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## Urgency of Intellectual Property Rights Protection in Electronic Commerce

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### **Abstract**

*The development of digital technology has driven many rapid transformations in various aspects of life, including electronic commerce which is growing rapidly in Indonesia. The growth of electronic commerce brings new challenges to Indonesia related to intellectual property rights violations such as trademark piracy. This research aims to find out how the protection of intellectual property rights against trademark creators in the digitalization era and to find out how the implementation of intellectual property rights law in Indonesia continues to be carried out in the digitalization era. By using normative research methods, the research found that the challenges in implementing IPR protection are weak public awareness and less effective law enforcement. The Indonesian government responded by revising the law. However, better policies are needed so that protection can be stronger for creators and can protect consumers.*

**Keywords:** Intellectual Property Rights, Electronic Commerce, Technology.

### **Introduction**

The development of digital technology that is starting to spread and create a deep transformation in various aspects of life ranging from politics, social, and culture, including the economy. This digital era has paved the way for individuals who want to innovate, distribute information, and exchange ideas globally. This rapidly developing technology has also helped develop trade business innovation in the world, which has now spread the electronic commerce business often referred to as online business. (Amalia, Mulyana, Ramadhan, & Fajarwati, 2024). Electronic commerce itself is defined as an activity carried out as in general trading is carried out but transactions that were previously carried out commercially are now carried out using electronic media. (Purnastuti, 2004). As a country that has been affected by this digitalization, Indonesia has also experienced a surge in e-commerce.

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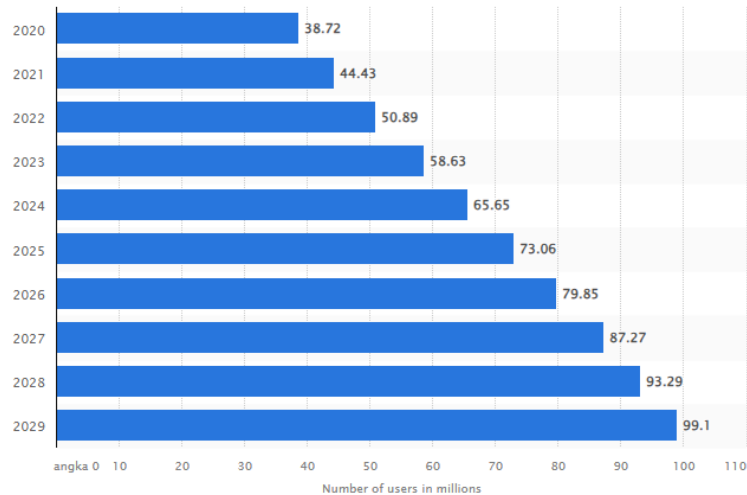


Figure 1: Number of E-Commerce Users in Indonesia 2020 - 2029

Source: (Statista, 2024)

Based on the graph above, it is clear that Indonesia is experiencing a surge in e-commerce users. It is even estimated that this surge will continue to increase from 2024 to 2029 with a total addition of 33.5 million users from 2024 to 2029 or an estimated increase of 51.03%. The emergence of electronic commerce is starting to bring structural changes and can affect all aspects, one of which is intellectual property. The development of this technology will raise challenges for a country, including Indonesia to strengthen the legal protection of intellectual property. Indonesia, a country that is developing its economy, really needs to deal with this. Especially in this digital era, intellectual property, patents, trademarks, copyrights, and other intellectual property rights are now assets that need to be protected and have a high value in today's digital era. Along with this, it is important to strengthen the legal protection of intellectual property.

Intellectual property rights are closely related to digital commerce. In recent years, there has been a significant increase in copyright infringement actions in the digitalization era such as cases of plagiarism without the permission of the creator, illegal distribution, and unauthorized digital content. The importance of IPR in this digital era is due to the ease of information that enters and creative works that begin to spread on the internet. Of course, this opens up space for violations of IPR such as illegal use of other people's work or piracy of other people's work. Digital trade provides quite challenging challenges to IPR protection rights.

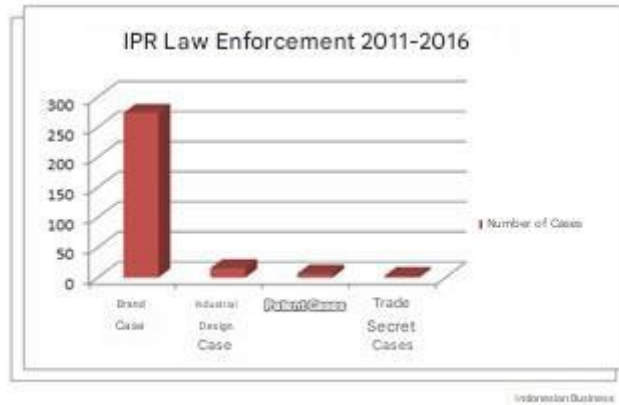


Figure 2. IPR Cases 2011 - 2016

Source: (Issetiabudi & Basari, 2017)

Based on the graph above, it is known that Indonesia has the most IPR infringement cases in trademark cases. Trademark protection in electronic commerce is important to be able to maintain trademark rights from other parties that might harm the creator of the trademark. If the owner of the brand does not protect the brand that he created, then it is likely that other parties will steal and claim the brand until then there will be circulation of counterfeit goods under the name of the brand. Basically, the violation of counterfeit goods circulating in electronic commerce is the responsibility of the marketplace or the party that is the intermediary between the seller and the buyer. The Indonesian government has responded by revising the copyright law to accommodate these new challenges. This revision includes strict provisions for digital copyright infringers and gives greater rights and authority to law enforcement in sanctioning digital copyright infringers. (Amalia, Mulyana, Ramadhan, & Fajarwati, 2024).

The next step that needs to be taken by the government is to encourage public awareness of the importance of intellectual property protection. Building educational programs and holding campaigns to provide understanding to the community, both business people, creators, and others who have trademarks in order to properly use the rights and obligations of intellectual property. However, until now, it can be seen that the implementation of regulations and law enforcement is a form of challenge for both the government and society itself. The growing digitalization also brings complexity to it, with this complexity it is quite difficult to find cross-border violations and determine jurisdiction. (Amalia, Mulyana, Ramadhan, & Fajarwati, 2024). Based on this background, the author is interested in conducting a research entitled, "Urgency of Intellectual Property Rights Protection in Electronic Commerce". This research aims to find out the protection of intellectual property rights against brand creators in the digitalization era and to find out how the implementation of intellectual property rights law in Indonesia continues to be carried out in the digitalization era.

## Literature Review

### a. Intellectual Property Rights

Intellectual property rights or what can be abbreviated as IPR is an object of wealth that can

become an object of transaction during the exchange process to meet human economic needs. IPR is an abbreviation taken from the translation of Intellectual Property Rights and translates into intellectual property rights, but in Law Number 25 of 2004 concerning national development programs, it is translated into Intellectual Property Rights or IPR. IPR itself is divided into two categories as follows (Arizki, 2016):

- 1) Copyright
- 2) Industrial property rights which are divided into several types, namely:
  - Patent rights
  - Brand rights
  - Industrial Design
  - Integrated circuit layout design
  - Trade secret
  - Geographical indication

Based on this grouping, IPR is closely related to the creation and wealth of industries related to commercial value. IPR is a property right in the realm of property law so that there are two related sides, namely the juridical aspect and the economic aspect.

#### 1) Juridical aspects of IPR

Based on research conducted by (Arlan, 2023) Which states that: “Juridically, users of the term wealth are always associated with ownership of moveable goods, immovable goods, tangible goods, or intangible goods. From a legal perspective, IPRs are categorized as personal property rights (personal property) arising from human natural rights (natural rights), therefore IPRs, similar to other property rights, can be defended from the power of anyone who is not entitled.”

#### 2) Economic aspects of IPR

Economically, the rights that exist in IPR function as the legal right of the owner to monopolize the use of the work or to legalize the work. From this economic aspect, ownership of intellectual property tends to be industrialized rather than as personal property. Therefore, the exclusive rights of IPR in this economic aspect can be used by someone other than the right holder as long as he pays royalties to the holder of the work.

### **b. Definition of Copyright**

The word copyright is a compound word derived from two words namely “rights” and “copyright”. The word “right” which means “the power to do something because it has been determined by law”, while the word “copyright” which means “the ability of the mind (mind) to create something new, especially in the field of art.” From the Copyright Act of 2014, there is an understanding of copyright itself, namely (Novariana, 2018):

*“Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in a tangible form without reducing restrictions in accordance with statutory provisions. - Article 1 Paragraph 1 of Law No. 28 of 2014 concerning Copyright”*

If referred to from Act No. 28 Year 2014 then someone's creation will get legal protection both

from the scope of literature, science, and art. The character of copyright is also specified in Article 16 Paragraphs (1) and (2) which reads:

“(1) Copyright is an intangible movable property (2) Copyright may be transferred or assigned, either in whole or in part because:

- Inheritance;
- Grant;
- Waqf;
- Testament;
- Written agreement, or
- Other justified reasons in accordance with statutory provisions”

### **c. Trademark Piracy/Fake Goods**

Brand has a role in a product in addition to a form of identification of a product, but also as a characteristic of an item so that it can be recognized by the public. The position of a brand is influenced by the quality produced by the company. Brands are often exposed to counterfeiting, especially brands that are traded electronically so that the owner of the legitimate brand will be disadvantaged due to a lack of marketing and brand reputation that will be damaged. The large consumptive rate is a driving factor for other industries to utilize the brands for profit without paying royalties to the brand owner. This creates the circulation of counterfeit goods in the market. The circulation of counterfeit goods, imitations with low quality quality is closely related to the offers given by producers to consumers in accordance with the purchasing power of consumers. The widespread circulation of counterfeit goods in the market is quite troubling for the government (tax), brand holders, and investors in the brand. (Sulistiyawati, Septarina, & Salamiah, 2021).

### **d. E-Commerce Liability Rights in Electronic Commerce**

Basically, violations of the circulation of counterfeit goods in electronic commerce are the responsibility of the intermediary, which in this case is e-commerce. However, the reality is that this does not work as expected. Basically, the law is made to protect the seller so that the marketplace is a place where the seller can feel safe because the marketplace provides protection against counterfeit goods. In addition to protecting sellers, this law can also protect consumers from purchasing counterfeit goods. Mentioned in Article 4 of the GCPL which states consumer rights are: “the right to choose goods and/or services and to obtain such goods and/or services in accordance with the exchange rate and the promised conditions and guarantees; the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services; the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be; etc.” (Khotimah & Chairunnisa, 2016).

## **Research Methods**

The research method used in this paper is normative research. Normative research is research that conducts research by examining library materials. The normative approach itself is an approach that deals with primary legal materials such as legal instruments, and laws and regulations while the secondary legal materials used are the results of existing scientific works

through Google Scholar.

## **Results and Discussion**

### **A. Legal Protection of Electronic Commerce Copyright**

Copyright exists because of the results of human thought in the fields of science, art, and literature. Copyright exists automatically when a work is created. Copyright is a civil right that is closely related to the work created and the owner of the work. A copyright can exist due to the results of human creativity, not which is outside the results of human creativity. Copyright itself has been regulated in Act No. 28 Year 2014 on copyright. Based on article 1 paragraph 1 of Law No. 28 of 2014 explained that: "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in real form without reducing the restrictions in accordance with the provisions of laws and regulations." Copyright itself is part of intellectual property in which it has a broad scope of objects. This is because intellectual property rights include science, art, literature, and computer programs. The development of the creative economy in Indonesia is now a priority in developing countries, one of which is Indonesia so the renewal of copyright law is required. The Copyright Act will provide protection and development of the creative economy so as to develop the country's economy more optimally. The emergence of various technologies in this day and age will certainly affect various kinds of things including the creation of works that have been created based on human creativity. This work can be physical or digital and this work can also be traded both conventionally and through digital platforms, but works that are traded through digital platforms will be more vulnerable to piracy of counterfeit products because they are more easily accessed by the media. (Jaman, Putri, & Anzani, 2021).

With the entry of this digital era, trade requires a recognizable "mark" for each product produced. Various programs are also facilities developed by the government to provide education to the public regarding the importance of legal protection for products produced by companies. As for some of the things done by the government in providing education to the public such as forming laws and regulations that have been adapted to the needs of the community, documenting intellectual property online, protecting intellectual property, and making institutional improvements. In addition, the government also conducts socialization regarding the importance of legal protection to protect products sold on digital platforms.

### **B. Implementation of Law on Copyright Infringement in Electronic Commerce**

Copyright is one aspect of intellectual property rights. In intellectual property law, there is a substance that contains the principle of intellectual property protection based on research conducted by (Ramadhan, 2022) namely:

- 1) The principle of IPR as an exclusive right means that the intellectual law system can give special rights to a person who owns intellectual property. With this right, intellectual rights holders can prevent other parties from using, making their products without the permission of the rights owner;
- 2) The principle that intellectual works are protected based on their registration, which means that the protection of intellectual work rights requires the registration of the work in advance so that the intellectual work can sue irresponsible parties who try to use the intellectual work; Prinsip pendaftaran yang bersifat teritorial yang berarti perlindungan hukum hanya diberikan dimana wilayah hak tersebut didaftarkan; dan

3) The principle of separating the physical object from the intellectual work in the object. This means that the intellectual property legal system attached to the object does not automatically have power over the object because the ownership of the intellectual work of exclusive rights of the object is still owned by the creator.

The efficiency of the application of the legal system in order to maintain copyright in this digital era has two aspects in it, such as (Dewi, Dahler, Yulianti, & Tahari, 2024):

- Regulatory evaluation that focuses on the diversity of strengths and weaknesses of the UUHC from various countries. Weaknesses include inconsistent implementation of the law, inappropriate sanctions that are considered detrimental to victims, and lack of transparency in monitoring violations. Copyright infringement cases in digital commerce still seem to illustrate the weakness of the legal system in facing challenges.
- Enforcing the law in holding the effectiveness of the legal system. Relevant agencies that are obliged to enforce the law need to provide an overview of how decisive action to deal with electronic commerce copyright infringement.

### **C. Policy Implications of Intellectual Property Rights**

The implications of Intellectual Property Rights (IPR) policies with electronic commerce in the form of:

- Sufficiently stringent IPR protection can help limit access to digital content from the general public. IPR protection and public interest in accessing content need to be balanced to avoid overlap.
- Restricting trade, which provides provisions for regulating intellectual property in electronic trade agreements, can limit or facilitate market access to digital products.
- IPR policies can also affect innovation as well as competition in this era of electronic commerce. However, IPR policies can also encourage innovation as well as investment in digital technology development.
- IPR policies also need to pay attention to consumer protection against imitation goods that can harm consumers.
- IPR policies also encourage collaboration between countries in order to help develop standards as well as frameworks that can facilitate safe and fair electronic commerce.

### **Conclusions**

The development of digital technology has now changed many aspects of human life including electronic commerce which is increasingly accelerating. In Indonesia itself, the increase in the use and spread of electronic commerce is quite widespread and widespread so that this creates new challenges for several aspects including intellectual property rights (IPR), especially brand rights which are often misused and become the circulation of counterfeit goods. Creative works that have been created by someone are now more easily accessed by the internet and become a source of infringement such as piracy and unauthorized use. Therefore, the implementation of IPR protection is quite important in maintaining the rights of creators of works in this digital era. The Indonesian government itself has responded to this challenge by providing a revision of copyright law to adjust to technological developments as well as establishing stricter sanctions for copyright infringers.

The implementation of the law on copyright in Indonesia still has several challenges including the lack of public awareness and implementation of the law that is still considered lacking. The policy of protection of IPR still needs to be done harder and further, by educating the public and improving the legal system. In addition, policies must also be balanced to protect the rights of creators without having to hamper public access to these works. By implementing the right steps and on target, copyright protection will have a significant impact on Indonesia's economic sector, can provide new innovations to protect consumers from counterfeit goods in circulation.

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