

ANALYSIS OF THE FAILURE OF THE
IMPLEMENTATION OF INTELLECTUAL
PROPERTY LAWS IN INDONESIA

by

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ABSTRACT

For the past two decades, intellectual property law has been the fastest growing and most dynamic field of law in Indonesia. But, despite impressive and extensive legal reform conducted by the Indonesian government in the area, intellectual property laws remain very difficult to enforce. Ignorance of intellectual property law is widespread within the country and protection of intellectual property rights is both practically and legally weak.

This dissertation aims: (i) to analyse the reasons for the apparent failure of intellectual property laws to be culturally and legally accepted in Indonesia, (ii) to understand the problems underlying the implementation of intellectual property laws in Indonesia and (iii) to seek some possible solutions for the problems. To test and sustain the hypothesis, this dissertation will employ both legal and cultural, socio-economic forms of analysis. It will be argued that the failure to enforce intellectual property laws in Indonesia flows from the fundamental fact that these laws are not consonant with Indonesian culture or with Indonesia's contemporary stage of economic and technological development and that the laws are accordingly unable to benefit and fulfil the interests of the Indonesian people.

With respect to patent law, this dissertation finds that the law does not, on balance, benefit Indonesia, largely because the country has not yet reached a stage of development where it has the potential to develop internationally important innovations with competitive value in the world market. In fact, patent law has a detrimental effect on Indonesia's technological and economic development, as the law increases the local cost of important technological products and further inhibits local technological development. Patent law is also ignored in so far as it is perceived to be contrary to Indonesia's communal political and social culture, which has historically emphasised the protection of the public interest rather than individual, private interests. With respect to trademark law, this dissertation finds that this is the only form of intellectual property law in Indonesia which has been relatively well established and which could easily be culturally and economically accepted

by Indonesians. This appears to be because the *Trademark Act 1961* was in fact essentially coherent with the communal culture of Indonesia in its emphasis on the need to serve the public interest by protecting consumers from misleading counterfeit goods, rather than protecting particular individual owners of trademarks. With respect to copyright law, this dissertation finds once again that the law does not easily fit Indonesian culture and level of development and is not consonant with the interest of Indonesians. Copyright law has become a neglected area of law in Indonesia, because the country is still unable to produce significant intellectual works which are worthy of international copyright protection. Further, most Indonesians have a relatively low economic standard of living and accordingly do not have economic capabilities to buy authorised but expensive works.

This dissertation makes frequent analytical references to the TRIPs Agreement and finds that that agreement has failed to be implemented in Indonesia, because of its profound incompatibility with Indonesia's social, economic and cultural situations. The dissertation finds that the TRIPS Agreement is a real burden for the development of Indonesian economy, especially after the economic and political crisis of 1997.

Based upon these findings, this dissertation recommends that intellectual property laws be drafted according to the needs of Indonesian culture, including the traditional customary laws of the *Adat*, that the intellectual property laws be in coherence with Indonesia's stage of development, and that the laws be able to fulfil the interests of the Indonesian people. Otherwise, the laws will inevitably continue to be ignored by the Indonesian people. Indonesia needs understanding and education in intellectual property rights enforcement from other developed countries, not trade sanctions. But at the same time, Western developed countries should let the Indonesian people determine by themselves through their government, how and what kind of intellectual property laws are appropriate for the nation, based on the social and economic realities and cultural values of Indonesian society.

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LIST OF ABBREVIATIONS

ABRI	Indonesian Army
ACP Group	African, Caribbean and Pacific Group of States
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
Asirevi	Association of Indonesian Sound Recording Industry
ASIRI	Association of Indonesian Recording Industry
B.I.R.P.I.	United International Bureaux for the Protection of Intellectual Property
BSA	Business Software Alliance
CBU	Completely build up
CKD	Completely knocked down
DPRD	Regional Legislative Assembly
EC	European Community
FDI	Foreign direct investment
GATT	General Agreement on Tariff and Trade
GDP	Gross Domestic Product
GSP	Generalised System of Preferences
IFPI	International Federation of Phonogram and Videogram Producers
IIPA	International Intellectual Property Alliance
IKAPI	Indonesian Book Publishers Association
IMF	International Monetary Fund
LIPI	Indonesian Academy of Sciences
LPHN	National Institute of Legal Development
MFA	Multi-fiber Agreement

MPEAA	Motion Picture Export Association of America
NGO	Non-governmental organisations
OECD	Organisation of Economic Cooperation and Development
OPEC	Organisation of Petroleum Exporter Countries
OPI	Organisation of Indonesian Authors
PCT	Patent Cooperation Treaty
PDI	Indonesian Democratic Party
PKI	Indonesian Communist Party
PMA	Foreign investment companies
PMDN	Domestic investment companies
PPUD	Entry Notification for Usage
REPELITA	Five Year Development Plans
TRIMs	Trade Related Investment Measures
TRIPs	Trade Related Aspects of Intellectual Property Rights
UMR	Regional minimum wage
UN	United Nation
UNCTAD	United Nations Conference on Trade and Development
USITC	United States International Trade Commission
USPTO	United States Patent & Trademarks Office
USTR	United States Trade Representative
VCD	Video compact disc
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation
YLBHI	Indonesian Legal Aid Foundation
YLKI	Indonesian Consumer Foundation

INTRODUCTION

A. Background to Dissertation

Although intellectual property law had been a relatively quiet and neglected area within the Indonesian legal order in the decades following Indonesian independence in 1945, that situation changed abruptly towards the end of 1980s. There was at that time a sudden interest in the protection of intellectual property rights in Indonesia and a corresponding flurry of political and legislative activity.¹ The change was largely brought about by the economic policies of the Suharto government in the 1980s which aimed to attract foreign investment and increase Indonesian exports by providing laws which met the demands of foreign investors in Western countries, the major markets for Indonesian exports.² Those demands included the provision of a strong legislative regime for the recognition and enforcement of intellectual property rights.

Since that time, intellectual property law has become the fastest growing field of law in Indonesia and the Indonesian government has launched massive legislative reforms in the area. The government introduced the *Copyright Act* in 1987 to amend the *Copyright Act* 1982. A *Patent Act* followed in 1989 and in 1992 a new *Trademark Act* replaced the old *Trademark Act* 1961. These developments were accompanied by a large number of government regulations, ministerial decrees, and other administrative decrees to support

¹ Antons, Christoph, "Intellectual Property Law Reform in Indonesia" in Lindsey, Timothy (ed), *Indonesian Law and Society* (Sydney: The Federation Press, 1999) at 304

Antons, Christoph, *Intellectual Property Law Reform in Indonesia*, Paper presented at "Indonesian Law: The First 50 Years" a Conference held at the Asian Law Centre, the University of Melbourne, 28 September 1995, at 1

² Antons, Christoph, "Indonesian Intellectual Property Law in Context" in Taylor, Veronica (ed), *Asian Laws through Australian Eyes* (Sydney: LBC Information Services 1997) at 411-412