

# Protection Intellectual Property Right in Indonesia and Holland (Study Comparative Both Country)

**Hafid Zakariya, Dardiri Hashim, Nurul Hidayah**  
Law Faculty of Islamic Batik University, Surakarta  
hafidzakariya@gmail.com

**Abstrak**-Tulisan ini bertujuan untuk mengetahui bagaimana perlindungan hukum terhadap hak kekayaan intelektual di Indonesia dan Belanda dan bagaimana upaya perlindungan hukum utamanya copyright. Metode penelitian ini menggunakan pendekatan normative, dimana ditemukan perbedaan perlindungan atas HKI, pemerintah belanda lebih optimal dalam perlindungan hukumnya.

**Kata kunci:** Perlindungan, Hak kekayaan intelektual.

**Abstract**-This article has aim for knowing how protection Intellectual property right in Indonesia and Holland and how effort for protect IPR particularly in copyright. Methodologies research in study normative approach, where date use is regulation both country, and see many literature, we use internet for looking for date. Result this article there is difference for protection in Indonesia and Holand, in Indonesia government not optimal for reduce unfair ipr, in Holland optimal use rule for law enforcement.

**Keywords:** Protection, IP

## 1. Introduction

Intellectual Property Rights IPR (Intellectual Property Rights) are rights that arise -IPR results thought, initiative, sense of humans with a process or product and the goods / services that are useful for the man himself. In connection the international community, Indonesia has been a member Agreement Establishing the World Trade Organization (the Agreement Establishing the World Trade Organization), which also include the Agreement on Trade Related Aspects of Intellectual Property Rights (Agreement on Aspects of Trade Intellectual Property Rights), which is commonly called TRIPs. And also through Presidential Decree No. 18 of 1997 Indonesia has ratified the Berne Convention for the Protection of Artistic and Literary works (the Berne Convention for the Protection of works of art and literature), as well as Presidential Decree No. 19 of 1997 on the World Intellectual Property Organization Copyrights Treaty (Treaty of Copyright WIPO), hereinafter referred to WTC (Putra and Suarbha, 2013).

Indonesia and Holland is member WTO, the both country have responsibility for protect intellectual property right, If flashback found relation between that country, Holland has colonize Indonesia 350 year, that very long time, Several regulation intellectual property right from Holland Octrooi Wet No. 136 Staatsblad 1911 No. 313, Industrieel Eigendom Kolonien 1912 and Auterswet 1912 Staatsblad 1912 No. 600.

After Indonesia freedom on 17 August 1945, Indonesia and Holland continous cooperation, for example in field education, culture, social, politic and goverment. This paper has aim for to know protection intellectual property right in both country.

## 2. Research Method

Metodologis research in study normative approach, where date use is regulation both country, and see many literature, we use internet for looking for date specially date from dutch.

### **3. Result and Discussion**

#### **Protection IPR in Indonesia**

Case Toraja coffee, although coffee is grown in Toraja, South Sulawesi is touted as the "Queen of Coffee" in the world, two turned out to have been registered by Key Coffee in Japan as a result of Indonesia can not directly export coffee to Japan except through Key Coffe. Intellectual Property Rights (IPR) provides a monopoly right to the holder with a fixed upholds restrictions that may be imposed by legislation in force. Intellectual Property Rights used to accommodate the rights arising from the results of human intellectual creations that have economic value to creators, designers, inventors or owners. Therefore Intellectual Property Rights included in the legal field property (intangibles).

Protection law, a monopoly or exclusive right to the person who has the ability to generate intellectual work was considered useful to keep the peace of the rights holder of the intervention of others, in order to enjoy the benefits of the widest in compensation over competing efforts to exploit its intellectual. The person who without permission holders of intellectual property rights and participate exploit the advantage is regarded as an act of infringement of intellectual property rights. In the Indonesian legal system laws that regulate the field of IPR, including:

1. Law No. 19 of 2002 on Copyright
2. Law Number 14 of 2001 on Patents
3. Law Number 15 of 2001 on Marks
4. Law No. 29 of 2000 on Plant Variety Protection
5. Law No. 30 of 2000 on Trade Secrets
6. Law No. 31 of 2000 on Industrial Designs
7. Law No. 32 of 2000 on the Layout Design

#### **Copyright**

Copyright is the exclusive right for the author or assignee to publish or reproduce his creations or give permission to do so without reducing limitations according to the laws in force. Exclusive rights are rights intended solely for holder so that no other party is allowed to capitalize upon these rights without a permit holder. In the definition of "publish or reproduce" includes activities translate, adapted, arrangement, change, sell rent etc.

Copyright (Marbun et al., 2013) consists of:

1. The economic rights:  
Entitlement to benefits or economic advantages over creation as well as products related rights.
2. Moral Rights:  
The inherent right of self-creators or actors that can not be lost or deleted without any reason, even if the copyright or related rights have been transferred.

#### **Creator**

Unless proven otherwise, which is regarded as the creator is; Article 5:

- a. The person whose name is registered in the public register of creation at the Directorate General, or
- b. The person named on the creation or announced as the creator of a work.

Under the provisions of article 5 of Law No. 19 of 2002, then in principle the Copyright obtained not because of registration, but in the event of a dispute in court for creation of registered and unregistered, if the interested party can prove who is the creator who can judge and determine who the creator.

#### **Creation of protected**

According to article 12 paragraph (1) of Law No. 19 of 2002, the creation of protected are creations in the fields of science, art and literature, which includes;

- a. Books, computer programs, pamphlets, typographical arrangement (layout), published works and all other written works.

- b. Lectures, lectures, speeches and other similar creations with it.
- c. Props made for the benefit of education and science.
- d. Songs or music with or without text.
- e. Dramas, musical dramas, dance, choreography, puppetry and fantonim.
- f. Architecture.
- g. Map.
- h. Batik art.
- i. Photography,
- j. Cinematography.
- k. Translation, interpretation adaptations, anthologies, data base and other works resulting from adaptations (Do not reduce over the original creation).

The use of copyright is not considered a breach of copyright if the source is mentioned or appears clearly and it should be restricted to activities that are non-commercial.

### **Copyright dispute resolution**

In Act No. 19 of 2002 on Copyrights, the Commercial Court authority in resolving copyright disputes can be found in Chapter X and Chapter XI of article 56 to article 70.

Article 56 of Law No. 19 of 2002:

1. The copyright holder is entitled to file a claim for compensation to the Commercial Court for breach of copyright and requesting seizure of objects that were announced or propagated creation.
2. Copyright holders are also entitled to appeal to the Commercial Court to delivery of all or part of income derived from organizing lectures, scientific meetings, performances or exhibitions of work, which is the result of copyright infringement.
3. Before dropping a final decision and to avoid greater losses on those rights have been violated, the judge may order the offender to stop activities of announcements and / or propagation of creation or goods infringing copyright.

In chapter 58; Creator of a work or heirs can file a lawsuit for compensation for violations as referred to in Article 24, namely:

1. The creator or his heirs entitled to sue the copyright holder in order to remain listed in the name of the creator creations.
2. A creation must not be changed even if the copyright has been submitted to the other party, except with the consent of the creator or with the consent of the heirs in the event creator has died.

Moral rights, the creator of a copyright work has the right to;

- a. Included the name or pseudonym in the creation or copy in relation to general use.
- b. Preventing shape = shape distortion, mutilation, or any other changes that include the distorsion cutting related with copyrighted works which will eventually damage the reputation of appreciation and creator.
- c. Shall also apply to change the title of the creation, inclusion and change the name or pseudonym of the creator.
- d. Creator still entitled to make changes in accordance with the creation of decency in society. The lawsuit referred to in article 55, article 56 and article 58 must be decided within a period of 90 days after the registration date in the Commercial Court is concerned (Article 59).In addition to the settlement of disputes referred to in Article 55 and Article 56, the parties may solve disputes through arbitration or alternative dispute resolution such as negotiation, mediation, conciliation and other means chosen by the parties in accordance with applicable laws.

The right to lawsuit as referred to in article 55, article 56 and article 65 does not reduce the right of states to carry out criminal charges against copyright infringement.

## **Provisional decision the Court**

In Law No. 19 of 2002 on copyright, known by the provisional decision before the verdict of the commercial court, set forth in chapter XI of article 67 to article 70. In article 67 states: at the request of the parties who feel aggrieved, the commercial court can issue a determination letter immediately and effective for;

- a. Prevent the continued violation of copyright, especially to prevent the entry of products allegedly infringing the copyright or related rights into the trading path, including importation.
- b. Preserve evidence relating to infringement of copyright in order to avoid the removal of evidence.
- c. Ask the parties who feel aggrieved, to provide evidence that such party is entitled to the copyright or related rights, and the rights of the applicants is being violated.

This provision is intended to prevent a greater loss to the party whose rights are violated, the judge of the commercial court is authorized to issue a provisional decision in order to prevent the continuation of the violation and the entry of goods that allegedly infringe copyright and related rights to the trade channel, including importation of act. And is also intended to avoid or prevent the disappearance of evidence by the offender.

After the judge of the Commercial Court gives a provisional decision within a period of 30 days after the provisional decision is issued, the commercial court judge must decide whether to amend, cancel or reinforce the provisional decision. If within 30 days there is no decision, then a provisional decision does not have the force of law (Article 69).

In a provisional decision is canceled, those who feel harmed may demand compensation to the requesting party a provisional decision on all of losses caused by the provisional decision.

## **IPR in Holland**

The intellectual property in Netherlands is referring to specific rights to use non-material things and have certain gains from this using. The owners of these non-material things have exclusivity on those and can manufacture or use it mostly in any way ([www.lawyersnetherlands.com](http://www.lawyersnetherlands.com)).

## **Types of Dutch IPR**

The main intellectual property rights in Netherlands are copyright, patent rights, property rights, trademarks, designs and trade names. Type of ipr in several country have same, Indonesia, Singapore, Malaysia and America.

## **Copyright**

The Dutch Copyright Act (Auteurswet) grants protection to literary, artistic or scientific works. The Copyright Act does not protect an idea as such, however original it may be. The Copyright Act protects only the original expression, or the original application of an idea. The test for originality as applied in case law is whether the work “reflects an original expression and the personal imprint of the author”. In compliance with the Berne Convention, the Copyright Act does not contain any formal requirements to obtain copyright protection, like registration or use of a copyright notice. Copyright is obtained by the mere creation of a work. The term of copyright protection runs during the life of the author and for 70 years after his death. Property rights - A copyright confers upon its owner the exclusive right to make the work available to the public and to reproduce it. The exclusive right to reproduce not only includes slavish copying, but adjustments and translations of the work as well. Moral rights - Apart from the exclusive right to reproduce and to make the work available to the public, the Copyright Act grants more rights to the author of the work. The moral rights allow the author to appose a distortion of its work, if it would injure its reputation or other. Other elements of moral rights include the right to be identified as the creator of a work or to recapture or suppress the work. A copyright owner may avail of the remedies an intellectual property owner has in general. In addition the Copyright Act explicitly provides for the following remedies:

- full damages
- apart from damages, surrendering of the profits made from the infringement, to be accounted for by the infringing party
- assignment or destruction of infringing products
- disposal outside the course of trade or destruction of materials predominantly used for the manufacturing of the infringing products. Assignment of copyrights has to be done by a written deed. The written deed of assignment has to be interpreted narrowly; only the copyrights explicitly mentioned in the deed fall within the assignment. Moral rights in principle survive assignment. Copyrights may be licensed as well. Although licenses are customarily issued in writing, there is no formal requirement to do so.

### **Patent “Octrooi”**

Patent in Dutch is used by inventors in order to protect their creation from duplicate or commercial use without his/her consent. A patent is an exclusive right to an invention which allows you to forbid someone else from using the invention for commercial purposes in a particular jurisdiction, for a limited period of time. A patent protects your invention in respect of a technical product or process. Whoever owns a patent can prohibit someone else from copying, selling or importing that invention. Even when that other person has come up with the invention himself completely independently. Each patent is valid in one or more countries and for a limited period of time. After a patent has expired, the technique is available for use by everyone. In order to be eligible for a patent in the Netherlands, you must have devised a technical invention that complies with 3 material conditions. In order to maintain a patent in the Netherlands, an annual fee must be paid to Netherlands Patent Office, a department of the Netherlands Enterprise Agency. The first payment is due at the start of the 4th year after the application has been filed ([www.english.rvo.nl](http://www.english.rvo.nl)).

### **Trademarks**

A trademark is a sign that distinguishes your products or services from those of your competitors. Essential is that the trademark has distinguishing characteristics. Examples of a trademark are word marks or device marks, such as the name Shell or its logo. Also packaging, such as the Coca-Cola bottle can be protected ([www.english.rvo.nl](http://www.english.rvo.nl)).

The Netherlands is part of the Benelux countries (comprising Belgium, the Netherlands and Luxembourg) and trademark registration can be made only for the Benelux area (only available for the three countries). The Benelux Office for Intellectual Property (BOIP) deals with trademarks and designs registrations in the Benelux and it is based in The Hague, Netherlands.

An international trademark registration can be made at the World Intellectual Property Organization (WIPO). The international trademark registration is governed by the Madrid Agreement and The Madrid Protocol. The Madrid Union is composed of the States that took part in the Madrid Agreement and the Madrid Protocol. A total of 92 countries, including the Netherlands, benefit from the Madrid system for trademarks and service marks protection. An international trademark registration can prove more advantageous when compared to national registrations.

When registering a Dutch trademark at the Benelux Office of Intellectual Property, individuals must file an application before the Benelux Office and wait for an examination that will determine the distinctiveness of the mark. After these formalities, the application is published in the Benelux Bulletin (available online) to check for oppositions. After the mark has been published, the oppositions (if any), can be filed within a period of two months. Trademark registration in the Benelux has a validity period of 10 years. It can be subsequently renewed for another 10 years.

The Madrid system of international trademark registration can be used by natural persons or legal entities. They must file an application for international registration. The application must contain an identical reproduction of the mark and a list of the goods and services that require protection. This registration remains valid for 10 years and it can be renewed further for periods of 10 years.

## Plant breeders' rights

Plant breeders' rights (PBR), also known as plant variety rights (PVR), are rights granted to the breeder of a new variety of plant that give the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a number of years. With these rights, the breeder can choose to become the exclusive marketer of the variety, or to license the variety to others. In order to qualify for these exclusive rights, a variety must be new, distinct, uniform and stable. A variety is:

- new if it has not been commercialized for more than one year in the country of protection;
- distinct if it differs from all other known varieties by one or more important botanical characteristics, such as height, maturity, color, etc.;
- uniform if the plant characteristics are consistent from plant to plant within the variety;
- stable if the plant characteristics are genetically fixed and therefore remain the same from generation to generation, or after a cycle of reproduction in the case of hybrid varieties.

The breeder must also give the variety an acceptable "denomination", which becomes its generic name and must be used by anyone who markets the variety. Typically, plant variety rights are granted by national offices, after examination. Seed is submitted to the plant variety office, who grow it for one or more seasons, to check that it is distinct, stable, and uniform. If these tests are passed, exclusive rights are granted for a specified period (typically 20/25 years (or 25/30 years, for trees and vines). Annual renewal fees are required to maintain the rights.

Breeders can bring suit to enforce their rights and can recover damages for infringement. Plant breeders' rights contain exemptions from infringement that are not recognized under patent law. Commonly, there is an exemption for farm-saved seed. Farmers may store the production in their own bins for their own use as seed, but this does not necessarily extend to brown-bag sales of seed. Further sales for propagation purposes are not allowed without the written approval of the breeder. There is also a breeders' exemption (research exemption in the 1991 Act) that allows breeders to use protected varieties as sources of initial variation to create new varieties of plants (1978 Act), or for other experimental purposes (1991 Act). There is also a provision for compulsory licensing to assure public access to protected varieties if the national interest requires it and the breeder is unable to meet the demand.

There is tension over the relationship between patent rights and plant breeder's rights. There has been litigation in Australia, the United States, and Canada over the overlap between such rights. Each of these cases was decided on the principle that patents and plant breeders' rights were overlapping and not mutually exclusive. Thus, the exemptions from infringement of plant breeders' rights, such as the saved seed exemption, do not create corresponding exemptions from infringement of the patents covering the same plants. Likewise, acts that infringe the plant breeders' rights, such as exportation of the variety, would not necessarily infringe a patent on the variety, which only allows the patent owner to prohibit making, using or selling the patented invention ([www.en.wikipedia.org](http://www.en.wikipedia.org))

## 4. Conclusion

Indonesia and Holland have way for protection Intellectual property right, one way is use registered IPR. Registered can protect optimalize.

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