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## **Intellectual Property Rights and Economic Development**

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**Abstract:**

**Purpose:** *The main aim of this article is to point out the intellectual property rights in Indonesia and how they can affect the economic development of the country.*

**Desigh/Methodology/Approach:** *Literate review and related studies are presented to give a better insight of the issue for those who are interesting to work in this discipline.*

**Findings:** *Brands become very popular, and are often used in the case of publishing either products, through the mass media, such as in newspapers, magazines and tabloids or through the electronic media, such as television and radio and others. With the increased competition in the world of traded goods and services in these days, it is no wonder that a brand has a very significant role, in that it is recognized as a sign of a specific product among the public. It also possesses strength and benefits when managed well.*

**Practical Implications:** *Brands have value or equity. And equity is very important because the value of a product will be the measured through the market. The brand is no longer only words that are connected with the product or a collection of goods in the era of free trade, but also a process and business strategy.*

**Originality/Value:** *Intellectual Property Rights is the exclusive right given to a person or a group of people over their intellectual property such as patents, brands and copyright. Intellectual Property Rights exist in the nature of information, science, technology, art, literature, skills and so on. This study tries to present the issue on a realistic way for the benefit of the people involved.*

**Keywords:** *Intellectual property rights, copyright, brands.*

**Article type:** *Research study.*

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## 1. Introduction

Indonesia is a country that has a variety of ethnicities, cultures and wealth in the field of art and literature, and with this development one requires copyright protection to intellectual property. The development in the industry, trade and investment sectors has been so rapid that requirements for increased protection for the creator and owner of the property has increased. Indonesia, which actually has many creative minds, is not removed from the reality that, indeed, there are some people who are ready to claim intellectual property that does not belong to them as their own. As time passes, copyright infringement cases in Indonesia have increased. These cases should be addressed, and not regarded as something that is not important. Most people may not see this as a big problem, and therefore this problem is not addressed immediately and this leads to not having deterrent sanctions for those who violate copyright.

Today, information technology is growing very fast and affecting every human activity. Almost all the daily work done is switching from conventional methods to digital technology. Likewise, whilst the community used to enjoy various creations, for example song in the form of cassette tape / CD (vinyl), they can now can be listened to through the services which stream paid songs on smartphones such as Spotify and Joox applications. Books are now also available in digital form. Copyright conditions are also stretched along with the rapid development of information technology. The development of information technology has influenced and changed the process of creation, creation protection, and distribution for the better. On the other hand, the development of information technology can be a tool for violation of laws, such as piracy.

Many economies are lagging behind Japan, South Korea and China but are now advancing as they develop and utilize science and technology and place Intellectual Property Rights in Research and Development (R & D) as an important factor to boost economic growth in the country. The supposed development of information technology and the use of Copyright instruments bring benefits to the Creator and other stakeholders and bring a positive impact to the national economic development.

There is still a lot of confusion as to how copyright works and who has rights to the wealth of intellectual property that has been created. This is because many people do not know how the legal system in HKI works. Outbreaks of piracy in Indonesia toward Intellectual Property Rights (HKI) have wronged many producers and owners of HKI. Thus pirated products are even more popular and often sought out by some people in Indonesia.

According to law No. 28/2014 on Copyright, this is defined as "*the exclusive rights for the creator or the recipient the right to publish or reproduce the creations or*

give permission for it by not reducing the restrictions according to the laws and regulations that apply" (Article 1, point 1).

## **2. The Meaning of Copyright**

Copyright gives the exclusive Creator or copyright holder the right to regulate the use of the creation, of realizing the ideas or specific information. Basically, copyright is "right to copy a creation". Copyright can also allow the holder of such rights to limit the replication on a creation. In general, copyright entails a certain period and is limited.

Copyright applies to various types of art works or copyright work or "creation". The creation can include poetry, drama, and other paper documents, films, the papers of choreographers (dance, ballet, etc.), musical compositions, voice recordings, paintings, pictures, statues, photos, computer software, radio and TV broadcasts, and (in certain jurisdictions) industrial designs.

Copyright is one type of intellectual property rights, but copyright differs significantly from other intellectual property rights (such as patents, which provides the monopoly over the use of an invention), because copyright is not a monopoly right to do something, but the right to prevent others to do something. The law governing copyright usually only includes the creation of the embodiment of a certain idea and does not include the general idea, concept, fact, styles or techniques that may be realized or represented in the creation. As an example, copyright related to the cartoon of Miki Rats prohibit the parties from distributing copies of the cartoons or create works that mimic certain mice figures created by Walt Disney, but does not prohibit the creation or other work of art about general mice figures.

Today, copyright is governed by the laws of the Copyright, namely,, Law No 19/2002. In the law, the understanding copyright is "exclusive rights for the creator or recipient, the right to announce or reproduce his creation or grant permission to not reduce restrictions according to the regulation" (Article 1 item 1).

The concept of copyright in Indonesia is the translation of the concept of *copyright* in English (literally means "copy"). *Copyright* was created in line with the discovery of the printing machine. Before the discovery of this machine by Gutenberg, the process to create a copy of a paper was done by writing which requires the same energy and costs of the original paper making process. So most likely, the publishers, not the authors were the ones who first asked for the protection of the law against the paper print that can be copied. Initially, the monopoly was given directly to the publishers to sell the printed paper. In 1710, following the incident with the *Statute of Anne* in England, the rights were given to the authors and not publishers. The regulation also includes protection for consumers and ensures that the issuer is not able to regulate the use of the printed paper after a trading transaction. In addition, the regulation also regulates the applicable exclusive rights

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for *copyright holders*, namely for 28 years, after that the work became common property.

In 1886, the *Berne Convention for the Protection of Artistic and literary works* ("Bern Convention on the Protection of the works of art and literature" or "Bern Convention") addressed the problem of *copyright* between the sovereign countries. In this convention, *copyright* was given automatically to works on paper, and the author did not need to register his work to get the *copyright*. Immediately after a paper is printed or stored in one media, the author automatically gets exclusive *copyright* rights of the work and its derivatives, until the author explicitly states otherwise or until the applicable *copyright* is finished. In 1958, Prime Minister Djuanda took Indonesia out of the Bern Convention so that the intellectuals in Indonesia can take advantage of the results of the paper and copyright of foreign nations without having to pay royalties. In 1982, the Indonesian Government revoked the setting of copyright based on the *Auteurswet 1912 Staatsblad* No. 600/1912 and specified the Law No 6/1982 about Copyright, which was the first copyright law in Indonesia. The law is then changed by Law No 7/1987, Law No. 12/1997, and in the end with Law No 19/2002 which now apply.

The changes to the law could not be separated from the role of Indonesia in the inter-governmental companion. In 1994, the government ratified the formation of the World Trade Organization (*World Trade Organization - WTO*), which also includes the *Agreement on Trade Related Aspects of Intellectual Property rights - TRIPs* ("The Agreement on Trade aspects of Intellectual Property Rights"). The ratification was realized in the form of Law No 7/1994. In 1997, the government ratified the Bern Convention through a Presidential Decree No. 18/ 1997 and also ratified the *World Intellectual Property Organization Copyrights Treaty* ("agreement Copyright WIPO") through a Presidential Decree Number 19, 1997.

### **3. The Rights Covered in the Copyright**

#### **3.1 Exclusive Rights**

In Indonesia, exclusive copyright includes "translating activities, adapting, arranging, realizing, lending, importing, showcase, exhibiting to the public broadcast, recording and communicating the creation to the public through any means". In addition, according to the law in Indonesia, there are also "related rights", which include the producer of voice recording and the broadcasting institutions that manage the activities done, recorded, or broadcasted by each one of them (The law No 19/2002 Article 1 point 9-12 and Chapter VII). For example, a singer is entitled to prohibit another party from reproducing voice recording his songs. These exclusive rights, which are covered in the copyright, can be redirected, for example, through inheritance or a written agreement (ACT 19/2002 Article 3 and 4). The copyright owner can also allow another party to have the exclusive rights under license, with certain conditions (The law 19/2002 Chapter V).

### **3.2 Economic Rights and Moral Rights**

Many countries recognize the moral right that belongs to the creator of a creation, according to the use of the WTO TRIPs Agreement (which in *inter alia* also requires the implementation of the relevant parts of the Bern Convention). In general, moral right includes the right that the creation is not changed or destroyed without the approval of or the knowledge of the creator. Copyright in Indonesia also relates to the concept of "economic right" and "moral right". Economic right is the right to get the economic benefits from the creation, while the moral right is the right attached to the concept that the creator should not be removed from his creation for any reason, even though the copyright or related rights have been redirected <sup>[2]</sup>. An example of the implementation of moral right is the inclusion of the creator in the creation, although, for example, copyright over the creation is sold to be used by another party. The moral rights are regulated in Article 24-26 Copyright law.

## **4. Acquisition and Implementation of Copyright**

In general, a creation must meet minimum standards in order to qualify for copyright and copyright usually does not apply again after a certain period of time (it is possible to extend the period in certain jurisdictions).

### **4.1 Copyright Gains**

Each country has different requirements to determine how and when a paper is entitled to copyright; in the UK, for example, a creation must contain a factor of "expertise, authenticity and effort". The Bern Convention is also based on this system, and a copyright on a creation can't be obtained without having to go through the official process; when the idea of the creation is realized in a specific form, for example in a specific medium (such as painting, donated songs, photo, video tape, or a letter), the copyright holder is entitled to copyright. A creation does not need to be registered to apply copyright of the creation (according to that which is made possible by applicable law in your jurisdiction) but it does have an advantage, namely as evidence of a valid copyright.

### **4.2 The Creation that Can Be Protected**

A creation protected by copyright in Indonesia can include for example, books, computer programs, website's display (*lay out*) published paper, lectures, speeches, teaching aids that are made for the benefit of the education and knowledge, a song or music with or without text, drama, musical drama, dance, choreography, anatomy, pantomime, art in all forms (such as painting, pictures, carving art, art calligraphy, sculpture, collages, and applied art), architecture, map, batik art (and other traditional works such as the art of songket and art girdles), photography, cinematography, but it does not include the industrial design (which is protected as a separate intellectual property). The collection of many creations grouped together

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such as translations, interpretations, rampai (for example the book which contains the collection of the paper, Association of songs recorded in one media, and the composition of various paper dance elect), and any database is protected as the creation itself without reducing the copyright on the original creations (the law 19/2002 Article 12).

### 4.3 Bookmark Copyright

In certain jurisdictions, for a creation, such as books or movies, to get copyright when created, the creation must contain a "copyright notice" (*copyright notice*). The message or notification consists of a letter c in a circle (namely the symbol for copyright ©), or the word " *copyright* ", followed by the year of copyright and the name of the copyright holder. If the creation is modified (for example with the rising of the new edition) and the copyright registered again, the new year will need to be written. Copyright Notice was aimed to give known users of creation the right to copyright. In its development, the above requirements are now generally not compulsory, especially for countries that are members of the Bern Convention. With the exception on a small number of countries, these requirements are now voluntary, except for creations done before the respective countries becoming a member of the Bern Convention. Symbol © is a symbol of Unicode 00A9 in hexadecimal characters, and can be typed in ( X ) as HTML &copy;, &#x00A9;, or &#169.

### 4.4 Copyright Protection Period

Copyright is valid for a period of time and this varies accordingly for different jurisdictions and for different types of creations. The period also can depend on whether the creation was published or not published. In the United States, for example, copyright on all books and another creations published before the year 1923 has expired. In most countries in the world, the period of the validity of the copyright is usually the *entire life of his creator plus 50 years*, or the *entire life of his creator plus 70 years*. In general, copyright expires at the end of the year concerned, and not on the death of the creator.

In Indonesia, the period of copyright protection in general is the *entire life of his creator plus 50 years* or *50 years after the first announcement or publication is made*, and 20 years after the first broadcast., There is no time limit for the moral rights of the creator's name and to copyright held by the state over folklore and the outcome that affects a culture and its people (the law 19/2002 Chapter III and article 50).

## 5. Law enforcement over copyright

Law enforcement over copyright is usually done by the copyright holder in the civil law case, but there is also the side of the criminal law. The criminal sanction applies to the activity of serious counterfeiting but is now increasingly prevalent on other

matters. The criminal sanction for violating copyright in Indonesia is general threatened imprisonment between one month and seven years which can be accompanied or not by a fine of at least one million rupiah or at most five billion rupiah, while the creation or goods which are the result of criminal copyright and the tools used to perform criminal acts are taken by the state to be destroyed (the law 19/2002 Chapter XIII).

### **5.1 Exceptions and Limitations of Copyright**

Exceptions of copyright in this instance does not take anything away from the effectiveness of exclusive rights regulated in the law on copyright. An example of the exception copyright is the doctrine of fair use or *fair dealing* that is applied in some countries that allow its reproduction or the creation without it being considered as a violation of copyright.

In the copyright law applicable in Indonesia, some usage is not considered as breaching copyright (Article 14-18). Usage of the creation is not considered as copyright infringement when the source is mentioned or listed clearly and it is limited to activities which are non-commercial, including social activities, for example, activities in the scope of education and knowledge and research and development, where the terms do not harm the interests of the Creator. A reasonable interest in this case is "interests which are based on a balance in enjoying the economic benefits of a creation". Included in this sense is the taking of the creation for show which is not subject to the fee. In this case, the source of the creation needs to be mentioned or cited completely. This means listing the name of the creator of the work or the name of the creation and the name of the publisher if any.

### **5.2 Copyright Registration in Indonesia**

In Indonesia, the registration of the creation is not obligatory for the creator or copyright holder and the emergence of the protection of a creation starts when the creation realized and not because of registration [2]. However, the letter of registration of the creation can be used as evidence in court when disputes occur after the creation [1]. As regulated in Chapter IV of Copyright law, registration of copyright is held by the Directorate General of Intellectual Property Rights (Directorate General of HKI), which is now under the Ministry of Justice and Human Rights.

The Creator or the copyright owner can register the creation directly or through consultants of HKI. The registration requires charges for copyright (the law 19/2002 article 37 verse 2). The explanation of the procedures and the registration of copyright can be obtained from the office or on the web sites of the Directorate General of HKI. A "General List Creation" that records creations which have been registered is managed by the Directorate General of HKI and can be seen by everyone without charge.

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### **5.3 Copyright Licenses**

The license is a permission given by the copyright holder or holders to another party which allows the reproduction of the creation or product under certain conditions. There has been a certain amount of criticism of this permission which comes from two areas, namely the side that holds that the concept of copyright never benefits society and is always enriching some people at the expense of creativity, and the side that holds that the concept of copyright must now be repaired in accordance with the current conditions, namely the existence of the new information society.

### **5.4 Intellectual Property about Trademark**

This involves the protection of the rights of brands obtained after the registration of the brand. Brands that are already registered are called registered trademarks, often symbolised by the sign ® (registered) after the brand or the sign ™ (trademark) after the brand:

- The purpose of the protection of the Rights of the brand: the protection of the rights of the brand is intended to protect the ownership of the brand, investment and goodwill (name), and to protect consumers from confusion regarding the origin of a good or service. The protection of the rights of the brand is done through the registration of the brand.
- Brand Protection justification: there are at least three (3) justifications for the protection of the rights of the brand according to the Bently & Sherman.

### **5.5 Brand Rights Law Enforcement**

Brand protection in Indonesia, which was drafted in Reglement Industriële Eigendom Kolonien 1912, was then renewed and replaced by Law Number 21 Year 1961 about company brand and brand of Commerce (also called Brand Act 1961). The emergence of the Brand Act of 1961 was in response to protect the hordes of imitation of goods that bore a brand that has been forced into exile. In addition, the Act also intended to protect the first users of a brand in Indonesia. Next, the Brand Act 1961 was updated and replaced again by Law Number 19 Year 1992 about Brand (hereinafter called the Laws of registered 1992), which has been in effect since April 1 1993. With the enactment of Law Registered 1992, legislation Registered 1961 was declared no longer valid. In principle Act 1991 Brand has been doing enhancements and changes to the things that are associated with the brand to be adjusted with the Paris convention.

The law No 19/1992, was replaced again by Law Number 14 1997. Enhancements to the laws are being done, and now there is law No. 15 2001 about Brand (State Gazette number 2001 110, Supplement to State Gazette of the year 4131), which has been in effect since 1 August 2001.

## **6. Copyright and the Economy**

Indonesia has updated the copyright regulations by the issuance of Law No. 28 of 2014 on Copyright. The latest copyright arrangements cover science, art and literature, including computer programs, whose expectations provide protection and legal certainty for the Creator, Copyright Holder and Rightsholder in a bid to improve the general welfare and national economic development.

Unfortunately, however, copyright protection and law enforcement are still weak. The rise of piracy on creations such as books, songs or music and attitudes of public discrimination of copyright infringement are examples of great detriment to the Creator and other stakeholders and the state economy. In Indonesia, the music and song industry has great economic potential for the national economy but until now this industry has not been able to contribute significantly due to the high levels of piracy of copyrighted songs, so much so that many songwriters stopped working and record companies stopped their business.

### **6.1 Contribution of Copyright to National Economic Development**

The data shows that the creative economy sector has a positive impact on employment absorption while contributing to the development of the national economy. By empowering Intellectual Property Rights, especially the Copyright in Indonesia, this provides the creative economy sector added value (added value) while increasing the income of the Creator / society and the economic development of the State. Copyright guarantees the Creator not only to profit from the sale of his creation but that there is a moral right to his creation and this can sustain his economic rights which will surely give more benefits as a Creator. It means that the Creator gains from the benefit of his intellect and encourages the Creator to passionately produce high-quality creations.

If copyright is well implemented, the creative economy and other industries using information technology will grow better to provide greater benefits, absorb more labor and provide greater tax revenues for the state.

## **7. Conclusion**

Brand is one of the important attributes of a product, where a registered product can give added value. The brand is not only a name for the product, but more than that it has a distinguished identity from the products produced from other companies. With this special identity, specific products will be more easily recognized by consumers and, in turn, of course will make the purchase of the product easier. Basically, the brand consists of two parts; the brand name and the sign of the brand.

Now the community, in making the submission of the claim, is not having difficulties because the Government, through the Directorate General of HKI, has

done good socialization through mass media and forums. Finally, the owner of the right does not need to worry that persons might take advantage of the popularity of a brand. From the discussion above about protection for the owner of the rights of the brands, we have seen that the laws are very strict with the creation of several stages to the process of screening and it is also clear that the government of the Republic of Indonesia is always monitoring the development of competition in world trade, both nationally and internationally.

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