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TRENDS OF GLOBAL VALUES IN LEGAL POLITICAL FORMATION OF INTELLECTUAL PROPERTY LAW IN INDONESIA

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ABSTRACT

This paper attempts to discuss the trends of global values regarding IPR as well as TRIPS Agreement and the IPR law implementation in Indonesia. Moreover, this study would like to assess the suitability of global values contained in the IPR, by comparing its values with sociological worldview of local communities. The study was conducted by library research and by socio-legal approach. The results show that the IPR provisions contain some Western values such as individualistic, monopolistic, materialistic and capitalistic tendencies that seems incompatible with local worldview, especially of Indonesian people, regarding communal ownership. Moreover, the establishment of the principle and the method of IPR protection in the IPR legal system in Indonesia is expected to further emphasize the values derived from extracting local and national legal values that are characterized as having communal and spiritual tendencies in nature.

Key words: Intellectual Property Right, Global Trends, Legislation, Socio-Legal Approach, Indonesia.

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1. INTRODUCTION

By enacting the Law No. 7 of 1994 on the Ratification of the Agreement Establishment of The World Trade Organization, the Indonesian government has an obligation to implement the provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) into the national legislation law. Since the emergence of the IPR issue in GATT negotiations in the Uruguay Round in 1986, the Indonesian government has established a team which is in charge of implementing the Presidential Decree No. 34 to prepare a bill of IPR. The draft law adjusted and implemented the TRIPS Agreement. Several laws have been produced, namely Law No. 30 on Trade Secrets, Law No. 31 on Industrial Design, Law No. 32 on Integrated

1

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391

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Circuit Layout Design, Act 33 of 2000 on Plant Variety, Law No. 14 of 2001 on patent as a change of Law No. 6 of 1989, and Law No. 13 of 1997, Law No. 15 of 2001 on brands as a substitution of Law No. 19 of 1992 and Law No. 14 of 2001 and Law No. 19 of 2002 on Copyrights, replacing Law No. 7 of 1987 and Law No. 12 of 1997. However, it is argued that the legal political formation that some of these laws solely based on the implementation of the TRIPS Agreement and not by the needs of the people of Indonesia.

Legal political dimension is seen in the preamble of Law No. 30, 31, 32 of 2000, that in order to realize industries capable of competing within the scope of national and international trade, a climate that encourages the creation and innovation of the public with legal protection of trade secrets as part of the IPR system. Moreover, Indonesia has signed the WTO Agreement Establishment which includes TRIPs Agreement with Law No. 9 of 1994, thus it is necessary to regulate the terms of trade secrets, industrial disputes and the design of integrated circuit layout. That is in line with Indonesia's ratification of international treaties, rapid technological, industrial and trading developments are required of the Patent Law which may provide reasonable for the inventor. The consideration of Law No. 15 of 2001 states that that in the era of global commerce, in line with international conventions that have been ratified by Indonesia, the role of the brand becomes very important, especially in maintaining fair business competition. Furthermore, the consideration of Law No. 19 of 2002 states that that Indonesia has become a member of various international conventions / treaties on the IPR in general and copyright in particular that requires further manifestation in the national legal system and that developments in the fields of trade, industry and investment have so rapidly increased the need to for the creator and the related rights owners by keeping in mind the interests of the wider community It shows that with the implementation of global values in conducting fair trade and protecting intellectual rights, the basic idea existing in IPR system will apply the provisions of the TRIPS Agreement in Indonesia. This implementation will be a problem when the values in IPR are dealing with the local values held by Indonesian society. Thus, this paper attempts to discuss the trends of global values regarding IPR as well as TRIPS Agreement and the implementation in Indonesia.

2. BRIEF OVERVIEW OF THE HISTORY OF IPR IN INDONESIA

IPR legal system in Indonesia that has emerged since the Dutch East Indies colonial government, by regulating the IPR regulations covering *Auteurswet 1912 Stb.1912 No. 600* for the protection of Copyright, The *Reglement Industriële Eigendom Stb.1915 Kolonien 545* amended with *Stb.1913 No. 214* regarding protection of trademark rights, and *Octrooiewet 1910 S.No.33 YIS S.11-33, S.22-54* concerning the protection of patent rights (Santoso, 2008). It is known that the Dutch government applied the political separation of the application of laws, the provisions of the law was applied only to the European groups in Indonesia and for the native is applicable legal provisions that did not recognize the concept of intangible ownership. After the independence, Dutch law was adopted by the Indonesian government because the Article II of the Transitional Regulation of the 1945 Constitution stipulates that the State Body and the existing regulations continue to apply, as long as not yet held a new according to this Constitution. After that the regulation of IPR laws continue to apply until now (Kusumadra, 2000).

3. THE POLITICS OF IPR LAW

Indonesia as one of the countries that signed and ratified the Establishment of The World Trade Organization TRIPS Agreement Agreement which is one of the agreements in it by Law No. 7 of 1994. As a consequence, Indonesia burdened with the obligation to implement the IPR system in accordance with the TRIPS Agreement in national law. Some legislation, as already

mentioned above have been made in order to implement and conform with the TRIPS Agreement.

All of the provisions of the Agreement as a whole adopts the whole of the basic principles of IPR protection under the provisions of the TRIPS Agreement. All WTO members have the obligation to make IPR regulation refers to the Bern Convention, Paris Convention, Rome Convention and Washington Treaty (Article 3 of the TRIPs Agreement). Adoption of such a consequence of the application of the principle of full compliance or full compliance imposed for all WTO members including in Indonesia. In article 1 of the TRIPs Agreement, it is stated the nature and scope of obligation that 'members shall give effect to the prevention of this agreement. Member may, but shall not be obligated to, implement their law more extraneous. Members shall be free determine the appropriate method of implementing the provisions of this Agreement within reviews their own legal system and practice.'

However, we argue that the politics of law which is reflected in some provisions of the above IPR Law only merely adopt the tendency of global values related to IPR protection system. Substantially, the IPR system adopted in several IPR legislation contains the following principles.

First, the principle of IPR ownership as an exclusive right means that the intellectual property law system gives special rights to persons directly related to the resulting intellectual property. Through that right, the right holder may prevent others from making, using or acting without permission. IPR ownership in the form of patents, copyright, brand rights, industrial design rights, rights to integrated circuits, plantation rights and trade secrets rights. Second, the principles of recognition of economic rights and moral rights to IPR holders. Third, the principle of protection of intellectual work granted by the state on the basis of registration means that the legal protection of the intellectual work requires the obligation to register. Without registering the producer of intellectual property can not sue any other party who uses his or her intellectual work. On other words, the obligation to register does not apply to copyright holders and holders of trade secret rights.

Fourth, the principle of registration is territorial, meaning that legal protection is only given in the territory where the intellectual work is registered. Fifth, the principle of physical separation of objects by the intellectual work contained in the object, meaning that in the legal system of intellectual property of physical objects is not automatically have exclusive rights to the object because the ownership of intellectual work attached to the object still belongs to the creator. This principle is different from the above legal principles tangible object (tangible) physical possession of an object at the same time legitimate membuktikan on the object (Utomo, 2009). Sixth, the principle of limited protection period, meaning that the legal system of intellectual property protection in a certain period (limitative), except for the right brand can be extended as long as the brand is still used in trading activities ((Lisdiyono & Assalmani, 2017). Seventh, the principle of rights related to the provisions of copyright. Eighth, the principle of intellectual property protection that ends up being a public domain.

4. GLOBAL TRENDS IN IPR SYSTEM

The above principles show that the values contained in the substance of intellectual property law contain individualistic, monopolistic, materialistic and capitalistic values. Individualistic tendency is reflected as intellectual property legal system recognizes and protects intellectual work and invention as a richness that can be owned by individuals. The system is arguably monopolistic because the law gives exclusive rights to the IPR holder within a certain period has the right to prevent others from wearing or using the results of intellectual work, compared to copyright protection period that is very long. The nature of materialistic is seen from the characteristic of IPR owner being able to exploit the maximum economic benefit and material

benefit from IPR ownership without interference from other parties. Lastly, the capitalistic trend is attributed to this law because IPR legal system protects the interests of the owners of capital as IPR holders than the creator or inventor.

Aside from the global values' orientation in this IPR, it is arguably needed the consideration of local values in determining the concept of intellectual rights. Moral doctrine is adopted by the legal system of IPR with exclusive ownership is purposively to provide protection to individual IPR owners so that their rights are not violated by others. This means that the owner of IPR has the right to monopolize the work or invention during the protection period. Thus, it is clear that the need for IPR adopts the idea of promoting individual rights or in other words, IPR protection adopts individualism. This understanding accepts a person who has a strong or absolute individual price. IPR strongly hold the concept that A person or individual is believed to have an intrinsic moral price. Based on these beliefs, then the individual understanding encourages one's autonomy in thinking and acting (Rahardjo, 2009). As a consequence, the self-exclusivity as individuals, or individual privacy, has a place and is recognized as essential. Someone is completely autonomous because it is released with a specific relationship with other. The goals to be achieved are centered on self-development (Hamilton & Sanders, 1994). Its exclusive ownership may carry the consequences of the IPR owner exploiting the economic benefits of his work to the greatest extent without any interference from others during the period of protection and whose limitations are simply not harming others. However, this stipulation may have serious implication in the field of pharmaceutical patents. For instance, the Indonesian people has knowledge about drugs resulted from biological and genetic resources, that are well-known as herbal medicine of medicinal herb (*jamu*) for Javanese (Andriyansah et al, 2017), which is knowledge of the ancestral heritage that has no doubt and proved to have contributed greatly to the development of intellectual work in the field of pharmaceuticals patent (Lisdiyono & Assalmani, 2017).

Intellectual works is a creativity not merely producing works of copyright or the findings that were not remarkable, but the works are full of meaning and symbolizes the symbols in accordance with certain mindset of the majority of Indonesian people who have religious and supernatural tendencies in nature. The world view of Indonesian people who magico-religious in making such works have meanings or symbols symbolize the interconnected relationship between people, the natural environment and the God (Susilo & Syato, 2016).

Besides, the cosmology of the communal society of Indonesia makes the intellectual works created by the creators and inventors not intended to be privately owned as wealth, but merely aimed at fulfilling the needs of the community in which he is part of the community. Sulastriyono (2012), Roisah (2012) in this regard states that the paradigm of communal and social life allows every individual sees society as the goal of living together. Every member, for instance in Javanese worldview, of the community views other members of society as a goal. In this connection then the preferred is harmony on the overall behavior of a person with the community and the natural surroundings. In communal society life, the ultimate goal is making harmonious relationship between individual and society. Hence society perceive its citizen not person as individual, but inseparable unity with society (Susilo & Syato, 2016). Every citizen is considered as a good citizen if able to adjust and able to provide devotion to the community. Communal minds in the life of people in Indonesia always put together together so that the interests of society placed on the interests of individuals (Ghofur & Susilo 2017). In that mind, the most important thing is to maintain a balance between society and its citizens. The balance or harmony of the relationship between the born world and the occult world, the relationships of fellow citizens, and the relationship of human being and the natural environment. The individual citizens of society perceive his personal being as an integral part of his society (Sulastriyono, 2012). Furthermore, Moh. Koesnoe (1969) states that a thinking

man, according to customary law is a community friend and every citizen has the right and obligation according to its position in the community. Individuals are part of society who have their respective functions in order to continue and perpetuate the community as a united environment that strives to serve as a devotion to the whole unity.

The cosmology of Indonesian society puts an individual inseparably from the surrounding environment, society, nature and even supernatural powers (Afandi, 1971). In comparison, Satjipto Rahardjo states that a society with a contextual character, then at the base of the community lies the philosophy of holism. Here, there is a tendency to not separate out from the social context. Everything then becomes socio-centric. The regulation of IPR, henceforth, need to look at ways people act in both social and individual context as a whole. In contrast to individualism in which an individual is autonomous, in contextual perspective, this view can be put as an encounter to individualism view as regulated mostly in the IPR provisions, by placing a person as being in connectedness with other people, or interconnected individuals. Fritjof Capra (2007) in the *Turning Point, Science, Society and the Rising Culture* views it as a mystical traditions. Furthermore, Capra (2007) states that the point of view of the system, both determinism and freedom is a relative concept of the existence of dependence on the environment through continuous interaction, and thus the activity will be shaped by the influence of its environment. The relative concept of free will seems consistent with the views of the mystical tradition that encourages its followers to transcend a separate self-understanding and realize that they are an integral part of the cosmos that surrounds them. The traditions are to shed entirely the whole ego and in the mystical experience appear in the totality of the cosmos. Sarjono Soekanto (1975) states that man in customary law is the people who are bound by the community. They are not merely an individual who in principle is free in all his conduct and deeds that do not transgress the limits of the established law.

This implies that an individual must be held responsible for the use or exploitation of his property to the society, the natural and supernatural forces that surround it. The background may explain why during the Dutch colonialism, the monopoly over intellectual work was not well known in Indonesian society. It is driven by the fact that the intellectual work is not only needed by individual owners but also the community where the owners live and work (Kusumadara, 2000).

The communal norms of Indonesian society are different from the Western worldview placing the individuals as the center of the protection of the law (Roisah, 2015). In Indonesian society, the focus of legal protection is not individual rights but community rights (Soepomo, 1982). The protection of intellectual works in communal norms is not intended to provide protection to individual creators or inventors but rather but more to preserve the integrity of sacredness as a work of creation that has meaning and symbolizes the symbols of the community where the intellectual work originated. Thus, the protection is directed to the community of the people concerned and any imitation and use of works that are not in harmony with the norms and interests of the community concerned are not permitted.

5. CONCLUSION

The results of this study reveal that although the ratification of TRIPs Agreement with Law No. 9 of 1994, to regulate the terms of trade secrets, industrial disputes and the design of integrated circuit layout that is in line with Indonesia's ratification of international treaties, rapid technological, industrial and trading developments may provide reasonable for the inventor, but the principle of IPR ownership as an exclusive right means that the intellectual property law system gives special rights to persons directly related to the resulting intellectual property. In addition, the results of study argue that IPR provisions contain some Western values such as individualistic, monopolistic, materialistic and capitalistic tendencies. The establishment of the

principle and the method of IPR protection in the IPR legal system in Indonesia which further emphasizes the values derived from global trend that is individualistic and monopolistic in nature without having to dominate the concept of intellectual property protection based on the values derived from the Indonesian itself characterized as having communal and spiritual tendencies in nature.

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