

# Urgency of Protection of Intellectual Property Rights in the Era of Economic Globalization

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**Submission date:** 05-May-2023 10:29PM (UTC+0700)

**Submission ID:** 2085173079

**File name:** 14.pdf (171.91K)

**Word count:** 5902

**Character count:** 32708

**Urgency of Protection of Intellectual Property Rights in the Era of Economic Globalization****Kasmawati<sup>1</sup>, I Gede AB Wiranata<sup>2</sup>**<sup>1,2</sup>Faculty of Law, University of Lampung, Bandar Lampung, Indonesia

**ABSTRACT:** This research is to examine the Urgency of Protecting Intellectual Property Rights in the Era of Economic Globalization. This intellectual property right is the result of human thought or creativity which results in a creation in the fields of art, literature, science, and technology in it. Which has economic benefits. In the current era of globalization, the protection of intellectual property rights is very important, because the protection of Intellectual Property Rights is closely related to global trade at the international level. The problem that will be discussed in this study is How Is the Urgency of Protecting Intellectual Property Rights in the Era of Economic Globalization. The research method used is a normative research method with a statute approach and analyzed descriptively.

**KEYWORDS:** Protection, Intellectual Property Rights, Economic Globalization**I. INTRODUCTION**

In the era of globalization, protection of intellectual property rights is very important, because the protection of IPR is closely related to global trade at the international level. Protection of Intellectual Property Rights is an interesting and prominent issue in international economic relations, due to several factors, namely the creation of a global market as a result of developments in communication and transportation technology, increased intensity and quality of research and development of innovations needed to produce and develop a new product. [1] These factors are coupled with the fact that certain new technologies cannot be properly included in one of the existing forms of protection of Intellectual Property Rights, whereas as a result of the development of cheap technology in the field of procurement, expropriation or piracy, there are many forms of Intellectual Property Rights. or the products it produces become more easily pirated and imitated. The process of globalization at this time has increased the level of relations between countries, even giving rise to the process of unifying the world economy. This is reflected in the opportunity to become part of global production. Thus each country must be able to create the most optimal level of efficiency and productivity, so that it has high competitiveness in the global market. [2]

In the era of globalization, every economic actor is required to improve his ability to compete both in producing and marketing a product as well as breaking through increasingly unclear boundaries or in other words must be able to compete in a competitive economy. This is because, in the era of globalization, production and marketing capabilities are based on the ability to create goods or services that can be sold worldwide and are able to compete globally by utilizing technological developments. [3] It cannot be denied that the global challenge rests on economic globalization which has given birth to a world without borders, allowing goods, services and people to move freely from one country to another. Indonesia as a developing country, like it or not, has to follow the existing globalization system, where the ideals of the Indonesian nation are clearly seen in the Preamble of the 1945 Constitution and Pancasila, namely to increase the welfare and prosperity of the Indonesian people. [4] One of these conditions can be achieved if there is mutual respect for individual rights and obligations. One individual will not be harmed by another individual, in other words there is a balance between one's rights and obligations. Article 33 paragraph I of the 1945 Constitution states that, the economy is structured as a community-based joint venture, with the intention that shared prosperity is the main thing. [5]

In the era of free trade, intellectual property rights are an important factor in creating a fair free trade system, where this problem plays a very important role, especially to protect the general public against imitation or counterfeiting of goods and services that piggyback on a well-known goods or service. as goods and services of good quality and excellence. [6] Intellectual Property Rights violation cases can take the form of civil cases, namely claims for compensation for imitation. As stated in Article 1365 of the Civil Code, which states, "Every unlawful act that causes harm to another person requires the person who caused the loss to be wrong, to compensate for the loss. Intellectual Property Rights cases are included in the field of commerce and are something that the government and foreign parties pay close attention to. [7] This can be proven from the history of the formation of laws governing IPR in Indonesia. Intellectual Property Rights are rights resulting from the activities of the human mind in the

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fields of industry, science, literature or art. Various studies have shown that the need for legal protection for intellectual property is due to the economic value contained therein. [8] That is, the inventor must receive back the costs incurred by giving him the right to commercially exploit his invention within a certain period of time. At present, Intellectual Property Rights play an important role because in a strategic sense they are related to products or results of processing of the human mind. This role is also evident in terms of facilitating foreign investment interests so that there is certainty of protection for their intellectual works. [9]

The development of technology and information has increased economic globalization and created new ways to generate such prosperity. For example, one of the biggest companies in the world is Microsoft which produces the software it develops. Conversely, computer software is a form of property that is protected by law governing Intellectual Property Rights. [10] In line with this, in the era of rapid technological development, an understanding of the legal framework for the protection of Intellectual Property Rights is very important for the economic development of a country. [11] Included in Intellectual Property Rights are Copyrights, Patents, Trademarks, Trade Secrets, Industrial Designs, Layout Designs of Integrated Circuits, and Plant Variety Protection. Intellectual property rights in principle are material rights that have economic value. Having economic value, in a commercial perspective means that it can be transferred, traded or leased. In the civil context, the economic value is the property of the inventor holding the intellectual property rights. [12] The government through creative economic agencies must be able to deliver creative workers to gain access to capital with debt guarantees. This is in line with the changing paradigm of the 1945 Constitution as a constitution in viewing the creative economy, through the last amendment it has shifted from limited positive right to extensive positive right. The consequence of this change is the empowerment of citizens towards independence to create a welfare state. [13]

Law number 28 of 2014 concerning Copyright stipulates that Copyright as an intangible movable object can be used as an object of fiduciary guarantees. Provisions regarding Copyright as an object of fiduciary security will be implemented in accordance with the provisions of the applicable laws and regulations. [14] However, in reality, this is still being debated by various related parties, especially regarding the mechanism for assessing and binding guarantees, so that until now there has been no party that has provided credit with collateral in the form of a Copyright. This is the basis for why the Intellectual Property Rights of every innovation and idea that we create need to be protected. [15] Because Intellectual Property Rights, especially Copyrights, based on Law Number 28 of 2014 concerning Copyright provides an opportunity for owners to obtain credit facilities by guaranteeing their copyrights. Intellectual Property Rights will become increasingly important when juxtaposed with the basic nature that every human being has different intellectual abilities. Intellectual Property Rights exist to protect creations because the results of a person's intellectual creations can be accepted by the public. If it is not protected, the work will be taken over by other people and will receive economic benefits. [16]

Based on the description of the background of the problems above, what becomes the problem in this discussion is How Is the Urgency of Protecting Intellectual Property Rights in the Era of Economic Globalization and How is globalization and its implications for Intellectual Property Rights.

## II. RESEARCH METHODS

The research method used is a normative research method, using a statute approach related to the Urgency of Protecting Intellectual Property Rights in the Era of Economic Globalization. The statute approach is to examine matters relating to legal principles, views and legal doctrines, and laws and regulations related to Intellectual Property Rights, with accurate data and can be accounted for. Apart from that, an in-depth examination of the legal facts was also carried out to then seek solutions to the problems that arise in the symptoms in question. [17]

## III. RESULTS AND DISCUSSION

### A. The Concept of Intellectual Property Rights in the Era of Economic Globalization

After all, Intellectual Property Rights is a neutral legal concept. However, as an institution, Intellectual Property Rights also have a mission. [18] Among other things, guaranteeing the protection of the owner's moral and economic interests. For Indonesia, the development of the Intellectual Property Rights system has been directed to become a fence, guide and at the same time a beacon for industrial activities and trade traffic. On a macroeconomic scale, Intellectual Property Rights are designed to provide energy and motivation to the public to be more able to move all of their economic potential. [19] However, in the development of globalization, do not abandon the noble values of Pancasila as a legal ideal which is the source of all existing sources of law. Because basically, Pancasila is the touchstone of every change that has occurred in the Indonesian nation. The background and consequences of the position of Pancasila as the basis of the state can be seen from at least three aspects, namely political, philosophical and juridical (laws and statutory regulations). [20] Politically Pancasila can be seen as a *modus vivendi* or noble agreement that unites all primordial ties into one nation and all of Indonesia's vast and diverse homeland in the principle of unity. Philosophically, Pancasila is the basis of belief in the ideal society and the basis for administering the state which is crystallized from values that have grown and developed and are rooted far from the lives of the ancestors or ancestors of the Indonesian

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people. Juridically, Pancasila is a legal ideal (rechtsidee) which must be used as the basis and objective of every law and regulation in Indonesia. [21]

Therefore, every law that is born in Indonesia must be based on Pancasila by containing consistency of content from the highest to the lowest in the hierarchy. [22] Benefit in the context of regulating Intellectual Property Rights means that every intellectual property (creation, invention, creation) that is produced must have goodness and benefit for mankind. Furthermore, such creations or inventions must be able to increase the dignity and worth of the humans who produce them and those who use them, instead of degrading human dignity. [23] This principle of benefit thus allows the owner of Intellectual Property Rights to benefit both economically and morally as long as he does not use the Intellectual Property Rights he owns as a tool to take excessive (exploitative) profits to the detriment of human interests in general. [24] The more people feel the goodness and benefits of their Intellectual Property Rights, the more noble the owner of Intellectual Property Rights will be before humans and in the eyes of God Almighty. The main motivation that underlies a creator or inventor in making works of Intellectual Property Rights should be the desire for human life to be better because he uses his creations or inventions in living his life and is not controlled by the intention of wanting to reap abundant material benefits. [25] When facing the storm of the economic crisis, Intellectual Property Rights are proven to be one of the protective umbrellas for workers who are truly creative and innovative. More than that, Intellectual Property Rights can actually be empowered to reduce the level of economic dependence on foreign countries. [26] For Indonesia, accepting globalization and accommodating the concept of protection of Intellectual Property Rights does not necessarily nullify national interests. Alignment with the people remains a justification in the principles of regulation and rationality for the protection of various fields of Intellectual Property Rights at the national level. However, all of this must remain within the corridors of international law and norms. [27]

Intellectual property rights in principle are material rights that have economic value. Having economic value, in a commercial perspective means that it can be transferred, traded or leased. In the civil context, the economic value is the property of the inventor holding the intellectual property rights. [28] The government through creative economic agencies must be able to deliver creative workers to gain access to capital with debt guarantees. This is in line with the changing paradigm of the 1945 Constitution as a constitution in viewing the creative economy, through the last amendment it has shifted from limited positive right to extensive positive right. [29] The consequence of this change is the empowerment of citizens towards independence to create a welfare state. From a legal point of view, in fact the basis for alignment with the national interest has been arranged in various institutions of Intellectual Property Rights. In the field of patents, for example, monopoly control is limited to only one-fifth of a century. After that, the patent becomes public domain. That is, the monopoly claim is stopped and the public is free to use it. In the field of marks, Intellectual Property Rights firmly reject the monopoly on the ownership and use of brands that have a poor reputation. Such marks are free to be used and registered by others as long as they are for trade commodities that are not of the same type. Intellectual Property Rights only give stricter monopoly authority to brands that are already well-known trademarks. Beyond that, the community is free to use as long as it is in accordance with the rules. To be sure, an application for trademark registration will be rejected if it is based on bad faith. [30]

Substantively, the notion of Intellectual Property Rights can be said to be the right of ownership as works that arise or are born due to human intellectual abilities in the field of science and technology. Intellectual Property Rights are generally related to creations and industrial assets that have commercial value. Trademark as a product of intellectual work can be considered a commercial asset of a company, for this reason legal protection is needed to protect one's intellectual works. The birth of a brand begins with findings in other interrelated areas of Intellectual Property Rights. As in a brand, there are elements of creation, for example logo designs, letter designs or number designs. There is copyright in art, so what is protected is not copyright in art, but what is protected is the brand itself. Intellectual Property Rights as a property right in the realm of material law, there are two related sides, namely the juridical aspect and the economic aspect.

### 1. Juridical Aspects of Intellectual Property Rights

Juridically, the use of the term wealth is always associated with ownership of movable goods, immovable goods, tangible goods, or intangible goods. From a legal perspective, Intellectual Property Rights are classified as personal property rights that arise from natural human rights. Therefore, Intellectual Property Rights are similar to other material rights, which can be defended from the power of anyone who is not entitled. Historically, the birth of Intellectual Property Rights is a new form of development of conventional property rights or intangible property. or original, both in the field of technology, literature and science, as well as in the field of industry, but in something that is abstract and contained in that tangible object. [31]

Besides that, the difference with material rights in general is that there are similarities between material rights and intellectual property rights, that is, these property rights can be transferred to other people in various ways or legal events, such as inheritance, sale and purchase agreements, grants and so on as long as they do not conflict with applicable laws and regulations and propriety in society.

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### 2. Economic Aspects of Intellectual Property Rights

Economically, the exclusive rights contained in Intellectual Property Rights function to legalize the owner monopolizing its use or to legalize the owner. From an economic perspective, ownership of intellectual property is more of an industrial nature than as personal property. Therefore, exclusive rights to an intellectual property can also be exercised by other people with a license agreement where the licensee pays royalties to the right holder. In its development, the biggest breakthrough from this new regulation is that people can apply for loans with Intellectual Property Rights as collateral for debt. This applies both to loans with banks and non-bank financial institutions, where all the mechanisms are regulated in the relevant regulations.

For those who don't understand the benefits of this, that your intellectual property certificate can be used as collateral at the bank as a fiduciary. So, for example, we have a brand certificate, or a song copyright, then we can guarantee the certificate. Furthermore, let's just say that if a song for which you already have a copyright certificate is put on YouTube and then gets millions of viewers and likes, the economic value of your certificate will also increase and can increase the amount of the loan when we mortgage it to the bank. In its implementation later, financial institutions, both banks and non-bank financial institutions, will form an appraisal team tasked with assessing the proposed intellectual property object.

### B. The Urgency of Intellectual Property Rights Protection in the Era of Economic Globalization

The term globalization is absorbed by the academic world, the production and reproduction of its meaning is increasingly intensive. With the passage of time, the production and reproduction of these meanings have formed tangled threads that are increasingly unraveled and according to Peter Mercuse this is very dangerous because certain ideological interests are hidden within it. The word globalization is a word that is always confusing and presents several interpretation problems for experts, especially in the field of social sciences. [32] For an economist the term globalization is generally defined as a form of activity of multinational companies that receive capital directly and develop business networks across national boundaries. Meanwhile, for a sociologist like Anthony Giddens, considering the terminology of globalization from an economic point of view is considered too narrow. Sociologists believe that globalization is so multi-dimensional, a very complex understanding both economic, political, cultural, technological. Globalization has created problems in the order of modern society, culture, politics in almost all corners of the world. The presence of multinational companies with different characters in the host country has presented various problems which in the end require harmonization, for example on cultural issues in the host country. [33]

Thus globalization is synonymous with openness in the flow of finance, information technology, and labor cooperation in terms of the process of integrating the national economy into a world economic system based on free trade. From an economic perspective, the globalization that has taken place has also brought the world into a global economic order which has the following characteristics:

1. **Borderless**, meaning that national borders still exist and can be witnessed in real terms, however, economic boundaries are no longer visible, it is so easy for economic transactions to occur between countries.
2. **Rapid change**, changes that are so fast, especially in terms of information, all of this is due to inventions in the field of technology that make transactions and communication between countries easier.
3. **Hard competition**, intense competition between business actors. Competition is something that usually occurs in business activities, but in this era competition is a place to win the competition in various ways. Competition does not only occur between fellow business actors in one area (domestic) but also between local business actors and foreign business actors, between foreign business actors and so on. Thus competition is followed by various components of business actors.
4. **Standardization**, trade between countries tends to be carried out with various international standards for certain commodities.
5. **Global strategy**, generally multinational companies carry out global strategy techniques, that is, they make the same standards for products, prices, services. However, it is not uncommon for multi-domestic strategies to be carried out, namely adjustments to local culture in various ways

This intellectual property right is the result of human thought or creativity which results in a creation in the fields of art, literature, science, and technology in it. Those that have economic benefits are very important because an invention that does not have economic benefits cannot be said to be intellectual property. If we look at this Intellectual Property Rights from a news excerpt contained in the Washington Post, which says that Intellectual Property Rights are a human resource and are very important because in the current era of economic globalization, Intellectual Property Rights are a new paradigm that it is very important that we control The new paradigm in a very competitive economic globalization, and we need to know so that we can take advantage of these Intellectual Property Rights for our business. [34] This intellectual property right or Intellectual Property Right as an exclusive right, its contents need to be protected with the intention, namely to give appreciation to the creativity of the perpetrators of Intellectual Property Rights, to stimulate others to further develop so that the intellectual property rights system in the interests of society is determined through the market system. This Intellectual Property Rights System supports the establishment of a good

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documentation system for all human intellectual creativity so that the same work or technology can be avoided. These intellectual property rights need to be protected, namely industrial property rights which include inventions in the field of technology in the form of copyrights, trademarks, industrial designs, integrated layout designs, trade secrets and plant varieties, all of which must be given recognition and appreciation and legal protection. [35]

Human intellectual creations are an undertaking that has consumed energy, thought, a long enough time, and has also incurred considerable costs. Recognition and appreciation for all these efforts should be given exclusive rights to be able to fully exploit Intellectual Property Rights in accordance with human intellectual results and the sacrifices that have been made, so that given the opportunity to be able to enjoy economic benefits. [36] Economic rights that exist under Intellectual Property Rights (specifically copyrights containing economic rights and moral rights) can be exploited in such a way that they need to be adequately protected. This protection is in the form of a set of effective legal rules so as to avoid possible violations by those who are not entitled. Efforts to protect Intellectual Property Rights are crucial for countries in the world today. It is not an exaggeration to say that the protection of Intellectual Property Rights is as important as the protection of economic interests. In essence, the legal protection of Intellectual Property Rights contains recognition of said intellectual property rights, rights that within a certain period of time enjoy or exploit these assets, can only enjoy or exploit these rights with the permission or license of the right owner, because protection and recognition can only be given specifically or exclusively to the party owning the intellectual property. [37]

The purpose of legal protection for intellectual property is intended so that those who have the right can exploit their wealth with a sense of security and comfort. That sense of security and comfort then creates a climate that allows that person to work, by producing further creations or inventions. [38] On the other hand, with this legal protection, the owner of the right is asked to disclose the form and method of work as well as the benefits of the wealth he has acquired. That person can safely and comfortably express his work, because the law provides protection, conversely, the public can be included to enjoy or use it on the basis of a license or even develop it at a more advanced level. Therefore it is very wrong if the regulation of Intellectual Property Rights in Indonesia tends to prioritize individualism and forget about communalism. [39]

On the other hand, it is also not appropriate if communalism is put forward while individualism is discarded. The most moderate middle way is a balance between individual interests and the interests of the wider community. According to Muhammad Djumhana and R. Djubaedillah as a way to balance these interests, the regulation of Intellectual Property Rights must be supported by four other principles, namely: (1) the principle of justice, in which the Arrangement of Intellectual Property Rights must be able to protect the interests of creators or inventors, but on the other hand do not let the interests of the creator or inventor cause harm to the wider community, (2) the principle of economics, that the birth of intellectual works requires knowledge, skills, facilities, time and costs that are not small, then intellectual works have economic value and creators or inventors deserve economic benefits in the form of royalties or technical fees, (3) cultural principles, that intellectual work is a product of human culture which is essentially the basis for the birth of further works, and (4) social principles, that the regulation of Intellectual Property Rights does not only regulate individual interests, but j also manage the public interest. [40]

The legal principles of Indonesian Intellectual Property Rights are rooted in Pancasila, the 1945 Constitution, the social reality of the Indonesian nation. The legal principles of Intellectual Property Rights are: the principle of freedom to work, the principle of legal protection of Intellectual Property Rights, the principle of benefiting Intellectual Property Rights, the principle of economic rights for Intellectual Property Rights, the principle of Intellectual Property Rights for human welfare, the cultural principle of Intellectual Property Rights, the principle of protection of national culture, the principle of the state's authority to implement Intellectual Property Rights for the sake of the national interest, the principle of protection of Intellectual Property Rights with dimensions of morality and religion, the principle of limited exclusive rights, the principle of justice, the principle of Intellectual Property Rights with a social function and the principle of collectivism.

### IV. CONCLUSIONS

Based on the description above regarding the Urgency of Protecting Intellectual Property Rights in the Era of Economic Globalization. Intellectual property rights or Intellectual Property Right as an exclusive right, its contents need to be protected with the aim of rewarding the creativity of Intellectual Property Rights actors, stimulating others to further develop the intellectual property rights system for the benefit of society. In essence, the legal protection of Intellectual Property Rights contains recognition of said intellectual property rights, rights that within a certain period of time enjoy or exploit these assets, can only enjoy or exploit these rights with the permission or license of the right owner, because protection and recognition can only be given specifically or exclusively to the party owning the intellectual property. Legal protection for intellectual property is intended so that those who have these rights can exploit their wealth with a sense of security and comfort and if IPR is not protected it will be detrimental to the inventors of these innovations which in fact can have economic value, especially in the current era of globalization. For the people, especially in Indonesia, they must be more enthusiastic and have high competitiveness to find new innovations and not forget to register their Intellectual Property Rights. This is because Indonesia's commitment to the protection

and enforcement of Indonesia in the field of intellectual property rights is being tested. There are so many violations such as piracy, plagiarism and counterfeiting of intellectual works in Indonesia.

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