

Intellectual Property Rights in The Field of Copyright in Indonesia Towards The Globalization Era

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Abstract—The rights for intellectual property in Indonesia nowadays have become highly necessary. It is grounded upon the notion that globalization is at the edge and Indonesia has agreed to sign the deal of the intellectual property right protection. If there is no specific rules to control the creation and utilization, Indonesia as a developing country is susceptible of the copyright misuse. Therefore, the idea and the creation should be protected through an official registration so that in the future there will be no problematic situation.

Keywords—Copyright and Globalization.

I. INTRODUCTION

Intellectual property right is an authority which belongs under the scope of both science and technology, and art and literature. The ownership is not laid upon the kinds of thing, but instead upon the result of the intellectual capability, one of those comprises the ideas. That kind of right is able to prove its existence only if the individual's intellectual capability has been poured into something sensible or is able to be utilized and has practical benefits.

The researcher's idea and paradigm are poured in this writing with the theme of intellectual property right, especially within the copyright issue, as the researcher sees the challenge faced by Indonesia nowadays because of the formation of the World Trade Organization. As a developing country, Indonesia must be actively involved in the implementation of TRIP's since January the 1st, 2000, as it has affected the market's condition as well as the open and competitive competition in business.

The limitations and decrease in crops and natural resources have so far become the nation's mainstay in collecting foreign exchange. In order to sustain the national development, the nation is required to strengthen the understanding of the rule of law and legislation to provide a protection under the law for the intellectual creation of the people in the nation so that in the end the desired goal will be achieved, which is to push the spirit to create and innovate in all of the science discipline, as well as in art, literature, and technology. In this globalization era, the role of technology in industrial developments has been

proven able to improve the prestige and dignity of the nation in facing all the obstacles and challenges.

With the population of around 250 millions, the changes in economy and the increase of the society's purchasing power for a certain domestic product are expected to improve better if only as a potential market for domestic products, the condition is in balance with the quality supported with advanced technologies that are at the same level as Japan, The USA, and Europe.

On the other side, the cultural diversity, talents, intentions, creation, as well as the human resources in relation to the capacity to process and transfer the technology has already been developed nowadays. Therefore, it is no wonder that at the moment, Indonesia has been able to compete as one of the producers of several commodities saleable in the world trade.

II. DISCUSSIONS

Being seen from the world trade concept, generally those which are related to the issue of the intellectual property right, the situation and condition of the nature in Indonesia is still considered ignorant towards the issue of copyright, let alone in making a special space to guarantee the protection of copyright. Looking back to the history of the trade law developing in Indonesia, the justice which specifically handles the violation issue of the intellectual property right has not yet been established. For instance, under the issue of brand violation, the case is handled by the justice institution only if it is based on the violation of law. For cases related to certain brands (those which have dominated the trade), the Central Jakarta Court has been appointed by the government as an authorized institution to do investigations on the case. Thus, all this time, a specific institution with the capacity to handle such cases related to brands, copyright, or patents has not yet been formed. Moreover, so far the TRIP'S Agreement does not set or oblige that Indonesia should have the judiciary or law institution which specifically handles cases related to the intellectual property right (Chapter 41, paragraph 5, TRIP'S Agreement).

A new phase in the regulation of copuright was started in April the 12th, 1982. Then came the time when the constitution

on copyright (*Undang-undang Hak Cipta No.6 Tahun 1982, LN No.15 Tahun 1982*) was updated with the new constitution (*Undang-undang No.12 Tahun 1997*, on May the 7th, 1997) and Verse 2 of the constitution on copyright year 1982 was updated with the constitution on copyright year 1997 (*Undang-undang Hak Cipta No.12 tahun 1997*). It was stated as follows; based on these conditions, copyright is a special right for the creator or person who gives license for it, without reducing the limitations according to the regulations under the governing law. It was also explained that copyright is an individual right of the creator, or the right of the one who gains the trust on it (the license receiver) to announce and reproduce the creation, as well as to give permission upon it, without reducing the limitations according to the regulations under the governing law. The same regulation works for the field of art and literature. Therefore, it is safe to say that copyright is a right which emerges from the acknowledgement on the intellectual property right which is exclusive.

The following law understanding is that copyright consists of economic right and moral right. Economic right is the right to obtain economic benefits upon a certain creation or related product of the related right, while moral right is the right attached to the creator which cannot be removed or deleted by any reason, even though the copyright or the related right has been diverted.

In another explanation on Chapter V of the Universal Copyright Convention, it is stated that copyright is an individual right of the creator to create, publish, and give authority to make the translation and the masterpiece protected by the agreement. Copyright is a part of the intellectual property right which has the widest scope as it covers science, art, and literature.

The definition of individual right which lies on copyright has the meaning of an exclusive right given only to the creator, while the others are not entitled to have the right, unless there has already been a permission from the creator. Therefore, it is also emphasized that copyright is an exclusive individual right of the creator.

Drawing it further, the constitution on copyright is detailing firmly that the creation that gets a law protection from the copyright constitution related to art and literature includes:

1. Books, pamphlets, and other kinds of writing;
2. Lectures, speeches, and the others;
3. Performances such as musical shows, *karawitan*, drama, dances, *pewayangan*, pantomime, and broadcast works such as radio media, television, cinema, and recording;
4. Creations of music and dance, choreography with or without texts;
5. All forms of art such as paintings and sculptures;
6. Architecture creations;
7. Map creations;
8. Cinematography creations;

9. Photography creations;
10. Translations, interpretations, adaptations, and potpourri arragnements, database, and other masterpieces as the results of diversion, and those which get no protection from copyright including: results of open meeting of state institutions, legislations, state speeches or speeches of government officials, court decisions or the confirmation of intellectual property right or the decisions of the arbitration body. (Elsi Kartika Sari: The Law of Economy: 100)

Verse (2) :

Translations, interpretations, adaptations, film recordings, compositions, musics, a set of original creations are protected as a separate creation without reducing the copyright or the original creation.

Verse (3) :

Within the protection as referred to on verse (1) and (2), all of the creations which are not or not yet announced but have already become a real unity which allows them to be reproduced are also included.

Unless it is proven the opposite, the one considered as the creator is: the person whose name has been registered in the general list of creation and the official announcement on registration to the Department of Justice as referred to on verse 29. It also includes the person whose name is mentioned in a creation or announced as the creator of a particular creation (Chapter 5 verse 1). If for example there is an unwritten lecture which has no previous announcement on who created it, then the person delivering the lecture is considered as the creator (Chapter 5 verse 2).

If a certain creation consists of some separate parts composed by two or more persons, the one entitled to be the creator is the one who leads and supervises the completion of the whole creation. If there is no such person, then the one who collects is the one entitled, without removing the copyright of each of the person for their own part of creation (Chapter 6).

The copyright is valid as long as the creator lives and will continue until 50 years after the creator passed away. Then, it has been stated on the constitution on copyright that copyright may be switched and diverted, either as parts or as a whole because of the existence of:

1. Heir
2. Grant
3. Will
4. State heritage

One of the concrete examples is an agreement which has to be done with a certificate, with the conditions that the agreement is only about authority as mentioned in the certificate. The transfer of copyright is done with an official certificate. A verbal transfer of copyright will not be considered valid.

The advance in technology and communication nowadays has become one of the variables in the constitution on copyright, considering that on the one hand, technology and communication hold a strategic role in the development of copyright. On the other hand, they can be a means of law violations in that particular field. That dilemma will always emerge as an impact of the current rate of technology and information which is too fast without being balanced with a proper regulations. Because of that, a proportional regulation with appropriate protection is highly needed in order for the positive function can be optimalized and the negative impacts can be minimalized, considering that the constitution on copyright supervises the concept of creation or invention fulfilling the developmental element or the protection for creative economy to contribute to the economic development of the nation.

The Protection of Intellectual Property Rights in The Globalization

One of the aspects of business law which needs extra attention is the notion of intellectual property rights. Moreover, the emergence of the intellectual property rights has always been interconnected with the other aspects of law such as the aspect of technology or the aspect of economy, as well as the aspect of art. The trade globalization emphasizes the importance of the intellectual property rights. The trade of goods and services is inseparable from the intellectual property rights because the goods being traded may be the objects of intellectual property. Computer programs, *batik*, and artworks are the objects of copyright. Therefore, the understanding on intellectual property rights is basically also an understanding on the rights upon the wealth that grows from human's intellectuality.

There are a lot of creations that came from people because of their intellectual capability, be it through their creativity, taste, or intention. The protection before the law for the results of human's intellectuality in the field of science, technology, art, literature and many others need to be upheld from the government officials as the creations were made with the sacrifices of energy, time, thought, and even cost. Such sacrifices have made the creations valuable and deserve to be appreciated.

In the process of globalization, business activities spread and flow beyond the limits of nations, so there emerges the need to internationally protect the intellectual property rights under the law through a lot of multilateral agreements (such as GATT and WTO). The nations who have signed and been involved in the international agreement should willingly adjust the rule within the country with the conditions in the international law.

Through the national constitution number 7 year 1994 (*Undang-undang No.7 Tahun 1994*) about the ratification of agreement upon the establishment of the World Trade

Organization (LN. 1994 No.57. TLN No. 3564), Indonesia has ratified the agreement of the formation of the world trade organization.

The encouragement and appreciation for the creativity and new innovations on new inventions often have to be achieved with sacrifices on cost, energy, thought, and time. In the globalization era, it is highly possible that there will be unfair competitions in technology such as forgery, plagiarism, illegal duplication upon a particular creation causing a massive loss both financially and other kinds of loss for the original creator (the one who holds the copyright), as copyright is an exclusive right for the creator. The right is not requested to the government, but right after a creator creates a creation, it should be announced and the creator's name should be listed on the creation (not by request, but automatically), so that the creator has the exclusive right protected before the law. It is actually not an obligation to register a particular creation because a registration is only a proof if there is another party who would like to claim the creation.

The exclusivity of the copyright is later confirmed in the constitution on copyright that there are three characteristics of the copyright law, which are:

1. Copyright is regarded as a dynamic and immaterial entity which can be diverted to another party;
2. Copyright must be diverted with a written certificate, be it a certificate from the notary public or a certificate on hands;
3. Copyright cannot be confiscated, under the reason that it has been the characteristic of the creation that it is an individual right united with the creator, even though the creator has passed away and the copyright has been inherited to the heir.

From the many fields included in the intellectual property rights as it has been mentioned above, not all of them have been governed in Indonesian constitution and law. The one which has been governed in Indonesian constitution is on copyright, as it is stated in the constitution number 6 year 1982 (*Undang-undang No.6 Tahun 1982*), constitution number 7 year 1987 (*Undang-undang No.7 Tahun 1987*) about brands, which is elaborated on the constitution number 19 year 1992 (*Undang-undang No.19 Tahun 1992*), and about patents as governed in the constitution number 6 year 1989 (*Undang-undang No.6 Tahun 1989*).

As a consequence of Indonesia's involvement in WTO, while the drafting of constitution is ongoing, the aim is not only to revise the current constitution, but also to prepare the legislation on industrial design, protection of varieties of plants, trade secrets, and integrated circuit. A good and comprehensive legislation needs to be complemented with a good and consistent implementation of law. The veins of the implementation of rights which has been guaranteed by the law are on the hands of the law enforcement apparatus. Hence, based on the presidential decree number 34, the law

enforcement apparatus with the responsibility to coordinate the development of the system of intellectual property rights in Indonesia, should put a priority on the issue of law enforcement in the field of copyright.

As an initial stage, the preparation is done by giving trainings to judges, prosecutors, police, customs officers, extension workers or supervisors of small industries and government officials whose duties are related to intellectual property rights. Besides that, education and trainings for lecturers in a lot of universities in general, and specifically in the law faculty are conducted in order to prepare the presentation and lecture on intellectual property rights in undergraduate programs. The purpose is to prepare the graduates or law practitioners in the future to have the knowledge in the field of intellectual property rights.

In further developments, the registration for the masterpiece or creation is not an obligation to obtain a copyright, so the registration of creation on the general list of creation does not also necessarily mean the ratification of the meaning or intention of the registered creation. The registration of creation on the general list of creation is done by the request from the creator or the one who holds the copyright or authority to the Directorate-General of Copyright, Patents, and Brand Rights. Besides that, the one who holds the copyright is entitled to give a license to other parties based on the license agreement letter towards the business-related parties or those who obtain the trust from the one who holds the copyright, because the license is considered as the easiest way to do with appropriate law protection for the copyright holder. It is expected that through the license, the violation on intellectual property rights in the field of copyright can be minimized, especially in Indonesia. That is because copyright is one of the parts of intellectual property rights which have the broadest scope of objects to protect, as they include science, art, and literature in which they also comprise computer programs.

III. CONCLUSION

1. Nowadays, Indonesia has already got the protection in the field of copyright (*Undang-undang No. 6 Tahun 1982*) as it has been replaced with the constitution number 7 year 1987 (*Undang-undang No.7 Tahun 1987*) and improved with the constitution number 12 year 1997 (*Undang-undang No.12 Tahun 1997*), which is updated with the constitution number 28 year 2014 (*Undang-undang No.28 Tahun 2014*) about copyright.
2. The intellectual property rights are related to the development of human resources which is one of the main modalities in sustaining the flow of economic development in Indonesia at the moment, in a way that intellectual property rights are conducted to encourage the creativity and capability of Indonesians in the field of literature, art, science, industry, and technology.

3. The intellectual property rights are also interconnected with the position of Indonesia upon the traffic of world trade activities, be it as a producer country to enter the international market or as the destination of market for goods and services from other countries.
4. Indonesia has also put priorities on the law enforcements in the field of intellectual property rights and develop the infrastructure capacity in the administration of intellectual property rights as copyright holds the longest period of protection in the field of intellectual property rights.
5. Copyright is an exclusive right in the field of intellectual property rights who has the moral value and economic value.

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