

## **The Understanding of Lecturers of Universitas Negeri Jakarta on Intellectual Property Rights (IPRs) Regime in Indonesia**

**Irawaty**

Universitas Negeri Jakarta

Email address: irawaty@unj.ac.id/irawaty.moechtar@gmail.com

### **ABSTRACT**

Although IPRs protection in Indonesia has been going on for quite some time, knowledge on IPRs has not been adequate. One significant thing is that many people still do not know the difference between patents and copyright. This is of great concern since the legal protection of patents and copyrights has been granted on the archipelago in 1910 (patent) and 1912 (copyright). Likewise regarding other types of IPR. Whereas in the current era of information globalization, information is one of the determinants of excellence in many ways including the economic field, IPRs is a very vital factor. In the world of academics, knowledge about IPRs is also important because lecturers should disseminate the concept of IPRs to their students as well as to protect their works and/or innovation or invention. So that lecturers should also be equipped with an adequate understanding of IPR. This research applies descriptive analysis by using qualitative approach. The data was obtained by interviewing seven lecturers of Universitas Negeri Jakarta. Based on the data, the understanding of the lecturers on this particular matter need to be elevated.

Keywords: TRIPS, IPRs, patents, copyright

### **INTRODUCTION**

Intellectual Property Rights are, actually, not a new concept in Indonesian. The terms patent, copyright and trademark are IPRs types which popular compared trade secrets, geographical indications, industrial design and layout design of integrated circuits. Eventhough patents and copyright are more popular, but the use of the terms are sometimes not correct. It is because many of Indonesian do not understand the meaning or concept of both terms.

After the Government of Indonesia signed the General Agreement on Tariff and Trade (GATT) in 1994, the government ratified the agreement through Law Number 7 Year 1994 regarding Ratification of Agreement Establishing The World Trade Organization. GATT has addendum which protect IPRs, that is Agreement on Trade-Related of Intellectual Property Rights (TRIPS). In TRIPS, there are seven terms to protect the products of human intellectual. They are namely Copyright, Patents, Trademarks, Trade Secrets, Industrial Designs, Layout Designs of Integrated Circuits and Geographical Indications. All the countries that signed the agreement are mandated to provide protection for intellectual property of their citizens, at least as specified in the agreement. Indonesia is included in the category of developing countries, thus the limit of granting period to provide protection through laws is by the year of 2000. In 2000, the Indonesian government issued three laws governing three types of IPRs, namely: (1) Law Number 30 Year 2000 regarding Trade Secrets; (2) of Law Number 31 Year 2000 regarding Industrial Design; and (3) Law Number 32 Year 2000 regarding Layout Design of Integrated Circuit.

The government need to disseminate the concept of IPRs regime to the society. One of elements that could help the government is lecturer. Lecturers hold strategic positions to also be able to spread the understanding of this HKI regime to the students. It is expected that lecturers can convey the understanding of IPR in relevant courses or also insert knowledge of IPRs in lectures or in research activities with students or even in some light discussions that may produce works that can be protected through IPRs regime. Moreover, through the current government policy, lecturers should also understand how to protect their intellectual works.

Universitas Negeri Jakarta has more than a thousand lecturers. It is important for the lecturers to understand IPRs. This study aims to seek the understanding of Universitas Negeri Jakarta lecturers on IPRs regime in Indonesia.

### **The Concept of Understand**

In the concept of Bloom's Taxonomy, which consists of 6 (six) levels, understand is at the second level—after remember. The levels are as follows: remember, understand, apply, analyze, evaluate, and create. Each level has a different level of complexity. The higher the level, thus the more complex/higher the ability that should be shown. For example, the level of understand has a higher complexity compared than the level of remember. Krathwohl (2002, p 215) states that what is meant by understand is "Understand -

Determining the meaning of instructional messages, including oral, written, and graphic communication." Furthermore, he writes that the dimensions included in the understanding are: interpreting; exemplifying; classifying; summerizing; inferring; comparing; explaining.

### **Intellectual Property Rights Protection in Indonesia**

Intellectual Property Rights (IPRs) is a term used to refer to rights as a result of the human mind. On the result of innovation and/or invention, the innovator(s) and/or inventor(s) should be given an incentive(s) for the results of his efforts (Tim Lindsey, et.al (ed), 2005). Agus Sardjono (2006) said that IPRs regime is a regime that protects commercialization of the result(s) of human mind.

IPRs are assets which are included as intangible assets. The protection on IPRs is granted on the following grounds (Tim Lindsey, et.al (ed), 2005):

1. Natural rights: that man should have control over what they created. Therefore, other people have to acknowledge the results of other human minds.
2. Protection of reputation: in generating inventions or works, a person or a company usually spends substantial costs. These costs are used in research and development to gain good reputation. Thus, it is logical if they want to protect the results of innovation(s) or invention(s) from other party(ies) who use their research results without permission.
3. The reward of innovation and creation: incentives for innovators and inventors is expected will encourage and assist them in conducting research. In addition, the results could be solutions to existing problems.

Candra Irawan (2011) put forward some criticisms on the politics of IPRs law in Indonesia. One of his critics is that the principles in enforcing IPR in Indonesia should be based on *Pancasila* (the ideology) and the 1945 Constitution.

The Indonesians are a nation that applies communal-religious way of life. The values of the aforementioned way of life are contained in *Pancasila*. The concept of IPRs, which comes from the Western, is considered not accordance with the principle of life of Indonesians. The implementation of IPRs which gives priority to individual is opposite with the principles that prioritize the benefits for the welfare and justice all together.

It has been pointed out in the Introduction part that there are 7 (seven) rights which are included in IPRs—which have been given protection by the government of Indonesia. Below are the definitions of each IPRs based on the rules that protect it:

1. Patent

The most recent protection on patents is provided through Law Number 13 Year 2006 regarding Patents. This law is replacing Law Number 14 Year 2001 regarding Patents. In Article 1 Number 1 of the Patent Law, the patent is defined as: "the exclusive rights granted by the state to the inventor of his invention in the field of technology for a certain period of time carrying on the invention himself or giving approval to the other party to carry it out."

2. Copyright

The most recent law protecting Copyright is Law Number 28 Year 2014 regarding Copyright. In Article 1 Number 1 of this Law, it is stated that Copyright is defined as: "Copyright is an exclusive right of the creator which arises automatically on the basis of a declarative principle after a work is manifested in a tangible form without prejudice to restrictions in accordance with the provisions of legislation."

This means that a person who produces a copyright does not have to register the results of his work to obtain protection, provided that the creator has declared the result of his creation. Whereas the meaning of the creation is stated in Article 1 Number 3, namely: "the work of inventiveness in the field of science, art, and literature resulting from inspiration, ability, thought, imagination, dexterity, skill, or expressed skill in tangible form. "

The right earned by the creator of his creation is the exclusive right to obtain the economic benefit of his creation (Article 8), which includes, among other things, the publication of creation, the multiplication in all its forms, the translation of creation (Article 9 (1)). If any other party wishes to exercise such economic rights this may be done after obtaining permission from the creator or the copyright owner (Article 9 (2)).

3. Marks

The protection on Marks in Indonesia is given through Law Nounber 20 Year 2016 regarding Marks and Geographical Indications. The aforementioned law is superseding Law Number 15 Year 2001 regarding Marks. In Article 1 Number 1 stated that:

"Mark is a sign that can be displayed graphically in the form of pictures, logos, names, words, letters, numbers, color arrangements, in the form of 2 (two) dimensions and/or 3 dimensions, sounds, holograms or combinations of 2 (two) or more of such element to distinguish goods and / or services produced by a person or legal entity in the goods and / or service trade activities."

#### 4. Trade Secrets

Based on Article 1 Number 1 of Law Number 30 Year 2000 regarding Trade Secrets stated that:

"Trade Secrets are information that is unknown to the general public in the field of technology and/or business, has economic value because it is useful in business activities, and kept confidential by the owner of Trade Secret."

Thus, inventors and innovators' good results in technology that can be protected through patents or non-value-added technologies can be protected through trade secrets. As long as such information is kept confidential in an appropriate manner by the owner.

#### 5. Industrial Design

Article 1 Number 1 of Law Number 31 Year 2000 regarding Industrial Design states that Industrial Design is:

"A creation of the shape, configuration, or composition of lines or colors, or lines and colors, or combinations thereof, of three-dimensional or two-dimensional shapes that give the aesthetic impression and can be realized in a three-dimensional or two-dimensional pattern and can be used to produce a products, goods, industrial commodities, or handicrafts. "

The application for protection of industrial design rights shall be submitted to the Directorate General of Intellectual Property Rights (*Direktorat Jenderal Hak Kekayaan Intelektual/DJHKI*) as stated in Article 1 Number 3.

#### 6. Layout Designs of Integrated Circuit

Article 1 Number 1 of Law Number 32 Year 2000 regarding Layout Design of Integrated Circuit states that:

"Integrated Circuit is a product in the form of finished or semi-finished, in which there are various elements and at least one of these elements is an active element, partly or entirely interconnected and formed in an integrated semiconductor material intended to produce electronic functions."

## 7. Geographical Indications

Geographical Indications are protected through Law Number 20 Year 2016 regarding Marks and Geographical Indications. In Article 1 Number 6 states that:

"Geographical Indication is a sign indicating the origin of an item and/or a product that due to geographical environmental factors including natural factors, human factors or a combination of both factors provide a reputation, quality, and certain characteristics of the goods and / or products produced.

## **RESEARCH METHOD**

To get real portrait of the understanding of lecturers of Universitas Negeri Jakarta on IPRs regime, this research applies qualitative approach. The number of respondents is 7 lecturers. The interview was conducted in 2015. This research applies analytical descriptive. In this case, the results of interviews with the respondents presented as it is. The interviews are conducted through live interviews recorded with voice recorder and also via emails. The questions used are the open-structured question. The questions raised are based on the concept of Taxonomy Bloom's understanding described by Krathwohl (2002, p.255) which has been written in the preceding section: interpreting; exemplifying (giving examples); classifying; summerizing; inferring; comparing; and explaining. The compilation of indicators of IPRs understanding based on those contained in the Patent Law, Copyright Law, Trademark Rights Act and Geographical Indication, Trade Secret Law, Industrial Design Act, and Layout Design of Integrated Circuit.

## **DISCUSSION**

As has been explained previously that the purpose of this study is to get a preview of how the understanding of Universitas Negeri Jakarta lecturers on IPRs regime in Indonesia. Although the concept of IPRs and some IPRs laws have been implemented in Indonesia, but the understanding of IPR has not reached all levels of society. Academics should have understood the concept of IPR as it relates to the protection of intellectual works. This research is an initial mapping, so the questions asked are general knowledge questions about IPRs regime. The questions are:

1. What do forms of IPRs that you know?
2. What is the appropriate form of protection for the invention in the field of technology?
3. Please explain how important is the IPRs protection in protecting innovation or invention in Indonesia?

4. Have you protected your work, innovation or invention with IPR?
5. What is the name of government agencies that deal with IPRs registration?
6. Please explain your opinion in regards the law enforcement on IPRs laws in Indonesia?

The results of interviews from the first question are as follows: all respondents mention patents, copyright is stated by 6 respondents, trademarks stated by 2 respondents, industrial design rights stated by 1 respondents, and trade secret stated by 1 respondent. Of the seven IPRs contained in TRIPs, only five types of IPRs are mentioned. Two types of IPRs which are not mentioned by the respondent are Geographical Indication (GI) and Integrated Circuit Layout Design.

For the second question: three respondents answered patent; while copyright, trademark and technology design were answered by one respondent for each form of IPRs; two respondents firmly answered that they do not to know and one person answered protection through law with strict sanctions. Actually IPRs right protection for invention in the field of technology can be protected through patent, and/or trade secret.

For the third question the seven respondents answered that it is very important to protect innovation(s) and/or Invention(s). Two respondents explain that the reason is economic reasons; four respondents said it is because of moral rights reasons; and 3 other said that their reason based on the ground that so as there will be no plagiarism. The definition of economic rights is the financial gain earned by an inventor or innovator. Whereas the moral rights (Article 5 Copyright Law) is a permanent inherent right of the creator of his creation except for certain circumstances the exercise of moral rights can be transferred after the creator dies.

The respondent's answer to the fourth question are: four respondents stated that they have not yet protect their works through IPRs protection. Two respondents claimed that they have received copyright protection (one of them earn it by registering to DJHKI). Nevertheless, referring to Copyright Law—actually copyright protection is not required to be registered. What one may do is to get notification (*pencatatan*) from DJHKI; and one respondent claimed to have used copyrights transfer. What is meant by copyrights transfer is a copyright protection agreement. In this case the respondent signed the agreement for his article to be published by an international journal.

The respondent's answer to the fifth question are: two respondents answered DJHKI, one respondent answered Ministry of Law and Human Rights (*Kementerian Hukum dan HAM*), two respondents answered through Faculty of Law or Legislative Body and two respondents answered that they do not know. The protection of copyright does not need

registration, it is protected immediately after a creator declared his/her work. Based on Article 1 Number 4 it is stated that the application is addressed to Minister in the field of law. However, the government body that is assigned to serve public who wants to register their IPRs is DJHKI. The process is through its website.

The respondent's answer to the sixth question are: two respondents answered that our public awareness in regards with the protection of IPRs is still low; one respondent answered that the law enforcement is very weak; two respondents answered that it is still weak; one respondent answered that the law enforcement has not optimal yet; and one respondent answered that the law enforcement is actually good enough, however there is still lack of dissemination and lack of public awareness.

Based on the results of answers from respondents can be submitted the results of the analysis as follows:

- 1) Of the seven types of HKI discussed in this study, patents are the type of IPRs which is stated by all respondents. It is confirmed to what has been stated in the Introduction part that the most popular IPRs forms is patent. Likewise with copyright which is a popular type of HKI although not as popular as Patents. Overall, other types of IPRs are not well known to the respondents.
- 2) Although the answer to the first question Patent is the type of IPRs that is answered by all respondents, but not all respondents know what protection is given by this type of IPRs. Only three respondents or 43% who answered protection for technological invention were patents. It is suspected that this can happen because Patent is the type of IPRs that is often stated or commonly used by mass media even for inappropriate IPRs protection (as described in the Introduction).
- 3) From the answer to the third question that is all respondents answered that IPRs protection is important. However, not all respondents understood what protection and how the process to get IPRs protection. There are three respondents who know the right protection for their work in writing and art. That is through copyright. It means that it still less than 50% of respondents who understand this. However, there is an interesting note from the fourth answer that there is one respondent who proposed copyright protection for her artwork by applying through DJHKI. This means that there is an initiative from the Universitas Negeri Jakarta lecturer to study the rules and procedures for submitting a copyright application for the filing of the application without being accompanied by IPRs consultant. The respondents stated that registering the work for



lecturers will provide benefits, one of which is related to economic rights. As a lecturer of ASN, the copyrights that have been registered in DJHKI will be granted by the Directorate of Higher Education with credit value equal to the patent, which is 40 for national registration and 80 for international scale with the attachment requirement attached to the college head certificate. Based on the Operational Guidance Assessment of Credit to Increase Rank/Academic Function of Lecturers issued by Directorate General of Higher Education Ministry of Education and Culture Year 2014 stated that:

- a. Creating patented technology/art designs and works a) International level (at least acknowledged by 4 States), enclosed with scanned performance evidence and a patent certificate shall be given a maximum credit score of 60; b) National level, attached with scanned performance proof and patent certificate given maximum credit score 40.
- b. Creating unpatented technology designs and works; design and monumental art / performing arts; literary works: a). International level attached with scanned evidence of performance, international peer review in the field of science given the maximum credit score 20; b). National level accompanied by scanned performance evidence, peer review according to field of science given maximum credit score 15; and c). Local level attached with proof scan given maximum credit score 10.

In the Operational Manual there is no information on the credit score given to Copyright. The artwork given the credit score is written patented artwork, whereas the protection of artwork is given through the Copyright based on the declarative principle (Article 1 Number 1 and 3 of Law Number 28 Year 2014 on Copyright).

- 4) Although there are Universitas Negeri Jakarta lecturers who have initiative to register their creations to DJHKI, but based on the answers of the respondents from the fifth question it can be concluded that more lecturers who do not know to what agency they can register the results of their intellectual.
- 5) Regarding the enforcement of IPRs protection law in Indonesia, almost entirely provide answers in the category of dissatisfactory. This is probably based on the fact that Indonesia had several years into the priority watch list issued by the United States because of the many violations of copyright.

## CONCLUSION AND RECOMMENDATION

### 1. Conclusion

Based on the results of research conducted through interviews of seven lecturers in the Universitas Negeri Jakarta, it can be concluded that the understanding of lecturers on Intellectual Property Rights (IPR) is still not adequate considering some strategic positions held by lecturers. Some of the strategic positions that are intended include: to disseminate their understanding on IPRs to students and society; and can bring the name of the Indonesian if the registration of their works reach to the international level. In addition to that, when lecturers have invention(s) and/or innovation they might earn economic advantage.

### 2. Recommendation

It is expected that the lecturers learn about IPRs. While the Universitas Negeri Jakarta may hold a seminar or workshop by inviting experts HKI and the Directorate General of Intellectual Property Rights to disseminate IPRs to lecturers.

## ACKNOWLEDGMENT

The writer would like to express her gratitude to lecturers who have been very helpful by providing their valuable time and knowledge.

## BIBLIOGRAPHY

- Irawan, Candra, Indonesia Political Law of Intellectual Property Rights: Criticism Against WTO / TRIPs Agreement and Effort to Build Intellectual Property Law For National Interest, Bandung: CV. Mandar Maju, 2011. (Original in Bahasa Indonesia)
- Krathwohl, David R., "A Revision of Bloom's Taxonomy: An Overview", *Theory into Practice*, vol. 4, no. 4, 2002, pp. 212-218.
- Lindsey, Tim et.al (ed), Intellectual Property Rights: An Introduction, Bandung: Alumni, 2005. (Original in Bahasa Indonesia)
- Sardjono, Agus, Intellectual Property Rights and Traditional Knowledge, Bandung: Alumni, 2006. (Original in Bahasa Indonesia)
- Republic of Indonesia, Law Number 30 Year 2000 regarding Trade Secrets

Republic of Indonesia, Law Number 31 Year 2000 regarding Industrial Design

Republic of Indonesia, Law Number 32 Year 2000 regarding Layout Design of Integrated  
Circuit

Republic of Indonesia, Law Number 13 Year 2016 regarding Patent

Republic of Indonesia, Law Number 28 Year 2014 regarding Copyrights

Republic of Indonesia, Law Number 20 Year 2016 regarding Marks and Geographical  
Indication

Republic of Indonesia, Directorate General of Higher Education, the Ministry of Education  
and Culture Year 2014 on the Operational Guidance Assessment of Credit to Increase  
Rank/Academic Function of Lecturers