

# Indonesian Intellectual Property Rights in the Asean Economic Community

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## **Abstract**

Protection of Intellectual Property Rights to the Indonesian community in the era of the Asean Economic Community became one of the things that should get attention. With the increasing number of foreign products entering Indonesia, the greater the similarity of the brands of products and services in Indonesia. It must watch out for the brand in Indonesia, which has existed prior bias be registered by foreigners as foreign brands. In this case the needed role of the Indonesian government in the protection of Intellectual Property Rights to the Indonesian community in the era of the Asean Economic Community.

## **Keywords :**

**Intellectual Property Rights.**

**Asean Economic Community.**

## Indonesian Intellectual Property Rights in the Asean Economic Community

### I. Introduction.

#### 1.1. Background.

Asean Economic Community is the result of an agreement by the ASEAN leaders a decade ago to establish a single market in Southeast Asia at the end of 2015. This was done in order to increase the competitiveness of ASEAN as well as China and India could compete to attract foreign investment. The formation of this single market will allow the country to sell goods and services easily to other countries across Southeast Asia so the competition will be intense.

In view of the industry in Indonesia, Asean Economic Community is incarnated as a double-edged knife. On one side of the Asean Economic Community to facilitate Indonesian products marketed abroad, on the one hand also threatens the existence of Indonesian products. Especially products that have not been patented or registered as copyright intellectual property.

From the protection of Intellectual Property Rights, Asean Economic Community also becomes one of the things that should get attention. With the increasing number of foreign products entering Indonesia, the greater the similarity of the brands of products and services in Indonesia. It must watch out for the brand in Indonesia, which has existed prior even registered by foreigners as foreign brands. Especially in Indonesia adopts a trademark registration First to File, which means that the registration of a mark will only be given to those who first filed an application for registration of a trademark, and the State did not provide registration for a brand that has similarities with the brand filed in advance that the another party for goods / services in kind. Intellectual Property Rights in essence can provide economic benefits to the holder and

also to the state, rights of intellectual property began to be fought as individual rights in countries that have a legal system or the Anglo-Saxon Common Law where property rights actually fought as individual rights. Common Law System and Continental Europe have different understandings of property rights. In the Common Law system this can be seen in the private legal rules which governed the law on Property in detail, while the Continental European legal systems do not.

Property rights is the right to enjoy the usefulness of something material freely, and act freely against the material with full sovereignty, the origin is not awry with the law or general rules established by a rule which reserves the right to assign, and do not interfere with the rights of others; all this without prejudice to the possible lifting of such rights or other restrictive measures in the public interest, based on the provisions of law and the payment of compensation.

An understanding of property rights is indeed still a lot of contradictions and difficult to invite problems defined by default, because the experts still have their own opinion. In addition there is a mistake using the term property rights. For example, defines the common property of a property. Meanwhile, legal experts and philosophy belong interpret as a right. Owned synonymous with private property, a right that is exclusive. The rights of people to the exclusion of the others in terms of usage and exploiting something.

Intellectual Property Rights is basically private rights (civil), in the sense that one is free to apply for the registration and protection of IPRs her or not. If nothing is done it will not be charged anything, but he will lose yourself if someone else wishes to use or even acknowledge the work of creation.

Intellectual Property Rights is basically private rights, in the sense that one is free to apply for the registration and protection of Intellectual Property Rights here or not. Understanding of property rights contained in the Intellectual Property Rights are the property within the scope of science, art, literature and technology also includes the design and information that originated from an idea. This means that the protection given to intellectual abilities poured from the form of ideas, ideas into tangible form, both new (original) as well as further development that can be seen, enjoyed, heard, felt, read, and others.

In this case how the Government of Indonesia provide legal protection to the people of Indonesia Related Intellectual Property Rights be in the form of ideas, ideas into tangible form, both new (original) as well as further development that can be seen, enjoyed, heard, felt, read and others, to face the Asean Economic Community.

## II. Discussion.

### 2.1. Definition of Intellectual Property Rights.

Haris Munandar defining abbreviated Intellectual Property Rights is equivalent word commonly used to Intellectual Property Rights, which is "a right that arises for the ideas of producing a product that is beneficial to humans".

Jill Mc-Keough and Andrew Stewart defines Intellectual Property Rights as "a set of rights granted by law to protect the economic investment of creative efforts".

Judging from the development of intellectual property rights in the country, the legal system of Intellectual Property Rights was first translated into "intellectual property rights", then to "intellectual property rights". The term commonly and commonly used now are abbreviated Intellectual Property Rights IPR. This is in line with the issuance of the Decree of the Minister of Law and Legislation No. M.03.PR.07.10 of 2000 and

approval of the Minister of State for Administrative Reform, in a letter No. 24 / M / PAN / 1/2000 term "Intellectual Property Rights" (without the "Top") can be abbreviated as "IPR" or the acronym "IP" has been officially adopted. So it is no longer of Intellectual Property Rights (the "Over"). Decree of the Minister of Justice and Per Act invitation was constituted also by Decree of the President of the Republic of Indonesia Number 144 of 1998 dated September 15, 1998, the change of name of the Directorate General of Copyright, Patent and Trademark transformed into the Directorate General of Intellectual Property Rights then based on Presidential Decree No. 177 of 2000.

In essence Intellectual Property Rights is the right to enjoy the economical benefits of an intellectual creation. Objects are arranged in IPR are works that arise or be born as a human intellectual abilities.

## 2.2. Juridical grounding Government in Providing Protection Against Intellectual Property Rights to Asean Economic Community.

The Indonesian government gave legal protection to the people of Indonesia Related Intellectual Property Rights (IPR) of the Asean Economic Community (AEC), which refers to the provisions of the laws in force in Indonesia.

In the provisions of the Law on IPR-related civil law, on Article 1365 of the Civil Code states that: "Every act of unlawful bring harm to another person, require a person who publishes the loss was due to his fault, replace such losses".

Article 499 of the Civil Code is the legal basis of the right material that can be mastered with the right property. Described in this article that referred to material can be goods, services or rights that can be controlled as property rights. Property rights are absolute rights means (1) a right that must be respected by everyone; as long as there are no specific legal relationship can not be diganggugat; and can be defended against

anyone who uses without rights. (2) the nature of "sticky", follow it when transferable (droit de suite). And (3) the nature of "droit de preference" (the right to precedence).

In Indonesia currently valid seven (7) legislation that protects intellectual property rights, namely:

- Constitution No. 28 of 2014 on Copyright.
- Constitution No. 14 of 2001 on Patents.
- Constitution No. 15 of 2001 on Marks.
- Constitution No. 29 of 2000 on Plant Variety.
- Constitution No. 30 of 2000 on Trade Secrets.
- Constitution No. 31 of 2000 on Industrial Designs.
- Constitution No. 32 Year 2000 on Layout Designs of Integrated Circuits.

Seventh of this law will be effective when used by investors, creators, designers to protect their rights. When not in use in accordance with section related laws, his work will be difficult to obtain the protection of the IPR laws in the face of the Asean Economic Community.

The principles underlying the Intellectual Property Rights is as follows.

- The principle of fairness (The Principal of Natural Justice). Intellectual Property Rights adhere to this principle by giving rights to creators, investors, or the designer to obtain rewards by providing economic rights and ethics rights.
- The economic principle, namely the principle to be able to enjoy the benefits. For example in the form of royalties, technical fees, etc.
- The principle of culture, namely that the results of inventors, inventions, or designers can improve the standard of living, civilization, and human dignity.
- social principle, namely the principle that the rights granted by the state contained also the fulfillment of public interests that must be met.

This view of government's role in providing legal protection of intellectual property rights against the Asean Economic Community, in this case always refers to what is expressed by Adam Smith in his "Wealth of Nations" that "the government has a duty to protect the public from abuse and invasion of other peoples and as far as possible the duty to protect every member of society from the injustice or the pressure of other community members, as well as the duty to uphold the administration of justice with certainty.

The substance of the policy may also come from outside the government, as well as understanding the policy was described by James E. Anderson that: "Public Policies Reviews those policies developed by governmental bodies and Officials" (public policies are policies developed by agencies and Government officials).

Public policy is able to reflect the demands and needs of the community. Public policy implications as it would be to create a greater support, adherence to and compliance with the community on public policy. Effectiveness of public policy will accelerate the achievement of the desired goal which is a prerequisite formulated the policy. Each policy included the scope of which is public always contain the objectives to be achieved through the actions taken by the government. As well as government action to provide legal protection to the people of Indonesia on its intellectual property rights in the face of the Asean Economic Community.

The government action can be something done or otherwise of something that was not done. Thomas R. Dye said that: "Public policy is whatever the government to do or not do". In connection with the government's policy towards the legal protection of Intellectual Property Rights community, it takes the concept of policies that can protect the intellectual property rights of society as well as to minimize the violation of



intellectual property rights so that people feel comfortable and eager to work, creating new innovations that are beneficial to life , The role of both the central and regional governments in an effort to protect the intellectual property rights of society to do with the various things that can be put in the form of public policy.

Public policy is a government authority, but that does not mean all the ongoing process of the policy was a complete domination of the government. That is a public policy issued by the government of Indonesia should be able to provide a legal protection of the people of Indonesia on its intellectual property rights in the face of the Asean Economic Community. Besides awareness to register the work and or products to the Directorate General of Intellectual Property Rights must urgently needed, because without this awareness to the maximum the government can not provide legal protection to the people of Indonesia on its intellectual property rights in the face of the Asean Economic Community.

### III. Conclusion.

Asean Economic Community is of course not only be a scary thing for entrepreneurs in Indonesia but also be a golden opportunity to grow the business to a wider market, or at least not to host at home. As the host, has a greater opportunity to dominate the market because it should be able to make the products and services much cheaper price. Especially now that the qualities of the products in the country are also getting better. Products from abroad can easily get into Indonesia, and vice versa. Only issues of quality and packaging of products which will determine who will dominate.

From the protection of Intellectual Property Rights, Asean Economic Community also becomes one of the things that should get attention. With the increasing number of foreign products entering Indonesia it is, the greater the similarity of the brands of products and services in Indonesia. Intellectual Property Rights are the rights of

intellectual property arising and born of the human ability to work in the fields of science, art, literature, and technology that was born through the outpouring of ideas that makes it worth the work.

With the development of Intellectual Property Rights, raises the need to protect or defend including recognition of those rights. The government as the organizer of the State Compulsory guarantee and provide protection for the intellectual property rights. Various laws and regulations such as Constitution No. 28 of 2014 on Copyright in this case set the standard of protection of IPR. On the basis that IPR protection and enforcement of law in Indonesia is very important in providing legal protection for the people of Indonesia on its intellectual property rights in the face of the Asean Economic Community.

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