

State Responsibility in Protecting the Intellectual Property Rights of Micro and Small Enterprise Products in the Culture-Based Tourism Industry

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ABSTRACT

This study aims to analyze state responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry. This study employed a normative legal research method, which was descriptive and analytical, with a statute approach. This study concludes that in the culture-based tourism industry, micro and small enterprise products have intellectual property rights that need to be protected. The state provides convenience to micro and small enterprises in terms of reduced fees for registering and recording intellectual property rights. To safeguard intellectual property rights, the state provides legal aid and assistance for micro and small enterprises that face legal problems in intellectual property rights disputes. It is hoped that the intellectual property rights of micro and small enterprise products in the culture-based tourism industry can be protected through that facilitation.

Keywords: *Culture-based tourism, Intellectual property rights, Micro and small enterprises, State responsibility.*

1. INTRODUCTION

God Almighty has bestowed on the Indonesian nation priceless wealth, including historical, artistic, and cultural heritage. This wealth needs to be utilized optimally by implementing tourism by introducing and utilizing tourist attractions and destinations in Indonesia. It is suggested to promote the Indonesian nation's prosperity and wellbeing, as envisioned in the Preamble to the Republic of Indonesia's Constitution of 1945.

Tourism can be defined as an activity in which people are traveling away from home or between regions or countries, especially for business or pleasure, in which they do not stay or look for work in that place. Tourism capital or resources can be grouped into three, namely (1) natural potential, (2) cultural potential, and (3) human potential [1].

One of Indonesia's tourist aims is to promote a culture based on the principles of human rights, cultural diversity, and indigenous knowledge. Tourism development is realized through the implementation of tourism development plans by taking into account the diversity, uniqueness, and characteristics of culture and nature and human needs for tourism, including the

tourism industry, tourism destinations, marketing, and tourism institutions.

In the tourism system, there are elements of the tourism industry that provide services, attractions, and tourist facilities. The industry is a business unit in tourism. Tourism is a phenomenon of temporary and spontaneous human movement in order to meet particular needs and desires. This phenomenon encourages and stimulates activities in consumption, production of goods, and services needed by the tourists [2].

The tourist sector is made up of a variety of tourism firms that include micro, small, and medium-sized businesses, as well as cooperatives. The central and regional governments are required to develop and protect micro, small, medium enterprises and cooperatives in the tourism business sector by (1) making a policy on tourism business reserves for micro, small, medium enterprises and cooperatives, and (2) facilitating partnerships of micro, small, medium, enterprises and cooperatives with large-scale businesses.

Micro, small, medium, and cooperative businesses are the backbones of the people's economic power that can expand employment opportunities, play a role in inequity, increase people's income, and encourage

economic growth. Therefore, they must obtain facilities, support, protection, and empowerment from the state.

To micro and small enterprises, the state provides convenience by giving guidance and facilitating business permit registration through the central and regional governments. In the meanwhile, the state is obligated to give legal help and assistance to micro and small business players through central and provincial governments. In terms of empowerment, the state aids micro and small businesses in terms of intellectual property rights through the central government, namely the ministry that oversees government operations in law and human rights.

Intellectual property rights are divided into two categories: (1) copyrights and (2) industrial property rights, which include patents, brands, geographical indications, industrial designs, integrated circuit layout designs, trade secrets, and plant varieties.

Intellectual property is described as the state's legal protection of a person, a group of persons, or an entity whose ideas and thoughts have been incorporated in the form of a copyrighted work. Therefore, intellectual property protects the use of ideas, notions, and information with commercial or economic value. Problems resulting in intellectual property disputes are due to legal violations committed by other parties on someone's rights to something included in the field of intellectual property that has been legally owned beforehand [3].

Micro and small businesses might take advantage of the fact that the government facilitates the registration of intellectual property rights for their products. This is to preserve micro and small business players' intellectual property rights.

Unfortunately, micro, small, and medium enterprises' awareness of intellectual property remains low. Micro, small, and medium enterprises do not pay attention to legal and regulatory aspects. From 2019 to 2021, only 76,294 applications for intellectual property registration were submitted. Indonesia's number of micro, small, and medium enterprises was around 65.4 million [4].

Enforcement of the law of intellectual property rights affects the development of science, technology, and the economy in Indonesia. Protection of intellectual property rights, one of which concerns economic rights, characterizes that intellectual property rights cannot be separated from the economy. Intellectual property rights stem from the creative activities of human thinking abilities, which are expressed to the general public in a variety of ways, and provide advantages and support for human life. Intellectual property rights are closely related to the protection of the implementation of ideas and information of commercial value [5].

The research questions that become the subject of discussion in this research are as follows from the description above.

- How does the state facilitate intellectual property rights for micro and small enterprise products in the culture-based tourism industry?
- How does the state carry out its responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry?

2. METHOD

This study used a statutory approach and a normative legal research technique. The research specification is in the form of an analytical description to provide a detailed, systematic, and comprehensive description of the state responsibility in protecting the intellectual property rights of micro and small enterprise products in the culture-based tourism industry. This study used secondary data in primary and secondary legal materials obtained from documents or through library research. The data that had been collected was then analyzed and arranged systematically using deduction logic as the central guidance and induction logic as the supporting work procedure.

3. RESULT AND DISCUSSION

Cultural tourism, according to the United Nations World Tourism Organization (UNWTO), is the largest and fastest-growing type of tourism worldwide. Four out of ten international visitors are said to pick a location based on the culture of cultural places, customs, and history. Cultural tourism, according to the UNWTO, is a type of tourism activity in which the main motivation of visitors is to learn, discover, experience, and consume tangible and intangible cultural products that exist in a tourist destination. The "UNWTO General Assembly," which was held on September 11-16, 2017, in Chengdu, China, defined it as "a type of tourism activity in which the main motivation of visitors is to learn, discover, experience, and consume tangible and intangible cultural products that exist in a tourist destination [6].

The development of tourism as an industry has created business opportunities in several tourist destinations. Hotels, homestays, restaurants, transportations, travel agencies, gift shops, and impresarios thrive. All of these things have created job opportunities and, at the same time, increased income per capita of the population in the area. (1) Languages, (2) customs, (3) handicrafts, (4) cuisine and eating habits, (5) music and art, (6) regional history, (7) work and technology, and (8) religion (9) architectural characteristic in the area, (10) dress and clothes, (11) educational systems, and (12) leisure activities are all parts of culture that might attract tourists [7].

According to the constitutional mandate, the state must maintain, care for, preserve, and promote culture. Indonesia, which consists of 13,000 islands and is inhabited by about 734 tribes, has many forms of culture passed down from generation to generation. The dynamics of society and globalization cause changes so that it is feared that they will erase the cultural heritage, which may further lead to a crisis of national identity [8].

In this case, the state's role is needed to protect the cultural heritage so that it is maintained and sustainable to be passed on to future generations by protecting intellectual property rights that grow and develop in the culture-based tourism industry.

Two functions must be carried out by the state, namely security, and welfare. In terms of security, the presence of the state is not only to protect the strong but also the weak in the society in ensuring security and order. In terms of welfare, the state can distribute national resources to create equality in society as a form of social justice. The state can carry out its functions by enforcing various regulations and laws, which are meant to protect the vulnerable and marginalized groups in society [9].

The implementation of intellectual property rights is a form of government responsibility based on the authority and functions as instruments of the state. According to the intellectual property rights regulations made by the state, the role of the government is significant to protect intellectual property rights. *Intellectual property rights* is an economic field that needs the attention of the government as state administrators. State officials carry out this state administration. The government must be responsible for carrying out the mandate of the provisions of the applicable law. Therefore, it is the responsibility of the government to protect the community [10].

At present, micro, small, and medium enterprises are the driving forces behind the country's economy that are not quickly impacted by the world recession. The promotion of a creative economy can revive the economic downturn. Indonesia has a huge number of micro, small, and medium businesses. Almost 90% of business actors in Indonesia belong to micro, small, and medium enterprises. By promoting local pearls of wisdom, natural resources, and human resources that are readily available, micro and small business products in clothing, food, and traditional medicines have a considerable potential to dominate the market. The potential to have geographical indications, patents, trade secrets, trademarks, and designs as intellectual properties is enormous if the government and relevant institutions [11].

Micro firms have a maximum yearly sale of two billion rupiahs and a maximum business capital of one billion rupiahs (excluding land and buildings for company premises). Meanwhile, small enterprises are

businesses with a business capital of more than one billion rupiahs, up to five billion rupiahs (excluding land and buildings for business premises), and with more than two billion rupiahs annual sale results up to fifteen billion rupiahs.

In the culture-based tourism industry, micro and small enterprises provide products in the form of handicrafts, traditional food, and traditional art. The products of micro and small enterprises in the tourism industry need to be protected by facilitating intellectual property rights, such as copyrights, brands, industrial designs, and trade secrets.

In terms of possible violations that might occur, the state has the authority to intervene by providing a series of regulatory instruments to regulate and provide threats in the form of sanctions in the event of violations against economic actors [12]. The state makes it easy for micro and small businesses to secure intellectual property rights swiftly, accurately, affordably, and without discrimination through the ministry that oversees government affairs in law and human rights.

It is in the form of reduced fees of at least 50% (fifty percent) for registering and recording intellectual property rights for micro and small enterprises.

The following are the current fees for registering and documenting intellectual property rights for micro, small, and medium businesses.

1. Application for the registration of related copyrighted works and/or products
 - a. Electronically: Rp 200,000
 - b. Non-electronically: Rp 250,000
2. Application for industrial design registration
 - a. Electronically: Rp 250,000
 - b. Non-electronically: Rp 300,000
3. Application for trademark registration
 - a. Electronically: Rp 500,000
 - b. Non-electronically: Rp 600,000
4. Application for patents
 - a. Electronically: Rp 350,000
 - b. Non-electronically: Rp 450,000
5. Application for trade secrets
 - a. Recording of a transfer of trade secret rights: Rp 200,000
 - b. recording of a trade secret license agreement: Rp. 150,000

By their authority, ministries/institutions assist micro and small enterprises to obtain intellectual property rights by conducting (a) consultation and assistance in the registration and recording of intellectual property, (b) literacy, education, and promotion of intellectual property, and (c) advocacy for intellectual property dispute resolution.

To defend the intellectual property rights of micro and small company goods exposed to intellectual property disputes, advocacy services for resolving

intellectual property disputes are provided to them. Settlement of intellectual property disputes is carried out through litigation and nonlitigation. Litigation is resolved through legal channels to the commercial court for industrial design disputes, integrated circuit layout designs, patents, trademarks, geographical indications, and copyrights. Meanwhile, disputes regarding the protection of plant varieties and trade secrets are submitted to the district court. On the other hand, nonlitigation is resolved through arbitration, consultation, negotiation, mediation, conciliation, and expert judgment.

Therefore, the tourism industry players, including the culture-based tourism industry run by micro and small enterprises, have the right to obtain legal protection in doing business, including protection of intellectual property rights of their business products.

Through the central and regional governments, the state is obligated to give legal aid and support to micro and small business players. Legal aid and assistance for micro and small enterprise actors are free of charge. Legal counseling, legal consultation, mediation, legal document management, and/or out-of-court help are all examples of legal aid and assistance. Not all micro and small enterprises can obtain legal aid and assistance from the state. Micro and small businesses must satisfy the following conditions to get these services: (a) make a written application to the central or local government, (b) have a company registration number, and (c) present case-related documentation.

In addition, through the central and regional governments, the state can provide financial assistance to micro and small enterprises that request legal aid and assistance provided by other parties, consisting of (a) individuals who have licenses to practice as advocates, (b) legal aid institutes, or (c) universities.

Legal aid and assistance provided by other parties include (a) legal consultation, (b) mediation, (c) preparation of legal documents, (d) out-of-court assistance, and/or (e) in-court assistance.

In providing legal aid and assistance to micro and small enterprises, the central and regional governments must at least:

- identify legal problems faced by micro and small enterprise actors;
- provide information to micro and small enterprise actors regarding the forms and methods of accessing legal aid and assistance;
- improve legal literacy;
- allocate budget for the implementation of legal aid and assistance activity program; and
- cooperate with related institutions, universities, and/or legal professional organizations.

State facilitation is carried out through the central and regional governments in reduced fees for registering and recording intellectual property rights. Legal aid and assistance are expected to protect the intellectual property rights of micro and small enterprise products in the culture-based tourism industry.

4. CONCLUSION

In the culture-based tourism industry, there are micro and small enterprise products. The state provides convenience to micro and small enterprises in the form of reduced fees of at least 50% (fifty percent) for the registration and recording of intellectual property rights, as well as assisting micro and small enterprises to obtain intellectual property rights by conducting

- a. consultation and assistance in the registration and recording of intellectual property;
- b. literacy, education, and socialization of intellectual property; and
- c. advocacy for the resolution of intellectual property disputes.

The state provides free legal support and counseling to micro and small businesses, including (a) legal counseling, (b) legal consultation, (c) mediation, (d) legal document preparation, and/or (e) out-of-court assistance. It is hoped that the intellectual property rights of micro and small enterprise products in the culture-based tourism industry can be protected through that facilitation.

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