

Legal Protection Model in Healthy Business Competition for Brands of Creative Economy Products

Ni Luh Made Mahendrawati*
Faculty of Law, Warmadewa University
Denpasar Bali, Indonesia
E-mail: made.mahendrawati@gmail.com

IB Gede Agustya Maha Putra
Faculty of Law, Warmadewa University
Denpasar Bali, Indonesia

Luh Kade Datrini
Faculty of Law, Warmadewa University
Denpasar Bali, Indonesia

Ni Nyoman Putri Nurbawa
Faculty of Law, Warmadewa University
Denpasar Bali, Indonesia

Abstract

This research aims to investigate the legal protection business competition of intellectual property rights in trademarks for actors within the creative economy, with the goal of promoting sustainable economic development and ensuring fair competition. The study focuses on exploring the regulatory framework surrounding the Creative Economy, intellectual property trademarks, and the legal safeguards for the creative works produced by individuals within this sector. Adopting a socio-legal research approach, the study combines elements from both the legal and social sciences to gain insights into the functioning of laws within society, taking into account economic and cultural factors. The research underscores the significance of trademarks as invaluable assets within the economy, closely intertwined with economic activities and trade. The Creative Economy places emphasis on the primacy of creativity and knowledge as drivers of economic growth. However, there exists a deficiency in the protection of intellectual property rights for trademarks associated with creative economy products in Indonesia, rendering them vulnerable to exploitation and infringement. Strengthening legal protection is of utmost importance to safeguard the interests of creative economy actors and to cultivate a conducive environment for economic progress. By shedding light on these issues and emphasizing the principles of Intellectual Property Rights, this research contributes to a comprehensive understanding of legal protection. Moreover, it provides recommendations aimed at bolstering the safeguarding of intellectual property rights specifically for trademarks within the realm of the creative economy in Indonesia. Through these efforts, the research aims to foster an environment that encourages innovation, supports fair competition, and facilitates sustainable growth within the creative economy sector.

Keywords: Legal Protection, Business Competition, Brands, Creative Economy Products

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1. Introduction

Globalization demands progress in all areas of human life, so humans must continue to follow its development. The government is strongly committed to developing the creative economy as one of the mainstays of the national economy. It is believed that the creative economy can be a powerful weapon, including the era of the Asean Economic Community which has begun since January 1, 2015. The creative economy has become an important sector in economic growth in many countries. This industry covers various fields such as art, music, film, fashion, design, advertising, and so on. Creative economy growth contributes significantly to job creation, income growth, and innovation in various sectors. The creative economy industry is characterized by products that are unique, creative, and have high added value. Trademarks play an important role in differentiating such products from competitors and creating a strong identity. Juridically, the form of intellectual property legal protection in the field of brands on the results of creative economy creativity has been reflected in Article 23 and Article 24 of Law No. 24 of 2019 concerning Creative Economy.

Trademark registration is an essential requirement for the protection of Intellectual Property, as regulated in Article 3 of Law No. 20 of 2016 concerning Trademarks and Geographical Indications. The creative economy itself is different from the commodity economy. In a commodity economy, products can be depleted when they

are sold out. However, it is different for the creative economy. If a work is created and licensed, its benefits can continue to be experienced. Law Number 20 of 2016 explains that the role of trademarks is crucial, especially in maintaining fair and healthy competition. (Tommy Hendra Purwaka, 2017, *Perlindungan Merek*, Yayasan Pustaka Obor Indonesia, Jakarta). Based on that, law enforcement agencies are obliged to provide protection for these creative economy practitioners. It is possible for someone to register a product when creative economy practitioners produce a valuable economic product/creativity. However, these creative economy practitioners may not be able to optimally obtain the rights in the form of a trademark, which should be used as protection if their products are imitated by others. This indicates the lack of legal protection for intellectual property rights, specifically trademarks, for the creative economy practitioners. A product that can be granted Intellectual Property (IP) protection must be creative and innovative. A trademark must have sufficient distinctiveness, meaning it has the strength to differentiate between the owned trademark and trademarks of others in the same or similar class of goods. Considering these criteria, it is clear that a product seeking IP protection should be creative and innovative. Currently, there are still some creative economy practitioners who do not pay attention to these criteria. As a result, existing products are not new and are even imitations/pirated versions of existing ones. The suboptimal protection of IP has wide-ranging and long-term impacts on the business world

It is important for businesses to ensure that their activities do not violate the law. When the creative outcomes of their business are to be registered for trademark rights at the Directorate General of Intellectual Property under the Ministry of Law and Human Rights, the products will go through several screenings to ensure that similar products have not been registered before. Based on this, there are three issues that will be investigated: Why is the legal protection of fair competition in intellectual property rights, specifically trademarks, for the creative outcomes of creative economy practitioners not optimal? What are the influencing factors? How is the concept of regulating the Creative Economy related to Intellectual Property, specifically trademarks? How is the regulation for the legal protection of intellectual property rights, specifically trademarks, for the creative outcomes of creative economy practitioners formulated?

Considering this background, it is crucial for the country and relevant parties to develop a comprehensive and effective legal protection model in promoting fair competition for trademarks in the creative economy sector. This model will provide adequate protection for business practitioners, foster innovation and growth in the creative economy sector, and uphold fair and equitable competition.

2. Reserch Methoda

The method used in this paper is socio-legal research, which is a research approach that integrates legal and social sciences. This method is employed to understand and analyze how law operates in society and its impact on economic, cultural, and other social aspects. In the context of researching legal protection in the creative economy and intellectual property rights, the socio-legal research method can be used to obtain a comprehensive understanding of the role of trademarks in a nation's economy and trade.

In this study, the researcher will follow the steps of Problem Identification, where the researcher identifies research issues related to legal protection in fair competition for trademarks in the creative economy. Literature Review involves an in-depth examination of legal theory concerning trademarks, intellectual property, and relevant aspects of the creative economy. Data Collection is conducted through interviews, observations, or document studies. The researcher then performs an analysis of legal materials to address the issues formulated in the research problem, using descriptive qualitative data analysis, which entails describing a situation or phenomenon in words or sentences and categorizing them to draw conclusions from the presented issues. (Suharsimi Arikanto, 2006, *Prosuder Penelitian Suatu Pendekatan Praktik*, Cipta Jakarta).

The researcher analyzes the collected facts and information to understand how the law plays a role in protecting trademarks in fair competition and its impact on the creative economy. This approach helps in understanding how the law operates in society and provides crucial insights for the development of more effective legal policies concerning trademark protection and the creative economy.

3. Discussion

3.1 Legal protection of competition for intellectual property rights in trademarks for creative economy business practitioners.

In order to establish a strong economic foundation to create an efficient and distortion-free market economy, Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition was enacted. The emergence of this law recognizes that in business activities, there is a possibility of negative behavior within the economic system that leads to non-competitiveness. Unfair competition among business players can also occur, resulting in harm to consumers and even the country. (Ni Luh Made Mahendrawati, *Larangan Praktek Monopoli dan Persaingan Tidak Sehat Dalam Usaha Perdagangan di Indonesia*, Malang, Surya Pena Gemilang, 2018). Therefore, legal regulations are established to ensure the implementation of beneficial business competition as an effective way to achieve optimal resource utilization. Additionally,

business competition can also serve as a fundamental basis for long-term average performance and is known as sustainable competitive advantage, which can be obtained through three strategies: cost advantage, differentiation, and cost focus. (Jhony Ibrahim, 2009, Hukum Persaingan Usaha (Filosofi, teori dan Implikasi penerapannya di Indonesia), Bayu Media, Malang).

The protection of Intellectual Property Rights (IPR) (now referred to as Intellectual Property/IP) holds an important and strategic position in promoting the emergence of the creative industry, which in turn drives overall economic growth, particularly in informal sectors that currently play a role in supporting national economic resilience. The protection of trademarks within the creative economic sector plays a crucial role in fostering innovation, protecting investments, and promoting fair competition in the market. The Creative Economy is a concept that places creativity and knowledge as the main assets in driving the economy. Every creative economy requires distinguishing elements when starting a business. These distinguishing elements are not only reflected in the form of products and services offered but also encompass trademarks. According to a survey conducted by the Creative Economy Agency (now called the Tourism and Creative Economy Agency/Baparekraf) in collaboration with the Central Bureau of Statistics (BPS), out of 8.2 million units in the creative economy, only 11% have registered for intellectual property protection. This reflects the suboptimal protection of intellectual property rights, particularly trademarks, for the creative products of businesses in the creative economy. Many creative economy products in Indonesia are still being traded without IP protection.

There are several reasons why legal protection is crucial. Firstly, it prevents counterfeiting and trademark infringement, as legal trademark protection enables creative economic actors to prevent others from using their trademarks without permission. According to Sudargo Gautama, a trademark is defined as a symbol that serves to distinguish goods and services of one company from those of others. (Sudargo Gautama, 1977, Hak Merek, Bandung: Alumni). Another reason is to provide legal certainty to consumers regarding the origin and quality of products and to grant exclusive rights to creative business actors as trademark owners. Therefore, it is important for actors in the creative economy to understand the importance of legal protection for intellectual property rights, specifically trademarks, and take appropriate steps to safeguard their trademarks, including trademark registration, consistent use of the trademark, and monitoring trademark infringements. By doing so, they can optimize the value of their trademarks and ensure the long-term sustainability of their businesses.

3.2 The concept of regulating Creative Economy related to Intellectual Property Trademarks.

The regulation of the creative economy is a concept that emphasizes the importance of utilizing creativity and innovation to create sustainable economic value. John describes the creative economy as an economic activity that generates ideas, not just routine and repetitive tasks, and this idea creation is done for the progress of society (Howkins John, 2001, *The Creative Economy: How People Make Money from Ideas*. London: Penguin). Substantively, Law Number 24 of 2019 on the Creative Economy has regulated intellectual property and the protection of creative results. However, the regulation of intellectual property in Law Number 24 of 2019 only facilitates as stipulated in Article 23, where the Government and/or Regional Government facilitate the registration of copyrights, related rights, and industrial property rights for Creative Economy Actors in accordance with the provisions of the legislation. Furthermore, Article 24 stipulates that the Government and/or Regional Government protect the creative results of Creative Economy Actors in the form of intellectual property in accordance with the provisions of the regulations.

One important aspect of regulating the creative economy is the protection of intellectual property, including trademarks. A trademark is a symbol, name, word, design, or combination of these elements that distinguishes a company's products or services from others. John Locke stated that the ownership rights of a person over the things they produce exist from the moment a person is born. In this context, 'things' refer not only to tangible objects but also to intangible objects, referred to as ownership rights over intangible objects, which are the result of human intellectuality (John Locke, *Two Treatises of Government*, edited and introduced by Peter Laslett, 1988).

Protection of trademarks is necessary to prevent unauthorized use or misuse by others, which can harm the trademark owner and confuse consumers. In the context of regulating the creative economy, the protection of trademarks plays a crucial role. Juridically, trademarks are regulated under Article 1, Number 1 of Law Number 20 of 2016 concerning Trademarks and Geographical Indications. A trademark is a sign that can be displayed graphically, such as an image, logo, name, word, letter, number, color arrangement, in 2-dimensional and/or 3-dimensional form, sound, hologram, or a combination of two or more of these elements, used to distinguish goods and/or services produced by individuals or legal entities in trade activities. In general, intellectual property rights (IPRs) are divided into two parts: Copyrights, which include copyright and related rights, and Industrial Property Rights, which include trademarks, patents, industrial designs, trade secrets, and layout designs of integrated circuits (Endang Purwaningsih, 2012, *Hak Kekayaan Intelektual(HKI) dan Lisensi*, Bandung).

Thus, legal protection serves as a means to safeguard legal subjects through the enforcement of applicable laws and regulations with corresponding sanctions. An example is the Copyright Law. The establishment of Law

Number 28 of 2014 on Copyright (Copyright Law) is the state's effort to protect the economic rights and moral rights of creators and rights holders as essential elements in the development of national creativity. The Copyright Law also addresses the development of an industrially-based creative economy, which has become one of Indonesia's economic strengths. Therefore, the Copyright Law can fulfill the elements of protection and development of the creative economy. The following are several aspects related to the regulation of the creative economy and the protection of intellectual property trademarks:

1. **Enhancing Innovation and Creativity:** Trademark protection provides incentives for companies to develop innovative and creative products and services. By having exclusive rights to their trademarks, companies can safeguard their investments in research and development and reap the economic benefits of their innovations.
2. **Increasing Economic Value:** Strong and recognized trademarks have high economic value. They can help companies differentiate their products from competitors, build a positive brand image, and gain consumer trust. In the context of the creative economy, trademark protection helps increase brand value and the economic contribution of companies operating in the creative sector.
3. **Facilitating Trade and Investment:** Strong trademark protection also facilitates international trade and investment. Globally recognized trademarks help build trust and make it easier for companies to enter new markets. This can stimulate economic growth and expand companies' access to broader economic opportunities.
4. **Respecting Trademark Owners' Rights:** Good economic regulations should ensure effective protection of trademark owners' rights. Clear and robust laws and regulations are necessary to prevent trademark infringements, including counterfeiting, theft, or unauthorized use. This provides legal certainty for trademark owners and promotes a fair and integrity-driven business environment.
5. **Effective regulation of the creative economy** requires policies and laws that support the protection of intellectual property, including trademarks. In a conducive environment, creative companies can generate significant economic value and drive the growth of innovative and sustainable economic sectors. Therefore, it is important for countries and stakeholders to collaborate in developing a strong legal framework and providing adequate protection for trademarks within the context of creative economic regulation.

3.3 Regulation for the Legal Protection of Intellectual Property Rights, specifically trademarks, in the creative economy sector.

Law plays a crucial role in the presence of intellectual property, as intellectual property rights are a form of legal recognition and protection. The government is considered necessary to provide maximum protection for creative economy actors who have produced innovative concepts. This will further inspire these actors to continue creating and advancing the national creative economy sector. Ledia Hanifa Amaliah, a member of the Indonesian Parliament, stated, "The existing issue in the creative industry is the lack of maximum protection and support for producers, creators, and works of the creative economy, especially from a legal perspective" (Rifa'I, 2019, Pentingnya HAKekayaan Intelektual (KI) Untuk Melindungi Pelaku Ekonomi Kreatif).

To meet the society's need for good, effective, and comprehensive legislation regarding the creative economy, including the legal protection of creative economy products as intellectual property, Indonesia has enacted the Law on Creative Economy, specifically Law No. 24 of 2019 on Creative Economy. This law aims to protect the results of creative activities by creative economy actors, as stated in Article 4 letter f and Article 5 of Law No. 24 of 2019 on Creative Economy. It also mentions that every creative economy actor has the right to receive support from the government and/or local government through the development of the Creative Economy Ecosystem.

In the provisions of legislation on intellectual property, trademarks are regulated in Law No. 20 of 2016 concerning Trademarks and Geographical Indications. Article 3 of Law No. 20 of 2016 on Trademarks and Geographical Indications clearly stipulates that the Right to a Trademark is obtained after the trademark is registered. Trademarks, as one of the intellectual creations closely related to economic and trade activities, play a crucial role in the economy and trade of a nation (Sulasi Rongiyati, Legal Protection of Intellectual Property Rights in Creative Economic Products, Jurnal Negara Hukum, Vol.9 No.1 June 2018).

Therefore, in order to obtain legal protection for intellectual property, trademarks resulting from the creativity of creative economy actors must be registered. Registration creates a right to the trademark, and the party that registers the trademark is the sole holder of that right. Third parties must respect the rights of the registrant as an absolute right. Trademark protection also plays a role in ensuring fair competition regulations. In many jurisdictions, creative economy actors who have registered trademarks have exclusive rights to use those trademarks. This means that creative economy actors can protect their trademarks from unauthorized use or unfair competition by others. In this regard, the legal protection of intellectual property rights in trademarks plays a role in maintaining healthy competition by preventing practices that infringe on trademark rights or

undermine fair competition.

4. Conclusion

Trademark protection also plays a role in ensuring fair competition regulations. In many jurisdictions, creative economic actors who have registered trademarks have exclusive rights to use those trademarks. This means that creative economic actors can protect their trademarks from unauthorized use or unfair competition by others. In this regard, legal protection of intellectual property rights through trademarks plays a role in maintaining healthy competition by preventing practices that infringe on trademark rights or undermine fair competition.

Therefore, the Legal Protection Model in Healthy Business Competition against Creative Economic Product Brands needs to be examined from several aspects. First, the regulations governing it (Legal Substance) should complement each other, such as the regulations governing Creative Economy through Law Number 24 of 2019 on Creative Economy and Intellectual Property Law through Law Number 20 of 2016 on Trademarks and Geographical Indications. Second, the implementing agencies (Legal Structure) need to be considered to ensure optimal functioning of the system, requiring optimization of the roles and functions of institutions in facilitating the registration of copyrights, related rights, and industrial property rights (trademarks). And third, the awareness and legal compliance of creative economic actors (Legal Culture) through changes in attitudes and behavior patterns to obtain intellectual property (trademark) rights from the results of their creativity.

Overall, the legal protection of intellectual property rights through trademarks plays an important role in creating and maintaining fair and healthy business competition. This involves preventing unfair practices, promoting innovation, providing identity and differentiation, as well as transparency and information to consumers. By effectively protecting trademarks, creative economic actors can compete fairly, enhance product and service quality, and provide benefits to consumers and overall economic growth.

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