

# Intellectual Property Rights On Internet Sites: Normative Review And Analysis

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**Abstract.** This study seeks to examine and assess the significance of intellectual property rights (IPR) on internet sites and how they are governed under Indonesian law. Utilizing a normative legal research method with a statutory approach, the research draws on both primary and secondary data sources. The findings highlight the essential role and purpose of IPR protection in the context of online platforms. Namely, legal protection of the efforts of creators owned by individuals and organizations in creating works that have economic value contained in them, as well as to anticipate and also prevent infringement of intellectual property rights belonging to others. Intellectual property rights are also regulated in various legal regimes that are currently in force in Indonesia, such as Law No. 28 of 2014 concerning Copyright, Law No. 15 of 2001 concerning Trademarks and other implementing regulations. Due to the applicable legal objectives and structures, it is practically important for the Government to continue to optimize and review the effectiveness of the law on a regular basis to prevent IPR infringement on internet sites by cybercriminals.

**Keywords:** Copyright, Intellectual Property Rights, Internet Site.

## 1 Introduction

Globalization and modernization today have had a significant impact on technological advances and information that can be utilized for the benefit of human life.[1] In this era, the world of technology continues to experience developments in society and has made a change for every human being to be able to carry out his daily activities without knowing the borders of the country or commonly known as borderless.[2] The phenomenon of borderless world and technological advances are controlled and supported by the presence and development of the internet.

The internet has experienced remarkable growth in recent years. Previously, it was known only to a small group of individuals, particularly those with an interest in computing. However, in recent times, the use of internet services has surged considerably. Due to its advantages, such as a global network that spans all regions, the internet has managed to penetrate various aspects of human life,

including education, commerce healthcare, advertising, and entertainment.[3]

Internet Robotics has had a significant impact on human life, in the sense that something that was previously impossible in the real world, now it can happen in the internet world (cyberspace). For example, in the context of freedom of expression, the internet allows individuals to express themselves without the limitations that may exist in a situation without the internet. One aspect of freedom of expression on the internet is the ability to store, use, create, distribute, and transmit data. As a result, it is not surprising that this freedom often leads to negative consequences for some, particularly in the realm of intellectual property rights (IPR), including copyright and patent rights. From a historical viewpoint, the concept of IPR is neither new nor unique to the Unitary State of the Republic of Indonesia. The existence of IPR itself has existed and been practiced since ancient times, namely since the colonial era. Historical records show that during the colonial period, IPR was enforced in the fields of Copyright, trademark and industry. The Dutch laws and regulations that regulate IPR in this field are as follows:[4] Auterswet 1912 (Authors' Rights Act 1912 Copyright Act; S.1912-600) Reglement Industriale Eigendom Colonien 1912 (Colonial Industrial Property Rights Regulations 1912; S.1912-545jo.S.1913-214). Octrooiwet 1910 (Patent Act 1910; S.1910-33, yeast S.191133,s.1922-54).

The provisions regarding IPR in the colonial era as intended for its existence are still valid and maintained, until precisely in 1961, Indonesia already had regulations in the field of IPR and its existence was valid nationally, starting with the presence of the Law on Trademarks which was followed by the Copyright Law Number 6 of 1982 as amended several times last by Law Number 19 of 2002. Substantive changes to the Copyright Law are caused by several factors, such as Indonesia's accession as a member of the World Trade Organization (WTO) which will later ratify the agreement on trade aspects related to Intellectual Property Rights in the form of Ratification of the Law on Copyright.

The legal construction of IPR from the perspective of international law can be traced to its existence as in the Trade Related Intellectual Property Rights (TRIPs) agreement, countries participating in international agreements must adjust their domestic regulations with international provisions. Indonesia is one of the countries that signed the agreement, and its ratification has been carried out through Law No. 7 of 1994, which pertains to the ratification of the Agreement on the Establishment of the World Trade Organization (WTO).[3] The scope of IPR enforcement has also undergone development, if in the past, IPR enforcement was only applied to tangible goods in the real world, now, the scope of IPR existence has changed to tangible goods in cyberspace, one of which is in internet sites. The existing phenomenon, internet sites continue to increase from time to time. The rise of the installation of this internet site on the internet continues to increase both for commercial and non-commercial purposes, it turns out to open up opportunities for IPR infringement which includes copyright or patents. Especially with the increasing sophistication of information technology, the opportunity for these violations is even greater.[5]

The reality of the loss is shown by the ease of production, expert realization, data reflecting, modifying data and distributing data. Efforts to flate and modify data are sometimes very difficult to distinguish from the original data. Of course, if this happens continuously, it can be unsettling,

especially the interests of creators/copyright holders both morally and economically.

Currently, the advancement of science and technology and the increase in national development activities have made people in various aspects of life also improved, therefore efforts to create and update a law and regulation are needed to ensure legal certainty. Similarly, in the fields of science, art, and literature which are closely related to the issue of Intellectual Property Rights, with the increase in activities in the field of technology marked by the emergence of new inventions that are innovative but very unfortunate in the midst of the development of the science and technology sector are not supported by public awareness and market participants to be honest in understanding the importance of protecting Intellectual Property Rights for a product that is produced by someone. At this time, technology is very closely attached to people's lives where people have become very dependent on this internet technology. On the one hand, the internet will be very helpful in finding the source of information needed and facilitating the process of cross-border transactions that will be carried out online, on the other hand, it is clear that the internet also has a negative side if used improperly. Many crimes actually occur through internet media, for example various types of fraud through social networks, the process of illegal buying and selling transactions also uses the internet network, and the reproduction of creations through the internet network is increasing.

Cases related to copyright and trademark infringement through the internet and other communication media are examples that are rampant today. In addition, violations of the law in electronic transactions are also a very worrying phenomenon, electronic commerce or electronic transactions are a transaction mechanism that uses electronic communication networks such as the internet which are used both by developed and developing countries so that their activities can no longer be limited by geographical boundaries because they have cross-border borders and can increase the efficiency and speed of business implementation and government.[6]

Based on the facts presented above, the purpose of this article is to explore and analyze the significance of Intellectual Property Rights (IPR) on internet sites, as well as to examine how these rights are regulated under Indonesia's positive law.

## **2 Method**

The research method used is normative juridical, with a legislative approach, the data used is in the form of secondary data or data taken from literature studies, secondary data can be broken down into three forms, namely primary legal materials, secondary legal materials and tertiary legal materials, primary legal materials in the form of laws and regulations related to IPR, secondary legal materials in the form of literature, namely books, journals and proceedings, while tertiary legal materials are in the form of legal dictionaries and Indonesian legal dictionaries.

## **3 Results and Discussion**

The term Intellectual Property Rights (IPR) is derived from the translation of Intellectual Property

Right (IPR), as outlined in Law No. 7 of 1994 concerning the Ratification of the WTO (Agreement Establishing The World Trade Organization). IPR refers to the legal framework that governs all creations arising from human intellectual abilities. Essentially, IPR represents the right to wealth generated by intellectual capability, which is closely tied to personal rights, specifically human rights. The concept of property rights here refers to "ownership," a notion associated with social and legal institutions that involve both the "owner" and the object owned. Broadly speaking, when the concepts of "ownership" and "wealth" are linked to "rights," they are recognized from a legal perspective as rights related to ownership and rights concerning material assets. Fundamentally, material rights also encompass property rights because ownership is always linked to specific objects, whether tangible or intangible.

Theoretical developments, related to the protection of Intellectual Property Rights have undergone various developments along with the need to solve the problems that arise, namely problems in the sector of the use of Intellectual Property Rights, including the need for the settlement of legal disputes in the Court or in the case of international trade agreements, then so that the regulation of rights related to Intellectual Property can always run dynamically, it is necessary to expand the scope of IPR to include new uses.[7]

There are several theories that are used as the basis for IPR protection, including: Natural Rights Theory, Work Theory, Social Exchange Theory, Functional Theory. The theory as mentioned has explained that ownership of IPR is part of Human Rights as an individual with a mindset, so naturally the value of communalism must be ignored to recognize and give appreciation to individuals who have produced works, so that IPR in the above theories provides protection for individual IPR owners so that their rights are not violated by others.

The rapid development of technology has led to so many discoveries that can facilitate human activities. Through technology, humans can overcome difficulties arising from the limitations of distance, space and time. This is related to modernization, which is defined as the process or characteristic of a superior culture.[8]

Information and communication technology has changed human behavior globally. The development of information technology has caused the world to become borderless and caused significant social changes that take place very quickly. Information technology is currently a double-edged sword because in addition to contributing to human welfare, progress and civilization, it can also be used as a very effective means in activities that are categorized as unlawful acts.[2]

In today's era, everything is always transformed into an all-digital one, for example related to books, at this time books have changed, if in the past people only knew books in text format, then at this time people have been faced with the use of books in electronic format. With this digital transformation phenomenon, it is necessary to set rules that provide protection for IPR, this is in accordance with the principles of the rule of law. Based on the theory of the state of law that the function and purpose of a state is to maintain and maintain public order, where human rights are recognized and protected by the state, these rights are clearly regulated by the Indonesian government through Law Number 28 of 2014 so that both the community and the government must

be subject to the same law, treated the same so that order arises.

The theory of legal protection emphasizes the role of law in society to provide legal protection to members of society whose interests are disturbed such as violations of IPR, disputes that occur in society related to IPR must be resolved according to applicable law. The right to defend and the authority to file a lawsuit for compensation through the court is to protect the economic interests of IPR creators for the content available on the website/internet.

Furthermore, based on the theory of work in the theory of IPR protection, these rights must be protected by the state. The intellectual property rights owned by every IPR creator over the content available on the website/internet are clearly private, so the idea of protecting them arises. Every human work must be appreciated and get property rights in a general sense, namely property rights as a human right so that a person's intellectual property cannot be used without the permission of the owner.

In simple terms, intellectual property itself is wealth that arises or is born from human intellectual ability. Works that arise or are born from human intellectual abilities can be in the form of works in the fields of technology, science, art and literature. These works are born or produced on the intellectual ability of human beings through the outpouring of time, energy, thought, creativity, taste and karsa.[9]

Works that are born or produced on human intellectual abilities either through the outpouring of energy, mind and creativity, taste and karst are naturally secured by developing a legal protection system for such property known as the Property Rights system. Intellectual Property (IPR). The 12 IPRs are traditionally separated into two clusters, namely: Copyright and Industrial Property Rights, which consist of patents, brands, industrial product designs, and fraudulent competition countermeasures. The main functions and objectives of the creation of IPR include: As legal protection for creators owned by individuals or groups for their hard work in creating works with economic value contained in them. Anticipate and also prevent violations of IPR belonging to others. Increase competition, especially in terms of commercialization of intellectual property. Because the existence of IPR will encourage creators to continue to work and innovate, and can get appreciation from the community. It can be used as a consideration to determine research strategies and industries in Indonesia.

The existence of intellectual property law, which has been regulated for a long time in several regulations, actually requires other legal components in its implementation, in line with Laurence M. Friedman, namely the need for a structure in the form of an agency or institution that is created through a legal system with various types of functions in supporting its enforcement, then a substance component is needed, namely the external aspects of the legal system or norms that are born from this system. Then the last is culture/culture in the form of behavior that directs society to the law, this is related to the legal system.[10] In Indonesia, regulations regarding the protection of intellectual property law have been accommodated separately based on the form of intellectual property itself, for example, science, here gets the protection of intellectual property regulations which can be referred to by Law Number 28 of 2014 concerning Copyright (UUHC).

Related to the theme of this article, the IPR discussed is IPR that intersects with internet sites. The internet site itself is a number of web pages containing information on interrelated topics, which can consist of text/writing, photos, images, even music, videos, databases and software. Law Number 19 of 2002 concerning Copyright ("UUHC") automatically protects -- without having to register with the Directorate General of Intellectual Property Rights ("DG IPR") -- both the design of the internet site and the content (content) of the internet site, from publication and reproduction by other parties without the permission of the copyright holder. Copyright protection is obtained by the creator or grantee, as long as the design and content of the internet site are original works.

An internet site can contain a number of intellectual property rights. In addition to the design of the internet site and the content of the internet site (which can be in the form of text/writing, photos, images, even music, videos, databases and software) which are the object of copyright protection, other elements that are often found on an internet site are logos, business names, brands/product or service names, symbols, slogans; domain name; and features with web technology such as search engines, online shopping systems and navigation systems.

For logos, brand names, icons and slogans, the protection is regulated by Law No. 15 of 2001 concerning Trademarks ("Trademark Law") if these elements have distinguishing power and are used in trading activities of goods or services (Article 1 paragraph [1] of the Trademark Law). Unlike copyright, only trademarks registered with the Directorate General of Intellectual Property Rights receive legal protection.

Domain names are also not included in the object of copyright protection. However, domain names can be registered as trademarks at the Directorate General of Intellectual Property Rights. Domain name registration as a trademark at least prevents other parties from using and registering your domain name as a trademark in the Directorate General of Intellectual Property Rights for products or services that are similar to the products/services listed in the registration. In choosing a domain name as an internet site address, it is also necessary to ensure that the domain name does not infringe on the trademark rights of other parties. If it is proven that there is a violation of rights, then the owner of the internet site can lose his rights to the domain name in question due to a lawsuit by the legitimate trademark owner. Although registration is not required to obtain copyright protection, in countries that have IPR offices that organize copyright registration, such as in Indonesia, registration will be more beneficial to copyright holders, especially in terms of defending rights in the event of a dispute or piracy. Every copyright registration will be published in the General Register of Works at the Directorate General of Intellectual Property Rights (Article 37 paragraph [1] of the UUHC) and the Copyright Registration Certificate is considered as prima facie evidence of ownership of a work. As long as no other party can prove otherwise in court, the facts listed in the copyright registration certificate are considered correct (Article 5 paragraph [1] of the UUHC).

An application for copyright registration for an internet site should be submitted by the copyright holder as soon as an internet site is ready to be broadcast or published. The copyright of the internet site is registered as a facial arrangement by displaying the appearance of the layout/design of the internet site. The copyright protection period of an internet site is valid for 50 (fifty) years from

the time it was first published (Article 30 paragraph [2] of the UUHC), or if the copyright is owned or held by a legal entity, it is valid for 50 (fifty) years from the time it was first announced (Article 30 paragraph [3] of the UUHC).

Many cases of IPR (Intellectual Property Rights) violations related to cybercrime occur today, people will easily commit infringements on other people's copyrighted works through internet media which as it is known can be reached without borders and without distance and can be used freely. However, this is not balanced with adequate laws and regulations, many violations that occur but can easily escape the legal snare because regulations on cybercrime do not have jurisdiction.

Based on the legal system and its relationship, Indonesia in this case is represented by the government in carrying out its duties and obligations must be based on laws or regulations, then the government is also obliged and must be able to guarantee human rights. Supervision from judicial bodies is also used to protect these rights, in relation to IPR that in Copyright there is an exclusive right for a creator of this exclusive right means that only the copyright holder is free to exercise the copyright, then other rights such as economic rights and moral rights of the copyrighted work.

Regarding legal protection, it can be examined under the ITE Law, specifically in Article 25, which addresses the protection of intellectual property rights over electronic information and/or electronic documents that are created as intellectual works, including those found on internet sites and the intellectual works they contain. Specifically, the legal basis for Intellectual Property Rights itself can be classified based on the form of IPR, which includes:

- 1 Copyright, which is regulated in Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright and its implementing regulations, namely Government Regulation of the Republic of Indonesia Number 1 of 1989 concerning Translation and/or Propagation of Works for the Benefit of Education, Science, Research and Development;
- 2 Patents regulated in Law of the Republic of Indonesia Number 13 of 2016 concerning Patents, Government Regulation of the Republic of Indonesia Number 27 of 2004 concerning Procedures for Implementing Patents by the Government, Government Regulation of the Republic of Indonesia Number 34 of 1991 concerning Procedures for Patent Requests, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 38 of 2018 concerning Patent Applications;
- 3 Trademarks are regulated in the Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks, Government Regulation of the Republic of Indonesia Number 24 of 1993 concerning Classes of Goods or Services for Trademark Registration, and Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 67 of 2016 concerning Trademark Registration;
- 4 Industrial Design regulated in Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design, Explanation of Law Number 31 of 2000 concerning Industrial Design, Government Regulation of the Republic of Indonesia Number 1 of 2005 concerning the Implementation of Law Number 31 of 2000 concerning Industrial Design.

## 4 Conclusion

Based on the above study and analysis, it can be concluded that the important meaning of the existence of Intellectual Property Rights (IPR) on internet sites has a basic purpose, namely as legal protection for creators owned by individuals or groups for their hard work in making works with economic value contained in them, Anticipating and also preventing violations of IPR belonging to others, Increase competition, especially in terms of commercialization of intellectual property. Because the existence of IPR will encourage creators to continue to work and innovate, and can get appreciation from the community, and can be used as a consideration to determine research strategies and industries in Indonesia. The form of regulation based on positive law in Indonesia for the legal protection of IPR contained in the internet site is divided into several forms in accordance with IPR, namely Copyright, Patent, Trademark and industrial design which have been regulated in a separate law and its implementing rules. In this problem, it is better to supervise and maximize the performance of law enforcement officials in enforcing laws. There needs to be socialization by instilling habits in the community, giving direct reprimands to internet sites that facilitate illegal downloads, and blocking internet sites that facilitate illegal downloads.

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