



Harmonization of Copyrights and Brands in Improving Community Competitiveness Through Creative Economy in Indonesia

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Abstract. In an effort to boost the community's competitiveness through Indonesia's creative economy, this research is concerned with the harmonization of copyrights and brands. Research was conducted using a normative legal approach using secondary data, which was then subjected to descriptive analysis. The study's findings indicate that the harmonization of copyright and trademarks is necessary to remove inconsistencies between Law Number 28 of 2014 concerning copyright and Law Number 20 of 2016 concerning marks and geographical indications, particularly with regard to logo creation, which cannot be used as a legal justification for the cancellation of registered trademarks in Indonesia. Through the omnibus law, the Law Number 28 of 2014 concerning Copyright and the Law Number 20 of 2016 concerning Marks and Geographical Indications are harmonized, providing legal protection for creative workers in developing their innovations. As a result, productive activities are anticipated to increase competitiveness and improve the quality of life of the community through the creative economy.

Keywords: Copyright · Brand · Creative Economy

1 Introduction

The idea of a "creative economy" aims to achieve sustainable economic growth. Use of resources like thoughts, ideas, abilities, or creativity that are not only renewable but also limitless. In contrast to the industrial age, where raw materials and production methods defined the economic value of a good or service, the creative era places more emphasis on the application of creativity and the creation of innovation through ever-improving technological advancements [1].

Creativity can also be based on science and technology, engineering, and telecommunications in addition to works that are based on art and culture. The creative economy is based on three primary components: creativity, innovation, and invention. Someone's copyright skills can help them attain these three key goals.

Science, art, and literature (art and literary), which includes computer programs, are all covered by copyright, one of the areas of intellectual property with the widest range of protected items. The growth of Indonesia's creative economy, which is one of the

country's mainstays, the abundance of its arts and cultures, as well as the advancement of its citizens' intellectual faculties, have increased the community's need for adequate legal protection in order to maintain the environment of healthy business competition necessary for achieving national development [2]. To address these changes in the law and the needs of modern society, a new copyright law known as Law No. 28 of 2014 regulating copyrights was created.

In accordance with the norms of laws and regulations, copyright is defined as "the exclusive right of the creator that arises spontaneously based on declaratory principles after a work is manifested in a tangible form" in Article 1 Paragraph 1 of Law Number 28 of 2014 Concerning Copyright. Economic and moral rights are among the exclusive rights provided to artists. Article 5 paragraph (1) of Law Number 28 of 2014 concerning Copyright regulates moral rights, which include the right to use a pseudonym, to continue to include or not include the creator's name on the copy in connection with the public use of his creation, and to defend his rights in the event of an accident. The economic rights as outlined in Article 8 of Law Number 28 of 2014 concerning Copyrights include publishing, copying in all forms, adaptations, arrangements, transformation, distribution, and broadcasting of his creations. These are contrasted with distortions, cuts, modifications, and other things that are detrimental to the honor or reputation of the creator.

The normative provisions of Law Number 28 of 2014 respecting Copyright have effectively governed an author's rights. In Law Number 20 of 2016 Concerning Marks and Geographical Indications, the same thing is stated regarding mark regulations. A brand must have enough differentiating power, or the ability to discern between the products of one firm and those of other companies.[3]. In order to have distinguishing power, the Mark must be able to provide determination on the goods or services in question. Marks can be imprinted on goods or on packages of goods, or specified on matters relating to services [4]. One of the regulations concerning brands in Indonesia is the regulation concerning well-known brands.

Article 6 bis of the Paris Convention does not provide a definition or criteria for well-known marks, but is left entirely to each member state. The criteria for well-known marks are as follows, as stated in the Government of Indonesia's Decree of the Minister of Justice of the Republic of Indonesia No. M 03-HC.02.01 of 1991 dated May 2, 1991 regarding the rejection of applications for registration of well-known marks or marks that are similar to well-known marks belonging to other people or belonging to other entities:

1. Commonly recognized trademarks used on goods sold by a person or company;
2. Used in Indonesia and abroad [5].

Efforts to achieve the title of a well-known brand for a product is not an easy thing. Brand owners need a lot of time and money to make their brand a famous brand. One way is to register the trademark in various countries. This requires the need for special provisions in the registration of well-known marks, because if an item is already known with a certain mark, then this mark is used as a guide to expand foreign markets and the goods in question [6].

There are legal loopholes that allow parties with bad intentions to register a logo as a brand even though it is a well-known logo, as in the case of the "Superman" brand dispute

with the defeat of the copyright. These legal loopholes are related to the regulation regarding the inability of logo creations to be registered as copyright as regulated in Article 65 of the Copyright Law.

Given the foregoing context, the issues that this study will investigate are as follows: how is the harmonization of copyrights and brands in an effort to increase competitiveness and quality of life for the community through the creative economy in Indonesia?

2 Research Method

1. Type of Research

Because it focuses on law or normative procedures in the form of legal principles and legal systems, this research is essentially a normative juridical research [7]. The goal of the normative research in this study is to promote competitiveness and quality of life for the community in Indonesia by describing or describing in depth, methodically, comprehensively, and deeply about the harmonization of copyrights and brands.

2. Nature of Research

This study is descriptive because it discusses the relevant laws and rules and how they relate to legal theories when they are applied to the issues under investigation.

3. Data Analysis

A qualitative analysis will be used to examine the collected data.

3 Research Results and Analysis

Due to people's access to creative capital, which they employ to produce innovations, the creative economy, which includes creative sectors, has significant bargaining power. However, in an effort to improve the creative economy, of course it can be carried out well if it is supported by qualified laws and regulations, so that innovation creators can protect their interests from parties with bad intentions.

In actuality, there is a legal loophole in the Copyright Law that prohibits the recording of logo copyright, preventing the existence of the creator or logo holder from having proof of ownership of the copyright, which can ultimately be exploited by parties with malicious intents. to file a trademark application for the logo.

The author is of the opinion that this provision certainly has legal implications, namely:

1. Against Legislation

One of the ideas for Indonesian economic development is the creative economy. To be able to innovate and create things, Indonesia can cultivate models of ideas and abilities from the populace. a creative mindset that will be necessary for future survival and growth. So it follows that being skilled at drawing, dancing, singing, and writing stories is not enough to be a creative worker. He needs to be able to coordinate ideas from several disciplines as well as find novel approaches to address challenges.

Of course, it needs to be backed by sound laws and regulations in order to grow the number of creative workers. This is due to the fact that having effective laws and regulations gives creative workers legal security and protection for their original works. The

laws and regulations governing intellectual property rights, particularly those pertaining to copyrights and trademarks, often inconsistent in practice.

The brand, which is manifested in the form of a logo, is a creation of creative workers to create the logo. However, once a work is created in a tangible form, the copyright concept emerges immediately based on the declarative principle. This means that in order to make a prosecution or lawsuit against a party deemed to have violated the copyright of the creator, there is no need for a registration/recording of the work in advance.

This is different from the principle of a trademark that is born orally when the mark is registered first. It will undoubtedly be a legal loophole for creative workers who create a logo but the logo is later stolen by another party and registered as a brand, as happened in the "Superman" dispute, if provisions regarding the recording of Works cannot be carried out on paintings in the form of a logo or distinguishing mark used as a mark in the trade in goods or services.

A lawsuit for the cancellation of a trademark registration may be brought by a party with interest under Article 76 paragraph (1) of the Law on Marks for the grounds mentioned in Articles 20 and 21. A lawsuit for the cancellation of a mark registration may only be filed within 5 (five) years of the date the mark was registered, according to Article 77 paragraph (1) of the Law Concerning Marks.

The Law on Marks' Article 21 paragraph (1) letter b, which does not specifically identify well-known marks, causes issues. According to the author, in the absence of an explanation and limitations on what is meant by "famous mark", the word "famous mark" has multiple interpretations, so that it is often misused by using it as legitimacy by one of the parties to apply for trademark registration. Given the various interpretations of the term "famous mark," the Director General of Intellectual Property Rights may approve a mark application if it has conceptual similarities to a well-known mark and does not violate the principle of basic equality. In the "Superman" brand issue, there was a well-known brand infringement that led to this situation.

Based on this case, due to the provisions regarding Article 65 of the Copyright Law which does not regulate logo creation as the basis for canceling a mark which is allegedly the result of the bad faith of the brand holder who took the logo creation, the Director General's refusal to cancel the application for the "Superman" mark Intellectual Property Rights and Judges of the Supreme Court have resulted in the absence of legal protection in the cancellation of the trademark application, so there is also no justice in it.

In the end, it is inhibiting the creativity of creative workers to create new innovations, because there is no guarantee of legal protection for their creations, including creations in the form of logos.

2. Against Directors General of Intellectual Property Rights employees and Commercial Court judges

Because the author claims that the Acting Director General of Intellectual Property Rights and Court Judges are "executors" of the implementation of the rejection of the application, they have a legal obligation to carry out the mandates in Articles 21, 76, and 79 of the Law on Marks. This obligation extends to judges of the Commercial Court, including judges of the Supreme Court. a mark that complies with Article 21, Article 76, and Article 79 of the Law on Marks and shares conceptual characteristics with a well-known mark.

The granting of the registration of the "Superman" mark which has similarities in principle with a well-known mark, will result in legal consequences for the owner of the famous mark, namely a legal dispute between the Petitioner and the Respondent in court which, according to the author, will be very detrimental to both parties, because it will be a loss in terms of time, energy, mind, and also in terms of material.

According to Article 21 paragraph (3) of the Law on Marks which reads that the application is rejected if it is submitted by an applicant with bad intentions. Article 10 paragraph (3) of the Paris Convention contains a stipulation that member countries of the Paris Convention are bound to provide protection for well-known marks so that unfair competition does not occur, while in paragraph (2) it is stated that any act that is contrary to the practice of business actors in the field of industry and trade is considered a dishonest act.

Article 10 paragraph (2) of the Paris Convention stipulates what actions are prohibited in relation to fraudulent acts which can lead to confusion in any way regarding the origin of goods or industrial and commercial undertakings of a competing entrepreneur. This dishonest competition can be in the form of an attempt to piggyback on or piggyback on the fame of a well-known brand. The act of "pirating," "copying," and "plagiarizing" well-known marks of third parties and then registering them at the Directorate General of Intellectual Property and Rights for both similar and dissimilar items constitutes attempts to accompany or pillage. This action results in losses suffered by other parties, deceives, and misleads consumers/confuses the public regarding the nature and origin of the goods.

3. Negative Legal Implications

The community has implied that the Law on Trademarks and the Law on Copyright are no longer trustworthy. Loss of legal protection results from the existence of legal loopholes in the Law on Trademarks and the Law on Copyright, and because positive law does not regulate and law enforcement officials are only mouthpieces for the law, these legal loopholes make it possible to do things that are obviously against the law.

The author is of the opinion that in order to achieve the implementation of Article 21, Article 76 and Article 77 of the Law on Marks, although there are legal loopholes in Article 65 of the Copyright Law, it is necessary to have an omnibus law specifically for intellectual property rights. Omnibus law is a law whose substance is to revise and/or revoke many laws [7].

The provisions on the omnibus law specifically for intellectual property rights can be a solution for disharmony between the Copyright Law and the Trademark Law, so that legal loopholes can be overcome by the omnibus law. The omnibus law harmonizes the Copyright Law and the Trademark Law, creating the principle of making laws outlined in Article 5 letter f of Law Number 12 of 2011 Concerning the Establishment of Legislation, particularly the principle of clarity formulation, which states that each piece of legislation must adhere to the technical standards for the creation of laws and regulations, systematics, word choice, and clear legal language.

4 Conclusions

The conclusion in this study is the harmonization of copyright and trademarks in an effort to increase competitiveness and quality of life for the community through the

creative economy in Indonesia is to eliminate disharmony between the Copyright Law and the Trademark Law, especially with regard to logo creation which cannot be used as a basis law to cancel a registered mark. Harmonization between the Copyright Law and the Trademark Law through the omnibus law, creates legal protection for creative workers in creating their innovations, so that productive activities are expected to increase competitiveness and people's quality of life through the creative economy.

References

1. Rochmat Aldy Purnomo, *Ekonomi Kreatif: Pilar Pembangunan Indonesia*, Surakarta: Ziyad Visi Media, 2016, p. 8.
2. Ditjen Hak Kekayaan Intelektual, *Buku Panduan Hak Kekayaan Intelektual*, Jakarta: Ditjen Hak Kekayaan Intelektual Departemen Hukum dan HAM, 2015, p. 32.
3. Abdulkadir Muhammad, *Hukum Ekonomi Hak Kekayaan Intelektual*, Bandung: Citra Aditya Bakti, 2001, p. 120.
4. Rachmadi Usman, *Hukum Hak Atas Kekayaan Intelektual*, Bandung: P.T. Alumni, 2002, p. 45.
5. Sudargo Gautama dan R. Winata, *Pembaharuan Hukum Merek Indonesia*, Bandung: Citra Aditya Bakti, 1997, p. 57.
6. Sudargo Gautama, *Hukum Merek Indonesia*, Bandung: Alumni, 1984, p. 154.
7. Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif-Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 2007, p. 10.
8. Indonesia, *The Constitution of the Republic of Indonesia 1945*.
9. Indonesia, Law Number 28 of 2014 concerning Copyright.
10. Indonesia, Law Number 20 of 2016 concerning Marks and Geographical Indications.
11. Indonesia, Law Number 12 of 2011 concerning the Establishment of Legislation.
12. Indonesia, Decree of the Minister of Justice of the Republic of Indonesia No. M 03-HC.02.01 of 1991 Concerning Refused of Applications for Registration of Famous Brand or Brand Same Brand Owned by Others or Other Entity.

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