

Legal Politics of Intellectual Property Rights Enforcement in Encouraging Investment and Innovation: Implementation Study in Indonesia

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Abstract. Intellectual property rights play an essential role in advancing and improving investment activities in Indonesia. Investment activities can develop rapidly with the existence of intellectual property rights that have the aim of providing legal protection and legal certainty for these investment activities. In this scientific article, two legal problems will be explained, namely, among others, regarding the enforcement of intellectual property rights in encouraging investment and innovation activities in Indonesia and regarding the legal political strategy in balancing the interests of holders or owners of intellectual property rights in investment activities and public interests. In writing this scientific article, the author uses a type of research in the form of normative research using various legal materials to produce various arguments, concepts, and new theories that can later resolve existing legal problems. Then, in this scientific article, two research results will also be explained regarding two existing legal problems, namely, among others, trademark enforcement which has a function as a differentiator for various investment products, and copyright, and patent enforcement which has a function as a potential asset of intangible objects and regarding the protection of intellectual property rights by providing exclusive rights to holders or owners of intellectual property rights but still paying attention to the public interest in encouraging investment and innovation activities in Indonesia.

Keywords: Intellectual Property Rights; Investment; Policy; Public.

1. Introduction

Intellectual property rights are rights that arise from the results of human thought that are used to produce a process or product that is useful for human life. Intellectual property rights have exclusive rights that are given specifically to the holder or owner of the intellectual property rights to utilize them optimally. So intellectual property rights contain economic benefits that can be obtained from intellectual creativity. The objects contained in intellectual property rights are various works that are born or arise due to the intellectual abilities of humans (Yuli Prasetyo Adhi, 2021).

Investment activities in a country are closely related to the protection of its intellectual property rights. The more advanced investment activities in a country, the more legal protection of its

intellectual property rights is needed. In addition, effective and efficient legal protection of intellectual property rights in investment activities has become a global event that must be followed by Indonesia. This is because currently, the economic globalization event arising from the principle of trade liberalization has had a significant influence on investment activities in Indonesia. Where the economic globalization event is difficult to avoid and must be followed by certain international agreements or agreements.

Indonesia is a country that has a very strong determination to protect intellectual property rights by actively engaging in national and international agreements or agreements. However, with this active involvement, Indonesia has not been able to enforce legal protection of intellectual property rights in its economic activities to the maximum. However, at least Indonesia has tried to protect intellectual property rights in its economic activities and show this to the international world.

One of the international agreements or agreements followed by Indonesia in the field of intellectual property rights is the Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement) which regulates that legal protection of intellectual property rights is considered to be able to accelerate and develop economic growth in a country, create economic and social welfare for holders or owners of intellectual property rights, and encourage innovation in technological development. In addition, legal protection of intellectual property rights can be implemented by making regulations that regulate various rights, various obligations, and various crimes and violations in the field of intellectual property rights that must be obeyed by the parties involved. Legal protection of intellectual property rights has various objectives, including providing a sense of security for holders or owners of intellectual property rights and creating a conducive climate for activities involved with intellectual property rights.

Investment activities in Indonesia are strongly supported by the existence of intellectual property rights as a commercialization tool that is always developing and growing. So the development of intellectual property rights in Indonesia is expected to be in line with the development of intellectual property rights in other countries. Where in the process of aligning intellectual property rights, an effective legal protection system is needed. Legal protection of intellectual property rights that is implemented optimally is considered to be able to increase competitiveness and innovation in economic activities, especially investment activities in a country. Thus, with the existence of legal protection of intellectual property rights, investment activities in Indonesia can be carried out smoothly and well by applicable regulations and provisions.

2. Research Methods

In writing this scientific article, the author uses a legislative approach where law is defined as a norm, regulation, or law. Then, the research is also descriptive to see the law in its real meaning and see how the law works in the community environment Peter Mahmud Marzuki, 2021). In addition, the author uses a normative type of research where various legal materials are used to produce various new arguments, concepts, and theories which can later resolve various

existing legal problems (Yati Nurhayati, Ifrani, and M. Yasir Said, 2021). The data sources used include primary legal materials and secondary legal materials. The primary legal materials used include Pancasila, Law No. 25 of 2007 concerning Investment, Law No. 13 of 2016 concerning Patents, and Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Meanwhile, the secondary legal materials used include various scientific articles and various books related to the Legal Policy of Enforcement of Intellectual Property Rights in Encouraging Investment and Innovation: Implementation Study in Indonesia. The various data sources used will be reviewed normatively and legally to provide a general description and conclusions regarding the various legal issues contained in this scientific article.

3. Result and Discussion

3.1. Enforcement of Intellectual Property Rights in Encouraging Investment and Innovation in Indonesia

Investment activities are considered to be able to provide various benefits for the community, investors, and the government that carries out the investment activities. In general, investment activities have the aim of obtaining profits that can be used to maintain business capital (Elif Pardiansyah, 2017). On the other hand, investment activities also have various specific objectives, including (Endang Purwaningsih, 2013):

1. Creating employment opportunities;
2. Encouraging people-oriented economic growth;
3. Processing a potential economic system into a real economic system by using funding sources from within the country or abroad;
4. Improving the capabilities and capacity of national technology;
5. Improving people's welfare;
6. Increasing economic growth nationally.

The government has formed a basic investment policy that aims to create a national investment climate that is conducive to investment activities in Indonesia. In addition, a conducive national investment climate also has various objectives, including accelerating investment growth and strengthening competitiveness in investment activities (Taufik H. Simatupang, 2010).

The basic investment policy applies to all investors, both domestic and foreign investors. So that the government provides a guarantee of equal treatment for domestic and foreign investors who carry out investment activities in Indonesia while still prioritizing national interests (Bonatua Edynata Manihuruk, Budiman Ginting, 2013).

The basic investment policy is a form of compliance by the Indonesian government with the international principles regarding Trade-Related Investment Measures (TRIM's) which are part of the agreement of all member countries of the World Trade Organization (WTO).

The international principle regarding Trade-Related Investment Measures (TRIM's) is the main principle in the World Trade Organization (WTO). According to this international principle, every member country is required to provide equal treatment regarding various regulations, various levies, and various tax policies in an investment activity (Ni Ketut Supasti Dharmawan and Wayan Wirawan, 2014). However, in Indonesia, this basic investment policy can be implemented on condition that it does not conflict with national interests.

The government provides guarantees for business security, business certainty, and legal certainty for investors from the investment licensing process, and implementation of investment activities, to the end of investment activities by investment policies that provide opportunities and space for growth and provide legal protection for investors and applicable laws and regulations. This basic investment policy has been regulated in Article 4 paragraph (3) of Law No. 25 of 2007 concerning Investment which stipulates that basic policies in investment are realized through the General Plan for Investment (Law Number 25 of 2007).

Based on the origin of capital, investment can be divided into 2 (two) types, namely domestic investment and foreign investment. Domestic investment is an activity of investing capital to organize a business in the territory of the Republic of Indonesia which is organized by domestic investors using domestic capital. Meanwhile, foreign investment is an activity of investing capital to run a business in the territory of the Republic of Indonesia which is run by foreign investors using foreign capital entirely or in partnership with domestic investors.

Meanwhile, investors can be divided into 2 (two) types, namely domestic investors and foreign investors. Domestic investors are investors with Indonesian citizenship who organize their business by creating a business entity in the form of a sole proprietorship, not a legal entity, or a legal entity by applicable regulations and provisions. Meanwhile, foreign investors are investors with foreign citizenship who organize their business by forming a limited liability company located within the territory of the Republic of Indonesia and which is based on Indonesian law by applicable regulations and provisions.

Domestic investors and foreign investors who establish a business entity in the form of a limited liability company can take part in shares when the limited liability company is established, buy shares when shares are sold, or in other ways by the applicable rules and regulations.

The Indonesian government provides guarantees to provide various forms of convenience for investors, namely, among others, the Indonesian government provides guarantees to provide various forms of convenience for investors, namely, among others (H. Salim and Budi Sutrisni, 2014):

1. The government grants investors the right to repatriate and transfer through foreign currency of interest, dividends, profits, and other income; of funds to pay debts; of funds needed

in investment activities; of proceeds from liquidation or sale of a company; of proceeds from compensation payments for losses; of proceeds from compensation payments for takeovers; of proceeds from sale of assets owned by investors; of capital owned; or of royalty payments or other payments;

2. The government provides equal treatment for foreign investors from all countries to carry out investment activities in Indonesia, except for foreign investors from certain countries who have special rights according to international agreements or deals with the Indonesian government;
3. The government allows investors to transfer assets they own to other parties by applicable regulations and provisions unless the assets are assets controlled by the Indonesian state;
4. The government will not carry out any takeover of ownership rights or nationalization from investors, except based on the applicable laws and regulations. If the government carries out any takeover of ownership rights or nationalization, then such action must be carried out by providing fair and equitable compensation.

The right to repatriate and transfer funds is carried out while still considering the interests of other parties and applicable regulations. Various examples of the right to repatriate and transfer funds, among others:

1. If there are legal responsibilities that have not been completed by investors, the Minister of Finance or investigators can ask banking financial institutions or other non-banking financial institutions to postpone the implementation of repatriation and fund transfer activities;
2. The government's right to collect taxes;
3. Government authority to request reports on repatriation and fund transfer activities;
4. Implementation of law to provide legal protection for creditors;
5. Implementation of law to prevent state losses.

Foreign investors who wish to conduct their business in Indonesia are required to pay attention to the negative investment list which regulates various business fields that are open to investment activities, various business fields that are opened with conditions for investment activities, and various business fields that are closed to investment activities (Dewi Masitah, Aris Munandar, and Lalu Wira Pria Suhartana, 2022). Where in principle all types of businesses or business fields are open to investment activities, except for types of businesses or business fields which are open with conditions and closed.

Various business sectors that are closed to foreign investors include the production of explosives, gunpowder, war equipment, and weapons, as well as various business sectors that are explicitly closed according to the applicable regulations and provisions. So that the government regulates various business sectors that are open with conditions and various

business sectors that are closed according to certain criteria that are regulated in the Presidential Regulation.

A business field is a business activity carried out to produce services and/or goods in various specific sectors. The more human needs, the more difficult it is to determine the category of business field for various human needs. Determining the category of business field is influenced by various factors, namely, among others, legal protection and guarantee factors, health, and considerations of the state and society in a particular country.

To attract investors to invest their capital in Indonesia, the government has determined various investment facilities that can be obtained by investors. These various investment facilities aim to provide convenience for investors when starting, organizing, and developing their businesses in Indonesia. Various investment facilities are provided for investors who meet various requirements, including:

1. Investments in partnership with small, medium, micro, or cooperative businesses;
2. Investments located in border areas, remote areas, underdeveloped areas, or other areas deemed necessary;
3. Investments that carry out technology transfer;
4. Investments that implement pioneering industries;
5. Investments that carry out innovation, research, and development activities;
6. Industrial investment that uses equipment or machinery or capital goods produced domestically;
7. Investments that maintain environmental sustainability;
8. Investments that absorb a lot of labor;
9. Investments included in infrastructure development;
10. Investments that are included in the high-priority scale.

In the world of investment, brands are used as signs that can promote and elevate products resulting from investment activities (Rahmi Jened, 2015). In principle, brands are divided into 2 (two) types, namely service marks, collective marks, and trademarks. Brands have been used as signs for various specific products to provide legal protection for these products and indicate the origin of various products.

Brands can also be used to distinguish the origins of various products and prevent imitation of these products. In addition, brands can also be used to show the level of trust that consumers have in these products. Products that have well-known brands tend to be easier to sell and therefore tend to be easier to make a profit (Iswihariyani, 2010).

The legal protection provided for trademark rights has various purposes, namely to provide protection and legal guarantees for trademark holders, inventors, or owners, prevent crimes and violations of trademark rights, and encourage local communities to immediately register their trademarks with the authorities (Dwi Atmoko, 2019).

Indeed, a brand is only a sign attached to a product that functions as a differentiator in trade activities in services and goods. Where the mark is not related to the quality of the traded product. Although the brand is only a sign of a commercial product, the brand is promoted and announced to produce the brand of a particular product which will later produce public opinion regarding the trust and reputation of the quality of the product. Thus, well-known brands and registered brands are a reflection of reputation which also functions as a differentiator with various other products that are considered very important in investment activities.

In Law No. 20 of 2016 concerning Trademarks and Geographical Indications, it is stipulated that investors, the public, and producers must pay attention to the existence of registered trademarks and registered geographical indications before registering the trademarks or geographical indications they own. In addition, investors, the public, and producers must also pay attention to the distinguishing power of registered trademarks and registered geographical indications to avoid rejection of trademark and geographical indication registration.

In the world of investment, patents also have a function that is no less important than brands. A patent is an exclusive right granted by the state to an inventor for the results of his invention in the field of technology for a certain period to carry out the invention himself or to give permission to another party to do so (Indirani Wauran Wicaksono, 2017).

Patents are a form of protection given to inventions in the field of technology. Patent protection covering the period and scope has been regulated in Law No. 13 of 2016 concerning Patents. To obtain patent protection, the invention must meet certain substantive requirements, namely, for ordinary patents, they must apply to the industry, contain novelty, and contain inventive steps. Meanwhile, simple patents, must apply to the industry, contain novelty, and develop a previously existing process or product.

At present, intellectual property rights in the form of trade secrets, patents, trademarks, geographical indications, copyrights, integrated circuit layout designs, and industrial designs are various forms of potential assets that are assessed as intangible objects that can provide many benefits for the holders or owners of these intellectual property rights (Farah Widjanti Worowirasmi, 2022). In general, investors already have one or more of these forms of intellectual property rights in carrying out investment activities. On the other hand, investors tend to need additional funds or capital when starting or developing their investment activities with the help of funds or capital from banking institutions. So that to obtain debt or credit from these banking institutions, investors are required to provide collateral ownership which is usually in the form of intangible or tangible objects to certain banking institutions.

Intellectual property rights can also create property rights that are included in intangible objects that are assessed as assets for investors for broader investment activities, exploiting the intellectual property rights they own, and gaining economic benefits (Arya Adhitya, 2023). Although it is still in the planning process and has not been carried out by various financial institutions and investors in Indonesia. So that further studies and research are needed regarding intellectual property rights which are used as objects of fiduciary guarantees in investment activities carried out by investors. This can be implemented well with the readiness of investors as holders or owners of intellectual property rights, bank financial institutions, non-bank financial institutions, and notaries related to the implementation of investment activities in Indonesia.

Patents as objects of fiduciary guarantees have been regulated in Article 108 of Law No. 13 of 2016 concerning Patents which stipulates that rights to patents can be used as objects of fiduciary guarantees and provisions regarding the procedures and requirements for rights to patents as objects of fiduciary guarantees are regulated in Government Regulations. In addition to patents, brands also have the potential to be used as objects of fiduciary guarantees.

The guarantee rights contained in intellectual property rights can be used as collateral rights to obtain debt or credit from banking institutions on the condition that they do not violate the rules and regulations in a country and do not violate international agreements or agreements in the field of intellectual property rights that have been ratified by that country (Suyud Margono and Amir Angkasa, 2017).

3.2. Legal Political Strategy in Balancing The Interests of Intellectual Property Rights Holders or Owners and Public Interests

Economic activities in a country are closely related to the protection of its intellectual property rights. If economic activities in a country are increasingly open, then protection of intellectual property rights is increasingly needed to improve the economy. So the protection of intellectual property rights is carried out with various objectives, namely to advance, utilize, and protect economic activities in a country, advance and promote the use of intellectual property rights in economic activities in a country, and encourage developments in the fields of culture, economy, social, and technology (Agil Febriansyah Santoso and Budi Santoso, 2022).

Legal protection of intellectual property rights has been regulated in various laws regarding intellectual property rights. Legal protection is implemented so that various creations and innovations in the field of intellectual property rights continue to develop and advance. In general, there are 2 (two) types of rights contained in intellectual property that must be protected, namely moral rights and economic rights. Moral rights are personal rights owned by the holder or owner of intellectual property rights to be named for a particular intellectual work. Meanwhile, economic rights are rights held by the holder or owner of intellectual property rights to obtain economic benefits from the exclusive rights they hold.

National economic activities do not only focus on domestic economic activities but also focus on foreign economic activities. One example is investment activities that can be carried out by domestic investors and foreign investors. These investment activities have a significant impact on economic activities in Indonesia. The positive impacts of domestic investment activities include increasing the amount of export production for domestic products, general welfare, and economic growth in a country (Herman Kambono and Elyzabet Indrawati Marpaung, 2020). Meanwhile, the positive impacts of foreign investment activities include increasing national income and economic growth in a country (Herman Kambono and Elyzabet Indrawati Marpaung, 2020).

In Indonesia, the legal protection system for intellectual property rights in investment activities is implemented in various ways, including, among others, the Indonesian state creating a conducive investment climate for investors while still prioritizing national interests and communal (community) interests (Wendelina Ernatudera, 2023), ratifying international agreements or deals in the field of intellectual property rights known as the Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement), and making efforts to resolve disputes in the event of crimes and violations in investment activities related to intellectual property rights.

The various benefits of intellectual property rights for economic activities, especially investment activities in Indonesia, include, among others:

1. Creating the latest innovations in investment activities;
2. Encourage domestic investors to compete healthily with foreign investors in investment activities;
3. Developing the latest technology in investment activities;
4. Increasing the number of investment activities;
5. Increasing the amount of export production against domestic products in investment activities;
6. Maintaining the reputation of the Indonesian nation in the international world in investment activities.

Meanwhile, the various benefits of legal protection of intellectual property rights for economic activities, especially investment activities in Indonesia, include, among others:

1. Attracting interest from foreign investors to carry out investment activities in Indonesia;
2. Developing innovation, creativity, and the latest technology in investment activities;
3. Increasing economic growth in Indonesia.

Indonesia is one of the member countries of the international trade organization regarding the World Trade Organization (WTO) which aims to realize world order based on the values of social justice, freedom, and eternal peace in the field of economics or international trade. Indonesia's participation in the World Trade Organization (WTO) makes Indonesia obliged to ratify the international agreement or agreement regarding Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement) which regulates various aspects of intellectual property rights in the field of economics or international trade.

In the process of forming national regulations and provisions governing investment activities related to intellectual property rights, it is mandatory to refer to international agreements or agreements and national regulations and provisions in Indonesia. So in the process of forming national regulations and provisions governing investment activities related to intellectual property rights, it is mandatory to pay attention to various values in Pancasila, various legal principles in the 1945 Constitution of the Republic of Indonesia, and the reality of life of the Indonesian people (Slamet Sutrisno, 2006).

The legal political strategy in balancing the interests of intellectual property rights holders or owners and public interests in investment activities in Indonesia must be by international agreements or agreements and existing national regulations and provisions. So the formation of national regulations and provisions regarding intellectual property rights must be adjusted to the values in Pancasila which regulate the balance between individual rights and communal rights (community rights). Legal protection of intellectual property rights in Indonesia must be guided by the values of social justice, humanitarian values or the welfare of humanity, nationalism values, the balance between individual rights and communal rights (community rights), and the values of technological and scientific development contained in the Pancasila (Niru Anita Sinaga, 2020).

The value of social justice can be achieved by having a balance between the interests of intellectual property rights holders or owners with the public interest in investment activities. Where this balance can be realized with the existence of harmonious and harmonious national development that still pays attention to the noble ideals of the Indonesian state to form a prosperous and just Indonesian society materially, evenly, and spiritually (Candra Irawan, 2011).

Humanitarian values or welfare for mankind can be achieved by having a protection system for a particular intellectual work that contains the value of creativity, willpower, and feeling from human thought processes. Where protection for intellectual work is also carried out to protect the human rights owned by the holder or owner of the intellectual property rights (Candra Irawan, 2011).

The balance between individual rights and communal rights can be achieved by having a protection system for intellectual property rights that appreciates a particular intellectual work by providing exclusive rights for the holder or owner of the intellectual property rights appropriately. However, the granting of such exclusive rights is carried out while still considering

the interests of the Indonesian people so that it is possible to revoke an exclusive right that is considered to be able to cause harm to the lives of the Indonesian people.

The value of nationalism can be achieved by having a protection system for intellectual property rights that continues to prioritize national interests and communal (community) interests in Indonesia. The value of developing technology and science can be achieved by having a protection system for intellectual property rights that continues to prioritize various values in Pancasila, including the values of social justice, humanitarian values, divine values, people's values, and unity values.

Intellectual property rights must obtain legal protection from the Indonesian state as long as they do not conflict with religion, morality, public order, and applicable laws and regulations. Legal protection for intellectual property rights is hoped to advance and increase investment activities in Indonesia. Thus, legal protection for intellectual property rights is considered to be able to increase income and the economy in Indonesia.

4. Conclusion

Intellectual property rights play an important role in advancing investment activities in Indonesia. This can be shown by the existence of brands that function as distinguishing marks for various products produced in investment activities and the existence of copyrights and patents that function as potential intangible assets for various products produced in investment activities. However, further regulations are still needed regarding intellectual property rights that are used as objects of material guarantees in investment activities carried out by investors. Economic activities in a country are closely related to the protection of its intellectual property rights. If the protection of intellectual property rights is higher, then the economic development in a country will also be higher. Legal protection of intellectual property rights in Indonesia is implemented while still paying attention to international agreements or agreements followed by Indonesia and national regulations and provisions in Indonesia. In addition, legal protection of intellectual property rights in Indonesia must be guided by the values of social justice, humanitarian values or the welfare of humanity, nationalism values, the value of balance between individual rights and communal rights (community rights), and the value of technological and scientific development contained in the Pancasila. On the other hand, legal protection of intellectual property rights in Indonesia should be able to be carried out by the Indonesian people, investors as holders or owners of intellectual property rights, and the Indonesian government actively and sustainably to increase income and the economy in Indonesia.

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