties themselves, starting from the scope, registration process, and what benefits are obtained from the acquisition intellectual property. Second, the relatively low incentive or appreciation of the government for public works, which in the end did not trigger artists, researchers, or inventors to produce innovative works. Third, the lack of information about IP is

caused by the distance of the location of the inventor/craftsman to IP information centers. While the model for the development of the protection of community intellectual property can include: a) The establishment of legal protection in the form of regulations governing intellectual property, b) documentation of community IP, c) the active role of related parties/government to protect and raise awareness of the craftsmen/inventors/artists will the importance of IP, d) Building a legal culture for the community through cultural seminars or workshops, e) Training of registering and registering IPs. Whereas for the implementation of granting simple patent protection in Indonesia, the system adopts first to file, first to protect, which means who registers first in an invention, then the first registrar is accepted. IP Implementation in SME Leading Products of the Food Sector in Indonesia experiences several obstacles including SME data in the food sector is incomplete, limited SME food sector in IP registration, IP socialization is less effective, lack of understanding of SME actors about IP, and lack of SME actors' appreciation of IP, the lack of understanding of SMI actors about IP, and the lack of appreciation of SME actors towards IP.

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References

- Alfons, M. (2017) Implementasi Hak Kekayaan Intelektual dalam Perspektif Negara Hukum. *Jurnal Legislasi Indonesia* 14(3):357-368.
- Arif, M., and Rosni, (2018) Pemanfaatan Dan Pengelolaan Hak Atas Kekayaan Intelektual (HKI) Sebagai Strategi Pengembangan Kewirausahaan. *Jurnal Geografi* 10(1):98-104.
- Arrozi, S.E., (2018) Perlindungan Hukum Terhadap Paten Sederhana di Indonesia, Thesis at Law Department of Universitas Mataram.
- Darmalaksana, W., (2017) Permohonan Hak Cipta atas Kekayaan Intelektual Berbasis Elektronik, *Jurnal Riset dan Inovasi*. *Jurnal Riset dan Inovasi* :1-16.
- Direktorat Jendral Kekayaan Intelektual (2022) Directorate of Intellectual Property, Ministry of Law and Human Rights Republic of Indonesia. <https://dgip.go.id/> Accessed 20 September 2020.
- Fathoni, (2014) Paradigma Hukum Berkeadilan dalam Hak Kekayaan Intelektual Komunal. *Jurnal Cita Hukum* I(2):289-304.
- Febriharini, M.P., (2016) Eksistensi Hak atas Kekayaan Intelektual Terhadap Hukum Siber. *Serat Acitya – Jurnal Ilmiah UNTAG Semarang* 5(1):15-22.
- Nugroho, S. (2015) Perlindungan Hak Kekayaan Intelektual dalam Upaya Peningkatan Pembangunan Ekonomi di Era Pasar Bebas ASEAN. *Jurnal Penelitian Hukum Supremasi Hukum* 24(2):164-178.
- Putra, N.B.I., and Suarbha, I.W., (2017) Perlindungan Hukum Hak atas Kekayaan

- Intelektual Terhadap Pengetahuan Tradisional di Indonesia. Thesis
- Rongiyati, S., (2018) Pelindungan Hukum Hak Kekayaan Intelektual pada Produk Ekonomi Kreatif. *Negara Hukum* 9(1):39-58.
- Sanjaya, U.H., (2016) Problematik Penerapan Undang-Undang Hak Kekayaan Intelektual Tentang Indikasi Geografik pada Undang-Undang Merek. *Jurnal Panorama Hukum* 1(2):17-28.
- Senewe, E.V.T. (2015) Efektivitas Pengaturan Hukum Hak Cipta dalam Melindungi Karya Seni Tradisional Daerah. *Jurnal LPPM Bidang EkoSosBudKum* 2(2):12-23.
- Sofyarto, K., (2018) Perlindungan Hukum Hak Kekayaan Intelektual atas Pengetahuan Tradisional Terhadap Perolehan Manfaat Ekonomi. *Kanun Jurnal Ilmu Hukum* 20(1):149-162.
- Yusuf, H., and Hasima, R., (2018) Perlindungan Hukum Hak Kekayaan Intelektual Masyarakat Kota Baubau. *Holrev* 2(1):335-353.