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LEGAL PROTECTION OF INTELCTUAL PROPERTY OF BALI SILVER CRAFT IN SUPPORTING TOURISM CLIMATE

I Wayan Wesna Astara, Universitas Warmadewa Denpasar
I Nyoman Putu Budiarta, Universitas Warmadewa Denpasar
Putu Ayu Sriasih Wesna, Universitas Warmadewa Denpasar

ABSTRACT

Bali has a variety of attractions, such as natural attractions, marine tourism, cultural tourism and even shopping for tourists. Before being known and created for its aesthetic purposes, all forms of art in Bali were originally created with the intent and purpose as expressions and offerings to the gods. The distinctive beauty of Balinese artists' works has long been easily found in various types of materials such as wood, stone, metal, bamboo and even woven cloth. There are various handicrafts that are in demand by tourists who are on vacation on the island of Bali and eventually become an export commodity, one of which is silver. But amidst the incessant promotion of Bali's tourism potential, Balinese craftsmen or artists feel disappointed because there are several motifs of Balinese silver crafts that have been registered to obtain intellectual property protection by foreigners.

Keywords: Bali Silver Craft, Tourism, Intellectual Property Right.

INTRODUCTION

Tourism is an industry that has long been played by the people of Bali. Turnover has opened the eyes and made people try to be equal with foreign investors/entrepreneurs/foreigners in enjoying the benefits in the tourism industry. The public is no longer an audience and workforce but has begun to rise with the emergence of local communities as tourism actors engaged in the market share of Micro, Small and Medium Enterprises (MSMEs) with retail product marketing. The community is increasingly creative and shows stretching rapid growth of the creative economy in the tourism sector. Most of their products or works utilize local genius or traditional culture that has been around for a long time and has been passed down for generations. Local genius provides the value of excellence, unique value, and aesthetic value in local products marketed in the tourism industry (Sanjiwani, 2016).

Intellectual Property exists after the concept of intangible objects comes out of the human mind, then materialized or stated in a creation of science, art and literature so that it is in the form of tangible objects. Broadly the concept of ownership and property when it's viewed in terms of the law, known as the rights relating to ownership and rights relating to material. Basically, property rights include ownership rights because ownership is always related to certain objects both materially and immaterially.

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INTRODUCTION

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Intellectual Property exists after the concept of intangible objects comes out of the human mind, then materialized or stated in a creation of science, art and literature so that it is in the form of tangible objects. Broadly the concept of ownership and property when it's viewed in terms of the law, known as the rights relating to ownership and rights relating to material. Basically, property rights include ownership rights because ownership is always related to certain objects both materially and immaterially.

Most of the people who are tourism actors do not really understand the importance of registering intellectual property for the work/products they produce/create. Outside parties such as foreign businessmen, recognize well the situation experienced by this community. They tried to make claims for the utility or use of local Balinese genius such as motifs of Balinese silver crafts as their own. This problem has caused local artists/entrepreneurs to be deprived of their rights. Even the Bali Government was surprised to learn that as many as 800 silver motifs of Bali had been registered by foreigners. Based on this, there are two issues that can be raised by this study: First, how is the existence of legal protection for Balinese silver motifs? Second, how is a legal protection for the creator of his creation in the form of Bali silver to support Bali tourism?

RESEARCH METHOD

The scientific value of a discussion and problem solving of the legal issues under studied can depend on the approach used (Ibrahim, 2006). This study uses normative legal research, as a characteristic of legal science is its normative nature. Normative legal research is often referred to as qualitative research. Normative legal research should not be identified with qualitative research. As law is a science of *sui generis* (Hadjon and Djatmiati, 2005). Normative legal researchers do not only limit themselves to one law, but also normative research does not recognize population and sampling.

The approach used in this research is the statute approach, and the case approach. The case approach aims to study the norms or legal norms, especially in cases of handicraft related to intellectual property that support Bali tourism. The case approach is also called the "in concreto" law. Law in this sense is also not much different from the notion of law "in abstracto", because both are laws in the sense of the provisions of the authorities. The theories used are legal protection theory, justice theory, and theories related to the justification of intellectual property protection such as reward theory, recovery theory, incentive theory and risk theory.

RESULT AND DISCUSSION

The Existence of Legal Protection against Motifs of Bali Silver Craft

The tourism industry is closely related to the creative industry. Both industries must go hand in hand and complement each other. Tourism businesses in general, such as hotels also involve a lot of creative processes, ranging from architects, souvenirs, culinary delights, to performing arts. Based on Article 1 number 9 of the Act of the Republic of Indonesia Number 10 of 2009 concerning Tourism, the tourism industry is a collection of tourism businesses that are interrelated in the framework of producing goods and/or services for meeting the needs of tourists in the administration of tourism.

Intellectual property is a material right, which comes from the workings of the brain rather than muscles and is the result of human thinking and reasoning. The workings of the brain by thinking and reasoning completed with taste and intention are still abstract so they must be poured or realized into a work called intellectual work which is "intangible things". Intellectual Property among local entrepreneurs on the work/products that utilize local wisdom is one of the intellectual property issues

Every side of life is regulated by law, including in tourism. The law was created to guarantee legal certainty. Related to tourism, the stability of the tourism climate is very important to ensure the sustainability of the existence of tourism, which is the biggest potential that exists in Indonesia, especially for creators themselves who are part of the tourism business activities. Many people have talked about intellectual property, but there are still many who do not understand. Protection of intellectual property rights must be given attention so that people understand their rights. Bali has a bitter experience that so many cases of piracy of traditional cultural works in the past.

Specifically, regarding silver crafts, the Bali government suspects there are 800 silver handicraft motifs that have been registered by foreign entrepreneurs. If observed, there is some traditional Balinese communal intellectual property that contains philosophical values, local wisdom, and nobleness which is often claimed ownership for commercial purposes and/or other interests. In 2008 there was a Balinese silver crafter who was demanded 2 years in prison for allegedly violating Article 72 Paragraph 1 of Act Number 19 of 2002 concerning Copyright by the Denpasar District Court for allegedly plagiarizing silver motifs that had been registered with copyright by an American citizen named John Hardy, who is also a silver businessman in Bali. Although Deni was finally acquitted of all charges because based on the judge's judgment, Deni was not proven guilty. This makes the Balinese silver crafters are now feel worry in creating silver craft. The craftsmen, artists, and designers of silver crafts in Bali are restless following the registration of some of the original Balinese design motifs by foreign nationals passed down from generation to generation.

Based on that mode, or the way in which foreign entrepreneurs make claims in two ways (Sanjiwani, 2016), namely: first, foreign entrepreneurs working in the Bali tourism industry use Balinese silver craft motifs as their inspiration and adopt them into the work/products they create. Then registration is done both in Indonesia and abroad. Second, foreign entrepreneurs who do business outside Bali register the work/products created by local Balinese people in other countries in the world, namely in countries where the works/products are marketed as belonging to foreign entrepreneurs.

To minimize claims for intellectual works, especially Balinese silver crafts, and obtain legal protection, the Balinese make some efforts. The Balinese who are members of the Celuk Design Center (CDC) are aware of the usefulness and benefits of the importance of intellectual property registration. CDC is a community movement in Celuk Village submitting Request for Geographical Indication of Silver and Gold Crafts of Celuk Gianyar. The characteristic of this craft design is the use of *Jawan* as the basic motif of Celuk jewelry, which is a component of motif made of silver shaped balls with various sizes. Typical design motifs are "*Jawan motif, Bun motif, Gonda Fruit motif and Liman Paya motif*". The community's request was granted by the Government with the Official Gazette of ³Geographical Indications SERI-A No. 08/IG/VII/A/2018 (Legislation, 2018), issued by the Directorate of Trademark and Geographical Indications of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia.



FIGURE 1
GEOGRAPHICAL LABELS OF HANDICRAFTS FROM TYPICAL CELUK VILLAGE COMMUNITY

Initially the legal basis for Geographical Indications is stipulated in Article 56 paragraph (1) of Act Number 15 of 2001 concerning Trademarks, which are further regulated by implementation instructions, namely Government Regulation Number 51 of 2007 concerning Geographical Indications. Until now, the legal history of the Geographical Indications is still running until finally the Geographical Indications are regulated in Act Number 20 Year 2016 concerning Trademarks and Geographical Indications (Law, 2016). In addition, Geographical Indications also have special arrangements by the Directorate General of Intellectual Property and are also recognized by the Ministry of Law and Human Rights as outlined and published in the Indonesian Geographical Indications Book.

Geographical Indications are regulated in Act of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications. According to Act Number 20 of 2016 concerning Marks and Geographical Indications, namely in Article 1 Number 6 that a Geographical Indication is a sign indicating the area of origin of goods and/or products due to geographical environmental factors including natural factors, human factors or a combination of both factors. This gives the reputation, quality, and certain characteristics of the goods and/or products produced.

Equitable Legal Protection of the Creator of the Works in the Form of Bali Silver to Support Bali Tourism

Intellectual property exists after the concept of intangible objects is out of the human mind, and then poured in a creation of science, art and literature so that it is in the form of tangible objects. Ownership of intellectual property does not result from the new human intellectual abilities of certain ideas. This intellectual property is only available, if the intellectual abilities of human beings have formed something that can be seen, heard, read, or used practically. This intellectual property is a right that comes from the results of creative activities of the ability of human thought that is expressed to the public in various forms, which has benefits and useful in supporting human life, also has economic value.

According to Bintang and Dahlan, when it is explored deeply, the concept more of intellectual property includes ownership of intellectual property that is inherent to the owner, is

9

permanent and exclusive; and Rights obtained by other parties on permission from the owner and are temporary. To find out the scope of Intellectual Property it must be known in advance about the types of objects. There are three types of objects that can be used as wealth or property, namely: "Movable objects, such as gold, silver, coffee, tea, electronic devices, telecommunications and information equipment and so on; immovable objects, such as land, houses, shops and factories; intangible objects such as patents, brands, and copyrights (Bintang and Dahlan, 2000).

Then according to legal experts of Intellectual property, there are several things that must be added, namely Trade Secret Service Mark and Protection from "Unfair Competition Protection" Cheating Competition. TRIP's "Trade Related Aspects of Intellectual Property Right" adds two more fields to the rights group above, namely:

1. Varieties of Plants Protection;
2. Layout Design of Integrated Circuit.

13

As a member of the WTO, Indonesia has ratified several international conventions in the field of intellectual property, including:

7

1. Paris Convention for the Protection of Industrial Property, dan Convention Establishing the World Intellectual Property Organization, which was ratified through Presidential Decree Number 15 of 1997.
2. Patent Cooperation Treaty (PCT) and Regulation under the PCT, yang; which was ratified through Presidential Decree Number 16 of 1997.
3. Trademark Law Treaty, which was ratified through Presidential Decree Number 17 of 1997.
4. Berne Convention for the Protection of Literary and Artistic Works, which was ratified through Presidential Decree Number 18 of 1997.
5. WIPO Copyrights Treaty, which was ratified through Presidential Decree Number 15 of 1997.
6. WIPO Performances and Phonograms Treaty, which was ratified through Presidential Decree Number 74 of 2004.

Basically every human being is born as a creature created by God Almighty who naturally has basic rights, namely freedom, right to life, right to be protected, and other rights. This is in line with the principles of natural law in the 18th century, namely individual freedom and the primacy of the ratio held by Locke. According to Locke, people who carry out social contracts are people who are orderly and respect freedom, the right to life, ownership of property as an innate human right. Locke further believes that an ideal society is one that does not violate basic human rights. These rights do not go to the authorities when the social contract is concluded. Therefore, the authority of the ruler given by the community is not absolute. The existence of such power is precisely to protect natural rights from dangers that may threaten. That is the law made in the State in charge of protecting these basic rights which are commonly called human rights. With these human rights, humans can develop their personal self and their role and contribution in the welfare of human life (Tanya, 2010)

The theory of legal protection is an element that must exist in a country. Every formation of state must have a law to regulate its citizens. This relationship gives birth to rights and obligations. Legal protection is a citizen's right. On the other hand, legal protection becomes an obligation for the state. The state is obliged to provide legal protection for its citizens.

Robert (1990) suggests several theories that underlie the protection of Intellectual property: first, Reward Theory which argues that an intellectual work that has been produced by someone so that the Inventor or brand owner or Designer should be given an award as a counterpart to his creative efforts in finding or creating works these intellectual works. Second, Recovery Theory believes that a creator, inventor, or designer who has spent time, money and energy in producing his intellectual work must recover what has been incurred. Third, the Incentive Theory which argues that the development of creativity by providing incentives for the Inventors/Creators or Designers aims to promote useful research activities so that new intellectual works are created, so that later new intellectual works can be utilized by wide community. Fourth, this Risk Theory believes that intellectual property is a work that carries risks. The purpose of risk here is to allow other people who first find a way or improve it and perfect it so it is natural to provide a form of legal protection for efforts or activities that contain the risk. Sherwood believes that the risks that may arise from illegal use that cause economic or moral harm to the Inventor or Creator and Designer can be avoided if there is a strong legal basis that serves to protect the Intellectual Property (Sherwood, 1990).

The nature of law is justice. Related to that John Rawls said that the role of justice as the main virtue in social institutions. As is the truth in the system of thought. Likewise regarding justice, it is possible when a law is made and legalized when it is considered correct, after a period of time there has been a change in thinking because there are several articles that are not in accordance with economic, social and juridical developments and the development of community thought. Therefore, it should be reformed or abolished if it is not fair (Rawls, 2006). Justice is a condition that reflects the harmony between the aspired laws with the applicable law. Justice itself is one of the main legal objectives besides legal certainty and expediency (Darmodiharjo and Shidarta, 2004).

Local genius which born from Indonesian culture in the form of both tangible and intangible cultures is considered a knowledge of local Balinese entrepreneurs. The embodiment of local genius that is often exploited by tourism entrepreneurs are the motifs of Balinese silver craft. The works/products resulting from the use of local genius should be registered to obtain legal protection for intellectual property. Intellectual property owners will enjoy and even increase the economic value of each work/product they register with the Director General of Intellectual Property Rights. If everything has been carried out then justice for the Owner of Rights is realized because an intellectual work that has been produced by a person must be rewarded as a counterpart to his creative efforts in creating these intellectual works, then the Creator who has spent time, money and energy in producing intellectual work must recover what has been issued.

CONCLUSION

To minimize claims on intellectual works, especially Bali silver, and to obtain legal protection the application of the Balinese who are members of the Celuk Design Center (CDC) was granted by the Government with the Official Gazette of Geographical Indications-SERI No. A. 08/IG/VII/A/2018, issued by the Directorate of Trademark and Geographical Indications of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia.

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