

The Protection of Intellectual Property Rights to Creative Economy Products in the Digital Era

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Abstract. As a work of creativity, the product design sub-sector in the creative economy (*Ekonomi Kreatif* or ekraf) is an intellectual property that needs to be awarded as intellectual work and obtain legal protection. Using a descriptive-analytical, normative juridical method, this study will examine the importance of preserving Intellectual Property Rights, or IPR, and the legal protection of items produced by product design actors. The findings are based on a review of the literature. According to the findings of the study, intellectual property rights (IPR) might be used to protect domestic products developed by product design business actors in the age of digitization. Product design can be understood as a design activity from the standpoint of IPR by emphasizing aesthetic features that fall under the scope of industrial design IPR and/or design activities that prioritize functional elements that fall under the scope of patent IPR. As a product design company, you can obtain IPR legal protection by registering an industrial design IPR and/or patent with the General Directorates of Intellectual Property of the Ministries of Law and Human Rights of the Republic of Indonesia.

Keywords: Intellectual Property Rights, Industrial Design, Patents, Product Design, Creative Economy.

1 Introduction

The digital era's development is accelerating in tandem with the movement of globalization. This creates unpredictability for corporate actors, necessitating adaptability to current conditions. Coupled with the fact that Indonesia would benefit from a demographic boost, with the population of working ages expected to exceed 60 percent by 2030, with 27% percent of them being young people aged 16 to 30 [1].

Of course, with the developments that have occurred, it creates a consequence for business actors to understand the applicable legal provisions regarding the business being undertaken, not least in the creative economy product design sub-sector (*Ekonomi Kreatif/Ekraf*), which in this case relates to the design of products from creativity. The intellectual abilities of business actors can be protected by law to encourage the creation of products with more value and quality.

Of course, the developments that have occurred create a consequence for business actors to understand the applicable legal provisions regarding the business being undertaken, not least in the creative economy product design sub-sector (Ekraf), which in this case relates to the design of products from creativity. The intellectual abilities of business actors that can be protected by law encourage the creation of products with more value and quality [2]. The

consequences or risks of intellectual property infringement also increase the large business potential (business) that can be developed in an intellectually-based creative economy.

When discussing the creative economy, it is impossible to avoid the topic of intellectual property rights (IPR). Both are known as intellectual property-based creative economies. IPR is a translation of the concept of Intellectual Property Rights (IPR), which is governed by Law Number 4 of 1994 concerning the Ratification of the WTO (World Trade Organization Agreement). Intellectual property rights are rights derived from the outcomes of human brain thinking that result in the creation of an item or method that is beneficial to mankind [3]. Works in science, art, literature, or technological inventions are examples of copyrighted works created by person intellectual creation through inventiveness, taste, and intention. The copyrighted work grants the original author or innovator rights to ownership [4][5][6].

The location of the power of creative economic actors is not in the power of capital but in their creativity, which must be protected. Unfortunately, the awareness of business actors in Indonesia still tends to be low to protect their business intellectual property, which is a valuable and useful asset so that their copyrighted works are not stolen or imitated by other irresponsible parties [7, 8].

Based on this definition, the study intends to investigate the safeguarding of intellectual property rights against items produced by actors in the creative industry in the digital era. This study will employ two problem formulations connected to the critical importance of maintaining ownership of intellectual property and the legal protection of domestic products developed and commercialized by the product design sub-sector in the creative economy in the digital era.

2 Research Methods

The normative juridical approach method was employed in the drafting of this legal text. Soekanto and Mamudji claim [9], Legal research employing library materials to conduct searches relating to the subject under study is a normative juridical approach. This research is conceptual descriptive in nature, with the goal of obtaining an idea of a condition at a certain period [10][11][12]. Data gathering methods involve identifying hypotheses, exploring literature, and assessing documents containing data relevant to the research issue [12].

3 Results and Discussion

3.1 The Urgency of Protecting Intellectual Property Rights on Domestic Products Produced and Commercialized by Business Actors from the Product Design Sub-Sector in the Creative Economy in the Digital Era

As defined by Law Number 24 of 2019 Concerning the Creative Economy, hereinafter referred to as the Creative Economy Law, cultural heritage, science, and/or technology are the basis or foundation of human creativity that underpins the creation of IP as a product of the creative sector.

Based on the latest survey conducted by the Central Statistics Agency and the Creative Economy Agency (*Badan Ekonomi Kreatif/Bekraf*), the total number of creative and creative sector business actors who pocketed IPR was only 11.05% of the 8.2 million business actors.

At the same time, the rest had not registered their products. Most of the registered creative economy actors can be seen through the data as follows:

Table 1. Percentage of IPR Registrations.

No.	Creative Economy Subsector	IPR Registration Percentage
1.	Movies, animations and videos	21,08 %
2.	Culinary	19,75 %
3	Television and radio Publication, Fashion	16,59 %
4	Product design	15,86 %
5	Visual	14,14 %
6	Communication	11,56 %
7	Design	7,25 %
8	Music	6,88 %
9	Craft	6,69 %
10	Design interior	5,45 %
11	Architecture	3,64 %

From this information, it is clear that a lot of creative players, particularly those in the product design sub-sector, should be suspected of being unaware of the need of IPR registration.

When it comes to product design, it is the Ministry of Tourism and Creative Economy (Kemenparekraf) or the Tourism and Creative Economy Agency (Baparekraf) structures that oversee the creative market in Indonesia and clarifies it as an expert service that creates and develops concepts and specifications that optimize the functions, value, and visual appeal of products and systems for the benefit of both users and makers (Industrial Design). [13][14][15].

According to the concept of product design, when it is related with the scope of IPR, the product design must be able to be realized in the form of commercial goods, and it must comprise two (two) necessary elements in the process of realization. Product design embodiment from the standpoint of look (aesthetic impression); Product design embodiment from the standpoint of function. The first aspect is related to Industrial Design Intellectual Property Rights (Article 1 point 1 of the Industrial Design Law), which states that industrial design is a process of creation involving form and arrangement. The second part, product design embodiment from a functional standpoint, can give rise to an innovation and is strongly tied to patent IPR (Law Number 13 of 2016 Concerning Patents).

Anton E. Wardhana, S.Kom., M.Sc., Head of Sub-Directorate of Design and Manufacturing Inspection of the Directorate General of Intellectual Property of the Ministry of Justice and Human Rights of the Republic of Indonesia, stated that advantages can be acquired by KI signing up, including:

- a. Legal protection for IPR owners
If the company registers an intellectual work, the work will automatically receive legal protection;
- b. Anticipatory forms of IPR violations
The registration of intellectual works is also a strong foundation against people who plagiarize or use the work illegally. Therefore, the other party can be more careful not to take other people's work;
- c. Increase competition and expand market share

Through HKI, people will be motivated to work and innovate so that competition will increase. This will indirectly make companies compete with each other to produce the best work.

3.2 Legal Protection for Domestic Products Produced and Commercialized from the Product Design Subsector in the Creative Economy in the Digital Age

Intellectual Property Rights (IPR) is an intangible property right on property originating from a person's intellectual property. For this reason, assets must have a legitimate owner. There is a need for legal provisions that need to be carried out so that a property can have protection. If there is a dispute over a work produced, the determining factor is the national law which is the rule of law in protecting one's intellectual rights [16–18].

Industrial design rights are protected in Indonesia through a registration method in accordance with the fundamental framework, with the person who initially registered the design with the DJKI Kemenkumham RI being a genuine and acknowledged design owner. In general, protection will be provided since the advent of design-related freedoms, which occur concurrently when a designer realizes a design. However, registering the revised design with the DJKI Kemenkumham RI provides concrete protection [19].

The government's responsibility, which in this case is carried out by the Directorate General of Intellectual Property (*Direktorat Jenderal Kekayaan Intelektual/DJKI*) of Ministry of Law and Human Rights (Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia/Kemenkumham RI) to the owner of the right to IP, includes two main things: providing exclusive rights and legal protection. Exclusive rights mean that people who have registered will have a monopoly right to prohibit other parties from using registered IPR without permission, let alone copying a design. If this happens, the owner has the right to fully prohibit it. Furthermore, legal protection implies that the right owner has the right to complain about violations of intellectual property rights in order to keep the unique asset owned [20].

3.3 Legal Protection for Products Produced from the Product Design Subsector (Aesthetic Aspects) Based on the Law on Industrial Design

In understanding legal protection for products produced from the product design subsector (Aesthetic Aspects) closely related to industrial design intellectual property rights. The following is a description of the elements that interpret the contents of Law Number 31 of 2000 concerning Industrial Design, including:

1. Registration
The protection of industrial design rights in Indonesia is obtained through a registration mechanism under the constitutive system in which all forms of the IPR application process are submitted to the DJKI Kemenkumham RI. Since August 2020, the entire IPR application process has been completed based on the website or online system.
2. Product Novelty
The step that designers need to consider before applying for industrial design IPR registration is to pay attention to the novelty of the products produced.
3. Classification (protected and unprotected)
The resulting product must be included among the 32 sub Locarno Classifications.

4. Exclusive Rights
Industrial design rights holders have exclusive rights and may not be used by others without their permission in their industry;
5. Term
Industrial design rights are only valid for ten years from the date of acquisition and cannot be renewed.
6. Transfer of Rights
Design rights can be passed on for a variety of reasons, including: a. inheritance, b. grant, c. are going to, and d. other legal grounds.
7. License
Licensing or issuing permits from industrial design rights holders to third parties in exchange for the financial advantages of an industrial design for a set length of time.
8. Dispute Resolution
The legitimate owner of the industrial design right or the licensee may file an action with the Commercial Court to recover damages and/or the termination of all acts against anybody who willfully and without rights commits an act harmful to the holder of the commercial design property.

3.4 Legal Protection for Products Produced from the Product Design Subsector (Function Aspects) Based on the Law on Patents

Understanding legal protection for products produced from the product design sub-sector (Function Aspects) is closely related to patent IPR. The following is a description of the elements that interpret the contents of Law Number 13 of 2016 concerning Patents, including:

1. Registration
Patent protection in Indonesia is obtained through a registration mechanism following the constitutive system in which all forms of the IPR application process are submitted to the DJKI Kemenkumhan RI.
2. Product Novelty
Before submitting an application for registration of an IPR patent, the designer must evaluate the novelty of the invention as well as the creation of current goods that can be implemented in the industry.
3. Classification (protected and unprotected)
The finished product must be covered by an ordinary or simple patent.
4. Exclusive Rights
Patent holders have exclusive rights and can ban anyone from using their products without their permission.
5. Term
Patent protection is valid for ten years, while simple patents are valid for twenty years from the date of receipt and cannot be prolonged.
6. Transfer of Rights
Design rights can be passed for a variety of reasons, including: a. lineage, b. give up, c. are going to, d. waqf, and e. other legal grounds.
7. License
The patent holder grants a license, either exclusive or non-exclusive, for a set amount of time and under specific terms.

9. Dispute Resolution
10. The proprietor of the patent or licensee may bring a claim for compensation with the court for commerce against anybody who undertakes an act damaging to the patent holder willfully and without rights.

4 Conclusion

Given the results of the preceding research it is possible to conclude that the Creative Economy's product design sub-sector and Intellectual Property Rights are related. IPR can be the basis for protecting domestic products produced by product design actors in the digital era. From the standpoint of intellectual property rights, product design can be defined as a design activity that emphasizes aesthetic elements that are covered by design-related trademarks and/or design activities that prioritize functional elements that are covered by patent ownership rights. In this case, every product design actor can have IPR legal protection by registering industrial design IPR and/or patents as Indonesia adheres to a constitutive system. IPR legal protection is given to parties who have previously applied for registration with the DJKI Kemenkumham RI. As a result, product design actors must thoroughly comprehend product design from an IPR standpoint, as well as the restrictions governed by Law Number 30 of 2000 about Industrial Design and Law Number 13 of 2016 concerning Patents.

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