

The Concept of Legal Protection of Intellectual Property Rights

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Abstract. This article describes the concept of legal protection in intellectual property rights. Using a qualitative approach, normative juridical studies, through library research in collecting data, will be analyzed descriptively. The study results indicate that the state has guaranteed intellectual property rights through existing legal instruments.

Keywords: Intellectual Property Rights; Protection; Law

1 Introduction

Indonesia is a legal state where People's sovereignty is in their hands, and they are in charge of it, implemented according to the Constitution. The essence of popular freedom is to provide democratic space in the nation's and state's life. In a democratic country, the relationship between the state and the people reflects symbiotic mutualism.[1] It will be done if there is sufficient space for community political activity so that it can give color to the life of democracy in a country. The parable is like the political superstructure and infrastructure. The political superstructure can be interpreted as the atmosphere of political life at the government level related to the life of state institutions and relations between institutions.

In contrast, political infrastructure is defined as the atmosphere of political life at the community level, influencing the implementation of tasks. State institutions. It also relates to the choice of a country's system of government, whether democracy (governance of all) or autocracy (government of one person). Democracy requires recognition of the sovereignty of the people (civil society). The characteristics of civil society include the existence of individual and group independence. There is a free public space when dealing with the state, and there are restrictions on state power.[2]

The next essence a legal system is the protection of Human Rights (HAM). There is constitutional protection of human rights with legal guarantees for demands for their enforcement through a fair process. The security of human rights is widely disseminated to promote respect for and protection of human rights as an essential feature of a democratic rule of law.[2] From birth, every human being has rights and obligations that are free and basic. The formation and administration of a state's power must not reduce the meaning or significance of freedom and human rights. Therefore, the protection and respect for human rights is a crucial pillar of every country called a state of law. If human rights are neglected or violated intentionally in a country and the suffering caused cannot be handled fairly, then the country concerned cannot be called a state of the law in the true sense.

Talking about human rights, copyrighted works need to be legally protected. Based on several definitions of copyright above, it can be concluded that basically what is meant by

copyright is; "A particular right held by the author of a work in the disciplines of science, art, and literature that may be asserted against anybody who infringes on that right in accordance with the applicable legislation."

[3] These copyrights, such as works of books, music, films, computer programs, dramas, paintings, etc. The economic value and satisfaction in a copyrighted work create a conception of the need for legal protection. The development of this concept, when viewed from a business perspective, is to encourage the growth of attitudes and a culture of respecting or appreciating the efforts of others who have an essential meaning. In this article, The issue of legal protection in intellectual property rights will be discussed.

2 Research Methods

This study is normative juridical law research employing a legal history method and secondary data in the form of primary, secondary, and tertiary legal sources. [4] especially documents and literature related to the history of the rule of law and intellectual property rights associated with respect and protection of intellectual property in Indonesia. The data collected will be analyzed in the form of explanations utilizing quantitative legal theoretical methodologies, using analogous interpretations of legal philosophy, legal theory, and legal dogmatics to the problems studied, then drawing deductive logic of thinking by presenting some casuistic data.[5]

3 Results and Discussion

Legal theory can also be understood as a legal discipline that critically from an interdisciplinary perspective, analyzes various aspects of law individually and in its entirety, both in its theoretical conception and in its practical processing, to obtain a better understanding and more straightforward explanation of the materials. the law that has been presented.[6] Discussions about legal theory also cannot be separated from legal thoughts.

Legal thought developed along with the history of legal philosophy and the legal schools. When the law is interpreted as values and principles of morality, it gives birth to the flow of natural law, the law which is interpreted as a positive norm system in legislation gives birth to legal positivism, the law which is interpreted as a pattern of habitual behaviour in society gives birth to the flow of legal history.[7] The law, which is interpreted as a court decision, gives birth to the flow of American sociological jurisprudence.

When the law is interpreted as facts of symbolic behaviour, it gives birth to the flow of legal realism. Prof. Atip Latipulhayat, in one of his lecture sessions, said that legal theory could also be understood as an expert's view that is conveyed within a certain period for other people to know.[8] The legal positivism thought of Hans Kelsen argued that law is a positive norm in the statutory system and is independent of social facts. What has been normalized into law is law so that it exists as a coercive normative institution. [9]

The validity of a norm does not lie in the conformity between the middle and reality but in the standards that lie above it to the ground norm, which functions as a source of obligation in the legal field. This fundamental norm can be formulated in the form of a legal rule which is considered the highest in the legal area. The rule reads as follows: one must conform to what is prescribed (man soll sich so verhalten wie die verfassung vorschreibt). For Kelsen, the primary example merely functions as a transcendental-logical condition for enacting the entirely legal

system. That means that the obligations and obligations related to the law do not come from the content of specific legal rules but a legal perspective.

Next is the flow of utilitarianism pioneered by three of its leading exponents. By holding the principle that humans will take action to get maximum happiness and reduce suffering, Bentham tried to apply it in the field of law. The goodness or badness of an effort is measured by whether the action brings happiness. Likewise, with legislation, good and evil are also determined by these measures. Therefore, laws that get the pleasure of the most significant part of society will be judged as good laws.

According to Van Apeldoorn's account, some adherents understood that law was power (according to Van Apeldoorn's version), among them the Sophists in Greece, who said justice was what benefited the strong. Meanwhile, Lassale noted that a country's constitution is not a written constitution that is only a piece of paper but a real power relationship in a country. According to Gumpowich, the law is based on the subjugation of the weak by the strong, and law is an arrangement of definitions formed by the strong to maintain their power. Some followers of positivism also say that obedience to the law is nothing but the submission of a weaker person to a stronger will so that the law is only the right of the strongest person.

Copyright protection then became something significant, both nationally and internationally, as was agreed in Geneva in September 1990. The Intellectual Property In Business Briefing discussed the issue known as TRIPs (Trade-Related Aspects of Intellectual Property Rights). There are important issues that are included in the structure of the WTO institution, namely TRIPs (Trade-Related Aspects of Intellectual Property Rights), which handles avowedly issues relating to Intellectual Rights, in the post-GATT (General Agreement on Tariffs and Trade) era of globalization and the maturity level of the WTO (World Trade Organization).

It is clear that international trade is more than simply about marketing. [10] But it also includes various pressures that have been put in place in areas that are not traded, such as issues of human rights, freedom to strike, and so on (Sudargo, 1992: 21). This implies that protecting intellectual property rights is as vital as protecting economic interests, especially from an international perspective. Protection is no longer a technical legal problem and concerns business disputes in achieving profits.

Article 4 of Law Number 28 of 2014 concerning Copyright states that copyright is an exclusive right consisting of moral rights and economic rights. According to Article 5, Piece Of content are those that are inextricably linked to the creation. Meanwhile, according to Article 8, Economic Rights are special rights owned by Copyright Owners to obtain economic benefits from their Works. 6 To get protection through copyright, there is no need to register. Registration is for verification purposes only. Thus, the copyright is automatically attached to the copyrighted work once a job is tangible. Protection regarding copyright cannot be assigned to ideas or ideas because the position must have a particular form, be personal, and display authenticity as a copyrighted work manifested by ability, creativity, or expertise so that a copyrighted work can be seen read or heard.

Based on the theory of legal protection believe the legal system has a significant influence in society is to provide legal protection to community members whose interests are disturbed, disputes that occur in society must be resolved according to applicable law. The rights to defend and the authority to file a reparation suit with the Court Of law are to protect the creator's economic interests. Electronic books are familiar among certain circles, most of which are specifically carried out on novels and many illegal websites that provide books in electronic format, along with data obtained by the author regarding several stories published in the country and abroad, which can be downloaded through illegal websites.

The problem of violation of electronic book copyright cannot be solved by Indonesian rules and regulations. Intellectual property laws are a challenge that is only getting worse as science and technology advance, as well as international trade. At the beginning of its story, the problem was simple, and it only involved demands that it be mastered and used for whatever purpose it had been found, created with the ability of his energy and intellectual who has the right to be the owner of work if the raw material comes from another party. Problems are getting more and more complex with the industrial revolution in England and the political revolution in France. The development of science and technology has a significant influence on Intellectual Property Rights. In the last decade, the issue of IPR has become even more complex. The problem is no longer purely in IPR alone because there are many interests related to intellectual property rights; the political and economic areas have become inseparable elements in discussing IPR issues.

The rights to defend and the ability to bring a compensation claim in the Commercial Court are intended to preserve the creator's economic interests as well as to clarify the Copyright holder's and the Commercial Court's roles. The copyright holder can submit a settlement of civil disputes for copyright infringement to the Commercial Court, a claim for compensation of a certain amount of money, the calculation of which must be reasonable and accountability can be accounted for. Article 95, paragraph 1 of the Copyright Copyright issues can be resolved by alternative dispute resolution, arbitration, or the courts, according to the law. Criminal penalties are also emphasized in Law Number 28 of 2014, which states in article 112: "Anyone who unlawfully commits an act as referred to in Article 7 paragraph (3) and Article 52 for Commercial Use shall be imprisoned for a maximum of two years and a maximum fine of 300 million rupiahs."

The article above explains, in general, that anyone who violates copyright or exclusive rights to other people's creations can be charged with the provisions that have been set. The form of the violation is either by broadcasting, exhibiting, listening to, or selling to the public the results copyrighted works of others that are protected are strictly enforced in the article, they are subject to sanctions, only the problem that arises at this time is the concept of a state of law where the role of the state to create security and maintain.

4 Conclusion

The state, in this situation, is represented by the government, and its duties and obligations must be based on laws or regulations, according to the notion of the rule of law and its relationship to the state of Indonesia as a state of law. Human rights must be guaranteed to the government as well. The rights of these people are also protected by judicial oversight. In terms of IPR, a creator has an exclusive right; this implies that only the copyright holder is free to exercise the copyright, and that other rights such as economic rights and morality of his inventions are not.

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