

## Protection of Intellectual Property Rights in International Trade

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**Abstract**---*That intellectual property is the creation of ideas in the form of new discoveries, literary works, and works of art, symbols, names and images used in trade. Of course, intellectual property is closely related to the world of commerce because its emergence is triggered by the desires of the members of the World Intellectual Property Organization who want to protect their economies in the era of free trade. In this case how the form of protection of intellectual property rights in the perspective of international trade, it can be seen that basically the laws and or regulations in every country in the world are different and each country has the right to implement its own legal rules in the jurisdiction of their country.*

**Keywords**---*country, intellectual property rights, international trade, legal rules, protection.*

### Background Problems

Intellectual property rights are closely related to objects (intangible) and protect intellectual works that are born from human creativity, taste, and intention. The World Intellectual Property Organization (WIPO), an international institution under the United Nations (UN) that deals with the issue of Intellectual Property Rights, defines Intellectual Property Rights as "creations resulting from the human mind which includes; inventions, literary and artistic works, symbols, names, images and designs used in trade" (Utomo, 2010).

Judging from the history of the birth of Intellectual Property Rights, the World Intellectual Property Organization (WIPO) states that what is meant by intellectual property is Creations of the mind: inventions; literary and artistic works; and symbols, names, and images used in commerce.

That intellectual property is the creation of ideas in the form of new discoveries, literary works and works of art, symbols, names and images used in trade. Of course, intellectual property is closely related to the world of commerce because its emergence is triggered by the desires of the members of the World Intellectual Property Organization who want to protect their economies in the era of free trade.

Based on the understanding of intellectual property, what is meant by Intellectual Property Rights is the right granted to everyone to the creation of ideas in the form of discovering new, literary works and works of art, symbols, names and images used in trade (Sutiyoso, 2012).

One of the known intellectual property rights is patent rights. Patents or octroi have existed since the 14th and 15th centuries, for example in Italy and England, in this case, the nature of patent rights was not aimed at inventions or inventions (uitvinding) but prioritized to attract experts from abroad. That is so that experts from abroad settle in the countries that invited them so they can develop their respective expertise in the inviting country to advance the population of the country concerned (Sudaryat, 2010; Mertokusumo, 1996).

The 8th Uruguay Round (Uruguay Round) has brought participating countries to agreements that have an effect on international trade. At the meeting, a multilateral agreement was agreed upon which was called the World Trade Organization Agreement (WTO Agreement). The participating countries signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations in 1994 in Marrakech, Morocco.

That by signing the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations, the signatory countries agree to sign the World Trade Organization Agreement (WTO Agreement) and its attachments. Provisions regarding Intellectual Property Rights can be found in the attachment to the WTO Agreement, namely Annex 1C entitled Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs

Agreement). The TRIPS Agreement entered into force in 1995 (Arsawati, 2016). The transition period applies to developing countries that must enter into force no later than four years thereafter or in 2000, while underdeveloped countries are given no later than the beginning of 2006.

Based on the background description of the problem above, the authors in this study are interested in examining how the form of protection of intellectual property rights in the perspective of international trade, it can be seen that basically the laws and or regulations in every country in the world are different and each country has the right to implement the rules its own law in the jurisdiction of the country.

### *Problem Formulation*

What is the form of protection of intellectual property rights from the perspective of international trade?

## **Research Methods**

This study uses a type of normative legal research that is studying and analyzing legal materials and issues based on regulations. This research was conducted to solve legal problems that arise while the results to be achieved are prescriptions about what should be done (Marzuki, 2005). In this case, research related to the Protection of Intellectual Property Rights in International Trade. The approach method is used in this study uses a conceptual approach which is an approach that moves from regulations and / or doctrines that develop in the science of law, in order to find ideas that give birth to legal understandings, and principles of law or legal arguments which is the back of researchers to build legal arguments in solving the issues at hand (Marzuki, 2005). This conceptual approach is used to discover the views and doctrines that develop in the science of law, the study of legal principles relating to the Protection of Intellectual Property Rights in International Trade.

## **Discussion**

### *A form of protection of intellectual property rights in the perspective of international trade*

Intellectual property rights are basically private (civil) rights, in the sense that a person is free to apply for registration and protection of his intellectual property rights or not (Munandar & Sitanggang, 2009; Sudharma *et al.*, 2018). If no registration is carried out, nothing will be claimed, but it will result in an own loss if the person others deliberately use or even recognize works that are not their own creation.

Intellectual property rights are the equivalent words commonly used for Intellectual Property Rights, namely "a right that arises for profit sharing thoughts that produce a product that is beneficial to humans ". Intellectual Property Rights are closely related to the form of protection of intellectual property rights from the perspective of international trade, this is because intellectual property rights are something that arises from the results of thoughts and or ideas.

The law has determined certain patterns of behavior, so everyone should behave according to the predetermined pattern. In line with Hans Kelsen, Gustav Radbruch is of the view that law must contain 3 (three) values of identity, namely the principle of legal certainty (*rechtmatigheid*), the principle of legal usefulness (*zwechtigheid*) and the principle of legal justice (*gerechtigheid*) (Tanya, 2010; Soekanto & Purbacaraka, 1994). In the perspective of justice in providing protection to intellectual property rights the principle is to provide justice for those who create intellectual property.

The form of protection of intellectual property rights in the perspective of international trade can refer to the theory of Hans Kelsen in his general theory of law and state, having the view that law as a social order can be declared fair if it can regulate human actions in a satisfactory way so as to find happiness in them (Kelsen, 2011).

Furthermore, Hans Kelsen put forward justice as a valuable consideration that is subjective. Although a fair order is assumed that an order is not the happiness of each individual, but the happiness as much as possible for as many individuals as possible in a group sense, namely the fulfillment of certain needs, which by the authorities or lawmakers, are considered as needs that are worthy of fulfillment, such as clothing, food and board. But which human needs deserve priority. This can be answered by using rational knowledge, which is a value judgment, determined by emotional factors and is therefore subjective (Kelsen, 2011). Based on Hans Kelsen's theory of justice, the importance of just legal protection for an intellectual property right from the perspective of international trade.

The inclusion of protection of Intellectual Property Rights into the world trade system, then called the General Agreement on Tariffs and Trade (GATT), was inseparable from the role of the United States who proposed the

Proposal for Negotiations on Trade-Related Aspects of Intellectual Property Rights. In addition, the European Community also proposes Proposals of Guidelines and Objectives. Against proposals from these countries, India is one of the countries most strongly opposed to the idea of including the protection of Intellectual Property Rights. However, after the debate between developing countries and developed countries, the winner is the one who has the most interest in protecting their works, namely the developed countries.

The form of protection of intellectual property rights in the perspective of international trade is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). The TRIPs Agreement is the result achieved and has also adopted two major international conventions in the field of industrial property and copyright, namely the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. The consequence of the victory of developed countries in the Uruguay Round GATT negotiations related to Intellectual Property Rights is what brought the entry of western countries' concepts of property and ownership into the law in developing countries including Indonesia.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) is an agreement that is part of the WTO Agreement signed by its member countries that obliges all members to make rules regarding intellectual property rights in their respective countries, this matter which forms the basis for protecting intellectual property rights in the perspective of international trade.

The form of protection of intellectual property rights in an international perspective can be based on each field of intellectual property rights which has its own international conventions as they develop over time. In the area of copyright, several international conventions that apply to the signatory countries are:

- a) Beijing Treaty on Audiovisual Performances
- b) Berne Convention for the Protection of Literary and Artistic Works
- c) Brussels Convention Relating to the Distribution of Transmission-by-Carrying Signals Program
- d) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
- e) Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled
- f) Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
- g) WIPO Copyright Treaty (WCT)
- h) WIPO Performances and Phonograms Treaty (WPPT).

Every country that has signed the agreement above must comply with the agreed international rules, the rules contained in the international convention are general rules internationally. For the application of general rules that have been agreed upon, it is up to the enactment and full regulation to the country that will apply the rules in its national law and / or jurisdiction, but not apart from the principles agreed in international agreements that have been signed and mutually agreed.

## Conclusions

Intellectual property rights are closely related to international trade, this is stated in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) is an international agreement in the field of intellectual property rights related to trade. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) is an agreement that is part of the World Trade Organization Agreement (WTO Agreement) signed by all WTO member countries aimed at uniforming intellectual property rights systems throughout WTO member countries. The World Trade Organization Agreement (WTO Agreement) itself is a world trade organization in this case as a form of protection of intellectual property rights from the perspective of international trade. All WTO member countries are required to make rules regarding intellectual property rights in their respective countries and/or jurisdictions, but they are inseparable from the principles agreed in international agreements that have been signed and mutually agreed upon. The form of protection of intellectual property rights in the perspective of international trade can refer to the theory of Hans Kelsen in his general theory of law and state, having the view that law as a social order can be declared fair if it can regulate human actions in a satisfactory way so as to find happiness in them. The benefits of intellectual property rights are very important, and therefore the need for legal protection is because intellectual property rights are very useful for the development of human life in the world.

## References

- Abdulkadir, M. (2007). *Legal Economic Review of Intellectual Property Rights*, PT Citra Aditya Bakti, Bandung.
- Arsawati, N. N. J. (2016). Legal protection of whistleblower witnesses in revealing corruption after the issue of supreme court circular no. 4 of 2011. *International Research Journal of Management, IT and Social Sciences*, 3(3), 27-33.
- Kelsen, H. (2017). *General theory of law and state*. Routledge.
- Marzuki, P. M. (2005). *Legal research*. Jakarta: Prenada Media.
- Mertokusumo, S. (1996). *Knowing an Introduction to Law, Liberty*, Yogyakarta.
- Munandar, H. & Sitanggang, S. (2009). *Knowing Intellectual Property Rights: Copyrights, Patents, Trademarks and Details*, Erlangga Publisher, Jakarta.
- Soekanto, S. & Purbacaraka, P. (1994). *Various Ways of Legal Distinction*, PT Citra Aditya Bakti, Bandung.
- Sudaryat, Sudjana, & Rika Ratna Sari. (2010). *Intellectual Property Rights*, Oase Media, Bandung.
- Sudharma, K. J. A., Sutrisni, N. K. E., & Abiyasa, A. P. (2018). Regulation of protection and fulfillment of employee rights of go-jek drivers under Indonesian employment regulation. *International Journal of Social Sciences and Humanities*, 2(3), 56-62. <https://doi.org/10.29332/ijssh.v2n3.193>
- Sutiyoso, B. (2012). *Legal Invention Method: Efforts to Realize a Certain and Fair Law*, UII Press, Cet. Fourth, Yogyakarta.
- Tanya, B., L. (2010). *Legal Theory of Orderly Human Strategy across Spaces and Generations*. Yogyakarta: Genta Publishing.
- Utomo, T., S. (2011). *Intellectual Property Rights (IPR) in the Global Era: A Contemporary Study*, Graha Ilmu, Yogyakarta.