

Intellectual Property Rights in a Judicial Review

Ahmad Ansyari Siregar¹, Kusno^{1*}, Risdalina¹, Muhammad Yusuf Siregar¹

¹Universitas Labuhanbatu, Indonesia

Abstract:- Legal protection of intellectual property is very important because it relates to the economic value of the holders of intellectual property rights. One form of intellectual property is copyright. This study aims to analyze the forms of legal protection provided for the creators of a work of creation. The method used in this study is normative juridical, normative juridical is a research method using legal or regulatory sources and literature relating to problems in research. The regulations used as research material such as the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. The results of the study indicate that legal protection of intellectual property rights is regulated in the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. A work of law can be given legal protection if the work is registered with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia.

Keywords:- Wealth, Intellectual, Juridical Review.

I. INTRODUCTION

A work produced by someone can have economic value. A work is a creation produced by someone in the form of writing, drawing, art, and products. A work that is produced is someone's intellectual property, so it needs protection from its creator.

Indonesia is a large country with a fairly large population. Based on current data, Indonesia has a population of about 265 million people. With this large population, abuse of one's intellectual property can be used by others for money. The use of other people's work which is intellectual property sometimes cannot be prosecuted if the work produced has not been registered. One form of intellectual property is copyright.

In the conflict referred to above where there is a copyright infringement that occurs as against the work of the photographer's Copyright. From a Producer of the work of the Photographer who produces Photography as the owner of the rights from the main source of the Photographer. The results of these works can become his intellectual property if the Photographer's results are his first creation [1]. Work in the form of a work that is produced by someone will become an intellectual property right for the creator when there is no other person to acknowledge the creation.

Exclusive rights in Copyright can be owned by the creator, recipient of the right or give permission to others to publish and announce it by not reducing restrictions based

on applicable laws and regulations. A person's copyrighted works will automatically become the property of the creator, even if they are not registered with the Directorate General of IPR [2].

Article 4 of Law No. 28 of 2014 concerning copyright, explains that exclusive rights are moral rights and economic rights for rights holders that arise automatically after a work of the creator is realized in tangible form in accordance with the provisions of the legislation [3]. Based on these exclusive rights, other people cannot abuse the creation of someone who has become the intellectual property rights of the holder.

In addition to copyright, trademarks and geographical indications are also regulated through Law Number 20 Year 2016 which is also the intellectual property of a person for the creator or holder of the brand. In Article 1 number (1) of Law Number 20 Year 2016, the mark is a sign that can be displayed graphically in the form of a picture, 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) or more such elements are to distinguish goods and / or services produced by persons or legal entities in the trading of goods and / or services. Whereas the right to geographical indication is regulated in Article 1 number (7) [4], namely the exclusive right granted by the state to the registered Geographical Indication right holder, as long as the reputation, quality, and characteristics on which the protection of the Geographical Indication is based remains. Based on this, it is quite interesting to do a research on how the form of legal protection of intellectual property rights owned by someone if someone else is abusing the intellectual property rights.

II. MATERIAL AND METHODS

The method used in this research is to use the normative juridical method. Normative juridical is a method using applicable laws and regulations. And using literature that is related to the focus of the research conducted. As for the laws and regulations that apply in Indonesia relating to copyrights to photographic works as follows:

- Code of Civil law;
- Criminal Code;
- Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.
- Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademark and Geographical Indications

- Constitution Republic of Indonesia Number 13 of 2016 concerning Patents
- Law of the Republic of Indonesia Number 29 Year 2000 About Protection of Plant Varieties

In addition to laws and regulations, it also uses literature such as books, journals, dictionaries and electronic media related to the research conducted. The data used in this study is using secondary data. After the data is collected it will be analyzed using qualitative data, four stages that will be used in analyzing data qualitatively, namely:

- Collection, which is collecting data derived from legislative materials as well as books, books, scientific works, and other literature relating to the issues discussed.
- Reduction, which is selecting and sorting the main data that has been obtained in the preparation of research, so that the direction of discussion and flow are clear according to the issues discussed;
- Display, i.e. the reduction results that have been obtained are entered into the data with certain patterns to form a brief description. If the pattern has been found, the next step will create a standard guideline that will be displayed at the end of the research.
- Conclusion, which is a conclusion that is temporary and can change at any time if at the time of writing in the study found new data to support research. In applying this stage, using two methods, namely:
 - Inductive Analysis, which is a method of thinking derived from facts and special events which are then drawn in general terms that are general in nature.
 - Deductive Analysis, which is a pattern of thinking derived from a fact or general events and then drawn into a specific nature.

III. RESULT AND DISCUSSION

A. Provisions on Intellectual Property Rights

Intellectual Property Rights or often abbreviated "IPR" is a right that arises from the results of the thought of the human brain that produces a product or process that is useful for humans. In general, it can be said that the objects governed in IPR are works that arise or are born because of human intellectual abilities. The main characteristic of IPR is that these rights can be sold, licensed, inherited like other material rights. In essence, intellectual property rights can be transferred on the basis of legal reasons and justified by legislation.

Types of intellectual property rights, namely [5]:

- **Patent**, is one of the most popular types of IPR in the community. A patent is an exclusive right granted by the state to an inventor (inventor) for the results of his invention (invention) in the field of technology. Examples of patents include protection for the discovery of medical drugs. Well later if the patent protection period is over, then the drug will become a generic drug. Provisions regarding patents are regulated by Constitution Republic of Indonesia Number 13 of 2016 concerning Patents.

- **Brand** is a "sign" in the form of pictures, names, words, letters, numbers, color arrangements or combinations of these elements that have the power of differentiation and are used in the activities of trading goods and services. This trademark is one of the easiest types of IPR to be found in the community. Almost all sellers of goods and services have many brands. If every trader has a belief that his trademark will be well-known, it is better to immediately register the trademarks of our products or services, so that they are safe and protected, so that no one can abuse and benefit from trademarks owned and known by the public at large. For trademarks, it is regulated by Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademarks and Geographical Indications.

- **Copyright** is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with statutory provisions. Examples of copyrights that are often found are creations attached to a song. If the protection time is over then the song created will become a public domain alias becomes public property. Examples of songs that have become public domain are the song "happy birthday alias happy birthday song". Copyright is regulated by Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.

- **Industrial design** is a creation of a shape, configuration, or composition of lines or colors, or lines and colors, or a combination thereof in the form of three dimensions or two dimensions that gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a product, goods, industrial commodities or crafts. Examples of industrial designs are the cool apple krowak design and the very expensive prancing horse car design. Industrial design is regulated by Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design.

- **Layout Design of Integrated Circuits** is a creation in the form of a three-dimensional laying of various elements, at least one of the elements is an active element, as well as some or all of the interconnections in an integrated circuit and the laying of these three dimensions is intended for the preparation of making integrated circuits. Here Integrated Circuits are intended as a product in a finished or semi-finished form, in which there are various elements and at least one of these elements is an active element, which is partially or completely interrelated and integrated in a semiconductor material intended to produce a function electronic. An example of integrated circuit layout design is the Motherboard / Mainboard which is the main circuit board of the computer to install the processor, memory and other devices. This provision is regulated by Law of the Republic of Indonesia Number 32 Year 2000 Concerning Layout Design of Integrated Circuits.

- **Geographical Indications** is a sign indicating the area of origin of an item, which due to geographical environmental factors including natural factors, human factors, or a combination of the two factors, gives certain characteristics and qualities to the goods produced. For example Coffee Karo, Batik Yogyakarta, Lampung Tapis Fabric. The geographical indices are regulated by Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademarks and Geographical Indications
- **Trade secret** is information that is not publicly known 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 trade secrets, which includes production methods, processing methods, sales methods, or other information in the field of technology and / or businesses that have economic value and are not known by the general public. For example trade secrets on KFC products with 11 secret ingredients. Trade Secrets governed by Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets
- **Protection of Plant Varieties** is a special protection granted by the state, in this case represented by the government and implemented by the Office of Plant Variety Protection, for plant varieties produced by plant breeders through plant breeding activities. One example of varieties that have received IPR certification for plant varieties is the *Aeschynanthus* Lipstick flower "SoeKa". The flower is unique in the outer crown of the flower that has a striated pattern so that it differs from the normal lipstick flower. Lipstick flower type is a cross between two different species, namely *Aeschynanthus* "Radicans" green petals with *Aeschynanthus* "Tricolor". This provision is regulated by Law of the Republic of Indonesia Number 29 Year 2000 About Protection of Plant Varieties

One of the intellectual property rights is copyright. Copyright termed first proposed by St. Moh Syah, at the Cultural Congress in Bandung in 1951 which at that time was accepted by the Congress to replace the term Author Rights which was considered less extensive in terms of its understanding. Where the term Author's Rights is a translation of the Dutch term namely *Auteurs Recht* [6].

In the principle of Copyright there is and is attached to the creator together when the creation of a copyrighted work or creation, from the legal point of view this must also be affirmed to know when the actual copyright was born or realized. In the Copyright law to determine the need for legal protection of Copyright, where the Work was deemed to have existed since it was first announced or published, broadcast, voiced or disseminated by any means or means so that it could be read, heard and seen by others [7]

B. *Legal protection of intellectual property rights*

The development of life that takes place very quickly, especially in the economic sector both at the national and international level contributes to the occurrence of changes in intellectual property rights (IPR), so that protection is needed by the state [8]. Intellectual Property Rights can be given legal protection if it has been registered. Registration of intellectual property rights through the directorate general of intellectual property, ministries of law and human rights of the Republic of Indonesia. In the Copyright Act Number 28 of 2014 concerning Copyrights, the following rights protection is regulated [9]:

- Copyright protection is done for a longer time;
- Better protection of the economic rights of the creators and / or owners of related rights, including limiting the transfer of economic rights in the form of sold out;
- Effective settlement of disputes through mediation, arbitration or court proceedings, as well as the application of complaint offenses for criminal prosecution;
- The manager of the trading place is responsible for the place of sale and / or infringement of copyright and / or related rights in the shopping center that he manages;
- Copyright as an intangible movable object can be used as an object of fiduciary security;
- The Minister is given the authority to delete the work that has been recorded, if the work violates religious norms, moral norms, public order, national defense and security, as well as statutory provisions;
- Creator, copyright holder, owner of related rights to become a member of the Collective Management Institution in order to collect rewards or royalties;
- The creator and / or owner of the related rights receive a royalty fee for the creation or product of the related right which is made in an official relationship and is used commercially;
- Collective Management Institution that functions to collect and manage the economic rights of the creator and the owner of related rights must submit an application for an operational permit to the Minister;
- Use of copyright and related rights in multimedia tools to respond to developments in information and communication technology.

Regarding the longer period of copyright protection, Article 29 paragraph (1) of Law 19/2002 states that the period of copyright protection is as long as the life of the author and lasts up to 50 years after the author dies, whereas in the new copyright law, the validity period of copyright is divided into 2 (two), namely the validity period of moral rights and economic rights.

Trademark rights are a form of intellectual property rights as regulated by Act Number 20 of 2016 concerning trademarks. The form of legal protection for trademark rights can be given up to 10 years, it is regulated in Article 35. While the scope of the mark is regulated in Article 2, namely:

- The scope of this Act includes:
 - Brand; and
 - Geographical Indications.

- Marks as referred to in paragraph (1) letter a include:
 - Trademark; and
 - Service Mark.
- A protected mark consists of a sign in the form of a picture, 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) or more such elements are to distinguish goods and / or services produced by persons or legal entities in the trading of goods and / or services.

Patent rights are exclusive rights granted by the state to an inventor for their inventions in the field of technology for a certain period of time carrying out the invention themselves or giving approval to other parties to implement it [10]. Patents are protected in the form of patents and simple patents. For the protection of patents as regulated in Articles 22 and 23 of the patent law. Article 22 states that legal protection for patents is up to 20 years while Article 23 is a simple patent which is given legal protection for up to 10 years.

Protection of plant varieties (PVP) is special rights granted by the state to breeders and / or holders of Plant Variety Protection rights to use their own varieties of breeding or give approval to other people or legal entities to use them for a certain period of time [11]. Varieties that can be given PVP must be given a name which then becomes the name of the variety concerned, provided that:

- the name of the variety can continue to be used even though its protection period has expired;
- naming may not cause confusion with the characteristics of varieties;
- the naming of varieties is carried out by the PVP rights applicant and registered with the PVP Office;
- if the naming does not comply with the provisions in point b, the PVP Office has the right to reject the naming and ask for a new naming;
- if the name of the variety has been used for another variety, the applicant must change the name of the variety;

The period of PVP is 20 (twenty) years for annual crops, and 25 (twenty-five) years for annual plants. This is as regulated in Article 4 of the law concerning the protection of plant varieties.

Industrial designs that receive legal protection viz Industrial Design Rights are granted for new Industrial Designs and Industrial Designs are considered new if on the Filing Date, the Industrial Designs are not the same as pre-existing disclosures [12]. Whereas for legal protection is given up to 10 years.

Layout Designs of Integrated Circuits that receive legal protection namely (1) The Right to Layout Design of Integrated Circuits shall be granted for the original Layout Design of Integrated Circuits. (2) The Design of the Integrated Circuit Layout is declared original if the design is the independent work of the Designer, and when the Layout Design of the Integrated Circuit is made it is not a

common thing for Designers [13]. The period of protection provided for integrated circuit layout design is given for 10 years.

Trade Secret protection covers production methods, processing methods, sales methods, or other information in the field of technology and / or business that has economic value and is not known by the general public [14]. Trade Secrets are protected if the information is confidential, has economic value, and is kept confidential through appropriate efforts.

C. Legal Action Against Violation of Intellectual Property Rights

Factors that influence citizens to violate Intellectual Property Rights include:

- Violation of Intellectual Property Rights is carried out to take a shortcut to get the maximum benefit from the violation;
- The violators consider that the legal sanctions imposed by the court so far have been too light even that there are no preventive or repressive actions carried out by law enforcers;
- There are some community members as creators who are proud if their work is copied by others, but this has begun to disappear due to an increase in legal awareness of Intellectual Property Rights;
- By conducting violations, taxes on the products resulting from such violations need not be paid to the government; and
- The community does not pay attention to whether the goods purchased are genuine or fake, which is important for them to be cheap and affordable with economic capacity

Actions that violate the creator's exclusive rights constitute a threat to actions that intentionally conflict with government policies in the field of religion, defense and state security. Procedurally, copyright infringement from a criminal perspective is carried out in a general court (district court). Therefore, the provision of this criminal threat in its regulation needs to get a more detailed assertion in law enforcement for copyright infringement in the field of creative industries, this affirmation also needs to be done by involving several elements of the government and law enforcers as well as those from the public [15].

In law enforcement against infringement of intellectual property rights are only able to solve problems that arise on the surface, but more than that, efforts are needed to solve the root problems that can arise below the surface through Preventive action as a comprehensive protection by involving all government agencies as person in charge [16].

Protection and legal efforts against violations of intellectual property rights can be done by taking a civil route whose element is the Act against the Law (onrechmatigedaad) contained in article 1365 of the Civil Code whose elements are as follows [17]:

- Actions that are contrary to the rights of others;
- Actions that are contrary to their own legal obligations;
- Actions that are against morality;
- Actions that are contrary to prudence or necessity in good community relations.

A legal photographer may file a lawsuit against a lawsuit against the use of his work without permission can be submitted to the Commercial Court or the Mediation and Arbitration Board of Intellectual Property Rights that has been regulated in article 95 paragraph 9 (1) and (2) as well as article 99 Law No. 28 of 2014.

IV. CONCLUSION

Legal protection of intellectual property has been clearly and expressly regulated by law. Real assets will get legal protection if they are registered or registered through an appointed institution in accordance with applicable law. The laws governing intellectual property rights are:

- Republic of Indonesia Law No. 28 of 2014 concerning Copyright
- Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademark and Geographical Indications
- Constitution Republic of Indonesia Number 13 of 2016 concerning Patents
- Law of the Republic of Indonesia Number 29 Year 2000 About Protection of Plant Varieties.
- Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design.
- Law of the Republic of Indonesia Number 32 of 2000 concerning Layout Design of Integrated Circuits.
- Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets

REFERENCES

- [1]. Nurul Liza Anjani dan Etty Susilowati, Jurnal : *Perlindungan Karya Seni Fotografi Berdasarkan Uu No.19 Tahun 2002 Tentang Hak Cipta*, UNDIP
- [2]. Eva Puspitarani, et.al, 2013, *perlindungan hukum terhadap potret orang lain yang digunakan promosi oleh fotografer berdasarkan undang-undang no. 19 tahun 2002 tentang hak cipta*, Jurnal, Fakultas Hukum, Jember
- [3]. Republic of Indonesia Law No. 28 of 2014 concerning Copyright
- [4]. Law of the Republic of Indonesia Number 20 Year 2016 concerning Trademark and Geographical Indications
- [5]. <https://klikhukum.id/macam-macam-hak-kekayaan-intelektual/> diakses pada tanggal 31 Mei 2020
- [6]. Ajip Rosidi, 1982, *Undang-Undang Hak Cipta Pandangan Seorang Awam*, Jakarta: Djambatan
- [7]. Suyud Margono, 2003, *Hukum Perlindungan Hak Cipta*, Jakarta; CV Novindo Pustaka Mandiri
- [8]. Jannah, M. (2018). Perlindungan hukum hak kekayaan intelektual (haki) dalam hak cipta di indonesia. *Jurnal ilmiah advokasi*, 6(2), 55-72. doi:<https://doi.org/10.36987/jiad.v6i2.250>
- [9]. Tim Lindsey, 2006, *Hak Kekayaan Intelektual*, PT. ALUMNI, Bandung.
- [10]. Constitution Republic of Indonesia Number 13 of 2016 concerning Patents
- [11]. Law of the Republic of Indonesia Number 29 Year 2000 About Protection of Plant Varieties.
- [12]. Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design.
- [13]. Law of the Republic of Indonesia Number 32 Year 2000 Regarding Layout Design of Integrated Circuits
- [14]. Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets
- [15]. Zainul Amin, 2018, *Penegakan Hukum Terhadap Hak Cipta Dalam Bidang Industri Kreatif di Negara Kesatuan Republik Indonesia*. Mimbar Keadilan Jurnal Ilmu Hukum
- [16]. Supanto, 2010, *Kebijakan Hukum Pidana dalam Rangka Penanggulangan Tindak Pidana di Bidang Hak Cipta*, Universitas Diponegoro,
- [17]. Munir Fuady, 2002, *Perbuatan Melawan Hukum*. Bandung: Citra Aditya Bhakti.