

Legal Perspective of Intellectual Property Rights in Protecting Betawi Batik Motif

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Submission date: 28-Apr-2024 08:25AM (UTC+0700)

Submission ID: 2363844650

File name: paper_legal_persepctive.pdf (161.7K)

Word count: 3228

Character count: 17925

Legal Perspective of Intellectual Property Rights in Protecting Betawi Batik Motif

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Abstract

Betawi Batik, is one of Indonesia's cultural heritages that is recognized by the world, it is necessary to conduct an in-depth study of Intellectual Property Law regulations so that it can maintain and protect batik itself. It has both micro and macro-objectives; On a micro level, it is to avoid plagiarism of Batik Betawi motifs related to business competition and at a macro level so that the results of Indonesian culture are not recognized (Claim) by other countries. For this reason, the author is interested in conducting a study entitled Perspective of Intellectual Property Law in Protecting Betawi Batik Motifs. The study is a literature review, sourced from secondary data originating from publications in journals, proceedings, books and from related agencies. The process of completing the writing is carried out by elaborating the problems found in previous studies, then comparisons are made with theory to find out the ideal situation that must be done. These facts are described and produce conclusions that can be a reference for the development of intellectual property law based on cultural products. The result of study stated that so far many people do not know and understand about the right to record or register IPR and there is a need for socialization to batik craftsmen regarding the importance of legal protection for intellectual property contained in batik motifs.

Keywords: Betawi Batik, Legal perspective, Intellectual Property Right, Culture.

1. INTRODUCTION

Culture is a reflection of the ecological interaction between humans and their environment; both human beings with one another, as well as human groups with other human groups. Humans are also social animals who engage in interactions and practice routines that eventually develop into their culture. Culture is a product of humans, but humans themselves are products of culture (Mahdayeni et al, 2019).

Culture gives a specific color of a society. ParsudiSuparlan in Setyaningrum and Putra (2014) states that culture is the overall knowledge of humans as social beings, which is used to interpret and understand the environment they face, and to create and encourage the realization of behavior. One of the cultural products that are very attached to people's lives, especially in Java is Batik Products (Heringa, 2000; Asikin, 2008). Batik is one of the works of creation that is regulated and protected in Article 40 of Law Number 28 of 2014 concerning Copyright. The term of copyright protection for contemporary batik art works is 70 (seventy) years. The batik art works referred to in the Copyright Law are contemporary batik motifs that are innovative, contemporary, and not traditional. The work is protected because it has artistic value, both in terms of images, patterns, and color composition (Article 40 of Law 28/14 on Copyright).

One area that has uniqueness in its batik motifs is Jakarta with its Betawi Batik. Betawi batik is a traditional craft of the people of Jakarta whose manufacture began in the 19th century. Currently, the workshops that produce this type of batik include craftsmen who are members of the Betawi Batik Family, SetuBabakan, and Batik Seraci and Adelia which are located in Bekasi (Soedarwanto et al, 2018). Betawi batiks at that time were commonly used among the Dutch, Chinese and indigenous elites. This also affects the Betawi batik motifs which have their own peculiarities (Nawingkapti and Gunadi, 2019)

Business competition creates a new atmosphere in the batik business world. Product innovation and strategy are important in maintaining the sustainability of batik products. The threat of plagiarism of batik motifs then become something that needs to be anticipated (Hall, 1996). The concept of copyright protection is currently something that batik designers and producers need to consider. Copyright is a branch of

Intellectual Property Rights (IPR) which protects human creations in the fields of art, literature and science. When a work is realized in a concrete form without lowering restrictions in line with legal requirements, copyright, which is the creator's exclusive right, arises immediately on the basis of declaratory principles (Article 1 of Law 28/14 concerning Copyright)

Intellectual Property Rights (IPR) is an important issue in Indonesian and international national forums. International arrangements regarding IPR are listed in the World Trade Organization (WTO) which officially replaced the GATT (General Agreement on Tariffs and Trade) since January 1, 1995 based on the results of the Uruguay Round agreement in 1994. One of the contents of the WTO is related to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) (Etty, 2007). TRIPs are international agreements regarding trade aspects of intellectual property rights, including trade related aspects of intellectual property rights including trade in counterfeit goods (Tesalonica et al, 2016).

Based on the description of the background, where Batik, especially Betawi Batik, is one of Indonesia's cultural heritages that is recognized by the world, it is necessary to conduct an in-depth study of Intellectual Property Law regulations so that it can maintain and protect batik itself. It has both micro and macro objectives; On a micro level, it is to avoid plagiarism of Batik Betawi motifs related to business competition and at a macro level so that the results of Indonesian culture are not recognized (Claim) by other countries. For this reason, the author is interested in conducting a study entitled Perspective of Intellectual Property Law in Protecting Betawi Batik Motifs.

2. RESEARCH METHODS

The study is a literature review, sourced from secondary data originating from publications in journals, proceedings, books and from related agencies. The process of completing the writing is carried out by elaborating the problems found in previous studies, then comparisons are made with theory to find out the ideal situation that must be done. These facts are described and produce conclusions that can be a reference for the development of intellectual property law based on cultural products.

3. DISCUSSION

Traditional knowledge is a term used to describe a form of knowledge created by a group of indigenous peoples that passes through many generations and has a direct impact on nature or society (Purba, 2005). The terminology of traditional knowledge itself has a broad scope including their economic aspects for the culture of indigenous peoples and country (Kurnilasari, et al, 2018).

One of the expressions of traditional knowledge of a community group is Batik. Betawi batik as a form of artistic and cultural expression of society has its own sociological and historical value. The opposition to the concept of "necessity" and "unnecessity" of a cultural expression to be patented has become quite an interesting debate. Many objections are of a practical nature based on core philosophical concerns. They consider that the traditional knowledge rights system completely does not fulfill the primary reason for conceding property privileges in intangible matters such as inventions and expressive works. On the one hand, intangible asset is intended to promote inventiveness and creativity. Despite the fact that most conventional knowledge is viewed as being unoriginal, at least in comparison to discoveries and works that is eligible for patents and copyrights (Cross, 2010).

On the other hand, argues that cultural expressions need to be patented, argues that innovation and even modern technology such as biotechnology basically comes from the manipulation of traditional knowledge into new forms of knowledge that have been adapted to modern science. Whether it is obtained from database searches or even direct discussions with the community, so they assume that traditional knowledge is an important component as the main source of scientific research (innovation) by academics or companies today (Ruiz, 2002)

Traditional knowledge is a body of information that is lived, created, preserved, and passed down from one generation to the next in a community. It frequently contributes to the cultural or spiritual identity of the community. Because of this, it is difficult to be protected by present intellectual property laws, which typically only offer temporary protection for the original creations and works of the identified people or businesses (https://www.wipo.int/pressroom/en/briefs/tk_ip.html , accessed 24 October 2021).

Talking about Betawi Batik, Betawi Batik has its own characteristics, both from the use of striking colors and unique images that are often sourced from the historical past of Jakarta. Betawi batik began to be

developed in the 19th and was popular in Batavia and was in great demand by the upper classes such as the Dutch, Chinese and the indigenous elite (<https://museumnusantara.com/batik-betawi/>). At first the Betawi Batik motif followed the pattern from the northern coast of Java Island, but in its development the Betawi Batik pattern was heavily influenced by Chinese culture and calligraphy typical of the Middle East. Betawi Traditional Batik usually uses bright basic colors with motifs that describe the culture that exists in Betawi such as ondel-ondel, Ciliwingsriver, Tanjidor, as well as some endemic trees typical of Batavia (currently Jakarta). There are even several motifs that describe the history of Jakarta, such as the Nusa Kelapa and Rasamala motifs.

In the current era of the creative industry, Betawi Batik is one of the fastest growing batiks (Rujiyanto et al, 2019). In a discussion panel on the topic of Betawi Batik in 2009 it was revealed that many problems related to the development of Betawi batik were revealed. In 2008 Betawi batik gained an important momentum with the creation of 24 Betawi Batik patterns on a large scale by KRT batik entrepreneur Daud Wiryo Hadinegoro from Yogyakarta in collaboration with Betawi culturalist Ridwan Saidi (Achjadi, 2009). These patterns are registered as intellectual property rights of the Betawi Batik Secretariat which manages the Pulo Gadung industrial zone in East Jakarta.

In the concept of protecting the Betawi Batik Motif as a product of the cultural expression of society, there are two kinds of intellectual property protection, namely defensive protection and positive protection. To prevent outsiders from getting intellectual property rights to traditional knowledge, defensive protection is used. The provision of rights that enable people to advance their traditional knowledge, regulate its use, and profit from its economic use is known as positive protection. Traditional knowledge applications can sometimes be safeguarded by existing intellectual property rules, and several nations have additionally created specific legal frameworks. One of the reasons why many indigenous and local groups and governments are pushing for international legal tools is because any unique protection offered by national law may not apply to other countries (WIPO, 2008).

Entrepreneurs and policymakers are increasingly recognizing the importance of intellectual property rights (IPR), particularly the significance of patents. Patents are used strategically in technological negotiations and as a legal protection tool for novel goods and processes at the corporate level. The patent system seeks to promote research and innovation initiatives at the national level, leading to economic prosperity.

More broadly, the discussion of intellectual property is closely related to the innovation process and related to patents. Several previous studies have stated that intellectual property rights are increasingly important in determining firm value (Potterie and Peeters, 2006). There are several important aspects of intellectual property with business sustainability, including safeguarding from the risk of piracy, economic value in the form of royalties and related to branding, intellectual property rights can strengthen brand positioning against competitors.

By the legal perspective in this paper includes multi-disciplinary legal aspects, namely basic law or constitutional law (constitutional law), administrative law, civil law, criminal law, especially the Job Creation Act. From the aspect of basic law or constitution (State Law) based on Article 28 C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the formulation is "Everyone has the right to develop himself through fulfilling his basic needs, has the right to education and benefits from science and technology, arts and crafts, culture, in order to improve the quality of life and for human welfare", while according to Law no. 28 of 2014 concerning Copyright in particular Article 40 has regulated and provided protection for "creations in the fields of science, art, and literature, consisting of one of them in the letter j, namely "work of batik art or other motif art".

Furthermore, the problem so far is the lack of public knowledge, both individually and in groups related to the protection of legal aspects of IPR. It is proven that there are many works as stipulated in Article 40 of Law no. 28 of 2014 concerning Copyrights, applications are rarely made to be recorded and registered, so that not a few people suffer losses, both moral rights and economic rights due to someone's ignorance or lack of understanding of their rights in the field of Copyright, so many people who understand on the provisions of the Copyright Act, for personal gain. Whereas in constitutional law, administrative law, civil law and even criminal law as regulated in Law no. 28 of 2014 is more than sufficient and strong to be used as a legal tool to protect copyright, including to protect intellectual property rights for the typical Betawibatik motif if there is a violation of the law. For example in Law No. 28 of 2014 there are moral rights and economic rights, if a certain person or group is deemed to have violated the provisions of the Copyright Law, the Creator or Copyright Holder can file a civil lawsuit to the Commercial Court, with the

following procedure: that has been determined, and ask for compensation if it is deemed that the actions of a person or group of people have harmed their rights. In addition, it is also possible to make criminal complaints to the Police Investigator and certain civil servant investigators in the relevant Ministries as regulated in Chapter XVI Article 110, Law no. 28 of 2014. In fact, operationally, this Copyright is further regulated in Government Regulation (PP) Number 16 of 2020 concerning the Registration of Works and Related Rights Products, as implementing regulations for the provisions of Article 73, Article 75, Article 77, and Article 79 of the Law. -Law Number 28 of 2014 concerning Copyright. This means that the regulation on the mechanism for the application for recording of Works and related rights products has also been technically regulated in the PP which includes the following matters;

1. Application for registration of Works or Related Rights Products;
2. Application for recording the transfer of rights to the recording of Works or Related Rights Products;
3. Application for recording changes to the name and/or address of the Author, Copyright Holder, or Related Rights owner;
4. Application for withdrawal of application for registration of Works or Related Rights Products;
5. Application for deregistration of Works or Related Rights Products; and
6. Application for official excerpts of Works or Related Rights Products.

4. CONCLUSION

From the description and discussion above, the author can provide the following conclusions;

1. Whereas the protection of Intellectual Property Rights on the "betawi batik motif" in a legal perspective, both basic law (constitutional law), administrative law, civil law, criminal law has been sufficiently regulated in Law Number 28 of 2014 concerning Copyright.
2. That so far many people do not know and understand about the right to record or register IPR with the Government
3. There is a need for socialization to batik craftsmen regarding the importance of legal protection for intellectual property contained in batik motifs.

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LAWS AND REGULATIONS;

- The 1945 Constitution of the Republic of Indonesia
- Law Number 28 of 2014 concerning Copyrights
- Government Regulation Number 16 of 2020 concerning Registration of Works and Related Rights Products

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