Analysis The Role of Law in Protecting Intellectual Rights and Their Relationship to Social Welfare

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Abstract. This study aims to analyze the role of law in protecting intellectual rights and their relationship to social welfare. This research belongs to the research that uses the juridical-normative method. The legal sources used in this study are secondary legal sources, which based on their legally binding power, consist of primary legal materials in the form of theories, norms, rules, and opinions of legal experts related to the intellectual property protection legal system associated with community welfare issues, and the role of strategy that the state can play besides the use of secondary and tertiary legal materials. Based on the study of legal sources, it can be seen that regarding the definition, recognition, and protection of intellectual property rights in Indonesia, it is regulated in the law and further regulated in Government Regulations. Intellectual property rights recognized and protected in Indonesia are Copyright and Industrial Property Rights, which consist of trademarks, patents, trade secrets, integrated circuit layout designs, and protection of plant varieties. This is very important to be maintained by the state, and the goal is to improve social welfare as mandated in the constitution.

Keywords: Law, Intellectual Rights, Social Welfare.

A. INTRODUCTION

The concept of law applicable in Indonesia is included in the Constitution of the Republic of Indonesia (Asri, 2020; Indriyani, 2018). This is further regulated in Article 1 paragraph (3), which states that Indonesia is a state based on law. The notion of indisputable sovereignty is sovereignty that comes from the people. The sovereignty of the people is embodied in the law in this modern era. The sovereignty of the people is transformed into the rule of law so that basically, the law should contain philosophical, sociological values and be inspired by the people. The law itself becomes sovereign because it is the embodiment of the people’s will; without the will of the people, the law will not exist (Sofyarto, 2018).

The general aim of this state is to create prosperity for the people. The welfare of the people can be done through many things and ways, one of which is carrying out National Development. National development is defined as a joint effort between the people and the state to improve themselves in a better direction than before (Mahardhita & Sukro, 2018). Therefore, the conception of national development itself, which is a conscious effort of the community to achieve prosperity, is natural for the district to conduct its well-being. However, along the way, this has not been maximally realized in social life due to the many problems in various sectors, such as the economic sector, social sector, and environmental issues (Dewi & Landra, 2019).

If you look at the national goals, this is imbued with the spirit contained in the precepts of Pancasila. In addition, the inauguration of the 1945 Constitution on August 18, 1945, as the state constitution has opened up opportunities for state administration that prioritizes the general welfare or society at large (Darwance et al., 2020). The amendment to Article 1 paragraph (3) of the 1945 Constitution further makes it clear that the legal
understanding adopted by the Indonesian people is closely related to the welfare state. The implementation of the knowledge of the state of material law will continue to support and accelerate the formation of a welfare state in Indonesia, so the first step that must be taken is to expedite the enforcement of the rule of law, which is positioned as the basis for state administration country (Triana, 2018; Yanto et al., 2020).

The state is present in guaranteeing Intellectual Property Rights for every citizen. For entrepreneurs, by ensuring a standard and quality of products or services, people will trust the product or service. In the end, the trust that arises from the community as consumers will facilitate trade and increase sales volume (Niswah, 2018). The increase in sales volume will benefit the business actors themselves. Suppose there is no protection for intellectual creativity that applies, for example, in the fields of art, industry, and knowledge. In that case, everyone can copy and make copies freely and produce without limits. There is no incentive to develop new creations (Rudakova et al., 2018). Thus the development and development in the fields of arts, industry, and science will be disrupted, so we need proper legal protection for this intellectual property right. In addition, to ensure the continued development of intellectual property rights and prevent unfair competition (Mody, 2019). Although with this protection, a particular monopoly right is granted to the creator or inventor (the creator in the field of copyright and the inventor in the field of patents).

Intellectual property rights can be thought of as tangible rights, or the rights to something created through the application of reason, logic, or emotion. Since implementing the national Copyright Law in 1982, Indonesia has been acutely conscious of the value of intellectual property that is located and exists as part of the Indonesian people's culture and customs. Article 10 of Law No. 6 of 1982 on Copyright was subsequently regulated in Article 10 of Law No. 19 of 2002 on Copyright, and lastly in Article 13 of the 2010 Draft Copyright Law. Additionally, Law No. 28 of 2014 controls traditional cultural expressions. All copyright rules in Indonesia stipulate that the state owns the rights to cultural heritage.

From another perspective, intellectual property protection is defined as the legal protection accorded by the state to an individual, a group of individuals, or an entity whose thoughts and ideas have been poured into the shape of a copyrighted work (tangible) (Ma, 2020). Copyright has historically been defined as an individual or collective right with economic worth that must be protected by law if an invention (innovation) is registered in accordance with established procedures (Mashdurohatun & Mansyur, 2017). Copyright works, such as literary, artistic, and scientific works, performances, cassettes, audio-visual broadcasting, scientific discoveries, industrial designs, trademarks, and business names, may be registered for legal protection. Intellectual Property Rights are also considered to be property rights in the fields of technology, science, the arts, and literature. Ownership is not of the products but of the intellectual capacities and tangibles of humans (Saggi & Ivus, 2020). Thus, intellectual property rights safeguard the use of commercially or economically valuable ideas, concepts, and information.

The nature of Intellectual Property Rights that the state can protect includes two factors, namely: 1) Has a particular and limited period, if the period of protection has expired, then the invention becomes public property, but there are also inventions whose rights can be extended, such as trademark rights; and 2) Exclusive, Intellectual Property Rights are exclusive, meaning anyone can defend them. The right owner can sue for violations committed by anyone regarding his rights (Yessiningrum, 2015). The right holder has a monopoly right that can prohibit anyone from making inventions or using his creations without the owner's consent.

In 2020, the Directorate General of Intellectual Property submitted the alleged criminal case of the Orchard Collections trademark violation to the Public Prosecutor. The
suspect in this violation is Wahyu Jatmiko as the director of Ibal Design, whose case file has been declared complete or P21. According to the Directorate General of Intellectual Property, the act has violated Law number 20 of 2016 point one and is punishable by four years in prison. Throughout 2019, the Ministry of Law and Human Rights noted that trademark infringement was the most frequently reported case in this regard. Throughout 2019, the Directorate General of Intellectual Property received 47 complaints regarding intellectual property rights violations, an increase of 12 complaints from the previous year. In addition, the Directorate General of Intellectual Property has also blocked as many as 199 illegal online movie streaming sites suspected of violating intellectual property rights, fewer than the previous year, which blocked about 390 similar sites. So it is essential to know to what extent the role of law in Indonesia is to protect intellectual property rights and their relationship to social welfare.

B. METHOD

This research belongs to the research that uses the juridical-normative method. The legal sources used in this study are secondary legal sources, which based on their legally binding power, consist of primary legal materials in the form of theories, norms, rules, and opinions of legal experts related to the intellectual property protection legal system associated with community welfare issues, and the role of strategy that the state can play besides the use of secondary and tertiary legal materials (Sofyarto, 2018). This analysis technique is a technique in which the materials or legal literature will be studied to provide an overview of the research topic to help the author make a correct conclusion.

C. RESULT AND DISCUSSION

1. Intellectual Property Protection Law and Its Relation to Social Welfare

Today's rapidly growing globalization cannot be separated from advances in information and transportation technology. In addition, the scale of investment in the industrial sector has also expanded not only to the national market but also to international markets. These market changes must also be supported by intellectual property rights used in the manufacture of products and also in the marketing process (Indriani, 2018). This creativity has long had a significant influence on human civilization, whether in inventions, works of art, literature, or those that affect the economy. Intellectual property rights were initially rights derived from creations expressed to the general public and provided benefits and supported human life.

From a legal perspective, it is necessary to understand that what is protected by law is Intellectual Property, not material objects in the form of Intellectual Property incarnate. The reason is that Intellectual Property is an exclusive right that only exists and is attached to the owner or right holder so that other parties if they want to utilize or use these rights to create or produce material objects in their incarnated form, must obtain a license (permit) from the owner or rights-holder (Mahardita & Sukro, 2018). This means that Intellectual Property is private ownership rights, or those who have legal entities must receive legal protection.

The legal system related to Intellectual Property cannot be separated from the elements that support it. The three elements are substance, structure, and culture. As a unified system, the three elements have the same meaning and position as essential to each other. Meanwhile, protection in the context of Intellectual Property, the basic principle is based on recognizing the right to such property and requesting a certain period to enjoy or exploit the wealth itself. During a certain period, other people cannot enjoy, use, or manipulate these rights without permission. In providing respect, recognition, and protection through legal theory, the embodiment of such protection is presented in the following table:
Table 1. Implementation of Intellectual Property Protection

<table>
<thead>
<tr>
<th>Stages</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>First Stage (Fixing)</td>
<td>Continuously improve the substance of all Intellectual Property laws and regulations. The improvement is, of course, not only to comply with various international instruments but more than that to provide recognition, respect, and protection of one's Intellectual Property.</td>
</tr>
<tr>
<td>Second Stage (Structure)</td>
<td>That is by looking at the mechanism, the institutions that handle the protection of Intellectual Property. The protection mechanism is carried out through procedures for obtaining rights and handling rights violations.</td>
</tr>
<tr>
<td>Third Stage (Community Legal Culture)</td>
<td>The enforcement of intellectual rights cannot be separated from the awareness of the community itself. Every human being has a legal knowledge of what the law is or should be; it is a distinct category of our mental existence through which we discriminate between law and non-law (onrecht), between what should and should not be done. Awareness of what the law means is the awareness that the law is the protection of human interests.</td>
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Source: Data Proceed

It is also a problem in countries that adhere to an excellent legal system, where the law is the law. The law, which some belief to be a political product, will not be separated from the interests and will of the political elite in power. At this level, social changes in society in addressing Intellectual Property issues cannot be seen from the legal dimension (law) alone. The attitude and acceptance of the community towards the laws and regulations in the field of Intellectual Property must also look at aspects that respond to the community, one of which is the aspect of legal culture.

There are two main aspects of the legal culture of society, namely the legal culture of a traditional society and the legal culture of an industrial organization. In the first community law, the rules only consist of habits and norms; violations of these two things will get social sanctions. Meanwhile, in some industrial societies, the application of law tends to be complex, varied, and specific, marked by arrangements, such as creating a contract system, cooperation, joint ventures, franchises, and so on (Jannah, 2018). The meaning of development for developing countries such as Indonesia is increasing economic growth and welfare, trying to build knowledge, skills, information, and the struggle to be economically independent, all of which can only be implemented if the intellectual property gets certain rights and protection from the state. The arrangement of intellectual property rights that are protected in Indonesia is presented in the following table: are: 1) Copyright is protected by; 2) Industrial Property Rights, patent rights are protected by law:
Table 2. Intellectual Property Rights Protected in Indonesia

<table>
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<tr>
<th>Rights Type</th>
<th>Chapter</th>
<th>Explanation</th>
</tr>
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<tbody>
<tr>
<td>Copyright</td>
<td>Law number 19 of 2002 concerning copyright</td>
<td>Copyright is a special right granted to creators or recipients of rights to reproduce their creations or give permission to other people without providing restrictions according to the applicable laws and regulations. Copyright holder, namely the creator as the owner of the right or who receives the request from the creator. Copyrights protected by the Copyright Law are in the form of books, computer programs, pamphlets, and layouts of written works. Lectures, lectures. Song. Drama, musical, art. Those that cannot be registered for copyright are: 1) Works outside the fields of science, art, and literature; 2) Unoriginal work; 3) Works that are not realized in a tangible form; 4) Works that are already public property, and 5) the provisions stipulated in article 13 of the Copyright Law.</td>
</tr>
<tr>
<td>Industrial Property Rights</td>
<td>Patent rights are protected by Law number 19 of 2002 concerning copyright</td>
<td>Patents are unique rights provided by the state to inventors to protect their technological discoveries for a specified period of time or to carry out their approval to other individuals.</td>
</tr>
<tr>
<td></td>
<td>Trademarks are protected by Law number 15 of 2001 concerning Trademarks</td>
<td>A brand is a symbol consisting of an image, a name, a word, a letter, a sentence, a number, a color scheme, or a combination of these elements that have the distinctive power of fibers employed in commercial transactions. Registered trademarks are legally protected for a period of ten years.</td>
</tr>
<tr>
<td></td>
<td>Trade Secrets are protected by Law no. 30 of 2000 on Trade Secrets</td>
<td>A trade secret is a piece of technological or business information that is not widely known to the public. It has economic worth because it aids in business operations and is kept private by the owner. Trade secrets do not need to be registered, but rights can be transferred and recorded. The period for trade secret rights is unlimited, as long as the owner can hold this secret.</td>
</tr>
<tr>
<td></td>
<td>Industrial design is protected by Law number 31 of 2000 concerning Industrial Design.</td>
<td>Industrial design is a creative endeavor concerned with the shape, configuration, or composition of lines or colors, or bars and colors, or a combination thereof in three or two dimensions that creates an aesthetic impression and can be realized in three or two-dimensional patterns and used to create a product, good, or service. Industrial design rights are exclusive rights granted by the State of the Republic of Indonesia to creators of their creations for a specified duration to exercise or authorize the use of these rights by third parties. In this context, a designer refers to an individual or group of</td>
</tr>
</tbody>
</table>
individuals who create industrial designs. Meanwhile, industrial design rights are protected for ten years from the date of receipt.

| Plant Variety is protected by Law no. 29 of 2000 on the Protection of Plant Variety. | The right to protect plant varieties is the right granted to the right holder to use the resulting mixture himself and give approval to another person or legal entity to use it for a specified period. |

Source: Data Proceed

Whereas regarding the understanding, recognition, and protection of intellectual property rights in Indonesia, it is regulated in the law and further in Government Regulations. Intellectual property rights recognized and protected in Indonesia are Copyright and Industrial Property Rights, which consist of trademarks, patents, trade secrets, integrated circuit layout designs, and protection of plant varieties. In terms of enforcement and protection of intellectual property rights in Indonesia, it should be accompanied by strict law enforcement. So that intellectual property rights recognized and protected by the state should continue to be adapted to the development of intellectual property rights themselves.

Brand regulation as part of intellectual property rights has been regulated since the beginning of Indonesia’s independence through Law Number 21 of 1961 concerning Corporate Marks and Commercial Marks, which was later changed to Law Number 19 of 1992 concerning Marks. After Indonesia joined the TRIPs agreement in 1997, the law related to trademarks was revised again to Law Number 13 of 1997 concerning Marks by adjusting the provisions of the TRIPs agreement. In 2001 the trademark law was again amended with Law Number 15 of 2001 concerning Marks. The latest amendment to date is Law Number 20 of 2016 concerning Marks and Geographical Indications (referred to as the Trademark Law) and Geographical Indications).

This will result in economic activity across a range of sectors. Economic activities that occur in society necessitate state action, given that the primary objective of economic activity is profit. These objectives foster a variety of anomalies and even fraud, which can be detrimental to select parties, if not all parties. Thus, official engagement in general economic activity within the context of legal relations is limited by the balance of all parties' public interests (Wicaksono, 2020). State involvement is necessary in this scenario to maintain a balance of interests between all parties in society, to protect producers and consumers, and to safeguard the state’s and the public interest against the interests of businesses or individuals.

The state has four functions in the development of social welfare, namely: 1) the state as a provider, which is carried out to meet the community's minimum standards, thereby reducing things that are detrimental to the public at large; 2) the state as a regulator, which is carried out to maintain order and prevent chaos, such as regulating investment to ensure industry development; and 3) the state's direct intervention in the economy (Rois & Roisah, 2018).

2. The Role and Strategy of the State in Providing Protection of Intellectual Property

In this era of disruption, many countries believe that intellectual property is a wealth that will never run out. So the protection of intellectual property rights is a necessary thing and must be done by the state. These rights are used/used by humans to improve the welfare/happiness of life. The more advanced and high the level of thinking ability of a person or a nation, the more advanced and high the knowledge and technology they master. As a result, the more productive a person or a country will produce new creations or
inventions. The ability to think will increase and develop if a person or a nation is educated and trained through learning activities and continuously adding experience (Sudjana, 2019).

The economic value contained in Intellectual Property encourages scientists to think continuously to produce new creations or inventions that bring economic benefits. The higher the ability to think and create, the more the number of Intellectual Properties will increase, which means that it will generate more economic benefits. The economic benefits are not only obtained by the owner but also by the licensee. From a financial perspective, the development of Intellectual Property underlies industrial action, which means it will increase economic growth in a country’s national income (growth national product). Intellectual property is also the basis of modern industry. It is said to be fundamental because Intellectual Property is the basis for current industrial growth, based on new inventions, advanced technology, high quality, and quality standards. The fast-growing modern industry can penetrate all types of markets, the products produced are of high value and can generate large profits. Intellectual property is also the basis of modern commerce.

This aspect, creation, protection, and utilization of intellectual property, then form an intellectual property ecosystem. The aim is for Intellectual Property to speak within the economic and social context it serves and create a better relationship between financial goals, development priorities, state resources, and the use of Intellectual Property. The key to the success of the national intellectual property strategy is by paying attention to related essential aspects such as aspects of policy, institutional law, and human resources (Sari et al., 2019). Compiled based on needs and in consultation with national authorities and stakeholders involved and linking national economic priorities, development goals, and intellectual utilization through the integration of relevant public policy areas such as policies in the fields of health, trade, culture, environment, science, and technology and other relevant policy areas.

Legal policies and intellectual property development priorities are the first way the state can produce regulations and create conditions that are following changing global trends by taking intelligent anticipatory steps related to the development and protection of Intellectual Property. Second, increasing the role of research institutions and universities as laboratories for producing innovations and new technologies based on Intellectual Property. This means that the inventions that are born must be needed by the market and consumers (Sulasno, 2012). Therefore, the state needs to provide sufficient research funds for research activities that have economic value. The three countries must be able to change the way of thinking on the dependence on natural resources to intellectual capital through the potential of Intellectual Property owned by the Indonesian nation. Fourth, the development of creative industries based on Intellectual Property.

D. CONCLUSION

Based on the study of legal sources, it can be seen that regarding the definition, recognition, and protection of intellectual property rights in Indonesia, it is regulated in the law and further regulated in Government Regulations. Intellectual property rights recognized and protected in Indonesia are Copyright and Industrial Property Rights, which consist of trademarks, patents, trade secrets, integrated circuit layout designs, and protection of plant varieties. This is very important to be maintained by the state, and the goal is to improve social welfare as mandated in the constitution. The economic value contained in Intellectual Property encourages scientists and entrepreneurs to think continuously to produce new creations or inventions that bring economic benefits and fulfill their needs, thereby increasing social welfare.
REFERENCES


