

Legal Politics of Government Regulation on Creative Economy Implementation in Indonesia

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Abstract

This scientific work will focus on the legal politics of Government policy through the actualisation of creative economy arrangements stipulated in Government Regulation Number 24 of 2022 concerning the Implementation Regulations of Law Number 24 of 2019 concerning the Creative Economy. The purpose to be achieved in the preparation of this scientific work is to be able to know and understand the legal politics of the implementation of the creative economy ecosystem regulated through Government Regulations as an implementing regulation of the Creative Economy Law. The method used to achieve these objectives is to use normative research methods through a statutory approach by examining in depth the implementation of the creative economy ecosystem through the Creative Economy Government Regulation. Thus the study in this scientific work can reveal the philosophical, sociological, and juridical dynamics of creative economic arrangements related to the creative economy ecosystem which includes Creative Economy Financing, Facilitating the development of Intellectual Property-Based Creative Economy Product Marketing Systems, Creative Economy Infrastructure, Incentives for Creative Economy Actors, Government and / or Regional Government responsibilities and community participation in the development of the Creative Economy, and Settlement of financing disputes.

Keywords: *Legal Politics, Government Regulation, Creative Economy*

Abstract

Karya ilmiah ini akan menitikberatkan pada politik hukum kebijakan Pemerintah melalui aktualisasi pengaturan ekonomi kreatif yang diatur dalam Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 24 Tahun 2019 Tentang Ekonomi Kreatif. Tujuan yang ingin dicapai dalam penyusunan karya ilmiah ini adalah untuk dapat mengetahui dan memahami politik hukum pelaksanaan ekosistem ekonomi kreatif yang diatur melalui Peraturan Pemerintah sebagai aturan pelaksana Undang-Undang Ekonomi Kreatif. Metode yang digunakan untuk mencapai tujuan tersebut adalah dengan menggunakan metode penelitian normatif melalui pendekatan perundang-undangan dengan menelaah secara mendalam pelaksanaan ekosistem ekonomi kreatif melalui Peraturan Pemerintah Ekonomi Kreatif. Dengan demikian kajian dalam karya ilmiah ini dapat mengungkap dinamika filosofis, sosiologis, dan yuridis terhadap pengaturan ekonomi kreatif berkaitan dengan ekosistem ekonomi kreatif yang meliputi Pembiayaan Ekonomi Kreatif, Fasilitasi pengembangan Sistem Pemasaran Produk Ekonomi Kreatif Berbasis Kekayaan Intelektual, Infrastruktur Ekonomi Kreatif, Insentif bagi Pelaku Ekonomi Kreatif, Tanggung jawab Pemerintah dan/atau Pemerintah Daerah serta peran serta masyarakat dalam pengembangan Ekonomi Kreatif, dan Penyelesaian sengketa pembiayaan.

Keywords: *Politik Hukum, Peraturan Pemerintah, Ekonomi Kreatif*

Introduction

The creative economy is a human endeavour in building the economy of society for the better, by using ideas, notions, talents, and creativity as the main tools. Human resources are the main element in this effort, because it is from humans that all these thoughts emerge which are then implemented into economic activities that trigger the community to grow and develop. The value of Indonesia's creative economy exports in 2022 reached USD 27 billion, and creative economy exports contributed around 9.25% to national exports. Creative economy export growth in December 2022 slowed down by 3% against the same period in 2021, but the overall export value in 2022 increased by 13.22%. This growth is in line with the positive contribution of the performance of several business sectors and the recovery in demand for creative economy products in several export destination

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countries such as the United States, Switzerland, and Japan, which are the top three creative economy export destination countries in 2022.²

The creative economy is not only related to the creation of added value economically, but also the creation of added value socially, culturally and environmentally. The creative economy is a manifestation of efforts to seek sustainable development through creativity, where sustainable development is an economic climate that is competitive and has renewable resource reserves that have great potential to become one of the important driving sectors in realising an independent, advanced, just and prosperous Indonesia. Creative economy development is the right choice to maintain economic resilience in the conditions of the global crisis. The Creative Economy needs to be developed because the creative economy has great potential in making a significant economic contribution, creating a positive business climate, building the nation's image and identity, based on renewable resources creating innovation and creativity which is a competitive advantage of a nation and providing a positive social impact.

The creative economy is a concept to realise sustainable economic development based on creativity. The utilisation of resources that are not only renewable, but also unlimited, namely ideas, talents and creativity. So the economic value of goods or services in the creative era is no longer determined by industrial raw materials, but rather by the utilisation of creativity and the creation of innovations through increasingly advanced technological developments.³

In the creative economy development model there are five main pillars, Firstly, supporting resources. Resources, both natural resources and cultural resources are inputs needed in the process of creating value-added creative works. Many natural resources typical of Indonesia can be an input for creative works, such as rattan, wood and pineapple fibre. Indonesia's cultural resources are also very diverse. The challenge in the development of the creative economy is to intensify the utilisation of local resources in the creation of creative works that will provide Indonesian nuances and identity so that the work is unique. This uniqueness will provide a competitive advantage for Indonesian creative works. Another challenge is that the utilisation of natural resources must consider the sustainability of natural resources so that they can be used by future generations of Indonesians. In addition, the utilisation of cultural resources needs to be done with a preservation approach, so that Indonesian generations will still recognise the roots of Indonesia's original culture even though it has been developed in such a

² Kedeputian Bidang Ekonomi. Perkembangan Ekonomi Indonesia Dan Dunia – Triwulan IV Tahun 2022. Jakarta: Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional, 2023, 47.

³ Purnomo, Rochmat Aldy. Ekonomi Kreatif Pilar Pembangunan Indonesia. Surakarta: Ziyad Visi Media, 2016.

way. Currently, Indonesia is faced with the degradation of the quality of natural resources, both forests and other natural resources as well as weak public knowledge of Indonesian culture.

Second, Industry. Industry is part of community activities related to the production, distribution, exchange, and consumption of products or services. The development of creative industries not only includes the main industry, in this case the 15 creative industries that are the focus of creative economic development, but also the supporting industries, such as the wood product processing industry for the handicraft industry, the textile industry for the creative fashion industry and the paper industry for the creative publishing industry. In addition, the development environment also needs attention, such as the world of education that will foster creative people, as well as the media that can encourage the distribution of knowledge and information to the public.

Third, Financing. Financing institutions play a role in channelling funding to industry players in need, either in the form of capital/equity or loans or credit. Both conventional financial institutions, such as banks and non-conventional ones such as venture capital, angel investors, and crowdfunds are important elements to bridge the financial needs of creative people and capital owners.

Fourth, Marketing. Creative works will have economic value if they find a market. Finding a market for the creative industry requires market research on market tastes and effective marketing techniques so that the creative work can be accepted by the market with high value. Market opportunities for Indonesian creative works are wide open not only domestically but also abroad. It is a challenge for the government to help creative people expand market access both at home and abroad.

Fifth, Technology and Infrastructure. Technology can be defined as an entity both material and immaterial, which is the application of the creation of mental or physical processes to achieve a certain value. In other words, technology is not just machines or tools that are tangible, but technology includes a collection of techniques or methods, or activities that shape and change culture. Technology can be used to create, produce, collaborate, find information, distribute and socialise. This technology will be an enabler to realise individual creativity in real work. An equally important challenge is the provision of infrastructure, not only physical infrastructure such as roads, but also non-physical infrastructure such as Internet access.⁴

The regulation of the creative economy itself in Indonesia has been regulated in the Creative Economy Law, namely Law Number 24 of 2019 concerning Creative

⁴ Kementerian Pariwisata dan Ekonomi Kreatif RI. "Ekonomi Kreatif : Kekuatan Baru Indonesia Menuju 2025." Kementerian Pariwisata dan Ekonomi Kreatif RI, 2014, 293.

Economy. Then the implementing rules of the Law were proposed with the issuance of Government Regulation Number 24 of 2022 concerning Implementing Regulations for Law Number 24 of 2019 concerning Creative Economy. However, both from the aspect of the formation and substance of the regulation of the Government Regulation on the Implementation of the Creative Economy are still far from ideal. This can be seen from the main obstacle, namely the delay in issuing Government Regulations that are not in accordance with the mandate of the Creative Economy Law. In addition, the substance of the regulation also does not embody the technical arrangements of the creative economy ecosystem clearly in accordance with the needs of the activities of creative economy actors in the community. This is an obstacle in the protection and legal certainty of creative economic arrangements in Indonesia. So it is important to elaborate further in this scientific work on how the dynamics that occur with regard to the implementation of the creative economy ecosystem in Indonesia.

Problem Formulation

Based on the background description of the problems that have been described, the main problems in this scientific work are:

- 1) How is the Political Law of Government Regulation on the Implementation of Creative Economy in Indonesia?
- 2) How is the Ideal Concept of Creative Economy Arrangements in the Implementation Regulations

Methodology

The legal politics of Government Regulation as an implementing regulation for the creative economy needs to be seen normatively. Because the substance of the regulation needs to be seen to what extent it can be implemented and in accordance with the state of empirical reality. In addition, the substance of the regulation also needs to be seen, whether the Government Regulation in this case the Government Regulation implementing the Creative Economy Law really embodies the concepts and ideas that want to be built in the Creative Economy Law technically. In addition, it is also supported by secondary data obtained from the results of literature review or review of various literature related to the subject matter and the main study of this scientific work. So that normative studies elaborated with epiris dynamics will be a reference in the preparation of this scientific work.

Discussion and Result

The creative economy essentially builds on specific contexts and phenomena found in developed countries, which use the creative economy as a strategy to deal

with economic restructuring and also to foster innovation and growth. At this time, developing countries are beginning to adopt the idea of developing creative industries as a national and regional development tool. However, the position of creative industries in socio-economic development in the context of developing countries is still not clearly identified. The social, economic and institutional situation in developing countries is clearly different from developed countries. In addition, economic activities based on cultural creativity have been found for a long time, but these activities are generally synonymous with handicrafts. The goods produced by these economic activities also tend not to change over time as ancestral heritage values are protected and highlighted as selling points. Despite these characteristics, which also tend to be at variance with the nature of the creative economy and creative industries, governments in various countries have endeavoured to promote these traditional businesses as creative industries.⁵

The United Nations Conference on Trade and Development defines the creative economy as the process of creation, production and distribution of goods and services that use creativity and intellectual capital as the main input of the production process. The creative economy production process combines knowledge, intellect, and creativity to produce goods and services as well as intangible intellectual or artistic services with creative content and added value.⁶

The creative economy has great potential to contribute significantly to economic growth, job creation and innovation in Indonesia. Increased awareness of the sector's importance Global and technological changes have altered the overall economic landscape, including the creative sector. The government is responding to these changes by trying to create an enabling environment for growth and innovation in the creative economy sector through relevant regulations, encouraging the government to develop regulations that support it. The Indonesian government has a desire to optimise the potential of the creative economy in driving inclusive and sustainable economic growth. Regulatory measures are expected to create a conducive environment for creative economy players to thrive.

However, although the government has previously issued the Creative Economy Law in 2019 and followed by Government Regulations as implementing rules in 2022, it has not made a significant contribution to the growth of the creative economy in terms of protection and legal certainty. Moreover, the issuance of Government Regulations implementing the Creative Economy Law has been delayed from the mandate of the Creative Economy Law itself. In addition, the substance of the regulation of the Creative Economy Government Regulation has

⁵ Fahmi, Fikri Zul. "Creative Industries and Regional Economic Development in Indonesia: Meanings, Patterns and Impacts." (University of Groningen) 2016.

⁶ United Nations Conference on Trade and Development. *The Challenge of Assessing the Creative Economy : Towards Informed Policy-Making*. United Nations, 2008

not specifically explained the technicalities in the creative economy ecosystem. These problems include:

1) Creative Economy Financing

One of the creative economy financing regulated in the Creative Economy Government Regulation is by using an Intellectual Property-Based Financing Scheme. Intellectual Property-based financing schemes by Creative Economy Actors are submitted to bank financial institutions or non-bank financial institutions. However, in this case there are still many obstacles in the technical arrangements related to this Intellectual Property-based financing scheme. The Government Regulation on Creative Economy does not explain clearly and substantially or delegate authority to authorised institutions to regulate in detail and structured technical guidelines to be understood by Creative Economy Actors. This should be a very big opportunity for Creative Economy Actors to gain access to financing if clear and detailed guidelines can be understood by Creative Economy Actors.

2) Incentives for Creative Economy Actors

The Government and Regional Governments provide incentives to Creative Economy Actors in the form of fiscal incentives; and non-fiscal incentives. Fiscal incentives for Creative Economy Actors can be in the form of tax facilities, facilities in the field of customs, facilities in the field of excise, regional tax incentives, retribution incentives implemented in accordance with the provisions of laws and regulations in the fields of taxation, customs and excise. Non-fiscal incentives for Creative Economy Actors in the form of simplifying the process of importing and exporting raw materials or supporting materials for Creative Economy businesses, easy access to Creative Economy business premises, easy business licensing services in the field of Creative Economy, ease of processing applications for registration or recording of Intellectual Property, mentoring and incubation for Creative Economy businesses, and easy access to legal assistance for Creative Economy businesses. Basically, the provision of these incentives, both fiscal and non-fiscal, has a very conducive and inclusive economic impact on Creative Economy actors. However, the Creative Economy Government Regulation does not explain substantially or even delegate clear authority for more technical arrangements. So that the arrangement only describes the general description of the scheme that can be implemented without a clear executorial mandate.

3) Creative Economy Infrastructure

The Government and Regional Governments encourage the availability of adequate Creative Economy infrastructure. The Creative Economy infrastructure in question is physical infrastructure; and

Information and Communication Technology Infrastructure. Physical infrastructure is a physical space and physical facilities that support the implementation of part of the Creative Economy ecosystem. While information and communication technology infrastructure is a means in the form of technology to prepare, collect, process, analyse, store, and announce by disseminating information. This facility will certainly be very beneficial for Creative Economy Actors. However, the fact is that both the Government and Regional Governments as mandated by the Creative Economy Government Regulation to provide these facilities have not been properly considered. This can be seen by the fact that there are still very few Regional Governments that pay attention to the Creative Economy. The Creative Economy Government Regulation should be more assertive in mandating how these facilities are available as the responsibility of certain institutions to be able to actualise them.

4) Development of Creative Economy Marketing System

The marketing development referred to in the Creative Economy Government Regulation is the Marketing Development of Intellectual Property-Based Creative Economy Products. Where this Government Regulation mandates that the Government and Regional Governments facilitate the development of Marketing Systems for Intellectual Property-Based Creative Economy Products through several schemes, including licensing, franchising, technology transfer, joint brands, transfer of rights and can also develop Marketing Systems for Intellectual Property-Based Creative Economy Products based on local wisdom. One of the facilities that can be provided by the Government and Regional Governments in this development is to provide marketing incubation facilities through designated institutions. This marketing incubation facility includes the provision of resources and services to accelerate the service process. However, what needs to be underlined is that the institution appointed to provide these facilities is clearly explained or delegated to whose authority. This causes uncertainty about the responsibilities that must be carried out. So that if there is no clear mandate by legislation, there are no benefits from this facility that can be felt or accessed directly by Creative Economy Actors.

5) Community Participation in Creative Economy Development

The role of the community expected in the Creative Economy Government Regulation does not provide direction on what kind of community participation to be able to make a positive contribution to Creative Economy Actors and the sustainability of the productivity of the creative economy ecosystem in Indonesia. In the Government Regulation on Creative Economy, it is only outlined that the community can reward

Intellectual Property produced by Creative Economy Actors and maintain and protect Intellectual Property produced by Creative Economy Actors. The arrangement does not have a clear direction of concrete steps to be actualised.

6) Financing Dispute Resolution

The existence of Intellectual Property-based financing schemes provides the potential for new disputes in the future. This is due to the lack of clarity on how to finance the Creative Economy through the utilisation of Intellectual Property. This must be regulated in a structured manner. Starting from how the scheme, how easy access for Creative Economy actors, to how the dispute resolution process for Intellectual Property-based financing that does not harm the creative economy ecosystem itself. So that the ideals of starting the development of a sustainable creative economy in Indonesia in order to make a real contribution to the national economy can be realised productively and sustainably.

The problems as described show that Government Regulation Number 24 of 2022 concerning the Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy has not fully explained substantively the technicalities that should be more executorial in order to be implemented and become the legal basis for creative economy actors. It can even be said that the substance of the arrangements in Government Regulation Number 24 of 2022 concerning the Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy does not further explain or even only describe in the theoretical dimension the arrangements in Law Number 24 of 2019 concerning the Creative Economy. Of course this makes the Government Regulation on the Implementation of the Creative Economy itself useless.

Conclusion

The delay in the issuance of Government Regulation Number 24 of 2022 concerning the Implementing Regulations of Law Number 24 of 2019 concerning the Creative Economy has an impact on the legal vacuum of the creative economy ecosystem in the aspect of protecting the technical implementation of the creative economy. Good prejudice against the regulatory substance that will provide strong legal certainty in the technical creative economy ecosystem with the delay in the formulation and issuance of Government Regulations for the Implementation of the Creative Economy faded with the issuance of Number 24 of 2022 concerning Implementing Regulations for Law Number 24 of 2019 concerning the Creative Economy which did not meet expectations. The substance of the arrangements in it does not regulate textual matters that can be executed directly by creative economy actors. The substance of the regulation is still at a theoretical level and without a

clear executorial scheme. This makes the need for other implementing arrangements that are more executorial and clear schemes. Recommendations that can be proposed are more technical arrangements relating to creative economy ecosystem schemes that can be directly implemented by creative economy actors and the existence of institutions responsible for assisting and supervising the scheme. The appointment of an institution that is the direct right hand of the government is important. The Creative Economy Agency in this case should be more actively involved in the implementation of the creative economy ecosystem.

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Reference

- Fahmi, Fikri Zul. "Creative industries and regional economic development in Indonesia: Meanings, patterns and impacts." (University of Groningen) 2016.
- Kedeputusan Bidang Ekonomi. *Perkembangan Ekonomi Indonesia Dan Dunia – Triwulan IV Tahun 2022*. Jakarta: Kementerian Perencanaan Pembangunan Nasional / Badan Perencanaan Pembangunan Nasional, 2023, 47.
- Kementerian Pariwisata dan Ekonomi Kreatif RI. "Ekonomi Kreatif : Kekuatan Baru Indonesia Menuju 2025." Kementerian Pariwisata dan Ekonomi Kreatif RI, 2014, 293.
- Peraturan Pemerintah Nomor 24 Tahun 2022 Tentang Peraturan Pelaksana Undang-Undang Nomor 24 Tahun 2019 Tentang Ekonomi Kreatif
- Purnomo, Rochmat Aldy. *Ekonomi Kreatif Pilar Pembangunan Indonesia*. Surakarta: Ziyad Visi Media, 2016.
- Undang-Undang Nomor 24 Tahun 2019 Tentang Ekonomi Kreatif
- United Nations Conference on Trade and Development. *The Challenge of Assessing the Creative Economy : Towards Informed Policy-Making*. United Nations, 2008.