

Legal Reconstruction of Intellectual Property Rights as Joint Property in Marriage Based on Justice Value

Jamadi^{1*}, Eman Suparman², Anis Mashdurohatun³

¹Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

²Faculty of Law Padjajaran University Sumedang, Indonesia

³Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

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*Corresponding author: Jamadi

Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

Abstract

The purpose of this study is to examine the weaknesses that arise as a result of IPR as joint property that is not regulated in the legislation regarding IPR and develop IPR as joint property and how to distribute it in case of divorce based on justice value. The method used in this research is socio-legal (Socio-legal Research) which uses primary data and secondary data. Meanwhile, the technique of collecting data is through library research and field studies, and Analytical descriptive data analysis. The results of this study indicate that the IPR legislation in Indonesia does not regulate IPR as joint property because it is heavily influenced by the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement, none of which mentions IPR as joint property. As a result, it creates weaknesses, including the positive law of IPR that is unable to answer and provide solutions to the problems of joint property that arise in Indonesian society, making it difficult for law enforcers to make decisions on issues of joint property in the form of IPR, the disparity in decisions by one law enforcer with others, and community rights related to IPR as joint property are not fully obtained by the community. This research also proposes legal reconstruction in the form of a new legal norm/rule, that the economic value derived from all types of IPR including Copyrights, Patents, Trademarks, and Geographical Indications, Trade Secrets, Industrial Designs, Plant Variety Protection, and Layout Designs of Integrated Circuits registered during marriage to become a joint property of husband and wife as long as it is not stipulated otherwise in the marriage agreement and the distribution after the breakup of marriage each gets half as long as husband and wife carry out their responsibilities, obligations, and duties properly in the household, if husband and wife are not / less able to carry out their responsibilities, obligations, and duties well in the household, then the distribution is in accordance with the size of their contribution in the household and the process of creating/discovering IPR. The results of the distribution of joint assets either in a decision or an agreement in front of an authorized official must be recorded at the Directorate General of Intellectual Property Rights because the transfer of IPR Economic Rights will only result in legal consequences for third parties after being registered at the Directorate General of Intellectual Property Rights.

Keywords: Legal Reconstruction, IPR, Joint Property, Justice Value.

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INTRODUCTION

The dispute between Michael Douglas and his wife named Diandra Douglas over the distribution of royalties over the copyright of the film "*Wall Street: Money Never Sleeps*" has lasted for 14 years (BBC, 2010). Diandra and Michael Douglas met at President Jimmy Carter's inauguration party in 1977 and married six weeks later. Diandra filed for divorce against Douglas in 1997, and it was settled in 2000 in a California Court. He received about \$45 million, in addition to homes in Beverly Hills and Majorca. In their divorce settlement in 2000, there was an agreement

made in 1998, among which Diandra got a 50% share of every money made from the film starring Douglas that was made during their two decades of marriage. One of the films ever starring Douglas is the film *Wall Street*. The movie "*Wall Street*", in this case, has been made twice. The first, directed by Oliver Stone and starring Douglas with Charlie Sheen and Daryl Hannah, was released in 1987. The second is a sequel to the *Wall Street* film entitled "*Wall Street: Money Never Sleeps*." which was released in September 2010 and has grossed over \$100 million worldwide.

Diandra filed a lawsuit against Douglas in New York Court for the second Wall Street film on the grounds that at the time of the divorce in 2000 it was agreed that she would receive 50% of copyright royalties on all copyright royalties for films starring Douglas during the marriage, while the second film, "Wall Street: Money Never Sleeps" is a spin-off of the first Wall Street film and the first Wall Street film was made when Diandra and Douglas were still married so that based on the divorce agreement he should have received 50% of the film's royalties. Meanwhile, Douglas denied Diandra's claim with the argument that the second Wall Street film was only a sequel to the first Wall Street, not a spin-off so that the copyright was different from the first Wall Street so that Diandra was not entitled to a 50% share of the royalties from the second Wall Street copyright. In The New York Court, Diandra's lawsuit was declared unacceptable (*niet ontvankelijke verklaard*) (Toebagus, 2022) with the consideration that Diandra's lawsuit was formally flawed in relation to relative authority to the New York Court declared that it was not authorized to hear the case. California Court. The court's decision basically has not considered the material (substance) of the lawsuit, whether Diandra is entitled to 50% of the copyright royalties for the second Wall Street film or not, because the Court only considers the issue of relative authority to adjudicate, not yet included in the main case.

The case above shows that royalties from copyright in the name of one of the spouses, in this case, the husband, can be categorized as joint property of husband and wife, as long as it was created during the marriage and the husband and wife agreed to share each half in accordance with the agreement at the time of divorce. The problem, in this case, for the husband and wife is whether the royalties from the copyright will still become joint property if the royalties are obtained after divorce even though the copyright was created during the marriage. This is certainly one of the new problems that arise regarding IPR as joint property.

The case above shows that IPR as joint property still leaves its own legal problems that require a fair legal solution, including the method of distribution. All of this happens because the legal norms of IPR as joint property are still unclear because it only refers normatively to the concept of joint property whose norms are still very general and abstract which has the potential to be interpreted with multiple interpretations, while IPR itself is a right, both moral rights, and economic rights, which Normatively, most of them have only received recognition and protection by the state in the last two decades after the ratification of the GATT (General Agreement on Tariffs and Trade) and TRIPS (Trade-Related Aspects of Intellectual Property Rights) as stated in Law Number 7 of 1994 concerning Ratification of the Agreement in

Establishing The World Trade Organization (Widodo, 2019).

In legal field practice, dividing IPR as joint property is not as easy and simple as dividing joint assets in the form of tangible (material) assets such as land, cars, houses, and others because HKI is rights in the form of intangible objects (intangible property) related to with recognition from the state through registration, protection period, recording, moral rights, economic rights, royalties, licenses and other matters that regulate IPR. This of course needs a fair legal solution for husband and wife that is in accordance with the characteristics of IPR which is certainly different from other properties even to more technical matters, such as the procedure for distribution after the breakup of a husband and wife's marriage in order to be able to become a comprehensive solution that is holistic and fair for both husband and wife.

From all that has been described above, it shows that there is a gap between the reality on the ground and what is aspired or expected. This is the focus of the object of this research, to find a comprehensive solution to the problem.

Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Intellectual Property Rights As Joint Property In Marriage Based On Justice Value*" where the main problem discussed in this article is as follows:

1. What are the weaknesses of the current IPR law that makes it unable to accommodate it as Joint Property in Marriage?
2. How to Reconstruct the law of IPR as joint property in Marriage based on the value of justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

- a. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
- b. Secondary legal materials are legal materials that explain primary legal materials.
- c. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Current IPR Law That Makes It Unable To Accommodate It as Joint Property in Marriage

In contrast to inheritance, grants, wills, and waqf which are regulated normatively in the laws and regulations governing IPR, joint property is not regulated at all in the laws and regulations governing IPR in Indonesia. This, as explained above is caused by two things. First, laws and regulations in the field of Intellectual Property Rights are heavily influenced by the provisions that have been agreed upon in international agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Second, the legislators in Indonesia, in this case, the Executive Government and the Parliament (DPR), are carried away by the provisions of the said International Agreement, so they tend to neglect to include the provisions of joint property in the laws and regulations in the field of IPR in Indonesia because the legislators The law lacks adequate knowledge of the legal substance that is in accordance with the culture of the Indonesian people, which is different from the Agreement, which has a more capitalist ideology and individualistic, materialistic and exclusive values, which is different from the culture that lives in Indonesian society which is communal, spiritual and inclusive (Widodo, 2018).

The absence of IPR as joint property in the laws and regulations creates several weaknesses, including:

- a. The laws and regulations governing IPR as a positive law that applies in Indonesia are not able to answer and provide solutions to the

problems of joint property that arise in Indonesian society, even though joint property is a legal and cultural fact that existed before the birth of all laws and regulations in the field of IPR.

- b. It is difficult for law enforcement officers such as government officials, notaries, judges, and others in making decisions in the case of joint property in the form of intellectual property rights, and it will lead to disparity in decisions in accordance with the understanding and interpretation of each legal enforcer/officer.

In terms of IPR, notaries, advocates, police, prosecutors, and judges, including the government and the DPR as lawmakers, need to work together in carrying out their duties professionally. Because Indonesia is a state of law, the commander in chief of the state is the law, in order to create justice. As a country based on Pancasila, the precepts in Pancasila should underlie and become a reference for every human being and law enforcement agency.

Even though it is colored by a positivistic legal model, at least the existing legal signs, it can still be hoped that there will be legal certainty on which to base the law. Here, of course, it takes courage, honesty, and conscience for law enforcement officers. As stated by Satjipto Rahardjo, in law enforcement a progressive legal approach is needed. This means that the law must bring happiness to the community, not solely based on legal procedures and formalism, especially if the rule of law is "expired" and no longer fulfills the benefit and justice in society.

In the context above, in this study, the researcher conducted a study on the decisions of judges in the Directory of Decisions of the Supreme Court of the Republic of Indonesia. Of the many decisions that researchers observe, as seen in legal considerations, it can be seen that it does not consider that the property can be in the form of intangible objects such as IPR. Some other nations have considered joint assets in the form of intangible assets but Indonesia does not include the types of assets that are considered in the category of intangible assets, while those that are usually included in the consideration of the category of intangible assets are shares, insurance, and others. The outputs listed in the decision certainly cannot be separated from the inputs. This is the cause of why there are not many judges who mention IPR as joint property in the form of intangible assets in their decisions, because one of them is because joint property cases are handled by judges who rarely ask for IPR as joint property, even though one or both husbands and wives actually have IPR Exclusive Rights such as Copyright, Trademark Rights, and Patent Rights. The economic rights on IPRs are not included in the disputed matter as joint property in their lawsuit even though one of them is an artist who has a

Copyright. Therefore, based on this, the weaknesses that arise are as follows:

- a. There is a disparity in decisions/policies by law enforcers with each other even though the cases are relatively the same.
- b. Especially for lawmakers, if the case isn't solved immediately, it will produce laws that are not or are less in accordance with the laws that live in the community so that they cannot reach, accommodate and provide solutions to legal problems or disputes that arise in the community.
- c. In the terms of Legal certainty, the benefits of law and legal justice are difficult to realize by law enforcers and are felt by the community, or at least there is a great potential to injure the sense of justice in the community if the Joint property is not properly regulated.

The exclusive nature of IPR emphasizes individualism and materialism so it is very contrary to the communalistic and religious characteristics of the Indonesian people. This is a factor that causes IPR legal culture to not grow well in the habitat of the Indonesian people. The Islamic values adopted by the majority of Indonesian people should be one of the basic ingredients for building the IPR legal system in Indonesia (Aqbar, 2022).

Lack of knowledge and understanding of Indonesian people regarding IPR will inevitably lead to weaknesses in the IPR culture in Indonesia, which is mostly communalistic and religious, in contrast to the IPR culture that emphasizes individualism and materialism.

As stated by Lawrence Friedman, In Edelman (2011) that a legal system, between sub-systems, will affect each other again and the legal sub-system will also affect the whole legal system. Based on this opinion, of course, the culture of the people who do not understand and know IPR will affect other sub-systems, namely substance, and structure. In the sub-system of legal substance, for example, because of the culture of the people who do not understand and know the ins and outs of IPR, it affects the law-making process, where many values and norms that live in Indonesian society have not been accommodated in the laws and regulations as also in the sub-system of the legal structure because people do not understand and know that intellectual property rights also have great economic value and can be transferred to other people so that even though they should have economic rights to intellectual property rights, they are not trying to fight for their rights. An example of this is related to the distribution of IPR as joint property. Based on the questionnaire that the researcher sent to 225 respondents, namely Judges of the Religious Courts and General Courts of both the first and appeal levels, it turns out that only 1 respondent has ever handled

disputes over joint property in the form of HKI. In fact, it can be seen that in the community, in fact, many divorced husbands and wives actually have one or both of them have IPRs. For example, artists and writers that have many copyrights but when divorced, do not mind the economic results of the copyright. They only proposed the distribution of joint assets related to tangible assets, not having a problem with the distribution of joint assets in the form of IPR. Due to the lack of problems that come to be handled by judges, of course, it will affect the skills of judges in handling IPR as joint property. These deficiencies in the legal sub-system in the field of IPR, of course, ultimately affect the IPR legal system as a whole.

2. Reconstruction of the Law of IPR As Joint Property In Marriage Based On The Value Of Justice

Based on the results of the analysis of the weaknesses above, the researcher argues that the percentage of the distribution of joint assets in the form of IPR after divorce based on the value of justice is 50% or half if the IPR is on behalf of the husband/wife and the husband/wife carries out the responsibilities, obligations, roles, and duties properly as the head/housewife, but if the IPR is on behalf of the husband/wife and their spouse is not/less able to carry out their responsibilities, obligations, roles, and duties properly in the household, then the percentage distribution can be based on consideration of the size of the role and contribution each husband/wife in the household and the magnitude of the role and contribution of each husband/wife in the creation/discovery of IPR (the principle of proportionality) are considered together (Wanberg, 2022). Husband/wife who does not carry out their responsibilities, obligations, roles, and duties well in the household so that their role and contribution in the creation/discovery of IPR is also less, he or she will get a smaller percentage and vice versa husband/wife who has carried out the responsibilities, obligations, their roles and duties are more than they should be in the household so that their roles and contributions in the creation/discovery of IPR are also greater, so they will get a larger percentage.

In general, the economic rights of all types of intellectual property rights, namely Copyright, Related Rights, Patents, Simple Patents, Brands, Geographical Indications, Protection of Plant Varieties, Trade Secrets, Industrial Designs, and Layout Designs of Integrated Circuits can become joint assets of husband and wife as long as the IPRs are registered. during the marriage, because it can be categorized as one type of property as referred to in Article 91 paragraph (1) and paragraph (3) of the Compilation of Islamic Law (KHI), namely joint property in the form of intangible objects (onlichamelijke zaken/immaterial/intangible property) in the form of rights. More In detail, whether the IPR's Economic Rights are joint property or not, if it is related

to the time of creation/discovery, registration, and acquisition, then, this research concludes as follows:

- a. IPR economic rights that are obtained during the marriage, but the IPR is found/created and registered by one of the husband/wife before marriage is not joint property but the innate property of the husband/wife who holds moral rights because husband/wife who is not a holder of moral rights has no contribution and support at all in the creation/discovery and registration of IPR.
- b. IPR Economic Rights that are obtained during marriage but the IPRs are found/created before marriage and registered during marriage by one of the husband/wife are joint assets because the husband/wife who is not the holder of these rights has contributed to the formation of the joint property, namely in the form of support for their capacity as husband/wife in the registration process and subsequent processes, while the economic rights of intellectual property rights have only received legal protection and have legal consequences for third parties since they are registered at the Directorate General of intellectual property rights, this is in accordance with the provisions of the legislation related to intellectual property rights including Article 3 of the Law Number 13 of 2016 concerning Patents, Article 3 of Law Number 20 of 2016 concerning Marks and Geographical Indications, and Presidential Regulation of the Republic of Indonesia Number 37 of 2010 concerning Terms and Procedures for Transfer of Patents. It's just that the percentage of the distribution can be given proportionally according to its contribution to the household and the process of registering the IPR (Arisandi, 2022).
- c. The IPR's Economic Rights obtained during marriage and IPRs are also found/created and registered during marriage by one of the husband/wife are joint property because the husband/wife who is not the holder of the rights has contributed to the formation of the IPR since the discovery/creation, registration to the process after.
- d. The Economic rights of intellectual property rights that are obtained after the marriage is terminated but the intellectual property rights are found/created and registered during the marriage by one of the husband/wife are joint property because the husband/wife who is not the right holder has contributed to the formation of the intellectual property rights since the discovery/creation, registration.
- e. Intellectual Property Rights that are found/created during marriage by either the husband/wife but are registered only after

breaking up the marriage, then the IPR Economic Rights that are obtained after breaking up the marriage by either the husband/wife are not joint assets because the IPR Economic Rights only receive legal protection and have legal consequences. to third parties after being registered with the Directorate General of Intellectual Property Rights.

Meanwhile, the percentage of the distribution of joint assets in the form of post-marital IPR based on the value of justice is that each husband and wife gets half of it if the IPR is on behalf of the husband/wife and the husband/wife carries out their responsibilities, obligations, and duties properly as the head/housewife, but If the IPR is on behalf of the husband/wife and their spouse is unable to carry out their responsibilities, obligations, and duties properly in the household, then the percentage distribution can be based on consideration of the magnitude of the role and contribution of each husband/wife in the household and the magnitude of the role and contribution of either the husband/wife in the creation/discovery of IPR (the principle of proportionality) which is considered together. Husband/wife who does not carry out their responsibilities, obligations, and duties well in the household so that their role and contribution in the creation/discovery of IPR is also less, will get a smaller percentage, and vice versa husband/wife who has carried out their responsibilities, obligations, and duties more than it should be in the household so that its role and contribution in the creation/discovery of IPR is also greater, so it will get a higher percentage. The results of the distribution of joint assets in the form of IPR contained in a notarial decision or agreement in front of the authorized official must be registered at the Directorate General of Intellectual Property Rights, because the transfer of IPR Economic Rights will only result in legal consequences for third parties after being registered/registered at the Directorate General of Intellectual Property Rights, this is in accordance with the provisions of Article 3 Law Number 13 of 2016 concerning Patents, Article 41 of Law Number 20 of 2016 concerning Marks and Geographical Indications, Article 69 paragraphs 4 and 76 of Law Number 28 of 2014 concerning Copyrights, Article 40 paragraphs 3 and 4 of the Law Number 29 of 2000 concerning Protection of Plant Varieties, Article 5 paragraphs 3 and 4 of Law Number 30 of 2000 concerning Trade Secrets, Article 31 paragraphs 3 and 4 of Law Number 31 of 2000 concerning Industrial Design, and Article 23 paragraph 3 and 4 Law Number 32 of 2000 concerning Layout Design of Integrated Circuits.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The weakness, as found by the author, is that the laws and regulations governing IPR as positive law that apply in Indonesia are not able to answer and provide solutions to problems of joint property that arise in Indonesian society, even though the joint property is a legal and cultural fact that existed before its birth. All laws and regulations in the field of Intellectual Property Rights, and this also makes it difficult for law enforcers/officers such as government officials, notaries, judges, and others in making decisions in the case of joint property in the form of intellectual property rights that will lead to disparity in decisions in accordance with the understanding and interpretation of each enforcer/officer of the law.
2. The reconstruction proposed by the author is related to the IPR Economic Rights obtained during a marriage but the IPR was found/created before marriage and registered during marriage by one of the husband/wife as joint property because the husband/wife who is not the holder of the rights has contributed. The formation of the joint property is in the form of supporting their capacity as husband/wife in the registration process and subsequent processes, while IPR economic rights only receive legal protection and have legal consequences for third parties since they are registered at the Directorate General of Intellectual Property Rights, this is in accordance with the provisions of the legislation. IPR-related laws include Article 3 of Law Number 13 of 2016 concerning Patents, Article 3 of Law Number 20 of 2016 concerning Marks and Geographical Indications, and Presidential Regulation of the Republic of Indonesia Number 37 of 2010 concerning Terms and Procedures for the Transfer of Patents. It's just that the percentage of the distribution can be given proportionally according to the contribution of the household and the IPR registration process.

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