

Trends Protection as Legal Protection of Creative Industries in the Perspective of the Welfare Law State

Nugraha Pranadita

Law Study Program, Postgraduate School
Nusantara Islamic University
Bandung, Indonesia
nugpra@yahoo.com

Abstract—In many ways, the creative industry is a way out for the development of new industries, which are hindered by problems with the availability of capital and technology. The creative industry is synonymous with Micro, Small and Medium Enterprises (MSMEs) that are more resistant to crises that are part of the free market. The biggest threat from the creative industry actually comes from within itself, namely the slowing down of the creative process that can bring new things. The creative industry is an industry that produces trends in certain fields, thus protecting the existence of the creative industry can be done by providing protection against the trends generated by the creative industry. What is meant by protection here is of course legal protection that has an impact on increasing the welfare of the stakeholders of the creative industry. Current trend protection has not become part of the protection of Intellectual Property Rights (IPR) even though in reality trend protection is a protection against the results of intellectual activity itself. Thought regarding trend protection is a new thought, so that research related to it is only possible to use primary legal material in the form of secondary data, thus making it a doctrinal legal research.

Keywords—industry; creative; protection; trends

I. INTRODUCTION

According to the meaning of language, trends are the latest style or can be said to be the style of the present [1]. However, trends are not something that suddenly exists in the present, but is a continuation of the efforts made in the past to the present. Meanwhile the creative industry is defined as; "Industries whose activities include the cultural industry and all results or the creation of artistic inner or intellectual human nature, both in the form of activities that are living or in the form of production in the form of special units, both products and services contain artistic elements or are creative endeavors and are based on cultural heritage, art, media and functional creations" [2].

Industry is a group of similar businesses, so entities from creative industries are a number of companies or business entities, whether legal entities or not, which carry out their business activities in fields that are "creative". Creative industry activities in a wider scope become part of creative economic activities, namely; "The manifestation of added value from an idea or idea that contains originality, is born from

human intellectual creativity, based on science, skills, and cultural heritage and technology is intellectual property" [3].

Trends are dynamic because they are associated with evolving creativity. Trends always present something new and renew something that is no longer new. The dynamic nature of the trend can be seen as contrary to the nature of legislation that tends to be rigid, rigid and difficult to change in accordance with the progress of the times. This is especially true in countries that adhere to the European civil law tradition, as is the legal tradition adopted and / or practiced in Indonesia, which gives priority to written laws that must be made and or changed according to certain non-simple methods, its nature.

Based on the description above can be formulated identification of this research problem as follows:

- How are trends protected.
- How can trend protection bring prosperity.

II. METHOD

This is normative legal research or library research. The primary legal material used is secondary data in the form of qualitative data, that is, the data available not specifically for this study and not in the form of numbers. This research uses the truth of pragmatics, i.e. something is considered true if proven true. Thus this research is descriptive analysis with a conceptual approach because it is related to a new idea.

III. DISCUSSION

In a certain degree, the economic system of a country reflects the ideology of that country. The liberal state presents a capitalist economic system by using its free market mechanism where individual property becomes a priority. The opposite happens in the socialist or communist economic system adopted by a State with a socialist or communist ideology where ownership is controlled by the State. In reality the economic system of the countries in the world does not only consist of capitalist and socialist / communist economic systems, there are also Islamic economic systems and others. In reality a country's economic system is possible to be mixed with various reasons. One of them is the economic system adopted by the People's Republic of China (PRC). It is known that China is a country that adheres to communist ideology,

thus its economic system is a communist economic system where individual ownership is not recognized. Meanwhile the Hong Kong region which was controlled by Britain adhered to a capitalist economic system as well as the economic system applied in England. On July 1, 1997 the Hong Kong region was handed over by the British government to the Chinese government [4]. Even though the Chinese government has retained the communist / socialist economic system, the economic system in the Hong Kong region still uses a capitalist economic system. Thus in the PRC State two different economic systems apply.

It is reasonably suspected that the legal regime of Intellectual Property Rights (IPR) is a representation of the capitalist legal system that gives priority to individual property rights. This is because IPR explicitly aims to protect individual property rights, or community property rights (communal) which are very limited in nature (protection of geographical indications). Intellectual Property Rights protection basically aims to provide benefits that have economic value to the "owner" of IPR protection. What is meant by economic value here is related to the use of IPR in economic activities, especially in a particular industrial field which is carried out solely for profit.

At present in Indonesia the law related to IPR protection is divided into 9 fields, namely; (1) protection of plant varieties / PVP, (2) protection of trade secrets, (3) protection of industrial designs, (4) protection of integrated circuit layout design, (5) copyright protection, (6) patent protection, (7) protection brand, (8) geographical indication protection, and (9) protection indication of origin. In succession the definitions of each IPR protection will be described as follows. PVP is "..., special protection given by the state, which in this case is represented by the Government and its implementation is carried out by the Office of Plant Variety Protection [5], on varieties of plants produced by plant breeders through plant breeding activities". "Trade Secret is information that is not known by the public 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 the Trade Secret" [6]. "Industrial design is a creation of the shape, configuration, or composition of lines or colours, or lines and colours, or a combination of three-dimensional or two-dimensional shapes that give an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a product, item, industrial commodity, or handicraft" [7]. "Integrated Circuits are products in a finished or semi-finished form, in which there are various elements and at least one of these elements are active elements, which are partially or wholly interrelated and formed in an integrated semiconductor material intended to produce electronic function" [8].

It is interesting to note that the four laws relating to IPR protection are now still valid in Indonesia in the field; plant variety protection, trade secrets, industrial design and integrated circuit layout design are laws issued in 2000. As is known that around 1998 Indonesia experienced an economic crisis which was to be overcome by the International Monetary Fund, DMI / International Monetary Fund; The IMF. Then in 2006 Indonesia settled the payment of the debt to the IMF even

though the payment was due in 2010 [9]. "The DMI is in charge of overseeing the international monetary and financial system and monitoring the economic and financial policies of its member countries. This activity is known as surveillance and aims to strengthen international cooperation" [10]. "The conditionality (requirement) of the IMF is a series of policies or conditions proposed by the IMF before disbursing a loan. The IMF requires collateral from the borrowing country and asks the government to seek assistance to correct macroeconomic imbalances in the form of policy reform. If these conditions are not met, DMI does not disburse the loan [10]. Based on this matter, it should be reasonably suspected that there was a connection between the loans provided by the IMF to Indonesia and the birth of laws relating to the protection of IPR in Indonesia in 2000. Thus, to a certain extent the existence of laws relating to protection of IPR in Indonesia was related to interests "Foreign party" in the Indonesian economic system.

"Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of legislation" [11]. "Patent is an exclusive right granted by the state to the inventor for the results of his invention in the field of technology for a certain period of time implementing the invention itself or giving approval to other parties to implement it" [12]. "Trademark is a sign that can be displayed graphically in the form of images, logos, names, words, letters, numbers, arrangement of colours, in the form of 2 (two) dimensions and / or 3 (three) dimensions, sounds, holograms, or combinations of 2 (two) or more of these elements to distinguish goods and / or services produced by people or legal entities in the activities of trading goods and / or services" [13]. "Geographical Indication is a sign that shows the area of origin of an item and / or product which due to geographical environment factors including natural factors, human factors or a combination of these two factors gives reputation, quality, and certain characteristics to the goods and / or products produced" [14]. "Indication of origin is a characteristic of the origin of goods and / or services that are not directly related to natural factors" [15].

If observed carefully, IPR protection in Indonesia can be said to be able to provide legal protection against (almost) all economic activities that can produce added value (profits). Legal protection is given both to the perpetrators / executors of economic activities directly, as well as to other parties who benefit from the intended economic activities. On the other hand, the rapid development of information technology has succeeded in "removing" national borders on the face of the earth. This has placed economic activity in an unlimited position in terms of its development. It is proper and proper that the economy in that position can bring prosperity to the community.

"Loss" of the boundary and distance between one country and another is a catalyst for the exchange of values between one region and another on the earth. The exchange of values is a process of "giving" and "receiving" in a certain amount until the equilibrium is reached between the two. One of the mechanisms for exchanging value is through trends in various fields. This specifically needs to be emphasized because the

trend up to now is still specifically related to fashion only (especially clothing mode). This is certainly not true because in reality trends can occur in various joints of people's lives. This will explain the influence of trends on IPR protection in Indonesia, which to a certain degree can be compared to the influence of trends in the Indonesian economy, especially in the creative economy and / or creative industries in Indonesia.

Questions, classics in the world trade system are between which, first; supply and demand. Maybe the question is just as difficult as the question, whichever comes first; egg or chicken? First, the amount of goods and services offered on the market will ultimately lead to a demand for these goods and services. Secondly, and vice versa, the high demand for goods and services in the market will eventually result in the many offers of goods and services from producers. For the first condition, goods and services are first on the market compared to the request itself. Consumers, although not yet in need of production, are "given an offer" to use the produce of the producer. This is done by producers through a process of "communication" which basically provides understanding to consumers about the importance and / or benefits of the producers' production to consumers, both at present and in the future. Under these conditions, producers "create" consumer needs. What is meant by the needs here is of course a need that is initially not needed by consumers, a need that is new. When producers make a process of "creating" new needs for consumers, these producers make a decision to invest by allocating a number of resources in various forms to create something new that (maybe) will be needed by consumers in the future. If it turns out that the creation of new needs by the producer is successfully communicated to consumers so that consumers "agree" to position it as a consumer need, then the producer will obtain economic value from the process of its creation. The opposite will happen, if it turns out that the new needs are not accepted by the consumer, then the producer will experience a "loss".

The process of creating new needs by producers is a decision that is "high risk" because if it turns out that the new needs are really needed by consumers, other producers can easily and quickly emulate them. For example: Initially in Indonesia there was no consumer demand for "hair vitamins". Then one manufacturer creates hair vitamins that can be used practically, directly used on hair in dry hair conditions (no need to wash hair). Within a few years, the manufacturer became the only producer that produced "hair vitamins" in Indonesia. It is understandable that the production of "hair vitamins" is not necessarily large, but develops from small to large along with increasing consumer awareness of the importance of the benefits of these goods resulting from a process of "communication" carried out by the intended producer to consumers effectively and continuously.

When consumer needs for the availability of "hair vitamins" in the market are higher, it is used as an "excuse" by other producers to meet these needs by producing the same (functional) goods. For the next producer, the process of producing hair vitamins is no longer a "high-risk decision" because indeed the demand from consumers already exists. This is what is meant by the statement of the two researchers in the previous section, namely the amount of demand for goods

and services in the market will ultimately lead to the number of offers of goods and services from the producer.

The description of "hair vitamins" above illustrates the effect of creating trends on the needs of the goods of the daily needs of the community which are generally permanent in the long term. The importance of creating this trend will be felt more in the creative industries in Indonesia due to three things, namely; (1) creative industries related to the creation of new ideas which are then communicated to consumers so that they can be accepted by consumers as a necessity, (2) these new ideas generally have a short "life cycle" because they will quickly be replaced by ideas and other new ideas, and (3) the creative industry is generally driven by Micro, Small and Medium Enterprises (MSMEs) that have been proven to be resistant to the effects of the crisis that characterize the liberal economy with its free market mechanism.

Creative industry entrepreneurs who generally consist of micro, small and medium business entrepreneurs, run their businesses dynamically (flexibly), by always creating and communicating new ideas to their customers. According to the Indonesian Banking Development Institute (LPPI) [16], the employment rate of micro, small and medium enterprises is 97% of all national the worker, and contributes around 57% of Indonesia's Gross Domestic Product (GDP). The same thing was also conveyed on the page of the Ministry of Industry of the Republic of Indonesia; "The contribution of the micro, small and medium enterprises sector to gross domestic product increased from 57.84% to 60.34% in the last five years. Uptake of the worker in this sector also increased, from 96.99% to 97.22% in the same period " [17].

Based on the description above, it can be understood that the contribution of the creative industry carried out by micro, small and medium enterprises in Indonesia occupies an important position in improving the Indonesian economy which is ultimately expected to improve the welfare of the Indonesian people. This is certainly in line with the objective of the establishment of an Indonesian state government, namely to carry out the welfare of the Indonesian people themselves [18]. Thus, it is fitting and rightly the trend created by the creative industries in Indonesia which is driven by micro, small and medium enterprises to obtain legal protection in order to grow and develop as expected so as to bring prosperity to the people of Indonesia. The legal protection in question is certainly carried out within the framework of the Indonesian welfare law [19].

Trends are closely related to the creation of new ideas that are the result of the intellectual activities of the creators. Thus the legal regime that is expected to provide legal protection against the existence of this trend is the Intellectual Property Rights (HKI) legal regime. At this time IPR protection in Indonesia has not provided space for trends as one of the IPR entities protected by law, therefore it is quite urgent to place trends as part of the IPR entity that obtains legal protection in the Indonesian legal state as one of the means for the welfare of the Indonesian people.

IV. CONCLUSION

Based on the description above, the conclusions of this study are:

- Protection of trends in Indonesia is carried out by placing trends as one of the Intellectual Property Rights entities so as to obtain legal protection as well as other Intellectual Property Rights entities such as copyrights, patents, brands and others.
- Protection of trends significantly impacts on the protection and improvement of Indonesia's national economy, one of which is through the development of creative industries that are driven by micro, small and medium enterprises that are able to absorb more than 90% of Indonesia's national workforce, so that the trend protection is expected to bring prosperity for most people (labor) Indonesia.

ACKNOWLEDGMENTS

Master of Law Studies Post-Graduate School of Islamic University of Nusantara, Bandung, Indonesia. This research is funded by DIPA Kopertis Region IV West Java Banten, Ministry of Research, Technology and Higher Education, in accordance with the 2018 Letter of Agreement of Decentralized Grant Research Fiscal Year Higher Education Research Program of Higher Education Number: 0048-B / LPPM-UIN / II / 2018.

REFERENCES

- [1] Online Indonesian Large Dictionary (KBBI), Trend, <https://kbbi.kemdikbud.go.id/entri/tren>, downloaded on Saturday, October 27, 2018.
- [2] Draft Law of the Republic of Indonesia concerning Creative Economy, Article 1 number 3, <http://dpd.go.id/upload/lapatan/ekonomi.pdf>, downloaded on Saturday, October 27, 2018.
- [3] Draft Law of the Republic of Indonesia concerning Creative Economy, Article 1 number 1, <http://dpd.go.id/upload/lapatan/ekonomi.pdf>, downloaded on Saturday, October 27, 2018.
- [4] Wikipedia, Submission of Upper Sovereignty of Hong Kong, https://id.wikipedia.org/wiki/Surrender_of_sovereignty_over_Hong_Kong, downloaded on Saturday, October 27, 2018.
- [5] Law of the Republic of Indonesia Number 29 of 2000 concerning Protection of Plant Varieties, Article 1 number 1.
- [6] Law of the Republic of Indonesia Number 30 of 2000 concerning Trade Secrets, Article 1 number 1.
- [7] Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design, Article 1 number 1.
- [8] Law of the Republic of Indonesia Number 32 of 2000 concerning Design of Integrated Circuit Layout, Article 1 number 1.
- [9] Wikipedia, Indonesia's Foreign Debt Position, https://id.wikipedia.org/wiki/Posisi_utang_luar_negeri_Indonesia, is downloaded on Saturday, October 27, 2018.
- [10] Wikipedia, the International Monetary Fund, https://id.wikipedia.org/wiki/Dana_Moneter_International, downloaded on Saturday, October 27, 2018.
- [11] Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, Article 1 number 1.
- [12] Law of the Republic of Indonesia Number 13 of 2016 concerning Patents, Article 1 number 1.
- [13] Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications, Article 1 number 1.
- [14] Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications, Article 1 number 6.
- [15] Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications, Article 64.
- [16] Profile of the Business of Micro, Small and Medium Enterprises (MSMEs), LPPI and Bank Indonesia Cooperation in 2015, Speech from the President Director of the Indonesian Banking Development Institute, p. iv.
- [17] The Ministry of Industry of the Republic of Indonesia, Distribution of MSMEs Up, <http://www.kemenperin.go.id/artikel/14200/Kontribusi-UMKM-Naik>, downloaded on Sunday 28 October 2018.
- [18] Opening of the Constitution of the Republic of Indonesia, fourth paragraph.
- [19] State Constitution of the Republic of Indonesia, Article 1 paragraph (3).