

Consequences of the
International Convention Trade-
Related Aspect Intellectual
Property Rights (TRIPs) Against
the Intellectual Property
Protection System

by Sagung Indradewi

Abstract

Anak Agung Sagung Ngurah Indradewi

Faculty of Law Dwijendra University

sagungindradewi@gmail.com

Consequences of the International Convention Trade-Related Aspect Intellectual Property Rights (TRIPs) Against the Intellectual Property Protection System

The long journey in the fight for intellectual property rights has actually been done since the 18th century. At that time, the discourse to accommodate human intellectuality in the form of a more intrinsic and structured right in the legal corridor was increasingly emerging in Europe. The development of technology-oriented international trade makes the need for harmonization of industrial law (ownership of assets) increasingly urgent, especially in the field of patents and trademarks. It was these issues which gave birth to some basic principles, and ultimately led to the discourse that the patent should be regulated in an effective system. This strong desire then gave birth to the international convention of intellectual property rights with a number of provisions related to intellectual property rights. The established international intellectual property rights Convention must have consequences for intellectual property protection systems in each country that adhere to one of the international conventions of intellectual property rights, as is the case with the International Trade-Related Aspect Intellectual Property Rights Convention (TRIPs).

Keywords: Consequences, Trade-Related Aspect Intellectual Property Rights, Protection of Intellectual Property Rights.

CHAPTER I

PRELIMINARY

1.1 Background Issues

The fundamental foundation of ²³ intellectual property rights is the respect for property rights as individual rights. The right granted by the state to the creators, inventors or designers of the creations or findings is the most perfect right in the field of material rights of property rights. Man makes his findings his own. With hard work he combines the things that are available in nature, therefore the work is an indispensable property, and no one but himself can have the right to work.

Intellectual property rights began to be fought as individual rights in countries that have a Common Law or Anglo Saxon legal system in which property rights are truly championed as individual rights. The Common Law and Continental European legal system has a different understanding of property rights. ²¹ In the Common Law legal system this can be seen in its Private Law where detailed legal property rules are in place, while the Continental European legal system does not.

That man has whatever is in him including his mind, his thoughts, ideas or ideas and his sensitivity then processed by combining, separating, reducing or adding to what is already in nature and claiming responsibly that it is he who has the idea. The right is granted by the state and authorized as his property because his ideas or products have commercial value and can be made private assets and used for the benefit and advancement and human welfare.

The long journey in the fight for intellectual property rights has actually been done since the 18th century. At that time, the discourse to accommodate human

intellectuality in the form of a more intrinsic and structured right in the legal corridor was increasingly emerging in Europe. The development of technology-oriented international trade makes the need for harmonization of industrial law (ownership of assets) increasingly urgent, especially in the field of patents and trademarks.

Concerns from various circles about the absence of adequate legal protection occurred when the Austrian-Imperial government ¹³ invited other countries to participate in the international exhibition of discoveries held in 1873 in Vienna. In reality, in this exhibition the level of participation was not significant because foreign tourists and inventors of new ideas were unwilling to show off their findings at the time.

These obstacles arise because this exhibition is deemed not to provide adequate legal protection to the exhibits on display. This eventually led to two major developments in Austria, the first Austrian Special Act assuring temporary protection to ⁷ all foreigners who participated in the exhibition for their trademark and industry discoveries. And second, the holding of the Vienna Congress for Patent Reform was held that same year.

These two issues then gave birth to some basic principles, and ultimately led to the discourse that the patent should be regulated in an effective system. Then the government is also urged to immediately provide ² an international understanding of patent protection as soon as possible. As a follow up to the Vienna Congress, an International Congress of the Property Industry was held in Paris in 1878.

The main result is the decision that one of the governments should be required to hold an international diplomatic conference with the task of determining the uniform basis of the Act in the field of industrial property rights. It was this strong desire that gave birth to an international convention of intellectual property rights with a number of provisions related to intellectual property rights.

The established international intellectual property rights Convention must have consequences for intellectual property protection systems in each country that adhere to one of the international conventions of intellectual property rights, as is the case with the International Trade-Related Aspect Intellectual Property Rights Convention (TRIPs). In connection with the above, it is necessary for the authors to review and examine the "Consequences of the International Trade-Related Aspect Intellectual Property Rights Convention (TRIPs) Against Intellectual Property Protection System".

1.2 Problem Formulation.

What are the Consequences of the International Trade-Related Aspect Intellectual Property Rights (TRIPs) Convention Against the Intellectual Property Protection System?

1.3 Writing Method.

In order for a paper based on research can be said to meet the criteria as a scientific work, then needed a method. In relation to this matter, in the preparation of this paper, the author uses normative juridical method of research legislation and literature analysis and other legal materials such as books and legal journals.

CHAPTER II

DISCUSSION

Consequences of the International Convention ¹ of the International Convention

Trade-Related Aspect Intellectual Property Rights (TRIPs)

Against the Intellectual Property Protection System

In order to manage and deal with matters relating ⁸ to the protection of industrial and copyright property rights, the United Nations (hereinafter referred to as the United Nations) established an international institute called the World Intellectual Property Organization (hereinafter referred to as WIPO) on 14 July 1967 in Stockholm. It is one of the United Nations specialized agencies established for the purpose of encouraging creativity and introducing intellectual property protection worldwide.

Before WIPO was born there was ⁹ a body called Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle (BIRPI) founded in 1893 in France to oversee ²⁵ the Berne Convention and the Paris Convention. In essence, WIPO was established to protect the copyright and culture owned by UN member states. This is especially important if there are cases where a country claims to have a machine tool or a design and a particular brand for example, but there are other countries that claim to be the original culture or belonging.

The establishment of WIPO is based on ¹⁶ the Convention of Establishing the World Intellectual Property Organization. The tasks of WIPO in the field of Intellectual Property Rights (IPR), among others: Management of the administrative cooperation of the formation of treaties or international treaties in the framework ¹⁸ of the protection of intellectual property rights; Develop and protect intellectual property rights worldwide;

Cooperate with other international organizations, encourage the establishment of new international treaties or treaties and modernize national legislation, provide technical assistance to developing countries, collect and disseminate information, and develop administrative cooperation among member countries.

The red thread ³ of intellectual property rights management struggle in the wake of the establishment of WIPO, a more complex mechanism is then re-initiated by developed countries led by the United States of ¹⁵ Trade-Related Aspect Intellectual Property Rights agreement (hereinafter referred to as TRIPs). The formation of TRIPs as a legal instrument for the management of intellectual property rights of the world actually did not escape the implementation of Uruguay Round 1990. Canada as a member of ⁶ the General Agreement on Tariffs and Trade (hereinafter referred to as GATT) formally proposed the establishment of an international trade body. This proposal was positively responded by GATT members.

The establishment of an international trade body eventually resulted in the World Trade Organization (hereinafter referred to as the WTO) and signed by GATT member states of 1947 on 15 April 1994 in Marrakesh, Morocco. The Agreement on the Establishment of the WTO clearly states the establishment of the WTO as an international trade organization.

The establishment of the WTO brought significant changes in the world trade system. There are four main attachments of approval of WTO establishment. One of them is the approval of TRIPs. These TRIPs are the culmination ¹⁰ of intense lobbying by the United States which is also supported by the EU, Japan and developed countries. Approval of TRIPs is not due to US concern over protection and enforcement of ²² intellectual property rights. From a United States perspective, the TRIPs agreement is a

great achievement. Previously, a long debate over the implementation of TRIPs occurred by involving ³ the interests of developed countries and developing countries.

Ultimately this debate was won by the developed countries where the approval of TRIPs was incorporated into approval in the formation of the WTO. The enforcement of TRIPs by some circles is also regarded as the victory and hegemony of developed countries as the owners of capital and technology rulers in the world. TRIPs notabene is a strategic victory that can be used as a tool to fight for their investment interests and effective protection in the international arena.

Thus, the TRIPs Agreement is not only understood as an international treaty instrument that eradicts the violation of IPR, but also as a technological and economic protection policy that benefits the developed countries. If you look at the characteristics of the TRIPs agreement, this policy is designed to combine two of its predecessor conventions, the Paris Convention and ¹⁴ the Vienna Convention. The substantive provisions ¹⁴ of TRIPs in terms of intellectual property rights in the fields of industry such as patents, trade mark provisions, trade names, utility capital, industrial design and unhealthy competition are adopted from the Paris Convention. In practice, TRIPs oblige each member state to provide strong protection ² of intellectual property rights. The TRIPs Agreement applies to all TRIPs members.

Objectives and Principles of Agreement TRIPs include:

1. Reduce the deviations and obstacles to international trade
2. Ensure that actions ¹² and procedures for enforcing intellectual property rights are not an obstacle to legitimate trade
3. Support innovation, transfer and technology for the mutual benefit of producers and users of technology knowledge in a manner conducive to social and economic well-being, as well as the balance of rights and obligations.

The principles of the TRIPs Agreement are as follows:

1. In the formation or amendment of its national law and legislation, member¹¹ states may stipulate the necessary efforts to protect the health and nutrition of the people, and to promote the interests of the people in sectors critical to socio-economic and technological development, in accordance with the provisions of this Agreement;¹⁹
2. To the extent⁴ consistent with the provisions of this Agreement, appropriate measures may be taken to prevent the misuse of intellectual property rights by rights holders or practices that unreasonably impede trade or adversely affect international technology transfer.

The consequences of TRIPs on the IP protection system, in this case the concept of TRIPs as a common pact in the fair management of intellectual property rights for all its members of course cause logical consequences That TRIPs approval for all countries is the most comprehensive agreement in protecting intellectual property rights.

That the points of agreement dealt with in a collective agreement are the basic reasons why the TRIPs agreement is considered the most comprehensive mechanism. Management arrangements TRIPs in each point of its approval look more detailed and decisive in regulating the regulatory mechanism of intellectual property rights in general. This is not encountered in any agreement or agreement regarding the management of intellectual property rights prior to the adoption of the TRIPs agreement. TRIPs material also does not focus on one particular theme or aspect issue because the scope of TRIPs regulates three important things, namely copyright, industrial property rights, and rights related to copyright.⁸

TRIPs is a summary of previous agreement agreements in regulating the management ¹⁷ of intellectual property rights. The TRIPs Agreement also implies the regulation of intellectual property rights in the respective national laws of each participating country in signing the TRIPs agreement. In Indonesia, the ratification and amendment of the law is also done by the government because it is one of the consequences of joining Indonesia in the agreement of TRIPs. This process is intensive started since 1997 until now. More comprehensive TRIPs agreement by many circles is also related to clear rules of the game in dispute settlement.

Along with the many conflicts over existing intellectual property rights, especially in developing countries which in fact are users of the output of intellectual property owned by developed countries, can be anticipated more clearly through TRIPs. The Paris and Berne Conventions are considered by some to be less able to bridge the disputes between stakeholders because of loose and unspecified rules of the game. So far, TRIPs are seen as the most perfect tools in solving the intellectual property rights issues today.

The flexibility of WTO member states, which in fact TRIPs members also can not avoid to not apply mechanisms in the domestic sphere. This is because in article 1, paragraph 1 of the TRIPs Convention states that countries that signed TRIPs (WTO member countries) must implement TRIPs. Furthermore, the agreement of TRIPs also does not provide wide space to its member countries because this mechanism does not require any additional requirements to the terms of the TRIPs agreement. That is, this obligation is carried out without any conditions, including when the member states ratified the TRIPs mechanism in its national law.

Thus, the arrangements contained in the TRIPs mechanism become the minimum standard of management of property rights in each WTO member country, including

Indonesia in providing protection and dispute resolution mechanisms. Gradations of national law among member states related to the management of intellectual property rights are more or less the same as global because the approval of TRIPs is the minimum standard of law enforcement of intellectual property rights.

CHAPTER III

COVER

3.1 Conclusions

The substantive provisions of TRIPs in respect of ²⁴ intellectual property rights provide protection in the fields of industry such as patents, trade mark provisions, trade names, utility capital, industrial design and unhealthy competition. In practice, TRIPs requires each member country to provide strong protection of intellectual property rights, TRIPs agreements apply to all TRIPs members. The consequences of TRIPs on the IP protection system, in this case the concept of TRIPs as a common pact in the fair management of intellectual property rights for all its members of course cause logical consequences That TRIPs approval for all countries is the most comprehensive agreement in protecting intellectual property rights. That is, this obligation is carried out without any conditions, including when the member states ratified the TRIPs mechanism in its national law. Thus, the arrangements contained in the TRIPs mechanism become the minimum standard of management of property rights in each WTO member country, including Indonesia in providing protection and dispute resolution mechanisms.

3.2 Suggestions

The need for synergy between consumers, business actors and government apparatus of a State, especially the State of Indonesia is concerned in the implementation of TRIPs, in this case must be obeyed and awareness of business actors and consumers and government to be honest and responsible so as to ensure business continuity and consumer protection this is because ⁵ intellectual property rights are an exclusive right granted by the state to a person, a

group of persons, or an institution to hold power in the use and benefit of intellectual property possessed or created.

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