

LEGAL PROTECTION OF INTELLECTUAL PROPERTY IN THE ERA OF GLOBALIZATION

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Abstract

Intellectual property refers to the legal rights granted to individuals or companies over their intellectual works, such as innovations, trademarks, copyrights, and patents. In the midst of globalization, IPR protection is becoming increasingly important due to the ease of globalization such as ease of wide access due to digitalization and the internet, but also increases the risk of IPR violations. This study aims to analyze the regulation of legal protection of intellectual works in Indonesia, as well as its role in facing IPR protection amidst the challenges of globalization. The method used is normative legal research with a descriptive approach. The results of the study indicate that legal protection of intellectual property in the era of globalization in Indonesia is still ineffective.

Keywords: *Legal Protection, Intellectual Property, Globalization.*

A. INTRODUCTION

Globalization is a worldwide process in which societies, countries, and cultures are interconnected and influence each other in various aspects of life, without being limited by geographical boundaries. This process is driven by rapid advances in information, communication, and transportation technologies, which allow the flow of information, goods, services, capital, and people to move very quickly around the world.

In the unstoppable vortex of globalization, where geographical boundaries seem to fade in the face of the speed of information and human mobility, Intellectual Property Rights (IPR) have also felt a significant wave of impact. Previously, protection of creative works, inventions, and brands tended to be territorial, regulated by the laws of each country. However, with the increasing openness of the global market and cross-country interactions, the concept and practice of IPR inevitably experienced drastic changes.

One of the most obvious impacts is the growing need for global harmonization of IP laws. When a product, innovation, or artwork can be easily traded or accessed in different parts of the world, differences in regulations between countries can become a serious obstacle. Consider a software company from the United States that wants to protect its code in Indonesia, or an Indonesian artist who wants to ensure that his paintings are not copied in Europe. Without harmonization of protection standards, enforcement, and registration procedures, the risk of piracy and abuse of IP will increase. This is what drives the emergence of international agreements such as TRIPs (Trade-Related Aspects of Intellectual Property Rights) under the WTO, which aims to establish minimum standards for IP protection across member countries.

However, this harmonization also brings the impact of increasing complexity in IPR enforcement. Despite the existence of global agreements, enforcement practices in the field remain challenging. Companies must deal with different jurisdictions, varying legal systems, and sometimes, uneven levels of legal awareness across countries. The phenomenon of digital piracy, for example, has become increasingly difficult to control in the era of globalization, where content can be easily copied and distributed without permission via the internet, crossing national borders in seconds.

Globalization has transformed the IP landscape from a domestic legal issue to a complex global issue. It brings great opportunities for the growth and spread of innovation, but also serious challenges related to harmonization, enforcement, gaps, and protection of cultural heritage. Managing these impacts effectively requires cross-

border cooperation, a deep understanding of global dynamics, and a commitment to creating a more equitable and sustainable IP system.

In an increasingly connected era of globalization, the protection of Intellectual Property Rights (IPR) faces a series of complex and multidimensional challenges. Globalization, with all its ease of cross-border flow of information, goods, and services, is actually a double-edged sword for IPR owners.

One of the biggest challenges is cross-border infringement. In the past, if someone copied or counterfeited a product, the impact tended to be limited to a specific geographic region. However, today, with e-commerce and complex global supply chains, counterfeit or pirated products can be manufactured in one country, shipped to another, and sold online around the world in a short period of time. This means that infringement in one jurisdiction can quickly affect IP owners in many parts of the world. Tracking and prosecuting perpetrators is extremely difficult because it often involves multiple countries, different jurisdictions, and anonymous actors online.

The second challenge is the differences in legal systems that apply in each country. Despite efforts to harmonize through international agreements such as TRIPs, there are still significant variations in the definition, scope of protection, registration procedures, and enforcement mechanisms of IP rights between jurisdictions. For example, what is considered an “original work” under copyright law in one country may be interpreted differently in another. The process for registering a patent or trademark may vary significantly from one country to another, with varying costs and time constraints. These differences create “loopholes” or “forum shopping” for infringers, who may seek out jurisdictions with weak IP protection or lax enforcement to conduct their illegal activities. For IP owners, this means navigating a complex legal maze, often requiring legal counsel in multiple countries, which is time-consuming and expensive.

Finally, there is the rapidly developing role of digital technology. The Internet and digital platforms have revolutionized the way information and content are distributed, but at the same time, they

have also opened the door to IPR violations on an unprecedented scale. Digital piracy, especially of music, movies, software, and e-books, has become very easy. A digital file can be copied and distributed to millions of users worldwide with just a few clicks, without losing its original quality.

Peer-to-peer sharing technologies, illegal streaming, and even generative artificial intelligence that can create new content based on potentially protected data, all pose new dilemmas for IP protection. Identifying infringers and taking illegal content down from global platforms is a monumental task, often requiring close collaboration between IP owners, internet service providers, and governments. Technology, which should be a tool for progress, in this context, is also a highly effective means of violating the rights of creators and innovators.

In short, globalization has exacerbated IPR vulnerabilities through infringements that cross borders without significant barriers, complicated by heterogeneous legal systems across jurisdictions, and exacerbated by the ability of digital technologies to enable mass infringements with global reach. Addressing these challenges requires a comprehensive approach, strong international collaboration, and adaptation of regulation and enforcement to the pace of technological development.

The purpose and objective of this paper is to analyze existing regulations regarding legal protection of intellectual property in the era of globalization, identify challenges and obstacles in providing legal protection for intellectual property in the era of globalization, therefore "This research is expected to help in compiling recommendations to strengthen legal protection for". The type of research used in this study is normative legal research with a descriptive research type. The type of problem approach in this study is normative by analyzing laws and regulations governing Copyright and Intellectual Property in Indonesia. The data used is secondary data consisting of primary, secondary and tertiary legal materials. Data collection is carried out by means of literature study and document study. Data processing is carried out by means of

examination, compilation and systematization of data which is then analyzed qualitatively.

From the description explained in the background above, the following issues can be explained in more depth:

1. How do national IPR legal frameworks adapt to the challenges of globalization?
2. How do developments in digital technology affect the protection and enforcement of IPR?

B. RESULTS AND DISCUSSION

1. How do national IPR legal frameworks adapt to the challenges of globalization?

Indonesia adheres to a dualism system, so if Indonesia agrees to an international agreement on intellectual property rights, Indonesia will not immediately apply all of its rules. The Indonesian government together with the House of Representatives (DPR) will create or change national laws so that their contents are in accordance with the standards of the international agreement. For example, the regulations before the internet and digitalization, copyright laws were different from those that exist now, changes occurred because there were international agreements that regulate copyright protection in the digital era resulting in the revision of copyright laws so that copyright protection also covers digital works, broadcasting on the internet, and so on. The goal is so that creators in Indonesia continue to have their rights protected in other countries, and vice versa, copyrights from abroad are also protected in Indonesia.

The implementation of the Intellectual Property system is a major task, especially with Indonesia's participation as a member of the WTO with the consequence of implementing the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), in accordance with Law Number 7 of 1994

concerning the Ratification of the Agreement on the Establishment of the WTO.¹

Intellectual Property Rights (IPR) are classified as individual property rights, namely intangible property rights. In the Intellectual Property Law system, the concept of individual ownership/individual right and the concept of communal ownership are known. The concept of ownership that applies in a country greatly influences the regulation of IP. Therefore, there are countries that prioritize individual ownership but there are also countries that prioritize communal ownership.

In the 1945 Constitution, there are several articles that contain the word "wealth". Article 32 reads as follows:

- (1) The state advances Indonesian national culture amidst world civilization by guaranteeing the freedom of society to maintain and develop its cultural values.
- (2) The state respects and maintains regional languages as national cultural treasures.

Furthermore, Article 33 reads as follows:

- (1) The economy is structured as a joint venture based on the principle of family.
- (2) Branches of production that are important for the country and that affect the livelihood of many people are controlled by the state.
- (3) The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
- (4) The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental awareness, independence, and

¹Niru Anita Sinaga and Muhammad Ferdian. 2020. Principles of Intellectual Property. Depok: Rajawali Pers. p. 21

maintaining a balance between progress and national economic unity.

- (5) Further provisions regarding the implementation of this article are regulated in law.

Based on several articles of the 1945 Constitution above, it can be seen how much the founders of the country, especially the designers of the 1945 Constitution, have paid attention to wealth. For them, wealth is certainly an important thing so that it is included as material in the contents of the Constitution. Although the term Intellectual Property is not found in the 1945 Constitution, it seems that the designers of the 1945 Constitution wanted more detailed regulations regarding wealth, including intellectual property, to be carried out through laws and other laws and regulations as stated in Article 33 paragraph (5) that further provisions regarding the implementation of this article are regulated by law.²

The current direction of Indonesian legal policy, especially in relation to the economy, refers to the government's efforts to facilitate the development of various economic elements in society through digitalization. The purpose of intellectual property law will essentially continue to follow the times, considering the very dynamic landscape of global economic development.³

2. How do developments in digital technology affect the protection and enforcement of IPR?

The development of technology will always be an inseparable part of human civilization. Science as the main element of technological development in the world, also continues to experience very rapid development. The urgency of science philosophically will always exist, as long as humans continue to live and work, and innovate in order to continue their lives. The

²Budiman NPD Sinaga, 2023, "Initiating the 1945 Constitution as an Intellectual Property Constitution", *Grondwet: Journal of Constitutional Law & State Administrative Law*, Vol. 2, No.1, p. 136.

³Sutra Day Meditation. 2023. *Understanding Intellectual Property Protection in Indonesia*. Depok: Rajawai Pers. p. 21

availability of information and access to available information is one of the most important factors in the development of science that directly affects the information available. The discovery of the internet also has implications that are very difficult to understand because of its wide reach and can embrace all aspects of life today.

The Internet has become a vehicle for IPR infringement due to its ability to duplicate and distribute content instantly and without cost. Digital piracy, spanning music, movies, software, e-books, and digital artwork, has become particularly rampant. A newly released song or movie can be quickly uploaded to an illegal file-sharing platform or social media, and then distributed to millions of users worldwide in a matter of minutes, without the copyright holder's permission. The anonymity offered by the Internet also makes it difficult to identify and prosecute violators. Social media, with its easy sharing features, often becomes a vehicle for the spread of pirated content, even without the uploader realizing it. In addition, trademark counterfeiting is also becoming more sophisticated; counterfeit products can be widely advertised and sold through e-commerce platforms and social media, deceiving consumers and harming the original brand owner.

Then there is artificial intelligence, which presents a more complex dimension of IPR infringement. AI is able to generate text, images, sounds, or even videos based on training data, raising serious questions about copyright. If AI is trained on millions of copyrighted works without permission, does the output of AI constitute copyright infringement? For example, an image generated by AI could closely resemble or substantially imitate the style of a particular artist whose work was used as training data.

Additionally, there are concerns about “algorithmic plagiarism” where artificial intelligence inadvertently replicates existing, protected patterns or expressions. There is also ongoing debate over whether copyright ownership of works generated entirely by artificial intelligence belongs to the AI developer, the user, or even the AI itself, which could complicate infringement claims. Deepfakes, which are artificially manipulated media to create

authentic-looking video or audio, can also be used for IPR purposes, such as imitating a singer's voice for a song they didn't release.

The speed of digital technology development often far exceeds the ability of the law to adapt. Existing IP regulations were often designed in the pre-digital era, and are therefore not fully prepared for the complexities of online infringement and the rise of artificial intelligence. For example, the concepts of "publication" or "distribution" become blurred on the internet. In addition, enforcement becomes more difficult due to the cross-border nature of infringement and the anonymity of perpetrators. Stronger international cooperation between countries and digital platforms is needed to combat IP infringement effectively.

Updates to national IPR laws, such as in Indonesia which continues to adjust the Copyright Law and related regulations, are crucial to cover digital and AI aspects. The question of the responsibility of digital platforms (internet service providers, social media) for content uploaded by users has also become a hot legal issue, prompting regulations that require them to be more proactive in removing infringing content.

Overall, digital technology has created significant dilemmas for IPR protection. On the one hand, it facilitates more widespread and difficult-to-control infringements. On the other hand, it also provides sophisticated tools for detection and enforcement. The main challenge today is how legal systems and stakeholders can continue to adapt to technological innovations, develop strong and flexible frameworks, and promote digital awareness and ethics to create a sustainable creative and innovative ecosystem.

To overcome the rampant violations of Intellectual Property Rights (IPR) in the era of globalization, especially with the increasingly sophisticated digital technology, a series of comprehensive, multi-party, and adaptive legal efforts are needed. These efforts are not only focused on taking action after the violation occurs, but also on prevention and harmonization at the international level, including:

1. Strengthening the national legal framework, meaning that countries must continually revise and update their IPR laws to keep pace with technological developments and international standards. For example, copyright laws must include clear protections for digital content, illegal streaming, and even consider issues arising from generative Artificial Intelligence. Regulations must be able to reach infringing activities that occur in cyberspace, which are often cross-border. In addition, there needs to be an affirmation of the responsibility of digital platform providers (such as social media and e-commerce) to be proactive in removing content or products that violate IPR, rather than just waiting for reports from rights owners.
2. Increasing international cooperation considering the nature of IPR violations that do not recognize national borders, no single country can solve this problem alone. Harmonization of IPR laws through international agreements such as TRIPs, the Berne Convention, or various WIPO (World Intellectual Property Organization) agreements must continue to be encouraged and implemented consistently. In addition, close cooperation is needed between law enforcement agencies across countries, including the police, prosecutors, customs, and courts. The establishment of an effective communication network and information exchange between countries is essential to track perpetrators, collect evidence, and take legal action in a coordinated manner. Multilateral and bilateral forums can be a forum for formulating joint strategies and sharing best practices in IPR enforcement.
3. Utilization of technology for enforcement and protection of IPR increasingly vital. Digital technologies that once facilitated violations can now also be a solution. The use of Digital Rights Management (DRM) and watermarking technologies can help control access and track the spread of illegal digital content. IPR owners and online platforms can use algorithms and artificial intelligence to automatically scan the internet, detecting unauthorized use of trademarks, patents, or copyrights. For example, image recognition technology can be used to find

counterfeit products in online marketplaces, or audio fingerprinting to identify pirated music.

Automated reporting systems and faster takedown mechanisms also need to be further developed and refined. Blockchain, as a technology that offers a decentralized and immutable transaction record, is also beginning to be explored for its potential to record IPR ownership and track product supply chains to prevent counterfeiting.

4. Increasing law enforcement capacity and public awareness such as police officers, prosecutors, judges, and customs officers must receive special and ongoing training on the complexities of IPR in the digital era, including digital evidence and cybercrime. A thorough understanding of the technology and modus operandi of violators is essential for effective enforcement. At the same time, educational campaigns and raising public awareness on the importance of respecting IPR must also be encouraged. The public needs to understand that buying or using pirated or counterfeit products not only harms IPR owners, but also hinders innovation and the development of the creative economy. This education must also target the younger generation who are active users of digital platforms.
5. Alternative dispute resolution (ADR) mechanisms such as mediation and arbitration can be a faster and more efficient option for resolving cross-border IP disputes, compared to traditional, expensive and time-consuming litigation. This provides more flexibility for the disputing parties and can encourage mutually beneficial resolutions.

With a combination of planned and collaborative legal efforts, it is hoped that the challenges of rampant IPR violations in the era of globalization can be minimized, so that creativity and innovation continue to be valued and protected effectively.

C. CONCLUSION

The concept of intellectual property rights, which include copyrights for artistic works, patents for inventions, and trademarks that distinguish products, can no longer be viewed solely in a national context. The Internet and social media have eliminated geographical barriers, allowing an idea, innovation, or even a copy of a work to travel across continents in a matter of seconds. This means that the protection of intellectual property rights is no longer just a domestic matter for a country, but has become a global issue that requires a coordinated and adaptive approach.

Enforcement of IPR law in the era of globalization is much more complicated. The nature of violations that are often cross-border and the perpetrators are anonymous makes enforcement a major challenge. Close cross-country cooperation is needed between law enforcement agencies, from the police, prosecutors, to customs, as well as collaboration with digital platform providers.

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The 1945 Constitution of the Republic of Indonesia