

Legal Analysis Of The Regulation Of Intellectual Property Rights In The Creative Industry Review From An International Legal Perspective

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Legal Analysis Of The Regulation Of Intellectual Property Rights In The Creative Industry Review From An International Legal Perspective

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Abstract. The creative industry is a sector that is growing rapidly in this era of globalization, but the development of the creative industry also poses challenges in protecting Intellectual Property Rights. This research aims to analyze the regulation of Intellectual Property Rights (IPR) in the creative industry from an international legal perspective. The research method used is a normative approach by examining various international legal instruments related to Intellectual Property Rights (IPR). The research results show that the regulation of Intellectual Property Rights in the creative industry still has weaknesses and challenges, especially in terms of law enforcement and protection of copyrights, patents and brands. This research provides recommendations for improving legal regulations related to intellectual property rights in the creative industry, including increasing international cooperation and more effective law enforcement.

Keywords: Intellectual Property Rights, creative industry, international legal perspective, legal protection, law enforcement.

INTRODUCTION

In the context of regulating intellectual property rights (IPR) from an international legal perspective, background analysis involves understanding the legal framework that regulates the protection and utilization of intellectual works at the global level. To begin with, there are two international agreements which form the main legal basis in this matter:

- 1) TRIPS: TIPS (Trade Related Aspects of intellectual property rights) is an agreement issued by the World Trade Organization (WTO). This agreement provides a comprehensive legal framework to protect and regulate various types of IPR, including copyright, trademark, patent, trade secret and industrial design protection.
- 2) Berne Convention: the Berne Convention is an international agreement that regulates copyright, this convention sets minimum standards for copyright protection, including exclusive rights for creators to regulate the use of trademark works, moral rights and duration of protection. However, it is important to remember that the background analysis must consider the issues and challenges that arise in the implementation and enforcement of IPRs from an international law perspective.

Some problems that often arise include:

- 1) Differences in different legal and regulatory systems related to IPR. This can cause difficulties in harmonizing IPR protection at the international level.

- 2) Protection of traditional rights of indigenous peoples and local communities often have traditional knowledge and discoveries that are not covered by the current IPR system. This creates challenges in recognizing and protecting their rights fairly.
- 3) Conflict of Interest: sometimes there is a conflict between the interests of the general public, especially in terms of access to medicines, technology and knowledge that are important for the general welfare.
- 4) International Law Enforcement: Even though there are international agreements governing IPR, legal enforcement is still a challenge. Limited resources, differences in the judicial system and the need for international cooperation are factors that influence IPR enforcement at the global level. In this background analysis, it is also important to consider recent developments in IPR, such as the protection of digital innovation, data protection, and issues related to new technologies such as artificial intelligence and blockchain. By understanding the background of IPR regulation from an international law perspective, we can identify challenges and opportunities in protection.

Research purposes

- 1) Understand the international legal framework that regulates IPR in the creative industry;
- 2) analyze the effectiveness and weaknesses of IPR regulations in the creative industry from an international legal perspective;
- 3) investigate the impact of IPR regulation on innovation, creative industry development and economic justice in different countries.
- 4) Discuss the challenges and opportunities faced by countries in implementing and complying with IPR regulations in the creative industries;
- 5) Identify best practices and recommendations to improve IPR regulation in the creative industries from an international legal perspective; With this aim, the research is expected to provide a deeper understanding of IPR regulation in the creative industries from an international legal perspective and contribute to formulating more effective policies to protect intellectual property rights in the creative industries.

RESEARCH METHODS

1. Identify research objectives:
 - General objective of analyzing the regulation of Intellectual Property Rights (IPR) in the creative industry from an international legal perspective.

- Special purpose
- a. Analyze the basic concepts and principles of IPR in the creative industry.
- b. identify international regulations governing Intellectual Property Rights (IPR) in the creative industry.
- c. analyze the implementation of countries' compliance with international Intellectual Property Rights regulations in the creative industry.
- d. prepare recommendations for improving the regulation of Intellectual Property Rights (IPR) in the creative industry from an international legal perspective
- 2. Determining the Research Approach
- Normative legal approach: analyzing and interpreting international IPR regulations in the creative industry
- Comparative Approach: comparing the implementation and compliance of countries with international Intellectual Property Rights (IPR) regulations in the creative industry.
- Descriptive approach: describes concepts, principles and issues related to the regulation of Intellectual Property Rights (IPR) in the creative industry from an international legal perspective
- 3. Data Collection:
- Literature study: collecting literature, international regulations, legal cases and reports related to IPR regulation in the creative industry from an international legal perspective.
- Analysis of international regulations: analyzing international regulations that regulate IPR in the creative industry, such as the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights)
- Case Study: analyzing cases related to the implementation and compliance of countries with international IPR regulations in the creative industry
- 4. Data Analysis
- Qualitative Analysis: analyze and interpret data collected through literature studies, international regulatory analysis, and case studies.
- identification of issues and findings:
- identify issues and findings:
- identify issues related to IPR regulation in the creative industry from an international legal perspective as well as findings that emerge during data analysis

5. Preparation of Recommendations

- based on findings and data analysis, formulate recommendations for improving IPR regulations in the creative industry from an international legal perspective.
- Recommendations can be in the form of suggestions for countries to improve implementation and compliance with international Intellectual Property Rights (IPR) regulations as well as improving relevant international regulations.

DISCUSSION

1. Understanding Intellectual Property Rights in the Creative Industries

Definition of creative industry.

The creative industry is an economic sector that focuses on the production and utilization of ideas, creativity and expertise to create products, services or experiences that have aesthetic, cultural and innovative value. This industry involves various fields such as art, design, fashion, film, music, video games, publishing, architecture, and many more. Creative industries not only contribute to economic growth, but play an important role in enriching the cultural and social life of society. This industry creates job opportunities, encourages innovation and provides a platform for individuals to express themselves and share stories through their work. The uniqueness of the creative industry is that its appeal is not limited to function or utility alone, but also to the emotional, aesthetic and life values it contains. This industry creates products and services that fulfill human needs for self-expression, entertainment, and engaging experiences. The creative industry is also a source of significant economic potential. In the digital era, this industry is increasingly developing with the existence of online platforms, social media and new technologies that enable wider distribution and access to creative works. In a global context, creative industries also have a positive impact in promoting cultural diversity, strengthening local identity, and facilitating cultural exchange between countries. The industry creates opportunities for cross-border collaboration and enriches global perspectives. Overall, the creative industry is a driving force for creativity, innovation and sustainable economic growth. With the right support, this industry can become an important resource in creating jobs, improving the quality of life, and strengthening a country's cultural identity.

Concept of Intellectual Property Rights

The concept of intellectual property rights is a series of legal rights that protect creative and innovative works produced by a person or company. These rights give their owners the power to control the use and distribution of their work, and provide incentives to continue creating and innovating.

There are several common types of intellectual property rights, including:

- 1) Copyright: copyright protects works such as books, music, films and software from unauthorized use. The copyright owner has the exclusive right to reproduce, distribute and exploit the work.
- 2) Trademarks: trademarks protect names, logos and symbols used to identify a product or service from competitors. This right gives the owner the exclusive right to use the trademark and prevent others from using a similar mark.
- 3) Patents: Patents protect new inventions and invasive technologies. By having a patent, the patent owner has the exclusive right to make, use and sell their invention for a certain period of time.
- 4) Industrial design: industrial design rights protect the visual appearance of a product, such as shape, pattern or color. the owner of industrial design rights has the exclusive right to use and trade the design.
- 5) Trade Secrets: Trade secrets protect confidential business information, such as product formulas or production methods that are not known to the public. Trade secret owners have the right to protect that information from disclosure or use by others.

Intellectual Property Rights (IPR) provide incentives for creators and innovators to protect and safely utilize their work. Apart from that, intellectual property rights also encourage economic growth and innovation, because they provide legal protection and certainty to rights owners.

2. Legal Regulation of Intellectual Rights in the Creative Industries

International Legal Instruments on Copyright

The international legal instrument governing copyright is the Bern Convention on the protection of literary and artistic works, which was first adopted in 1886 and has undergone several revisions since then. This convention provides intellectual property rights protection for creators of literary and artistic works, including writers, composers, artists and film makers.

Some of the main principles set out in the Bern convention are:

- 1) Exclusive Rights: The Bern Convention grants authors **exclusive rights to control the use of their work**, including the right to publish, copy, distribute and display the work.
- 2) Duration of copyright: The Berne Convention specifies a **minimum duration of copyright** throughout **the life of the author plus a** certain number of years after their death. This duration may vary between Member States.
- 3) Automatic Protection: Copyright is granted automatically to the creator once the work is realized in a form that can be accessed by others. There are no registration or announcement requirements required to obtain copyright.
- 4) Cross-Border Protection: The Berne Convention provides copyright protection that crosses national borders. This means that works protected by one country will remain protected in other countries that are members of the Bern Convention.
- 5) Protection of moral rights: in addition to economic rights, the Bern convention also protects **the moral rights of authors, including the right to be recognized as the author of the work** and the right to prevent alteration or distortion of the work.
- 6) Apart from the Bern conversion, there are also other international agreements relevant to copyright, such as the TRIPS (**Trade-Related Aspects of Intellectual Property Rights**) Agreement issued by **the World Trade Organization (WTO)**. This agreement **sets minimum standards** of copyright **protection** that **WTO member countries** must comply with.

International Legal Instruments on Patent Rights

The national legal instrument that regulates patent rights is the TRIP (**Trade Related Aspects of intellectual property rights**) agreement **which** was agreed within the framework of the **World Trade Organization (WTO)** in 1994. Following are several main points regulated in TRIPS regarding patent rights:

1. Minimum standards of protection:

TRIPS sets minimum standards for patent protection that all WTO members must comply with. This standard covers general requirements for patent eligibility, exclusion rights for new inventions, and the term of patent protection.

2. Product and Process Protection

TRIPS recognizes patent protection for products and processes including pharmaceutical products, and other innovations. This ensures that discoveries and innovations produced in one country can be protected in other countries.

3. Registration and Transparency Obligations

TRIPS requires WTO members to have an effective and transparent patent registration system. This allows patent holders to obtain clear legal protection and provides access to information to the public

4. Licensee Protection

TRIPS recognizes the licensee's right to use and derive benefits from patent-protected technology. This supports the transfer of technology and innovation between member countries.

5. Dispute Resolution

TRIPS provides an effective dispute resolution mechanism in the event of patent infringement between WTO members. This mechanism involves consultation procedures, mediation, and if necessary, settlement through an arbitration panel.

The TRIP Agreement is an important instrument in protecting Intellectual Property Rights (IPR), including patent rights at the international level. The aim is to encourage innovation, technology transfer and protection of intellectual rights throughout the world.

International Legal Instruments on Trademark Rights

International legal instruments that regulate trademark rights include, among others:

- 1) TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement which is managed by the WTO (World Trade Organization).
- 2) This agreement includes minimum standards for the protection of brand rights in all WTO members.
- 3) Madrid Protocol concerning international registration and protection of Trademarks managed by WIPO (World Intellectual Property Organization). This protocol provides a way for brand owners to obtain international protection for their trademarks in several countries at once.
- 4) Paris Convention for the Protection of Industrial Property which is also managed by WIPO. This convention also provides international standards for the protection of trademarks and other intellectual property rights in various countries.

These instruments are important in helping to increase harmonization of trademark protection at the international level. All countries that are members of this instrument are expected to fulfill the minimum standards for trademark rights protection that have been agreed internationally.

3. Analysis of Intellectual Property Rights Regulations in the Creative Industries

Challenges in Copyright protection

Copyright protection is a complex challenge in the digital era. There are several main challenges that need to be faced in copyright protection, including:

- 1) Digital piracy: Technological advances have made piracy easier in terms of duplicating and distributing copyrighted works. This makes it difficult for copyright owners to control the distribution of their works and incurs significant financial losses.
- 2) Spread of illegal content: the internet allows the spread of illegal content widely and quickly. Websites and platforms can easily allow users to upload and share copyrighted content without permission, making effective enforcement and monitoring difficult.
- 3) Copyright in Digital Content: With more and more content available in digital format, challenges that arise include protecting this digital content from illegal distribution, manipulation, and plagiarism.
- 4) Difficulty Detecting Violations:
- 5) In a large and growing digital environment, detecting copyright infringement is becoming increasingly difficult. Algorithms and detection technologies may not be sophisticated enough to monitor and protect all existing types of work.
- 6) Difficulties in International Enforcement: Because the internet does not recognize national boundaries, enforcing copyright law in the international environment can be complicated. Different legal regulations in various countries can also make copyright enforcement difficult.

When facing challenges in copyright protection, it is important to find solutions that accommodate technological changes and society's needs for sharing and accessing information, but still protect the rights of work owners. This enables collaboration between government, industry and other stakeholders to formulate effective and sustainable policies to address these challenges.

Obstacles in Patent Protection

Patent protection involves a number of obstacles that need to be overcome to ensure fair protection of innovation. Some of the main obstacles include:

- 1) Cost of complexity: The process of applying for a patent is very expensive and complicated. This makes it difficult for individuals or small companies to secure patent protection, especially in countries with complicated bureaucracies.
- 2) Time Required: The process of granting a patent can take years, meaning the owner of the innovation has to wait before getting full legal protection. During this time, their innovations may be vulnerable to misuse.
- 3) Cross-Border Enforcement: In today's global environment, patent enforcement across multiple jurisdictions can be complicated. Patent protection is not necessarily recognized throughout the world and issues with the spread of technology can complicate enforcement.
- 4) Patent Abuse: Sometimes, patents can be misused to hinder competition and innovation. Some companies use their patents to hinder competitors or force cooperation to the detriment of others.
- 5) Technological Change: With the rapid pace of technological change, it is often difficult to establish clear boundaries in patents. This can result in disputes related to patent claims and their scope. To overcome this obstacle, there are efforts that can be taken, such as streamlining the patent registration process, increasing legal accessibility for individuals and small companies, and promoting cross-border cooperation to facilitate patent enforcement. In addition, there needs to be an appropriate balance between patent protection and your interests, so that innovation can continue to develop without being hindered by unnecessary obstacles.

Obstacles in the protection of Trademark Rights

Brand rights protection also faces a number of obstacles that affect the protection of innovation and intellectual property. Some of the main obstacles include:

- 1) Complicated registration: the trademark registration process can be time consuming and expensive, especially at the international level. This can be an obstacle for small brand owners or individuals who want to protect their brand in the global market.

- 2) Brand Infringement: In the era of digital and globalization, brand infringement can occur easily through brand misuse in the public domain, websites or counterfeit products. Law enforcement against brand infringement is a challenge in itself.
- 3) Cross-Border Protection: When dealing with brands operating in different countries, differences in trademark laws and registration procedures can make cross-border protection of the brand difficult.
- 4) Subsidiaries and Branches: Companies with many subsidiaries or branches in various countries often face difficulties in protecting their brands consistently in each jurisdiction.
- 5) Brand genericization: Over time, some brands can become so generic that they lose their uniqueness. this may cause difficulties in maintaining and enforcing exclusive rights to the mark in question.

To overcome these obstacles, efforts need to be made to simplify the trademark registration process, increase cross-border cooperation in trademark enforcement, and raise awareness of the importance of trademark protection. Effective legal enforcement against trademark infringement is also essential to ensure that the rights of trademark owners are protected and defended. Apart from that, the role of international legal entities is also important to provide legal certainty and balanced protection for brand owners.

4. Recommendations for Improving Legal Arrangements

Increased international cooperation

Increasing international cooperation related to improving intellectual property law is very important in facing global challenges in terms of innovation, trade and protection of intellectual property rights (IPR). There are several ways in which international cooperation can help improve intellectual property legal arrangements :

- 1) Harmonization of Regulations: International cooperation allows countries to collaborate and harmonize their intellectual property legal arrangements. Harmonization of these regulations reduces barriers to international trade and ensures that intellectual property rights are protected consistently throughout the world. In this way, companies and individuals can more easily innovate, carry out cross-border investment, and use creative works in various countries.
- 2) Enforcement of Intellectual Property Rights: International Cooperation allows countries to cooperate in enforcing intellectual property laws, coordinating

investigations, and taking effective legal action against IPR violations. it provides incentives for innovation, creates an environment conducive to investment, and increases protection against intellectual property theft.

- 3) The Role of International Organizations: Such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and others, play an important role in facilitating international cooperation in terms of improving intellectual property legal regulations. They facilitate international treaty negotiations, provide technical guidance and provide a platform for countries to share information and experiences regarding IPR protection.
- 4) Protection of Plant Varieties: International cooperation is also very important in improving the protection of plant varieties. Through international agreements, countries can ensure that innovation in agriculture and the development of plant varieties is needed fairly, so that farmers and seed companies feel encouraged to continue to do so. research and development.
- 5) Handling global issues: Problems that cross national borders, such as the movement of counterfeit goods or online theft of intellectual property, require strong international cooperation. Only by collaborating across countries can we address these issues effectively and provide better protection for intellectual property rights.

Ultimately, increasing international cooperation in the legal regulation of intellectual property rights brings benefits to all parties. This makes it possible to protect innovation outcomes, create an environment conducive to investment and economic growth, and provide incentives for innovation throughout the world.

More effective law enforcement

Effective international law enforcement related to the regulation of intellectual property rights (IPR) plays a very important role in protecting innovation, encouraging investment, and overcoming detrimental violations of intellectual property rights. The following are several steps that can be taken to improve the enforcement of international law related to more effective IPR regulations.

- 1) Compliance with international agreements: Countries throughout the world need to ensure that they comply with international agreements relating to intellectual property, such as the TRIPS (Trade-Related Aspects of Intellectual Property Rights)

agreement managed by the World Trade Organization (WTO). This includes consistent and fair application of agreed IPR rules at the national level.

- 2) Increased Capacity and Resources: Countries must increase capacity and resources to manage IPR law enforcement effectively. This includes training for law enforcement officers, adequate budget allocation, as well as investment in infrastructure and technology that supports the enforcement of intellectual property rights laws.
- 3) Collaboration between countries: Countries need to cooperate actively in combating violations of IPR that cross national borders. This includes the exchange of information, coordination of investigations and law enforcement across borders to address acts of intellectual property theft involving more than one jurisdiction.
- 4) Increased Penalties and Sanctions: it is important to have effective and painful penalties and sanctions for IPR violations. This can include very significant fines, prison sentences, confiscation of pirated goods and other legal measures capable of providing a deterrent effect and limiting IPR infringing activities.
- 5) Increasing Awareness and Education: Increasing awareness and the importance of intellectual property rights and the consequences of violating them is a crucial step. Public education campaigns, training for industry and society, as well as counseling about the importance of IPR protection can help prevent violations early on.
- 6) Utilization of Technology: technology can be a powerful tool in supporting IPR law enforcement. This includes using digital technology to track and record IPR violations, as well as building a digital copyright management system that makes it easier to manage, distribute and protect creative works.
- 7) Collaboration with the Private Sector: Collaboration between the government and the private sector, including creative industry technology companies and patent holders, can improve IPR law enforcement. This may include the exchange of information, implementation of IPR protection rules on online platforms, and cooperation in strengthening existing law enforcement mechanisms.

By taking these steps, enforcement of international law regarding IPR regulation can become more effective. This will create a more conducive environment for innovation, fair trade and better protection for IPR throughout the world.

CONCLUSION

In the creative industry, the regulation of intellectual property rights (IPR) is very important because it protects intellectual works such as works of art, music, films and so on. From an international law perspective, it is important to understand that each country has different IPR regulations, but there are several international agreements such as the TRIPS Agreement that provide a framework for protecting intellectual property rights globally.

Analysis of IPR regulations in the creative industry from an international law perspective includes evaluation of the extent to which a country's IPR regulations comply with existing international standards. This involves also considering aspects such as the protection of the original work, the duration of protection, and the rules relating to the use of the work in the creative industries.

By understanding the differences and similarities in the regulation of intellectual property rights from an international legal perspective, creative industry players can manage creative works and protect their intellectual property rights in various global markets.

BIBLIOGRAPHY

- 10
Enforcement on intellectual property rights in the EU states. (2019).
Global intellectual property law. (2017).
International intellectual property law and policy. (2012).
10
International intellectual property: A handbook of contemporary research. (2015).
5
Law Number 23 of 2014 concerning Regional Government.
Law Number 3 of 2020 concerning Mineral and Coal Mining.
7
Law Number 4 of 2009 concerning Mineral and Coal Mining.
The 1945 Constitution of the Republic of Indonesia.
The TRIPS regime of patent rights. (2006).
WIPO (World Intellectual Property Organization). (2019).

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