



## **INTELLECTUAL PROPERTY RIGHTS INTEREST AND LEGAL PROTECTION**

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### **Abstract**

Developed countries around the world have now shifted to a knowledge economy function where information and knowledge are important drivers of economic growth. The concept of the knowledge economy evolves into a creative economy. The creative economy as one of the pillars of the economy in the future has a very strategic role to support the country's economic growth. This is due to the advantages possessed by the creative economy as a source that will never run out because everything is based on the originality of ideas. The economy can be a solution to overcome the problems faced by the community and the government, especially in the field of employment, business and as a source of state revenue. Each party in the creative industry that creates creative works needs to obtain protection of intellectual property rights so that the existence of all copyrighted works can be protected under the law and no one person can take without permission, trade, reproduce without the owner's permission. Encouragement to register creativity results needs to be done in order to protect Intellectual Property Rights for the creative industry. Obstacles must be overcome immediately. The important role of HKI in the modern economic era is very real and with this the economic development of a country is more assisted because it presents healthy competition and industrial development and economic growth are also more advanced.

**Keywords:** creative economy, creative industries; protection of intellectual property rights.

## Introduction

Today's national economy must be able to rise from the downturn caused by the Covid-19 pandemic. The government, business actors and the community must synergistically try to improve and empower each industry as a pillar in economic development (Mendrika *et al.*, 2021). Indonesia has economic sectors that are a mainstay of supporting economic growth, such as the trade sector, chemical industry, fertilizer and pesticide industry, machine industry, electrical tools and equipment, rubber and plastic goods industry, paper industry, paper and cardboard goods and other various sectors. (Darmawan, 2018). One of the industries that must receive attention and support is the creative industry. The creative industry in Indonesia grows and develops into an economic sector that has a strategic role for the economy, although it is not as strong as other sectors. However, the advantage of the industry is that it has the advantage of being renewable and different from the goods industry that can run out in the future (Scott, 2004).

The creative industry is a collection of economic activities related to the creation or manufacture of an object or the use of knowledge and information technology. Jones (2004) provides an explanation regarding the emergence of the creative industry because creativity, skills and talents of one person or group of people are utilized so that prosperity can be realized, employment is created due to the utilization of creativity. The creative economy can be explained as a concept in the modern economy that is oriented towards information and creativity as well as innovation by utilizing ideas and insights from human resources themselves which are the main factors of production related to their economic activities. Therefore DePropris (2003) argues that there is a link between the creative economy and the creative industry, this is because the creative industry is part of the creative economy. This means that the creative industry is a process of making a product that will later be traded to better advance the creative economy.

The creative industry is not only limited to the creation of industrial products, but the industry covers various aspects that are able to replace natural resources that are decreasing day by day (Muller *et al.*, 2009). The creative industry is getting bigger and developing day by day in line with the development and progress of the times (Pratt & Jeffcutt, 2009). Slowly but surely the creative economy in its time will shift the role of a commodity and natural resource which is currently the backbone of the Indonesian

economy and the emergence of creative ideas will not stop so that in the future the national economy can also be supported by it. So far, most of the state's revenue has come from taxes and non-renewable natural resources which will gradually shift to creative industry products.

The creative economy plays an important role in building the national economy. This fact requires good planning, strategy and implementation in the development of industrial products. In Indonesia the creative economy is also developing, this is the result of real efforts that are carried out with optimism and there is a strong desire to realize the vision of the Indonesian state itself. The vision is to become a developed country and have visionary thoughts, strong desires and what people dream of being able to experience a decent and prosperous life can be realized (Gani et al., 2021). Human resources are used as the main capital in a creative economy development that begins with ideas and thoughts (Schlesinger, 2007).

Creative economic products as an intellectual property produced and owned by a creator in the fields of art, literature, science and technology (Boyle, 1997). With this in mind, the state should provide a form of appreciation for creative economic products which are works of high value and must obtain the protection of Intellectual Property Rights (HKI). This protection is given so that a creator or inventor of a creative idea gets economic benefits resulting from his intellectual work (Chon, 2006). Even though laws and regulations have regulated it, in reality in Indonesia awareness regarding HKI protection is in the low category.

The list of creative economy products at the Director General of Intellectual Property is still small. In addition, the number of piracy or plagiarism of a work or creative idea is very detrimental to the creators of their creative economic products, especially in terms of fulfilling the economic rights of the creators which are still relatively high. This is due to perceptions and perspectives on the reality of HKI protection, one of which is that the registration procedure is still far from what was expected because it is still difficult, complicated, costs a lot, duration is not short and is not easy to understand.

This study intends to review the protection of HKI for creative industries, and the factors related to the management of HKI for creative industry players.

## Method

Normative and empirical juridical research is used in this study with descriptive research as its type. Normative juridical research based on the explanations of Mardikaningsih & Darmawan (2013) is research carried out by tracing secondary data in the form of rules or legal regulations as a system related to activities in the field of law. Furthermore, to strengthen research studies, it will also be seen the development of the creative economy through HKI protection at the empirical level which is also focused on implementing HKI protection for actors in the creative industries.

## Result and Discussion

### Creative Economy and Creative Industries

All over the world, developed countries are starting to change their knowledge-based economic functions where with information and knowledge, economic growth is more encouraged (Darmawan *et al.*, 2021). Knowledge-based economic activities that form the basis of creative industries (Hall, 2000). The concept of the knowledge economy ovulates into a creative economy. It can be understood that there is an inspiration whose value must be recognized and the magnitude of the desire that exists must be placed on an expressive medium in business and services.

The creative economy is a concept that emerges from a review of all the potential and role of creativity as a force for modern economic life which states that economic and cultural development cannot be separated but can be made into a part of a broader development process (Hesmondhalgh & Pratt, 2005). Thus, the creative economy is an industry that is based on creativity, competence, talent that is owned and has greater possibilities in terms of wealth, creation of jobs through generations and utilization of intellectual property (Okediji, 1996). In essence, the creative economy is a creative and cultural industry that is placed on a mixture of art, culture, business and technology.

The creative industries are increasingly important in the knowledge economy. Howkins (2001) states that the creative industry is the provision of economic goods or services that result from creativity and have economic value. The creative industries are experiencing faster-than-average growth and the creation of new jobs, providing expressions of cultural identity and promoting cultural diversity (Blair *et al.*, 2001; Hotho

& Champion, 2011). Gibbon (2001) defines the creative industry as a group of parties involved in economic activities by utilizing creativity, skills and ownership of talent to create wealth in employment. Therefore it relates to individual characteristics and skills as well as personal creativity (Ashton, 2011; Hotho & Champion, 2011).

### **Overview of Intellectual Property Rights**

Intellectual Property is one of the rights that arises based on human intellectual abilities. Intellectual Property Rights, abbreviated as HKI, are rights related to objects that originate from the work of the brain, the work of ratios. The result of the work of reasoning human ratios. The result of his work is an immaterial object. Intangible objects. HKI is an exclusive right that is within the scope of life in technology, science, or art and literature. Ownership does not lie in the object but is based on the results of intellectual abilities and creativity which include ideas.

As a property right that arises from human work, initiative, creativity or can also be referred to as human intellectual property rights. The results of these creations, in civilized society it is recognized that those who create may master for purposes that benefit him. Creations as property based on property rights in the broadest sense which also includes intangible property (Roscou Pound, 1982).

Since the 1970s HKI protection has been linked in the literature, although it generally existed in the late 1970s and 1980s, when HKI protection began to be addressed in 2013 on issues of competitive advantage in economic activity (Muzaka, 2013).

HKI protection at this time is not only to generate wealth or influence investment but rather form a competitive (Singh, 2015). In addition, HKI protection can prevent ideas that are owned from being used by other parties without permission and protection and being developed by other parties and at the same time the owner of the idea can benefit. Based on Sirgy *et al.* (2020) legally they are protected from all kinds of violating forms.

### **The Importance of Protecting Intellectual Property Rights for Creative Economy Players.**

Indonesia as one of the most populous countries in the world has many talents in the creative industry. This potential must be developed further.

Creative products continue to emerge in various fields with the idea of being a limitless resource that has very high economic value (Padma *et al.*, 2018).

The creative industry has high economic value for people's welfare and employment and can increase a country's economic growth. Creative economic products are intellectual property produced and owned by a creator in the fields of art, literature and science or an inventor in the field of technology (Kapczynski, 2008). Thus, creative economy products are wealth that should be appreciated as works that generate economic value and require protection for these HKIs.

Every party involved in the industry must be aware of and understand the importance of HKI to maintain the originality of their creative ideas. Products whose creative ideas have been registered with Intellectual Property Rights, then the worry that other people will imitate the idea will not arise. HKI is a legal right that is given to the expression of ideas that are manifested in real terms (Lexchin, 2005). There are two characteristics of HKI. HKI is an exclusive right, monopoly right, which includes three things, namely the right to use, the right to allow other people to use a right, and the right to prohibit other people from using a right. HKI is an intangible asset, meaning that a person who has HKI means that person owns an asset, which often has a higher value than tangible assets.

HKI is an expression of an idea that has fulfilled three conditions, namely first, the idea is not just an idea or notion, but must be expressed in a tangible form. Second, the expression of the idea has never been disclosed to anyone and anywhere, which is commonly referred to as the originality of the idea. Third, the expression of these ideas can be realized in real terms, both in commercial and non-commercial forms.

Trademarks, patents and industrial designs must be registered in order to receive protection from the state. If not, people can imitate and there is no legal protection. The existence of HKI can be a source of increased income for the owners of these creative ideas. There are royalties that are obtained when other parties use the idea so that products or ideas that have been registered in Intellectual Property Rights will provide economic benefits for creators, creators, designers, and investors. Therefore, to prevent claims on products, brands, and even creative ideas from other parties taking advantage of the situation, creative economy actors should register them with Intellectual Property Rights.

HKI dispute resolution in Indonesia is known in two ways, namely through litigation through commercial courts or district courts and non-litigation through negotiation, mediation, conciliation and arbitration. HKI disputes often occur in trademark disputes. Brand disputes themselves are divided into several types. In article 76 of the Civil Code, it has been stated about the dispute over the revocation of the mark. Article 30 paragraph 3 of the Civil Code contains objections or decisions of the appeal commission. Articles 77-73 of the Civil Code contain objections to disputes or the abolition of mark registration at the initiative of the Director General of Indonesian Civil Code. Article 74 of the Civil Code is about trademark registration deleted by third parties. Article 83 is a claim for compensation. Temporary determination in Article 94 of the Civil Code. To prevent disputes, owners of brands and other products should immediately take care of ownership rights. Management and registration letters as well as brand certificates, patents and industrial designs are currently in electronic form.

### **The Government's Role in Protecting Intellectual Property Rights**

HKI is part of human rights that must be protected, respected and fulfilled by the government. However, the awareness of the Indonesian people regarding intellectual property rights and its legal aspects is still very concerning, so it often results in various legal issues that lead to disputes in court. If there are legal issues, law enforcement will occur.

The government, as a policy supervisor, must disseminate information to the public regarding the interests of having Intellectual Property Rights. HKI can be expressed as a right to obtain legal protection based on intellectual property according to the regulations set out in the HKI law. The form of HKI patents, trademarks, industrial designs, copyrights, geographical indications, and trade secrets.

Broadly speaking, the scope of HKI consists of two parts, namely copyright and industrial property rights. Industrial property rights consist of patents, trademarks, industrial designs, layout designs of integrated circuits, trade secrets, and protection of plant varieties. HKI protection in creative economic practices, then there are three realities that can be found. Here's an explanation.

HKI protection is essentially related to innovative and creative product expansion. This implies that the reality of HKI protection is in all kinds of creative and innovative products. Therefore it is clear that HKI protection is aimed at creative and innovative products, but from an HKI perspective there are specific criteria for said product to be creative. These criteria include originality, fixation and creativity. Likewise for patents, a product is called creative and innovative if the product meets the criteria for novelty, one step is more inventive and industrial activities can also be applied, the industrial design criteria are updated, the criteria for trade secrets must be new and for trade secrets the criteria that must be met are efforts to safeguard valuable information. Economy not to be known by the public. By setting a criterion, it is clear that requests from HKI must be creative and innovative. Even so, currently there are creative economy actors who ignore the criteria so that the result is that existing products are not new products and even plagiarism of existing products.

The reality is that obtaining HKI protection in relation to the registration system is indeed complicated, the costs involved are not cheap, the time required is unpredictable, which is why the owner is reluctant to register it. This of course weakens legal protection and has implications for the creative economy products not being protected.

Another reality of HKI protection relates to HKI law enforcement. Currently, HKI law enforcement is still uneven and not implemented properly and professionally. This is due to a lack of interested apparatus, namely law enforcers who already have a good understanding of HKI which is a clear reality for HKI law enforcement so that creative economic products that have been registered with HKI do not receive protection even though the legal process has been carried out properly. HKI socialization must be carried out to all related groups, such as law enforcement officials, students, user communities, creators and no less important is the press because with the power of ink among journalists efforts to raise awareness of the importance of HKI will be relatively easier to materialize. In addition, the target participants of the socialization activities must be clearly identified in each form of socialization. By carrying out more effective socialization, knowledge of the HKI system can be known to all levels of society.

### Nature of HKI Protection

HKI as a right to obtain legal protection has two characteristics, namely having a limited period of time and being exclusive and absolute. This characteristic will be attached if the owner has obtained HKI protection.

There is a limit on the timeframe. This means that the legal protection for HKI is determined by the time. The period for the protection of HKI has been determined and regulated by law. Copyright protection lasts 50 years from the time a work is published and extends up to 50 years after the creator dies (Article 34 of Law Number 19 of 2002 concerning Copyright). Industrial Designs are protected for 10 years from the date of Acceptance (Article 5 paragraph 1 of Law Number 31 of 2000 concerning Industrial Designs). Confidential information, commonly known as trade secrets or confidential information, includes formulas, patterns, compilations, programs, devices, methods, techniques or processes. Trade secrets are protected continuously without any time limit, the confidentiality is maintained and has economic value (Article 3 paragraph 1 of Law Number 30 of 2000). Patents can be granted for both products and processes. There are two parts to patent protection. First, ordinary patents that can protect within 20 years from the date of receipt and no extension. Second, simple patents can protect within a period of 10 years from the date of filing and cannot be extended, stated in (Article 8 paragraph 1 and Article 9 Law Number 14 of 2001). Brand protection for 10 years from the date of acceptance and can be (Article 28 of Law Number 15 of 2001 concerning Marks). The Integrated Circuit Layout Design is protected for 10 years from the date of acceptance (Article 4 paragraph 3 of Law Number 32 of 2000 concerning Layout Design of Integrated Circuits). Plant Variety Protection is divided into 20 years for annual crops and 25 years for annual crops (Article 4 paragraph 1 and 2 of Law Number 29 of 2000).

Exclusive and absolute. HKI legal protection provides exclusive and absolute rights for owners. Being exclusive and absolute means that the right is only owned by the owner. The owner has the right to exploit the HKI he owns for his benefit. The owner of that right can sue against violations committed by anyone either civilly, criminally or administratively. The owner/holder of HKI has a monopoly right, to use his right by prohibiting anyone without his consent from making

creations/inventions or using them. Parties who violate the owner's rights may be subject to sanctions. Both of these properties are listed in HKI law. These properties require legal protection for the owner. A limited, exclusive and absolute period is automatically attached to the HKI.

Thus HKI discusses the attachment between every idea and the original product that comes from human intelligence. Intellectual Property Management is a multidimensional task that requires a variety of different actions and strategies to comply with the law. Trade and commerce considerations are important for the management of HKI. Different forms of HKI demand different treatment, management, planning and strategies and the involvement of people with different domain knowledge such as science, engineering, medicine, law, finance, marketing and economics. Each industry has to develop its own HKI policy, management style, strategy, etc. depending on the area of specialization.

HKI is a legal right granted to the inventor or creator with the aim of providing protection for copyrighted works, products for a specified period of time. These legal rights give the assignee the exclusive right to use to the fullest the copyrighted invention or employee for a set period of time. The important role of HKI in the modern economic era has real benefits and is a way for the economic development of a country to be more assisted by promoting fair competition and encouraging the realization of industrial development and economic growth.

## Conclusion

At present the creative industry has experienced very rapid progress which can be relied upon as opening business fields, employment opportunities and as a source of state income. This makes the creative industry have the potential to develop into a major element of a national asset which is always renewable along with the changes and progress of human civilization.

All forms of creative industry businesses, if they have artistic value and high economic value, need to be protected by HKI of creative industry business actors. Every creative economy actor must be able to understand that HKI is important because originality can be maintained. HKI is a form of protecting ideas owned by creative industry players. They must feel secure with ownership rights and avoid acts of theft, imitation and recognition/claims for creativity.

Efforts to encourage creative industry players are needed so that they have the awareness to register intellectual property. This is also due to their little knowledge about the protection of HKI and the assumption that every bureaucratic arrangement requires a lot of money. The bureaucratic system for registering Intellectual Property Rights is required to be simple and does not require a long time.

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