

Intellectual Property Rights (IPR) Protection of Creative and Innovative Creative Industry Works through the Role of West Java Government in Improving the Growth of Creative Economics in Indonesia

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The creative and innovative work of a region has high economic potential, yet it is vulnerable to violations. It needs to have adequate IPR protection through the optimal role of regional institutions. The aim of the study is to examine how IPR protection for regional creative and innovative work, through regional institutions using IPR protection, development models supporting Indonesia's creative economic growth. The research uses normative juridical methods referring to national and international principles and legal norms. The research uses descriptive analysis and qualitative juridical methods of interpretation of legal historical, sociological, and legal constructions. The results of the study show that the West Java Regional Government is a "booster" in supporting a creative economy, through the issuance of various IPR Regional Regulations harmonizing the National IPR regulations. The substance regulates the strength of functions and optimizes the tasks of Regional Device Organization/RDO (OPD), and IPR Centers to facilitate and integrate IP utilization. The synergy of the central government, and regional collaboration, with related institutions, facilitation of IPR registration, data collection, guidance and advocacy, as the implementation of effective IPR protection development models, supports the enhancement of the growth of Indonesia's creative economy.

Key words: *IPR Protection, Creative and Innovative, Creative Industry, Local Government, Creative Economy.*

Introduction

The role of the creative industry in increasing Indonesia's creative economic growth is significant. The data of creative economic statistics in 2016 show, in the period 2010-2015, the amount of creative economic Gross Regional Domestic Product (GRDP) increased by an average of 10.14% per year (Badan Pusat Statistik, 2017). The growth in the creative economic subsector also affects creative economic growth. In the 2011-2016 period, culinary contributions were the largest at an average of 3.03%. Meanwhile, Visual Communication Design and Product Design sub-sector, contributed the smallest by an average of 0.001% (Badan Pusat Statistik, 2017, p 94).

In the West Java Province, Central Bureau Statistic (BPS) data show that in the period of 2011-2016, there were 8 (eight) creative economic sub-sectors. The average growth of the sub-sectors was higher than the average creative economic growth of 6.12%. That is the growth of the sub-sectors was as follows: Architecture (8.66%); Interior Design (6.92%); Culinary (7.93%); Music (6.97%), Applications and Game Developers (6.13%), Advertising (6.35%), Television and Radio (9.92%), and Performing Arts (7.20%). The Television and Radio sub-sector has the highest average growth of 9.92%. However, the Product Design sub-sector has the lowest growth of 2.04% (Badan Pusat Statistik, 2017, p 105). West Java is a creative economic growth booster with the tagline "Creative Economy Champion," which has a targeted program for creative economic zones and villages, through coaching and promotion, building synergy between business actors and the government based on Presidential Instruction No. 6 of 2009 concerning the Development of the Creative Economy, instructing 27 Ministries and Institutions, Governors, Regents/ Mayors throughout Indonesia to support the policy starting in 2009-2015 (Rosmawaty Sidauruk, 2013, p 132).

During the period 2010-2016, GRDP /PDRB in West Java's creative economy had an average growth of 6.12%, contributing most to Indonesia's West Java creative economic growth. In 2016, export of electricity from West Java reached 31.96% of Indonesia's total export (BPS – BEKRAF.bekraf.go.id). The three dominant sub-sectors contributed the most; those are Culinary, Fashion and Craft. Each contributed 40.97% 34.70% and 14.99% to the GRDP/ PDRB of the creative economy in 2016, respectively. Creative economic development in West Java is based on ideas, creativity, innovation, skills, cultural wealth, creative human resources, and potential growth in West Java, and is spread across eleven (11) districts / cities, those are (Rosmawaty Sidauruk, p 151): 1) Bandung (fashion and design), 2). Bogor: (culinary and fashion, silver, puppet), 3). Ciamis (design industry and culinary), 4) Cirebon (craft), 5) Garut (Leather and Fashion), 6) Brass (culinary and Handicraft), 7). Tasikmalaya (border and fashion, design and architecture), 8) Bekasi (home industry: flower crafts, dolls),

9) Karawang (processing industry, tourism, food crops, land fisheries), 10) Purwakarta (Ceramic handicraft), and, 11) Subang (Culinary, craft industry). These industries are able to create prosperity and employment by generating and exploiting these creative and innovative resources. This potential currently supports the West Java Governor's Vision for the period 2018-2023, that is "the realization of West Java champion born with innovation and collaboration," with the mission "to deliver Cultured, Qualified, Happy, and Productive people through innovative public services," under the tagline "Millennial Champion," with the target of growing Start Up or Creative industry in the Regency/City with ideas and business development facilities. As well as, the mission of "increasing productivity and economic competitiveness of the people who are prosperous and fair through the use of digital technology and collaboration with centers of innovation and development actors" encourages creative economic progress in West Java.

Crucial problems in the implementation of the development of the regional creative industry are still leading to violations of IP results from creativity and innovation. For example, the 2012 Exam Gird pencil counterfeiting case in West Java caused a loss of 3 billion (Suara Pembaharuan, 2012), both in the potential of tax revenues and foreign exchange, in addition to employment opportunities (Suara Pembaharuan, 2012). Another case happened to *Trusmi Batik* craftsmen in Cirebon. This should potentially develop rapidly in significant creative industries, such as batik made in Yogyakarta, Solo, or even Pekalongan. In fact, the batik motif is monotonous as a result of violations of IPR in the form of rampant impersonation of motives that cause demotivation for creators and innovators to develop innovation and the creativity of their invention further. The fundamental obstacle is still the philosophy of the people of Indonesia, including West Java, that suggests that "the knowledge that they have if shared will be more useful and become a pride if many of them are imitating". This philosophy has an impact on the low awareness of the importance of registration / registration of IPRs, and low enthusiasm about registering / registering IPRs for their creative/innovative work. Another obstacle to registering, is that the cost of registering IPR is considered relatively expensive by MSME groups, and the process takes a long time. Frequently, other entrepreneurs have copied batik motifs, while the registration process was still ongoing. The reluctance of IPR registration is seen in the *Rajjas Batik* businessman in the village of *Trusmi* Cirebon, who until now have registered batik motifs in the Ministry of Law and Law (Suara Pembaharuan, 2012). Even though the registration of IPR is very important to ensure legal certainty of the protection of rights, both as a moral rights and the economical rights, of their intellectual work. IPR protection aims to protect the rightful owner of IPR from others that harm IPR holders. Based on the risk theory, proposed by Robert M. Sherwood, IP is a work that carries the risk of another party using it illegally (Robert M. Sherwood, 1990, p 11-13).

Therefore, the role of the state / central and regional government is increasingly important to strengthen IPR regulations that favor the creative industry actors (Sulasi Rongiyati, 2018).

According to the concept of "modern welfare state," stated by Marbun, the government's duty is to be active in people's welfare (Marbun dan Mahfud, 2006, p 45). According to Jeremy Bentham, utilitarianism is "the greatest happiness for the greatest number of people." Associated with the task of synergizing the government in the region and at the center of regional autonomy, West Java must adjust the interests of the local community. Given the variety of products and cultural assets of the people, the potential to support the development of regional creative economy can increase the growth of the regional creative economy. Because of the vulnerability of imitation and claiming rights, by unauthorized parties, this requires the alignment of the regional government to achieve comprehensive protection of IPR. Based on these issues, the researcher is interested in examining IPR protection for regional creative and innovative work through regional institutions, and how the IPR protection development model for the work is intended to support the growth of Indonesia's creative economy.

Theoretical Background

The issuance of several Regional Regulations related to IPR in West Java is a harmonization of national IPR law in line with Mochtar Kusumaatmadja's (Mochtar Kusumaatmadja, 1976, p 4) opinion, through Legal Development Theory, which states that law, as a means of development in the direction of development / renewal, must be used as a "Community Development Facility" from the "mind set" of traditional communal society towards a modern democratic "mind set." Attention needs to be paid to the theory of "*Stufenbau*" Hans Kelsen" that states "the enactment of the law if it is in accordance with higher standards (Mariana Molnar Gabor, 2012, p 28). According to Soerjono Soekanto, it needs to pay attention to factors such as; rules of law / regulation, law enforcement, facilities, society and culture. According to Lawrent Friedman (Satjipto Rahardjo, 1986, p 69), law enforcement needs to pay attention to legal substance, legal structure, and legal culture, so that creators and innovators are valued and protected by law and their creativity is supported according to reward and incentive theorists. According to Robert M., Sherwood in Public Benefit Theory (Robert M. Sherwood, 1990, p 37), it is a philosophical foundation of the exclusive rights of the nature of monopoly stated by Jeremi Philips and Allison Firth, in the theory of "The Absolute Monopoly of The Market," that creative industrial owners have the right to prevent anyone from using rights to the market without basic rights in increasing the growth of Indonesia's creative economy (Robert M. Sherwood, 1990, p 11-13).

Research Methods

Normative juridical reviews of the object through its legal principles through national IPR legislation harmonized into several IPR Regional Regulations in the West Java Region for the creative and innovative work of creative industries supporting creative economic growth. The

specification of the research uses descriptive, qualitative juridical analysis, with the interpretation method of historical law, sociological, and juristic construction methods of interpretation of law. Referring to the principles of national and international legal norms, international conventions, as secondary primary data and reviewing library data. Primary data is used to clarify the study of secondary data.

IPR Protection for Creative Works and Innovative Creative Industries in the West Java Region

West Java Province has the potential of the creative industry that needs to be developed and utilized optimally through the expansion of products with education and facilitation of IPR and the commitment to the development of the creative economy. Facilitation of IPR according to Soerjono Soekanto, in the form of IPR protection, needs to pay attention to these three factors: legal / regulatory rules, law enforcement, and facilities, society and culture (Satjipto Rahardjo, 1986, p 69). Lawrent Friedman states that law enforcement is influenced by three factors i.e. interrelated legal substance, legal structure, and legal culture as the essence and measure of effectiveness of law enforcement. Regarding the protection of IPR by the West Java Regional Government, it is reviewed as follows:

Legal Subtension (Legal Substance)

Legal Substance in the form of legislation as an effort to protect IPR in the form of repressive and preventive laws. Preventive legal measures are seen in the regulation of National IPR in several laws and regulations, such as Law No. 30 of 2000 concerning Trade Secrets, Law No. 31 of 2000 concerning Industrial Design, and Law No. 32 of 2000 concerning the Design of Integrated Circuit Layout. In an effort to harmonize all laws and regulations in the IPR sector with the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Government of Indonesia ratified Law No.13 of 2016 concerning Patents and Law No. 20 of 2016 concerning Trademarks and Geographical Indications and Law No. 28 of 2014 concerning Copyright. Repressive legal measures can be seen in the regulation of criminal acts in these provisions. As a harmonization of the regulation, West Java as an area supporting the development of an inclusive creative industry has issued several Regional Regulations related to IPR, those are: West Java Regulation No. 5 of 2012 concerning Intellectual Property Protection, Governor Regulation No. 73 of 2015 concerning Guidelines for the Implementation of IPR Registration Facilitation, West Java Regional Regulation No. 10 of 2018 concerning Management of Intellectual Property supported by West Java Regional Regulation No. 15 of 2017 concerning the Development of Creative Economy. This is in accordance with Hans Kelsen's "Stufenbau" theory, which is "the enactment of the law if it is in accordance with higher standards," (Mariana Molnar Gabor, 2012). West Java is the booster, and the only Province that has a regional regulation on the creative economy

(Republika, 2019), sourced from a higher level, that is the national IPR arrangement.

In addition, the province of West Java will establish a Regional Creative Economy Agency (*Bekraf*) in 27 districts / cities, with the supervision of the Central *Bekraf* in the form of IPR facilitation. Thus, *Bekraf* and the West Java Provincial Government have the authority to draft regulations on IPR in the creative industry according to mutual agreement (Pikiran Rakyat, 2018). The realization of these regional regulations is related to the support of facilitation of registration in accordance with article 4, paragraph 1 jo. paragraph 2 of West Java Regional Regulation No. 5/2012 concerning the Protection of Intellectual Property Jo. Article 23 of West Java Regulation No. 10 of 2018 concerning Management of Intellectual Property. The province provides registration facilities. Currently the Deputy for Facilitation of IPR, in its efforts to enforce IPR protection through a flagship program, holds mass and free IPR consultations, providing facilitation for 1,000 (one thousand) registrations of IPRs for economic actors, while also establishing Anti-Piracy Task Force to eradicate IPR violations (Sulasi Rongiyati, 2018, p 47). The achievements made by Deputies in 2016 were those who consulted IPR for free, for 753 economic practitioners, free IPR registration for 642 registrations, redesign of product packaging that indicates the geographical character of 16 superior products professional certification for economic actors in the fields of batik, photography, barista, and 1,200 digital creative economic actors. As a whole, since *Bekraf*, the number of creative economic actors who have facilitated IPR registration were as many as 1,174 people from 21 cities, and the Professional Certification Facilitation program in 16 cities was as many as 1,830 people. The achievement program's 2016 Deputy Facilitation of IPR and *Bekraf* Regulation had exceeded the initial target. However, these activities are still limited to a number of cities and are focused on large cities, including West Java. For East Java Province, the Surabaya City Government has collaborated with the Director General of Ministry of Forestry to open facility service content for creators and innovators in terms of applications for registration / registration of trademark rights, copyright, patent rights and integrated industrial design through one-stop integrated services (UPTSA), including free service for 150 Micro Small and Medium Enterprises/ MSME (UMKM) (Tribun Jatim, 2019).

Regarding the registration facility according to the West Java Regional Regulation, from 2016 to 2018, *Bekraf* has facilitated 5,671 registration of IPR. However, considering the awareness of creative industry players on the importance of IPR ownership is low, it is necessary for *Bekraf* Chief, Triawan Munaf, to say that HKI socialization and facilitation facilities, from *Bekraf* to the Ministry of Law and Human Rights, have been carried out in 80 cities in 34 provinces. Based on the Central Bureau Statistics (BPS) and *Bekraf* surveys, the number of creative business people who already have IPR certificates is only 11.05% of the 8.2 million business people, while the rest have not registered their products. The perpetrators who have not registered from the film, animation and video sub-sectors are 21.08%. Another

sub-sector is culinary, with as much as 19.75%; television and radio with 16.59%; issuance with 15.86%; fashion with 14.14%; product design with 11.56%; visual communication design with 7.25%; music with 6.88%; craft with 6.69%; interior design with 5.45%; and architecture with 3.64% (Michael Reily).

Legal Structure

The role of the related technical implementation agency in West Java Province is in accordance with paragraph 4 Jo. Article 6 Regional Regulation No. 5 of 2012 concerning the Protection of Intellectual Property Jo. subsection 1 paragraph 6 J. subsection 22 paragraph 1,2.3 Jo subsection 23 paragraph 4 jo. subsection 27 paragraph 2 Governor Regulation No. 73 of 2015 concerning Referrals for the Implementation of IPR Registration Facilitation, including:

- a. Regional Devices Organization (OPD) has the duty and function of HKI protection, that is facilitation of IP utilization, among others, registration and making license agreements and empowerment in the form of IPR counseling and training. The agency needs to have a comprehensive understanding of the technical preparation of IPR registration applications.
- b. IPR Center serves supporters and work partners to realize the optimization of IPR protection programs in facilitating data integration, guidance, registration, data collection, acquisition and utilization of strategic functions of the Intellectual Property in an effort to improve synergy between Local Governments, Universities, Professional Associations, Intellectual Property NGOs and other communities (Sudarmanto, 2012, p 113), namely creative industries participants, IPR implementers, ministries, non-ministries as supervisors, IPR offices, courts, the Supreme Court, the Police, and the Prosecutor's Office are the most fundamental in protecting IPRs in accordance with West Java (Haris Yusup, 2018, p 350) conditions beside helping to direct IPR disputes through negotiation, mediation and arbitration.

Legal Culture

West Java has the traditional potential of superior knowledge, as well as in Bali, but those people tend to have a permissive or proud communal culture if others copy the processes and creative products, and even bring happiness. This culture greatly inhibits the effectiveness of IPR protection, in an effort to increase the growth of the creative industry. This is a challenge for the government, especially the local government, because changing the paradigm is not easy. For example, Cirebon batik motifs has thousands in number, but employers often copy the motives of other parties. It is argued that imitating the motives of other parties violates IPR, but there is a sense of reluctance to reprimand other businessmen, considering that

generally entrepreneurs in this village have kinship relations, besides the eastern world IPR 'mind set' in the form of wisdom values of local culture more togetherness and sharing (Rosmawaty Sidauruk, 2013, p 157).

Development Model of IPR Protection in Creative and Innovative Work in Industries Through the Role of the West Java Regional Government to Increase the Growth of Indonesia's Creative Economy

The creative industry has a close relationship with the protection of IPR, given the very conditions of the work of creativity and innovation, namely intellectual property. It is the absolute right of creative industry actors, so as not to be exploited, to get comprehensive protection. Reviewing this, the IPR protection system in the regions has not been comprehensive in supporting the increase of Indonesia's (Haris Yusup, 2018, p 350) creative economic growth, as well as in West Java. Therefore, an effort is needed for the role of local governments to develop effective models of IPR protection development with the following strategic steps (Mariana Molnar Gabor, 2012);

Renewal of IPR Law

Renewal is carried out through harmonization of national IPR regulations into regional IPR regulations/policies, through the synergy of the central Intellectual Property protection system with the regions, so that "effective" and "progressive" (Sajipto Rahardjo, 2010) characteristics of modern legal systems require institutional development and professional optimization so as to solve "social problems." The West Java Regional Government is a "booster" that is very concerned in realizing this by issuing several regional IPR law products, as described earlier, among others, the essence of which is as follows: (1) Institutional development and optimization of professionalism through the West Java Regional Regulations embodied the establishment of Regional Device Organization/RDO (OPD) services, and (2) The Center for Intellectual Property Rights are expected to be strong, capable, effective and integrated in carrying out the IPR protection function. This is in line with Mochtar Kusumaatmadja's "Legal Theory of Development," stating that the renewal as "Community Development Facility" is aimed at achieving the accelerated increase in creative economic growth.

Improving the Law Culture

In line with this theory, the development of IPR protection is effectively not only prioritizes rules but also behavior (Mariana Molnar Gabor, 2012) by directing the "mind set" of creative industry actors from the "mind set" of a communal traditional society to the "mind set" of a modern democratic society to realize the acceleration of creative

economic growth. In line with the opinion of Seidman (Seidman, and Abeysekere, 2012, p 13-16), West Java Government through the Center for IPR, according to their duties and functions, needs to pay attention to non-judicial objective factors in the education of the importance of recognizing and respecting Intellectual Property, expressing opposition to Intellectual Property registration at the Directorate General of Intellectual Property Rights considering that the Intellectual Property registered is owned by the community in the area besides carrying out the Intellectual Property violation advocacy function. Communication efforts are used to increase understanding of various information regarding to the urgency of registration, the steps and costs of registration as well as the steps and the cost of filing litigation if there are violations that are difficult to overcome with persuasiveness. This encourages the effectiveness of IPR legal protection as an effort to prevent / act against forms of IPR violations that harm and hinder the acceleration of Indonesia's creative economic growth in addition to fostering existence, surviving the creative industry and regional culture is a reliable power in increasing the growth of creativity and innovation.

Documentation of Intellectual Property Community

The IPR Center in West Java has the function to support IPR protection programs, facilitate registration and data collection and aims to claim the types of communal rights and personal rights in each region, as an effort to prevent registration by parties who are not internal, regional or international potentially harmful and inhibiting the acceleration of the growth of the national creative economy.

Training, IPR Recording / Registration

An important obstacle to obtaining IPR protection is the lack of understanding of creators and innovators for the recording/registration process to obtain rights from the Director General of Intellectual Property Rights. Regional Device Organization (OPD) in West Java and IPR Centers must be more proactive in taking the initiative in providing knowledge about IPR recording / registration through intensive training, involving collaborative IPR Centers with Universities, IPR NGOs, Professional Associations. Recording/registration has a philosophical meaning that inventors have exclusive monopoly rights, according to Jeremi Philips and Allison Firth in the theory of "The Absolute Monopoly of The Market" stating that rights owners must be protected by IPR, so that they have the right to prevent anyone from using property rights in the market regulated by law that protects it.

Conclusions and Suggestions

Conclusion

- a. West Java Regional Government is as the "booster" development of an inclusive creative industry in the form of comprehensive regional IPR protection covering Legal Substance with the issuance of Local Regulation (*PERDA*) of IP Protection, Governor Regulation on IPR Registration Facilitation Implementation Guidelines, Intellectual Property Management Regulations, Local Regulation (*PERDA*) on Creative Economic Development, as harmonization of national IPR creative economic arrangements. Essentials govern the functions and strategic tasks of the Regional Device Organization (OPD) and IPR centers in facilitating the use of IP in the form of registration for guidance, data collection other than mediators, negotiators, arbitration in the event of an IP dispute. The role is strategic considering that community culture is communally permissive, in addition to the more prominent 'mind set' of togetherness and sharing (Rosmawaty Sidauruk, 2013, p 157) that has a juridical impact on potential violations of Intellectual Property.
- b. To support the increase of creative economic growth, it is necessary to develop an effective IPR protection model, in addition to renewing IPR law in the region, through strengthening, optimizing the professionalism of the Regional Device Organization (OPD), and the IPR Center in an integrated manner. Improvement of the "mind set" behavior of traditional communal society is needed in the direction of modern democratic society. Advocating Intellectual Property violations in addition to documenting Intellectual Property Community. Intensive training and registration of IPR are also crucial to be implemented.

Suggestion

- a. Accountability and credibility of the Regional Device Organization (OPD) institutions and IPR centers through intensive training are needed so that the effectiveness of the tasks and functions are optimal for preventive violations, considering the application of curative sanctions has not provided a deterrent effect and requires strong commitment from law enforcement officials. As well as the need for strengthening by optimizing the Anti-Piracy Task Force in the region to address IPR violations, strengthening IPR protection efforts.
- b. It takes an optimal role of the Regional Device Organization (OPD) institutions and IPR centers in improving community behavior from traditional communal "mind sets" to modern democratic directions through education and advocacy in addition to efforts to document community IP. The intensive training, proactive in registering and registering IPRs are an effective model for the development of IPR protection to increase the growth of Indonesia's creative economy.



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