

# THE URGENCY OF THE RELEVANCE OF *INTELLECTUAL PROPERTY* *AUDIT* TO SAFEGUARD THE COMPANY'S ECONOMIC INTERESTS

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### Abstract

The purpose of this study is to analyze: 1) Why does IPR audit for companies need to be carried out in order to secure the company's economic interests? 2) To what extent are regulations in the field of Intellectual Property Rights able to accommodate the economic interests of the company? 3) What is the ideal concept for IPR audit to be a necessity in order to safeguard the company's economic interests? The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The term company for the first time is contained in Article 6 of the Commercial Law Code (KUHD) which regulates the maintenance of records that must be carried out by everyone who runs a company. 2) Basically, the government and companies or private companies play an important role in realizing a country's economic condition. With the existence of a mutually sustainable relationship between the government and the private sector will have a very significant impact on improving the economic level and economic activity of a country. 3) Through a routine audit process and responding appropriately to findings, it can progressively improve the company's innovation capabilities.

**Keywords:** Urgency, Relevance, Intellectual Property, Audit, Safeguard, Interests, Economy, Company

## INTRODUCTION

### Background

The economic value of an Intellectual Property Right (IPR) not infrequently shoots far away from its physical assets, sometimes it can even occur in copyrighted works that seem trivial and not too difficult to make. For example, the character Mickey Mouse created by *Walt Disney*. Of the number of characters under *Disney*, the character that sticks most in memory until now is Mickey Mouse. *The Walt Disney Company* itself has become a company that has a lot of intellectual property assets and it has become one of the biggest parts of its success. In other words, *The Walt Disney Company* was very successful in exploiting its intellectual property holdings. In 2019, *Disney* earned revenues of 70 Billion USD and 66%; From the income comes from copyright.<sup>1</sup>

The term IPR is a translation of *Intellectual Property Rights* (IPR), as stipulated in Law Number 7 of 1994 concerning the ratification of the WTO (*Agreement Establishing the World Trade Organization*).<sup>2</sup> IPR is classified as intangible movable objects. Objects are defined as symptoms of something that can be used as objects of property rights. As

objects, the properties of material rights are also attached to IPR, one of which is transferable to other parties.<sup>3</sup> Understanding *Intellectual Property Right* itself is an understanding of property rights arising from human intellectual abilities, which have a relationship with a person's personal rights, namely human rights. IPR is personal wealth that can be owned and treated the same as other forms of wealth.<sup>4</sup>

Responding to the rampant piracy of computer programs in Indonesia, the Directorate General of IPR once sent a letter via *direct mailer* to 10 thousand software users (*software*. to use legal software. The contents of the letter are in the form of an appeal to use legal software for software users, especially businesses and entrepreneurs. In addition, the Directorate General of IPR also signed an MOU with the police on June 10, 2003 for the effectiveness of law enforcement in the field of IPR violations. The government has also designed the formation of a team to combat IPR violations which includes the Police, the Attorney General's Office, the Supreme Court, the Ministry of Health and Human Rights, and Customs and Excise. This team is designed to determine the direction of enforcement of violations in the field of IPR, including combating piracy nationally.<sup>5</sup>

When looking at the piracy map of copyrighted works in the field of *entertainment* in the country, the piracy rate in Indonesia is still very high. The loss reached trillions of rupiah due to low public awareness of the appreciation of intellectual property rights (IPR). According to the Deputy for IPR Facilitation and Regulation of the Creative Economy Agency (Bekraf. Ari Juliano Gema, Indonesia is one of the countries with a high level of piracy. This happens because there is still low public awareness in respecting other people's IPR. Data from ASIRI (Indonesian Recording Industry Association). In 2017 stated that losses due to music piracy reached Rp. 8.4 trillion and losses of Rp. 1.4 trillion due to DVD piracy and illegal downloading.<sup>6</sup>

Given the potential commercialization of IPR and the potential for losses due to IPR, it is very wise to conduct *Intellectual Property Audits (IP Audits)* for companies that are already established in carrying out business activities. *IP Audit* is actually a review (systematic review of IPR owned, used, proposed for use, or obtained by the company). Its main purpose is to identify all intellectual property rights owned or used by the company and consider appropriate ways to provide protection, especially from various forms of infringement. From the manager's perspective, such an audit can help the company to determine development strategies and also optimize the results of the unity of intellectual property owned or used by the company. The process to conduct an IP audit usually goes through several stages, including: *Innitiation, identification, consolidation, valuation, transfer, and education*.<sup>7</sup>

For developing countries, intellectual property rights initially seemed to be a casual concept, but now it is beginning to be realized that if treated seriously, intellectual property rights can bring concrete and positive results. Without the protection of trade secrets, patents, copyrights, trademarks, the state in every stage of its development will waste their potential.

Several *surveys* conducted by WIPO member countries relating to copyright contributions to national economies have been conducted by several countries. This *survey* aims to obtain definite data on the percentage of copyright contributions to certain copyright-based industries to the national economy so that relevant steps can be taken for appropriate policy making. *The survey* is known as *copyright-based Industries*. Based on the results of a 2015 survey conducted by several countries shows that the contribution of copyright-based industries to the GDP of the United States has increased to 11.25%. While in Australia the contribution of copyright to GDP ranges from an average of 6.70-6.80%; In the Netherlands it was 5.90%; for 2015. While in Finland it reached 4.90%.<sup>8</sup>

### **Problem Statement**

1. Why does an IPR audit for companies need to be carried out in order to secure the company's economic interests?
2. To what extent are regulations in the field of Intellectual Property Rights able to accommodate the economic interests of companies?
3. What is the ideal concept for IPR audit to become a necessity in order to safeguard the company's economic interests?

### **Theoretical Framework**

#### **1) Legal System Theory**

Lawrence M. Friedman<sup>9</sup> posited 3 functions of the legal system. *First*, as part of a system of social control that regulates human behavior. *Second*, as a means to resolve disputes (*dispute settlement*). *Third*, the legal system has a function as a *social engineering function*, which is a function that emphasizes the role of law as the maintenance of the "status quo" that does not want change.<sup>10</sup>

In the national legal system, IPR has been regulated in several statutory instruments such as, Law Number 31 of 2000 concerning Industrial Design, Law Number 32 of 2000 concerning Integrated Circuit Layout Design, Law Number 30 of 2000 concerning Trade Secrets, Law Number 29 of 2000 concerning Protection of Plant Varieties, Law Number 13 of 2016 concerning Patents, Law Number 20 of 2016 concerning Trademarks, Law Number 28 of 2014 concerning Copyright, and many more. Legal interests protected in IPR regulation are useful to protect protection, encourage and reward every innovation and prevent it through incentive systems, and duplication. Briefly, there are two main scopes of IPR, namely, copyright along with related rights (*Copyrights*) and industrial property rights (*Industrial Property Rights*). While in the international scope IPR can be found in the World Trade Organization Agreement (*WTO*), World Intellectual Property Organization (*WIPO*), Trade-Related Aspects of Intellectual Property Rights (*TRIPs*). and so on.<sup>11</sup>

## 2) Law Enforcement Theory

Legal certainty is a matter (circumstances. that is certain. The law must essentially be certain and just. Legal certainty is a question that can only be answered normatively, not sociologically. Normative Legal Certainty is when a regulation is made and promulgated with certainty because it regulates definitely and logically.<sup>12</sup> Legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who committed it. The existence of legal certainty everyone can predict what will happen if they take these legal actions. Legal certainty is needed to realize justice. Legal certainty is one of the characteristics that cannot be separated from the law, especially for written legal norms. Laws without certainty value will lose meaning because they cannot be used as a code of conduct for everyone.<sup>13</sup>

## RESEARCH METHODOLOGY

This research is included in the type of *doctrinal* research, where the approach method used is normative juridical. The study method used in this study is normative legal research, which is a study conducted by reviewing applicable laws and regulations or applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials.<sup>14</sup> Soerjono Soekanto<sup>15</sup>, that normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied.

Data collection techniques in this study were obtained based on *library research*. The study conducted was a literature study (*library research*) using secondary data. Secondary data in this study was obtained through literature studies, by seeking information as complete and as much as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to those related to the research theme.<sup>16</sup> This research technique is descriptive analytical, where analysis is carried out critically using various theories of research problems. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*), based on words arranged in a scientific setting.<sup>17</sup>

## RESEARCH RESULTS

### **The relevance of conducting a company IPR audit in order to secure the company's economic interests**

Company is an economic term used in the business world or business, whatever its form. Companies according to Article 1 letter (b) of Law Number 3 of 1982 concerning Compulsory Company Registration, namely:<sup>18</sup>

"Company is any form of business that runs every type of business that is permanent and continuous, and established, working, and domiciled in the territory of the state of Indonesia for the purpose of obtaining profits and / or profits"

The existence of companies in economic activities, companies are one of the economic actors in economic activities both at the local, national and international levels. Economic actors / business actors / business people are organs of society that have two functions at once. First, as a supplier of all community needs ranging from primary, secondary, and tertiary needs. Second, as an absorber of community labor.<sup>19</sup> Every business actor is a bearer of rights (legal subjects) and is able to carry out legal acts or enter into legal relations that must be followed by legal competence (*rechtsbekwaamheid*) and legal authority (*rechtsbevoegdheid*).

The most important sources of corporate law are the Commercial Law Code (KUHD) and the Civil Code (KUH Percivil). This is based on the provisions of Article 1 of the KUHD which states that this Commercial Law Code, if this Code is not specifically regulated. Thus, the Commercial Law Code applies as a special law (*Lex specialis*).<sup>20</sup> However, along with the development and rapid existence of the company, the government has also made several laws and regulations that regulate more specifically companies based on the type and form of business. Such as some companies in the form of Legal Entities have been regulated through separate laws such as Limited Liability Companies regulated by Law Number 40 of 2007 concerning Limited Liability Companies, State-Owned Enterprises (BUMN) regulated by Law Number 19 of 2003 concerning State-Owned Enterprises, Regional-Owned Enterprises (BUMD) regulated by Government Regulation Number 54 of 2017 concerning Regional Owned Enterprises, Village-Owned Enterprises (BUMDes) regulated by Law No. 6 of 2014 concerning Villages, as well as Cooperatives based on Law No. 25 of 1992 concerning Cooperatives. Each of these Laws then has several implementing regulations down to the level of Ministerial Regulations that regulate highly technical matters.<sup>21</sup>

The existence of the company has always grown, this is one of them also because the company has a dual function, namely 1). The company is an organ of society, and 2). The company is the center of community activities. Because where there is a company, there will be transactions continuously, never stop, and never intermittent. In this case, it can be said, that the company has a management function in society, because the community is the main consumer of the company, and at the same time the community will turn on the company.<sup>22</sup> According to Sri Redjeki Hartono, the reality is that if a company can be said to develop, one of the conditions is definitely that the company is *backed up* by the community. This means that with *the company's back-up*, there will be a continuous demand as the company continues.<sup>23</sup>

The activity of a sector in the economy is inseparable from other economic sectors, so a policy that is directly related to the sector will have an impact on the macro economy because the existence of companies is closely related to economic actors. Similarly, the monetary crisis that hit Indonesia was a heavy blow to the business sector in particular

and other sectors in the economy. This makes sense, because the company functions as an organ of society and at the same time it is the center of economic activity.<sup>24</sup>

A very large role is given by the economic sector for development, especially the industrial sector. The industrial sector contributed 21.31%, followed by the trade sector by 13.37%, the agricultural sector by 13.41% and the mining sector by 11.06%. The rest is filled by other sectors, namely the electricity, gas and water sector, construction sector, trade sector, hotel and restaurant, transportation and communication sector, financial sector, real estate sector and corporate services, and service sector, which totals 40.85% of this sector.<sup>25</sup>

Today, many new companies are established in various services and businesses in Indonesia, their development adapts to the pace of economic development that continues to increase. The number of new companies that were established slowly began to match the senior companies that were established first. The company in this case has a dual function, namely first, the company is an organ of society, and second, the company is the center of community activities. Because where there is a company, there will be transactions continuously, never stop, and never intermittent. In this case, it can be said, that the company has a management function in society, because the community is the main consumer of the company, and at the same time the community will turn on the company.<sup>26</sup>

Companies that have roles as producers, distributors, and consumers. The role of producers as parties who carry out the production process. As a consumer, the company is engaged in the procurement of production staples, means of production, as well as payment of labor. As a distributor, the company is responsible for providing the welfare of employees and the community.<sup>27</sup>

Basically, the government and companies or private companies play an important role in realizing a country's economic condition. With the existence of a mutually sustainable relationship between the government and the private sector will have a very significant impact on improving the economic level and economic activity of a country. Basically, the government sector can be categorized into the public sector. The public sector is an organization of state economic entities to carry out the task of controlling society towards welfare. Different influencing factors, different also the goal of achieving a result of activities of organizations, such as the private sector. The private sector is an organization that aims to make a profit or profit. Factors affecting the private sector are different from the public sector, such as organizational objectives, funding sources, accountability, organizational structure, budget characteristics, and finally there is an accounting system. Public sector funding sources come from taxes, levies, debts, government bonds, profits of SOEs/SOEs, sales of state assets, donations, grants; Meanwhile, the private sector gets working process capital functions derived from internal financing, own capital, retained earnings, asset sales, external financing, bank debt, bonds, and stock issuance.<sup>28</sup>

The form of business run by a company or business entity depends on the founder of the company or business entity, because there are various forms of business entities that can be run. Chidir Ali explained about business entities with an emphasis on having the following elements:<sup>29</sup>

- 1) A business entity is the embodiment and embodiment of a company's organization, which has components in the form of ways of working, the form of work containers and the form / size of the responsibility of the management and members;
- 2) Business entities generate profits obtained from marketing results in the form of goods and or services produced by a company;
- 3) A business entity that is the embodiment of an organized enterprise; and
- 4) Business entity in abstract form, (that in essence a business entity is an organization of a company, which is publicly known, and for its distinction is based on the form of business entity as written in front of its name such as: CV. Fa. PT and so on. While the thing that is seen concretely from a business entity is the company.

#### **Availability of regulations in the field of intellectual property rights in accommodating the company's economic interests**

The term company for the first time is contained in Article 6 of the Commercial Law Code (KUHD) which regulates the maintenance of records that must be carried out by everyone who runs a company.<sup>30</sup> According to Soekardono, the Company is one of the economic notions that also enters the field of Civil Law, especially Commercial Law. Through *Staatblad* 1938/276, the term Company entered into Commercial Law by replacing the terms merchant and trade act<sup>31</sup>

The inclusion of the term Company in the KUHD begins with the discovery of several deficiencies or weaknesses in the KUHD. However, the term Company is not formulated explicitly as what happens in the term Trade Traders and Deeds.<sup>32</sup> Over time, some articles from Book I of the KUHD on trade are generally considered to be no longer in accordance with developments in the business world and trade. This then prompted the legislator to take a decision to revoke the provisions of Article 2 to Article 5 of the Criminal Code regarding traders and business acts with Stb.1938: 276. Therefore, starting from July 17, 1938, a new round of enactment of the Commercial Law (KUHD) began not only for traders but also those who were not traders by profession. Subsequently the terms merchant and trade (commerce) were abolished and replaced with the term "Company".<sup>33</sup>

The term "Company" is a term that was born as a result of updates in Commercial Law. Therefore, since several articles in Book I of the KUHD were revoked, since then the terms and definitions of traders and trade (commerce) are no longer worthy of representing the interests of traders in particular and society in general who may have relationships, interests and or take part in company activities.<sup>34</sup>

The Company is clearly defined according to Indonesian law for the first time in Article 1 letter (b) of Law Number 3 of 1982 concerning Compulsory Company Registration which reads:

*"Company is any form of business that runs every type of business that is permanent and continuous and established, working, and domiciled in the territory of the State of Indonesia with the aim of obtaining profits and / or profits"*

The definition requires that the company must be established, worked, and domiciled in the territory of Indonesia. In addition, the company must be engaged in the economy (industry, trade, services, financing). In this sense, it also includes companies owned or sheltered under social institutions, such as foundations. The pressure point is not on his social institution or foundation, but on his company.<sup>35</sup>

The definition of a company is then rearranged in Article 1 paragraph (1) of Law Number 8 of 1997 concerning Company Documents, which reads:

*"Company is any form of business that carries out activities on a regular and continuous basis by obtaining profits and / or profits, whether organized by individuals or business entities in the form of legal entities or non-legal entities, which are established and domiciled in the territory of the Republic of Indonesia."*

A company or business entity is one of the entities in a country that determines the pace of economic development. Companies or business entities enter the jurisdiction of civil law, the relationship that occurs between the parties is in the private domain. Although the company, whether as a legal entity or not, can be involved in public affairs, in carrying out its business activities it is dominated by private affairs, not public. A business entity is an economic juridical unit that establishes a business to run every type of business that is permanent and continuous, established, working, and domiciled in the territory of the State of Indonesia with the aim of obtaining profits / profits.<sup>36</sup>

The term Business Entity itself in laws and regulations is first used in Law Number 8 of 1997 concerning Company Documents in the general provisions section which states that the Company is any form of business that carries out activities permanently and continuously with the aim of obtaining profits or profits, whether organized by individuals or business entities in the form of legal entities or non-legal entities, established and domiciled in the territory of the Republic of Indonesia.<sup>37</sup>

Apart from the issue of *legal* forms of business entities, there are also other laws that need attention because they are related to business entities such as Law Number 3 of 1982 concerning Compulsory Company Registration and Law Number 8 of 1998 concerning Company Documents. These two laws officially introduce (in legislation) the terms "Company" and "Business Entity" which were previously explained in the *Memorie van Toelichting* replacement of the term "merchant and trade" in Articles 2-5 of the Criminal Code. Because, the legality of a business entity is very important because it is an identity that legalizes or certifies a business entity so that it gets recognition by the community.<sup>38</sup>



## **The ideal concept for IPR audit to become a necessity in order to safeguard the company's economic interests**

The development of the increasing business world today requires resilience amid fierce competition in the business world. Financial statements become an important instrument in the operations of a company. Financial statements are the result of the accounting process that can be used as a means of communication between financial data or operational activities of a company with certain parties who need the data or financial activities. One of the efforts or ways to create resilience and competitiveness for the company is to use *internal auditors*.<sup>39</sup>

According to Arens, the purpose of auditing is to provide users of financial statements with an opinion given by the auditor about whether the financial statements are presented fairly in all material respects, in accordance with the applicable financial accounting framework. This auditor's opinion adds to the level of confidence of the user concerned in the financial statements.<sup>40</sup>

IPR audit is a procedure for reviewing Intellectual Property Rights management policies and procedures used by organizations (companies) to identify, obtain and protect their Intellectual Property Rights and protect the company from other people's IPR.<sup>41</sup> The use of IPR Audit is as a process to anticipate companies from negative risks due to ignorance of obligations that must be fulfilled by companies related to other parties' IPR. In other words, another purpose of this IPR audit is to provide all the comfort in doing business.<sup>42</sup>

Audit activities in the form of management and inventory of Intellectual Property Rights are part of the company's business risk management. Identification and management of these risks is important because basically every day the company will face various kinds of risks for various business activities carried out and the consequences of management decisions taken. Risk is uncertainty about the probability of an event occurring and the impact of the event if it actually occurs which can have a material effect on the achievement of company objectives.<sup>43</sup>

Going concern or the principle of business continuity shows that an entity (business entity) is considered to be able to maintain its business activities in the long term, will not be liquidated in the short term. Evidence of the potential and survivability of a business entity or company that is included in the category is evidenced in the form of an auditor's report as a party who has competence in assessing whether a company can properly carry out its business or deserves bankruptcy.

*Going concern* is a company that is being run as a whole, and by taking into account several things. This term refers to an ability to solve existing business problems, which are carried out normally and reasonably. Applying the concept of this principle in a company, it can be said that the company continues to transact business reasonably, even though it is financially experiencing problems, continues to transact business reasonably. The existence of an audit report on *going concern* is an indication that in the auditor's assessment there is a risk of the auditee (the company being audited) determining whether or not it can survive in business. Through an accounting point of

view that involves several stages of analysis, the auditor must consider the results of operations, economic conditions affecting the company, the ability to repay debts, and future liquidity needs.<sup>44</sup> Through a regular audit process and responding appropriately to findings, it can progressively improve the company's innovation capabilities.<sup>45</sup>

## CONCLUSION

The results showed that;

- a. The term company for the first time is contained in Article 6 of the Commercial Law Code (KUHD) which regulates the maintenance of records that must be carried out by everyone who runs a company.
- b. Basically, the government and companies or private companies play an important role in realizing a country's economic condition. With the existence of a mutually sustainable relationship between the government and the private sector will have a very significant impact on improving the economic level and economic activity of a country
- c. Through a regular audit process and responding appropriately to findings, it can progressively improve the company's innovation capabilities.

## Footnote

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