INTELLECTUAL PROPERTY RIGHTS LAW CHALLENGES IN NEW NORMAL ERA

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Abstract: The global world is currently facing a very difficult period due to the outbreak of the SARS-CoV-2 coronavirus pandemic or commonly known as covid 19. Several aspects of community life such as economy, education and health have decreased because all human activities are limited and they carry out more activities in house. Indonesia must be ready to face the challenges of this situation by preparing Intellectual Property Rights Law which can fulfill the interests of all Indonesian people. This juridical normative research is sourced from secondary data or library data that comes from online and offline library materials. In the current era of digitalization, intellectual property rights are a creative industry that is very fundamental in driving economic growth. Intellectual Property Rights are resources that are based on the intellectual ability of a person which is then manifested in the form of creative works in the fields of science, art and technology. There are many challenges that will be faced in the application of intellectual property rights in this digitalization and new normal era because of the different characteristics of Indonesian people who are not yet literate in Intellectual Property Rights Law. The government and stakeholders need to carry out reforms and socialization of intellectual property rights law, especially in the field of copyright and trademark rights that are in accordance with the culture of the Indonesian people to encourage economic development in this new normal era.

Keywords: Challenges, Intellectual Property Rights, New Normal

Introduction

At the end of December 2019 the global world was shocked by the emergence of a pandemic attack in the form of the SARS-CoV-2 corona virus originating in the country of Wuhan, China. Corona virus 2 (SARS-CoV-2) attacks the respiratory tract which can cause death. As a result of this corona virus pandemic which became known as COVID-19, many countries in the world experienced a decline in their economy, education and health. This economic and financial decline was due to restrictions on the movement and mobility of people, goods and services. Many world airlines are threatened with bankruptcy due to travel restrictions in many countries and falling demand for airplane tickets. Sluggish tourism activity has caused hotel and restaurant businesses to also plummet. Banking and multifinance companies are also experiencing a decline in business due to the impact of covid 19. Factory workers are threatened with layoffs and people's purchasing power decreases and the price of raw materials soars up, (Kompas .id December 13, 2020).

The Indonesian finance minister has several times announced that Indonesia is facing an economic recession. Since the monetary crisis in 1998, for the first time, the Indonesian economy
experienced a recession again. Economic growth has been negative for two consecutive quarters. The government is trying to overcome this recession by taking policies in the health sector for handling Covid 19, providing social protection assistance (bansos) and free vaccination programs in early 2021 for the community and finally the government will launch a Sovereign Wealth Fund (SWF) or an Investment Management Institution or Indonesia Investment. Authority is a source of financing in the infrastructure and energy sector based on equity or equity participation (kompas.com 1 jan 2021)

The results of a survey by the Indonesian Institute of Sciences stated that 70% of MSMEs find it difficult to survive after the pandemic and the rest will be able to survive because of using digital technology. Whereas 98% of the national economy comes from MSMEs. In addition, MSMEs also contribute to 60% of Gross Domestic Product and are able to absorb a national workforce of 117 million or 97% of the total workforce (Berita 1, com, 25 September 2020). The government invites MSME actors to register and use intellectual property. By using IPR, there are many benefits that will be obtained by MSMEs such as; protection of IPR from business products, avoiding business actors from violating IPR of other business actors, facilitating transfers and licenses, expanding businesses such as franchising and finally simplifying the investment or IPO process because it is a good evaluation because of its legality. Utilization of information technology in community services in the field of intellectual property is also prepared by the government, as evidenced by the fact that all IPR registration has been done digitally or online. Intellectual Property Rights are a creative industry that plays an important role in the development of the creative economy.

This 20th century is known as the digital era or era 4.0 where all information can be easily accessed, distributed and transmitted anywhere and anytime via internet facilities (Murfianti, 2020). The global condition of the digital era that has entered the new normal has created many challenges and new hopes, especially in the field of intellectual property rights.

Literature Review

a. Intellectual Property Rights

Intellectual Property Rights can be broadly divided into two major parts, namely copyright and industrial property rights. (Ok.Saidin, 2007). Intellectual Property is part of the law of objects (property law) which is intangible. According to David I Bainbridge in Henry's book, Intellectual Property or intellectual work rights are rights to property that come from human intellectual work, namely rights that come from creative results, namely the ability of human thinking which is expressed in various forms of work that are useful and useful to support life (Soelistyo, 2014).

The works that are born can be in the form of science, art technology and literature which require time, energy, thought, creativity, taste and initiative to make them happen. These works have economic value or benefit for human life. This intellectual property should be protected under the Intellectual Property Rights Law system. Legal instruments to protect intellectual property are contained in Indonesia's positive law, namely Law No. 24/2014 on Copyright, Law No. 13/2016 on Patents, Law No. 20 of 2016 concerning Trademark Rights and Geographical Indications, Law no. 30 of 2000 concerning Trade Secrets, Law no. 31 of 2000 concerning Industrial Design, Law No.32 of 2000 concerning Layout Designs of Integrated Circuits and Law no. 29 of 2000 concerning Protection of Plant Varieties.

The objectives of protection of intellectual property rights in general are(dkk, 2005):

a. Provide legal certainty to the creator or inventor of the intellectual work.
b. Give credit to someone's work or invention.
c. Documenting existing intellectual property rights.
d. Protects against piracy or impersonation by others.
e. Encouraging the creation of technology and information transfer.
f. Provides Economic Benefits for creators and intellectual rights holders.

The development of science and technology is in line with the development of intellectual property rights. Human intellectual creativity is an important part of producing creative industry products. Developed countries have turned to this intellectual property-based creative industry (Harani, 2010). The United States, Japan and China rank first in their creative industries. Microsoft, Facebook, Instagram, Tik Tok, Zoom and so on are the products of the creative industry that are rapidly developing and using them. Indonesia as a country that has enormous intellectual resources has the potential to develop the economy through creative industries to overcome the problems of low economic growth, high unemployment, high poverty rates, and low industrial competitiveness. Intellectual Property Rights are private rights for someone who produces works. A creator or inventor has the freedom to apply for registration of his intellectual work so that it is protected by the state. The exclusive rights granted by the state to the subject of intellectual property rights actors are an appreciation for his work in the form of moral and economic rights.

The development of law in the era of globalization has grown rapidly. Countries adhering to the Anglo Saxon legal system and adherents of the continental European system are increasingly mingling. The trend of legal harmonization is an urgent need because in globalization, the demonstration of international transactions is increasing and complex (Atmadja, 2015). Indonesia as an adherent of the continental European system finally joined the Anglo Saxon legal system because participants in the World Trade Organization (WTO), the world trade organization since 1994. Starting from GATT (General Agreement Trade on Tariff) which later changed to the WTO where 185 countries in the world agreed to join in this world trade organization. The inclusion of TRIPs (Trade Related Of Intellectual property Right) in the WTO marks the beginning of a new era for the development of IPR around the world. (II, 2006). The characteristics of the digital era, in the form of a technological revolution and the digitalization of content, have created new challenges for Intellectual Property Rights (Sumartiah, 2006) in this new normal era.

b. New Normal Era

The new normal era is also referred to as the new lifestyle that will be lived during the COVID-19 pandemic. To undergo this period requires a high degree of discipline. A simple campaign with attention to 3C, namely: Closed Space, Closed Contact and Crowded place is a campaign to simplify the dangers of covid 19. Closed Space is to avoid rooms with closed air circulation. Close Contact is to avoid activities carried out in close proximity between fellow humans and Crowded Place is avoid crowded and congested places. With this 3C we will evaluate all daily activities by looking at how many 3C elements are in it. The most dangerous places and activities are those that contain 3C elements in them. Several countries implementing the new normal such as South Korea, Thailand, Singapore and Malaysia have adopted a very different lifestyle when shopping at malls. Limiting the number of visitors in the shop, using a tracing system in the form of using a QR Code, leaving personal data in the form of name, cellphone number and body temperature, not allowing trying on clothes purchased and touching clothes that will not be purchased when shopping at a shop or mall. (Commentaries, 2020). In Indonesia, the new lifestyle in shopping has changed drastically with an increase of 400% of online shopping activities (Komalasi, 2020), namely to avoid cash and close contact. In addition to implementing the 3C lifestyle during the new normal period, the 3M and 3T were applied. 3M, namely using masks, washing hands and maintaining distance. Whereas 3T is Testing, namely early inspection, Tracing in the form of tracking, and Treatment. The 3M and 3T habits must continue even though the vaccines are available, until the government provides information that Covid 19 is no longer available. (covid19.go.id, 2020)
Method

This article about the Challenges of Intellectual Property Rights in the new normal era is included in the type of normative legal research because it uses secondary data sources, namely data sources that come from library studies or library research. Secondary data that the author can consist of primary legal materials in the form of statutory regulations, secondary legal materials in the form of books and journals and tertiary legal materials in the form of legal dictionaries, internet media and encyclopedias. The data collection tool used was a documentation study both online and offline. The nature of this research is descriptive.

Result and Discussion

Intellectual Property Rights Law Challenges in the New Normal Era

The discovery of the internet has changed human behavior and changed the pattern of relationships with other human beings. This technology can disseminate information widely, quickly and cheaply and is directly connected to the source (Riswandi, 2009). Many people play games or games, download movies and music and copy data and information via the internet. This situation has increased since the Covid 19 pandemic that hit the world. Everyone’s activities are carried out from home. The community is prohibited from carrying out activities outside the home, must always keep a distance and protect themselves by complying with the health protocols that have been announced by the government. The use of the internet, especially the zoom application, which is widely used for office meetings, virtual meetings with business partners and academic seminars, which are more popular with the name webinars, are increasingly being carried out. According to news, zoom users are 200 million people (compas.com, 2020). With more and more digital and virtual activities, the activity of retrieving information such as data, writing and articles is also increasing. This data collection is also called decoding, which is a process, creation or way of copying one copy of a creation in any way and with any form permanently or temporary (Article 1 point 12) in Act No.28 of 2014. Reproduction is an act that is prohibited in the copyright law because it is a violation of the exclusive rights of the creator, namely violating the economic rights of the creator as regulated in Article 9 paragraph 3. For the perpetrator of the copying of a creation, the maximum imprisonment is 4 years old and a maximum fine of one billion rupiah (Article 113 paragraph 3) in Act No. 28 of 2014.

Retrieval of data on the internet can also be said to be a violation of the moral rights of the creator, namely violating Copyright Information (Article 6), including information about: a work that appears and is attached electronically in connection with the announcement of a creation, the name of the creator includes a pseudonym, the creator as the copyright holder, the period or period of use of the work, number and information code. (Article 7). Every person who violates moral rights will be subject to a maximum imprisonment of 2 years and a maximum fine of three hundred million rupiah.

The use of internet media for online trading is also increasing. According to the Indonesian Minister of Trade due to the Covid pandemic 19 people have switched to shopping online. Internet users are around 143 million people, accounting for 64% of Indonesia's population. Looking at the 2018 data, MSMEs contributed to GDP by 61% and had a workforce absorption of up to 120 million. The government encourages MSMEs to enter the digital market and increase the competitiveness of domestic products. (Kompas.com, 2020). Business actors who use digital
media must always pay attention to the names of the products or goods / services being traded. The use of the same brand as a whole or the same in essence can become a dispute over brand rights later. The overall equation means that the brand is exactly the same as the brand name of the other party's goods, while the similarity is basically as regulated in the Elucidation of Article 21 paragraph 1 of Act No.20 of 2016 one with another trademark so as to give the impression of a similarity, both regarding the form, the way of placement, the way of writing, or a combination of elements or similarities in the sound of speech contained in the trademark.

The dominant elements are relative, not absolute, meaning that if one of the dominant elements is present, the trademark can be canceled. Violation of the trademark of another party, both as a whole and in equality, is subject to a maximum imprisonment of 5 years and a maximum fine of 2 billion (Article 100) in Act No.20 of 2016.

Conclusion

In the new normal era, the use of the internet by the community increased. For this reason, the public must know the regulations regarding the protection of intellectual property rights against the use of the internet by avoiding duplicating the work of others except for the sake of education and science, but still have to protect the moral rights of creators, as regulated in Article 7 of Act No. 28 of 2014 on Copyright.

Business actors who use digital means as promotion and online sales must be aware of the use of trademark of goods or services being traded so that they avoid violating the rights of the same trademark as a whole or the same trademark in essence. Because violations of trademark are subject to imprisonment of up to 5 years and a maximum fine of 2 billion as stipulated in Act No.20 of 2016 concerning Trademark and Geographical Indications.

The government and stakeholders need to carry out reforms and socialization of intellectual property rights law, especially in the field of copyright and trademark rights that are in accordance with the culture of Indonesian society to encourage economic development in this new normal era.

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