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## Legal Protection of Intellectual Property Rights (IPR): What is Urgency for the Business World?

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### Abstract

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Thought intellectual works produced by humans that require the sacrifice of energy, time, and cost in its creation. The existence of this sacrifice makes the work produced has economic value because of the benefits it enjoys. Based on this concept, it encourages the need for an appreciation for the work in the form of legal protection for Protection of Intellectual Property Rights (IPR). This paper aims to analyze the Legal Protection of IPR and Its Urgency for the Business World. This research uses a legal policy approach, namely an approach that is carried out by observing the laws and regulations related to the policy issues under study. The results of the research show that Intellectual Property Rights products are works born of creativity, initiative, and creative power, as well as high and creative intellectual abilities/the work of the brain, meaning and reasoning from the inventors, creators and designers. The results of intellectual creativity with such a deep process as mentioned above have a very high economic value. The results of these works are essentially the personal wealth of those who invented, created or designed.

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## INTRODUCTION

The conception of Intellectual Property Rights (IPR) is based on the idea of intellectual works produced by humans that require the sacrifice of energy, time, and cost in their creation.<sup>1</sup> The existence of these sacrifices makes the work produced has economic value because of the benefits it enjoys. This concept encourages the need for appreciation of the work in the form of legal protection for IPR. Substantively from here emerges the notion of intellectual property rights as wealth that arises or is born due to human intellectual abilities. Intellectual Property Rights are categorized as property rights which ultimately produce intellectual works in the form of knowledge, art, literature, and technology.<sup>2</sup>

Strategically IPR is part of economic law. Therefore, IPR is one of the agendas of the liberalization of free trade as stated in the Agreement Establishing the World Trade Organization (WTO). This agenda is an agreement reached from the meeting in Morocco

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<sup>1</sup> Henry Soelistyo, *Hak Kekayaan Intelektual Konsep, Opini dan Aktualisasi*, (Jakarta: Penaku, 2014), 9.

<sup>2</sup> Adrian Sutedi, *Hak Atas Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2009), 19.

(Marrakesh Agreement) which was held on April 15, 1994. One of the discussions was related to Trade-Related Aspects of Intellectual Property Rights (TRIPs). In this regard, it is worth asking why developing countries such as Indonesia agree to be bound by TRIP's in the WTO trade rules system. The next question is how TRIP's can provide a positive contribution and opportunity to enhance economic and social development.

Basically, there is a continuity between the standards contained in TRIPs and the previous IPR systems that were formed over a certain period of time through domestic processes.<sup>3</sup> There is a continuing domestic drive for the development and implementation of IPR protection systems. Viewed from a policy perspective, IPR is not recognized and protected solely for the sake of IPR itself, or simply as an imprecise response to an international obligation. Rather, it is an integral element of the legal and trade infrastructure needed to promote more profitable investment and trade.

Intellectual Property Rights is the result of thoughts in the form of ideas or ideas that are realized or expressed in the form of inventions, works of literary and artistic science, designs, certain symbols/signs, creations of layouts for semi-conductor components as well as varieties resulting from breeding. This expression will become a legal product and become an Intellectual Property Rights (IPR) if it is processed through the applicable procedures and provisions, so that it can be said that IPR is a legal product in the form of rights arising from the resulting intellectual property. The results of these ideas are then used in the world of trade so as to produce economic value for the inventor / creator of the creation.<sup>4</sup>

In its journey to become a product of intellectual property rights, it requires applicable stages and procedures which are in accordance with laws and government regulations. It is these procedures and stages that are usually considered difficult and complex by IP producers, so that there are still many IP results that have not been submitted for IPR. The impact of this condition is that the economic benefits of IP that have been used by the public have not been felt optimally by IP producers.

Intellectual Property (KI) is part of property law. IP related to their rights are grouped as individual property rights which are intangible. Intellectual Property Rights (IPR) are very abstract compared to movable property rights in general, such as ownership rights to land,

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<sup>3</sup> Insan Budi Maulana, *Politik dan Manajemen Hak Kekayaan Intelektual*, (Bandung: Alumni, 2009), 15.

<sup>4</sup> Richard A. Mann, Barry S. Roberts, *Business Law and The Regulation of Business*, (USA: Thomson South-Western West, 2005), 862.

vehicles, and other tangible and intangible properties. According to Bainbridge (1999), intellectual property rights are rights to property originating from human intellectual work, namely rights derived from creative results, namely the ability of human thought expressed in various forms of work, which are useful and useful to support life.<sup>5</sup>

Saidin (2004) argues that IPR is material rights, the right to an object that comes from the work of the brain, the result of ratio work, namely the work of a reasoning ratio, and the result of that work in the form of immaterial objects.<sup>6</sup> Regarding the ability to work that comes from human intellect, Saidin argues that not everyone can and is able to employ his brain (reason, ratio, intellectual) to the fullest. Therefore, not everyone can produce "Intellectual Property Rights". Only people who are able to work their brains can produce material rights known as "Intellectual Property Rights." That's why the work of the brain that produces intellectual property rights is exclusive and gets legal protection.<sup>7</sup>

This study uses a legal policy approach, which is an approach that is carried out by observing laws and regulations relating to the policy issues under study. The procedure for processing materials through library research using a card system is to make an inventory of statutory regulations, text books, journals, and seminar papers to obtain material in accordance with the formulation of the problem to be discussed. Then arranged systematically based on the subject matter in the study and identified for use as material for analysis. The operationalization of the method begins with affirming legal policies, taking inventory of policies, identifying and classifying policy problems or potential problems with the achievement of national development goals. Then proceed with policy analysis, and the next step is to produce recommendations or follow-up designs as solutions to problems.

## **DYNAMICS AND IMPLEMENTATION OF IPR LEGAL PROTECTION IN INDONESIA**

Legal protection in the context of IPR is separate between Intellectual Property itself and the material results that become the physical incarnation of these rights. Intellectual property rights are intangible property rights, namely the right to the ability to use their brains

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<sup>5</sup> David Bainbridge, *Intellectual Property*, (England: Finacial Times Pitman Publishing, 1999), 62.

<sup>6</sup> OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, (Jakarta: Raja Grafindo Persada, 2003) 8.

<sup>7</sup> Basuki Antariksa, "Peluang dan Tantangan Perlindungan Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional," (Makalah Konsinyering Pencatatan Warisan Budaya Takbenda (WBTB) Indonesia, Jakarta, tanggal 7 Oktober 2011), 2.

creatively, meaningfully and reasoning so as to produce intellectual works. Within the framework of IPR, what gets legal protection (exclusive rights) is the right, while the incarnation of the right is in the form of physical objects or tangible objects (material objects).<sup>8</sup> For example, the Copyright of a book that is incarnated or material from the Copyright of a book is manifested in the form of book copies, in this case physically the book gets legal protection of objects in the category of material objects (objects in form).

In the concept of legal science, intellectual property rights are considered to exist and receive legal protection if the ideas and intellectual abilities of humans have been realized and expressed in a form of work or result that can be seen, heard, read or used practically. The real manifestation of human intellectual ability can be seen in the form of technological inventions, science, artistic and literary creations, and design works.

Maulana (2009) argues that IPR is included in the law of intangible assets, which consists of 2 (two) major parts, namely:<sup>9</sup>

- a. *Industrial property rights are related to inventions, or innovations related to industrial activities which include patents, brands, industrial designs, trade secrets (trade secrets or know-how), and layout designs of integrated circuits (lay out design of integrated circuits), and;*
- b. *Copyrights or copyrights that provide protection for works of art, literature, and science, for example: films, paintings, novels, computer programs, dances and so on.*

Saidin (2004) argues that IPR is a material right, "the right to an object that comes from the work of the brain, the result of ratio work, which is the result of the work of a rational human ratio."<sup>10</sup> The result of his work is in the form of im-material objects. Is closely related to intangible objects and protects intellectual works born of human creativity, taste and initiative. In line with the previous opinion. Mann & Roberts (2005) stated that "*Intellectual Property is an economically significant type o intangible personal property that includes trade secrets, trade symbols, copyrights, and patents. These interests are protected from infringement or unauthorized use by others.*"<sup>11</sup>

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<sup>8</sup> Nilay Patel, "Open Source and China: Inverting Copyright?," *Wisconsin International Law Journal* 23, no. 4 (2015): 165.

<sup>9</sup> Insan Budi Maulana, *Politik dan Manajemen Hak Kekayaan Intelektual*, (Bandung: Alumni, 2009), 25.

<sup>10</sup> OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, (Jakarta: Raja Grafindo Persada, 2003), 86.

<sup>11</sup> Richard A. Mann, Bary S. Roberts, *Business Law and The Regulation of Business*, (USA: Thomson South-Western West, 2005), 98.

The opinions of the experts mentioned above further emphasize the existence of intellectual property rights as rights to immaterial objects or intangible objects. The attachment of property rights arises from a person's ability to produce a work based on the work of his brain/intellectuality. The results of this intellectual work then foster the concept of ownership of an intangible object in the form of intellectual property rights. So in the context of IPR, property rights that are protected as rights to intangible objects are intellectual property rights that give birth to tangible material objects.

Property rights here are not on material objects that exist as a form of intellectual property rights, because the material or physical objects are owned by the buyer of the object. For example, a person because of his high and creative intellectual ability is able to give birth to a copyrighted work in the form of a book. In connection with this ability to produce intellectual works in the form of books, intellectual property rights will be born to the author or creator (the existence of ownership rights over immaterial objects, namely intellectual property rights over the work of the book), and not on the material results, its physical form in the form of books, but rather the copyright attached to the book that gives birth to immaterial rights or intangible property rights.

By paying attention to the definition and understanding of IPR as mentioned above, it seems that it is indeed not easy to get a standard formulation and understanding of what IPR really means. In WIPO (Convention Establishing the World Intellectual Property Organization), specifically based on Article 2 of the WIPO Convention only mentions matters relating to intellectual property rights including: *“Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; invention in all field of human endeavor, scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all scientific, literary or artistic fields.”*

Antariksa (2011) suggests, *“IP rights are legal and institutional devices to protect creations of the mind such as inventions, works of art and literature, and designs. They also include marks on products to indicate their difference from similar ones sold by competitors”*.<sup>12</sup> Sementara itu, Lawrence (2007) menyebutnya sebagai: *“...the intangible but legally recognized*

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<sup>12</sup> Basuki Antariksa, “Peluang dan Tantangan Perlindungan Pengetahuan Tradisional Dan Ekspresi Budaya Tradisional,” (Makalah, Konsinyering Pencatatan Warisan Budaya Takbenda (WBTB) Indonesia, Jakarta, tanggal 7 Oktober 2011), 5.

*right to property in the products of one's intellect. Intellectual property rights allow the originator of certain ideas, inventions, and expressions to exclude others from using those ideas, inventions, and expressions without permission*".<sup>13</sup>

Sardjono (2005) suggests a broader understanding, "that is, rights that arise from human intellectual activities in the fields of industry, science, literature and the arts."<sup>14</sup> The IPR legal system at the beginning of its development was not well known and received little attention in Indonesia, was often ignored and many This violation occurred in the field of law. This is not surprising, considering that the conception and legal system of IPR is basically not rooted in the legal culture and national (original) Indonesian legal system which emphasizes more on the communal concept. which tends to have a legal concept of ownership with individual rights. The concept of ownership based on the concept of individual rights emphasizes the importance of providing legal protection to anyone who has produced an intellectual work that has a very high economic value, where the work is born from a very complicated process. full length p sacrifices in the form of energy, time, thoughts, intellect, family and money.

For people who have worked hard like that and produced intellectual works that have very high economic value, it is appropriate to be given individual rewards and legal protection in the form of exclusive rights for the work they produce. Meanwhile, the concept of communal ownership that develops in society emphasizes that intellectual works such as copyrighted works are created for the benefit of many people and not only for the benefit of individuals. The communal concept often assumes that the intellectual work is a common property.

It is known that in the communal concept, there is still an assumption that intellectual works are the result of jointly owned works which in society is one of the factors causing the weak enforcement of IPR law in Indonesia. However, in its current development, considering that Intellectual Property Rights Law has developed and is attached to become part of the national legal system as a consequence of the association of the Indonesian nation with developed industrial nations and nations from other developing countries. Moreover, after Indonesia has participated in the World Trade Organization (WTO), which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), Indonesia as one

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<sup>13</sup> Lawrence Liang, *Free/Open Source Software Open Content*, (United Nations Development Programme-Asia-Pacific Development Information Programme (Undp-Apdip), 2007), 321.

<sup>14</sup> Agus Sardjono, *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*, (Bandung: Alumni, 2006), 75.

of the member countries is obliged to comply with international standards for the protection of intellectual property rights and carry out law enforcement in the field of intellectual property rights.

Legal protection of human intellectual works is very important in Western understanding because Western society is generally an advanced industrial society.<sup>15</sup> They are the ones who have pioneered the development of the IPR legal system and they are very concerned with addressing its legal protection. This is because the works that are included in the scope of IPR, whether in the form of works of art, literature, technological inventions, designs, brands and other IPR works are the result of human intellectual creativity born from a very long process, with heavy sacrifices, both in terms of time, labor and costs (for example because they have to go through the research and development process).

#### **IPR IN TRIPs-WTO AGREEMENT AND HOW TO HARMONIZE IT IN INDONESIA'S LEGAL SYSTEM**

The concept of the importance of protecting intellectual property rights has its roots in developed countries from Western countries.<sup>16</sup> The first country to have an IPR law was Italy, Venice, namely in 1470 inventors such as Caxton, Galileo, and Guttenberg. monopoly in the form of patent rights for its inventions. England has a Patent Law, namely the Statute of Monopolies (1623). Meanwhile, in America, it has had a Patent Law since 1791. Intellectual Property Rights (IPR) is classified as individual property rights, namely intangible rights."

With regard to IPR, the term used in Indonesia today is "Intellectual Property (IP)." The abbreviation HKI is no longer used, but rather refers to "KI" because it follows a term that is mostly applied in other countries. Regarding the change in terms used in Indonesia from HKI to KI can also be known through Presidential Regulation of the Republic of Indonesia Number 44 of 2015 concerning the Ministry of Law and Human Rights. In Article 25 of the Seventh Part of this Presidential Regulation it is stated that the name of the Directorate is "Directorate General of Intellectual Property", not the Directorate General of Intellectual Property Rights.

After having legislation on IPR in several countries as mentioned above, in the international dimension, various Conventions governing intellectual property, namely: those relating to Industrial Rights (Patents, Trademarks and Industrial Designs), were initially

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<sup>15</sup> Achmad Zen Purba, *KI Pasca TRIP's*, (Bandung: Alumni, 2005), 34.

<sup>16</sup> Ermansyah Djaja, *Hukum Hak Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2009), 59.

regulated through the Paris Convention. 1883, then for Copyright is regulated through the Berne Convention 1886, the oldest convention in the field of copyright. Various international conventions in the field of intellectual property rights include the following: Berne Convention, Universal Copyright Convention (UCC), Convention Establishing The World Intellectual Property Organization (WIPO), Patent Cooperation Treaty (PCT), The Hague Agreement Concerning The International Deposit of Industrial Designs, Paris Convention, and the TRIPs-WTO Agreement.

On the basis of the above and within the framework of the development of the National IPR legal system, as well as with the ratification of the Convention on the Establishment of the World Trade Organization (WTO) through Law no. 7 of 1994, Indonesia is obliged to establish laws and regulations governing the protection of IPRs, and must harmonize its IPR legal system with the standards set by the TRIPS Agreement. Another basis is also to support Indonesia's participation in the Paris Convention (Paris Convention for the Protection of Industrial Property), The Hague Agreement (London Act) Concerning the International Deposit of Industrial Designs, Provision of the Treaty on Intellectual Property in Respect of Integrated Circuit (Washington Treaty).

The TRIPs Agreement itself starts from the 8th Uruguay Round which has brought participating countries to agreements that affect international trade. At that meeting a multilateral agreement called the WTO Agreement was agreed. The participating countries signed the Final Embodying Act the Result of the Uruguay Round of Multilateral Trade Negotiations in Marrakesh, Morocco in 1994.<sup>17</sup> By signing this Final Act, the signatory countries agree to sign the WTO Agreement (World Trade Organization Agreement) and its annexes. the provisions contained in the attachment to the WTO Agreement are Annex 1C entitled Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). The TRIPs Agreement has been in effect since 1995. The transition period applies to developing countries which are required to apply at least four the year after or in 2000, while countries the last date is given no later than the beginning of 2006.

The inclusion of IPR protection into the world trade system which at that time was called the General Agreement on Tariffs and Trade (GATT) could not be separated from the role of the United States in proposing the Proposal for Negotiations on Trade-Related Aspects

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<sup>17</sup> Hector Mac Queen, Charlotte Waelde & Graeme Laurie, *Contemporary Intellectual Property Law and Policy*, (New York: Oxford University Press, 2008), 311.



of Intellectual Property Rights. In addition, the European Community also proposes a Proposal of Guidelines and Objectives. Against proposals from these countries, India is one of the most vehemently opposed to the idea of including IPR protection. However, after a debate between developing countries and developed countries, the winner is the one who has the most interest in protecting their works, namely the developed countries.

The TRIPs Agreement is the result achieved and has also adopted two major international conventions in the field of industrial property and copyright, namely the Paris Convention and the Berne Convention. The consequence of the victory of developed countries in the GATT Uruguay Round negotiations related to Intellectual Property Rights is what has brought the concept of western countries regarding property and ownership into law in developing countries including Indonesia.

IPR as a right cannot be separated from economic problems. IPR is synonymous with the commercialization of intellectual works. IPR protection becomes irrelevant if it is not linked to the commercialization of IPR itself. The phrase Trade Related Aspect of Intellectual Property Rights in relation to international trade issues has become an important icon in the discussion of human intellectual work. According to Long (2012), this agreement is the most comprehensive international agreement regarding IPR protection. Some even say that TRIPs is a breakthrough in international trade cooperation.<sup>18</sup>

The TRIPs Agreement itself does not actually provide a definition of IPR, but in the preamble TRIPs Agreement it is written: Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. The legal status of TRIPs in the WTO Agreement is very clear considering that TRIPs are an annex which is an integral part of the WTO Agreement. There are no reservations to the WTO Agreement/TRIPs so that the relationship between Intellectual Property Rights and international trade is very clear.

The branches of IPR in the TRIPs Agreement as described in Article 1.2 of the TRIPs Agreement consist of: <sup>19</sup> 1) Copyright and Related Rights; 2) Brand; 3) Geographical

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<sup>18</sup> Afrillyana Purba, Gazalba Saleh, dan Andriana Krisnawati, *TRIPS-WTO & Hukum HKI Indonesia: Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*, (Jakarta: Rineka Cipta, 2005), 28.

<sup>19</sup> Gillian Davies, *Copyright and The Public Interest*, (London: Thomson Sweet & Maxwell, 2002), 264.

Indications; 4) Industrial Design; 5) Patents; 6) Layout (Topography) of the Integrated Circuit; 7) Protection of Confidential Information; and 8) Control of Unfair Business Competition Practices in the License Agreement. Countries that are signatories to the TRIPs Agreement have their respective meanings related to the elaboration of the meaning of the branches of IPR above. However, in principle all refer to what is written in PART II Standards Concerning the Availability, Scope and Use of Intellectual Property Rights.

Indonesia through Presidential Decree Number 24 of 1979 has ratified two conventions, namely the Paris Convention for the Protection of Industrial Property dated March 20, 1883, as has been amended several times, most recently on July 14, 1967 in Stockholm and the Convention Establishing the World Intellectual Property Organization (WIPO) 1967. In the legal framework, IPR there are two main categories of protected rights, namely 1) Copyright and Related Rights; 2) Industrial Property Rights. Industrial Property Rights include rights to trademarks, patents, geographical indications, plant varieties, industrial designs, trade secrets, and integrated circuit management/layout designs.

With the signing of the WTO Agreement in which there are attachments, one of which is the TRIPs Agreement, Indonesia is subject to the provisions of the TRIPs Agreement. The TRIPs agreement is a complete agreement and with a higher standard (compared to the previous international agreements on IPR).<sup>20</sup> Complete, because in PART II, important regulatory standards are regulated in the areas of Copyright and Related Rights (also known as Neighboring Rights), Trademarks, Industrial Designs, Patents, Layout-Designs (Topographies) of Integrated Circuits, and Protection of Undisclosed Information (also known as Trade Secrets). The chapter even regulates the supervision of anti-monopoly practices in the license agreement.<sup>21</sup>

As for the assessment of the content of a higher standard or quality, and is a feature of the TRIPs Agreement, it starts from the provision that participating countries must agree to fulfill the obligations stipulated in the Bern Convention (Copyright), Paris Convention (Patents/Brands/Designs (Products), Industry/Trade Secrets, Rome Convention (Neighboring Rights) and Washington Treaty (Integrated Circuits). Compared to all other international agreements in the field of Intellectual Property Rights, the TRIPs Agreement contains

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<sup>20</sup> Suyud Margono, *Hukum Kekayaan Intelektual (HKI)*, (Bandung: Pustaka Reka Cipta, 2015), 7.

<sup>21</sup> Ary M. Sigit, "Sistem Perlindungan Paten," (Makalah Seminar, Kerjasama Ditjen HAKI- UNUD, Denpasar, 2000), 57.

provisions regarding relatively strict law enforcement and dispute resolution mechanisms, followed by the granting of rights to the aggrieved participating countries to take countermeasures/retaliations in the cross-trade sector.

There are pros and cons to the actual birth of the TRIPs Agreement, especially from developing countries. Nevertheless, the benefits for Indonesia with the existence of the TRIPs Agreement in general are to enforce the law related to the protection of intellectual property rights and to motivate the producers of intellectual works to innovate and produce other works because of the protection of their intellectual rights. In addition, the existence of the TRIPs Agreement can reduce barriers in international trade related to intellectual property rights."

For developing countries, the transitional provisions and preparations for the establishment of legislation in the field of intellectual property rights are 5 years since the establishment of the WTO in Morocco in 1994.<sup>22</sup> In order for Indonesia to be accepted in the association of civilized nations, especially in international trade relations, within that period, Indonesia must have complete IPR legal instruments, and be able to implement them properly.

In subsequent developments, the TRIPs Agreement, namely Annex 1C of the World Trade Organization (WTO) Agreement is seen as the most comprehensive international agreement in the field of Intellectual Property, which simultaneously regulates Industrial Rights and Copyrights.<sup>23</sup> The TRIPs agreement expressly stipulates that all member countries must comply with and implement the universal TRIPs standards in full compliance in protecting IP, including Indonesia. Currently, almost most of the countries in the world are WTO member countries, until July 2016 as many as 164 countries were registered as WTO members, Indonesia was registered as a WTO member country on January 1, 1995, China in 2001, and Afghanistan became a WTO member on January 1, 1995. 29 July 2016.

The TRIPs Agreement itself is one of the most important multilateral agreements related to IPR. This international agreement came into force on January 1, 1995. Indonesia as one of its member countries has ratified and is obliged to implement and apply in Indonesia since 2005. Indonesia ratified TRIPs through Law no. 7 of 1994, and as a consequence of its

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<sup>22</sup> Tomasz Rychlicki, "GPLv3: new software licence and new axiology of intellectual property law," *European Intellectual Property Review* 30, no. 6 (2008), 176.

<sup>23</sup> Rachmadi Usman, *Hukum Hak Atas Kekayaan Intelektual Perlindungan dan Dimensi Hukumnya di Indonesia*, (Bandung: Alumni, 2003), 4.

participation, Indonesia is obliged to harmonize the IP legal system in accordance with the standards set by TRIPs.<sup>24</sup>

The general objectives of the TRIPs Agreement are:<sup>25</sup>

1. Reducing irregularities and barriers to international trade
2. More effective promotion of IPR protection
3. Promote/encourage technological innovation
4. Provide a balance between rights and obligations between producers and users

In the TRIPs Agreement, in particular Article 3 and Article 4 (Article 3: National Treatment and Article 4 of TRIPs Agreement: Most-Favoured-Nation Treatment), the general principles of the General Agreement Trade and Tariff (GATT) are introduced, namely the Most Favored Nations Treatment (MFN). This principle prohibits discrimination between certain member countries and other member countries. Every advantage and protection given by a member country to another member country must be the same given to other members.<sup>26</sup>

The standard of legal protection granted to national IP owners must be the same as those from abroad who are member countries.<sup>27</sup> The NT and MFN Principles which are also known as the Basic Principles in the TRIPs Agreement must be transformed into the national laws of the WTO member countries. In this regard, Indonesia as one of the WTO member countries is obliged to transform the international principles of the TRIPs Agreement into various laws relating to Intellectual Property.

As has been stated that in the international dimension, the State of Indonesia has ratified the WTO-TRIPs Agreement. Indeed, Indonesia has ratified various conventions other than the TRIPs Agreement. Various International Conventions/Agreements/Treaties relating to intellectual property that have been ratified by Indonesia include:<sup>28</sup>

1. The Paris Convention for the Protection of Industrial Property was ratified by Presidential Decree no. 24 of 1979 which was revised by Presidential Decree no. 15 year 1997

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<sup>24</sup> Bambang Kesowo, "Pengantar Umum Mengenai KI di Indonesia", (Makalah pada Pelatihan Teknis Yustisial Peningkatan Pengetahuan Hukum bagi Wakil Ketua Hakim Tinggi se-Indonesia yang diselenggarakan di Semarang, tanggal 20-24 Juni 1995), 64.

<sup>25</sup> Catherine Hawkins, *Copyright Law, Course Material*, (Sydney: UTS, 2000), 88.

<sup>26</sup> Ermansyah Djaja, *Hukum Hak Kekayaan Intelektual*, (Jakarta: Sinar Grafika, 2009), 72.

<sup>27</sup> Jenet Rahmi, *Penyalahgunaan Hak Eksklusif*, (Surabaya: Airlangga University Press, 2007), 11.

<sup>28</sup> Hector Mac Queen, Charlotte Waelde & Graeme Laurie, *Contemporary Intellectual Property Law and Policy*, (New York: Oxford University Press, 2008), 36.

2. Convention Establishing the World Intellectual Property Organization (WIPO) Presidential Decree No. 24 of 1979 which was revised by Presidential Decree no. 15 year 1997
3. Agreement Establishing the World Trade Organization (WTO) was ratified through Law no. 7 year 1994
4. The Patent Cooperation Treaty (PCT) was ratified by Presidential Decree no. 16 of 1997
5. Trademark Law Treaty (TLT) was ratified through Presidential Decree no. 17 of 1997
6. The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) was ratified by Presidential Decree no. 18 year 1997
7. The WIPO Copyright Treaty (WCT) was ratified by Presidential Decree no. 19 year 1997
8. The WIPO Performances and Phonograms Treaty (WPPT) was ratified through Presidential Decree no. 74 year 2002.

In addition to the protection of intellectual property or IPR, it is regulated in various international conventions, as well as conventions at the regional level such as the European Patent Convention (EPC) and the Bilateral Agreement.<sup>29</sup> Indonesia, which has participated in various international conventions in the field of IPR, has transformed international standards and principles that are obligations as a member state into various laws in the field of intellectual property rights.

## CONCLUSION

Intellectual Property Rights products are works born of creativity, initiative, and creative power, as well as high and creative intellectual abilities/the work of the brain, meaning and reasoning from the inventors, creators and designers. The results of intellectual creativity with such a deep process as mentioned above have a very high economic value. The results of these works are essentially the personal wealth of those who invented, created or designed. Therefore, it is proper for inventors and creators to be given legal protection individually, namely in the form of exclusive rights to the work they produce.

IPR can only be given to the creator or inventor to enjoy or reap the benefits themselves for a certain period of time, or to give permission to others to use it. Moreover, IPR according

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<sup>29</sup> Philip Griffith, *International Intellectual Property Conventions IPR Courses Material*, (Sydney: UTS, 2000), 46.

to the conception and legal system of Western society is an individual's property (personal rights) that cannot be interfered with or contested by anyone, and is considered a violation for anyone who violates the personal rights of the IPR holder. This type of wealth is an intangible asset that can be transferred (including through buying and selling transactions), licensed, granted, even willed to parties deemed entitled to receive it.

## **BIBLIOGRAPHY**

- Antariksa, Basuki. "Peluang dan Tantangan Perlindungan Pengetahuan Tradisional dan Ekspresi Budaya Tradisional." *Makalah* pada Konsinyering Pencatatan Warisan Budaya Takbenda (WBTB) Indonesia yang diselenggarakan di Jakarta, tanggal 7 Oktober 2011.
- Bainbridge, David. *Intellectual Property*. England: Finacial Times Pitman Publishing, 1999.
- Cheeseman, Henry R. *Contemporary Business Law*. New Jersey: Prentice Hall, Upper Saddle River, 2000.
- Davies, Gillian. *Copyright and The Public Interest*. London: Thomson Sweet & Maxwell, 2002.
- Dharmawan, NK Supasti. *Perlindungan Hukum Atas Karya Intelektual Hak Cipta dan Desain Industri*. Makalah Seminar HAKI, Denpasar, 2003.
- Dharmawan, Supasti. "Perlindungan Hukum terhadap Karya Cipta Program Komputer di Indonesia: Studi Komparasi dengan Negara Maju dan Negara Berkembang." *Penelitian Hibah Doktor Ditjen Dikti*, 2010.
- Djaja, Ermansyah. *Hukum Hak Kekayaan Intelektual*. Jakarta: Sinar Grafika, 2009.
- Feller, Joseph et.al. *Perspectives on Free and Open Source Software*. Cambridge: MIT Press Books Massachusetts Institute of Technology, 2005.
- Fontana, Richard, et al. *A Legal Issues Primer for Open Source and Free Software Projects*. Software Freedom Law Center, Inc., 2008.
- Gautama, Sudargo & Rizawanto Winata. *Hak Atas Kekayaan Intelektual Peraturan Baru Desain Industri*. Bandung: Citra Aditya Bakti, 2004.
- Griffith, Philip. *International Intellectual Property Conventions IPR Courses Material*. Sydney: UTS, 2000.
- Hawkins, Catherine. *Copyright Law, Course Material*. Sydney: UTS, 2000.
- Kennel, John R. et.al. "Novelty and Anticipation." *Corpus Juris Secundum* 69, C.J.S. Patents § 30, J. Int'l L (2007).
- Kesowo, Bambang. "Pengantar Umum Mengenai KI di Indonesia." *Makalah* pada Pelatihan Teknis Yustisial Peningkatan Pengetahuan Hukum bagi Wakil Ketua Hakim Tinggi se-Indonesia yang diselenggarakan di Semarang, tanggal 20-24 Juni 1995.

- Liang, Lawrence. *Free/Open Source Software Open Content*, United Nations Development Programme: Asia-Pacific Development Information Programme, 2007.
- Mann, Richard A., Barry S. Roberts. *Business Law and The Regulation of Business*. USA: Thomson South-Western West, 2005.
- Margono, Suyud. *Hukum Kekayaan Intelektual (HKI)*. Bandung: Pustaka Reka Cipta, 2015.
- Maulana, Insan Budi. *Politik dan Manajemen Hak Kekayaan Intelektual*. Bandung: Alumni, 2009.
- Patel, Nilay. "Open Source And China: Inverting Copyright?." *Wisconsin International Law Journal* 23, no. 4 (2015).
- Purba, Achmad Zen. *KI Pasca TRIP's*. Bandung: Alumni, 2005.
- Purba, Afrillyana, Gazalba Saleh, dan Andriana Krisnawati. *TRIPS-WTO & Hukum HKI Indonesia Kajian Perlindungan Hak Cipta Seni Batik Tradisional Indonesia*. Jakarta: Rineka Cipta, 2005.
- Purwaningsih, Endang. *Perkembangan Hukum Intellectual Property Rights*. Bogor: Ghalia Indonesia, 2005.
- Queen, Hector Mac, Charlotte Waelde & Graeme Laurie. *Contemporary Intellectual Property Law and Policy*. New York: Oxford University Press, 2008.
- Rahmi, Jenet. *Penyalahgunaan Hak Eksklusif*. Surabaya: Airlangga University Press, 2007.
- Ramli, Ahmad M. *Perlindungan Rahasia Dagang dan Perbandingannya dengan Beberapa Negara*. Bandung: Mandar Maju, 2001.
- Riswandi, Budi Agus. *Hak Cipta di Internet Aspek Hukum dan Permasalahannya di Indonesia*. Yogyakarta: FH UII Press, 2009.
- Rychlicki, Tomasz. "GPLv3: New Software License and New Axiology of Intellectual Property Law." *E.I.P.R* 6, Sweet & Maxwell Limited And contributors (2008).
- Saidin, OK. *Aspek Hukum Hak Kekayaan Intelektual*, Jakarta: Raja Grasindo Persada, 2004.
- Santoso, Budi. *Butir-Butir Berserakan tentang Hak Atas Kekayaan Intelektual (Desain Industri)*. Bandung: Mandar Maju, 2005.
- Sardjono, Agus. *Hak Kekayaan Intelektual dan Pengetahuan Tradisional*. Bandung: Alumni, 2006.
- Sigit, Ary M. "Sistem Perlindungan Paten." *Makalah Seminar* pada Kejasama Ditjen HAKI-UNUD, Denpasar, 2000.
- Soelistyo, Henry. *Hak Kekayaan Intelektual: Konsepsi, Opini dan Aktualisasi*. Jakarta: Penaku, 2014.
- Sutedi, Adrian. *Hak Atas Kekayaan Intelektual*. Jakarta: Sinar Grafika, 2009.
- Tunggal, Iman Sjahputra dan Heri Herjandono. *Aspek-Aspek Hukum Rahasia Dagang (Trade Secrets)*. Thailand: Harvarindo Information Programme, Keen Media Co, Ltd, 2000.

Usman, Rachmadi. *Hukum Hak Atas Kekayaan Intelektual Perlindungan dan Dimensi Hukumnya di Indonesia*. Bandung: Alumni, 2003.

Utomo, Tomi Surya. *Hak Kekayaan Intelektual (HKI) di Era Global: Sebuah Kajian Kontemporer*. Yogyakarta: Graha Ilmu, 2010.