
LAW ENFORCEMENT OF DEFAULTS IN INTELLECTUAL PROPERTY RIGHTS AS DIGITAL TRADE OBJECTS

Muhdar, Mohamad Tohari, Wieke Dewi Suryandari

Universitas Darul Ulum Islamic Centre Sudirman GUPPI, Indonesia

Email: mudamuhdar99@gmail.com mohamadtohari.undaris@gmail.com wiekedewi11@gmail.com

Abstract

The rise of information technology has highlighted the significance of Intellectual Property Rights (IPR), which protect creative efforts and economic investments. In the digital era, intellectual property rights have become a key means to support innovation, creativity, and healthy competition. This study aims to provide a comprehensive analysis and understanding of how to enforce laws regarding breaches of contract in the context of IPR within digital trade. The research contributes to the development of robust legal frameworks and practices in the digital economy. The research method used to write this is normative legal research method, which is legal research carried out by examining library materials and secondary data, where the approach used will be a normative juridical (statute approach) with descriptive-analytical character (Soerjowinoto, 2006). The normative approach is used to analyze Law Number 28 of 2014 concerning Intellectual Property rights and civil law, carried out through examining specific regulations or written laws related to the concept of law enforcement concerning intellectual property Rights as objects of digital trade.

Keywords: Intellectual Property Rights; Digital; Default Law Enforcement

INTRODUCTION

The internet, although it offers various advantages and conveniences, not only provides benefits for business actors but also carries risks that result in legal violations, such as security and data privacy issues, as well as violations of the human rights of internet users. Advances in digital technology have also led to an increase in copyright violations in Indonesia (Hidapenta et al., 2023; Kharisma, 2021), especially against digital copyrighted works such as computer software, digital music, digital films, digital books, and other similar works.

The current development of information technology has drawn attention to the importance of Intellectual Property Rights (IPR), which is an integral part of the law that aims to protect creative businesses and economic investment in this field (Elpina, 2024; Olubiyi et al., 2022; Trequattrini et al., 2022). IPR, as regulated in the Trade Related Aspect of Intellectual Property Rights (TRIPs) which is an agreement within the framework of the World Trade Organization (WTO), covers various aspects such as copyright, patents, trademarks, industrial designs, protection of integrated circuits, trade secrets, and geographical indication of the origin of the goods (Laxmi & Inala, 2021).

Even though internet use provides many benefits, the high level of internet use can pose a threat to the existence of copyrighted works and inventions produced by Intellectual Property Rights (IPR) owners. The Internet has several technical characteristics that support the growth of problems related to Intellectual Property Rights. Intellectual Property Rights play an important role in the modern world because they involve legal aspects that are closely related to technology, economics, and arts and culture (Abbott et al., 2024; Walsh et al., 2021). Intellectual Property Rights are an integral part of the legal system in modern life, especially in the context of the development of Copyright for digital products. (Syahdeini, 2009).

The 2014 Intellectual Property Rights Law provides legal protection for creators of digital creative works, which can be converted from physical to digital form or directly produced in digital media. However, digital trade presents unique challenges such as copyright infringement, trademark counterfeiting, patent misuse, licensing and digital distribution issues, and trade secret protection. Copyright owners face challenges in preventing unauthorized distribution and piracy, while trademark owners face risks in counterfeit products and consumers. Patents can be misused by companies or individuals seeking to claim ownership of unrightfully their technology or aggressively sue others for financial gain. Digital content theft and unauthorized access also pose challenges for original creators. Therefore, safeguarding intellectual property rights in the digital world remains a significant challenge.

This issue requires a strong legal approach, effective enforcement actions, and greater awareness of the importance of Intellectual Property Rights (IPR) in supporting innovation, creativity, and healthy competition in the digital era. Intellectual property is the exclusive right owned by the owner or rights holder, so others who want to utilize or use those rights to create or produce a work must obtain a license from the owner or rights holder. (Muhammad, 2004) Article 1 number 25 of Law Number 28 of 2014 concerning Intellectual Property Rights states that Compensation is the payment of a sum of money charged to the perpetrator of the economic rights violation of the Creator, Copyright Holder, and/or Related Rights owner based on a final and binding court decision on the losses suffered by the Creator, Copyright Holder and/or Related Rights owner. Based on this Article, it is clear that intellectual property perpetrators will be protected by the law.

Breach of contract in the context of Intellectual Property Rights (IPR) in digital objects can occur when there is a violation or failure to fulfill agreed obligations related to digital content or assets. Examples include copyright infringement in the use of digital content, unauthorized distribution of Licensed Content, violation of Software License Agreement, contract violation in Digital Application Development, breach of agreement in Digital Content Monetization, and use of content that infringes on third-party Intellectual Property Rights. Companies can be considered in breach of contract if they use digital content beyond the scope or duration of the license, distribute content to regions not included in the agreement, or use content that infringes on third-party intellectual property rights without permission.

These examples show that default in the context of digital objects can have serious legal and reputational consequences for the companies and individuals involved. Therefore, it is essential to ensure compliance with agreements and respect the intellectual property rights of others. The legal basis for defaults related to Intellectual Property Rights (IPR) as digital objects is generally based on agreements or contracts that regulate rights and obligations related to IPR. The Civil Code provides a general framework for agreements and breaches of contract in Article 1234, which states that a breach of contract occurs when one of the parties fails to fulfill the obligations agreed upon in the contract. In the context of Intellectual Property Rights as digital objects, a breach of contract occurs when one party does not fulfill the obligations related to the use, distribution, or licensing of digital content specified in the contract. If a breach of contract occurs, the aggrieved party can take legal action to obtain recovery or compensation for losses caused by the breach of agreement.

Based on the description above, the interesting legal issue to discuss here and becomes the research purpose is discovering how to enforce the law regarding breach of contract in Intellectual Property Rights as an object of digital trade. The research contribution is to provide a comprehensive analysis and understanding of how to enforce laws regarding breaches of contract in the context of Intellectual Property Rights (IPR) within digital trade. This study addresses the legal challenges and propose solutions for ensuring effective

enforcement of IPR, thereby protecting digital copyrighted works such as software, music, films, and books. By exploring legal enforcement mechanisms, the research contributes to the development of robust legal frameworks and practices in the digital economy.

RESEARCH METHOD

The research method used to write this is a normative legal research method, which is legal research carried out by examining library materials and secondary data, where the approach used will be a normative juridical (statute approach) with descriptive-analytical character (Soerjowinoto, 2006). The normative approach is used to analyze Law Number 28 of 2014 concerning Intellectual Property Rights and civil law, carried out by examining specific regulations or written laws related to the concept of law enforcement concerning Intellectual Property Rights as objects of digital trade.

RESULT AND DISCUSSION

Intellectual Property Rights as Digital Objects

Intellectual property is an exclusive right granted by law to individuals or groups over their intellectual creations. These rights protect various types of creations originating from human thought, such as artworks, inventions, designs, trademarks, and other forms of innovation. The purpose of intellectual property protection is to provide incentives to creators and innovators by granting them the right to control the use, distribution, and commercialization of their works, usually for a specified period. Intellectual property can be divided into several main categories, including copyright, patents, related rights to trademarks, industrial design rights, and trade secrets. Each of these categories serves a specific function in protecting various aspects of human creations and innovations (Rahardjo, 2010).

In the current era of globalization, technology has become the backbone for creating efficiency without being hindered by national boundaries, with the internet being one of its main pillars. The digital age is characterized by rapid advancements in the fields of science and technology. The emergence of data conversion technology has transformed many traditional copyright works into digital formats. It enables easier access for many people through computers, software, and the Internet. In this digital era, creators have a variety of technological options to support their creative processes more easily, efficiently, and seamlessly (Saidin, 2015).

Technology has become the focal point of society, particularly in the era of the Industrial Revolution, which has transformed traditional ways into modern ones with widespread technology usage. In this era, technological products are closely related to intellectual property rights (IPR). In this digital age, digital IPR has become exceedingly popular as people can complete their work anytime and anywhere thanks to the internet. Therefore, legal protection for digital IPR is paramount.

Intellectual property rights have commercial value as they can provide economic benefits to creators, inventors, or designers. These economic rights are a form of recognition for the intellectual activities carried out by creators, inventors, or designers. Additionally, the moral rights granted to the owners of intellectual property are inherent to the creators and cannot be removed even after their passing. In principle, every owner of intellectual property rights is entitled to the benefits and advantages of both economic and moral rights. The development of intellectual property impacts a country's macroeconomic conditions, such as by increasing exports of quality products, promoting technological advancements and research, and developing products as a local and national identity. Furthermore, the development of intellectual property also provides recognition and acknowledgment of individual creativity and innovation (Sulistianingsih et al., 2021).

Intellectual works as assets of a nation need to be protected and managed effectively because they have a significant impact on national development. Intellectual Property Rights (IPR) protection is closely related to the economic development of a country. The more open a country's economic system, the more important the role of IPR protection in supporting its economic development. The protection grants exclusive rights to the rights holder to enjoy or exploit the asset for a certain period. During the legal protection period, others can only enjoy, use, or exploit the rights with permission from the rights holder. The approach creates incentives for innovation and creativity and fosters economic growth through the recognition of works and inventions (Sinaga, 2020).

Legal protection for owners of Intellectual Property Rights (IPR) has a central role in creating balance in trade and harmony in society, both locally, nationally, and internationally. Legal protection is an important issue in the context of IPR, but it is necessary to understand who and what is being protected. Sometimes, different interests can conflict with each other, giving rise to polemics between developed and developing countries. In the context of protecting digital works of art, Law Number 19 of 2016 which is a revision of Law Number 11 of 2008 concerning Information and Electronic Transactions, in Article 25, states that electronic information and electronic documents compiled as intellectual works are protected as intellectual property rights, under relevant laws and regulations. Therefore, the protection of digital artwork is guaranteed through several regulations, including Law Number 24 of 2014 concerning Copyright, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, as well as regulations and other related legislation.

Law Enforcement of Defaults in Intellectual Property Rights as Digital Trade Objects

Intellectual Property is the right granted by the state to any intellectual work within the domain of Intellectual Property, which includes ideas and concepts that have been materialized into economically valuable works. These rights can be obtained automatically or through official registration and serve as recognition, acknowledgment, and legal protection. Intellectual Property is protected by the state by the provisions of applicable laws and regulations. Registering intellectual works is one of the steps taken to ensure legal protection by the state.

The rapid development of technology has triggered significant changes in the digital world, which in turn demands continuous innovation. Innovation, which is valuable and needs protection, becomes the key to facing these changes. One way to protect innovation in the digital era is through the protection of digital Intellectual Property Rights (IPR). One form of protection for IPR is by making agreements between the parties involved. Agreements in the context of IPR play a crucial role in regulating the use, protection, and commercialization of intellectual property rights, ensuring that the rights of IPR owners are respected and providing a legal framework to support innovation in the digital era. Here are some key functions of agreements in IPR:

- a. Establishing rights and obligations: Agreements establish the rights and obligations of the parties involved. For example, in a licensing agreement, it is determined who has the right to use the intellectual property, for what purpose, and within what limits.
- b. Providing official permission: In many cases, agreements are a means to provide official permission to other parties to use intellectual property rights, such as copyright licenses, patent licenses, or trademark licenses.
- c. Providing legal protection: Intellectual property agreements provide a clear legal basis for rights holders to protect their intellectual property from unauthorized use or infringement. If there is a breach of contract or infringement, the agreement can be used as a legal basis for taking action.

- d. Regulating compensation and royalties: Intellectual property agreements establish provisions regarding the compensation and royalties to be paid to rights holders for the use of their intellectual property. This ensures that rights holders receive fair compensation for their work.
- e. Defining the scope of use: Agreements help define the scope of the use of intellectual property rights. For example, in a licensing agreement, it can be determined whether the rights are exclusive or non-exclusive, as well as geographic limitations and duration.
- f. Encouraging innovation and collaboration: Intellectual property agreements can encourage innovation and collaboration by providing legal clarity to parties wishing to collaborate on innovative or creative projects.
- g. Preventing conflicts and misunderstandings: With clear agreements, the risk of conflicts and misunderstandings can be minimized. All parties know exactly what is expected of them and what they will get from the agreement.
- h. Facilitating dispute resolution: Agreements may include clauses for dispute resolution, such as arbitration or mediation, which can be used to resolve disputes in an efficient and structured manner.

Agreements in the context of intellectual property serve as important instruments for regulating, protecting, and facilitating the safe and fair use and commercialization of intellectual property. These agreements are governed by Article 1313 of the Civil Code, which states that an agreement is an act by which one or more persons bind themselves to one or more others. To be considered valid, Article 1320 establishes four main conditions: agreement, capacity, definite subject matter, and lawful purpose. If these conditions are met, the agreement is considered valid and legally binding for both or all parties involved. With a valid agreement in place, parties involved in intellectual property transactions have a clear legal foundation, providing protection and assurance that their rights are respected. Additionally, a valid agreement helps prevent disputes and ensures that any breaches or defaults can be legally addressed.

The principle of freedom of contract in Intellectual Property Agreements follows Article 1338 paragraph (1) of the Civil Code, which states that individuals have the freedom to make contracts, determine the contents of agreements, and limit their liabilities, as long as they do not violate the law, morality, or public order. The principle is considered relevant because society often requires flexibility and ease in transactions, and not all situations can be detailed in laws. The complexity of modern society also drives the need for practicality in daily activities. Therefore, the principle of freedom of contract becomes necessary in intellectual property agreements.

Each contract outlines the rights and duties that the parties involved are obligated to fulfill. However, in reality, contracts often encounter various hindrances that can impede the execution of the contract's provisions. When one party fails to meet the outlined rights and duties, a breach of contract transpires, commonly referred to as default. Default is a situation where either the creditor or debtor fails to comply with their obligations or violates the terms of the agreement. A default may occur due to several reasons, including inability to fulfill obligations, intention, or neglect. In the event of a default, the affected party has the right to take legal action or seek compensation according to the provisions of the agreement or relevant laws and regulations. Sanctions or remedies that can be sought include contract termination, compensation, or other legal action (Miru, 2016).

Article 1238 of the Civil Code states that the debtor is negligent if he is declared negligent by an order or a similar deed, or for the sake of the agreement itself, that is, if it stipulates that the debtor must be considered negligent after the specified time has passed. A summons is a warning given by a creditor to a debtor to fulfill obligations or achievements by

the agreement agreed between the two parties. A subpoena letter generally contains a demand that the debtor fulfill its obligations within a certain period and is usually the first step before further legal action is taken. The concept of a subpoena is often used in cases of default or breach of contract. A warning letter or subpoena is usually served in several stages, and often, common practice is to issue three warnings before proceeding with further legal action. However, these rules may differ depending on local legal provisions or contractual agreements (H.S, 2019).

According to Article 1236, the party who is in default is legally responsible for compensating the creditor for any costs, losses, or interest incurred due to the debtor's inability to hand over an item or failure to properly care for it. Additionally, Article 1243 of the Civil Code stipulates that compensation for losses and interest becomes mandatory if the debtor fails to fulfill their obligation, even after being declared in default, or if the required action or item can only be provided after the specified deadline has passed.

CONCLUSION

The rise of information technology has highlighted the significance of Intellectual Property Rights (IPR), which protect creative efforts and economic investments. IPR is regulated by the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement under the World Trade Organization (WTO) and covers aspects like copyright, patents, trademarks, industrial designs, integrated circuit protection, trade secrets, and geographical indications of origin. The high utilization rate of the internet can threaten copyrighted works and inventions. Law Number 28 of 2014 provides legal protection for IPR creators. Breach of contract in digital objects can occur when there is a violation or failure to fulfill obligations. Agreements are crucial instruments for regulating, protecting, and facilitating the safe and fair use of intellectual property.

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First publication right:

Injurity - Interdisciplinary Journal and Humanity



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