

Research Article

Pancasila Philosophical Values as the Regulation Basis of Intellectual Property Rights In Indonesia

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Abstract.

Not only having recognition of property rights, the customs and culture of Indonesians also have a social function. As the strongest legal standing, intellectual property rights are individualistic to monopolize ownership rights over intellectual works. This right is developed in individualistic and capitalistic countries. Pancasila as the nation's philosophy is more prioritizing the balance between rights and social functions, therefore the regime of intellectual property rights is different from the characteristics of Indonesia. Pancasila contains values for the soul of the nation and the ideals of Indonesia law. Pancasila recognizes intellectual property rights as part of the legal ideals to achieve the national goals, i.e creating public welfare. It also contains fundamental basic values that must cover the regulations, including those related to intellectual property rights. By this reason, it is necessary to develop a basis in theory and practice to balance rights and social function that reflect Pancasila as the philosophy of Indonesia people, including to limit and to exclude exclusive rights.

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1. Introduction

Since Intellectual Property Rights (IPR) was introduced in Indonesia through Law No 6 of 1989 of Patents, it became a quite controversial legal instrument because the Patent Law reflects a bold monopolistic character. Communal work values were being rejected. However, The Presidential Decree 34 of the Secretariat of the Republic of Indonesia was able to harmonize the norms of patent law with the national interest. The preamble of Law No 6 of 1989 of Patents stated that "The Republic of Indonesia is a constitutional state based on Pancasila and 1945 Constitution, aims to create a just and prosperous society that is disseminated materially and spiritually."

Along the time, Pancasila is no longer listed in the preamble of IPR regulations. Basically, IPR is divided into 2 (two) main magnitudes, i.e copyrights and industrial property rights. Copyright is defined as all rights associated with copyrights. While

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industrial property rights consist of patents, brands, geographic indications, trade secret, industrial designs, integrated circuit layout designs, and plant variety protection.

IPR is an individualistic regime to monopolize a technology and to protect the investment. Those things are completely different from the characteristics of Indonesia. IPR as a right cannot be separated from economy issues because it is identical with the commercialization of intellectual works.

The regulations of IPR substantially are sourced from the concept of individualistic and capitalist concept. The individualistic system does not allow the development of community rights recognition collectively, unlike in socialist economic countries. Furthermore, the systems developed in Western countries do not protect the rights of local communities over their intellectual property, which are generally not owned individually, including in Indonesia.

Based on the background above, the problem statement which can be discussed is Pancasila philosophical values as the regulation basis of intellectual property rights in Indonesia.

2. Discussion

2.1. Philosophical Values of Intellectual Property Rights

As intelligent creatures of God's law, human must be able to distinguish between good and bad. Therefore, individuals also have rights to exploit this idea as a whole, then the use of wealth without the compensation of other parties must be considered as theft. This wealth is private and exclusive. Based on moral obligation, society and the State must recognize and protect these rights.¹

There are 2 (two) influential philosopher of IPR protection, i.e John Locke and Friedrich Hegel. The IPR concept of these philosophers comes from the Natural Theory Law which is sourced from the morality of what is good and what is bad. Natural rights are derived from the real world for tangible material. Both philosophers do not directly provide IPR conception. It means the general concept and wealth justification have been dominated by tangible wealth.

John Locke's *The Second Treatise of Government* of 1689 taught the concept of property with its preposition, which is stated that effort or labour belongs to a person and when that person able to produces an object from general use properly, s/he will combine his/her effort into something as an object. If another person takes the object, it is assumed that person has taken his/her effort. This is detrimental to the first person.

Therefore, others have an obligation to let the first person has his/her property. Besides, there are people whose labour is limited by two things, i.e where there is enough and what remains is equally good for others [1].

John Locke furtherly explained that humans are equal in status naturalis, then people's obligation to one another is the same as 2 (two) keys of free right: (1) Everyone has the right to freedom to perform effort as they want; (2) Everyone has the right of freedom to use the earth and its fruits that God as given.

These two rights of freedom indicate that in natural law no one can sue another for a use that is not detrimental to someone's efforts or society. However, a person is not allowed to harm the rights of others or hamper their access to society. John Locke emphasized that effort to produce intellectual receipts are rights that must be respected and have implications for economic compensation.

However, John Locke's view is different from Friedrich Hegel. In his book *The Philosophy of Right of 1821* and *The Lectures on the Philosophy of History of 1820*, Hegel elaborated the concept of Right, Ethic and State. He developed a concept related to the existence of personality. He stated that property rights associated with personality or self-identity are free will (The Personality Theory). As an abstract conception, a person must give him/herself an external space of freedom to make an idea. Wealth is a media to express a person's personal and singular will objectively.

According to Hegel, personality is free and has limitless knowledge. Personality is universal, but to achieve some more concrete forms in the world, freedom is not enough. This is the reason for the existence of wealth. The fusion of mental, talent, knowledge, and artistic skill are called inner possession. Therefore, when it is externalized, it will become something that is legal ownership. This is emphasized by Hegel that a person must translate his/her freedom into an external space to form an idea. This is the beginning of personality which as a whole is still abstract as a determination of the absolute and unlimited will. The will interacts with the external world with various activity levels. Mental processes, such as recognition, classification, explanation, and memory can take over the external world through the mind. This action is the first step for self-actualization.

Hegel preserved his conception of wealth by distinguishing the function of choice and the institution of wealth inherently at the level of abstract rights of optimum evolution in life ethics. Every discussion of freedom must be begun not only from individual concepts or individual consciousness but from the essence of self-awareness. Human must realize the scope of meum and tuum. There is no way, a person can differentiate him/herself from the world and from others. This is a prima faice of interesting wealth institutions

for their inherent qualities. Personality as a power which gives the ability to recognize and translate freedom of somebody externally to form the existence of idea. Therefore, Hegel stated that in a particular stage, a wealth must become a personal thing and private wealth becomes a universal institution. This is the basis of IPR justification.

According to Hegel, there is something more of wealth than human instinctive behaviour. The importance of wealth is to build, develop, and understand our personality, as well as to help us to control our expression, and at the same time to define boundaries between other persons and other wealth of society. In the end, this is the way of human respects each individual's personality through IPR. Human is free to choose the wealth they want to acquire and the social roles they want to fulfil. Therefore, the real issue is not ethical issues, but legal issues. Then it's necessary for the court to define the object of wealth.

The Hegelian concept establishes the capacity of rights, ethics, and familiar Godhead feeling. It also sets minimum moral standards and at the same time prevents inconsistencies from claiming that a person's body naturally is not wealth. Abstract rights, not from human entities naturally, but from free will inside them, which is referred to abstract conception. Wealth is an expression of will as part of the personality, it creates conditions to determine further action.

Legal protection is frequently limited. In a matter of fact, the value of the intellectual property is given to the strength of IPR and society, depending on the ability of thinkers and societal tolerances. Hegel said that wealth as personal identification also benefits society. Society is the referee who through individual market trying to locate and protect identity through wealth voluntary exchange to reflect the will of individuals. In this case, society has limited rights to prevent individual interests in accumulating, controlling, and granting permits for their assets. The needs of society will not justify the expropriation of one's wealth without reasonable compensation.

Therefore, Hegel's theory complements Locke's theory for two reasons, i.e. first, IPR is a property related to works that show intellectual capacity and human creativity rather than just consumption, as stated by Locke and second, Locke's interpretation of IPR logical sequence that human from the beginning has body, soul and effort that submits to a desert with no owner. Those reasons are the beginning of Hegel's theory that IPR is an abstract right of human existence.

Otherwise, Hegel's conception of human rights is separated from individualistic notion stated by Locke. In other words, Hegel's concept complemented and perfected Locke's concept. Locke emphasizes that effort to produce intellectual creations is a right that must be valued and effort has implications for economic compensation. While Hegel

complements this notion with an emphasis that intellectual creation is the embodiment of personality as an abstract right of human existence. And value is not merely economic compensation, but it extends to the value of economic rights and the recognition of moral rights.

2.2. Pancasila as the Regulation Basis of Intellectual Property Rights

Pancasila is staatsfundamentalnorm and the main value of the law formation in the hierarchy of laws in Indonesia. Pancasila is placed as a basic value because, i.e. first, Pancasila is the legal state for the nation and state, that continues to complete the law pattern in Indonesia with five basic values, including Divine values, Humanitarian values, Unity values, Deliberative values, and Social Justice values. Second, as a basic value, Pancasila will face various values such as capitalism, individualism, etc. Third, as the soul of laws of Indonesia, Pancasila still has not received its essential meaning from legal experts [2].

Pancasila has two main values of those five values, i.e. Religiosity value and Community value. The value of Religiosity implies the concept of thinking, which is in a cosmic space of performing thinking and law, it is always associated with Divine values by placing God at the centre of legal dynamic in Indonesia society. Furthermore, Community values is a cosmic space which stated that people of Indonesia cannot live alone, but always in a group. The combination of Community and Religiosity values form a philosophy that is known as Pancasila Philosophy [3].

The communal value of Indonesian has particular uniqueness, i.e. diversity and togetherness. Togetherness becomes dynamic of its communal work between individuals and groups, consisting of multicultural, multi-ethnic, multilingual, and multi-religious. Therefore, communal value has contained the process of acceptance among various elements of culture, religion, and other forming values. It is reasonable to state that the communal value of Indonesian nation is communal diversity. If it is connected to the existence of belief in Divine values, it can be stated as Communal Religious value of Diversity. This value is derived from Pancasila Philosophy as staatsfundamentalnorm which eventually will be formed grundnorm, i.e. the Constitution.

Pancasila in the Preamble of 1945 Constitution is a guiding value in Indonesia, which consists soul of Indonesian nation as the main thought and legal ideas. These values intended and aimed to implement happiness, prosperity, and peace independence in Indonesia society as the order of constitutional.

The material used in formulating the main idea in Pancasila as stated in the Preamble of 1945 Constitution is the noble values that are applied and shared by the people of Indonesia. By this reason, Pancasila is not only the life fundamental value, but also contains the most important universal basic values.

According to Emanuel Sujatmoko, Pancasila as the ideology of Indonesia has fundamental values, instrumental values, and practical values, that equivalent to the Rule of Law which consists of Supremacy of Law and Equality before the Law.

The definition of ideology is a system of ideas and ideals, especially one which forms the basis of economic and political theory and policy. According to Moerdiono, Pancasila is different with other ideologies, such as capitalism and communism. They were first occurred as philosophical thoughts which were then formulated in the ideological formulation, then were manifested in political concepts. This process has passed decades to form it. Historically, Pancasila as an ideology contains the characteristics of the ideology of Reformist and Revolutionary.

In 1985, President Soeharto emphasized that Pancasila is an open ideology. It means that the fundamental value has been set already, but the application can be developed creatively according to the dynamic needs of Indonesia society development. The constitutional accountability for this open ideological can be found in the Explanation of 1945 Constitution, which explicitly stated that The Constitution is a written form of Basic Law which institutionalize the background of its mystical atmosphere. It is not only regulating the basic rules of People's Consultative Assembly (MPR) as the embodiment of Indonesia people but also must observe the dynamic of society and outline the following-plans for the next five years. Pancasila is not a dogma or a religion. The statement of President Soeharto can be seen as a planning tool to develop the instrumental values of Pancasila linear with the principle in the fields of economy, socio-culture, politics, and defence. What we need to do is systematize the elements of Pancasila values as an ideology and make them as an integrated, coherent, and consistent system of thinking. Pancasila is a philosophical intellectual work that requires diligent handling. As the soul and guide of Indonesia nation, Pancasila has been considered capable of bringing an independent, united, and sovereign to Indonesia. Although, Pancasila has not yet completely reached the stage of a just and prosperous democratically.

Pancasila as an open ideology is expected to be opened to free markets competition as the main objective of Agreement on Establishing the World Trade Organization which has been ratified by Law No 7 of 1994. In Fair Competition framework, there are

three legal instruments that require enforcement, i.e Intellectual Property Rights Law, Competition Law, and Unfair Competition Prevention Law [4].

IPR law aims to protect intellectual creations against piracy or counterfeiting. Competition law ensures the market of fair competition, for instance, prohibit monopoly or cartel action. Unfair competition prevention law prevents actors or competitors from acting fraudulently which is contrasting to fair industry and business practice, for instance misleading consumers or discrediting competitors.

The National Development is for the whole people in Indonesia. Therefore, Hegel's Personality Theory of value system is linear with the IPR regime as new ownership in Indonesia. Wealth is defined as peculiar or proper to any person that which belongs exclusively to one; In the strict legal sense, an aggregate of rights which are guaranteed or protected by the government; the word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible real or personal, everything that has an exchangeable value or which goes to make up wealth or estate.

The concept of law according to Indonesia laws, wealth is objects and legal relations. In other words, wealth is including object (zaak) and relation (verbintents). Wealth is an object belonging to a person and it has an economic value. Furthermore, according to Article 499 of the Indonesian Civil Code, the definition of an object is assets and rights. Both assets and rights of somebody are recognized and protected based on valid evidence. Property Rights definition according to Article 507 of Indonesian Civil Code stated that property right is the right to enjoy the use of an object freely as long as it does not contradict the law or general regulations. The provisions have the rights to determine and not to interfere the others' rights without reducing the possibility of compensation payments and revocation based on public interest.

Based on those articles, the property right is only applied to movable property, including the right to control, the right to enjoy, and the right which does not against the law. Pancasila recognizes the property rights as part of legal ideals of the Republic of Indonesia to achieve national goals "creating public welfare". IPR is recognized by Indonesia based on Pancasila, then it cannot be taken arbitrarily. However, every right granting has a specific purpose. Therefore, IPR as exclusive rights of legal monopoly, the use of it is also limited. It has a social function in Indonesia context.

The culture of Indonesian people based on Pancasila ideology, it views human completely as human, i.e human nature is the creature of God Almighty or as live beings that become part of other human groups. As social beings, human life in a community

environment with other humans and their natural surroundings. But whichever understanding of harmony and balance of life, the view and value of human as an individual has the same weight as its essence and dignity as a social being [4].

The value of human as an individual, including their development of efforts and works, gained the highest place. In other words, the value concept of human as live beings created by God almighty, human is provided with the highest place, although it must always be implemented in harmony and balance with the concept of human as a social being. Therefore, it is reasonable if The Outline of State Policy (GBHN) or National Long-Term Development (PJPN) emphasize that Pancasila as the State Foundation of the Republic of Indonesia is the source of all sources of law (grundnorms) in Indonesia nation.

Furthermore, IPR Protection is written in Article 28 Letter H of 1945 Constitution stated: "... everyone has the right to own private property and this right cannot be taken over arbitrarily by anyone..." Specifically in Article 28 paragraph (4) that stated "... Everyone has the right to advance themselves in surviving for their rights collectively to support their society, nation, and state..."

Based on these regulations, IPR Protection according to Pancasila is not only recognizing individual property rights but also recognizing collective ownership rights. This is linear with the improvement of international understanding about Collective Intellectual Property, such as genetic resources, traditional cultural expressions (folklore), and traditional knowledge.

Therefore, based on the National and Economic Development, IPR Law is an important legal instrument to be transplanted into the national legal system by attaching Pancasila as the ideal foundation and 1945 Constitution as the constitutional foundation.

Related to IPR Protection, Pancasila Philosophy contains fundamental values that must cover the law. At the level of the norm, Pancasila contains implementation values. While on law interpretation by a judge in certain cases, Pancasila contains practical and social values. These values are Pancasila characteristic that is different from other justice values [5].

3. Conclusions

The communal religious value of diversity is derived from the legal of Pancasila Philosophy as staatsfundamental norm in the hierarchy of Indonesia laws. Pancasila is an open ideology that can be the regulation basis of intellectual property rights in Indonesia by implementing the social function.

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