

Legal Reforms of Trademarks in Order to Increase Investment in Indonesia

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Abstract: Intellectual Property Right is an important aspect for the economic growth of a developing country. One of the ways to strive the economic system is through investments. It is believed that Foreign Direct Investment can be a measurement tool for a country's economic growth, FDI may increase capital formation and create job opportunity, promote exports such as manufacturing, access of skilled labor to production networks at the international level and creating some brand names as well as technology transfer and spillover effect. These advantages will automatically contribute to a country's economic growth which will help a developing country to eradicate poverty and achieve peoples' welfare. However, these benefits could not be achieved if a country lacks national platforms for intellectual property protection. Country should be able to develop technology rather than relying merely on natural resources and for this exact reason, an adequate protection of IPR is very necessary. The absence of adequate protection for such rights could make investment in intellectual works less attractive thus affecting economic development and the expansion of world trade. This paper introduces empirical studies of trademarks protection and how it can help economic growth in a developing country, provides an overview of the topic as well as findings on the issues.

1 INTRODUCTION

Information and communications revolution began in the 1800s when the industrial revolution caused millions of people to change their lifestyle. Headrick argued that the Information Era has no beginning, as it is as "old as humankind." However, he suggests that "in the course of history there have been periods of sharp revolutions in the amount of information that people had access to and in the creation of information systems to deal with it" (Headrick, 2000). As we entered the 21 st century, the information era is marked by the rapid advance of science, the advent of online world and digitalization as well as the information system and technology that transform people's lives. Globalization is a real result of advances in science and technology. Intellectual Property Rights (Consideration of Law No. 28 of 2014) is an important matter in the fields of science, technology, art and literature that has an important function in nation-building and promoting public prosperity that has been mandated by the constitution namely the 1945 Constitution of the Republic of Indonesia. The existence and very broad development, especially in

this field of knowledge, requires a process or effort to increase protection and legal certainty for citizens or owners of intellectual property rights.

One of the things that deserves the attention of the state is an establishment of legal protection of ownership rights granted by the state to every citizen. The same type or form of legal protection efforts for IPR holders must also be provided to IPR which is acknowledged as part of efforts to protect human rights (see also article 27 (2) of the UN Declaration of Human Rights). These two things are basically identical due to the fact that both rights are legal objects and are things that can be owned individually or in groups by legal subjects.

The Agreement on the Establishment of the World Trade Organization (WTO) on April 15, 1994, intensified globalization in the field of law that is closely related to the scope of global trade development and intellectual property rights and their attachments namely Trade Aspects Related to the Form of Intellectual Property Rights Agreement (TRIPS Agreement). WTO is a rule of law in the field of trade between countries at the global level and has a high level of enthusiasm to eliminate all bad business or trade prac-

tices.

In the development of international trade which will continue to grow, such as goods and services as human intellectual products, has a very relevant role nowadays. An economic value that has been inherent in intellectual property. Therefore it can be said that with the clarity of elements and standardization of law in the field of protection of intellectual property rights, a new legal concept has emerged, namely the globalization of law. Intellectual Property Rights consisting of copyright, patent, trademarks, varieties of plants, trade secret, industrial design and integrated layout design is a powerful weapon in the economic development of a nation to become a developed country (welfare state). One of the WIPO strategic realignment program is "The challenges we face include addressing the stress on patent and copyright systems as a result of rapid technological change, globalization and increased demand, reducing the knowledge gap between developed and developing countries, and ensuring that the IP system continues to serve effectively its fundamental purpose of encouraging creativity and innovation in all countries".

Many international rules and regulations have been established by the international community with the aim of providing legal protection in a simpler way. Madrid Agreement on International Trademark Registration, 2196 and the Protocol relating to the Madrid Agreement on International Trademark Registration, 1989 and General Regulations based on the Madrid Agreement on International Trademark Registration and Related Protocols of the Agreement, 2008 is an international legal regulation in the field of trademarks which provides a way easier to register trademarks internationally. Moreover, to support the country's economy, the protection of geographical indications and the use of traditional knowledge must be increased.

2 THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS FOR ECONOMIC DEVELOPMENT

One of the ways to strive the economic development is through investments. "Many authors believe that Foreign Direct Investment could be an engine of a country's economic growth, because FDI may enhance capital formation and employment generation, promote manufacturing exports, bring management know-how, access of skilled labor to international production networks and established brand names and

technology transfers and spillover effects (SAMAD, 2010). At the most fundamental level, FDI is a forward-looking decision that binds a multinational to a long-term operation in a host nation. As such, any factor that raises the expected profits of such an operation will raise FDI. In our case, stronger IPRs can raise the firm's perception that it will earn and retain higher returns on its protected knowledge-based assets" (Ghosh and Yamarik, 2019).

"FDI can help the improvement of environment and social condition in the host country by relocating 'cleaner' technology and guiding to more socially responsible corporate policies" (Kurtishi-Kastrati, 2013). Many other potential advantages include reduces in scarcity of capital, raises labor productivity, reduces income disparities, increases competition and reduces foreign exchange gaps. These advantages will automatically contribute to a country's economic growth which will help a developing country to achieve people's welfare and alleviate poverty.

However, these benefits could not be achieved if a country has a weak national platforms and a weak intellectual property rights protection. Intellectual Property Rights is a set of given by a state to the creator and these set of rights are protected by the state for a limited period of time from unauthorized commercial exploitations. These rights include copyright, trademarks, geographical indication, patent, trade-secret, industrial design, as well as plant variety rights. Superior competition in the current world economy in the development of the latest technology related to natural resources and traditional production factors and this reason cannot be supported without adequate protection of intellectual property rights. The absence of adequate forms of legal protection for these rights (Seyoum, 1996) can make investments in the creative world.

Intellectual property right is indeed a powerful tool for economic growth and development of a nation (Syafrinaldi, 2010). Data shows that generally exports by developing countries in the form of natural resources became less relevant for the country's development. The percentage of deterioration of export reaches 70% in 1900 and was down by 20% by the end of the 20th century (see Resources Matter, in the Message of the Director General of WIPO). The data tells us that, relying on merely the natural resources of a country in fact cannot bring prosperity and welfare towards the state. However, by relying on the intellectual property rights, there have been many countries that have given us a definite proof that those said rights can help transform the country into a developed country (industrialized country). The intel-

lectual property is a constant economic potential that will continue to undergo a development and progress through creative and innovative work.

“Various technology development in various fields, that is either simple in nature or high tech, is the result of human invention that is patented and thus protected by the law, by both international and national provisions. Legal protection of the intellectual property rights contain economic rights” (Ng-Loy, 2008) that are high in value as well as moral right (Davis, 2012).

According to this sense, it can be concluded that the law plays an important role and determine the economic development of a society either local, national and international. More over, in this globalization era, the necessity of the law is not only needed by the public and the justice seekers in a case at the court only, but also by the business actors, farmers and technocrats who also rely on the law which purpose is to provide protection for their own profession.

According to the provisions of Article 15 of the Trade Agreement concerning aspects of Intellectual Property Rights (TRIPs): “Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trade mark”. Things that can be explained in this sense. First, trademarks are interpreted in substance: a sign. It can be denominations, letters, numbers, color combinations, or a combination of these elements. Second, the trademark is determined by its function, the mark must be distinctive. Initially trademark law was designed to meet the objectives of public policy regarding consumer protection. This prevents the public from being misled about the origin or quality of the product. Third, the trademark is interpreted in a legal term: *“This is a type of industrial property. Trademark protection gives owners the exclusive right to use signs to identify goods or services produced or authorize other parties to use them in return for payment. Practically, the owner can be a physical or legal person, (the majority of trademarks are owned by companies)”* (Çela, 2015).

Madrid Agreement acknowledge that international trademarks registration is done in one of the trademarks office of the member countries or at the offices of the WIPO by filling in the registration form. With those procedures, trademarks has obtained a legal protection internationally in member countries without having to perform the registration in their respective countries. The principle of the first to file apply to this international trademarks registration due to the fact that the law only provides protection for registered trademarks (constitutive principle).

“The international registration referred to by the Common Effluent Regulations of the Madrid Agreement concerning the International Registration of Marks and the Protocol Relating to that Agreement is a trademarks registration made in accordance with the Madrid Agreement or the protocol or in accordance to both. The protocol should be seen as the law as a tool of economic development in an effort to attract foreign investors to Indonesia. Therefore, the participation of Indonesia to become a member of the Madrid Agreement and its Protocol must be really bring benefits for the development of intellectual property rights in Indonesia, especially trademarks”(Wipo, 2018) The trademarks act not only provides protection towards foreign good and services but also to the goods and services of domestic product from small, medium and large business. Past experience of Indonesia that is not so good in the development of the law in the field of trademarks should not be happening again. The IP system can support economic, social and cultural development if it is used strategically(Wipo, 2018).

2.1 The Necessity of Bold Legal Measures from the Government of President Jokowi

Basically, the concept of IPR covers intellectual property rights which are inherent to the owner and are permanent or exclusive, and the rights obtained by other parties upon permission from the owner are temporary. *“The results of this ability to think are ideas that are then embodied in the form of creation or invention. While the rights obtained by other parties on the permission of the owner, as well as the right to reproduce, the right to use certain products or the right to produce a certain product”*(Muhammad, 1982).

There are many laws and regulations in Indonesia concerning intellectual property rights which only act as passive laws, because in reality these laws have not been implemented to the utmost. This will affect the potential economic strength of existing provisions that cannot be achieved in the community and state. it can be said that the effectiveness of law and law enforcement in Indonesia, especially in the field of intellectual property rights is not at its limit.

“It is time for the enactment of Act No. 20 of 2016 concerning trademarks and geographical indications to be followed up with updates and to be incorporated (Syafrinaldi, 2010) with a variety of international provisions in the field of trademarks, such as the Madrid Agreement and its Protocol as well as the Singapore Treaty, 2006. This is the right moment for Indonesia’s Government under the leadership of President Joko

Widodo and Muhammad Jusuf Kalla to use the law as a tool of economic development and as well as the ability of the law to attract the investors to invest their funds in Indonesia through some actions. First, Indonesia should ratify the Madrid Agreement and its Protocol. Secondly, implementing the Act No. 20 of 2016 concerning trademarks and geographical indications to the maximum.”

Trademarks and geographical indication measures, aspects of geographical indications that exist in Indonesia must be of particularly serious concern to the country, which in this case is the government at both the central and regional governments. this is because in various regions still have a lot of wealth and considerable economic potential that can be done and formed into a creative economy. In fact the conditions in many areas is almost the same, only a small percentage of areas in Indonesia that already brought up the aspects of the commercial value of geographical indications, for example, “the Kopi Arabika Toraja, Kopi Arabika Gayo, Kopi Arabika Kintamani Bali, Tembakau Hitam Sumedang, Tembakau Mole Sumedang, Susu Kuda Sumbawa, Kangkung Lombok, Madu Sumbawa, Beras Adan Krayan, Kopi arabika Bajawa Flores, Vanilla Kepulauan Alor, Ubi Cilembu Sumedang, Salak Pondoh Sleman, Kopi Liberika in Meranti, Riau, and so on”.

Geographical Indication is a sign that shows the region of where the goods natively came from based on its geographical environmental factor including its natural factor, human factor, or a combination of both said factors which give reputation, quality and particular characteristic to the produced goods and/or products (Article 1 Number 6 of Act No. 20 The year 2016 concerning Trademarks and Geographical Indications).

Trademarks are generally different from other geographical indications that are not related to natural and human factors. in this case the definition of geographical indication is the exclusive right granted by the state to the holders of registered geographical indications, the meaning is that if as long as reputation, quality and characteristics are the basis of geographical indications still remain.

(hashita, 2019) India is able to produce more products of geographical indication that could depend on from the various districts, then rest assured that the Indonesian economy will be better.”

Filing for geographical indication registration is an absolute requirement to get the protection of the law and this is what makes geographical indication different with the designation of origin that does not require the registration. “A registered Geographical Indication enjoys a legal protection, which persists as

Table 1: The export value of Indonesia and some countries in the field of GI.

No	State	Product	Volume (Tons)	Value
1.	Indonesia	Coffee	900,000	\$1.2 B
2.	Thailand	Rice	1.400.000	12,23 B Thai Baht
3.	Sri Lanka	Ceylon Tea	-	\$1.5 B
4.	India	Basmati Rice	5.000.000	\$250 M

far as the features and or the quality on which the protection has been conferred still exist (Article 56 paragraph (7) of Trademarks and GI Act).” Which exists like in Thailand, for coverage of geographical indications in that country according to B3 which include such as Rice, Silk, Grapes and Spirits. compared to the provisions contained in Article 2 paragraph (2) of Government Regulation No. 51 of 2007 goods can be in the form of products in agriculture, foodstuffs, handicraft forms, or other types of goods. Another interesting example of the geographical indication to pay close attention to is Ceylon Tea from Sri Lanka which is the best product of the geographical indication that has a very high economic value. “The contribution towards economic provided by Ceylon Tea is directly and indirectly employed by the tea industry”(Hasitha, 2013) :

- 3Rd Largest Foreign Exchange earner.
- Generates an annual income of USD 1.5 Billion.
- Covers entire food import bill of the island.
- Constitute 65 percent of the nation’s Agricultural Export revenue.
- Contributes 2 percent to the country’s GDP.
- 2 Million People (10 percent of population)

According to data released by the Agency for the Development of Exports of Agricultural and Processed Products, another thing that can be explained is that the country of India is also one of the countries in the world that is able and has been able to enjoy the results and economic benefits of geographical indications, for example is the type of basmati rice. India stated that the export of basmati rice India reached the numbers of 370.000, 57 tons from April 2013 until March 2014 with the value of Rs 2,929,900,000.96 or worth more than Rp 3 Trillion,- . The number of this exports rose by 10,000 tons from the previous year.

India provides limitations on the geographical indication, “in relation to goods, means an indication

which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be” (Sreenivasulu, 2013).

Traditional knowledge is one of the field of IP that also receives very little attention from Indonesian government. Therefore, traditional knowledge has not yet been able to be displayed to the surface optimally to become national commodities that could be commercialized. The terminology of the “traditional knowledge” is used for fields which include traditional knowledge (TK), genetic resources (GRs) and traditional cultural expressions (TCEs). *“Traditional knowledge (TK) is defined as “knowledge, know-how, skills and practices that aceres developed, sustained and passed on from generation to generation within a community, fills up forming part of its cultural or spiritual identity”* (Wipo, 2018).

TCEs have strong ties with the social and cultural identity of the original people of a local, including in it know-how and skills which it possessed in accordance with the values and trust of that local communities. The legal protection given is a means of an effort to promote creativity, enhance cultural diversity and preserve local cultural heritage. In this context, the copyright Act No. 28 of 2014 is pretty much accommodating the protection in the provisions of article 40 and other related article. This was seen as a progress in the copyright field compared with the Act No. 19 of 2002 concerning Copyrights, although there are still some provisions that are debatable.

Genetic material can be in the form of natural materials such as plants, animals, microbial decomposition or other original materials that have a hereditary unit function. Genetic resources (GR) if associated with genetic material that has an actual value. for example, in the form of some plant material, animal origin, or microbial decay origin, such as medicinal plants, agricultural plants, and animal breeds.

Indonesia is still not too late for excelling in the field of traditional knowledge if the current open opportunities is not wasted. The commitment of the government is expected to promote the intellectual property as a strategic plan to promote the economy of the nation. IPR management system that it is required for the golden opportunity can be achieved for the future of justice and peace.

3 CONCLUSION

“Investment is influenced by various factors, such as political, economic, legal and social culture. especially in the field of intellectual property law, the provisions of the legislation in the field of intellectual property must be able to provide guarantees to every citizen that the national legal rules of Indonesia must be in accordance with international provisions. Enactment of Law No. 20 of 2016 concerning Trade Marks and Geographical Indications must be immediately followed by Indonesia’s participation as a participant in various international provisions in the field of trademarks, such as the Madrid Agreement and its Protocols and Singapore. Agreement, 2006.”

There are numerous things that determined matters relating to investment, those are political, economic as well as social. Specifically, stipulations of laws and regulations concerning intellectual property law shall provide a certainty that Indonesia’s national laws are in accordance with the international provisions.

In Joko Widodo and Jusuf Kalla administration era, there are several actions and efforts needed to be accomplished in order to carry out and execute the laws to the utmost and to ensure that these laws would attract and influence investors to invest their funds in Indonesia. First, Indonesia must immediately ratify the Madrid Agreement and its Protocol and adapt it to the legal character of the nation. Second, the Government must immediately assign and create pilot projects in the field of intellectual property that the goal is to achieve prosperity for every citizen of Indonesia

The set of laws and regulations which shall exist in the field of intellectual property rights must be utilized to the utmost and shall be used as a tool in the protection and development of the creative economy in Indonesia. These laws shall be able to guarantee creativity and innovation as well as ensuring that these innovations are protected by law. It is very necessary that the Government is able to show good faith as well as a strong and sincere political will that the provisions of the Act in the field of intellectual property rights are no longer only existing laws, but rather feasibly implemented so that in the future Indonesia will be able to rely on intellectual property as a result of intellectual creation of human minds that are able to bring prosperity to the nation and state.

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