

Intellectual Property Rights Protection for Actors in the Creative Economy Based on Intellectual Property Rights Law Number 28 of 2014 Concerning Copyright

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Abstract

Intellectual property rights (IPR) are rights that are born as a result of a person's intellectual labor; hence, IPR is a legal structure of intellectual property protection as a result of the work performed by the creator or inventor. This research approach combines normative and empirical legal research with descriptive research characteristics. According to the study's findings, there is still a lack of public awareness, particularly among creative economy players, in terms of preserving their inventions and not being registered, resulting in many infringements of their works. The existence of IPR may be a source of increased income for participants in the creative economy. Intellectual Property Rights are governed by the Law of the Republic of Indonesia No. 28 of 2014 on Copyright and the Government Regulation (PP) No. 56 of 2021 on the Management of Song and/or Music Copyright Royalties. As a result, anyone who infringes Intellectual Property Rights will face legal consequences.

Keywords: *Copyright; Creative Economy; Intellectual Property Rights*

Abstrak

Hak kekayaan intelektual (HKI) adalah hak yang lahir sebagai hasil kerja intelektual seseorang; karenanya, HKI adalah struktur hukum perlindungan kekayaan intelektual sebagai hasil dari pekerjaan yang dilakukan oleh pencipta atau penemu. Pendekatan penelitian ini menggabungkan penelitian hukum normatif dan empiris dengan karakteristik penelitian deskriptif. Menurut temuan penelitian, masih kurangnya kesadaran masyarakat, terutama di kalangan pelaku ekonomi kreatif, dalam hal melestarikan penemuan mereka dan tidak terdaftar, yang mengakibatkan banyak pelanggaran terhadap karya mereka. Keberadaan HKI dapat menjadi sumber peningkatan pendapatan bagi peserta ekonomi kreatif. Hak Kekayaan Intelektual diatur oleh Undang-Undang Republik Indonesia No. 28 Tahun 2014 tentang Hak Cipta dan Peraturan Pemerintah (PP) No. 56 Tahun 2021 tentang Pengelolaan

Royalti Hak Cipta Lagu dan/atau Musik. Akibatnya, siapa pun yang melanggar Hak Kekayaan Intelektual akan menghadapi konsekuensi hukum.

Kata Kunci: Ekonomi Kreatif; Hak cipta; Hak Kekayaan Intelektual.

A. INTRODUCTION

One of the industries with development potential is the creative economy. This is consistent with the diminishing availability of natural resources for extraction. Through Creative Economy Law Number 24 of 2019, the government began to pay attention to the creative economy (Mandala & Khoirunurrofik, 2021). Architecture, interior design, visual communication design, product design, fashion, film/animation/video, photography, crafts, culinary, music, publishing, advertising, performing arts, fine arts, and television/radio are among the 16 creative economy subsectors established by the government. A Presidential Regulation on the National Creative Economy Development Master Plan (Rindekraf) for 2018-2025 has also been released by the government (Bappeda Kabupaten Gresik, 2022). According to Rindekraf, a creative economy is the manifestation of value added to an original concept or idea of intellectual property that results from human intellectual creativity and is grounded in science, technology, expertise, and cultural heritage (Noviriska, 2022).

At the moment, Indonesia is classified as a developing nation. Sustainable national economic growth is a result of the economy of the developing country striving to realize the national ideals (Febiola, Edbert, Ariffin, & Sanjaya, 2023). The government, community, and individual development advocates all require significant financial resources to carry out the process of sustainable development (Atika Sari, 2019). When a human thought process results in a production or innovation, intellectual property rights are the outcome. A right arising from human reason is tied to the production or innovation

as a property. Humans use these rights to enhance their well-being and quality of life. The more science and technology a person or a country masters, the more sophisticated and higher their degree of thinking capacity. Consequently, the more productive an individual or a country is, the more innovations or creations they make (Budi Asri, 2020).

Creativity that emerges from human thinking to address demands and promote the welfare of human life is known as intellectual property. Human creativity which manifests as an intellectual asset has long had a profound impact on human society, primarily through breakthroughs and outcomes in the domains of art and copyright. A society will progress at a faster rate the more creatively advanced each individual is (D. Dwisvimiari & Sulasno, 2023). The following are included in intellectual property rights: 1. Copyright and associated rights, such as those of performers, companies that generate sound recordings, and broadcasting organizations; 2. Brand; 3. Indications by Region; 4. Design for Industry; 5. Patents; 6. Design of integrated circuit layout; 7. Private data, such as test results and company secrets; and 8. New Plant Types.

As can be seen from the previous statement, intellectual property rights have a very wide protection spectrum. Copyright protection is one of them (Handiwiyanto & Aryo Dewanto, 2020). When time and money are sacrificed during the creation of an intellectual work, riches are the inevitable result, and the work itself has intrinsic economic worth. If financial gains that can be enjoyed in the future are achieved via these efforts. Only when anything created by the human brain can be seen, heard, read, or utilized realistically can intellectual property rights emerge. Furthermore, intellectual innovation needs to be entirely fresh, and unique, and rejuvenate earlier creative endeavors (Brian E. S., 2022). In the international context, protecting intellectual property rights is just as vital as protecting economic interests. Protection is no longer only a

technical legal problem; it also pertains to commercial issues in the pursuit of profits (Hamdani, 2022).

The reality of protecting intellectual property rights is linked to the creation of creative and innovative goods. A product that may be protected by Intellectual Property Rights must be original and inventive. In terms of Intellectual Property Rights, a product that is deemed to be creative and inventive should be able to fulfill the standards of each Intellectual Property Rights system. For copyright, a product is said to be creative and innovative if it meets the criteria of originality, fixation, and creativity; for patents, a product is said to be creative and innovative if it meets the criteria of renewal, inventive steps, and can be applied in industrial activities; and for industrial design, the criteria must be new and not the same as previous disclosures (Eka Sari, 2020). A creative economy is a system of producing, exchanging, and consuming creative goods (Shabillia & Santoso, 2023).

A creative economy product is an intellectual property created and held by a creator in the disciplines of art, literature, science, or technology (investor). As a result, it is only reasonable that a creative economy output is a property that must be regarded as a work of economic worthwhile also receiving intellectual property rights protection. The fact that the market potential of creative works at home and abroad is very large and is expected to grow further strengthens the case for protecting intellectual property rights (IPR) for creative economy products, to ensure that the originators of creative ideas and innovations receive economic benefits for their intellectual works. The domestic creative work market is growing as the Indonesian people's purchasing power rises and they buy more domestic products, particularly those in the middle and upper classes; the pattern of consumption of creative works is changing as consumers become co-creators of creative

works; and the Indonesian population grows (Kusumaningtyas, Ayu, Rahayu, Setiawan, & Ristanti, 2023).

The creative economy is essentially a manifestation of efforts to achieve sustainable development through innovation, where sustainable development is defined as an economically competitive environment with fresh resource reserves. The creative economy also allows people to grow their enterprises by employing resources that are not only renewable, but also limitless, such as ideas, skills, innovation, technology, social media, and creativity.

The creative industry, on the other hand, is an industry that concentrates on the development and commercialization of intellectual property works such as art, music, video, cinema, gaming, or fashion design, as well as intercompany creative services such as advertising. Many nations are vying in this respect to establish intellectual economic competence in the methods and capacities of these countries. Some of the directions of this creative industry's development include (1) development that focuses more on industries based on creative cultural industries; (2) creative industries; or (3) intellectual property rights such as copyright.

Intellectual Property Rights are the legal rights to obtain legal protection for one's intellectual property by laws and regulations (Mike et al., 2017). The following laws and regulations govern IPR in Indonesia: Law 29 of 2000 concerning Plant Varieties Protection, Law 30 of 2000 concerning Trade Secrets, Law 31 of 2000 concerning Industrial Design, Law 32 of 2000 concerning Integrated Circuit Layout Design, Law 14 of 2001 concerning Patents, Law 15 of 2001 concerning Trademarks, and Law 19 of 2002 concerning Copyright.

IPR is traditionally classified into two categories: copyright and industrial property rights, which include patents, industrial designs, trademarks, plant variety protection, integrated circuit layout design, and trade secrets. Copyright is the creator's or recipient's exclusive right to publish or reproduce his work or grant permission to do so, subject to limits imposed by applicable laws and regulations (Razak et al., n.d.).

The notion of a creative economy evolves from the concept of creativity-based capital, which can promote economic growth in an area. President Susilo Bambang Yudhoyono states that "the creative economy is the fourth wave economy, which is a continuation of the third wave economy with an orientation to creativity, culture, cultural heritage, and the environment (Maulana Dongoran, Nisa Azhar, Bisnis dan Pendidikan Terapan, & Aufa Royhan, n.d.)." In economic history, there was a shift in the orientation of economic waves beginning with the transition from the agricultural period to the industrialization era, which was followed by technological and information discoveries.

This wave of change has given mankind a new and highly sophisticated way of existence. Discoveries in the realm of information and communication technology, such as the internet, email, Google, PlayStore, and so on, are encouraging people to be more active and productive in their search for new technology. Industrialization resulted in cheaper and more efficient work, production, and distribution patterns.

Based on several definitions of the creative economy, it is possible to infer that the creative economy is an economic activity connected to innovation, creativity, ideas, and ideas created from human resources, such that the end products, both commodities, and services, have added value. The creative economy is a set of sectors that have a link in exploiting ideas or concepts that can offer high economic value to promote welfare and jobs for the community.

Cultural arts, creativity, individuals, and the use of technology in the context of creating an economically viable product or service are all concepts in the creative economy. The phrase "creative economy" became widely recognized with the publication of John Howkins' book *The Creative Economy: How People Make Money from Ideas*.

B. METHOD

The research method employed in this study was normative juridical. The normative juridical study examines secondary data in the form of rules or legal norms as a system construction connected to a legal occurrence.

C. DISCUSSION

1. The Importance of Intellectual Property Rights Protection for Actors in the Creative Economy

In the creative industries, Indonesia boasts a wealth of talent. Every day, the nation's youngsters create new creative material in a variety of sectors. This bountiful creative concept is a limitless resource with extremely high economic worth. As a result, the government invites the general population, particularly creative sector participants, to understand the significance of Intellectual Property Rights (IPR).

Intellectual Property Rights (IPR) are defined as the right to receive legal protection for one's intellectual property in line with IPR laws and regulations. Patents, trademarks, industrial designs, copyrights, geographical indications, trade secrets, and Integrated Circuit Layout Design (DTLST) are examples of IPR.

It is appropriate for participants in the creative economy to appreciate the value of IPR in preserving the originality of their creative ideas. Intellectual property rights are a type of protection for creative ideas from stakeholders in the creative business. The owner

of the "creative idea" does not have to worry about his invention being claimed by others by registering it with IPR.

The Expert Staff of the Minister for Bureaucratic and Regulatory Reform of the Ministry of Tourism and Creative Economy/Tourism and Creative Economy Agency of the Republic of Indonesia, according to Ari Julianto Gema's presentation. "If someone has an idea or ideas, you should record them right away." Some IPRs must be registered, while others do not. To get state protection, trademarks, patents, and industrial designs must be registered. People can mimic if there is no legal protection. The existence of IPR may be a source of increased income for participants in the creative economy. For example, if an invention is granted IPR and subsequently exploited by someone else, the owner of the concept is entitled to royalties.

In other words, registered Intellectual Property Rights items or ideas will bring economic rewards to innovators, creators, designers, and investors. The relevance of comprehending IPR in the context of accelerating digitization must also be addressed by participants in the creative sector. Because of the widespread usage of social media, it is impossible to rule out the prospect of a creative concept becoming viral, as well as the risk of idea theft. The advancement of the digital world is beneficial to the creative economy business. However, it has been discovered that this might also have a negative consequence. For example, in the publishing industry, there is piracy and illicit book sales via e-commerce. The Ministry of Tourism and Creative Economy has undertaken conversations with IKAPI to combat digital piracy (Bagus Setiawan, 2020).

As a result, to protect claims on goods, brands, and even creative ideas from being exploited by third parties, creative economy operators need to register them with IPR. Not to be overlooked, IPR ownership influences the ease with which a product might

enter the worldwide market. A product without Intellectual Property Rights may be returned since it is deemed trademark infringement, and there is no trade secret protection. The Ministry of Tourism and Creative Economy is constantly conducting socialization and organizing various events to support the creativity of creative economy actors, such as the Indonesian Creative Appreciation and Food Startup programs, as well as several other programs with the Creative Economy Agency. We are often reminded not to infringe on the intellectual property rights of others in their respective industries (I. Dwisvimiar, Sulasno, & Wahyuddin, 2022).

IPR protection is meaningless if it is not linked to commercialization procedures or activities. Commercialization is the act of producing something for sale as a product. Commercialization is a set of actions that begins with the creation and marketing of a product or process and ends with the implementation of procedures in manufacturing operations. Production activities with a purpose provide value. An intellectual property product has additional value, as do the economic rights tied to it.

The establishment of the Creative Economy Agency (Bekraf) through Presidential Regulation No. 6 of 2015 concerning the Creative Economy Agency, signed by President Joko Widodo, demonstrates the government's commitment to building and developing the economy as an important part of national economic development. This non-ministerial entity is in charge of Indonesia's economic growth and assists the President in designing, implementing, coordinating, and synchronizing economic policies. Presidential Regulation No. 6 of 2015 about the Creative Economy Agency was later changed by Presidential Regulation No. 72 of 2015 regarding Amendments to Presidential Regulation No. 6 of 2015 regarding the Creative Economy Agency (Handitya, 2021).

According to Presidential Regulation No. 72 of 2015, Bekraf has identified at least 16 subsectors of ekraf development, which include architecture, interior design, visual communication design, product design, animated films and videos, photography, crafts, culinary, music, fashion, app and game developers, Publishing, Advertising, television and radio, performing arts, and fine art. Bekraf has six deputies to carry out this task: 1. Deputy for Research, Education, and Development; 2. Deputy for Capital Access; 3. Deputy for Infrastructure; 4. Deputy for Marketing; 5. Deputy for Intellectual Property Rights and Regulation Facilitation; and 6. Deputy for Inter-Agency and Regional Relations.

According to Presidential Regulation No. 72 of 2015, Bekraf has identified at least 16 subsectors of Economic Economy development, which include architecture, interior design, visual communication design, product design, animated films and videos, photography, crafts, culinary, music, fashion, app and game developers, Publishing, Advertising, television and radio, performing arts, and fine art.

The creative economy industry (Ekraf) falls under the category of industrial groupings, which are made up of numerous types of industries, each of which has a role to play in the process of turning an idea or concept into intellectual property.

Creative industries have great economic value for the welfare and employment of the community, and they may help a country's economic progress. A creative economy product is an intellectual property created and controlled by an artist, writer, or scientist, or an invention in the field of technology (inventor). As a result, Ekraf goods are a property that must be rewarded as works of economic worth, as well as having their intellectual property rights protected.

The fact that the market potential for creative works at home and abroad is enormous and is expected to expand further. This reinforces the significance of maintaining intellectual property rights (IPR) for creative economy goods for the originators of creative ideas and inventions to get economic rewards for their intellectual efforts.

Registration applications are required for various IPRs, such as trademarks, patents, industrial designs, and geographical indications. Even though some other IPRs, such as copyright and trade secrets, are legally protected under declaratory principles. At the moment, trademark registration applications for SMEs continue to dominate. According to Article 3 of Law No. 20 of 2016 on Marks and Geographical Indications, trademark protection is given after registration. As a result, trademark registration is critical in terms of trademark protection.

2. The Government's Role in IP Protection

IPR is a property right derived from human intellectual ability. These skills can manifest themselves in the form of works in technology, science, art, and literature (Indirakirana & Millenia Krisnayanie, 2021). In general, intellectual property rights are classified into two categories: copyright and industrial property rights. Patents, trademarks, industrial designs, integrated circuit layout designs, trade secrets, and plant variety protection are all examples of industrial property rights (Marthalia et al., 2022).

Three facts may be identified in the practice of IPR protection in the creative economy. The reality is that IPR protection is connected to the creation of creative and innovative goods; IPR protection related to the IPR registration system; and IPR law enforcement.

The reality of intellectual property protection about the creation of creative and innovative goods. A product that can be granted IPR protection must be original and inventive. In the context of IPR, a product is considered to be creative and inventive if it can fulfill the standards of each IPR. A product is deemed to be creative and innovative in terms of copyright if it fits the criteria of originality, fixation, and creativity.

For patents, a product is said to be creative and innovative if it meets the criteria of novelty, inventive steps, and application in industrial activities; for industrial design, the criteria must be new and not the same as the previous expression; and for trade secrets, the criteria must be an effort to keep information of economic value hidden from the public. Based on these characteristics, it is clear that the product sought by IPR (Intellectual Property Rights) must be original and inventive. Unfortunately, there are still creative economy actors that do not adhere to these standards, resulting in existing items that are not innovative and even imitation/piracy of existing ones.

The reality of IPR protection regarding the IPR registration system is that registration processes are regarded as cumbersome, have "expensive" charges, and take an unpredictable amount of time, thus they are not registered. This undoubtedly diminishes legal protection and has ramifications for the non-protection of creative economy items. Another aspect of IPR protection is IPR law enforcement. IPR law enforcement is still deemed selective, and it lacks strong and professional management. A shortage of law enforcement professionals who understand IPR is also a major issue in IPR law enforcement. As a result, even if the correct legal process has been followed, creative economy items that have been registered with IPR cannot be protected (Riswandi, 2021).

D. CONCLUSION

It is appropriate for participants in the creative economy to appreciate the relevance of intellectual property rights in safeguarding the uniqueness of ideas. Intellectual property rights are a type of protection for creative industry participants' ideas. The owner of the "creative idea" does not have to worry about his invention being claimed by others by registering it with IPR. In contrast to industrial characteristics in general, the creative economy industry (Ekraf) is included in the category of industry groups consisting of numerous types of industries, each of which has a relationship in the process of developing an idea or notion into intellectual property.

The creative sector has great economic value for the welfare and employment of the community, and it may help a country's economic progress. IPR, as a legal right, possesses two characteristics: it is limited in time and it is exclusive and absolute. Copyright is protected for 50 years from the creation of a work and continues for another 50 years after the creator's death (Article 34 of Copyright Law Number 19 of 2002).

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