

# CREATIVITY IN INTELLECTUAL PROPERTY RIGHTS.pdf

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**CREATIVITY IN INTELLECTUAL PROPERTY RIGHTS  
IN INDONESIAN PANDEMIC: CHALLENGES AND  
OPPORTUNITIES**

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**ABSTRACT**

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*This article aims to provide an overview and understanding of intellectual property rights in Indonesia during the covid 19 pandemic. The pandemic that occurred in Indonesia had an extraordinary impact on various fields of Indonesian people's lives. A pandemic condition becomes an obstacle for everyone to carry out their normal activities, and it is a challenge for everyone to survive in the covid 19 pandemic. This research was conducted using normative juridical research methods with emphasis on secondary data. Indonesia continues to carry out its duties to provide legal protection for intellectual property rights and continue to provide intellectual property registration services to be registered. Indonesian Ministry of Law and Human Rights carries out coercive agreements in order to register and protect pandemic privileges in the country 19. Indonesian people must be able and able to produce intellectual work that can improve good quality during the pandemic, both economically and psychologically (emotionally).*

**Keywords:** Intellectual Property Rights, Covid 19, Creative

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**INTRODUCTION**

Intellectual property is wealth that arises or is born from human intellectual abilities. The works that arise or are born from human intellectual property can be in the form of works of technology, science, art and literature. These works were born or produced on the intellectual ability of humans through the outpouring of time, energy, thought, creativity, taste, and work. The works produced from human intellectuals have economic value or benefit for the owner of the work and have benefits for human life in general.

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IPR is a right that comes from the work, intention, and creativity of human intellectual abilities that have benefits and are useful in supporting human life and have economic value. Intellectual property has economic value that is able to bring various benefits to the owner. The development of a knowledge-based economy has become a millennia trend<sup>1</sup>. The scope of IPR is quite broad covering a variety of rights arising from the existence of products of human thought and continues to develop both in terms of quality and quantity, in accordance with the development of human life and creativity. Intellectual property that is produced through human intelligence or thought and has economic value, can be said to be a commercial asset. Commercial assets in the form of human intellectual works can be protected through legal instruments of intellectual property rights, namely copyrights, patents, brands, geographical indications, industrial designs, trade secrets.

Protection is intended so that the owner of intellectual property either individuals, groups or business entities can use their rights or explore their wealth safely which in turn can create an economic climate from the results of his work and can create an economic climate for the country so that it can provide benefits and welfare for its people because protection<sup>2</sup>. Intellectual Property is creativity that results from human thought in order to meet the needs and welfare of human life<sup>3</sup>. Protection provides certainty of the guaranteed rights of intellectual property owners. The certainty of legal protection is one of the driving forces for continuing intellectual creativity.

IPR as a result of thought production which is an immaterial object, becomes very important and has high economic value that can be transferred or traded locally, regionally, nationally and internationally. The existence of high economic value or benefits requires many parties and the wider community to understand the usefulness and benefits of the existence of Intellectual Property Rights<sup>1</sup>. There are many benefits of KI legal protection, including: providing legal protection as an incentive for creators, inventors and designers by giving special rights to commercialize the results of their creativity by ignoring their romantic nature, creating a conducive climate for investors, encouraging research and development activities to produce new discoveries in various fields of technology, accelerating industrial growth, creating new jobs, encouraging economic growth, improving the quality of human life that provides the needs of society at large, encouraging community creativity and increasing productivity, quality and competitiveness of a country's economic products<sup>4</sup>. Intellectual creativity that already exists and gets legal protection, is not easily formed. Not everyone is able to produce real intellectual creativity, intellectual abilities and productivity are needed in creating. Therefore, it should be valued by protecting it with legal mechanisms for the owners of these intellectual creativity rights.

Creativity creates, makes intellectual work continue to roll from time to time. Creative people will always make intellectual work in any condition. Creative people will innovate and develop new ideas to solve existing problems. Creative people will be able to read the situation and the problems that exist, then take advantage of other potential that can be developed so that it can change its shortcomings into an advantage.

The current pandemic makes everyone not only to think creatively but also to create creative works that can make themselves survive in the pandemic covid 19.

Covid 19 inevitably attended uninvited in Indonesia, in March 2020 we carried out various anticipations because of the presence of Covid 19. Starting from Social distancing, Work from Home (WFH), Large-scale Social Restrictions (PSSB), lockdown, studying at home, worship at home, etc. All efforts made are not to add victims. Government and community Together make efforts to break the chain of transmission of the Covid virus 19.

Prevention and control of COVID-19 must be placed at the top priority in all government policies. Health institutions at all levels/levels must follow the instructions of the central/local government and strengthen the work guidelines for local epidemic prevention and control and form a COVID-19 prevention and control expert group that involves experts and relevant stakeholders.

Covid 19 now is not only a problem of individuals (individuals) but a problem of the Indonesian nation. The impact of this epidemic can be felt both in the economic, social, political, security, cultural, religious, educational, etc. Since WHO determined that Covid 19 is a pandemic, since then the country of Indonesia began to make efforts to save, prevent and restore the situation. The Indonesian government has taken the necessary actions to reduce the spread of Covid-19. The actions are adjusted to the number of cases in several regions in Indonesia (we know the terms red

zone and green zone). There are local governments that impose work breaks, cancellation of large gatherings, travel restrictions, etc.

Covid 19 virus is very contagious and has spread rapidly globally. The government officially designated the corona virus outbreak (Covid-19) as a National Disaster through Presidential Decree Number 12 of 2020 Determination of Non-Disaster in the Spreading of Covid-19 as a National Disaster. Directly or indirectly, the onset of a disaster is a unique test for the government especially how the government provides services to the community and tests whether the government has done its duty in protecting citizens from this disaster.

As a consequence, it is the people who are directly affected by this non-natural disaster. The state has made efforts to overcome this disaster, successful or unsuccessful efforts that have been made by the government, is not the study in this paper. The community is not the time to blame and hold the government accountable, but the community must be able to survive in this pandemic condition. Efforts continue to be made and must not stop his intellectual creativity. This paper focuses on how the obstacles and challenges of intellectual creativity in the pandemic covid era 19 in the perspective of intellectual property rights protection.

## RESEARCH METHOD

This research is a legal research that uses secondary data with literary materials and legislation. Legal materials are collected through an inventory procedure and identification and systematization of legal materials in accordance with the research problem. Data collection techniques used are literature studies. Literature study is conducted by reading, analysing, recording, and making reviews of library materials, especially those relating to intellectual property during the pandemic covid 19. The data analysis is done in a descriptive qualitative manner. Legal materials obtained are then subjected to discussion, examination and grouping into certain parts to be processed into information data.

## ANALYSIS AND DISCUSSION

Intellectual property is born from intellectual creativity in the form of tangible forms of ideas of intellectual creativity. This intellectual creativity was born and grew based on creative culture. Creative culture is important to be built to be able to produce intellectual creativity that can be utilized to improve the welfare of the right owner.

The creative era focuses on the creation and exploitation of intellectual works such as visual arts, film and television, software, games or design, fashion and includes creative company services such as advertisement, publishing and design<sup>5,6</sup>. The economic value of a product or service in the creative era is no longer determined by raw materials or production systems as in the industrial era, but rather the use of creativity and innovation creation through increasingly advanced technological developments.

Creativity refers to people who 'wander' for new, useful, and unusual ideas; people experience the world in new, original, fresh and enlightening ways. It is not easy to give birth to new innovative intellectual creativity. Innovation is a 'product' of creativity with several meanings: new ideas, introduction of new ideas, inventions, introduction of inventions, ideas that are different from existing forms. The 'imitation and imitation' mentality (mimetic culture) - plagiarism, imitation, piracy, smuggling - does not encourage 'creative culture'. This kind of mentality must be destroyed and is the main enemy of intellectual property rights.

To increase a creative culture full of innovation, at least there must be a main motive or initiative that results in the creation or invention, which includes: (1) the pleasure of carrying out

discovery activities (love to invent); (2) A desire to renew (desire to improve); (3) financial gain; (4) necessity; (5) Desire to achieve (desire to achieve); (6) part of the work (part of works); (7) prestige (prestige).

The community plays an important role in encouraging the emergence of creativity. As one of the external factors that fundamentally influences creativity is education and learning. Education and learning play a fundamental role in shaping a creative environment. Education and learning will hone human intellectuals well. Internal factors are human intellectuals themselves, how humans are able to grow their creativity by honing their intellectuality continuously.

Creativity is the capacity to produce something new and useful, it can be in the form of ideas, behavior or products. Creativity comes with the support of personal and situational factors. Personal able to productive with any situation (including pandemic situations).

After doing productivity it is necessary to manage the productivity of the creativity that has been done. A creative idea can come from anywhere, from the current pandemic because it has a lot of free time, it can come from the process of contemplation, observation, and even just crossed the mind of the creator. The most important thing is that the creative idea is translated into a real form of intellectual creativity and make sure the real form of intellectual creativity does not violate the intellectual property rights of others.

Strategies for managing intellectual property creativity in the pandemic period, namely:

1. Ensure that intellectual creativity is unprecedented. Take a thorough search, or prior art from various sources of information.
2. Ensure that the realization of intellectual creativity does not violate the intellectual property rights of others, which of course will have economic consequences (fines or imprisonment due to infringement of intellectual property rights of others).

### Opportunities and Challenges of Intellectual Creativity in the Pandemic Covid 19

Humans are faced with situations that change every time. Period full of busy getting together, holding meetings, attending seminars, traveling out of town or abroad. That time cannot be done freely anymore. Since the presence of covid 19, a pandemic has occurred, and humans have been living in limitations to interact with each other. Changes occur in human beings both from attitude, mindset, mentality, creativity, culture, etc. This change occurs suddenly adjusting the conditions and circumstances of the pandemic. Humans still have to survive and remain productive despite being in a pandemic situation. Creativity will always be there for people who think and act productively.

Attributes of creative people are: open to experience, like to pay attention to see things in an unusual way, sincerity, accepting and reconciling something that is contrary, tolerance to something that is not clear, independent in making decisions, thinking and acting, require and assume autonomy, confident, not subject to group standards and control, willing to take calculated risks, persistent, sensitive to problems, fluent-ability to generate many ideas, flexible authenticity, responsive to feelings, open to phenomena that are not clear, motivated, free from fear of failure, think in imagination, selective. It is not easy to be a creative human being but that does not mean impossible to do.

Intellectual creativity can be done by the people of Indonesia in the midst of the Covid pandemic by always upholding new productivity and innovation. Intellectual creativity can emerge even during a pandemic period. A pandemic situation gives rise to creativity in every field to take actions in an effort to tackle the Covid pandemic 19.

Each field made breakthroughs in order to survive in this pandemic. In the field of law, the President issued Perpu No. 1 of 2020 and Presidential Instruction No. 4 of 2020, in an effort to

tackle the Covid 19 problem and its impacts. This step was taken as soon as possible by the President because covid 19 had caused many impacts in various sectors and the lives of Indonesian people. Despite the pros and cons of the presence of these legal instruments, it is necessary to appreciate what the government is doing to overcome this pandemic. All the panic went on, happened to every individual and institution. Panic may occur and become a natural thing, but as human beings who have intellectuals begin to act rationally and not just based on instinct. Both government and private institutions strive to maintain the sustainability of activities without violating restrictions imposed by the government. Ministry of Law and Human Rights continues to provide services during this pandemic. The question is how come? Yes, you have to be able to, service is still service, because the presence is the state must continue to provide services for the community under any conditions. Ministry of Law and Human Rights Central Java continues to carry out its legal and human rights services even in pandemic conditions. Service to the public is done by telephone and whatsapp, coordination between agencies is done *via* email and whatsapp, coordination with echelon 1 units is done through video conferencing (vcon), promoting and disseminating intellectual property through interactive dialogue on the Radio.

In the current pandemic, creative ideas will be born when you are at home. In a pandemic such as now, the possibility for the birth of creative ideas such as songs, books, poetry, logo design, trademarks, is likely to increase, this is because during a pandemic like this, many creative things are created when activities at home with a lot of time. These creative ideas are realized in a work which will later be registered for legal protection. Anticipating this, registration of Intellectual Property is done online. Online registration *via* [pa](https://merek.dgip.go.id) <https://merek.dgip.go.id> and <https://paten.dgip.go.id> and <https://desainindustri.dgip.go.id> and <https://e-hakcipta.dgip.go.id>. The point is that registration can still be done both for intellectual property that is personal and communal.

Steps taken by the Ministry of Law and Human Rights to continue to provide legal services even in pandemic conditions. The community must also remain productive and creative even in pandemic conditions. Community smart efforts are needed to assist the government in strengthening the weakening economic factors due to the existence of Covid 19. People are required to be creative and innovative to create ideas. Things that need to be done by the people in the middle of a pandemic; (1) gathering needs information; (2) identify the priority of creativity to be built; (3) think creatively and make innovations; (4) identification of pandemic risks for creativity that will be significantly shaped; (5) carrying out activities to design, create and express ideas in tangible form without violating government rules/policies; (6) creating a work that produces intellectual property both copyright and industrial property; (7) registering so that they will get legal protection and obtain moral and economic rights from the intellectual property that has been created; (8) creativity in distribution, for example selling products through online media, creating content and sharing on YouTube.

By keeping the spirit of creative thinking and acting productively during the pandemic. Do not regret why Covid is present, all present must have meaning, but as human beings who have intellectuals, they should take various actions to be able to remain productive and creative even though there is Covid.

Changes that occur due to pandemic conditions, actually bring up opportunities that can be seen and done for people who are able to be productive intellectually.

1. Easy access to search prior art searches so that it will be easy to find novelty or the latest innovations from existing intellectual creativity.
2. The spread of the virus that occurs, consumers will be very careful in choosing the product to be bought. Consumers will choose a quality product and maintained good quality in terms of cleanliness, safety, and quality. It

- will not be difficult to find, especially with guarantees of intellectual property rights, consumers will feel safe and comfortable.
- How to do marketing online. The seller does not need to leave the house, just do it inside the house. Good knowledge about online marketing is needed. Simple but badly needed products will quickly be sold to the regions through the internet.
  - Opportunities to carry out unique product development strategies with certain characteristics.

In addition to the opportunities available, Indonesian society remains confronted with the challenges of carrying out intellectual creativity during the Covid pandemic 19. These challenges are:

- The threat of violation of intellectual property rights is increasingly high because of easy access to data and information that can make it vulnerable to violations.
- The emergence of innovations resulting from human creativity during the pandemic presents its own challenges, so it must continue to do more recent innovations.
- Must be able to create intellectual creativity that has economic value and entered the market share during the pandemic. It must be understood that this pandemic period gave rise to a new market share that was different from the market share before the pandemic.
- Strength of product innovation and price of foreign products.
- Increasingly sharp and global pairing.

### Registration and Protection of Intellectual Property Law in Pandemic

In Indonesia, the agency authorized to manage IPR is the Directorate General of Intellectual Property Rights (Ditjen HKI) under the Ministry of Justice and Human Rights of the Republic of Indonesia. In general registration is a requirement for intellectual property generated by someone to protection. Some branches of IPR that require someone to register are Trademark, Patent, Industrial Design, Layout Design of Integrated Circuits and Plant Variety Protection. This principle underlies all IPR regulations throughout the world and has the consequence that intellectual property owners who do not register cannot sue someone who is deemed to have used their property unlawfully. Some exceptions are given by national laws of certain countries which can make lawsuits against violations of intellectual property rights even though their intellectual property has not been registered.

Intellectual property that can provide economic value (economic right) both to individual citizens themselves and groups, which will also have an impact on the country's economy. Therefore, it is necessary to protect the holders of intellectual property so that they do not feel violated their rights or even experienced a loss both formally and materially.

There is a respect or an appreciation for the work that has been created by the existence of a legal protection, which hopes to make everyone motivated in developing the spirit of work or create. KI violations will impact on the weakness of the creator's creativity, Indonesia's credibility will be bad which will ultimately make the investment level low.

Extra protection from the realm of law because without adequate protection, it will not be possible to create a great work. In Indonesia, since the COVID-19 pandemic, registered intellectual property rights have actually increased. This proves that Indonesia is able to survive in a pandemic situation to still have intellectual creativity (Table 1).

Tahun	Patent	Industrial Design	Copyright	Mark
2019	16.249	26.485	152.956	384.072
2020	18.686	29.956	209.805	411.458

Source: Directorate General of IP, Indonesia

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Intellectual property is a property right born from the ability of the human intellect that exists within the scope of science, art and literature. Intellectual property is a right that is owned by individuals and groups that will provide economic value (economic right) and will also have an impact on the country's economy. So that protection of intellectual property is very necessary to be upheld. The protection has been regulated in the regulations regarding Intellectual Property in Indonesia. Every person has the right to maintain any intellectual property he has and to reap the benefits of that intellectual property.

Efforts to protect a work or copyright that has a right known as intellectual property rights. This exclusive right has been expressly protected in every law concerning intellectual property. These safeguards are intended to provide security and comfort to the original owner or creator if a dispute arises in the future.

Legal protection is intended so that the right owner can safely use or exploit his intellectual property. That feeling of security creates a climate that allows people to work to produce the next intellectual creativity.

In accordance with the essence of the IPR system which is an "appreciation" for creative, inventive and innovative people, the use of IPR is an important part of the IPR system. One of the main essences contained in the IPR system is the economic value contained therein, especially during the period of effective protection. A person or institution that has an IPR will get the right to determine the form of utilization of the IPR it has, including regional targets, target consumers and so on. This is part of the award for the "exclusive" award contained in the IPR system for the owner.

Legal protection is also important for communal intellectual property, this is important because:

1. Guaranteed product development owned by each region that is more competitive and sustainable, without ignoring local cultural wisdom.
2. Prevent the use of ownership claims for these products, which are carried out by other parties without permission.
3. Ensuring that all Indonesians or Indonesians who develop them, even going forward they will receive benefits, both monetary and non-monetary as appropriate.

The growth of the conception of human intellectual property will ultimately lead to the need to protect or maintain that intellectual property. Protection of intellectual property rights still applies even in Pandemic conditions.

## CONCLUSION

Pandemic Covid 19 was a time when Indonesian people were tested physically and psychologically. The strength to survive in a pandemic depends on the efforts made by the Indonesian people themselves. The government carries out its duty as an institution that has an obligation to protect the entire Indonesian nation and the task of the Indonesian people is not only to comply with government regulations, but also to step up to be able to awaken creative culture, especially innovating intellectual creativity. As a society blessed with intellectuals, it is better to do what the intellectuals should do. The pandemic is still ongoing but intellectual creativity must not stop because of a pandemic.

Registration of real work resulting from intellectual creativity is still carried out to obtain legal protection by using the mechanism of intellectual property rights. Protection continues even if faced with a pandemic. Services for registration of intellectual property will still be carried out by



the Ministry of Law and Human Rights by using online facilities in accordance with the provisions of existing laws and regulations.

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