

OPTIMIZING INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION IN LOCAL CREATIVE ENTERPRISES IN STRENGTHENING THE TOURISM SECTOR

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Abstract

The creative sector and tourism are inextricably linked; both provide an emotional connection between tourists and the places they visit, particularly through souvenirs, which are keepsakes to bring back home after a trip. Because of the increased dissemination of knowledge about work and creativity brought about by advancements in digital technology, there is a greater chance of work theft and copyright infringement, which can be harmful to anyone involved in the creative business. Laws, government rules, books, and articles that are relevant to the research topic are examples of the literature that is used in this study along with qualitative approaches. In order to guarantee the legal protection of the developed intellectual property, this study attempts to provide insight into the significance of registering intellectual property rights for the creative business. According to the study's findings, all participants in the creative sector must register copyrighted works with the Directorate General of Intellectual Property. In addition, the government and the public must work together to raise awareness of the need for creators or other creative industry participants to register copyrighted works as intellectual property rights through the rules and resources offered by the Ministry of Law and Rights' Directorate General of

Intellectual Property, an authorized government agency. Indonesian Human Rights to provide the legal protection of artistic creations.

Keywords: *Intellectual Property Rights; Tourism; Creative Business; Creative Economy*

A. INTRODUCTION

In the current era of globalization, easy access and distribution of information has become very easy for everyone. The availability of extensive information, especially through digital media, makes information similar to a double-edged sword that can have both beneficial and detrimental effects. The phenomenon that occurs in the wide distribution of information encourages the need for awareness for creators, the community as local creative industry players to report all forms of their creative works, this aims to register and provide legal protection for the intellectual property rights (IPR) produced so that they are not pirated by other people or other parties. Intellectual Property Rights (IPR) are also known as "mind products" as referred to by the World Intellectual Property Organization (WIPO) as "mind creations". According to Umar Husin, intellectual property refers to the results of human creativity of ideas and thoughts that involve effort, imagination, time and cost.¹ This is a person's sole ownership right over all of his/her creative works. Participation in the Agreement Establishing the World Trade Organization forum, which contains the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), allows Indonesia to maintain this exclusive right. The creator or recipient of the rights has the exclusive right to announce or reproduce his/her creation, or grant permission for it, without reducing the limitations in accordance with applicable laws and regulations, in accordance with Law Number 19 of 2002 concerning Copyright, this is where Abdul Kadir Muhammad claims this exclusive right is regulated.²

¹Umar Husin, "Perlindungan Hukum Terhadap Hak Cipta Dari Penggunaan Sebagai Desain Industri (Studi Kasus Putusan Nomor 238 K/Pdt.Sus-Hki/2014)," *Jurnal Sosial Dan Humaniora* 4, no. 7 (2021): 37– 48, <https://doi.org/10.47313/ppl.v4i7.597>."

²Abdul Kadir Muhammad, 2004, *Hukum Dan Penelitian Hukum*, Bandung, PT. Citra Aditya Bakti, hlm.72."

Currently, discussions about the protection of Intellectual Property Rights (IPR) have become a major concern in Indonesia, this is because there are not a few cases of conflict over mutual claims to a brand or work. Some of the main factors that trigger this phenomenon are the introduction and popularity of the terms "creative industry" and "creative economy". The importance of the growth of the creative economy in Indonesia has become a concern for the government so that in 2019 there was a change in the nomenclature of the Ministry of Tourism of the Republic of Indonesia (Kemenpar RI) to the Ministry of Tourism and Creative Economy of the Republic of Indonesia (Kemenparekraf RI) which was formed based on Presidential Regulation number 69 of 2019 concerning the change in the nomenclature in question.³ An interesting phenomenon is the question of whether Intellectual Property Rights (IPR) should protect the nation's cultural heritage in the form of Traditional Knowledge (TK) and Traditional Cultural Expressions (TRE). The controversy surrounding TK and TRE has even spread to the political realm, affecting international relations. For example, Malaysia's claim to various Indonesian cultural heritages, including Batik, Reog Ponorogo, Pendet Dance, and Tor-Tor Dance, has caused tension between Indonesia and Malaysia. As a marketing tool or souvenir from an event or activity, the initial goal of souvenir producers and traders is to strengthen emotional ties. However, over time, souvenir making has developed into an important and closely monitored aspect of the creative sector. Souvenirs and gifts are referred to as "merchandise" in the trade sector, and "merchandise rights" are legal protection for souvenir products or "merchandise" under the intellectual property rights framework. According to Basuki Antariksa, the basic components of an intellectual work, including copyright, trademark, industrial design, and other intellectual property rights, are mostly related to the creation and exchange of commodities. Because the owner or holder of intellectual property rights has the authority to create and market

³Muhamad Djumhana, 2010, Perlindungan Hukum Hak Mechandising Dalam Menunjang Pertumbuhan Industri Kreatif Di Indonesia Dihubungkan Dengan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta, *Jurnal Syiar Hukum* 12,no.3:26984.https://ejournal.unisba.ac.id/index.php/syiar_hukum/article/view/644

goods, the creation and exchange of those goods is closely related to his or her creative power.⁴

In addition to creative industry products as explained in the previous paragraph, along with the development of the digital era, the types of creative works have also diversified, especially in digital content such as tourism promotional videos, graphic designs, illustrations, animations, and others. These materials have a significant impact on how tourist locations are promoted on social media, YouTube, and other digital platforms. Unfortunately, many creators only rely on watermarks as a form of protection for their work. This practice does not have adequate legal force, so it is unable to protect ideas and creations from piracy or illegal duplication.

By registering digital content as a work of creation in the IPR system, creators will have a strong legal position. They can obtain legal protection and compensation in the event of a violation. In addition, IPR registration also provides formal recognition of their creativity, which can be used as a professional portfolio and a tool to open up opportunities for collaboration with the private sector and the government. Some forms of Intellectual Property Rights (IPR) are: patents, trademarks, industrial designs, copyrights, geographical indications, trade secrets, and designs. The massive development of the digital world today provides an understanding that it is appropriate for actors engaged in the creative industry sector to understand the importance of registering Intellectual Property Rights (IPR) so that the authenticity of ideas and works can always be maintained so that they can provide more benefits in terms of achievement and prestige as well as economic benefits and other positive benefits. One of the benefits of owning Intellectual Property Rights (IPR) is that by registering Intellectual Property Rights (IPR), it will indirectly be easy to get recognition and can further make it easier for a product to penetrate the international market. If you do not have intellectual property rights; if a product is found to violate a trademark, the product can be returned to another party, and there is

⁴Basuki Antariksa, 2012, *Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia*, *Jurnal Ekonomi Kreatif* 1, no. 1 : 1–21.

no guarantee of legal protection related to the product offered. In addition to strengthening the legal basis, registration of Intellectual Property Rights (IPR) for a work will also improve the brand image of a product which of course will have a good impact on its creator both in terms of prestige and economic impact. The main benefits of IPR ownership are not only from a legal perspective, but also have implications for prestige, competitiveness, and economic potential. Products or works that have IPR certification tend to be more easily accepted in the international market because they have met global legality standards. In addition, IPR can be an economic asset that can be licensed, sold, or used as collateral for business financing. According to Sesde Seharja, IPR is a form of protection for creative ideas, which if not registered, will be vulnerable to being claimed by other parties. Protection through IPR provides legal certainty and is the basis for enforcing rights before the law. Briefly, it can be explained that according to Sesde Seharja, the ideas of creative sector actors are protected by Intellectual Property Rights (IPR). "Ideas" registered with the IPR eliminate the concept owner's concerns that other parties can claim them because their ideas or concepts have been legally protected by applicable laws and regulations.⁵

The purpose of this study is to provide an understanding of the importance of the registration aspect of copyrighted works or intellectual property rights in the creative industry, especially for the community as local creators as supporters of the tourism sector. The findings of this study will help those involved in the creative business to improve their understanding of the importance of registering Intellectual Property Rights (IPR) for a work produced from ideas and intellectual property. The following problem formulations are based on the description: 1. Why does the creative industry need intellectual property rights protection? 2. How is the awareness of business actors and the role of the government regarding the registration aspect of intellectual property rights (IPR) especially in supporting the tourism sector in Indonesia

⁵Sesde Seharja & Andin Rusmini, 2023, Perlindungan Hak Kekayaan Intelektual (HKI) bagi Usaha Kreatif Lokal dalam Mendukung Sektor Pariwisata, *Jurnal Ilmiah Multidisiplin Indonesia*, no. 2. 3025-1028

B. RESULTS AND DISCUSSION

The tourism industry is a strategic economic sector that not only produces products and services directly related to tourism activities, but also involves various supporting sectors, including the creative industry. The synergy between the tourism industry and the creative industry can create high economic value, strengthen cultural identity, and increase national competitiveness in the global arena. However, this synergy will not be maximized without adequate legal protection for creative works that are an integral part of tourism attraction. In this context, Intellectual Property Rights (IPR) are very important.

Unfortunately, most players in Indonesia's local creative industries who contribute to the tourism sector have not fully realized the urgency of registering the intellectual property rights (IPR) for their products or works. This lack of awareness leaves their work vulnerable to being claimed by others, including foreign entrepreneurs who understand and strategically exploit this legal loophole. A concrete example of this problem is the Patra Bali motif in Bali Province. This motif originates from the cultural heritage and local wisdom of the community, yet it is at risk of being commercialized by foreign parties without the original owner community's permission or appreciation.⁶

This phenomenon demonstrates the dual nature of protecting local cultural property. Anonymous and long-established cultural assets, such as batik motifs, traditional dances, and regional musical instruments, become part of communal intellectual property that is automatically protected as state property.⁷ On the other hand, when these cultural elements are re-explored, modified, or packaged as new works by individuals, they become subject to individual intellectual property rights (IPR) protection. This loophole is often exploited by

⁶ Kementerian Pariwisata dan Ekonomi Kreatif, *Kajian Potensi Kekayaan Intelektual Berbasis Budaya Lokal di Bali*, 2021.

⁷ Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta, Pasal 38 ayat (2).

parties who are not fully committed to exploiting local cultural wealth, both domestically and abroad.

Local business actors are also not very aware of how to protect their work through the IPR registration mechanism and tend to be pragmatic. Many micro, small, and medium enterprises (MSMEs) or creative economy actors only register their work when it has significant commercial value or if a dispute occurs. This reactive approach results in suboptimal IPR protection because IPR is fundamentally designed to provide preventive protection before infringement or misuse occurs.

Juridically, Indonesian national law only has binding force within the country's jurisdiction. If a foreign party claims and registers a local creative work as intellectual property rights (IPR) in another country, Indonesia has no legal basis to cancel or prosecute the claim directly, except through international cooperation mechanisms and applicable bilateral or multilateral agreements⁸. Therefore, it is important for players in Indonesia's creative industries to register their intellectual property rights (IPR) not only domestically, but also internationally, especially for products with export or global market potential.

Batik is one example of success in IPR protection. It has been recognized by UNESCO as an intangible world cultural heritage and has become an icon of Indonesia's creative industry. Batik demonstrates that local cultural wealth can become a national economic force with proper management, including strong legal protection.⁹

Through the Ministry of Law and Human Rights (Kemenkumham), the Government of Indonesia, particularly the Directorate General of Intellectual Property, has provided various services and procedures to facilitate the registration of intellectual

⁸ Direktorat Jenderal Kekayaan Intelektual (DJKI), *Panduan Perlindungan HKI di Luar Negeri*, 2022.”

⁹ UNESCO, *Batik, Intangible Cultural Heritage of Humanity*, 2009.”

property rights (IPRs), including copyrights, trademarks, industrial designs, and geographical indications.¹⁰ All Indonesian citizens who create works in the creative industry sector have the right to register their work, and if the administrative requirements have been met, a letter of creation registration will be issued as legal evidence.

However, in addition to providing legal infrastructure, proactive steps are also needed from the government in the form of education and assistance to creative industry players, especially MSMEs. Massive socialization, technical training, as well as providing incentives or subsidizing IPR registration fees can be effective strategies to increase community participation.¹¹ A top-down approach from the government must be accompanied by a bottom-up approach from the creative community in order to create collective awareness of the importance of IPR.

The role of local governments is no less important. Within the framework of regional autonomy, several provincial and district governments have begun to formulate IPR protection policies in the form of Regional Regulations (Perda) that refer to national policies. This is a positive step that must continue to be expanded, because locally-based IPR protection can accelerate the protection of regional cultural property before it is claimed by outsiders.¹²

Intellectual property rights (IPR) protection is not only a matter of legal recognition, but also of economic justice and cultural sovereignty. In the era of globalization, where cultural exchange and cross-border trade are rapid, IPR protection is an important tool for developing countries, such as Indonesia, to defend their cultural identity and local knowledge.

¹⁰ Direktorat Jenderal Kekayaan Intelektual (DJKI), *Prosedur Pendaftaran Hak Cipta dan Merek Dagang*, 2023.

¹¹ Kemenkumham RI, "Strategi Nasional Kekayaan Intelektual," Jakarta, 2021.

¹² Rizki, Mahendra. "Peran Pemerintah Daerah dalam Perlindungan Kekayaan Intelektual Berbasis Lokal," *Jurnal Otonomi Daerah*, Vol. 10 No. 2, 2020.

To support the sustainable growth of the creative industry and tourism sector, there must be a joint effort between the government, businesses, creative communities, and the general public to integrate IPR into the creative economy ecosystem. Adequate protection provides legal certainty, increases the competitiveness of local products, and encourages innovation and creativity, which are the foundations of knowledge- and culture-based economic development.

C. CONCLUSION

In the current era of globalization and digitalization of information, protection of Intellectual Property Rights (IPR) is a very important need, especially for creative industry players who support the tourism sector. Creative works produced both in the form of physical products such as souvenirs and digital works such as promotional content have high economic and cultural value. Without adequate legal protection through IPR registration, these works are very vulnerable to theft, unilateral claims, or exploitation by other parties, both from within and outside the country.

The awareness of local businesses on the importance of IPR registration is still relatively low and reactive. This leaves many works unprotected when they begin to have economic value. On the other hand, Indonesia's juridical limitations in protecting intellectual property in the international realm add to the complexity of protecting local works, especially when claims are made by foreign parties.

Although the government has provided legal facilities and infrastructure, including an easier IPR registration process, these efforts must be accompanied by education, assistance, and real support for creative industry players. Local governments and creative communities also play a crucial role in accelerating the protection of works with cultural content and high economic potential.

Based on the results of the analysis in this journal, it is recommended that the government, local creative businesses, and the

community collaborate to optimize the protection of intellectual property rights in the tourism sector. The following recommendations and suggestions can be made:

1. Increased education and socialization

The central and local governments should actively educate the community, especially MSME players and local creative industries engaged in tourism, about the importance of IPR.

2. Facilitate and provide incentives for IPR registration.

Policies that provide incentives or subsidize IPR registration fees are needed so that creative industry players from all levels of society can access legal protection for their work.

3. International Registration

For works with export potential or global recognition, the government should encourage businesses to register their IPR internationally to avoid claims by foreign parties.

4. Strengthening Local Regulations

Local governments should formulate and implement local regulations (Perda) that support IPR protection based on local wisdom, including the preservation of cultural expressions and traditional knowledge.

5. Multi-stakeholder synergy:

Building an IPR protection ecosystem that is sustainable, inclusive, and adaptive to the times requires collaboration between the government, academics, creative communities, the private sector, and the wider community.

With these strategic steps, Indonesia is expected to effectively protect its intellectual property and make it a key pillar in the development of the national creative economy and tourism sector.

BIBLIOGRAPHY

Abdul Kadir Muhammad. “Hukum Dan Penelitian Hukum.” Bandung: PT. Citra Aditya Bakti, 2004.

Anggraen, Adelia Dwi, Budi Santoso, and Adya Paramita Prabandari. “Perlindungan Hak Kekayaan Intelektual (HKI) Pada Usaha Mikro Kecil Dan Menengah (UMKM) Di Bidang Pengrajin Batik Dan Kuliner.” *Notarius* 14, no. 2 (2021): 650–65. <https://doi.org/10.14710/nts.v14i2.43711>.

Basuki Antariksa. “Landasan Filosofis Dan Sejarah Perkembangan Perlindungan Hak Kekayaan Intelektual: Relevansinya Bagi Kepentingan Pembangunan Di Indonesia.” *Jurnal Ekonomi Kreatif* 1, no. 1 (2012): 1–21.

Djumhana, Muhamad. “Perlindungan Hukum Hak Mechandising Dalam Menunjang Pertumbuhan Industri Kreatif Di Indonesia Dihubungkan Dengan Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta.” *Syar Hukum* 12, no. 3 (2010) 256-262
https://ejournal.unisba.ac.id/index.php/syar_hukum/article/view/644

Husin, Umar. “Perlindungan Hukum Terhadap Hak Cipta Dari Penggunaan Sebagai Desain Industri (Studi Kasus Putusan Nomor 238 K/Pdt.Sus-Hki/2014).” *Jurnal Sosial Dan Humaniora* 4, no. 7 (2019): 37–48.
<https://doi.org/10.47313/ppl.v4i7.597>.

Seharja, Sesde & Andin Rusmini, 2023, Perlindungan Hak Kekayaan Intelektual (HKI) bagi Usaha Kreatif Lokal dalam Mendukung Sektor Pariwisata, *Jurnal Ilmiah Multidisiplin Indonesia*, no. 2. 3025-1028.

Direktorat Jenderal Kekayaan Intelektual. Panduan Perlindungan HKI di Luar Negeri. Jakarta: Kementerian Hukum dan HAM RI, 2022.

Direktorat Jenderal Kekayaan Intelektual. Prosedur Pendaftaran Hak Cipta dan Merek Dagang. Jakarta: Kementerian Hukum dan HAM RI, 2023.

- Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia. Strategi Nasional Kekayaan Intelektual. Jakarta: Kemenkumham RI, 2021.
- Kementerian Pariwisata dan Ekonomi Kreatif. Kajian Potensi Kekayaan Intelektual Berbasis Budaya Lokal di Bali. Jakarta: Kemenparekraf, 2021.
- Rizki, Mahendra. "Peran Pemerintah Daerah dalam Perlindungan Kekayaan Intelektual Berbasis Lokal." *Jurnal Otonomi Daerah* 10, no. 2 (2020): 145–160.
- Setiady, Tony. Hak Kekayaan Intelektual dan Globalisasi Budaya. Yogyakarta: Pustaka Pelajar, 2020.
- UNESCO. Batik, Intangible Cultural Heritage of Humanity. Paris: UNESCO, 2009.
<https://ich.unesco.org/en/RL/indonesian-batik-00170>
- Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipta.
- Wahyuni, Sri. "Perlindungan Hukum Terhadap Produk Kreatif Lokal Melalui Pendaftaran Hak Cipta." *Jurnal Ilmu Hukum* 12, no. 1 (2019): 65–78.