

**INTELLECTUAL  
PROPERTY LAW  
IN INDONESIA AND MALAYSIA  
(A Comparative Study)  
By UUM and UNISSULA**

**Anis Mashdurohatun**

**Dr. Hj. Anis Mashdurohatun,SH.,M.Hum.**

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## FOREWORD

Let's thank to Allah Swt. for many blessing, goodness, and guidance so the author has finished the book entitled, "INTELLECTUAL PROPERTY LAW IN INDONESIA AND MALAYSIA (A Comparative Study) By UUM and UNISSULA". Secondly, mercy and peace from Allah Swt. always given to our great prophet Muhammad (pbuh.), his family, and his followers until the day of judgement.

There are some issues that need to be observed and studied particularly a problem comparison Intellectual Property Right (IPR) in Indonesia and Malaysia in particular implementations in Sultan Agung Islamic University Semarang and University Utara Malaysia, namely protection of intellectual property, economic recovery, the welfare of the people, the capacity of local development and community capacity, problems law, order, security, implementation of the government, regional autonomy, the environment and independence in an era of global competition. Allegedly the amount of research that has the potential IPR's professor especially in UNISSULA still less than 10% as well as in UUM still in stride take the development of the country of Malaysia in the Multimedia Super Corridor (MSC) attract foreigners to set up their company in the MSC. The goal is to examine ways and means by which the government is trying to keep the most effective balance between private and public interests in the realm helpful intellectual property rights can be applied in the financial and industrial fields. Many of these studies have not been optimally utilized dormant and thus accumulate with no sense financially. Many found the research of professors researching just to meet the requirements of credit points promotion. The main emphasis of this research is to identify and position the results of research into the potential creation within the scope of the implementation of intellectual property between University Utara Malaysia (UUM) and Sultan Agung Islamic University Semarang (UNISSULA). From these results grouped the social field, the field of art, technology, science, industrial design as well as the fields of literature.

This book is worthy of appreciation, and should be one of the sources of copyright law and intellectual property law. Hopefully this book will be able to contribute new knowledge in law, especially the law of intellectual property and become a charity for the author.

Netherlands, 10 September 2018

Hayyan Ul Haq, S.H., LL.M., Ph.D

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## CHAPTER I

### LEGAL STATUS AND SCOPE OF COLLEGE

#### A. Legal Basis of College of UUM and Unissula

Indonesia has been a member of the World Trade Organization (WTO) since 1994 under Act No.7 of 1994, and ratified various international conventions in the field of IPR in 1997. As a consequence of such participation, Indonesia must be prepared to face the global competition in the 21st century. In an effort to face the competition, Indonesia has perfected the various legislations in the field of intellectual property rights, such as the Law on Copyright, Patent, Trademark, Industrial Design, Trade Secret and Integrated Circuit Layout.<sup>1</sup>

Benefit improvements and legislation in the field of IPR is expected to provide incentives and at the same time the legal protection of the owner or holder of rights in the field of intellectual property rights so that they can perform in a healthy competition.

Wealth of natural, cultural and ethnic diverse Indonesia is a source of inspiration human intellectual development. Therefore a climate that encourages creativity and innovation in the field of intellectual property community is an effort embodiment of national education goals based on Act No.20 of 2003 on National Education System. Changes in the structure of people's lives at the national and international level have marked the development of science and technology that is more dynamic and modern, thus giving birth to the needs of the supply of human resources with the quality level of professionalism / expertise reliable and adequate improvements require the forging of a planned, standards,

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<sup>1</sup>Lindsay Lim et al, 2002, *the Intellectual Property Rights An Introduction*, Bandung: Alumni, p. 67

and systematic of education providers on line and levels of education expertise should.<sup>2</sup>

The existence of legislation has been amended and supplemented as well as the issuance of new laws such as the Act No.19 of 2002 on Copyright, No.14 Act of 2001 on Patents, No.15 Act of 2001 on Trademarks, Act No.31 2000 on Industry Design, Act No. 32 on Layout Designs of Integrated Circuits, Act No. 30 of 2000 on Trade Secrets certainly adds to a belief in the spirit of the Indonesian people to be consistent to what he had done. This law is meant to ensure a better climate for growth and development of community spirit (creator or inventor) included therein are researchers and businesses to develop creativity and innovation. Provision of legal protection of intellectual property, is expected to boost the development of national industry<sup>3</sup>.

There are some issues that need to be observed and studied particularly a problem comparison IPR in Indonesia and Malaysia in particular implementations in Sultan Agung Islamic University Semarang (Unissula) and University Utara Malaysia (UUM), namely protection of intellectual property, economic recovery, the welfare of the people, the capacity of local development and community capacity, problems law, order, security, implementation of the government, regional autonomy, the environment and independence in an era of global competition.<sup>4</sup>

Allegedly the amount of research that has the potential IPR professor at LPT especially in Unissula still less than 10% as well as in UUM still in stride take the development of the country of Malaysia in the Multimedia Super Corridor (MSC) attract foreigners to set up their company in the MSC, the goal is to examine ways and means by which the government is trying to keep the most effective balance between private and public interests in the realm helpful

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<sup>2</sup>L.Tukan L, *Development And Strengthening Ipr Tasa Results Of Research Work Of The College*, 2007, p. 24-25

<sup>3</sup>Rinitami Nyatriani, *Papers Management of Intellectual Property Rights in the Era of Regional Autonomy* (Bandungan 11-12 August 2004), p. 6

<sup>4</sup>Bagir Manan, 1993, *Travel Historical Article 18 1945 Constitution*, Karawang: Uniska, p.

intellectual that property rights can be applied in the financial and industrial fields. Many of these studies have not been optimally utilized dormant and thus accumulate with no sense financially. Many found the research of professors in Private University (PTS) researching just to meet the requirements of credit points promotion.

The main emphasis of this research is to identify and position the results of research into the potential creation within the scope of the implementation of intellectual property between the Sultan Agung Islamic University Semarang (Unissula) and University Utara Malaysia (UUM). From these results grouped the social field, the field of art, technology, science, industrial design as well as the fields of literature.<sup>5</sup>

Urgency of destination (Virtue) of this study is intended to stimulate interest, motivation in order to encourage the acceleration to research the potential of intellectual property to be immediately listed among the two countries, namely Indonesia and Malaysia. Encouraging interest and motivation is done with the idea that motivation as a driving force that causes someone is interested in doing something that is practiced. As pointed out, that motivation as a desire, needs and interests that encourage or enable and direct it toward a specific goal. The purpose is abstract (such as gratification) and concrete (with the invention can be successful in order to be financially).

## **B. An Overview of UUM and Unissula**

### **1. Round About Sultan Agung Islamic University Semarang (Unissula)**



Sultan Agung Islamic University or Unissula established by the Yayasan

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<sup>5</sup> *Ibid.*

Badan Wakaf Sultan Agung (YBWSA) on the 16th of Dzulhijjah 1381 H which coincides with the date of May 20, 1962 AD. The name is taken from the name of Sultan Agung which is one of the national heroes who are a boon for the nation of Indonesia. Sultan Agung has the full name of Adi Hanyokrokusumo who was born in the town, Sultanate of Mataram in 1593. Sultan Agung of Mataram Sultanate is the third sultan who ruled in 1613-1645. Under his leadership, the Sultanate of Mataram developed into the largest kingdom in Java and the archipelago at the time. Selection of Sultan Agung name as the name of the university is also inseparable from a variety of thought among others he is a great leader who loves the state and nation and very persistent against various colonization. Sultan Agung was a king whose religious and superior character that is able to implement the religious life through acculturation can be accepted by society.<sup>6</sup> Therefore, it is not surprising that his services as a warrior and humanist deliver big name Sultan Agung Indonesia designated as a national hero by Presidential Decree No.106 / TK / 1975 dated November 3, 1975. The rationale becomes a logical thing to make the name of Sultan Agung as the name of the university and through the name is expected to rekindle the spirit of the struggle to build a nation through education with Islamic values. Rector in charge now is Ir. H. Prabowo Setiyawan, MT, PhD (2018-2022), the previous rector is Anis Malik Thoha, MA, PhD (2014-2018), Prof. Dr. Laode M. Kamaluddin (2009-February 2014).

Faculty and program in Unissula are the Faculty of Medicine: Medical Education & Professional Program Physicians, Nursing, Professional Midwife, Pharmacy, Midwifery, Faculty of Dentistry: Dentist Education & Professional Program Dentistry, Faculty of Psychology, Faculty of Nursing & Professional nurses, Faculty of Civil Engineering: Techniques of Urban and Regional Planning, Faculty of Law, Faculty of Economics: Management and Accounting, Faculty of Islamic Studies: Islamic Education (*Tarbiyah*), Islamic law (*Syari'ah*), History and Culture of Islam (SPI), Faculty of Industrial Technology: Electrical Engineering, Industrial Engineering, Information Technology, Computer

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<sup>6</sup>New admissions team Unissula, 2018, *Book Introduction Unissula For New Students*, Unissula Press, Semarang, p. 6-9

Engineering, Faculty of Language and Communication Studies in English Literature: English Education, Science Marketing Communications, Broadcasting Communication Studies, the Faculty of Education: Indonesian Language and Literature Education, Mathematics Education, Elementary School Teacher Education, Post Graduate Programs; Master of Management, Master of Law, Master of Notary, Master of Electrical Engineering, Master of Civil Engineering, Master of Islamic Education, Master of Biomedical, Doctoral of Law, Doctoral of Civil Engineering, Doctoral of Management.

Unissula has been incised achievements at national and international level. Among them are the Finalists Student Achievement National Level (2007, 2008, 2009), 2<sup>nd</sup> Place English Debate National Level 2008, 5 Large Selection of The Radio Star RRI 2009, the Indonesian delegation at the English Debate in Korea, Singapore and Ireland in 2008, and the delegation of Indonesia International MTQ in Moscow, Russia, 2010 (Muhammad Mas'ud). Unissula also hosted the XXI PIMNAS (National Student Science week) in 2008. Being a finalist in the UI Communication week 2014. Student Choir (PSM) Unissula Firdaus Choir once gave two Silver Medals for International event 4th Bali International Choir Festival and 1 Achievements Silver for 3rd National event Karangturi Choir Games 2015. Best delegation in Asian Student Summit 2014, best delegation in student exchange program in IIUM and best delegation in Turkey, Malaysia, Indonesia, Singapore, Thailand "Bhakti Survival Program 2016" (Ong Argo Victoria). Gold Medal of Robotic contest in USA 2016 (Faisal Aminudin, Laode Muhammad Idris & Ahmad Zuhri).

Unissula has 35 hectares area, the campus is quite extensive and integrated, located in jl. Kaligawe Km 4 Semarang, the province on the main road, which is green, cool and comfortable. Unissula equipped with supporting facilities Such as; Mosque of Abu Bakar Assegaf, Sultan Agung Islamic Teaching Hospital as the Hospital of education for students of department of General Medicine and Hospital Dental of Sultan Agung for students of the Faculty of Medicine of teeth into one complex at the Islamic Hospital Sultan Agung, Central Library and Unissula TV, Fields sports, Auditorium, Dormitory, Laboratorium, Bank: Bank of

Central Java, BNI Syariah, and Food and copy center in PUMANISA.

In order to build the network in a global network, the Unissula have established various partnerships, both nationally and internationally through student exchange, research, advanced studies and a variety of other possible co-operation.<sup>7</sup> As an example:

The signing of the MoU with Hiroshima University in Japan in the development program Teaching Hospital and the Faculty of Dentistry Unissula represented by drg. Siti Chumaeroh, MS (Dean of the Faculty of Dentistry Unissula) has signed an MOU with Hong Kong University in Hong Kong on 30 October 2012. After that expand again in international relations with a member of South East Asian Association For dental Education (SEAADE) and is an added value for the Faculty of Dentistry is the only School of Dentistry in Semarang who have been accredited. Cooperating with the University of Mindanao - Philippines, in the preparation of nursing science curriculum to international standards, because the Philippines is benchmarking (comparison) for government affairs professional employment abroad. The cooperation continued with the signing of the MoU with the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), because with the curriculum of international standards then Unissula can be used as a center of excellence for educational, training, and preparation of recruitment of health workers international standards abroad. Unissula is conducting exploratory approach and cooperation with Fatih University in Turkey, Al-Azhar University in Cairo, the University of Iowa (USA), Hankuk University in Korea, and anothers. Unissula also signed a MoU with the University Padjadjaran Bandung in the establishment of the Faculty of Pharmacy.

Unissula also consistently sought to play a role in efforts to build a new Islamic civilization and modern, as well as those used by Islamic leaders in building the Islamic civilization thus experiencing a golden age. For that Unissula highly appreciates the religious leaders / community, scientists, researchers,

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<sup>7</sup>*Ibid.* 18-21

writers, artists, and others who have contributed to the development of Islamic civilization.

## 2. Round about the University Utara Malaysia (UUM)



University Utara Malaysia (UUM), which was officially established on February 16, 1984, is the sixth Malaysian public university. It is the only university that was founded to specialize solely in management education from the beginning of its establishment.

The sixth university development planning began in August 1983 when the Ministry of Education Malaysia began to give shape, in earnest, with the idea of establishing this university. On October 19, 1983, the Cabinet gives formal approval to this project in Kedah. At that time, the project is called "The Sixth University Project". A few months later, the temporary office of the sixth university, officially named University Utara Malaysia (UUM), was officially opened on February 15, 1984 in Jitra<sup>8</sup>,

Four months after the official opening, the office moved to the UUM campus while - Darul Aman Kampus - in Jitra, in June 1984, when the first phase of the project has been completed. relocation is done so as to usher in the first batch of students for the school year that begins in early June 1984. Darul Aman Kampus is on a 62-acre tract of land in Bandar Darul Aman. It was 18 km north of Alor Setar and 4.8 km from Jitra.

Meanwhile, planning for the permanent campus universities have started. permanent campus will be built on an area of 1,061 hectares in Sintok (in the

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<sup>8</sup> International Intellectual Property Alliance 2005 Special 301 Report: Malaysia, in <http://www.iipa.com/rbc/2005/2005SPEC301MALAYSIArev.pdf>, accessed on August 27, 2005.

district of Kubang Pasu), located approximately 48 km to the north of Alor Setar and 10 km east of Changlun, a small town along the North-South Highway, near the border with Malaysia -Thailand.

UUM campus permanently, referred to as Sintok campus, started operating on 15 September 1990. It is located in a former tin mining area, was ensconced in a lush tropical forest valley, embraced by blue hills, and watered by two streams flowing along central campus. River, creek and river Sintok, complete the scenic beauty of the natural surroundings, affording a view of the myriad of verdant splendor.

The MYR580 million Sintok campus was officially opened on 17 February 2004 by the Royal Chancellor, His Majesty the Sultan Abdul Halim Mu'adzam Shah. The main building of the campus is the Sultanah Bahiyah Library, the Chancellor, Masjid Sultan Badlishah, who Mu'adzam Shah Hall, Tan Sri Othman Hall, Sports Complex, the Varsity Mall, building Budi Students, Convention Complex, and houses various departments of the Academic High School.

As the campus is located far from the madding crowd, UUM has to make sure that students do not want adequate accommodation. Currently, UUM has 15 Student Residential Halls (SRH), which, together, home to 20,000 students. The SRHs named after a Malaysian company, institutions, and organizations of repute, namely MAS, LABOR NATIONAL, TRADEWINDS, PETRONAS, EON, MISC, SIME DARBY, BSN, TM, PROTON, MAYBANK, Foundation Albukhary, Bank Muamalat, Bank Rakyat, and SME Bank.

In addition to this, UUM also features comfortable accommodations available for visitors at the University Inn and EDC-UUM Hotel. Given the well-being and the need for accommodation among its personnel, the University has built 600 housing units of various types for a sizable portion of its workforce<sup>9</sup>,

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<sup>9</sup>Khaw Lake Tee, Copyright Law in Malaysia, 2nd ed., Malayan Law Journal, Kuala Lumpur, 2001, p. 9



UUM has developed into an open campus where outsiders and tourists are allowed the freedom to visit and take advantage of various facilities in it. Area covers 107 hectares of forest has evolved into a wide range of good facilities to attract tourists to the north and to meet the recreational needs of members of the campus community. Among these facilities a picnic area, a nine-hole golf course, go-kart circuit, shooting and archery range, equestrian sites, and many others are fast gaining popularity among tourists and members of the campus community together.

In January 2008, the restructuring of the university academic system is done with the aim of preparing a strong structure that will enable an increase in the number of graduate students and UUM flag raising in the international academic arena. University sees the need to be global in practice and because of the knowledge produced content and purveys overcome and far beyond the borders of Malaysia. In practice this restructuring, 13 faculties merged and flowing into the three main Academic Colleges, namely UUM COB (UUM College of Business), UUM CAS (UUM College of Arts and Sciences), and UUM COLGIS (UUM College of Law, Government and International Studies ).

This step is in line with the requirement articulated in the report of the Prime Minister and Minister of Higher Education that underscores the need to increase the number of graduate students in the country to 100,000 in 2010. The main strategy is embedded in the National Higher Education Strategic Plan 2007-2010.

To decorate UUM name in the history of academic excellence as Eminent Management University and as a Research University in the Social Sciences, Transformation Plan launched by the UUM Vice-Chancellor, Professor Dr. Dato' Mohamed Mustafa Ishak, in conjunction with the 2011 New Year Message her on 1 January 2011 in Mua'adzam Shah Hall.

The UUM Transformation Plan, which is essentially a road map for activities and enterprises of the future UUM, is divided into two stages. Phase One, which from 2011 to 2015, focused on the firm put UUM in local academic

map in a systematic and planned. During this period, a greater emphasis will be given to ensure the successful achievement of the objectives of Stage One while, at the same time, be aware of the necessity for the Second Phase of the Transformation Plan, which will be from 2016 to 2020.

## CHAPTER II

### INTELLECTUAL PROPERTY RIGHT (IPR) REGIME MEMBERS OF THE NATIONAL LEGAL SYSTEM IN WTO

#### A. History and the National Legal System As the IPR in Indonesia

Legislation in the field of IPR in Indonesia historically has been around since the 1840's. The Dutch colonial government introduced the first legislation regarding the protection of intellectual property in 1844. Furthermore, the Dutch government in 1885 enacted the Trademark Law, the Patent Act of 1910 and 1912 in the Copyright Act. Indonesia at that time still called the Netherlands East-Indies has been a member of the Paris Convention for the Protection of Industrial Property since 1888, members of the Madrid Convention of the year 1893 until 1936, and a member of the Berne Convention for the Protection of Literary and Artistic Works since 1914. In the days of the Japanese occupation in 1942 until 1945, all rules in the field of intellectual property law is still valid.<sup>10</sup>

On 17 August 1945 nation of Indonesia proclaimed its independence, as defined in the transitional provisions Constitution 1945, all regulations Dutch colonial heritage remains in effect as long as not contrary to the Constitution 1945, Copyright Law and Trademark Law Dutch heritage remains in effect, but not so with Patent Act that are considered contrary to the Government of Indonesia. As applied in the Patent Act by the Dutch, the patent application may be filed at the Patent Office which is located in Batavia (now Jakarta), but examination of the patent application is to be done in Octrooiraad residing in the Netherlands.

In 1953 the Minister of Justice of the RI issued an announcement which is the first national set of regulations governing the patent, namely the Minister of

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<sup>10</sup>Muhammad Rais Abdul Karim and Mohd Khalid Nazariah, *E-Government in Malaysia*, Lemur Publications, Subang Jaya in 2003, especially Chapter 10, p. 163-182. See also Quotes from the speech of Mahathir Mohamad at the Multimedia Super Corridor, Lemur Publications, Subang Jaya in 1998.

Justice Announcement No.JS 5/41/4, which regulates the temporary filing of the patent application in the country, and the announcement of the Minister of Justice No.JG 1 / 2 / 17, which regulates the temporary filing patent requests abroad.<sup>11</sup>

On 11 October 1961 the Government of Indonesia enacted Act No. 21 of 1961 on Brands Company and Commerce Trademark (Trademark Act 1961) to replace the Dutch colonial Trademark Act. Trademark Act 1961 which is Indonesia's first legislation in the field of Intellectual Property Rights entered into force on 11 November 1961. Determination of 1961 Trademark Law is intended to protect the public from imitation goods / pirated.<sup>12</sup>

On 10 May 1979 Indonesia ratified the Convention on Paris {Paris Convention for the Protection of Industrial Property (Stockholm Revision 1967)} by Presidential Decree No.24 of 1979. Indonesia's participation in the Paris Convention was not yet full for Indonesia to make exceptions (reservations) against a number of provisions, namely Article 1s / d 12 and Article 28 paragraph (1).

On 12 April 1982, the government passed Act No. 6 of 1982 concerning copyright (the Copyright Act 1982) to replace the Copyright Law of Dutch heritage. Ratification of the Copyright Act 1982 is intended to encourage and protect the creation, dissemination of culture in the field of works of science, art and literature as well as accelerate the growth of intelligence of the nation's life.

In 1986 may be cited as the beginning of the modern era of intellectual property system in the country. On July 23, 1986 the President formed a special team in the field of IPR through Decree No.34 / 1986 (this team is better known as Tim Decree 34). The main task team Decree 34 is covering The preparation of the national policy in the field of IPR, the design of the legislation in the field of IPR and dissemination of intellectual property system among relevant government

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<sup>11</sup> Hassan Mat Daud, *'The Current and Future Outlook of Agricultural Biotechnology in Malaysia'*, in: S. Chaturvedi and SR Rao, in a note 6, pp 143-150.

<sup>12</sup>S. Sapalo, *Background Reading Materials on Intellectual Property System of the Philippines, the World Intellectual Property Organization*, Geneva 1994; AFS FIDER, *'The Philippines*, in: (ed.). C. Heath, *Intellectual Property Law in Asia* (above note 4), pp 363-390.

agencies, law enforcement officers and the public. Presidential Decree No.34 team next made a number of breakthroughs, such as by taking new initiatives in addressing national debate about the need for the patent system in the country. After Tim revise Decree 34 Patents Bill which was completed in 1982, 1989 at last year, the government passed the Patent Act.

On 19 September 1987 the Government of Indonesia passed Act No.7 of 1987 as the amendment of Act No. 12 in 1982 on Copyright. In the explanation of Act No.7 of 1987 explicitly stated that the amendment of Act No.12 in 1982 performed because of increasing incidents of copyright infringement may endanger social life and destroy people's creativity.

Following the enactment of the Act No. 7 of 1987 the Government of Indonesia signed a number of bilateral agreements in the field of copyright as the implementation of the Act. Then in 1988 by Presidential Decree No.32 stipulated the establishment of the Directorate General of Copyrights, Patents and Trademarks (DJHCPM) to take over the functions and duties of the Directorate of Patent and Copyright, which is one unit of echelon II of the Directorate General of Legal Affairs and Legislation, Department of Justice.

Date 13 October 1989 the House of Representatives approved a bill on patents, which subsequently passed into Act No. 6 k 989 (Patent Act) by the President on 1 November 1989. 1989 Patent Law came into effect on 1 August 1991. Ratification of the Patent Act 1989 put an end to a long debate about how the importance of the patent system and its benefits for the people of Indonesia. As stated in the consideration of the Patent Act 1989, the device in the field of patent law is needed to provide legal protection and bring about a better climate for technology discovery activities. This is due to the national development in general and particularly in the industrial sector, the technology has a very important role.

Ratification of the Patent Act 1989 is also intended to attract foreign investment and facilitate the entry of technology into the country.<sup>13</sup>

Then on August 28, 1992 the Government of Indonesia passed Act No. 1992 19 years Trademark (Trademark Law 1992), entered into force on 1 April 1993, 1992 replace Trademark Law Trademark Act 1961.

No dated 15 April 1994 the Government of Indonesia signed the Final Act embodying the Result of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIP's approval).

Finally, three of later, in 1997 the Government of Indonesia to revise the regulatory legislation in the field of intellectual property, namely the Copyright Act 1987 jo. Act No. 6 of 1982, 1989 Patent Law and Trademark Law 1992.

Then in late 2000, passed three new laws in the field of Intellectual Property Rights, Act No. 30 of 2000 on the Trade Secret Act number 31 of 2000 on Industrial Designs and Act No.32 of 2000 on Layout Designs of Integrated Circuits.

In an effort to harmonize all legislation in the field of IPR with TRIP's approval in 2001 the Government of Indonesia passed Act No. 14 of 2001 on Patents and Act No. 15 of 2001 on Marks. Both regulations replace the old law in a related field. In mid-2002, approved Act No. 19 2002 on Copyright which replaces the old law and become effective one year since invited.

## **B. History and National Legal System As the IPR in Malaysia**

Copyright or copyrights are part of the intellectual property rights (IPR) or intellectual property rights, in addition to patents, trademarks and other intellectual property rights more recently emerged as the rights to the design and

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<sup>13</sup> Kuanpoth, 'Thailand', in: (ed.). C. Heath, *Intellectual Property Law in Asia* (above note 4), pp 337-362

layout of the integrated circuit, the rights to plant varieties, the rights to the products featured and so forth.

Copyright is a right given to a person or group of people to protect his creation (his work). Copyright emphasizes the protection of the expression (material nature) and not protect his idea (which is immaterial). Here is the fundamental difference between copyrights to patents that often makes people misunderstand. In the patent protection granted to inventions and more focused on the idea of the invention itself. Thus the patent is contrary to copyright, namely the protection directed to the idea, not expression.

The contradiction between the idea and the expression of ever arise in the case of Goodyears vs Silver Stone. Two of the company's tires copyright dispute regarding the tires they make. Judge Abdul Malek in its decision said that: “ In the copyright is of expression, not the idea of ”. So in copyright does not really matter where someone got the idea that, even ideas that could be obtained from another person or party, but most importantly of expression, both in the form of goods, songs, movies etc. are created different from the goods or film other. Here open the possibility of one person but has a lot of copyright, as happened in the songwriter for example<sup>14</sup>,

In Malaysia copyright stipulated in the Deed of copyright act 1987 or 1987. In the deed there are several categories of copyright, namely:

1. Literature;
2. Work Music (musical work);
3. Artwork (artistical work);
4. Film;
5. Voice recording (sound recording); and
6. Broadcasting.

Currently copyright demanded not only can protect copyrighted works are exceptional, but also copyrighted works are scattered in cyberspace. This paper

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<sup>14</sup> Kong Chhung, *'Trademarks and Copyright Protection in Cambodia'*, *Asia Law - IP Review*, January 2005.

attempts to see how far copyright in Malaysia can be protected by the 1987 Deed of copyright.

#### **a. Copyright Categories**

As mentioned above, there are six categories of copyrights referred to in Article 7 of this Act. In the category included some things that need to be defined further. Included in the literary work as in article 3 of the certificate are:

- 1) Novels, stories. Books, treatises, manuscripts. Works of poetry and other writing;
- 2) Action, drama, landing stage, scenario film, broadcast scripts, works of choreography and pantomime:
- 3) Treatis, history, biographies, essays and articles:
- 4) Encyclopedias, dictionaries and other reference works:
- 5) Letters, reports and memoranda:
- 6) *Syarahan*, sayings, sermons and other works of the same nature:
- 7) The schedule or the preparation of which is expressed in words, numbers or symbols (same exists in the form that may be viewed or not); and
- 8) The preparation of a computer program or computer programs;

Of the several types of literary works protected by copyright, some issues related to the internet such as novels, stories, works of poetry are often found in the web or personal blogs, similarly with drama, movies, scripts broadcasts and some categories such as encyclopedias and dictionaries , Electronic Ensiklopedi like wikipedia today even very popular. Also included in the literary work is a computer program. The computer program also includes the preparation or ordinances making.

#### **b. Music works**

Included in a piece of music, as in Article 3, including music and arransment modified, and both lyrics. So that not only the music intact protected



by copyright, but the parts of the music, such as arrangement course also be protected. Artwork could include:

- 1) painting-paint, painting, lithographs, carve-chisel and mold and any three-dimensional work;
- 2) maps, slowly, *carta*, tattoo, illustrations, *lakaran* and three-dimensional works in relation to geography, topography, architecture or science;
- 3) works sculp;
- 4) works in the form of a building or model;
- 5) photograph that is not contained in the film; and
- 6) carpentry works of art, including pictorial finely woven, the fabric was determined and handicraft and art goods companies;

In this category a map and clues about an area can be found on the Internet. Then the three-dimensional shaped mold is also found on the internet, though not a physical object, but design. This is where the design of the integrated circuit or an integrated circuit in the internet were also protected and included in this category.

Broadcasting interpreted as a transmitting sounds or images or both through wireless to the public interest or the crowd. From these definitions, radio, television and whatever they are called throughout the broadcast sound, images or both will be protected by copyright. Currently, many radio and TV which can be accessed directly through internet. Movies are interpreted very technically related production HSIL with two things:

- 1) Indicated by the moving image;
- 2) Recorded on an object, and because recorded on the object can be seen as appropriate.

In copyright<sup>15</sup> protected in the film are all parts of the film, as well as parts associated with the film any part of such a scenario, arrangement music, in the film there is also a choreography. All of this is protected under this copyright deed.

### **c. Derivative Action**

What is meant by derivative action is action to move (to derive) a copyright work into a new form. There are two kinds of derivative action is justified under Article 8 of this Deed of copyright, namely:

Translation, arrangement, adaptation of literary works, music or art; collection of literary works of music or art for its creation are considered part of the property rights intellectual. In context of this second collection of folklore, poetry collections can be protected by copyright.

### **d. Moral Rights**

Moral rights or moral rights are rights owned by the creator who has been copyrighted. This is an obligation of moral rights to anyone who uses his creations. In chapters 25 and 25 A deed of property rights. Some things that set them<sup>16</sup>:

- 1) Ask permission to the owner of the copyright, if you want to use his creation;
- 2) In the context of copyright was to be published, then it must include or mention the name of its creator;
- 3) Legally, the copyright holder is entitled to decline to a person's rights. The decline in these rights resulted in the attachment of the moral rights of the creator to the person in question after he died.

### **e. Violation of copyright**

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<sup>15</sup> *Ibid.*

<sup>16</sup> Mapes, 'Battle for Brand Reclaim', *Far Eastern Economic Review*, May 22, 2003, pp 36-37 .; G. Suryomurcito, 'intellectual property laws remains weak', *The Jakarta Post*, 31 January 2005

Deed copyright in Malaysia mentioned some kind of infringement of copyright, namely:

- 1) Violation directly, ie violations that are directly used without permission of the copyright or moral rights infringe on the copyright holder. Direct infringement is regulated in Articles 13 and 36 of this Deed.
- 2) Violation indirectly as stipulated in the original 36 paragraph 2 are violations committed by someone in a way to export and / or import of goods that violate copyright;
- 3) Included also in violation of copyright, namely those involved in the misuse of technology for the purpose of infringing copyright. Article 36 (3);
- 4) A person who, without authority modify, add, destructive and distribute certain information to the public through an electronic device is a violation of copyright.

#### **f. Authentication of copyright**

In 1987 Malaysia copyright deed there are four elements at least to prove authentication of copyright;

##### 1) Originality

At least two ways to ensure that a person's work is original work that he has. First is the way it ensure that copyrighted work is the work of someone. This method is adopted by tracing a work first. The authenticity is the expression of, not the idea of the work. The first way this can be seen in the case of the University of London Press University Tutorial Press. Judge Jefferson said<sup>17</sup>;

*“the original word does not in this connection means that the work must be an expression of original or inventive thought. Copyright act are not concerned with*

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<sup>17</sup> Summary of these reasons and counterarguments, see W. Weeraworawit, (note above 45), pp. 213-215

*the originality of ideas, but with the expression of thought, and, in the case of a literary work with the expression of thought in print or writing. The originality the which is required relates to the expression of thought”.*

The second way to ensure an element of originality is a way to test for a job, and the test is the basis for decision-making in court. It is this second way is the authority of judges to examine the elements of originality. It can be seen from the opinion of the judge in the case *Mc Milan v Cooper*; “copyright can subsist in a street directory since a reasonable amount of work involving judgment and selection has been used in making the compilation “.

## 2) In the form of Material

In Article 7 (3) Deed of copyright stated that all forms of copyright must be seen in the material. This applies to the original copyright, and copyright derived from the right to make derivative action.<sup>18</sup>

There are four legal subjects recognized by this deed, so that their rights can be protected by copyright law in Malaysia:

- a) The rights holder is a citizen of Malaysia. Article 10 in conjunction with Article 3;
  - b) Holder made his rights in Malaysia;
  - c) Upload their work is based on the decision of the Government of Malaysia;
  - d) His work is published in Malaysia;
  - e) Citizens of the countries that are members of the signatory countries of international agreements on copyright.
- 3) For additional information, copyright in Malaysia does not require formalization or registration. The rights will automatically be given to the subject of law as mentioned above. (Vide Article 42 paragraph (1)).

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<sup>18</sup> *Ibid.*

- 4) The right of copyright are the kinds of works that are protected by copyright certificates Malaysia. This means that refers to the categorization set forth in article 7 as discussed earlier.

**g. Some of the problems of copyright on the Internet**

Some issues related to copyright in the internet can be identified by some of the things that has been known in the world of the Internet, namely<sup>19</sup>;

1) E-mail

Potential breaches of copyright in the e-mail is very open possibilities for the use of e-mails that do not correspond to the identity indicated on the e-mail. Furthermore, the violation is likely to occur in the use of e-mail is done by about a man who actually bereft of authority, or a person who is not the owner of the e-mail.

2) Broad Bulletin

Broad bulletin lately a lot in our internet world. Broad bulletin commonly known in the form of a forum, or use the net. In this context of copyright violations will be found in the case of a transaction would be a lot of delivery of a range of information, whether it be news, scientific works, music, and others. Delivery of these works are very rarely meet the obligations of moral rights / moral rights in a way to identify who made the work.

3) Spydering

Spydering or spy virtual world is a very dangerous thing. In a publication mentioned 9 out of 10 computers are never connected to the Internet network spy seized this potential. Spydering activity commonly known in the form of spyware, or adware. Spydering activity makes people or parties who spied can view, add, and even alter all existing data on the computer. This is where the potential for infringement of that goal.

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<sup>19</sup> *Ibid.*

#### 4) Design (freemium) site and / or Blog

Currently owned by personal web, or institution. In designing a website or blog usually one does not always do so by using his own work. Some or all of designing a website or blog can be retrieved by copying from another website or blog, or specific sites. An copying is done without permission of the creator of the original work.

#### 5) Linking

Increasing number type of web or on the Internet, then the use of linking (network) can not be avoided. A blog for example incorporate many links to some other websites can be accessed from the blog is a way to click. Potential copyright infringement occurs when more and more people access the web contents or particular blog on another blog and a case of copyright infringement, such as making a copy without permission, then indeed the owner of the blog that provides a link to the public Internet had committed a violation indirectly, because it facilitates copyright violations as stipulated in article 36 paragraph 2 of this deed.

## CHAPTER III

### INTELLECTUAL PROPERTY RIGHT (IPR) AND TYPE OF QUALIFICATION

#### A. Based on the International Convention

Intellectual Property Rights (IPR) or commonly called intellectual property in a foreign language Intellectual Property Rights (IPR / English) or “*Geitigge Eigentum*” (Germany) is a right arising from a mind process, which results in a product or process that is useful to humans. In essence that Intellectual Property is the right to enjoy the economical benefits of a human intellectual creativity. The objects are arranged are works that arise or be born as a human intellectual ability.<sup>20</sup>

At the beginning of the 19th century, the international community, spearheaded by countries in Europe have been socialized and institutionalized intellectual property rights under the provisions of international law. It can be seen that the date of March 20, 1883 has approved the Paris convention For The Protection Of Industrial Property covering industrial property rights such as patents, brands and industrial design. Three of later approved the Berne Convention For the Protection of Literary and Artistic Works, known as the Convention on copyright and adjacent rights. Then on July 14, 1967 established Intellectual Property Organization (WIPO), which serves as an umbrella for all activities of intellectual property rights.<sup>21</sup>

Indonesia's participation in the establishment of World Trade Organization or the Agreement Establishing the World Trade Organization (approval of the establishment of the World Trade Organization), in which includes an agreement on trade aspects of intellectual property rights (IPR). Through Act No.7 of 1994,

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<sup>20</sup>Bagir Manan, 1999, *Basic and Political Dimensions of Autonomy In Act No.22 of 1999 on Local Government Seminar Papers in Regional Autonomy and Peimbangan between Central Government and Local Government*, Legal Concellours Hatta International Airport, Jakarta, p. 31

<sup>21</sup>Josef Riwu Kaho, 1997, *Analysis of Central and Local Government Relations in Indonesia*, Jakarta: Bina Script, p. 22

Indonesia has ratified the logical consequence as endorsement by the Article 65 paragraph 20 TRIP's Indonesia is bound to base all the provisions of the TRIPS's.<sup>22</sup>

IPR system is the right of private (Private Rights), where the characteristics of IPR. A person is free to submit an application or registration of intellectual works or not. The exclusive rights granted by the state to the individual perpetrators of IPR (inventors, creators, designers, etc.), nothing else is meant as a tribute to the work (creativity) it and that others are stimulated to be able to further develop it again, so that the system of intellectual property rights that the public interest is determined through market mechanisms. Besides, the system of intellectual property rights to support the holding of a good documentation system on all forms of human creativity that produced the possibility of technology or other similar works avoidable / preventable. With the support of such documentation,<sup>23</sup>,

Issues of Intellectual Property Rights (IPR), from a legal standpoint in the era of free trade and glolisasi today is something very important. There is a close relation between intellectual property rights to the products sold globally. The close connection is<sup>24</sup>:

- 1) IPR present since the beginning of production until the product is marketed. In the planning stage of production, the selection of the technology used in the production process related to problems in the field of patents and intellectual property related to copyright, whereas when production was launched in the market, intellectual property rights involved in the form of brands. It is thus no exaggeration to say that the globalization of trade, globalization is synonymous with IPR.

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<sup>22</sup>AW Wijaya, 1992, *Focus of the Autonomous Region in Act No. 22 of 1999 on Local Government*, Seminar Papers in Regional Autonomy and Financial Balance between the Central Government and Local Government, Legal Concellours Hatta International Airport, Jakarta on 20 July 1999.

<sup>23</sup>Chrism D Darumurti and Uumbu Rantu, 2003, *the Regional Autonomy Thought Development, Regulation and Implementation*, Citra Aditya Bakti, Bandung, p. 72

<sup>24</sup>Sentosa Sembiring, 2000, *Procedures and Procedure for Obtaining Intellectual Property Rights in the Field of Copyright, Patent and Trademark*, Bandung: Yrama Widya, p. 17-18



- 2) The use of high technology to strengthen the competitiveness and greater added value, typically capital intensive. Economies of scale for a business like this requires the implementation of the trade policy of each country must be looked in the International market. The market is no longer required area of regional or national, but global. Therefore the objective of trade globalization emerged as a necessity.

The value of the technology used (as part of the capital), require maximum security from possible unfair competition with a product or technology.

Broadly speaking IPR divided into two (2) sections, namely<sup>25</sup>:

- a) Copyright;
- b) Industrial Property Rights, which include:
  - c) Patent;
  - d) Industrial Design;
  - e) Brand (Trademark);
  - f) Trade Secret;
  - g) Combating Fraudulent Practices Competition (repression Of Unfair Competition);
  - h) Integrated Circuit Layout Design (Layout design of Integrated Circuit).

Malaysia was determined to move to the Era of Information Technology with the changing times, particularly through the development of the Multimedia Super Corridor, to evaluate the role of Intellectual Property Rights in Malaysia. Therefore, traces the development of the law in terms of Intellectual Property Rights in Malaysia and problems encountered in ensuring that conflicts of interest in the free flow of information and the need for protection of individual property rights be balanced. The purpose of this study was to examine the ways and means used to strike a balance between the free flow of information and the protection of

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<sup>25</sup> Jumhana, 1999, *the Intellectual Property Rights in Theory and Practice*, Bandung: Citra Aditya Bakti, page 9

individual rights. The methodology applied was exploratory and comparative. This exploration due to the novelty of the subject matter and comparisons as the experience of developed countries in this field was taken after turning on the appropriate model to be developed in Malaysia. As Intellectual Property Rights related to information technology, whose characteristics change and challenges, the issues involved, such as those inherent in the Internet and the consumer in this Rights, noted. Overall, the protection of Intellectual Property Rights is expected to give Malaysia an advantage in the competitive world of international trade and move the economy to a service orientated Malaysia through the Multimedia Super Corridor as inherent in the Internet and the consumer in this Rights, noted. Overall, the protection of Intellectual Property Rights is expected to give Malaysia an advantage in the competitive world of international trade and move the economy to a service orientated Malaysia through the Multimedia Super Corridor as inherent in the Internet and the consumer in this Rights, noted. Overall, the protection of Intellectual Property Rights is expected to give Malaysia an advantage in the competitive world of international trade and move the economy to a service orientated Malaysia through the Multimedia Super Corridor<sup>26</sup>,

In short, intellectual property refers to patents, copyrights, trademarks, industrial designs and trade secrets. They relate to the protection ideas and information from elements of plagiarism.

After World War II, and especially in 1975 and 1985, Malaysia, like most developing countries, faced with the urgent need to reconcile with the demands of the West in terms comply with the law on intellectual property rights developed by West<sup>27</sup>,

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<sup>26</sup> This is a revised version of a paper originally presented at the Second International Symposium on Information Law "Alternative Framework for Validation and Implementation of Intellectual Property in Developing Countries", History and Governance Research Institute, Law Information Research Group, University of Wolverhampton, UK, February 3rd, 2006 ,

<sup>27</sup> Professor of Comparative Law and Director, Center for Comparative Law and Development in Asia and Pacific Studies, Faculty of Law, University of Wollongong, Australia; QEII Fellow of the Australian Research Council (ARC); Adjunct Research Fellow, Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich.

United States, occupies a pre-eminent position in the world, spearheaded the movement for a worldwide acceptance of the protection and development of intellectual property rights based on the general principle underlying such rights (economic and moral) for a variety of reasons including the need to correct the huge deficit that had accumulated over years.

Being a pioneer trading nation, Malaysia is very sensitive to the external environment, he was dependent on export earnings but to rely on external sources for technology and capital. The initial response of his Western demands it to follow a bilateral approach with countries like the United States, Britain and others, but in 1989 he decided to opt for collective agreements and conventions in line with the behavior of his past to rely on the collective organization like the United Nations and ASEAN for the sake of his country<sup>28</sup>,

Intellectual Property in the case of intangible property, which could be very valuable, and limited time frames. According to WR Cornish in his book, "Intellectual Property," Third Edition, "Intellectual Property protects the application of new ideas and a commercially valuable information." This right can be an element of protection to prevent others from doing the things that are negative and usually have to go through advance registration. There are three main types of intellectual property rights, namely<sup>29</sup>:

- a) Copyright, includes original works written, artwork, movies, videos, broadcast, computer programs and data bases of musical works.
- b) Patent, granted for the invention, which is novel and industrial applications. Many countries provide patent for utility model and must meet strict standards to reach it.
- c) Trademarks, helps to distinguish the goods and services and valuable property to the owner / company but registration of intellectual property in the trademark very little.

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<sup>28</sup>Christoph Antons, *'Intellectual Property Law in ASEAN Countries: A Survey'*, in *European Intellectual Property Review Vol 13 Issue March 3, 1991*, p. 78-84

<sup>29</sup> SSC Tay and JP Estanislao, *'The Relevance of ASEAN: Crisis and Change'*, in: SSC Tay, JP Estanislao and Soesastro H. (eds.), *Reinventing ASEAN*, the Institute of Southeast Asian Studies, Singapore, 2001, p. 14-16

- d) Industrial design, typically has a functional value or non-aesthetic aesthetic and be right after registration.
- e) Trade secrets, trade secrets related to that may take the form of the manufacturing process or a secret list of customers.

The underlying principle is that Intellectual Property has the values and laws designed to protect and allow owners to enjoy the benefits of monetary over his property. This is a purely economic rights, the violation of which can result in losses will be replaced with sanctions, such as compensation, injunction or criminal proceedings involving penalty depending on the type of infraction. There are moral rights related to the creative work of someone like a book which in this case must be fought by the state, embodied primarily in civil and criminal law as has been done in Western Europe and France. United Kingdom only recognizes the moral rights in 1968 and Malaysia take on the responsibility of both the basic rights<sup>30</sup>,

Compliance Malaysia, over the years, to the changing demands in terms of intellectual property rights translates into the need to update legislation and for the effective enforcement of the law against violations of these rights. While there is a legislative machine to update the law, enforcement remains elusive, especially in connection with the Internet, which no government has so far drafted legislation the right to control or agreed areas where restrictions should be placed. Malaysia move into the Information Age and the Multimedia Super Corridor, it is important to understand the benefits and challenges of Intellectual Property Rights, which affectus, given that intellectual property is characterized by a current control technology advances allow, say the Internet, threatening the free flow of copyright. Therefore,<sup>31</sup>,

In steps take developing country, Malaysia in terms of the Multimedia Super Corridor (MSC) attract foreigners to set up their company in the MSC, the

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<sup>30</sup> For details, see Ng-Loy Wee Loon, 'Singapore', in: C. Heath (ed.), *Intellectual Property Law in Asia*, Kluwer Law International, London, 2003, pp 291-306.

<sup>31</sup>S. Chaturvedi, 'Singapore Strategises Biotechnology for Development', in: (eds.) S. Chaturvedi and SR Rao, *Biotechnology and Development: Challenges and Opportunities for Asia*, Institute of Southeast Asian Studies-Academic Foundation, Singapore and New Delhi in 2004, p. 231-267.

goal is to examine the ways and means by which the government is trying to maintain the balance of the most effective between private interests and the public in the realm of property rights intellectual. This involves the following checks<sup>32</sup>:

- a) Incumbent government's legislative and rule in the future in terms of these rights;
- b) The interests of the rights and the enforcement of rights and the relevance of non-governmental organizations for these rights.

WR Cornish in his book entitled, "Intellectual Property Rights", indicates that developing countries, which had harbored "old antagonism" with the intellectual property rights should come to the origin of the development and protection of the rights of this as' the key to development technology and national prosperity. ' This belief is echoed by the Director, Intellectual Property Division of the Ministry of Domestic Trade and Consumer Affairs, in his paper, "Update on the Protection of Intellectual Property Rights in Malaysia at the World Intellectual Property Organization (WIPO) held in Shah Alam, 28-29 August 1996 that" The Malaysian government believes in the important role of intellectual property rights protection "in the areas of investment, trade and technology transfer"<sup>33</sup>,

#### 1) Copyright

Tee Dr. Khaw Tee in his book, "Copyright laws in Malaysia" noted that copyright stipulated in the Deed of 1987 and in anticipation of accession to the Berne Convention, the Deed of 1987 amended to meet the requirements of the Convention. Dr. Khaw Tee, in paper submitted to Mathematics (intellectual Property Association of Malaysia) in intellectual Property Seminar in Kuala Lumpur in March 1997 on "Multimedia and Cyber Law", questioned " whether

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<sup>32</sup> Loy Wee Loon, *The Report of Singapore, paper presented at the' latest developments in IP Law Enforcement & Asia 'conference*, Fordham University School of Law, Singapore's IP Academy, New York, April 14, 2004, p. 15 ,

<sup>33</sup> See a list of members on the UPOV website at <http://www.upov.int/en/about/members/pdf/pub423.pdf>, accessed on 10 April 2006.

the rights granted under the ruler has met the requirements of the multimedia industry? "

## 2) Patent

General Manager SIRIM Information Service, Yuke Chin Lee, in his paper "The use of the national patent system for Technology Development Industry", presented at the Seminar of WIPO in Shah Alam in August 1996, showed that significant improvement in terms of patent filings by residents of our own "since patent legislation came into force. The patent system nationwide has "achieved success and is expected to continue to play a key role to stimulate the development of technology and industry."<sup>34</sup>

## 3) Trademark

Sanjay Kapur, explained in WIPO seminar in his paper titled, "The Function of Trade Marks and Service Marks on the market", the famous trademark provides an opportunity for franchising and licensing, preferably for royalty. Katherine Lim Sui Hong, in presenting his paper titled, "Trademark" in the Roundup Seminar of WIPO in March 1997 in KL indicate that the trademark is currently undergoing a "facelift" and the implementation of the Law on Amendments will "help improve the confidence of the public and interested parties that the Government strive to ensure that our intellectual property system in line with international standards and guidelines. "

## 4) Design

Peter Huang, in his paper bearing the title "Registered Design," observes that the design is concerned with the performance of their functions. He welcomed the new Industrial Designs Act, 1996, which awaits the announcement of the date of enforcement, as previously Malaysia did not have laws on it and relies on the UK for the registration of a design problem. In principle, he showed

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<sup>34</sup> See the inaugural report of Superior and Subordinate Courts in Malaysia in [http://www.keHKIman.gov.my/buku\\_laporan.html](http://www.keHKIman.gov.my/buku_laporan.html), accessed on August 27, 2005.

that the law should provide "protection by granting monopoly rights to the visual form of the article which is produced commercially." He added that the law should "encourage the creation of design."

Director at the Ministry of Domestic Trade and Consumer Affairs, stated that in accordance Trade Agreement Related Aspects of Intellectual Property Rights, the Ministry has drawn up the rules proposed in the House. The director also must provide benefits that intellectual property rights would provide benefits to Malaysia and especially for the business community. In his paper, "Update on Intellectual Property Rights protectionism", he stated that these rights will play an important role in "stimulating the flow of foreign investment, encourage the transfer of technology, promote the development of indigenous technology and increasing domestic and international trade."

## **B. Based on Legislation**

Indonesia has been determined through the Law of the Republic of Indonesia number 20 of 2003 article 50 (6) states that the College determines the policy and has autonomy in the management of the institution. In the other article mentioned also that the educator as professional staff in charge of planning and implementing the learning process, coaching and training, and conduct research and community service. On Government Regulation No.60 of 1999 also mention that the research center is implementing elements of the environment of college education for conducting academic research / assessment<sup>35</sup>, So that as the executive element college environment research center (Research Center) tasked to coordinate, monitor and assess the implementation of the research conducted and to help commercialize research center as well as administrative control necessary resources. Article 30 of Government Regulation mentions that implementing the academic field of education in the form of faculty, coordinate and / or implement academic education and / or professional in one or a set of branches of science, technology and / or particular art. This means that for all

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<sup>35</sup>Papers DP3M 2006,"delivered in upgrading Research Program, Pengabdian on society and the Student Creativity in Higher Education on 27-II-2006

faculty environment LPT (Higher Education Institutions) can participate fully in the increase of research in general and research potential of intellectual property rights in particular.<sup>36</sup>

In the era of globalization, the role of LPT is very dominant, especially in improving the nation's competitiveness through targeted Longterm Higher Education Strategy (HELTS) 2003-2010. In an effort to improve the accountability of the work, sustainability and overall role and optimal, then any work of LPT potentially IPR, likely to generate economic value. The value attached to the results of his research and can eventually add value to researchers in particular and higher education institutions (LPT) in general.<sup>37</sup>

LPT as a carrier agent and printer technology, innovation and invention have recently had a major role in the transfer of technology, creation and other findings held to the industrial sector or civic entrepreneurs / businesses and users of technology, either the process or the product or invention produced of application and utilization in various sciences that generate economic value for the fulfillment, continuity and improving the quality of human life which is processed through a incepted by LPT form Institution Transfer Teknologi / LTT (Technology Transfer Organization) / licency the field of Intellectual Property Rights ( IPR). The institute is in charge and take care of everything on technology, inventions or new innovation research results from various faculty environment LPT TSB. as well as a license agreement with the user / business people. Intellectual Assets of LPT is indeed very necessary commercialized in order to obtain the economic value of new innovations that include components of knowledge, organization, hardware, processes and creation product eventhough should get legal protection of intellectual property rights. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments

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<sup>36</sup> Insan Budi Maulana, 1999”In Compilation UUHC, Patent, Trademark, and Translation Conventions in the Field of Intellectual Property Rights Series A, Clinic IPR, PT.Citra Aditya, Bandung, p 42

<sup>37</sup>Bambang Kesowo, 1998, *GATT, TRIP's and Intellectual Property Rights (IPR)*, Jakarta: The Supreme Court, p. 33



in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local. Intellectual Assets of LPT is indeed very necessary commercialized in order to obtain the economic value of new innovations that include components of knowledge, organization, hardware, processes and creation produk.maupun should get legal protection of intellectual property rights. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local. Intellectual Assets of LPT is indeed very necessary commercialized in order to obtain the economic value of new innovations that include components of knowledge, organization, hardware, processes and creation produk.maupun should get legal protection of intellectual property rights. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local. Therefore, the government has made improvements legal instruments adapted to global and formed a new legal instrument that has not been touched by the legal instruments in the field of Intellectual Property Rights. Keep in mind that this is international IPR rules (global), but the protection of national / local.

#### **a. Law In IPR**

- 1) Patents: Act No.6 of 1989 regarding Patents (State Gazette Of 1989 Number 39) Act No.13 of 1997 on the amendment of Act No. 6 of 1989 regarding Patents (State Gazette of 1997 No.30) Act No.14 of 2001 regarding Patents (Gazette state RI 2001 No.109)

- 2) Brand: Act No. 19 of 1992 on Trademarks (Statute Book of 1992 No.81) Act No.14 of 1997 on the amendment of Act No. 19 of 1992 on Trademarks (Statute Book Of 1997 Number 31) Act No.15 of 2001 on Marks (Gazette state RI 2001 No.110)
- 3) Copyright: Act No. 6 of 1982 on Copyright (Statute Book of 1982 No.15) Act No.7 of 1987 on the Amendment of Act No.6 of 1982 on Copyright (Statute Book Of 1987 Number 42) Act No.12 of 1997 on the Amendment of Act No.6 of 1982 as amended by Act No.7 of 1987 (Statute Book of 1997 No.29) Act No.19 of 2002 on Copyright
- 4) Industrial Design: Act No. 31 of 2000 on Industrial Designs (State Gazette of 2000 No.243)
- 5) Integrated Circuit Layout Design: Act No. 32 Of 2000 on Layout Designs of Integrated Circuits (State Gazette of 2000 No.244)
- 6) Trade Secrets: Act No. 30 of 2000 on Trade Secrets (State Gazette of 2000 No.242)
- 7) Government Regulation In IPR

#### **b. Field of Copyright**

Indonesian Government Regulation No.7 of 1989 April 5 1989 on Amendment to Government Regulation No.14 of 1986 on the Rights of the Council of the Republic of Indonesia. Act No.1 of 1989 January 14, 1989 on Translations and / or reproduction of a work for interests Education, Science, Research and Development. Government Regulation of the Republic of Indonesia Number 14 Of 1986 on March 6, 1986 on the Copyright Council.

#### **c. Field of Patents**

Indonesian Government Regulation No.31 of 1995 Date August 29, 1995 concerning the Appeals Commission Patent. Government Regulation of the Republic of Indonesia Number 11 of 1993 Date February 22, 1993 on Form and Contents Letter of Patent. Government Regulation of the Republic of Indonesia Number 33 of 1991 On June 11, 1991 on the Special Registration Patent. Consultants Government Regulation of the Republic of Indonesia Number 34 of 1991 Date June 11, 1991 on the Procedure for Patent Application.

**d. Brand field**

Indonesian Government Regulation No.32 Of 1995 on August 29, 1995 Tanggal Appeals Commission Mark. Government Regulation of the Republic of Indonesia Number 23 of 1993 Tanggal March 31, 1993 on Procedures for Registration Request Mark. Government Regulation of the Republic of Indonesia Number 24 of 1993 Tanggal March 31 1993 on the Class of Goods or Services for Trademark Registration.

**e. Presidential Decree In IPR**

Indonesian Presidential Decree No.189 of 1998 on the revocation of Presidential Decree No.34 of 1986 as amended by Presidential Decree No.26, 1995 (October 29, 1998) The decision of President of the Republic of Indonesia Number 144 of 1998 on the amendment of Presidential Decree No.61 of 1998 on the status, tasks, organizational structure and departmental Working Procedure as amended by Presidential Decree No.142 of 1998 (15 September 1998).

**f. Minister In IPR**

Field of Copyright: Regulation of the Minister of Justice of the Republic of Indonesia No.M.01-HV.03.01 1987 dated October 26, 1987 on registration of a work.

**g. Decision Of The Director General In The Fields Of IPR**

The decision of the Director General of Intellectual Property Rights No.H-08-PR.07.10 2000 on Implementation Guidelines for Acceptance of Application for Registration of Intellectual Property Rights through Regional Office Department of Justice and Human Rights of the Republic of Indonesia (December 8th 2000).

**h. Deed 617 On the Intellectual Property Corporation of Malaysia Act 2002**

- 1) Secondary law is a legal substance that gives an explanation of the primary legal materials, such as a variety of the literature, the results of scientific research and the work of legal practitioners.
- 2) Tertiary legal materials is legal material which provide instructions or explanations of the primary legal materials and secondary law, such as legal dictionary, Indonesian dictionaries, and encyclopedias.

After the data collected then analyzed the data with qualitative data analysis methods.

## CHAPTER IV

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHT (IPR)

#### A. Legislation and IPR System in Malaysia

Malaysia is a country in Southeast Asia with an area of 329 758 km<sup>2</sup> and a population in 2007 amounted to 27.17 million. Of the total population in 2007, 60% are ethnic Malay “Bumiputera”, 26% ethnic Chinese, 8% Indians, 5% other ethnic Bumiputera, and 1% other ethnic groups such as Arabic, Sinhalese, Eurasian and Europe. Under the constitution, Malays are Malaysian citizens who practice a traditional Malay, Melayu Language, and Muslim. Approximately 25% of the Malaysian population is Chinese, and 7% is made up of India. Almost 85% of the races Indians in Malaysia are Tamil community. More than half the population of Sarawak and Sabah 66% of the population consists of non-Malay indigenous people. The entry of another race to some extent reduce the percentage of indigenous population in the two states. In addition, Malaysia also has a population that comes out of Europe and the Middle East. Malaysia's population density is not distributed evenly, with 17 million of the 25 million people living in Peninsula Malaysia<sup>38</sup>.

Malaysian law is generally based on the Common Law of England. Intellectual Property Law was based on the IPR laws in English or Australian. Case law of the countries which adopted English common law is very persuasive in court Malaysia. The development of IPR law cases in the UK, Australia, India, New Zealand, South Africa and Singapore have a strong influence on the Court of Malaysia.<sup>39</sup>

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<sup>38</sup> Ong Argo Victoria and Fadzly Ameer, *Systems and Political Development in Malaysia*, International Journal of Law Reconstruction (IJLR), Doctoral Program in Law, Unissula, Semarang, Vol.2 No. 2, 10.26532/ijlr.v2i2.3259, September, 2018.

<sup>39</sup> Yahya Harahap, Brand Overview General and Trademark Law in Indonesia Based on Act No. 1992 19.

With the growth of industrialization in developing countries that have a low cost like China, Vietnam, Indonesia, etc. Similarly the more products are broken into the Malaysian market. Often the full product or parts of products brought into the country assembled in Malaysia and then distributed to the Malaysian market. Packaging and labeling can be done in the country of Malaysia making it difficult to track the counterfeit products at the border breach.

The cost of equipment down the machine (relatively), entry barriers in many industries, especially for consumer goods have dropped as well. Often the second party or reconditioned machinery / equipment imported from Japan, Korea, Taiwan or Italy are also included in this category. This makes it easier for counterfeiters to enter the market.

The growth of air transportation to the country of Malaysia has also resulted in tourists bring some items considered as infringement. It's hard to keep track of these items. Customs service are not trained to detect / identify counterfeit goods. In addition, they are more interested in collecting custom duties on imported goods<sup>40</sup>,

Act in Malaysia will HKI has begun to be repaired. Administration of intellectual property in this country also improved since the patent offices have been incorporated as a legal entity in 2003. The new form of organization was called the Intellectual Property Commission of Malaysia (MyIPO), so that more independent in managing affairs of IPR, even though the commission is still under the direction and supervision of the Ministry of Foreign Trade and Consumer Affairs in the Kingdom of Malaysia<sup>41</sup>,

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<sup>40</sup>Y.Budi Sarwo 2006, "socialization and inventory delivered in High school IPRs by the Research and Development Department.

<sup>41</sup> Ariyanuntaka, *'TRIPS and Lodging Intellectual Property Court in Thailand'*, in: *International Review of Industrial Property and Copyright Law*, Vol 30, No. 4/1999; A. Morgan, 'Comment: TRIPS to Thailand: The Act for the Establishment of and Procedure for Intellectual Property and International Trade Court', in: *Fordham International Law Journal*, Vol. March 23, 2000.

Problems also occur in the judicial enforcement sector. Statistics show that the Malaysian courts are overloaded and backlogged cases<sup>42</sup>, As in other countries in this respect, it formed a special intellectual property court in solving this problem. On the other hand, Malaysia is a serious effort to improve its reputation as the most significant producer in the world / exporter of optical disk<sup>43</sup>, Malaysia has a strong ambition in the field of information technology and biotechnology. Multimedia super corridor in Cyberjaya on the outskirts of Kuala Lumpur, which provides favorable conditions and tax advantages for an IT company. The legal framework for the further development of the IT sector increased in the late 1990s with the enactment of the Digital Signature Act, Deeds Computer Crime and Law Telemedicine, all in 1997, the Deed of Communications and Multimedia in 1998, and various amendments to the Law on Copyright.<sup>44</sup> Mega latest project of the government BioValley Malaysia, a similar project for Cyberjaya in biotechnology, which is already in operation in 2006 following the establishment of the Biotechnology National Directorate (Biotech) under the Ministry of Science, Technology and Environment (moste), which in turn was followed by the formation of Biotechnology cooperative Center (BCC).<sup>45</sup>

#### **a. Trademark Status and Practices in Malaysia<sup>46</sup>**

A trademark is a symbol / mark to distinguish goods and services from other people's merchandise. A trademark includes words, logos, pictures, names, letters, numbers or a combination of these. A trademark that is used as a marketing tool to allow customers to recognize products from certain merchants. Malaysia adopted the International Classification of Goods and Services, which

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<sup>42</sup> *Ibid.*

<sup>43</sup> According the statistics on the website of the Directorate General of Intellectual Property Rights (<http://www.dgip.go.id>, accessed on August 19, 2005)

<sup>44</sup> "Eg Scotch Whiskey" the decision of the Supreme Court No. 2564K / pdt / 1994 of 29 July 1996 to decide an appeal filed in October 1988 and Scooby Doo" the decision of the Supreme Court No. 3879K / Pdt / 1991 August 31, 1995, to decide an appeal filed in April 1989, both printed in S. Gauthier and R. Winata, Brand Renewal Indonesia (in the framework of the WTO, TRIPS), PT Citra Aditya Bakti, Bandung 1997

<sup>45</sup> *Ibid.*

<sup>46</sup> Antons, *'Harmonization and Adaptation Selective as Intellectual Property Policy in Asia'*, in :. C. antons, M. Blakeney and C. Heath, Intellectual Property Harmonization in the ASEAN and APEC, Kluwer Law International, The Hague 2004, pp 113-114.

contains 35 classes of goods and 10 classes for services. All of them are 45 classes and have been submitted to WIPO. However, the title of class only serves as a general indication of the type of goods or services and may not cover all the goods or services in it.

A trademark serves several functions. That includes:

- 1) Origin Function - A trademark helps to identify the products and services sold in the market.
- 2) Function Category - A trademark allows consumers to choose goods and services with ease while shopping.
- 3) *Quality Function* - Consumers choose a particular trademark known for quality.
- 4) Marketing functions - Trademark plays an important role in advertising. Something that is normal for consumers to make purchases based on the influence of advertising.
- 5) The economic function - An established trademark is a valuable asset. Trademarks can be licensed or franchised.

Trademark registration provides exclusive rights which the owner of a registered trademark has the exclusive right to use their trademarks in commerce. They also have the right to take legal action for breach by the Trade Mark Law against other people using their trademarks without consent. They can also take action by filing a civil complaint to the Enforcement Division for appropriate action under the Deed of Commerce in 1972. In Malaysia, trademark registration is not mandatory as the registration of companies and businesses. The registered trademark may still receive protection under Common Law based on the use and reputation. " Passing off " action against infringers can still be criminalized.

However, in asking for the legal protection of the trademark owner must convince the court, first, that the measures violate the harm it and, second, the goods and services that violated mislead the public. If the trademark protection is required in other countries, it will be required submission of registration separately in each country. However, Malaysia app can be used as a basis for



claiming priority in the member countries of the Paris Convention and the WIPO.<sup>47</sup>

The registration procedure is as follows:

- 1) The procedure to apply for a trademark similar to the procedure in countries other Common Law. Malaysia adopted a system of 'who first use' in comparison with the system of 'first bid'. Registered mark may be revoked if the registered trademark is not used in a trade for a continuous period of 36 months without an acceptable reason legally.
- 2) Each application must be classified in one class and if the class including T then no additional charge.
- 3) If the trademark is accepted by the Trademark Office will be advertised in the Government Gazette. The government gives the time duration of 2 months for anyone who wants to claim and filed opposition. If there is no opposition, the trademark registration was legally owned by that made the submission. Conversely, if there is opposition and other parties claim or objection then there will be a settlement between the two parties, and if the impasse will be resolved in the realm of the courts.
- 4) After the registration, the trademark is valid for 10 years from the date of filing of the application; renewable for every 10 years thereafter.
- 5) If the application does not face any objection or opposition, the trademark will be registered within 2 years.
- 6) Protection for Functional Aspects of Products in Malaysia

Section 3 (1) of the Trade Marks 1976 defines trading applications can include some goods or services such as the following explanation<sup>48</sup>:

- a) Color

In connection with this, a lot of non-conventional signs including color can not be given as a trademark and therefore excluded from the domain registration. However, it should be noted that Article 13 (1) Trade Marks Act 1976 does not

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<sup>47</sup>Antons, '*Specialized Intellectual Property Court in Southeast Asia*', in: A. Kur, S. and E. Luginbühl Waage (eds.), "... und sie bewegt sich doch!"- Patent Law on the Move, Festschrift für Gert Kolle and Dieter Stauder, Carl Heymanns Verlag, Cologne-Berlin-Munich, 2005, p. 287-299.

<sup>48</sup> *Ibid.*

provide that the trade mark may be limited to one or more specific colors and, in certain cases, the fact that the trademark should be considered for purposes of determining whether to Khasan trademark it. Section 13 (2) states that where there is the registered trademark without limitation of color, it will be deemed to be registered for all colors.

b) Form

Three-dimensional marks are not specifically regulated in the Deed of Trademarks 1976. However, it should be noted that in practice, the registration form has been received by the Registrar in the Manual of Trade Mark Law & Practice in Malaysia (WIPO, Geneva 1989).

3) Aroma

Malaysia does not follow developments in other countries that have adopted the source identifier for the other non-verbal symbols. However, as ascertained from the above discussion, many other jurisdictions do not really acknowledged, aroma registration assayed difficult due to the fact this is not unusual and the most difficult to represent graphically.

4) Marks Non-Conventional

A non-conventional trademarks or trademarks of non-traditional are new types of trademarks that are not incorporated in the existing categories in the regulations of the trademark. This is done to protect the functional aspects of a product because it is difficult to register such marks though it may still meet the prerequisite of unique trademark.

## **B. Legislation and IPR System in Indonesia**

Indonesia completed the main part of intellectual property law during the 1990s and introduced a complete new set of laws between 2000 and 2002 to

become TRIPS compliant.<sup>49</sup> Like so many areas of law, intellectual property development has also been influenced by political and economic turmoil the country has experienced since the late 1990s. On the one hand, the piracy rate has increased again due to increasing poverty and ease with which money can be made from pirated products. On the other hand, greater political openness and diversity also means that the approach will be the realization of the tasks of the past, where the intellectual property reform can be pushed easily without worrying about the opposition, are no longer as easy as turning the hand description. As in the past, implementation of the law remains to be hindered by a large number of decisions that are often associated with the year of publication.<sup>50</sup> Political liberalization in Indonesia also started with the program of decentralization and transfer of power decisions will be submitted provinces and districts. This reform also has some effect in the field of intellectual property. The government finally promised to introduce institute branch of intellectual property offices by the authorization of the local branch office of the Ministry of Justice to accept the application for registration of intellectual property rights available since 2001, submission of applications in the branch office has been very popular with the trademark owner.<sup>51</sup>

With the recent changes to intellectual property laws in Indonesia, intellectual property cases dealing with patents, copyrights, trademarks, industrial designs and layout designs of integrated circuits are now being decided at the level of the first court. Court district level remain responsible for this, but for criminal cases, especially of plant varieties, trade secrets and regulated under Act No. 10 of 1995 on Customs Issues. The court did not fully especially those on intellectual property matters, but they also handle bankruptcy cases. In fact, the court was created as an emergency measure after the Asian crisis in dealing with a wave of bankruptcies.

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<sup>49</sup> *Ibid.*

<sup>50</sup> Version of the draft law, which seems to have been adopted with only minor changes, see the website of the National Office of Intellectual Property at [http://www.noip.gov.vn/noip/cms\\_en.nsf](http://www.noip.gov.vn/noip/cms_en.nsf) (accessed on 23 January 2006)

<sup>51</sup> Khine Khine U, 'Protecting Intellectual Property in Myanmar', *Asia Law - IP Review*, July / August 2003.

## CHAPTER V

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHT (IPR)

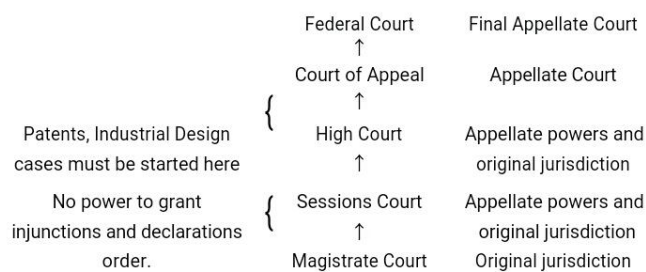
#### A. Enforcement of IPR Administratively

Apart from the judicial, it is possible to take administrative action in certain cases. For example, the use of trademarks on the board without the consent of the trademark owner may be terminated by notifying the local city council. The city council is responsible for the licensing and approval of board / billboard / advertisement.

The government also persuaded a large shopping center to include a clause in the lease agreement of many stores will be revoked / expired if the store was found guilty and dealing with counterfeit goods.

The court hierarchy and jurisdiction is as follows:

Hierarchy of Courts and Jurisdiction



In addition to Courts under the Judiciary there are other forms where some IPR disputes can be heard.

- |   |   |  |
|---|---|--|
| <ol style="list-style-type: none"> <li>1. Arbitration</li> <li>2. Mediation</li> <li>3. Copyright Tribunal</li> <li>4. Small Claims Tribunal</li> </ol> | } | <p>Not very popular as the bodies cannot grant injunctions;</p> <p>voluntary in nature.</p> <p>- Power to hear limited; dispute on payment of royalty for music/ voice recordings, translation rights.</p> <p>- Where claims worth below RM10,000.00 can be brought by ordinary citizens. No lawyers are involved; procedure is cheap, fast and effective.</p> |
|---|---|--|

In addition under the Court of Justice there are other forms of intellectual property in which several disputes can be resolved such as:

- 1) Limited to a royalty payment disputes for recorded music / sound, translation rights.
- 2) Where claims worth RM10,000.00 under deliberation can be solved by ordinary citizens. No lawyer is involved; the cost of the procedure is cheap, fast and effective.

One complaint that often arises in IPR disputes in courts is that judges are not mastered properly be the subject of intellectual property rights. Therefore, public discussion about the need for an understanding of the intellectual property rights for the members of the Court were commonplace in Malaysia.

The contact details of IPR protection agency for Malaysia as follows:

- a) Email: [habsah@cic.customs.gov.my](mailto:habsah@cic.customs.gov.my)
- b) Website: [www.customs.gov.my](http://www.customs.gov.my)
- c) Phone: + 603-8882 2716
- d) Fax: + 603-8889 5872
- e) Contact: Ms. Siti Habsah Harun
- f) Address: Institute of Malaysia Customs
- g) the enforcement division
- h) Level 3, North Block
- i) Ministry of Finance Complex Precinct 2
- j) Federal Government Administration Center
- k) 62 592 Putrajaya Malaysia

## **B. In the Civil Enforcement of IPR**

Here is the enforcement and implementation of Intellectual Property Rights in Malaysia<sup>52</sup>:

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<sup>52</sup>Indonesia publisher PT Tatanusa to publish all decisions of the most important commercial court in Jakarta and all decisions of the Supreme Court in terms of intellectual property has been mentioned. In Thailand, a summary of some of the decisions of the Central Intellectual Property and International Trade Court and the Supreme Court decision is available through a special electronic journals in [http://www.geocities.com/cipit\\_ejournal](http://www.geocities.com/cipit_ejournal), accessed on January 28, 2006. In the Philippines, the case of wealth intellectual searchable via the link on the

There are several methods of enforcing IPR in Malaysia. Malaysia give freedom to the owners of IPR (Intellectual Property Right) have the option to select one or more methods of enforcing intellectual property rights, while the options are:

- 1) Civil action
- 2) Criminal act
- 3) Administrative actions;

#### **1) Civil action**

The owner of intellectual property rights (including confidential information) can begin the registration of civil action if there is a violation of their intellectual property will be. The main aim of the civil action are:

- a) To prevent offenders from committing infringing activity.
- b) Deliver or destroy all products are caught red-handed violation.
- c) Fined violations.
- d) Seek and assess the damage suffered by the owner of intellectual property rights.
- e) In some cases as a means of apology on any violations.

Who could be dealt with through the civil lawsuit for infringement of intellectual property rights?

In all cases, the owners of intellectual property should be filed in court. However, if the defendant after receiving the decision of the court does not go start a civil action or the defendant refused and neglected to initiate action within the prescribed period, the intellectual property licensees may initiate action on its own.

Who can be sued?

Anyone who is involved in activities infringing intellectual property rights owners can be prosecuted in court. For example, the defendant being the manufacturer, store, distribute, resell or use the goods by way of trade it.

How long the action should be initiated?

Generally, the civil action must be commenced within certain legal limits, after a court decision. However, any new action would be a violation of intellectual property rights will not necessarily be required prior to their registration, and the damage can not be claimed as a violation if it does not meet the following time limits<sup>53</sup>:

- a) Patents: 5 years
- b) Industrial Design: 5 years
- c) Trademarks: 6 years
- d) Copyright: 6 years

### **C. In Criminal Law Enforcement of IPR**

Infringement of trademarks and copyrights belong to a criminal mistake. However infringement of patents and industrial design does not include a criminal act, just be civil fault because it is not considered a criminal offense.<sup>54</sup>

The owner of intellectual property rights or its agents or authorized representatives may initiate its claim and submitted documents will be a formal complaint to the Enforcement Division of the Ministry of Domestic Trade and

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<sup>53</sup> Antons, 'Intellectual Property in Free Trade Agreement Australia with countries in the Asia-Pacific', paper presented at the Conference on 'Recent developments in and Law Enforcement IP Asia', Fordham University School of Law and IP Academy Singapore, New York , March 30, 2005

<sup>54</sup> Weerawit Weeraworawit, '*Harmonization of Intellectual Property Rights in ASEAN*', in: C. Antons, M. Blakeney and C. Heath (eds.), *Intellectual Property Harmonization in the ASEAN and APEC* (above note 13), p. 208. See also Article 1.4. and 1.5. ASEAN Framework Agreement.

Consumer Affairs (this is the Ministry responsible for the administration of various acts of infringement of intellectual property in Malaysia). The plaintiff must have the full details on ownership of intellectual property in Malaysia, together with details of the report will be ongoing violations. After the Division accepts the existence of IPR infringement cases, they will conduct raids in places identified, related goods confiscated. If proved correct he committed the crime, the criminal action will be initiated against the offenders.

Prosecution of criminal offenses committed by law enforcement officials (officers prosecution). If the defendant was found guilty it will be processed immediately concerning his trial. Although there is no payment to the Division that in practice there are other problems. Some of them are:

- 1) After the raid conducted, prosecution of offenders does not go immediately started quickly or not at all. So that intellectual property owners have lost interest in the case.
- 2) Often the owners of intellectual property rights do not cooperate fully in the prosecution case in court. The expert witness, laboratory analysis report proper, professional help is not provided.
- 3) Investigations are sometimes neglected, so the decision stated the free perpetrator.
- 4) Even if convicted, the sentence imposed was too light compared to the gravity of the offense committed, so the actors just remember it as a business expense then everything will be fine.

In the case of trademark infringement, where the trademark that resembles not identical to the registered trademark, the owner of intellectual property who wants to file a lawsuit must first obtain a description Trademark of the High Court, before filing the complaint at the Division of Enforcement of Intellectual Property Rights. This ruling is valid for five years and can be extended for five years or more. Where when there are other offensive trademark, similar or identical to the trademark is registered, it can directly sued.<sup>55</sup>

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<sup>55</sup> Action Plan 2004-2010 ASEAN Intellectual Property Rights in the ASEAN Secretariat in <http://www.aseansec.org/7980.htm> site, accessed on 12 April 2006.



Now that the law enforcement would appear their IPR in Malaysia border and checks on importers of goods that will go to the state. Detailed provisions are made to stop the import and distribution of food false trademark, which is regulated in the law of copyright under the Deed of Trademarks 1976 and the Copyright Act 1987 each have measures borders and only approved trademark has been registered in Malaysia , If importers have not enrolled the trademark owner must immediately register to the country of Malaysia.

#### **D. IPR Law Enforcement In ADR**

Law enforcement authorities on Intellectual Property Rights (IPR) in Malaysia is handled by the Ministry of Domestic Trade and Consumer Affairs and the Malaysian Customs agencies under ex-officio capacity, as under the Trade Marks Act 1976 - section 70 C to 70 O.

As far as border measures are concerned, the institution Malaysian Customs authorities may detain goods (suspected abuse or false), then submitted to the Registrar of Trademarks under the Ministry of Domestic Trade and Consumer Affairs.

## CHAPTER VI

### LEGAL CULTURE OF INTELLECTUAL PROPERTY RIGHT (IPR)

#### A. Religion Aspects

The scholars in the country is poised to give serious attention to the rampant practice of IPR violations. Indonesian Ulema Council (MUI) has set Fatwa No.1 of 2003 on Copyright and Fatwa No.1 / MUNAS VII / MUI / 15/2005 on Intellectual Property.

“Every form of copyright infringement, an injustice that is haram”, said chairman of the MUI Fatwa Commission, KH. Ma'ruf Amin. In clause consideration, MUI looked at the practice of copyright infringement has reached a stage that is troubling. Many of the injured parties, especially the copyright holder, the state and society.

Not only the state law that simplified system, the illegal practices also violated the provisions of the Law. Surat an-Nisa verse 29 explicitly prohibits eating another man's treasure is vanity (without rights). "O you who believe! Do not eat each other neighbor's property by way of vanity, except by way of commerce that goes with the same love-love between you. And janglah you kill yourselves; surely Allah is Merciful to you."

Related to the issue, in a letter as-Syu'ara Koran verse 183 Allah says, “And do not harm humans by reducing their rights and do not rampant in the earth with mischief.” Prophet strongly denounce any action that could harm the rights of others. “Not to be harmful (adverse) themselves and should not be too harmful (adverse) of others”. (Ibn Majah from 'Ubadah bin Saamit) ulama of Maliki, Hanbali and Shafi'i not differing views on the practice of infringement this copyright.

The scholars that school cross classify the original copyright and useful as a precious treasure. Therefore, al-Zuhaili Wahbah also emphasized that acts of

piracy is a violation or a crime against the rights of authors. The culprit will be seen to have that sin which is sinful. " It's the same with theft practices, there should be compensation to the author's right to the text printed violated, " said Wahbah. The provisions outlined Allah and His Messenger, nor jurists earlier, and then comes down to the rules of fiqh. There are at least three guidelines, first, the danger (loss) should be eliminated. Second, avoid masfadat precedence over bringing beneficiaries, and the third, everything was born (arising) from something forbidden, is forbidden.

After watching all these aspects, the Fatwa Commission determined that copyright included within the scope of huquq maliyyah (property rights) that should receive legal protection (Mashun) as well as wealth. " Rights should be protected by law is copyright that does not conflict with Islamic law, " explained KH. Ma'ruf Amin.

Thus, as a treasure, the copyright can be made the object of the contract (al ma'qud 'alaih). This contract includes mu'awadhah agreement (exchange, commercial) and contract tabarru'at (non-commercial), may also diwakafkan and inherited. That Islam protect copyrights and intellectual property rights.

## **B. Economics Aspects**

Every company established course along with hope that someday in the future the business will experience growth and progress rapidly, gaining maximum profits. For companies engaged in industries that make and sell products as consumer needs. Always adjust product design with tastes and desires of consumers.

This is in accordance with the opinion of Bagas Prastyowibowo, states that:

*"The product design one of the elements advance the industry that the results of industrial products can be accepted by society, because they get the products have good quality, reasonable price, attractive design, get a guarantee and so on".*

So even think Yus R Hadjadinata (1995: 18) states that:

*"Product design function relating to the form and the forms related to the design and appearance of product design . While on the functions related to how the product can be used. "*

There is also the understanding of the design of the product was raised by his Suyadi Prawirosentono in Production Management:

*"Product design is the design of a product (goods) to be produced."*

Franklin G Moore and Thomas E Hederick in his book Production and Operations Management, says:

*"The product design is the most important thing, because of the opportunity that new products are often stunning. Where at one time, the new product can increase two times or three times the turnover of an organization".*

### **1) Purpose of Product Design**

While the purpose of Product Design, is:

- a) To produce a high quality product and has a high resale value.
- b) To produce the products trends of his time.
- c) To make the product economical as possible in the use of raw materials and cost - the cost without reducing the value of sales of such products.

### **2) Stages - Product Design activity stage**

A product designer must go through the stages - in the planning stages of a product, these stages are:

- a) Formulating marketing research results

As for the starting point in the stages of product design is marketing research. To find the desired product customer, product designers can obtain data from marketing research that is directly related to the customer. This research was done both for products that really new or for existing products.

Development of a research within the company will produce an idea or ideas to make a product, where the idea was derived from data obtained when the research itself is conducted. In researching the manufacture of a new product or development of existing products, the company should consider - as follows:

- a) Wishes of the customer in terms of usability, quality, capital and the color of its products premises not ignore pricing
- b) Cost of manufacture new products or development of existing products if the company is able to pay it.

For things above, then this research needs to be supported by factors that include time to conduct the research, find information, or information based on experience.

- c) Consider the ability of the company's facilities

To conduct the manufacture of a product, then the designer must consider the ability of the company itself, including: labor, machinery, equipment support and other tools. In making the product, the designer must consider the cost as economical as possible.

- d) Sketching

In the sketch, the shape of the product that will be made will be apparent to one another. The sketches were made to facilitate the making of working drawings (blue print), a sketch of each - each product although this sketch does not show the size - actual size, but can be seen dal scale comparison.

- e) Make working drawings

Working drawings is the final phase in Product Design activities, which in this working drawings can be described the actual shapes and sizes with a reduced scale. In addition, the employment picture is also shown materials that will be used in the manufacture of such products. After the completion of working drawings designed, then submitted to the implementing activities to immediately studied and worked more about the production process.

### **3) Trade Secrets**

Trade secret is information unknown by the public in the field of technology and / or business which has economic value because it is useful in business activities, and kept secret by the owner of a trade secret.

The scope of protection of trade secrets include methods of production, processing methods, sales methods, or other information in the field of technology and / or business that has economic value and are not known by the general public.

- a) Trade secret protection if the information:
- b) Secret known only to certain parties and not by the general public,
- c) Has a value economy if it can be used to carry out activities or commercial nature or business which can increase economic benefits,
- d) Be kept confidential if the owner or the parties that control has taken steps and appropriate.

Trade secret owner may grant a license to the other party. The meaning of the license is a license granted to another party via a covenant based on entitlements (not the transfer of rights) to enjoy the economic benefits of a given trade secret protection for a certain period and certain conditions.

Not considered a trade secret violation if:

- a) Revealing for the interests of defense, health, or safety of the public;
- b) Reverse engineering of products produced by the use of other people's secrets mixes were done solely for the sake of further development of the product concerned.

Trade Secrets in Indonesia is set in Act No.30 of 2000 on Trade Secrets. Trade secret protection and automatic ongoing protection period indefinitely.

#### **4) Consumer protection**

- a. Consumer understanding

According to Act No.8 of 1999 on Consumer Protection: Article 1 paragraph 2: "Consumers are everyone user of goods and / or services available in the community, for the benefit of themselves, their families, other people, as well as other living beings and not for sale."

According to Hornby: "Consumers is someone who buys goods or using services; a person or a company who buy certain goods or use certain services; something or someone that uses a stock or a number of items; every person who uses the goods or services ".

In the business reality is often distinguished between:

- a) Consumer and Customer;
- b) Consumers are all people or society, including customers.
- c) The customer is the consumer who has to consume a product that is produced by a particular manufacturer.
- d) End consumers with consumer Between:
- e) End consumer is the consumer who consumes the product obtained directly;

- f) Among Consumers are consumers who acquire a product to manufacture other products.

While understanding consumer protection are:

According to Act No.8, 1999, article 1 point 1: "any measure that guarantees the legal certainty to provide protection to consumers". Guidelines 1993 through MPR No.II / MPR / 1993, Chapter IV, the letter F item 4a: "trade development is intended to facilitate the flow of goods and services in order to support increased production and competitiveness, boost producer incomes, protecting the interests of consumers."

#### b. Consumer Protection Law

Consumer protection laws are: "The overall principles and legal norms that regulate and protect consumers in the relationship and the problem with the providers of goods and / or services consumers".

So, the conclusion of understanding above is: That the consumer protection laws are needed if the condition of the parties to a legal relationship or problematic in a state that is not balanced.

### **C. Social Aspects**

In this modern era, piracy Copyright've not unusual, especially in the country of Indonesia. Rampant illegal copying by unscrupulous persons who are not responsible for causing many copyright owners feel very aggrieved, because the work that they painstakingly created, dispersed offhand without getting loyalty. Therefore, the purpose of this journal is made is to alert the public to stop the activities of illegal copyright trade, better yet join eradicate copying other people's work without permission of the owner. Hopefully this paper builds the reader's conscience free from bad culture is not ashamed to buy pirated.



Copyright Protection in Indonesia is still weak. It is common knowledge, piracy happens everywhere, not only in rural areas in Indonesia, the company office was now many are wearing illegal software. Possibly the most part, the issue price is the main point for the perpetrators of illegal goods. However, if the problem is far above the price of illegal goods, then we have the right to steal other people's work?

The purpose of this journal is made is to remind and invite the community to shame stole the work of others purchased illegally and are very detrimental, not hurt us to give up some amount to buy other people's work legally, and certainly for the progress of our country towards a better

IPR stands for Intellectual Property Rights. During this time, you may often hear about human rights or human rights. It is then taken into account rights are not only about the issue of human rights, but also such intellectual property.

Infringement of intellectual property owned by an individual or group is tantamount violate the rights of the owner of the intellectual. If you want more dramatized, a violation of the person's intellectual ability or the same group with no regard originally a work. It is another word for "intelligence" were discredited. Are the principal things that later becomes the cornerstone presence of the term "intellectual property rights" in Indonesia.

Intellectual property is protected by intellectual property rights include two things, namely the protection of rights to intangible objects such as copyright a work, patent rights, and the rights of trade mark particular as well as the protection of rights to tangible objects such as information, knowledge, technology, and artwork or works literature.

Intellectual property rights, Indonesia Probably most people are already familiar with this law or at least have heard about this legislation. I will try to review a little about intellectual property rights (IPR). Intellectual Property Rights (IPR) is the right exclusive that given a rule to a person or group of people to the work. Simply put IPR includes Copyright, Patents and Brands Rights

At the Act No.19 of 2002 concerning copyrights, inscribed "Copyright is the exclusive right of the creator or the recipient of the right to publish or reproduce his Work or to grant permission to do so without reducing limitations according to the laws in force. (Article 1 paragraph 1) "this chapter has been very clear that all the work of a person (the creator) is given the right to reproduce his creations in accordance with applicable regulations. But the practice is now widely evasion creator works in the capture or plow without the consent of the creator

During this time the general understanding of IPR proportionately less often interpreted as merely focuses on aspects of the monopoly held by the owner or holder of rights to the IPR in absolute terms. Such understanding can negate the basic concept of IPR that IPR has the main function to promote creativity and innovation that is widely benefit to the people specially created while the case also serves as a means for introduced, and spread out the enrich the national culture. Even one of the aspects inherent in the IPR is the social aspect to all types of IPR unless the brand, when the protection period expires, everything becomes public property or public domain.

Lack of proper understanding of IPR also deals with the prejudice that IPR will only benefit developed countries and hamper developing countries in access to technology and information. The issue now is not the access to technology and information, but the trend is going in the world today this is their tight trade competition from country to country. There is now not only depend on another country for Indonesia-based industry on the natural resources that are increasingly reduced in number. Therefore Indonesia must develop industries based on the ability of human resources for creative and innovative industries most likely have the opportunity to compete in the global market one of them is an industry based on IPR

The first is to change the mindset of the people that someone in a creative process to produce a work needs to be appreciated and recognized. Therefore need to be introduced culture of shame purchase and use pirated goods.

The second is the need for synergistic cooperation among creative workers in the field of information technology, industry, trade in order to improve efficiency in the production process so that the computer can be grabbed. While the price of program the government can help the development of the IT industry in Indonesia with ease and taxation 0 % as well as building a strong IT infrastructure.

A third particularly in the education, appreciation and recognition of intellectual property rights need to be introduced since the basic education, as this will give a very good impact for legal awareness.

#### **D. Political Aspects**

In addition to copyright protection, there is also a related patent law. Patent Law set at number 14 of 2001 governing the definition of a patent, patent holders, substantive terms of patents, types of patents, the subject of patents, patent procedures and patent application specifications. In-Law also discusses the patent protection period, the cancellation of patents and patent holder of rights and obligations.

Patenting IPR can be done for all of the products and the work that has benefited. Patentable works are works that provide benefit and empowerment for human life. Works that are exclusive easier for the patent, then the process is called copyright.

The concept of intellectual property rights depend on the researcher / inventor. The findings, the researchers are fixed, exclusive because its findings are the result of thinking that is attached to the owner. Before the results were well applied, initially still be ideas are realized and applied in a tangible form. The

findings then bring positive change to society and the state. In other words, have the selling power and expediency is right on target.

When the result of the work was to be used for the production interest by the other party, the other party must request permission in advance to the inventor / researcher. If already obtained a license, the product or the work can be copied and widely distributed. For the record, both parties have the right only temporary.

Intellectual Property Rights system can be judged as an effort to provide solutions for problems that occur in the community. This solution is expected to provide a way out for society in general, and to help countries solve problems that occur nationally.

Intellectual Property Rights as functionalize efforts to support the development process better. The output, will encourage social change in order not to cause harm in the community. Thus, it can be concluded that the main objective of IPR laws is to realize order, certainty and fairness.

The principle of the rule of law includes norms of intellectual property rights, the principle of law and court decisions relating to the IPR setting. Law of Intellectual Property Rights under the approval of the TRIPS / WTO could also intersect with culture, way of thinking, citizens (public opinion) and other law enforcement officials. In other words, IPR laws are always up to date on social interaction and sustainable, which reflects a modern legal concepts. That review of Intellectual Property Rights from many perspectives. Hopefully the above gives a discourse review, add a new angle.

Hopefully from this review does not necessarily dampen interest in working and researching. Keep doing research for the advancement of Indonesia. Because only by researching, the more solutions we offer to the problems that exist in the community.

#### **E. Education Aspects**

As the quote, "if there is a lesson for the past half century's economic development is that natural resources do not drive the economy; human resources to do that "(The Washington Post 28 April 2001 edition). Thus the human resource development is absolutely necessary, in order to utilization of existing resources and not just depend on foreign expertise or knowledge of human resource.

President Nyerere once said that technology transfer is a legal obligation of developed countries to developing countries; so not on the basis of mercy. Agreement on Trade Related Aspects of Intellectual Property Rights itself emphasizes the system of intellectual property for the purpose of "Contribute to the promotion of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations ".

Capital intellectual capital will become more important and strategic function, when compared to physical capital, which had previously been the main source of consumer goods products for the welfare of mankind.

Historically, laws on intellectual property rights was first in Venice, Italy concerning patent issues in 1470. Caxton, Galileo and Guttenberg listed as inventors that emerged in this period and have a monopoly on their inventions. The laws of the patent was later adopted by the British empire in the days TUDOR 1500s and then was born the first patent law in the UK, namely the Statute of Monopolies (1623). The United States has a new patent law in 1791.

Harmonization in the field of IPR first occurred in 1883 with the birth of the Paris Convention for the issue of patents, trademarks and designs. Then the 1886 Berne Convention on copyright or copyright issues. The purpose of these conventions include standardization, discussion of new issues, exchange of information, protection minimum and procedures get right. Both conventions are then formed an administrative agency called the United International Bureau for the Protection of Intellectual Property which was then known as the World Intellectual Property Organization (WIPO). WIPO became a special

administrative body under the United Nations that deal with intellectual property rights of the UN members.

Some of the terms are important and related to IPR. Copyright is the exclusive right of the creator or the recipient the right to publish or reproduce his Work or to grant permission to do so without reducing limitations according to the laws in force. Creator is a person or several persons jointly upon whose inspiration a Work is based on the ability of the mind, imagination, dexterity, skill or expertise manifested in the form of a distinctive and personal. Creation is the result of any work of the Creator an authenticity in the field of science, art, or literature. Copyright Holder Author as the Owner of the Copyright, or the party receiving such rights from the Creator, or others who receive more rights than those who receive such privileges. License is a license granted by the Copyright Holder or the Holder of Related Right to another party to announce and / or reproduce works or products Related Rights under certain requirements.

At least there are some advantages in the enforcement of intellectual property rights, which could affect the development of science and technology in Indonesia. Such as the protection of the traditional work of the Indonesian nation, prevent theft of the local works are generally categorized as simple patent and new discoveries. Input their income to the inventor / creator. Improving intensive to continue working for the inventor of the patent, both from the government and the private sector and that others are stimulated to be able to further develop it again. In addition, the system of intellectual property rights to support the holding of a good documentation system on all forms of human creativity that generates the possibility of technology or other similar works avoidable / preventable. With the support of good documentation, expected community can use it to the maximum for the purposes of his or develop them further to provide added value even higher. Improve understanding of intellectual property rights in law enforcement and the community.

IPR violations in the form of piracy (piracy), forgery in the context of the Copyright and Trademark (counterfeiting), infringement of the patent

(infringement) clearly hurt significantly to economic actors, especially going to hurt the legal owner of the intellectual property rights. Likewise consumers and a healthy market mechanism will also be affected by their acts of infringement of intellectual property rights.

According to Prof. Philip Griffith, the actual copyright was first put forward, to create a balance between the interests are interlinked and conflict around literature. "First, the interests of the authors themselves, who must have thought that the literary work is 'part of him' that materialized. Then, the right publisher to take benefit through services reproduce literary works, and the third the right of people to enjoy the literary work".

The main cause of the low level of patent filings by Indonesian researchers, among other things:

First, the factor is still relatively low incentives or recognition for the research work by the Government and eventually less lead researcher in generating innovative scientific work.

Second, the technology research field Portion less of Government budget - so far behind the average number of research advanced industrial countries in general - will only pass on an environment that is not conducive to cultivate human resources of high quality science capabilities.

Third, researchers are often less aware of the importance of patent protection on inventions.

Fourth, distance location of the workplace researchers scattered in various parts of the area led to expenditure of travel expenses for the maintenance of the patent into its own obstacles.

Achmad Zen Umar Purba civilizing stressed the importance of IPR in the community. People should know that intellectual property is an asset that is legally under the authority of the full owner. Findings are already guaranteed by

IPR-in the form of patent or copyright-can not be claimed again by the other parties. "Traditional communities still think, that the more people the better mimic his work for him. It can only be removed by growing the IPR culture. Because it would be unfortunate if a finding finally claimed others, including strangers because not patentable".

In the Copyright Act No.19, 2002, a work that is protected is a work in the fields of science, art and literature, which includes: books, computer programs, pamphlets, typographical arrangement (layout) of published works, and all other written works; speeches, lectures, speeches and other works alike; props made for the purposes of education and science; songs or music with or without text; dramas, musical dramas, dance, choreography, puppetry and pantomime; art in all forms such as painting, drawing, sculpture, calligraphy, sculpture, sculptures, collage, and applied arts; architecture; map; batik art; photography; cinematography; translations, interpretations, adaptations, anthologies, databases, and other works resulting from adaptations.

Copyright Act No.19 of 2002, also contains about Copyright Restrictions related to education. Contained in Chapter II Scope of Copyright, Part Five Copyright Restrictions, Article 15. On condition that the source must be mentioned, the following shall not be considered a violation of the Copyright, Such as: the use of work of another party for the purposes of education, research, scientific thesis, report writing, criticizing or reviewing an issue with not prejudice the normal interest of the Creator; making work of another party, either in whole or in part, for purposes of the discourse solely for the purpose of education and science; Reproduction of a work other than computer program limitedly by way or by any means or similar process by public libraries, science or educational institutions, and non-commercial documentation center solely for the purpose of its activities. While Article 16 For the purposes of education, science, and research and development activities, to work in the fields of science and literature, the Minister after consultation with the Copyright Council may: require the Copyright Holder to carry out its own translation and / or reproduction of such work in the territory of the Republic of Indonesia in the prescribed time; or oblige



Copyright Holder concerned to give permission to another to translate and / or reproduce the works. And may also appoint another party to carry out the translation and / or reproduction of such work. and non-commercial documentation center solely for the purpose of its activities. While Article 16 For the purposes of education, science, and research and development activities, to work in the fields of science and literature, the Minister after consultation with the Copyright Council may: require the Copyright Holder to carry out its own translation and / or reproduction of such work in the territory of the Republic of Indonesia in the prescribed time; or oblige Copyright Holder concerned to give permission to another to translate and / or reproduce the works. And may also appoint another party to carry out the translation and / or reproduction of such work. and non-commercial documentation center solely for the purpose of its activities. While Article 16 For the purposes of education, science, and research and development activities, to work in the fields of science and literature, the Minister after consultation with the Copyright Council may: require the Copyright Holder to carry out its own translation and / or reproduction of such work in the territory of the Republic of Indonesia in the prescribed time; or oblige Copyright Holder concerned to give permission to another to translate and / or reproduce the works. And may also appoint another party to carry out the translation and / or reproduction of such work. science, as well as research and development activities, to work in the fields of science and literature, the Minister after consultation with the Copyright Council may: require the Copyright Holder to carry out its own translation and / or reproduction of such work in the territory of the Republic of Indonesia within a stipulated time ; or oblige Copyright Holder concerned to give permission to another to translate and / or reproduce the works. And may also appoint another party to carry out the translation and / or reproduction of such work. science, as well as research and development activities, to work in the fields of science and literature, the Minister after consultation with the Copyright Council may: require the Copyright Holder to carry out its own translation and / or reproduction of such work in the territory of the Republic of Indonesia within a stipulated time ; or oblige Copyright Holder concerned to give permission to another to translate and / or reproduce the works.

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Intellectual Property Rights (IPR) was introduced and popularized College. Especially for lecturers. 2016 many universities receive training and socialization of the importance of IPR.

As a developing country, Indonesia is clearly lags far behind developed countries in terms of inventions and research results. There are many factors, one of which the level of awareness of lecturers / researchers / inventors of the Intellectual Property Rights. Thus, the results of research and discoveries few registered in the state archives. In other words, the level of public awareness and appreciation of the work of Intellectual Property Rights is still quite low.

Intellectual Property Rights is important for faculty and Institution Education Laboratory (PLP). Given lecturer identical to the results of research. IPR socialization is expected to give encouragement to enroll academic works to the Ministry of Justice and Human Rights. Thus, the lecturers copyright and patent law. The other hand, copyright will provide protection work of lecturers, if his work in the trace.

IPR socialization for lecturers is expected to improve the work listed in the ministry of law and human rights. Whereas, before being socialization concerning IPR many works that have not been patented. Works that have not been patented

risky to be acquired and manipulated by others. When that happens, the writer can not do anything.

Efforts to protect the work of faculty and Institution of Education Laboratory (PLP) can be registered to the Intellectual Property Rights (IPR). The rules on Intellectual Property Rights, contained in Act No.28 of 2014 describes the definition creator (article 31), the creation of protected (article 40), the term of copyright protection, registration of copyright (Article 66) which contains the procedures copyright registration agency to Intellectual Property rights.

## CHAPTER VII

### IMPLEMENTATION OF INTELLECTUAL PROPERTY RIGHT (IPR) IN COLLEGE

#### A. Implementation of IPR at Universiti Utara Malaysia (UUM)

In the 1980s Malaysia has experienced a major shift in the policy of industrialization. Malaysia began a policy of major industrialization, large investments in infrastructure and export of goods and services. The country's political stability, low cost of labor, higher education level of workers and attractive investment incentives provided by the government attracts many foreign manufacturing companies to build or to shift their manufacturing operations to Malaysia. This is the beginning of the country's economic growth, also ikur competitive indigenous industries that initially only a simple manufacturer, but began to grow into a strong manufacturer to not compete with foreign companies operating in Malaysia.<sup>56</sup>

So, until the 1980s, IPR is not too plays an important role in Malaysia, since the country is only focused on economic growth. Actually IPR in Malaysia already exists, but is confined to the Trade Mark registration. All patents and industrial designs are required filed in the UK and then registered in Malaysia. If the UK receive accreditation forms for registration and approved the industrial design, then automatically it is also enforced in Malaysia without any other administrative actions. But with the rapid industrialization of the country, the development of indigenous industries, and an emphasis on research and development of the times, make the importance of IPR rules and protection will be. This gave rise to the Deed of patents which entered into force in 1986.<sup>57</sup>

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<sup>56</sup> WIPO document A / 41/17 General Report of the Assemblies of the Member States of WIPO, October 5, 2005; 'Myanmar to enforce intellectual property protection laws, the People's Daily Online, 1 September 2005

<sup>57</sup> Assembly adopted a law on IP and e-transactions', the Thai Press Reports, 23 November 2005

In the 1990s, Act on Industrial Designs, and new laws relating to information technology / communications imposed. Intellectual property department has two functions, namely the function of registration and law enforcement functions given an important role in the protection process of the process of industrialization. Of course IPR play an ever increasing role and importance in the country's economic growth in Malaysia. This is reflected in an increasing number of registration of patents, industrial designs and trademarks and geographical indications registered in Malaysia.

In accordance with the increase in the number of registration of intellectual property rights, the government has embarked on campaigns on IPR nationally. But there is still a big gap with respect to the appreciation of the IPR system. The general public is not yet fully understand the system of Intellectual Property Rights. Even the industry, especially the local industry has not fully understand the system of Intellectual Property Rights. This is not surprising because even in industrial countries advanced course there are still shortcomings in understanding the IPR system. However, many attempts were made by the government and non-governmental organizations (NGOs) to improve understanding the importance of IPR in the public and industry.

Policy and legal changes in Malaysia is of course affect all aspects of life, especially in terms of the development of science and the protection will treasure the results if the human thought, not least education agency that notabennya place if the source of thought and creativity comes from, one of which is University Utara Malaysia

University Utara Malaysia (UUM) seeks to contribute to and to move part of law enforcement in terms of how the intellectual property rights of every citizen of Malaysia can be guaranteed to be ownership. UUM provide similar services such as Legal Aid Institute (LBH) for every citizen, especially the faculty in maintaining intellectual property ownership rights will be when there is a violation of others that are harmful. Likewise with law enforcement in the country of Malaysia, UUM prefer legal channels than in terms of socialization. Because

virtually every citizen is already required to know and understand the law or deed that has been issued by the Malaysian royal.<sup>58</sup>

While University Utara Malaysia (UUM) is more focused on protection of intellectual property rights on the legal side, the UUM gave birth to the amendment Act 617 on Intellectual Property Corporation Of Malaysia of 2002, Incorporating all Amendments up to 1 January 2006 on the Copyright Act of 1969 protects literary, art and music, in addition to sound recordings, cinematograph films and broadcasts. Malaysia and the citizens enjoy the protection of works of literature, art and music in the time duration of 25 years, while other works are provided with protection in the duration of 20 to 25 years as the work of foreigners are protected only if their works were first published in Malaysia or published in Malaysia 30 days from the first publication abroad Technological advances in the 1970s which led to the proliferation of pirated sound recordings and video tapes.<sup>59</sup>A) literary, art and music; b) sound recordings, films and broadcastings; and c) setting typography work published edition. "

All three groups are considered as "intellectual property" by University Utara Malaysia (UUM) while some Commonwealth countries consider (a) as a work and (b) is similar to (c) in the category of related rights. "

As a result of the accession of University Utara Malaysia (UUM) of the Berne Convention, Copyright Act 1987 has been amended and the regulations under section Copyrights and came into force on October 1, 1990. Under the Berne Convention, the work of a writer Malaysia will get protection from countries that have relationship with the Berne Convention, whether published or not. The work of a writer of non-state Berne Convention will only be granted protection if his or her work published in a country member of the Berne

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<sup>58</sup> An famous decision is a declaration of bankruptcy is very favorable Canadian life insurance company Manulife in 2002, see R. Robison and Hadiz VR, *Reorganization Power in Indonesia: Politics Oligarchy in the days of the Market*, RoutledgeCurzon, London 2004, p. 265, fn.1.

<sup>59</sup> See C. Antons, 'Indonesia', in: (ed.) C. Heath, *Intellectual Property Law in Asia* (above note 4), p. 391-428.

Convention or the Berne Convention was published in the state within 30 days of its first publication in a non-Berne.

Deed of 1987, as amended, conferring protection to a work's creator, if he is a citizen or native of Malaysia, where the work was first published or made in Malaysia also made by or under the direction of the Government of Malaysia. There is no formal registration of copyright ownership is required for work is reduced to a material form and author enjoys the status of those mentioned above. Copyright protection is granted to the following works: literary works, artworks, films, musical works, sound recordings and broadcasts, computer programs and industrial designs.

Deed or earlier Act contains criminal provisions such as the Criminal Procedure Code if in Indonesia. When copyrights are violated, there will be criminal sanctions for any person to sell, rent or let to hire, to import or exhibit by way of trade or processing, except for personal use, and solely for commercial purposes and the penalty is a fine not exceeding RM 10,000 per violation or imprisonment for a maximum period of 5 years or both. For subsequent violations, and for cases involving copies, penalties may be imposed double. Copyright (Amendment) Acts of 1997 to revise the definition of "work of art" and removed the functional article (industrial design) of the copyright protection.

As an example a case in which titangani University Utara Malaysia (UUM) that involve copyright infringement, between Anton (a producer of broadcasting in Malaysia) and Mandarin Video Holding Sdn Bhd. Which was broadcast on television and others, which received a complaint from the plaintiff (the two film producers Chinese for TV shows in Hong Kong and the plaintiff third with the rights to distribute films on videocassettes in Malaysia) that the defendant make copies of videos forbidden. The defendants attempted to release the order and argued, inter alia, that the plaintiff did not meet Films (Censorship) Acts 1952 and that there was no evidence that the tapes are sold or made available to the public within 30 days of their publication in Hong Kong. there must be clear evidence that the defendant has committed offenses such as possession of

documents or tangible things that they had damaged the material. J. Chan, also noted that cases of this Anton is something of a surprise, especially in cases of piracy there must be clear evidence that the defendant has committed offenses such as possession of documents or tangible things that they had damaged the material. J. Chan, also noted that cases of this Anton is something of a surprise, especially in cases of piracy.<sup>60</sup>

Other cases are copyright ownership of Polygram Records Sdn, in which the accused was arrested on the plaintiffs, because: first, for two years to make an album with forming a new company consisting of several members of the group. In a case that dealt with a lot of problems, Visu Sinnadurai J decided that the first contract was not valid but the second is valid only defendant could not refrain from trading in the album.

In the case of patent rights corresponding deed of 1983 set the items to be patented must meet the following criteria:

- a. Invention must be new;
- b. An inventive step; and
- c. It should apply in the industry.

A patent provides the right protected by the law, namely to exploit the patented invention, to assign patent rights to conclude contracts and licenses. University Utara Malaysia (UUM) provide such protection measures would damage offenses. Patent rights under the deed of 1983 and (Amendment) Acts 1994 to guide University Utara Malaysia (UUM) and determine the pattern of protection and the distribution of types of objects that includes people who sell pirated goods specified violation.

Thus the implementation of intellectual property (IPR) at University Utara Malaysia (UUM).

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<sup>60</sup>Antons, 'Specialized Intellectual Property Court in Southeast Asia', in: A. Kur, S. and E. Luginbühl Waage (eds.), "I ... und sie bewegt sich doch"- Patent Law on the Move, Carl Heymanns Verlag, Cologne-Berlin-Munich, 2005, p. 295.



Table 1

Data on IPR acquisition of UUM in 2015-August 2018

NO	IPR	TOTAL
1.	Patent	2
2.	Copyright	48
3.	Trade Marks	9
4.	Industrial Design	1

Implementing IPR will safeguard firm's new invention, innovation or processes in the long run. Intellectual property rights should be treated as new forms of investment. The patent and related intellectual property rights system will have to respond to the market changes. There is probability for the system to have its own weaknesses here and there. The major challenge for patent and other IP elements together with government policies is to ensure a national pay-off from scientific and technological development. In relation to the impact for the operation performance of the firm, patent system should be able to reduce the manufacturing cost per unit, increase product delivery, improve product/process flexibility and high quality products being produced. This paper provides the importance of applying intellectual property rights as firm's business strategy. Manufacturing firms has different goals in determining which business strategy in order to make them remain competitive in the challenging business atmosphere.

#### **B. Implementation of IPR in Sultan Agung Islamic University (Unissula)**

We need to look, that the registration of IPR in Central Java through the Regional Office of the Ministry of Justice and Human Rights each year has increased pretty good. It caused participation of relevant institutions and the role

of the universities in Central Java is the development of most of the tersebut. Namun petition filed requests still revolves around the brand. For registration application:

a. brand:

- 2001 : 28 petition;
- 2002 : 99 petition;
- 2003 : 103 application;
- 2004 until the end of July 2004: 90 petition.

(Some brands have earned the certificate request).

b. patents:

- 2001 : 4 petition
- 2002 : 5 of the petition;
- 2003 : 3 petition;
- 2004 until the end of July 2004: 3 petition

c. Copyright :

- 2001 : L application;
- 2002 : 16 petition;
- 2003 : 31 petition;
- 2004 until the end of July 2004: 8 petition.

d. Industrial Design:

2004 : L petition (Office of the Ministry of Justice and Human Rights in Central Java).

But we need to know, that the registrations listed above is a specialized registrar through the Ministry of Justice and Human Rights Regional Office in Central Java. This is possible applicants from Central Java, but apply directly to the headquarters of the Directorate General of Intellectual Property Rights center, so it's hard to be traced quickly.

Especially for the applicants from professors who are members of the Institute of Higher Education is not yet able to be detected, it is more due to the small number of intellectual property owners who want to register the results of the research potential of the intellectual property rights. Or even perhaps because of ignorance or do not understand that these research results Intellectual containing potentially high economic value. Unissula new in itself there are some that are less than 10 pieces of intellectual property rights which has the registration, but there are some potentially IPR invention, the inventor did not want to register. This is what we need to stress and the need to give greater understanding of optimal, so that the actual access can be displayed as the access of the LPT, it will be able to increase the prestige of LPT in society. Is the pride of a high society especially is that we can cooperate with the relevant institutions, with business / industry or part of users and so on.

But in reality is still a lot happening on the contrary, that the intellectual works in college either in the form of scientific work and research are still many KUM achievement-oriented in order to rise in the hierarchy. And after only a material stored in warehouse or library. In the current circumstances, in fact intellectual works mentioned above can be optimized potential to become an alternative source of financing.

Below is a table of intellectual property rights held by lecturers at the Islamic university of Semarang grand Sulatan<sup>61</sup>:

**Tables 2**

**Lecturer IPR UNISSULA 2015**

NO	REGISTRATION CODE	NAME OF LECTURER	INFORMATION	TYPE	NO OWNERSHIP IPR	STATUS
1	0608096901	Dr. Atina Husaana MSi., Apt	Lotion Composition And Development Based On Seed Extract membrane Bixa Orellana (BIXA ORELLANA L) AND USES	Patent	P00201508002	Registered
2	0621075601	Dr Chodidjah M.Kes	Syrup Rodent Tuber (Typhonium Flagelliforme) AS BREAST CANCER DRUG	Patent	P00201406508	Registered
3	0620026501	Dr. Dra SRI Arttini Dwi Prasetyowati M.Si	Tools and Methods LMS Adaptive Noise Removal by Modified for Workspace	Patent	P00201406510	Registered
4	9906976635	Dr. Imam Jamaluddin M.	Receptors In serotype DEN-3 ovarian Aedes aegypti	Patent	P00201508001	Registered
5	0626068303	Suparmi S.Si, M.Si	Vitamin A Carotenoids Drop Of Banana Skin	Patent	P00201508004	Registered

**Tables 3**

**Lecturer IPR UNISSULA 2016**

NO	REGISTRATION CODE	NAME OF LECTURER	INFORMATION	TYPE	NO OWNERSHIP IPR	STATUS
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<sup>61</sup> IPR registration results in Unissula through LPMM years 2015-2016

1	0608096901	Dr. Atina Husaana MSi., Apt	Lotion Composition And Development Based On Seed Extract Membrane Bixa Orellana (Bixa Orellana L) And Uses	Patent	P00201508002	Registered
2	0620026501	Dr. Dra Sri Arttini Dwi Prasetyowati M.Si	Tools and Methods LMS Adaptive Noise Removal by Modified for Workspace	Patent	P00201406510	Registered
3	9906976635	Dr. Imam Jamaluddin M.	Receptors In serotype DEN-3 ovarian Aedes aegypti	Patent	P00201508001	Registered
4	0626068303	Suparmi S.Si, M.Si	Vitamin A Carotenoids Drop Of Banana Skin	Patent	P00201508004	Registered

In Central Java in particular, intellectual property registration through the Office of the Ministry of Justice and Human Rights each year has increased pretty good. This is due to the participation of relevant institutions and the role of the universities in Central Java is the development of the application. But the majority of requests submitted for registration is still around Brand.<sup>62</sup>

Unissula at the Faculty of Law, from 2005-2007 has produced 9 pieces of research papers and a group of 13 pieces of research papers, which of course there are 22 pieces of creations that have the potential of intellectual property rights in the form of Copyright. The results of the law faculty Unissula more potential IPR in the field of Copyright.<sup>63</sup>

From the total number of researchers has been no potential IPR Patent precisely the form of some lecturers from the research dissertation has made the research results in the form of book which is potentially in the form of intellectual property Copyright namely:

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<sup>62</sup>Abdul Kadir Muhammad, *Assessment of Economic Law of Intellectual Property Rights*, Citra Aditya, Bandung, 2001, p. 26

<sup>63</sup>DG, *Handbook of Intellectual Property Rights (question and answer)*, Directorate General of IPR Department of Justice and Human Rights, Jakarta, 2001, p. 34

1. Prof. Dr. HM Ali Mansyur, SH, M.Hum and Dr. H. Mustaghfirin, SH., M.Hum. although already possessed Copyright but they have yet to make commercialization in general, only recently in a university level course.

2. In addition, because there is also the Academic kebutuan has produced several books specific courses are: Prof. Dr. HM Ali Mansour, SH, M.Hum, Dr. Sukarmi, SH.M.Hum and also Notary, HM Mawardi Muzamil, SH. While almost all the lecturers that have copyright over the form books Textbook. But they did not commercialize the textbook because only insider in a sense only for academic needs.

3. In 2007 the chairman of the Research Center, Dr.Ir.Slamet Imam Wahyudi, DEA was selected as the best presenter of Higher Education study. While Mochammad Rosul, ST.MT, was chosen as the first winner of the results of research in the State of Foreign Affairs of Malaysia.

4. In 2006, the Research Center has been getting 32 pieces of potential creation of research of the lecturers in Unissula, of 32 pieces is berpontesi kresi IPR in the form of copyright but it also is 6 pieces of research from the Faculty of Medicine and Engineering, which has the potential creation of intellectual property rights in the form of patent and it is likely that other areas of intellectual property such as Desai Industry, Trade Secret and Marks.

5. In 2007, the Research Center has been getting 35 pieces of the potential creation of research of the lecturers in Unissula, 35 pieces are berpontesi kresi IPR in the form of copyright but it also is 7 pieces of research from the Faculty of Medicine and Engineering, which has the potential creation of intellectual property rights in the form of patent and it is likely that other areas of intellectual property such as desaign Industry, Trade Secret and Marks.

6. In 2006, Lemlit Cooperation with Higher Education and Government (Department of P & K) Central Java Province has produced 17 pieces of the potential creation of research of the lecturers in Unissula, of 17 pieces is berpontesi kresi IPR in the form of copyright but it also is one the fruits of

research from the Faculty of Medicine, which has the potential creation of intellectual property rights in the form of patent and it is possible that other areas of intellectual property such as Design Industry, Trade Secret and marks.

Unissula, itself also has Creative Potential of Intellectual Property Rights (IPR) is Sinau Online, Cultural Academic Islami (Budai), and also the creation of a potential form of Subjects of lecturers from across the Faculty in Unissula, the space production in the Faculty of Engineering Unissula, but until now is also not of interest to be registered as creation potential of Intellectual Property Rights (IPR).

But in reality is still a lot happening on the contrary, that the intellectual works in college either in the form of scientific work and research are still many KUM achievement-oriented in order to rise in the hierarchy. And after only a material stored in warehouse or library. In the current circumstances, in fact intellectual works mentioned above can be optimized potential to become an alternative source of financing.

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