

State Protection in Intellectual Property Products

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Abstract

This study aims to see that Indonesia is a country that has great potential and produces many works of art that have high economic value. Therefore, the state needs to be present to provide legal protection for various products so that the value and selling power of the economy is a national product. The state should protect the presence of tertiary institutions through lecturers in producing intellectual works. But the problem lies in applying laws and regulations on intellectual property products that have not been appropriately applied. The results of this study are expected to contribute knowledge and scholarship in the realm of law and management of intellectual property product protection as a form of the implementation rule of law by protecting human rights as a characteristic of Indonesia as a rule of law state.

1. Introduction

Indonesia is the largest maritime country in the world. As the largest archipelagic country, it has a variety of cultures, traditions, and customs by producing works of art with very high economic value. With intellectual product property, the presence of the state is needed to provide legal protection for various products from the archipelago so that they have high value and selling power.

The existence of tertiary institutions as centers of national civilization education, where one of the important elements is lecturers as educators responsible for teaching, research, and community service. Lecturers carrying out research activities that produce intellectual works deserve to be protected and recognized by the state constitutionally. But the reality then is different from the theoretical level. There are still many intellectual works of lecturers where there is a lot of plagiarism, and even the works of lecturers are not protected by law. The causative factor is the weak application of laws related to intellectual property products, so many works are still

not protected. The results of this research are expected to be able to contribute knowledge and scholarship in the realm of law and state management in protecting intellectual property products for lecturers and researchers who have created their intellectual works. Implementing the protection of the intellectual property manifests the concept of the rule of law by protecting human rights as a characteristic of Indonesia as a rule-of-law state.

Intellectual property that is a product of the campus originating from lecturers and students must be legally protected. State protection of citizens is human nature, such as lecturers and students. Locke argued that state nature is a harmonious condition in the form of equal rights and freedoms for every human being¹ Besides that, products that elevate the treasures and diversity of Indonesia's potential. In addition, it is to appreciate the intellectual work of the lecturers who have created intellectual masterpieces through a long process, namely research. With the presence of the state providing protection for intellectual works, it provides legal guarantees for future research continuity. State presence Providing legal protection is part of human rights that needs to be protected. It is because work results from a human product that needs to be maintained and protected. Appreciation for intellectual work is a human award that needs to be maintained and preserved through upholding intellectual property rights law.

However, various implementation problems need to be addressed as part of finding solutions to implementing intellectual property rights protection because many things still need to be improved. Even though intellectual property regulations already exist, they still need improvement, so the state's presence in the form of state protection in intellectual property products is necessary to be maximized. This study describes the formulation of the problem, namely, first, what is the state's role in protecting intellectual property rights among lecturers at tertiary institutions in Indonesia. Second, how is the protection of human rights in intellectual property rights for university lecturers in Indonesia?

Besides that, this study aims first to determine the state's role in protecting intellectual property rights among lecturers in tertiary institutions. Second, to find out the protection of human rights in intellectual property rights in universities in Indonesia. So the benefits of this research are, first, theoretically, it can be applied so that intellectual property products get legal protection. Secondly, empirically contributing legal and management knowledge to protecting intellectual property rights in tertiary institutions is expected to be helpful.

2. Research Method

¹ Reza A. A Wattimena , MelampauNegara Hukum Klasik Locke-Rousseau-Habermas,Penerbit Kanisius Yogyakarta 2007, hlm 16

The research method used is normative by reviewing the literature by examining various concepts and theories relevant to state protection of intellectual property products. Normative research. The research analysis technique used in solving the problem is to use normative legal research with a concept or approach conceptual approach and case approach or case approach.² The type of research used is normative legal research using statutory or statutory approaches, statute approach, and case approach or case approach. Statutory approach or statute approach is to use a statutory approach, namely;

Law of the Republic of Indonesia Number 20 of 2016 concerning Trademarks and Geographical Indications, and Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright.

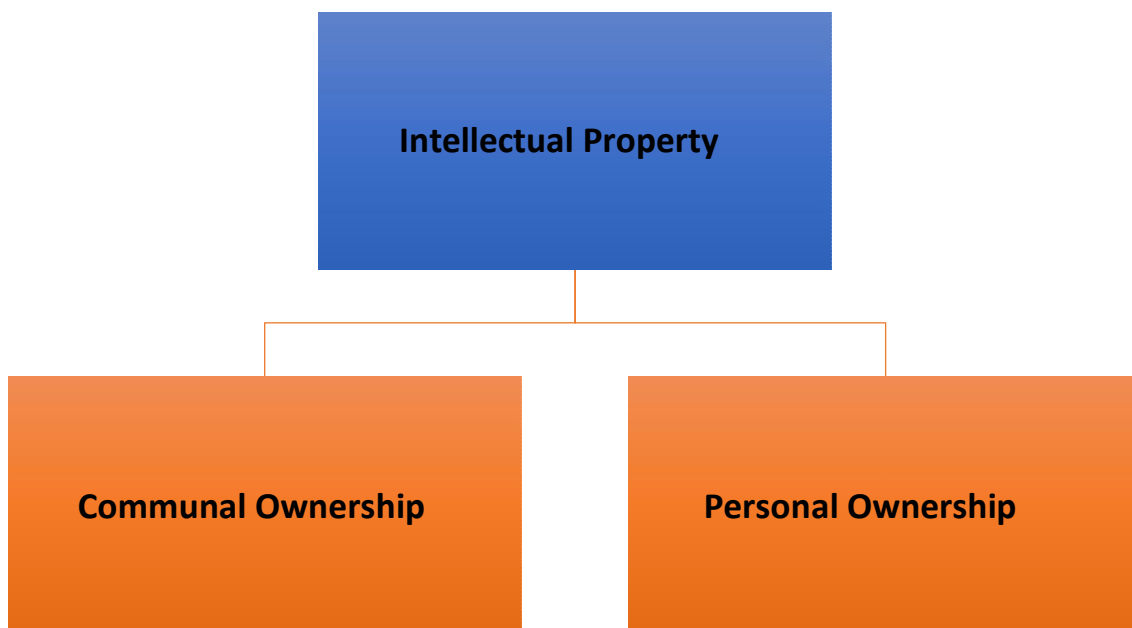
In this study, normative research will display norms, rules, and concepts in applying intellectual property rights law. The study of the theory used is in the form of grand theory, human rights theory, middle theory, the rule of law theory, and operational theory, the theory of democracy.

3. Results and Discussion

1) Diversity of Intellectual Property Products

Diversity of intellectual property is a form of the many works produced by the nation's children in presenting the best dedication in intellectual property inherent in a person or group, which is said to be intellectual property rights. Private intellectual property rights have a legal dimension in the form of a product or process, containing individual rights and legal entities from the individual, which then has economic benefits for the individual for the work that has been produced. In addition, group intellectual property rights have a legal dimension in maintaining traditions, having the dimension of common property and usually having rights over traditional or customary communities. Intellectual types can be seen in the image below

² Jonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, 2006, hlm 306 dan 321



Picture 1: Intellectual Property Product
source: retrieved from various sources

Communal ownership has a group dimension and is plural in nature. Intellectual property rights in communal ownership are shared property that is produced jointly. So that the most crucial part of community elections contains a public dimension which is divided into three, namely expressions of traditional culture, traditional knowledge, and geographical indications or indications of origin, as shown in the figure below:

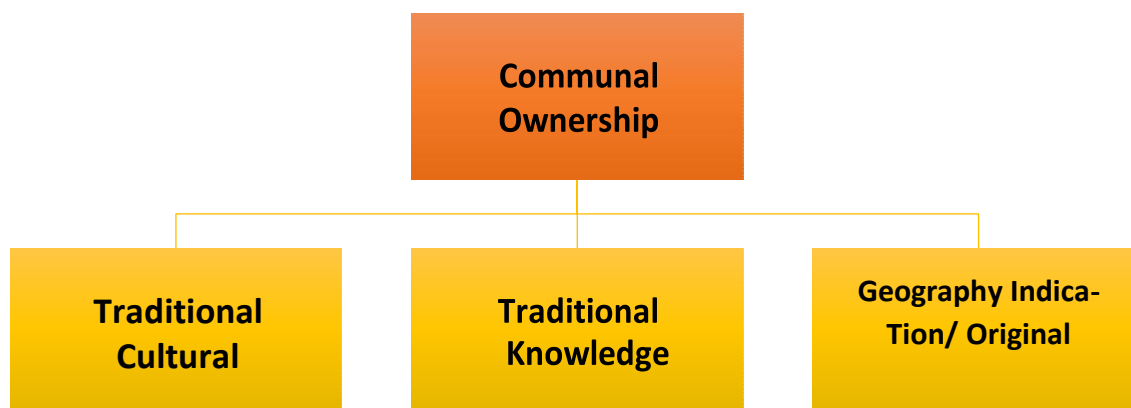


Figure 2: Communal Ownership

source: retrieved from various sources

Besides communal ownership, there is also personal ownership that is more private in characteristic. Personal ownership includes copyrights usually created by lecturers at universities, such as journals and books from a scientific process, namely research. Personal ownership has a private dimension because it is inherent in a person's rights and freedoms in using the work as an intellectual property right. Personal ownership consists of copyright or related rights and industrial property rights, as shown below:

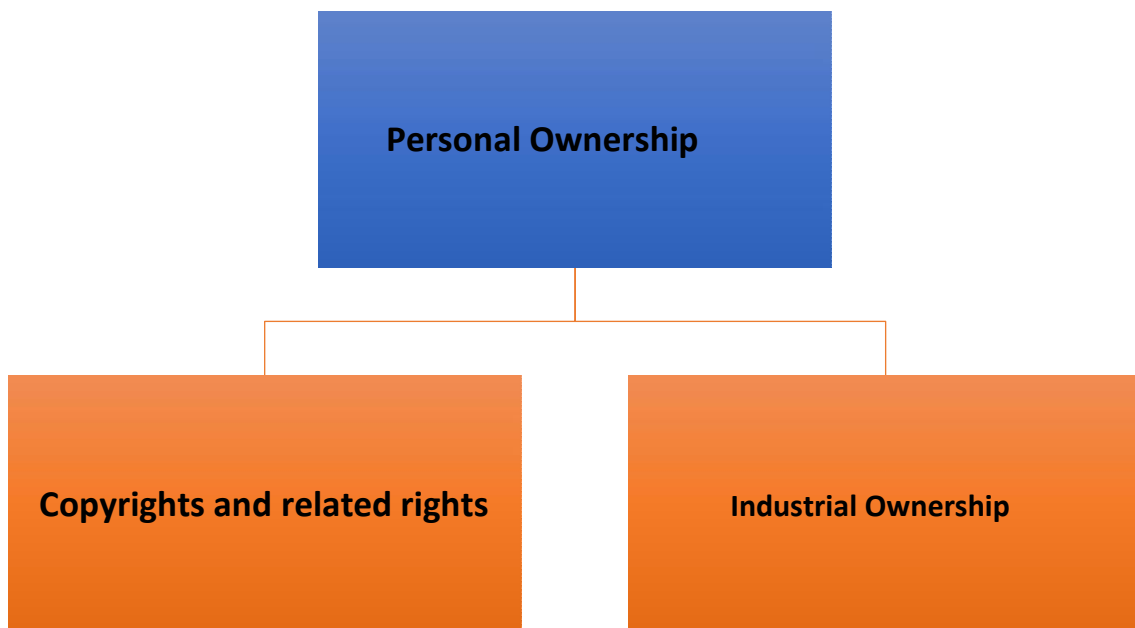


Figure 3: Personal Ownership

Source: Retrieved from various sources

In the diversity of intellectual property products, there are patents, integrated circuit layout designs, brands, industrial designs, trade secrets, and plant varieties, as illustrated below.

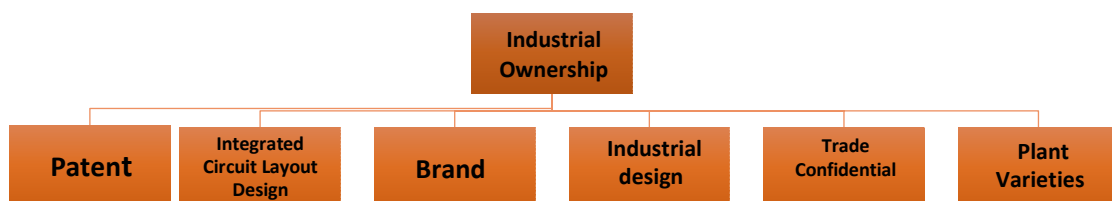
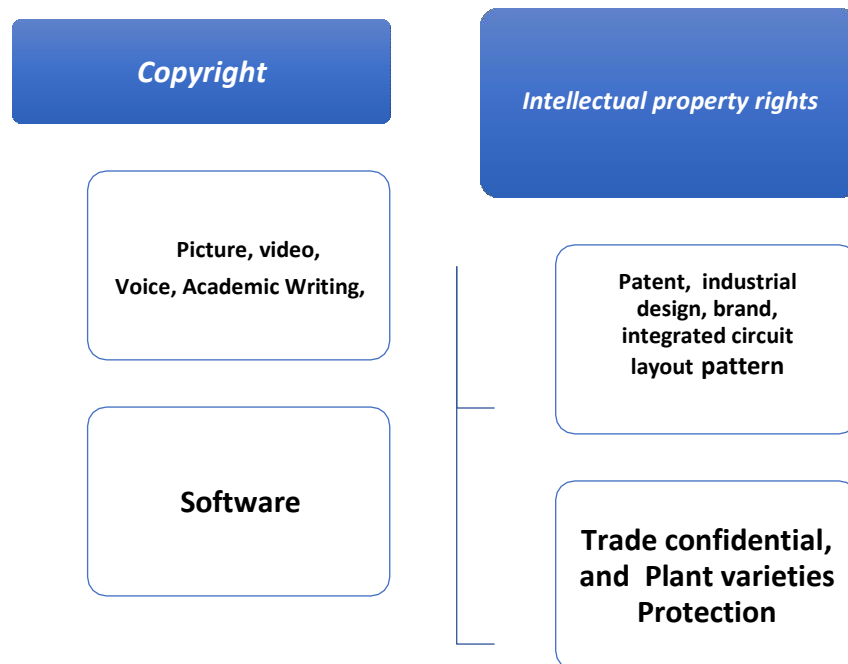


Figure 4: Industrial Ownership

Source: retrieved from various sources

For the diversity of intellectual property products to be protected by the state constitution, various regulations are also needed to regulate them, such as the Law of the Republic of Indonesia Number 13 of 2016 concerning Patents, Law of the Republic of Indonesia Number 20 of 2016 regarding Marks and Geographical Indications, Law of the Republic of Indonesia Number 28 of 2014 concerning



Copyright, Law of the Republic of Indonesia Number 32 of 2000 concerning Layout Designs of Integrated Circuits, Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design, Law of the Republic of Indonesia Number 29 of 2000 concerning Plant Varieties, Law of the Republic of Indonesia Number 30 of the Year 2000 concerning Trade Secrets. As a basis, Intellectual ownership has included scope as below:

Figure 5: Scope

Source: retrieved from various sources

State protection efforts against intellectual property rights to avoid the risk of infringement to facilitate the transfer and licensing. The license in national law is a permit that has been issued from the holder of the trade secret rights to another party in an agreement process following the granting of rights to obtain economic benefits sourced from trade secrets which will be given

protection for a certain period of time.³ The purpose of state protection in intellectual property rights is to facilitate the investment process of the public offering. The essence of registering intellectual property rights is so that when an intellectual property dispute occurs, it will become authentic evidence in the trial of the dispute.

Intellectual property. There are several types of intellectual property disputes, namely intellectual property rights violations, decisions on rejecting intellectual property applications in commercial and general courts, and tests of the validity of registering and recording intellectual property.

2) *Asas Ne Bis Vexan Rule*

Asas Ne Bis Vexan Rule is a principle that requires that every act of state administration must be based on laws and regulations, and every state intellectual property product must protect the form of administrative action, namely copyright. So that the results of intellectual property products need protection from the state, as stated in the law as a principle *Ne Bis Vexan Rule*. The state's existence in protecting intellectual property rights is fundamental as a basis for acting on behalf of the law. The presence of the state in protecting its citizens is necessary in a democratic country. One of the citizens is a lecturer as the most crucial part of a country's progress.⁴

One of the pillars of a country's progress is higher education which has responsibility for the quality of human resources and the development of science and technology. Higher education is the largest source of intellectual property rights or IPR. Universities are expected to actively encourage the academic community, such as lecturers, to promote intellectual property rights products as academic work and as a commitment with lecturers to create a national innovation system. Higher education with fundamental principles *Ne Bis Vexan Rule*, all elements in tertiary institutions, including the leaders of tertiary institutions, should support the intellectual property created by lecturers to be based on moral values with high economic value. Moral values are very urgent in the rule of law. Moral rules and decency relate to humans as individuals because they relate to personal life.⁵ With a high economic capacity for intellectual property products, it will encourage the independence of higher education management in organizing higher education, both universities, institutes, high schools, and academies.

Principle implementation of *Ne Bis Vexan Rule* it needs to be ensured that it runs well so that the protection of the state in the form of law against creators,

³ Gunawan Widjaja, *Lisensi atau Waralaba Suatu Panduan Praktis*. Rajawali Pres Jakarta. 2002 hlm 21

⁴ Riyo Hanggoro Prasetyo, *Pentingnya Perlindungan Kekayaan Intelektual (HKI) Dalam Dunia Bisnis*. Fakulras Hukum Airlangga Surabaya. 2021

⁵ Achmad Ali, *Menguak Tabur Hukum Suatu Kajian Filosofis dan Sosiologis*. Toko Gunung Agung Jakarta. 2002 hlm 39

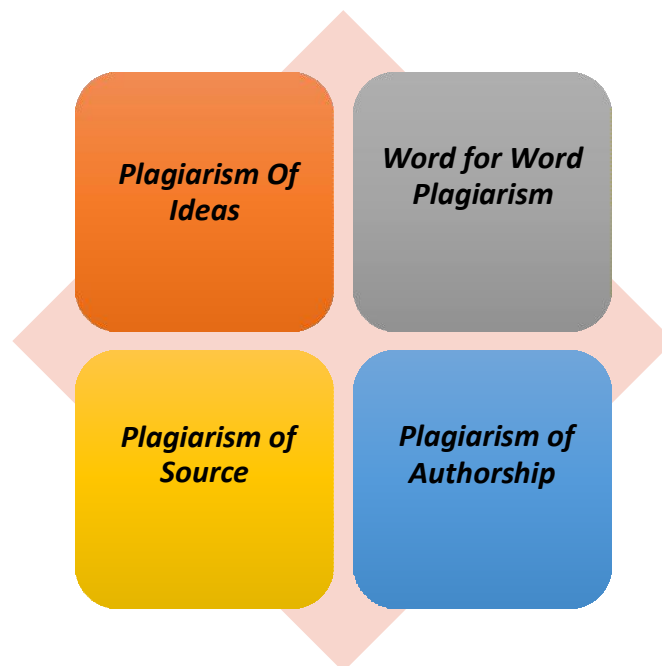
inventors, and designers be given special constitutional rights in actualizing the results of their creativity so that universities are expected to carry out information technology transformation as a reference for evaluating the tri dharma of higher education. So that duplication of research and intellectual work of lecturers will not occur, at least as an effort to reduce duplication of lecturer works.

The urgency of applying Ne Bis Vexan Rule principles in tertiary institutions is to provide legal protection played by the state, which protects intellectual property rights and the moral value of work and economic value. It is because there is a duplication of intellectual works more because of economic motives. One of the economic impacts on intellectual property products in tertiary institutions is the use of the college logo by individuals who have no interest in the existence of tertiary institutions. The logo of a higher education institution is an intellectual property product as stipulated in the 2014 Law of the Republic of Indonesia concerning Copyright which is regulated in Article 40 paragraph (1) letter (f) "stated that works of art in all forms such as paintings, drawings, carving, calligraphy, art, sculpture, sculpture, collage included. In the explanation of the regulation of the law, logos include images so that logos can be categorized as brands as stipulated in the Law of the Republic of Indonesia of 2014 concerning Marks and Geographical Indications, which briefly defines that a mark is a sign that can be displayed graphically in the form of an image, logos, names, words, letters, numbers, color arrangements, etc. So that a logo can be categorized as a brand when creation has been recorded at the Directorate General of Intellectual Property as stipulated in Article 65 of the 2014 Republic of Indonesia Law concerning Copyright. So that the logo of a college can be categorized as a brand when it has been registered as a brand or just a logo in the form of an image that is not registered as a brand

The rise of university logos that are not registered as brands have resulted in many misused university logos, which impacts morality and the economy. But when the college logo has been registered as a brand, it can have legal consequences for those who violate intellectual property. Criminal provisions in copyright infringement, such as violations of logos that are registered as brands, are regulated in the Law of the Republic of Indonesia of 2014 concerning Copyright Article 113 paragraph (1) everyone who Deliberately without the right to carry out economic violations as referred to in Article 9 paragraph (1) letter I for commercial use shall be subject to imprisonment for a maximum of 1 (one) year/or a fine of a maximum of Rp. 100,000,000.- (one hundred million rupiah). Paragraph (2) "Everyone who without rights and/or without the permission of the creator or copyright holder violates the economic rights of the creator as referred to in article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for commercial use shall be subject to imprisonment for a maximum of

3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs). Paragraph 3 "Everyone without the rights and/or permission of the creator or copyright holder violates the economic rights of the creator as referred to in Article 9 (1) letter a, letter b, letter c, and/or letter g for commercial use under with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Besides the basics, *Ne Bis Vexan Rule* the state must protect intellectual property rights because they are classified as educational crimes. In the field of education, a crime occurs because of the piracy of another person's scientific work by an evil educator who contains an act in the form of imitation or plagiarism in part or as a whole by adapting or quoting it, then presenting the plagiarism of a scientific essay to students in circulation in the form of printed material in the form of a book or diktat in the name of himself as if that he was the original author, furthermore false recognition of other people's scientific writings to the public or their students⁶. In general, it is said to be plagiarism. According to Alexandr Lindsey, plagiarism is an act of plagiarizing the ideas and work of another party without mentioning the source, thus giving birth to the view that it is wrong about the source of an intellectual work.⁷ In the study of plagiarism, there are several types of plagiarism as shown in the picture below:



⁶ A. Ridwan Halim, *Tindak Pidana Pendidikan Dalam Asas-Asas Hukum Pidana Indonesia, Suatu Tinjauan Yuridis-Edukatif*. Toko Gunung Agung Jakarta. 2002 hlm 19-20

⁷ Henry Soelistyo, *Plagiarisme Pelanggaran Hak Cipta dan Etika*, Penerbit Kanisius, Yogyakarta (2011) hlm 17

Figure 6: Types of Plagiarism

Source : Henry Soelistyo, *Plagiarisme Pelanggaran Hak Cipta dan Etika*, Penerbit Kanisius, Yogyakarta (2011)

3) State Protection with *Fair Use and Fair Dealing*

The state's study of legal protection is a constitutional obligation that must be carried out. Legal protection for citizens is closely related to the Dutch language, "legal protection of citizens against the government." In English, "legal protection of the individual with acts of administrative authorities"⁸. So protection is something that absolutely must be done by citizens to citizens, including lecturers, as one of the main components in creating a superior generation of the nation.

The lecturer is a noble profession in creating a nation's civilization. Besides teaching, the lecturer's main task is also to research to create a monumental work. The work is in the form of an intellectual property product which will then be dedicated to the nation and state. Various forms of intellectual property rights of lecturers are born, so there is a need for state protection to maintain originality and authentication.

A profession that later becomes intellectual property rights. Such property rights include writing books, research products, and other works. Lecturer copyrights are special rights granted to lecturers as creators of intellectual product work in developing science and technology, art, and literature. Issuing copyrights from lecturers will provide freedom and flexibility for lecturers who create intellectual works to publish, announce, and reproduce works because the state constitution protects them. If the copyright has been registered with IPR, then the copyright will be attached to the creator for life as an intellectual work.

Forms of intellectual property produced by Lecturers in the form of copyright and industrial property rights. The urgency of intellectual property rights Lecturers need to be protected by the state in the form of patent rights to form the branding of lecturers as creators of intellectual property rights, the ability of academic branding for lecturers that comes from intellectual property products that have been IPR will give birth to moral integrity for lecturers in producing work. Morality in producing work positively affects the public so that the community will recognize the lecturer's intellectual work externally. IPR or intellectual property rights can also protect the work of lecturers because IPR adds to the intellectual branding of lecturers as inventors and researchers in their respective fields of expertise. In this way, lecturer

⁸ Philipus M. Hsdjon, *Perlindungan Hukum bagi rakyat di Indonesia Sebuah Studi Tentang Prinsipnya, penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*. PT. Bina Ilmu, Surabaya (1987) hlm 1

branding will automatically form the expertise and expertise of lecturers as intellectuals.

Besides providing economic benefits, it can increase the enthusiasm of lecturers and positively impact the accreditation of institutions and study programs where lecturers teach. In addition, individuals and other parties do not plagiarize the lecturer's work without the permission of the lecturer who created the intellectual work. In addition, the work of lecturers protected by the state can be used as a basis and research reference in developing science and technology and discoveries in the form of new theories. The lecturer, as the creator of a work, will increase the lecturer's income in the form of commissions and royalties for works that have been published.

The effort to protect the state should be carried out by applying a doctrine. Fair Use and Fair Dealing are access to the public that the standard law system has developed; the object of protection is creation-oriented, model fair use, namely using a copyrighted work for the public interest in the form of science, education, and research without harming the interests of the creator. Mention the source clearly. It is also similar to *fair dealing* with creating more patents except for computers in limited form⁹

4) Conclusion

Conclusion from the description above, it can be concluded as follows:

1. Basic implementation *Ne Bis Vexan Rule* in the country's protection of intellectual property rights as a form of national administration action based on the applicable Law
2. State strategy by implementing *fair use and fair dealing* as an effort to protect human rights in protecting the fundamental rights of citizens, including lecturers who produce intellectual property products

Suggestions from the description above can be concluded as follows:

1. An Intellectual Property Rights Clinic is needed in each tertiary institution which functions as a vehicle for the entire academic community to obtain intellectual property rights
2. It is necessary to revise laws and regulations related to Marks and Copyrights, which are related to providing special protection to Lecturers and Universities

References

A Ridwan Halim, Tindak Pidana Pendidikan Dalam Asas-Asas Hukum Pidana

⁹ Henry Soelistyo, Plagiarisme Pelanggaran Hak Cipta dan Etika, Penerbit Kanisius, Yogyakarta (2011) hlm 98

- Indonesia Suatu Tinjauan Yuris Edukatif, Ghalia Indonesia Jakarta (1985)
- Achmad Ali, menguak Tabir Hukum Suatu Kajian Filosofis dan Sosiologis, Toko Gunung Agung, Jakarta (2002)
- Gunawan Widjaja, Lisensi atau Waralaba Suatu Panduan Praktis. Rajawali Pres Jakarta. (2002)
- Henry Soelistyo, Plagiarisme Pelanggaran Hak Cipta dan Etika. Penerbit Kanisius. Yogyakarta (2011)
- Jonny Ibrahim, Teori dan Metodologi Penelitian Hukum Normatif. Bayu Media Publishing (2006)
- Lawrence M. Friedman, Sistem Hukum Perspektif Ilmu Sosial. Nusa Media, Bandung (2009)
- Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia Sebuah Studi Tentang Prinsipnya, penanganannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara. PT. Bina Ilmu, Surabaya (1987)
- Reza A.A. wattimena, Melampaui Negara Hukum Klasik Locke-Rousseau-Habreman, Kanisius. Yogyakarta (2007)
- Riyo Hanggoro Prasetyo, Pentingnya Perliindungan Kekayaan Intelektual (HKI) Dalam Dunia Bisnis. Fakultas Hukum Airlangga Surabaya. (2021)