Legal protection of intellectual property rights in the context of economic globalization: A case study of copyright enforcement in international markets

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ABSTRACT

Intellectual property rights are an important part of intellectual property rights that have a very wide scope of objects. In the era of economic globalization, intellectual property is becoming increasingly important as competition between companies and individuals around the world intensifies. However, there are also challenges that arise in the form of violations of Intellectual Property Rights that pose a serious threat to rights holders. Therefore, the purpose of this study is to determine the legal protection of intellectual Property Rights in the context of economic internationalization. The data collection technique used is a literature study, where relevant data is collected from various related literature sources. Finally, conclusions are drawn to identify important findings from the data analysis that has been carried out. This study can help strengthen theoretical foundations about the role of law in protecting innovation, artwork, and intellectual creation in an ever-changing global economy. This research can also open the door for further research to understand how legal regulation can accommodate rapid and complex global economic developments, as well as foster innovation and inclusive economic sustainability.

INTRODUCTION

In the era of economic globalization, intellectual property is becoming increasingly important as competition between companies and individuals around the world intensifies. Companies are competing to exploit and also protect the innovations, artworks and intellectual creations they produce (Dratler Jr & McJohn, 2023; Hernández-Cheá et al., 2020; Virchenko et al., 2021). In an increasingly globally connected business environment, having exclusive rights to new ideas, designs, technologies, or artwork can provide a significant competitive advantage (Gupta et al., 2008; Massi et al., 2020; Wang et al., 2020). Therefore, intellectual property rights are not only a tool to obtain economic benefits, but also a means to maintain market position and strengthen competitiveness at the international level. However, on the other hand, challenges also arise in the form of violations of intellectual property rights that pose a serious threat to rights holders. Such violations may take the form of piracy, forgery, or unauthorized use of another person's innovation, artwork, or intellectual creation. Such violations not only harm rights owners, but also undermine consumer trust, lower brand value, and hinder sustainable economic growth.

The rate of piracy in Indonesia is still very high, losses reaching trillions of rupiah due to low public awareness of respect for intellectual property rights (IPR). According to the Deputy of IPR Facilitation and Regulation of the Creative Economy Agency (Bekraf, Badan Ekonomi Kreatif) Ari Juliano Gema, Indonesia is a country with a high level of piracy. This is due to the low public awareness in respecting other people's IPR (Anggoro, 2019). Therefore, law enforcement and protection of intellectual property rights are essential to ensure the continuity of innovation and creativity and maintain the integrity of global markets.
Intellectual Property Rights (IPR) as rights that receive legal protection have two main characteristics, namely having a limited period of time and are exclusive and absolute. These characteristics are bound when IPR owners have obtained protection for these rights. Protection of Intellectual Property Rights (IPR) due to Indonesia's ratification of the provisions of the World Trade Organization (WTO) regulated in Law Number 7 of 1994. The purpose of IPR legal protection is to encourage innovation, transfer and dissemination of technology, as well as to obtain mutual benefits between the creation and utilization of technological knowledge. It aims to create social and economic welfare, as well as maintain a balance between rights and obligations (Liling, 2014).

Legal protection also provides legal certainty to IPR owners to utilize their intellectual works with the aim of obtaining economic benefits. In addition, this protection also serves as a preventive measure against adverse actions that may be taken by other parties, especially if the product is already on the market (Safitri, 2022). The legal protection of Intellectual Property in Indonesia is based on the theory of justice rooted in Pancasila, with principles that include humanity, balance between individual and community interests, nationalism, social justice, and the inevitable development of science and technology (science and technology), separated from values. -Pancasila values. Although there have been efforts to establish and implement various regulations related to Intellectual Property, there are still a number of problems faced. Factors that influence it include aspects of substance, structure and legal culture, including cultural factors (Sinaga, 2020).

Another study conducted by Mahardhita & Sukro (2018) found that IPR legal protection through the Cross Border Measure mechanism can be done in 2 (two) ways, namely through ex-officio determination by the DGCA and through orders from Commercial Court (judiciary). Although Government Regulation Number 20 of 2017 concerning Import or Export Control of Goods Suspected or Derived from Intellectual Property Rights Infringement has been issued, implementing regulations are still needed that regulate the technical implementation of this Government Regulation, such as a recording system procedure. for rights holders or rights owners to obtain IPR protection ex-officio.

Previous research conducted by Atmadja (2015) shows that world economic phenomena require other countries, including Indonesia, to follow economic globalization. Economic globalization is followed by legal globalization. Globalization of law occurs through efforts to standardize law through international agreements. Full adjustment or full compliance as minimum requirements and guidelines for WTO-TRIPs member states to implement new norms; has higher standards and contains strict enforcement provisions.

This research can help strengthen theoretical foundations about the role of law in protecting innovation, artwork, and intellectual creation in an ever-changing global economy. These theoretical implications could also open the door for further research to understand how legal regulation can accommodate rapid and complex global economic developments, as well as foster innovation and inclusive economic sustainability. The purpose of this study is to determine the legal protection of intellectual property rights in the context of economic globalization.

METHOD

This research applied a qualitative approach. The data collection technique used is a literature study, where relevant data is collected from various related literature sources. After the data were collected, the analysis process is carried out through three stages, namely data reduction, data presentation, and conclusions. The data reduction stage aims to simplify the data that has been collected, then proceed with the data presentation stage where the data is presented systematically. Finally, conclusions are drawn to identify important findings from the data analysis that has been carried out.

RESULTS AND DISCUSSION

The ongoing phenomenon of economic globalization is a process that is slowly forming new forces in regulating economic activity around the world. Globalization is reflected in various aspects such as the financial sector, production, and trade, which affect the way countries interact economically (Firmansyah & Hendra, 2015). The process of globalization in this economy has led to the process of unification of the world economy, so that the boundaries between countries in various business practices or businesses seem to be considered illegitimate.

Economic globalization has an important impact on various aspects of life, one of which provides new opportunities for creators to market their products or works to a wider international market. Driven by free trade and advances in information technology, access to global markets has become easier than ever (Lugu, 2023). Economic actors can now reach audiences around the world more efficiently through digital platforms such as websites, social media, and e-commerce platforms (Yansahrita et al., 2023). An international market is a space where goods and services are offered, obtained, and traded between countries around the world. For most entrepreneurs, expanding their products to international markets is a coveted goal. Expansion into
international markets means that its products successfully cross national borders and are widely accepted, and have the potential to generate profits for business continuity.

There is a positive side of economic globalization that facilitates product marketing more broadly, but on the other hand globalization also increases the risk of product copyright infringement. According to Kilanta (2017), the development of information and communication technology has a strategic role in the development of copyright, but at the same time it can also be a tool for legal violations in this field. Violations of law in copyright can be reflected as in the practice of piracy and plagiarism. Product piracy or plagiarism is an act that involves copying or distributing a copyrighted work without permission from the owner. It involves taking someone else's work or thoughts and claiming them as one's own. In addition, there is also plagiarism which is interpreted as an attempt to gain recognition or value of a product by using or imitating the work of others without providing appropriate and adequate recognition to the source (Nahrowi, 2014).

Piracy of top brands is often triggered by manufacturers' drive to make big profits in a short period of time. Including economic actions where products are produced without the permission of the brand owner and then sold to the public (Widyanti, 2023). While this may benefit the party that produced the counterfeit item, the original creator will feel morally disadvantaged because his name was used without permission. Financially, they also do not take advantage of products produced by others without permission. Therefore, copyright protection is essential to prevent piracy and protect the rights of the original creators, both morally and financially.

Copyright is an important part of intellectual property that has a very wide scope of objects. Intellectual property rights refer to rights relating to property arising from human intellectual abilities (Jain, 1996). Such as works in the fields of technology, science, art, and literature. The concept of Intellectual Property Rights is based on the idea that human-generated intellectual work involves sacrifices of labor, time, and money (Marthalia et al., 2022). Thus, the work has economic value because of the benefits it can provide to society. Copyright is a right that must be protected because if it is not protected it will harm individuals who have worked hard to create something through inspiration, imagination, and thought (Thalib, 2013). Therefore, Copyright is seen as a very important part of Intellectual Property Rights that need to be protected.

Ownership of Intellectual Property Rights is very important because copyright has an exclusive value that covers various aspects of life, not only ownership of physical goods, but also ownership of the results of human intellectual abilities and creativity, such as ideas or ideas. Copyright has an exclusive and absolute nature which means that the owner has the right to sue for violations committed by anyone against these rights (Jannah, 2018). Intellectual property rights holders also have monopoly rights, which allow them to prohibit others from creating or using the work or invention without their permission. Legal protection of intellectual property rights not only adds value and increases the bargaining position of a product, but also can prevent violations of intellectual property grabbing.

Article 27 (2) of the Universal Declaration of Human Rights affirms that every individual has the right to be protected against the moral and material benefits derived from the scientific, literary or artistic work he creates. In other words, the creator has the right to be recognized and appreciated for his work, both morally and financially. This includes rights to royalties, credits, and protection against use or misuse of the work. The Universal Declaration of Human Rights recognizes the importance of protecting intellectual property rights as part of human rights, thus creating an environment that encourages innovation, creativity, and cultural development.

In Indonesia, the protection of intellectual property rights is regulated in several laws such as Law Number 14 of 2001 concerning Patents, Law Number 15 of 2001 concerning Trademarks, and Law Number 28 of 2014 concerning Copyright. But these regulations only apply at the national level, and are often insufficient to protect these rights in the international market. Therefore, an international legal instrument is needed that regulates the protection of intellectual property rights globally. One of the international legal instruments is the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights). TRIPS is part of the World Trade Organization (WTO) Establishment Agreement and requires member states to provide minimal protection of intellectual property rights, including copyright.

The TRIPS Agreement strengthens the standard of protection of intellectual property rights at the international level, including copyrights, patents, trademarks, industrial designs, and trade secrets. The high standard of protection stipulated in the TRIPS Agreement is an obligation for all WTO members (Setyoningsih, 2021). The TRIPS Agreement aims to reduce gaps in law enforcement and intellectual property rights protection in different countries, by setting minimum protection standards that each WTO member country must adhere to compared to other countries. If there is a dispute between countries, the settlement can be done through the WTO dispute settlement mechanism (Kholilah, 2014). This shows that TRIPS plays a role in unifying the protection of intellectual property rights at the international level and regulating the way disputes between countries are resolved.
In addition to the TRIPS Agreement, there are other international agreements such as the Paris Convention and the Berne Convention for the Protection of Literary and Artistic Works. The Paris Convention oversees the protection of industrial property rights, which include patents, utility models, industrial designs, trademarks, service marks, and trade names (Rahmatullah, 2014). One important feature of the Paris Convention is the provision of priority rights, which allows intellectual property rights applicants of member states to use the date of filing their initial application as the effective date when applying in another member state. This provision aims to simplify the process for applicants to acquire intellectual property rights in different countries more effectively.

On the other hand, the Berne Convention for the Protection of Literary and Artistic Works is an international treaty that regulates the safeguarding of copyright for literary, artistic, and scientific works (Kusmawan, 2014). This treaty mandates its signatory countries to provide equal protection to copyrights originating from other member states, regardless of the nationality of their creators (Felano, 2021). Indonesia as one of the member states has ratified the Berne Convention for Copyright Protection through Presidential Decree Number 18 of 1997. By ratifying the Berne Convention, Indonesia shows its dedication in supporting the protection and recognition of intellectual property rights in the global arena.

The existence of this international legal instrument guarantees every member involved in the agreement to comply with applicable rules in order to create a business environment that supports copyright. However, there are still a number of challenges in copyright enforcement in international markets, such as:

1) Differences in legal systems between countries: Each country has a unique legal system when it comes to Intellectual Property Rights, this difference often makes it difficult to enforce copyright laws in other countries, because standards, procedures and sanctions can vary. Different levels of IPR law enforcement in each country sometimes become a source of tension in international economic relations because intellectual property is increasingly important in global trade (Kholilah, 2014).

2) Lack of law enforcement: In some countries, law enforcement against violations of intellectual property rights is still weak (Atallah et al., 2023). So that the violator does not get a punishment that is commensurate with his actions. This can harm copyright holders and stifle innovation.

3) Technological developments: The development of information and communication technology is also another challenge in copyright enforcement (Kurniawati, 2020). The development of this technology makes it easier for copyright infringers to carry out their actions, such as by loading and changing a work easily. Digitization also allows for fast and high-quality copying of works, making it difficult for law enforcement.

CONCLUSION

Legal protection of intellectual property rights in support of economic globalization has been regulated in national and international law, such as the TRIPS Agreement, Paris Convention, and Berne Convention. However, there are still challenges in copyright enforcement in international markets. To overcome these challenges, copyright enforcement in the international market needs to be strengthened by increasing cooperation between countries, harmonization of legal systems, and utilization of information and communication technology. Thus, such efforts can help copyright enforcement in international markets in the context of economic globalization.

REFERENCES


