

## THE SOLVING INDONESIAN INTELLECTUAL PROPERTY RIGHTS TRANSFER ISSUE

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**Abstract:** The aim of this research was to analyze legal problems that are hindering the process of intellectual property rights (IPR) transfer within the Indonesian legal system. This objective was achieved by employing the normative legal research method with a statutory approach while, utilizing secondary data. Accordingly, the secondary data used consisted of primary legal sources, including Law No. 30 of 2000 on Trade Secrets, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 28 of 2014 on Copyrights, Law No. 13 of 2016 on Patents, as well as relevant judicial decisions made within the Indonesian legal system, which enhanced the analysis. This research showed the problems that exist within the Indonesian legal system regarding the transfer of IPR and identified the contributing factors. Furthermore, from the analysis conducted, it was found that the Indonesian IPR legal framework is too complex and lacks harmony, specifically when it comes to the mechanisms involved in IPR transfer and the bureaucratic efficiency associated with these processes. This research serves the purpose of providing comprehensive literature for the development of better intellectual property laws, which are continuously being refined by the Indonesian government to protect and foster creativity in the economy of the country, thereby making it a more attractive prospect for capital. Unlike previous studies, this research placed significant emphasis on legal problems specifically hindering the process of IPR transfer and examined their impacts on actual IPR cases within the Indonesian legal system.

**Keywords:** Legal Clarity, Legal System, Intellectual Property Rights Transfer

**Abstrak:** Penelitian ini bertujuan untuk menganalisis permasalahan hukum yang menghambat proses pengalihan Hak Kekayaan Intelektual (HAKI) dalam sistem hukum Indonesia. Tujuan tersebut dicapai dengan menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dengan menggunakan data sekunder. Dengan demikian, data sekunder yang digunakan

terdiri dari sumber hukum primer antara lain UU No. 30 Tahun 2000 tentang Rahasia Dagang, UU No. 20 Tahun 2016 tentang Merek Dagang dan Indikasi Geografis, UU No. 28 Tahun 2014 tentang Hak Cipta, UU No. 13 Tahun 2016 tentang Paten, serta keputusan yudisial terkait yang dibuat dalam sistem hukum Indonesia, yang menyempurnakan analisis. Penelitian ini menunjukkan permasalahan yang ada dalam sistem hukum Indonesia mengenai pengalihan HKI dan mengidentifikasi faktor-faktor penyebabnya. Lebih lanjut, dari analisis yang dilakukan, ditemukan bahwa kerangka hukum HKI Indonesia terlalu kompleks dan kurang harmonis, khususnya terkait dengan mekanisme pengalihan HKI dan efisiensi birokrasi yang terkait dengan proses tersebut. Penelitian ini bertujuan untuk menyediakan literatur yang komprehensif untuk pengembangan undang-undang kekayaan intelektual yang lebih baik, yang terus disempurnakan oleh pemerintah Indonesia untuk melindungi dan menumbuhkan kreativitas dalam perekonomian negara, sehingga menjadikannya prospek permodalan yang lebih menarik. Berbeda dengan penelitian-penelitian sebelumnya, penelitian ini lebih menekankan pada permasalahan hukum khususnya yang menghambat proses pengalihan HKI dan mengkaji dampaknya terhadap kasus-kasus HKI aktual dalam sistem hukum Indonesia.

**Kata Kunci:** Kejelasan Hukum, Sistem Hukum, Pengalihan Hak Kekayaan Intelektual

## Introduction

The protection of intellectual property rights (IPR) is essential to foster innovation, creativity, and economic development.<sup>1</sup> By providing legal protection to creators, inventors, and businesses,<sup>2</sup> IPR incentivizes investment in new ideas, leading to technological advancements and the creation of new products and services.<sup>3</sup> This protection also plays a significant role in attracting foreign investors, thereby boosting

economic development, as these investors are more likely to invest in countries with a robust IPR regime.<sup>4</sup> Furthermore, strong IPR protections can enhance the competitiveness of the economy of a country by promoting the development of a knowledge-based economy driven by innovation and creativity.<sup>5</sup> It is also important to note that recognizing rights of creators and inventors encourages creativity and supports the development of a vibrant and dynamic society. Therefore, the

- <sup>1</sup> Saïd Hammami, "The Effect of Intellectual Property Protection on Innovation: Empirical Analysis of Developing Countries Panel," *African Journal of Science, Technology, Innovation and Development* 13, no. 4 (2021): 397–405, <https://doi.org/10.1080/20421338.2020.1824608>.
- <sup>2</sup> Hari Sutra Disemadi, *Mengenal Perlindungan Kekayaan Intelektual Di Indonesia* (Depok: Rajawali Pres, 2023).
- <sup>3</sup> Eva Mavroudi et al., "How Can MNEs Benefit from Internationalizing Their R&D across Countries with Both Weak and Strong IPR Protection?," *Journal of International Management* 29, no. 1 (February 2023): 100994,

- <https://doi.org/10.1016/j.intman.2022.100994>.
- <sup>4</sup> Fengchun Li, Ting Liang, and Xiang Zhou, "How Does Intellectual Property Protection in the Host Country Affect Outward Foreign Direct Investment?," *Research in International Business and Finance* 58 (2021), <https://doi.org/10.1016/j.ribaf.2021.101476>.
- <sup>5</sup> Jiaoli Cai, Hongzhong Zhao, and Peter C. Coyte, "The Effect of Intellectual Property Rights Protection on the International Competitiveness of the Pharmaceutical Manufacturing Industry in China," *Engineering Economics* 29, no. 1 (2018): 62–71, <https://doi.org/10.5755/j01.ee.29.1.16878>.

protection of IPR is crucial for promoting innovation, creativity, economic growth, and social progress.

IPR is a form of property and, as such, its legal framework is centered on the concept of ownership.<sup>6</sup> Similar to other types of property, ownership of intellectual property can be transferred to another party. This entails transfer of associated rights and economic benefits of intellectual property. Nevertheless, transfer of IPR in Indonesia is confronted with a multitude of legal challenges. These challenges impede businesses and individuals from effectively safeguarding and utilizing their intellectual property assets.

Transfer of IPR rights, such as patents, trademarks, and copyrights, in Indonesia is governed by a complex legal framework that poses significant challenges and problems. One of the most significant of these challenges is the lack of legal clarity and consistency regarding transfer of IPR. Legal framework for IPR transfer in Indonesia is fragmented, with various laws, regulations, and administrative procedures that often overlap and contradict each other. This lack of legal clarity can create confusion and uncertainty for businesses and individuals seeking to transfer their IPR assets.

Another significant challenge in transfer of these assets in Indonesia is the availability of inadequate infrastructure and limited expertise in legal system.<sup>7</sup> Admittedly, the Indonesian legal system faces significant capacity issue, including limited resources, lengthy court procedures, and a lack of

expertise. This lack of expertise among the Indonesian communities can be traced back to the fact that IPR is still a poorly informed topic in the country at large.<sup>8</sup> This challenge can result in delays during transfer of IPR assets and, in some cases, can even lead to the misappropriation of the assets. Notably, the level of IPR protection in Indonesia is relatively low compared to other countries in the Southeast Asia region.

In addition to legal and institutional challenges, there are also practical challenges that tend to hinder transfer of IPR in Indonesia. These include a lack of transparency and limited access to information, making it difficult for businesses and individuals to understand the requirements and procedures involved in transferring IPR assets. Concerns also arise regarding the reliability of the Directorate General of Intellectual Property (DGIP) of the country in processing and registering IPR transfer, as well as the quality of the examination process conducted by the DGIP.

These challenges have significant implications for businesses and individuals seeking to protect and exploit their IPR assets. In particular, the lack of legal clarity, inadequate infrastructure, and limited expertise can lead to a lack of effective protection against infringement and the exploitation of these assets. Therefore, IPR protection has been found to have a significant impact on foreign direct investments as it acts as a form of safety insurance for many foreign investors.

<sup>6</sup> Séverine Dusollier, "Intellectual Property and the Bundle-of-Rights Metaphor," in *Kritika: Essays on Intellectual Property*, vol. 4, 2020, 146–79, <https://doi.org/10.4337/9781839101342.00013>.

<sup>7</sup> Sutrisno and Adhitya Widya Kartika, "Legal Protection of Intellectual Property Rights in Rural Village in Subdistrict Sekaran Lamongan District," in *Nusantara Science and Technology Proceedings*, 4th

*International Seminar of Research Month*, 2020, 84–90, <https://doi.org/10.11594/nstp.2019.0412>.

<sup>8</sup> Anis Mashdurohatun, Jamadi Jamadi, and Eman Suparman, "Developing Intellectual Property Rights as Joint Assets Post-Marriage Decisions Based on Justice," *Scholars International Journal of Law, Crime and Justice* 5, no. 12 (December 2022): 527–36, <https://doi.org/10.36348/sijlcj.2022.v05i12.003>.

This research paper aims to provide a comprehensive analysis of legal challenges and problems pertaining to transfer of IPR in Indonesia, with a focus on patents, trademarks, and copyrights. It will examine legal framework governing IPR transfer in the country and identify the practical challenges that businesses and individuals face when attempting to protect and exploit their IPR assets. Furthermore, the paper will explore the impacts of these challenges on the Indonesian economy and examine the strategies that can be adopted to address them effectively.

The objective of this research is to contribute to the development of effective policies and strategies for transfer and protection of IPR assets in Indonesia. The obtained results will be of particular interest to policymakers, legal practitioners, businesses, and individuals who are involved in transfer and protection of these assets in the observed country. By focusing primarily on the challenges and problems that IPR holders face during transfer process, this paper aims to bridge the gap between conceptual understanding and the normative issue present in the existing IPR regimes. Accordingly, a notable limitation of this research lies in its absence of a specific analysis of a particular regime. This omission emphasizes the need for future investigations to delve deeper into the intricate interplay between conceptualizations and normative flaws pertaining to the transfer mechanisms of IPR in Indonesia.

## Method

The normative legal research method was used in this research<sup>9</sup> to analyze the problems within the Indonesian legal framework around intellectual property and examine their impacts on the mechanisms of IPR transfer in the country. To ensure a robust analysis, the statutory approach was utilized, focusing on the analysis of existing laws and regulations governing IPR, which are fragmented in the Indonesian legal system. Furthermore, secondary data, primarily in the form of laws and regulations, were utilized as the primary source of legal information. These included Law No. 30 of 2000 on Trade Secrets, Law No. 20 of 2016 on Trademarks and Geographical Indications, Law No. 28 of 2014 on Copyrights, Law No. 13 of 2016 on Patents, as well as judicial decisions made within the Indonesian legal system that correlated with the topic and provided additional value to the analysis.

## Results and Discussion

### *Lack of Legal Clarity and Consistency in the Laws and Regulations for IPR Transfer*

Transfer of IPR within legal framework of Indonesia has long been a challenging issue. One of the key obstacles to smooth IPR transfer is the lack of legal clarity and consistency in the laws and regulations governing them. This issue creates confusion and uncertainty for businesses and individuals seeking to transfer their IPR assets within the country.<sup>10</sup> The current legal framework lacks a comprehensive and unified law that governs IPR transfer, resulting in a patchwork of laws, regulations, and decrees that are often contradictory and

<sup>9</sup> Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

<sup>10</sup> Hari Sutra Disemadi, "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia," *LAW REFORM* 18, no. 1 (March 2022): 89–110, <https://doi.org/10.14710/lr.v18i1.42568>.

confusing. Furthermore, the existing legal framework does not provide clear guidance for transfer of different types of IPR assets, such as patents, trademarks, copyrights, and trade secrets.<sup>11</sup> This results in businesses and individuals being left with little direction on how to proceed with IPR transfer, hence, leading to delays, disputes, and potential legal issue. It is also important to note that the lack of legal clarity and consistency in the laws and regulations for IPR transfer has made it challenging for foreign businesses to navigate the Indonesian legal framework, which has led to a decreased level of foreign investment in the country. While efforts to reform the Indonesian legal framework for IPR transfer are ongoing, the current lack of legal clarity and consistency remains a significant challenge for businesses and individuals seeking to transfer their IPR assets within the country.

As Indonesia continues to deepen its integration into regional free trade agreements such as ASEAN and global free trade through the World Trade Organization (WTO), the protection of IPR becomes increasingly crucial for sustaining economic growth. Consequently, Indonesia will likely encounter an increased number of IPR-related legal cases, activities, and discussions. Within this context, IPR transfer will also play a significant role, especially as Indonesia and other developing countries strive to attract foreign investments given their fast-growing economies and huge outsourcing potentials. According to the APNIC Transfer Log, there were 1,234 requests for IPR transfer in 2022. Out of these requests, 1,193 were approved while 41 were denied. The most common reason for the denial was that the request did not meet the APNIC transfer policy

requirements.<sup>12</sup> Other relevant data from APNIC is presented in Table 1:

**Table 1:** Type of IPR Transfer (APNIC Transfer Log 2022)

Type of Transfer	Number of Requests
Merger-Acquisition	754
Historical Internet Number Resources	439
Unused IPv4 and AS Numbers	34

This number of technical terms and potentially new forms will continue to increase with the advancement of technologies. Furthermore, it is important to analyze the number of IPR transfer with respect to regions.

**Table 2:** Number of IPR Transfer Requests Based on Region (APNIC Transfer Log 2022)

Region	Number of Requests
Asia-Pacific	991
Europe	187
North America	46
South America	1
Africa	1

Despite limitations such as the unavailability of data from countries outside the Asia-Pacific region and the fact that there may be other requests for IPR transfer that were never submitted to APNIC, the available data provides valuable insights into the relevance of IPR transfer in Indonesia, one of the most promising economies in the Asia-Pacific region.

Given the current circumstances, it is crucial for Indonesia to thoroughly examine legal challenges associated with transferring IPRs to better facilitate mobility in the dynamic free trade economy. One of the key

<sup>11</sup> Jessica Leonard, Prita Amalia, and An Chandrawulan, "Indonesian Perspective On The Investor-State Dispute Settlement Mechanism For Foreign Investment Dispute Settlement In The Field Of Intellectual Property Rights," *Indonesia Law Review* 10, no. 1 (April 2020): 17-28,

<https://doi.org/10.15742/ilrev.v10n1.615>.

<sup>12</sup> APNIC, "Transfer Logs," Asia Pacific Network Information Centre, 2022, <https://www.apnic.net/manage-ip/manage-resources/transfer-resources/transfer-logs/>.



contributing factors to IPR transfer problem in Indonesia is the complexity of legal system of the country. The laws and regulations governing IPR transfer are scattered across various legal instruments, including Patent Law, Trademark Law, Copyright Law, and Industrial Design Law. This fragmentation makes it difficult for businesses and individuals to navigate transfer process effectively. Furthermore, these laws and regulations are not always consistent with each other, leading to ambiguity and confusion.<sup>13</sup> One of the biggest problems within this system is the difficulty faced by legislative bodies in Indonesia to continuously develop all the necessary laws and regulations in a balanced way. This challenge is evident in the fact that the Trade Secret regulation dates back to 2000, while the Patents Law is relatively recent, enacted in 2016. While it is arguable and to some extent, justified to think of intellectual property law as one of the most developed legal fields in the Indonesian legal system, the existence of old regulations does indicate the difficulty to regulate some of the existing intellectual property regimes despite the urgency brought by the changes in society such as digitalization.<sup>14</sup>

The complexity of the Indonesian legal framework regarding transfer of IPR is evident through the existence of multiple IPR regimes within legal system of the country. Article 5 of Law No. 30 of 2000 on Trade Secret (Trade Secret Law) outlines the provisions related to transfer of Trade Secret Rights. In the article, it was stated that (1) Trade Secret Rights can be transferred through inheritance, grant, will, written agreement, or other reasons justified by laws and regulations. (2) Transfer of Trade Secret

Rights, as referred to in paragraph (1), must be accompanied by documents evidencing transfer of rights. (3) Transfer of rights to a registered Mark, as referred to in paragraphs (1) and (2), requires registration with the Minister. (4) Transfer of Trade Secret Rights that are not recorded at the Directorate General will not result in any legal consequences for third parties. (5) Transfer of Trade Secret Rights, as stated in paragraph (3), must be announced in the Official Trade Secret Gazette.

In contrast, Article 41 of Law No. 20 of 2016 on Trademarks and Geographical Indications presents a different set of regulations regarding transfer of rights to a registered Mark. This article states that “(1) Rights to a registered Mark can be changed or transferred through inheritance, will, waqf, grant, agreement or other reasons justified by laws and regulations. (2) If a Mark Owner owns more than one registered Mark that shares the same principal or is similar in their entirety for similar goods and/or services, transfer of rights can only be carried out if all the registered Marks are transferred to the same party. (3) Transfer of rights to a registered Mark, as referred to in paragraphs (1) and (2), requires registration with the Minister. (4) The application for transfer of Rights to a Mark, as stated in paragraph (3), must be accompanied by supporting documents. (5) Transfer of rights to a registered Mark which has been recorded, as referred to in paragraph (3), must be announced in the Official Gazette of the Mark. (6) Transfer of rights to a registered Mark that is not registered will not have legal consequences for third parties”.

The two provisions showed significantly different procedures, mechanisms, and

<sup>13</sup> Fitri Rini Ariyesti et al., “Systematic Review of the Functionality of Intellectual Property Rights in Indonesia,” *Journal of Public Affairs* 22, no. 2 (2022), <https://doi.org/10.1002/pa.2482>.

<sup>14</sup> Abdurrahman Mazli, “Urgensi Pembaharuan Undang-Undang Perlindungan Konsumen Indonesia Di Era E-Commerce,” *Jurnal Lex Renaissance* 6, no. 2 (2021): 298–312, <https://doi.org/10.20885/jlr.vol6.iss2.art6>.

requirements for administrative works. The most fundamental difference is the fact that the provision on transfer of Trade Secret rights is carried out through the DGIP while that of the Trademark rights is performed through the ministry. Furthermore, the timeline of these two provisions presents a rather counter-intuitive approach, which was taken by the Indonesian government. Despite the fact that the procedures outlined by the DGIP have been modernized by the process of digitalization through its official website,<sup>15</sup> the newer provision (Trademark Rights) takes the mechanism backward and makes it more complicated by involving the Ministry, compared to the older provision (Trade Secret Rights), which relies solely on the DGIP.

Another noteworthy issue is the absence of a specialized regulation for copyright transfer, in contrast to the specific regulation in place for patent transfer through Government Regulation No. 46 of 2020 on Terms and Procedures for Registration of Patent Transfer.

The lack of legal clarity and consistency in the Indonesian legal framework for transfer of IPR can be attributed to several factors. One of these factors is the availability of limited expertise and resources within legal system. These normative issue, combined with limited expertise and resources within the Indonesian legal system, contribute to the challenges faced in transferring IPR. Accordingly, insufficient knowledge and experience among legal professionals, coupled with inadequate infrastructure and expertise, result in delays and confusion for businesses and individuals navigating legal framework.

The lack of legal clarity and consistency in the laws and regulations governing transfer of IPR can have significant impacts. For example, businesses and individuals may find themselves facing increased costs and time spent navigating legal system due to the lack of clear guidance and inconsistencies within legal framework. This creates uncertainties and risks associated with IPR transfer, hence, further complicating the process for those involved. Moreover, the lack of legal clarity and consistency in the laws and regulations governing IPR transfer may discourage foreign investors from investing in Indonesia. Licensing and technology transfer are common considerations for foreign investors, and the presence of unclear or inconsistent regulations can create doubts and hesitations.<sup>16</sup> This situation can hinder the competitiveness of the country by reducing its ability to attract the level of foreign investment it requires to grow and develop its economy.

To address these challenges, there have been concerted efforts to streamline and simplify the laws and regulations governing IPR transfer in the country. One notable example of these efforts is the implementation of a one-stop system for IPR registration by the Indonesian government. This system was introduced with the aim of simplifying and expediting the many mechanisms regarding IPR in Indonesia, making it more accessible and efficient for businesses and individuals. This system utilizes the official website of the DGIP as an effort to further anticipate the digitalization process and changes brought about by the current technology and computation advances.<sup>17</sup>

<sup>15</sup> Harimurti Dyan Anggriani, "Implementasi Komputasi Awan Di Direktorat Jenderal Kekayaan Intelektual (DJKI)," *Jurnal Darma Agung* 30, no. 2 (August 2022): 357–65, <https://doi.org/10.46930/ojsuda.v30i2.1680>.

<sup>16</sup> Fira Amalia Sugianto and Devi Siti Hamzah Marpaung, "Efektivitas Peranan Mediasi Dalam

Upaya Alternatif Penyelesaian Sengketa Kekayaan Intelektual," *Jurnal Meta-Yuridis* 5, no. 1 (March 2022): 51–59, <https://doi.org/10.26877/m-y.v5i1.8756>.

<sup>17</sup> Anggriani, "Implementasi Komputasi Awan Di Direktorat Jenderal Kekayaan Intelektual (DJKI)."

While the implementation of the one-stop system for IPR registration represents an important step towards addressing issue of legal clarity and consistency in the Indonesian legal framework for IPR transfer, there are still substantial challenges that need to be addressed. The current legal framework governing IPR transfer in Indonesia remains fragmented and lacks a comprehensive and uniform set of laws and regulations. This makes it challenging for businesses and individuals to navigate legal system when transferring IPR assets. Particularly, the absence of clear guidance on transfer of different types of IPR assets such as patents, trademarks, copyrights, and trade secrets further complicates transfer process. It is also important to note that while having a fragmented legal framework for IPR protection does provide Indonesia with more normative room to regulate even the technical details of many IPR regimes, there has to be a pattern or similarity when it comes to IPR transfer mechanisms within legal system of the country to avoid confusions and the possibility of turning investors away due to complicated bureaucracy. Additionally, the technical aspects of legal mechanisms, such as the drafting of contracts, lack clear guidance on whether certain procedures are compulsory or not.<sup>18</sup> When considering the position of Indonesia, as one of the weakest countries in the Southeast Asia region in terms of IPR protection, the lack of legal clarity and consistency becomes even more discouraging for potential investors.

Technically, the lack of legal clarity and consistency in the Indonesian legal framework for IPR transfer has significant implications for businesses and individuals seeking to transfer IPR assets within the country. These implications entail higher costs, longer processing time, and increased legal risks associated with IPR transfer.

Additionally, this lack of a clear and consistent legal framework can discourage foreign investors from investing, and this can adversely affect the economic growth of the country and its competitiveness. Notably, given the ambitious economic goals of the country for the future, this situation is particularly concerning.

In this regard, while the implementation of a one-stop system for IPR registration is a positive development, it should be viewed as part of a broader initiative to reform the Indonesian legal framework governing IPR transfer. Accordingly, a more comprehensive and uniform set of laws and regulations is required to address the challenges faced by businesses and individuals seeking to transfer IPR assets in Indonesia. Such reforms will require sustained efforts from the Indonesian government and legal system to ensure that legal framework governing IPR transfer is clear, consistent, and supportive of business growth and development.

The lack of legal clarity and consistency in the laws and regulations governing IPR transfer poses a significant problem within the Indonesian legal framework. This issue has resulted in confusion and uncertainty for businesses and individuals and has significant effects on the competitiveness of the country and its attractiveness to foreign investors. Addressing this issue will require a comprehensive approach, involving the streamlining and simplification of legal framework for IPR transfer, the improvement of infrastructure and expertise, as well as the enhancement of transparency and accessibility to information.

#### *Inadequate Infrastructure and Limited Expertise in the Indonesian Legal System*

Transfer of IPR within the Indonesian legal framework is facing several key challenges,

<sup>18</sup> Annalisa Yahanan and Elmadiantini, "Akta Notaril: Keharusan Atau Pilihan Dalam Peralihan

Kekayaan Intelektual," *Lambung Mangkurat Law Journal* 4, no. 1 (2019): 51–63.



primarily stemming from inadequate infrastructure and limited expertise within legal system. These challenges have resulted in delays and misappropriation of IPR assets. Furthermore, the overall legal has a significant impact on the development of legal system, and the case of intellectual property in Indonesia is no exception as it utilizes a *sui generis* system with a fragmented legal framework. This allows for specialized normative construction, even the technical aspects. It also poses the challenge of a much more difficult process of harmonization with other existing laws and regulations.

The inefficiency of the Indonesian legal system in supporting the effective transfer of IPR assets is primarily due to the lack of necessary infrastructure. For instance, the absence of an efficient and reliable IPR registration system leads to significant delays in transfer process. Additionally, the DGIP in Indonesia operates with limited resources and capacity, resulting in longer processing times for IPR transfer applications. These delays can have significant implications for businesses and individuals, including the loss of business opportunities and risks associated with the misappropriation of IPR assets.

Another significant problem lies in the limited expertise within the Indonesian legal system. The successful transfer of IPR assets requires specialized knowledge and skills, including the ability to understand complex legal frameworks and navigate legal procedures. Unfortunately, many legal professionals in Indonesia lack the necessary expertise in IPR transfer, leading to delays and inefficiencies in transfer process. Additionally, this lack of expertise can make

it more challenging to identify and address issue related to transfer of IPR assets, leading to increased risks of misappropriation.

In addition to the challenges of inadequate infrastructure and limited expertise, another significant issue that arises is the misappropriation of IPR assets. This issue is particularly prevalent in the technology sector, where transfer of IPR assets is critical to innovation and development. This problem is further compounded by the development of a counterfeit culture, where the Indonesian society is starting to normalize the misappropriation of IPR.<sup>19</sup> The combination of inadequate infrastructure and limited expertise can create opportunities for malicious actors to exploit and misappropriate IPR assets, resulting in significant losses for businesses and individuals. Such misappropriation can take many forms, including piracy, counterfeiting, and infringement, and can result in reputational damage, financial losses, and legal disputes. Although not directly tied to the problem of IPR transfer, the very purpose of transferring IPR is to ensure transfer of associated benefits without the risk of misappropriation. These problems emphasize the importance of a comprehensive approach encompassing law, accountability, infrastructure, and access,<sup>20</sup> as these aspects are intricately linked to the conceptualization of IPR.

It is also important to note that the lack of infrastructure and expertise in the Indonesian legal system can contribute to a lack of confidence among businesses and investors. The uncertainties and risks associated with IPR transfer can discourage foreign investors from engaging in the economy of a country, thereby limiting its economic growth and

<sup>19</sup> Muhammad Deovan Reondy Putra and Hari Sutra Disemadi, "Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual," *KRTHA BHAYANGKARA* 16, no. 2 (September 2022): 297–314, <https://doi.org/10.31599/krtha.v16i2.1151>.

<sup>20</sup> Vissia Dewi Haptari and Rahadi Nugroho, "Literasi Akuntansi Dan Pemasaran Online Bagi UMKM Desa Tirtonirmolo Kabupaten Bantul," *KUAT: Keuangan Umum Dan Akuntansi Terapan* 1, no. 3 (November 2019): 190–93, <https://doi.org/10.31092/kuat.v1i3.632>.

development.<sup>21</sup> Furthermore, the limited expertise and infrastructure present significant challenges for businesses seeking to operate in Indonesia, leading to a less competitive business environment. These challenges pose considerable obstacles in conducting proper risk assessments, which is an important aspect of any kind of investment.<sup>22</sup>

To address issue of inadequate infrastructure and limited expertise in the Indonesian legal system, various initiatives have been implemented. For example, the Indonesian government has initiated efforts to improve the capacity of the DGIP and streamline IPR registration process. Furthermore, various programs have been launched to enhance the expertise of legal professionals in IPR transfer. While these efforts have yielded progress, further improvements are still required to fully address the challenges related to inadequate infrastructure and limited expertise within the Indonesian legal framework for IPR transfer.

Particularly, this challenge poses a significant problem for transfer of IPR in the country. This issue has resulted in delays, inefficiencies, and disruptions in transfer process, misappropriation of IPR assets, and a less competitive business environment. Effectively addressing these challenges necessitates a comprehensive approach that encompasses the improvement of infrastructure, enhancement of professionals with legal expertise, and streamlining of IPR transfer process. It is worth noting that Indonesia is among the worst-performing countries in the Southeast Asia region when it comes to the protection of intellectual property.

## Case Reviews

There have been many cases within the Indonesian legal system that shows the confusion around transfer mechanisms of intellectual property in the country. The first case is Central Jakarta District Court Decision Number: 56/Pdt.Sus-Hak Cipta/2020/PN. Niaga.Jkt.Pst. In this case, the court made a consideration stating "Considering, that in court the Plaintiff could not prove that he had submitted evidence of a letter of postponement of transfer or receipt before submitting transfer process "Hologramization or Kinergramization of Tobacco/Cigarette Excise Tape "Registration Number: 021812 types of work: Written work, date and place of first announcement: 16 February 1993 in Jakarta on behalf of the Creator/Copyright Holder, Mr. Kasim Tarigan (Plaintiff) whose address is: Jl. Cempaka Putih Tengah 21/3, Cempaka Putih, Central Jakarta to Defendant II by Defendant I was processed; Rejecting the plaintiff's claim in its entirety; Punishing the Plaintiff to pay court fees which to date have been set at Rp. 1,817,000 (one million eight hundred and seventeen thousand rupiah)."

Although the court denied the plaintiff's claim in its entirety, there was no legal basis for the consideration mentioned above, specifically regarding the postponement of transfer or receipt before submitting transfer process of the said Copyright. Law No. 28 of 2014 on Copyrights (Copyrights Law) does not include any provisions regarding the postponement of copyright transfer or anything similar. Throughout the entirety of the case, there was also apparent confusion among legal team members of the plaintiff

<sup>21</sup> Kalle A. Piirainen et al., "The Reverse Tragedy of the Commons: An Exploratory Account of Incentives for under-Exploitation in an Open Innovation Environment\*," *Technology Analysis and Strategic Management* 30, no. 3 (2018), <https://doi.org/10.1080/09537325.2017.1308479>.

<sup>22</sup> Mia Hang Pham, Yulia Merkoulouva, and Chris Veld, "Credit Risk Assessment and Executives' Legal Expertise," *Review of Accounting Studies*, August 2022, <https://doi.org/10.1007/s11142-022-09699-9>.

regarding the proper mechanism for transfer of copyrights.

Another illustrative example highlighting Copyrights-related issue is the SURABAYA District Court Decision Number 3/Pdt.Sus-HKI/Paten/2020/PN Niaga Sby. In this case, the court made a consideration stating “In light of the exception outlined in point 4, which pertains to an unclear claim on *posita* and *petitum* related to transfer of industrial design rights from Co-Defendant I to Co-Defendant, with unexplained/unknown records of transfer of rights. The Plaintiff, admitting his uncertainty about the process of transferring and registering rights over the 'Genteng' Industrial Design, List No. IDD000043407 from Defendant I to PT. Kepuh Kencana Arum (lc. Also Defendant), failed to provide clarity in his lawsuit. Consequently, the Panel of Judges is of the opinion that the lawsuit of the plaintiff has outlined the events that caused his loss, hence, the exception is not based on law and according to law, the exception is to be rejected.” In this case, the plaintiff even admitted that he did not know for certain about the process of transferring and registering rights over the “Genteng” Industrial Design.

The court also noticed another problem, and this led to further consideration where it was stated “In relation to the exception outlined in point 3, namely the exception of a general civil lawsuit with a special civil lawsuit (commercial case), which states that the Plaintiff has combined claims (cumulation of lawsuits) against 2 (two) different objects. He combined the cases of Cancellation of Registration of Industrial Designs and Cancellation of Transfer of Rights of Industrial Designs. Juridically, the merger of the lawsuits cannot be justified. This is because, in principle, the object of the lawsuit filed by the Plaintiff has its characteristics that require a separate and independent examination and proof process. In this case, the Panel of Judges is of the opinion that the

process of transferring rights to an Industrial Design is a set of follow-up processes, which are an integral part of the field of intellectual property, hence, the exception is not based on law and should be rejected according to law”. Similar to the previous problem encountered in the Copyrights case, there was no specific regulation that addresses the provision for the cancellation of transfer of rights of industrial designs. Another interesting thing to point out, in this case, is the fact that the plaintiff used the Patent claim.

Throughout these two cases, the court did not establish a clear legal basis for its examination of issue regarding transfer of intellectual property. Instead, employed a variety of different approaches to look at the case. Consequently, this will result in uncertainty not just among business owners seeking to transfer their IPR, but also legal practitioners and IPR experts within the Indonesian legal sphere, which relies heavily on the codified laws and regulations.

### *Normative Rooms for Simplifying Bureaucracy*

One approach to addressing the challenges related to transfer of IPR within the Indonesian legal framework is to simplify bureaucracy through the revision of existing laws and regulations. This approach can lead to a more efficient and effective IPR transfer process, hence, reducing delays, as well as enhancing legal protections for both businesses and individuals.

A significant issue related to bureaucracy within the Indonesian legal system is the complex and fragmented legal framework governing IPR transfer. This framework encompasses numerous laws, regulations, and decrees, making it challenging to navigate the intricacies of IPR transfer process. Consequently, the fragmented legal framework can result in inconsistencies and confusion, leading to delays and inefficiencies in IPR transfer process. As

highlighted by the aforementioned case reviews, the complexity of the many IPR regimes within the Indonesian legal framework contributes to challenges in understanding transfer of rights.

To address these challenges, the Indonesian government should consider revising its existing laws and regulations related to IPR transfer, with the aim of simplifying the overall legal framework. This revision can include consolidating the various laws and regulations into a single, comprehensive law or regulation, hence, providing a clear and concise framework for IPR transfer. The revision can also include the harmonization of IPR transfer process with international standards, as this will increase legal certainty, and facilitate transfer of IPR assets across borders. Furthermore, it is essential to address the technical issue such as the cancellation of transfer of rights, ensuring that these matters are resolved in a manner that does not further complicate the bureaucratic system.

In addition to the aforementioned benefits, the revision of laws and regulations can bring about enhanced legal protections for businesses and individuals, effectively mitigating the risks associated with the misappropriation of IPR assets. The revised laws and regulations can include stronger enforcement mechanisms, such as enhanced penalties for IPR infringement, thereby improving legal protections for these assets. Furthermore, the revision can improve legal framework for alternative dispute resolution, providing more efficient and cost-effective mechanisms for resolving legal disputes related to IPR transfer.

It can also facilitate the development of a more competitive business environment in Indonesia. A simplified legal framework

reduces the costs and time associated with IPR transfer, thereby increasing the efficiency of business operations. This, in turn, makes the country a more attractive destination for foreign investment. A more competitive business environment can lead to increased economic growth and development, creating more opportunities for businesses and individuals within the country.

By simplifying legal framework for IPR transfer, the costs and time associated with transferring IPR assets can be reduced, hence, stimulating economic activity and bolstering the competitiveness of Indonesia. The simplified legal framework can also increase legal certainty, reduce the risks associated with IPR transfer, and make the country a more attractive destination for foreign investors, thereby ultimately enhancing economic growth and development, as well as providing more employment opportunities for individuals in Indonesia.

Furthermore, a more competitive business environment not only fosters economic growth but also encourages innovation and creativity, driving the development of new and innovative products and services. The simplified legal framework for IPR transfer can provide businesses with more opportunities to protect and commercialize their intellectual property, thereby promoting innovation and creativity. As a result, the Indonesian economy can become more diversified, leading to long-term economic growth and development.

It is also important to note that the simplified legal framework can facilitate the growth of micro, small, and medium-sized enterprises (MSMEs) in Indonesia.<sup>23</sup> MSMEs often face significant challenges in protecting and commercializing their intellectual property due to the complexity and cost

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<sup>23</sup> Disemadi, "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia."

associated with IPR transfer.<sup>24</sup> The simplified legal framework can reduce these costs, hence, making it easier for these enterprises to protect and commercialize their intellectual property. This can lead to increased competition and diversification in the Indonesian market, which can ultimately contribute to the long-term growth and development of the economy.

In addition, a more competitive business environment can lead to increased foreign competition, which in turn drives domestic businesses to become more innovative, productive, and efficient. The presence of foreign competitors can spur local businesses to strive for greater efficiency, enhance quality products and services, and improve their operations, which will ultimately benefit the consumers in the country. Improved business competition, along with the current digital transformation encouraged by the government can help multiply the mentioned positive changes and also reduce costs among many businesses.<sup>25</sup>

The revision of laws and regulations related to IPR transfer can contribute to the development of a more competitive business environment in Indonesia, which in turn will ultimately enhance economic growth and development, encourage innovation and creativity, and promote the growth of small and medium-sized enterprises. Accordingly, the simplified legal framework can reduce costs, enhance legal protections, and attract foreign investment, thereby making an economic system a more attractive

destination for businesses and individuals.<sup>26</sup> Ultimately, a more competitive business environment can lead to long-term economic growth and development, and this will undoubtedly benefit the Indonesian people.

Simplifying bureaucracy through the revision of existing laws and regulations is an effective strategy for addressing the challenges related to transfer of IPR, especially for MSMEs which are often faced with many difficulties in this regard.<sup>27</sup> Finally, the revised legal framework can provide a more efficient and effective IPR transfer process, enhance legal protections for businesses and individuals, and create a more competitive business environment in Indonesia.<sup>28</sup>

## Conclusion

In conclusion, transfer of intellectual property (IP) relies on a stable and well-understood legal framework that is supported by a strong legal culture. These elements are crucial as they ensure the proper protection and value of intellectual property assets. Without them, the importance of intellectual property transfer diminishes. Specifically, for IPR transfer, a simplified bureaucratic system and a uniform set of regulations or at least a framework that aligns with one another are necessary. Furthermore, it is important to note that completely abandoning the *sui generis* system may not be the optimal approach, as it significantly limited the normative space for the Indonesian

<sup>24</sup> Lidia Kando Br Gea and Hari Sutra Disemadi, "Relation Between The Awarenesses of Culinary Msme Actors and Trademark Protection," *Jurnal Supremasi*, September 2022, 1–16, <https://doi.org/10.35457/supremasi.v12i2.1999>.

<sup>25</sup> Chun Liang Chen et al., "Role of Government to Enhance Digital Transformation in Small Service Business," *Sustainability (Switzerland)* 13, no. 3 (2021), <https://doi.org/10.3390/su13031028>.

<sup>26</sup> Ivo Gulbis, "Foreign Direct Investment and Special Economic Zones in Latvia," *Baltic Journal of Real*

*Estate Economics and Construction Management* 6, no. 1 (2018): 240–52, <https://doi.org/10.2478/bjreecm-2018-0018>.

<sup>27</sup> Disemadi, "Contextualization of Legal Protection of Intellectual Property in Micro Small and Medium Enterprises in Indonesia."

<sup>28</sup> Putra and Disemadi, "Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual."



government to effectively govern the highly technical nature of intellectual property regulations. Instead, the findings of this research indicate the recommendation for Indonesia to harmonize the process of IPR transfer by revising the existing IPR regimes. While this undertaking might require a considerable amount of effort, it can be achieved while simultaneously developing the broader legal framework of IPR in the country to adapt to the evolving landscape of the Indonesian society. This includes addressing issue related to digitalization, legal compliance for data processing, and the emergence of AI as a disruption in IPR world.

In essence, the development of IPR legal framework must be comprehensive, encompassing all critical aspects of IPR protection, including IPR transfer mechanisms.

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