

THE “UNJUST ENRICHMENT” IN INTELLECTUAL PROPERTY RIGHTS: A PROPHETIC LEGAL PARADIGM

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Abstract

The purpose of this study is to analyze the implications of the concept of Unjust Enrichment in the realm of intellectual property rights and the orientation of the application of the concept of Unjust Enrichment in the realm of intellectual property rights from a prophetic law perspective. This research is a normative legal research using a case, concept, and statutory approach. The results of the study state that the implication of the concept of Unjust Enrichment in the realm of intellectual property rights is intended to protect creators of works or holders of intellectual property rights, especially in fulfilling economic rights. The orientation of the application of the concept of Unjust Enrichment in the realm of intellectual property rights in the perspective of prophetic law is that the Supreme Court Decision which becomes jurisprudence must be a guide and guide for judges in resolving cases related to Unjust Enrichment in the realm of intellectual property rights. The main finding in this study is that three aspects of prophetic law, namely liberation, humanization, and transcendence are three aspects that must be met and considered in the application of the concept of Unjust Enrichment in all rules related to intellectual property rights, including the formulation of sanctions as well as legal remedies that can be taken if there is a loss suffered by the holder of intellectual property rights.

Keywords: Intellectual; Property; Prophetic; Rights.

A. INTRODUCTION

The intellectual property rights are rights obtained from human intellectual activities. Intellectual activity here is in the form of creation and creative efforts to carry out certain activities that have value.¹ That aspect of value makes the creator of intellectual property rights obliged to get appreciation by guaranteeing certain rights. Appreciation in providing certain

¹ Chijioke Okorie., Roundup of Intellectual Property Decisions and Other Developments in Africa 2022, *Journal of Intellectual Property Law & Practice*, Vol. 1, No. 1, 2023, page. 1–16,

rights guarantees for intellectual property rights creators includes two rights at once, namely moral rights and economic rights.² Moral rights and economic rights are cumulative rights which means that they must be fulfilled both to give appreciation for the intellectual creation made.³ That means the non-fulfillment of one of the rights, both moral rights and economic rights, is an act that cannot be justified and is contrary to the cumulative nature of the fulfillment of moral rights and economic rights in intellectual property rights.

Moral rights relate to the right to be announced as the creator or creator of a particular creation in intellectual property rights.⁴ Although it does not have direct economic implications, moral rights are related to ethical aspects where every creator of the creation must get an award to be named as the creator. Economic rights are more specific, namely, rights that provide guarantees for the work's creator or the holder of rights to the creation to get economic benefits from intellectual property rights. The economic aspect is the "heart" of intellectual property rights because this aspect is related to the orientation of intellectual property rights as an economical means or producer of surplus value for the creator of the right or the holder of rights to the rights.⁵ That is reinforced by all types of intellectual property rights always having and emphasizing economic aspects so that the state needs to participate in protecting and guaranteeing rights arising from the intellectual property through the establishment of a law that regulates each type of intellectual property rights.⁶

Intellectual property rights with their economic orientation actually emphasize that every legal act related to intellectual property rights must guarantee appropriate economic benefits to those who are entitled to receive it. One of the legal concepts that seeks to protect the economic benefits that should be obtained by parties entitled to intellectual property rights is the concept *Unjust Enrichment*. *Unjust Enrichment* in simple terms, it means a legal concept that asserts that there is no benefit or economic benefit obtained by one party but on the other hand harms or ignores the other party.⁷ The concept of *Unjust Enrichment* in relation to intellectual property rights actually has relevance because intellectual property rights

2 Małgorzata Węgrzak., Intellectual Property Law in Japan: Contemporary Trends and Challenges, *Gdańskie Studia Azji Wschodniej*, Vol. 1, No. 21, 2022, page. 27–40

3 Ammar Mahmoud Ayoub Al-Rawashdeh., The Principle of Exhaustion of Intellectual Property Rights in Jordanian Legislation, *Endless: International Journal of Future Studies*, Vo. 6, No. 1, 2023, page. 224–38

4 Muh Fathan Laleno, Lusiana Margareth Tijow, and Dian Ekawaty Ismail., The Protection of Copyright Law (Copyright) in the Piracy of Creation, *Estudiante Law Journal*, Vol. 1, No. 2, 2019, page. 448–57.

5 Victor Cui et al., Towards Integrating Country- and Firm-Level Perspectives on Intellectual Property Rights, *Journal of International Business Studies*, Vol. 53, No. 9, 2022, page. 1880–94

6 Darwance Darwance, Yokotani Yokotani, and Wenni Anggita., Dasar-Dasar Pemikiran Perlindungan Hak Kekayaan Intelektual, *Progresif: Jurnal Hukum*, Vol. 15, No. 2, 2020, page. 193–208

7 Aarushi Sahore., Lights, Camera, No Action: The Interface Between Contract Law And Unjust Enrichment, *The Cambridge Law Journal*, Vol. 81, No. 3, 2022, page. 487.

are oriented towards economic aspects, the concept of *Unjust Enrichment* can be a "protective frame" for every legal act to protect the rights of parties related to intellectual property rights.⁸

The existence of economic benefits makes intellectual property rights often misused or used as a means to benefit one party but actually harm other parties in a certain transaction or legal act. The development of court decisions related to the concept of *Unjust Enrichment* in intellectual property rights is actually contained in Supreme Court Decision No. 426 PK / pdt / 1994 (Supreme Court Decision *Unjust Enrichment* 1994) and Supreme Court Decision No. 723 K / pdt / 2013 (Supreme Court Decision *Unjust Enrichment* 2013), as well as Supreme Court Decision No. 11 PK / pdt.sus-HKI / 2015 (Supreme Court Decision *Unjust Enrichment* 2015). The focus of this study is the analysis of the concept of *Unjust Enrichment* in the realm of intellectual property rights in a prophetic legal perspective.

The prophetic legal perspective is used as an "analytical knife" because it emphasizes legal efforts to guarantee the existence of economic rights as a means to maintain dignity and human aspects. This study aims to answer two legal issues, namely the implications of the concept of *Unjust Enrichment* in the realm of intellectual property rights and the orientation of the application of the concept of *Unjust Enrichment* in the realm of intellectual property rights in a prophetic legal perspective. Research on intellectual property rights in general is still dominated by research that prioritizes efforts to protect and guarantee legal certainty for intellectual property rights based on each type. This means that research and study of the concept of *Unjust Enrichment* in the realm of intellectual property rights in the perspective of prophetic law has never been carried out so that the research carried out is original research.

Research on intellectual property rights has actually been carried out by three previous researchers, such as: (i) research conducted by Rehulina, et al. which discusses legal protection efforts for intellectual property rights.⁹ The advantage of this study is that it discusses defensive and positive legal protection efforts related to intellectual property rights. The drawback of this study is that it has not discussed case studies so it has not actually described the importance of defensive and positive legal protection related to intellectual property rights. Further research was conducted by (ii) Wanida, et al. which focused on efforts to protect and inventory intellectual property rights related to companies.¹⁰ The advantage of this study is that it has discussed specifically the urgency of the importance of protecting intellectual property rights for companies. The drawback of this study is that there has not been a normative study of the formulation of the Company Law related to efforts to facilitate intellectual property rights for companies.

8 Andrew Botterell., Private Law, Public Right, and the Law of Unjust Enrichment, *International Journal of Legal and Political Thought*, Vol. 12, No. 4, 2021, page. 540.

9 Rehulina Yunita Maya Putri, Ria Wierma Putri., Perlindungan Bagi Hak Kekayaan Intelektual Komunal, *Jurnal Hukum De'rechtsstaat*, Vol. 7, No. 2, 2021, page. 173–84.

10 Oktor Tri Wanida Dian Latifiani, Alya Fatimah Azzahra, Pentingnya Hak Kekayaan Intelektual Sebagai Hak Benda Bagi Hak Cipta Atau Merk Perusahaan, *Supremasi Hukum*, Vol. 31, No. 1, 2022, page. 66–74.

Further research was conducted by Ibrahim who analyzed legal protection for intellectual property rights in Indonesia and was submitted at the Department of Foreign Languages Tashkent State University of law, Uzbekistan.¹¹ The advantage of this study is in the comprehensive description of legal protection for intellectual property rights in Indonesia. The drawback of this study is that there has been no comparative legal study between Indonesia and Uzbekistan. Referring to the three previous studies, it can be concluded that research on the concept of *Unjust Enrichment* in the realm of intellectual property rights in the perspective of prophetic law has never been specifically studied.

B. RESEARCH METHODS

This research which focuses on the concept of *Unjust Enrichment* in the realm of intellectual property rights in a prophetic legal perspective is a normative legal research. One of the characteristics of normative legal research is the analysis of court decisions and laws and regulations.¹² The primary legal materials in this study are: the 1945 NRI Constitution, the 1994 *Unjust Enrichment* Supreme Court Decision, the 2013 *Unjust Enrichment* Supreme Court Decision, the 2015 *Unjust Enrichment* Supreme Court Decision and various laws and regulations that discuss intellectual property rights. Secondary legal materials are journal articles, books, and the results of studies that discuss intellectual property rights and the concept of *Unjust Enrichment*. Non-legal material is a legal dictionary. The approach used is the case, concept, and legislation approach. The purpose of this study is to analyze the implications of the concept of *Unjust Enrichment* in the realm of intellectual property rights and the orientation of the application of the concept of *Unjust Enrichment* in the realm of intellectual property rights from a prophetic law perspective.

C. RESULTS AND DISCUSSION

1. Implications of the *Unjust Enrichment* Concept in the Realm of Intellectual Property Rights

Intellectual property rights actually have two substantive rights that must be guaranteed and fulfilled to the creator of intellectual works. These two rights are moral rights and economic rights. Especially regarding economic rights, intellectual property rights actually emphasize proper and optimal use related to economic aspects.¹³ This means that intellectual property rights actually have main relevance to economic aspects and their use. The relevance of intellectual property rights to economic aspects can actually be seen from three arguments, namely: first, intellectual property rights have historically been born due to the

11 Muhammad Yusuf Ibrahim., *Perlindungan Hukum Kekayaan Intelektual Di Indonesia, Pengabdian*, Vol. 2, No. 1, 2023, page. 69–76.

12 Rahmadi Indra Tektora Efendi, A'an, Dyah Ochtorina Susanti., *Penelitian Hukum Doktrinal* Yogyakarta, LaksBang Justitia, 2019.

13 Cita Citrawinda Noerhadi., *Cybercrimes and Alternative Settlement of Intellectual Property (IPR) Disputes in Indonesia, International Journal of Cyber Criminology*, Vol. 16, No. 1, 2022, page. 89–109

demands of the development of the industrial revolution which emphasizes all the power and efforts to optimize aspects of human creativity in supporting economic utilization.¹⁴ This means, intellectual property rights that rely on the power of human creativity are intended to benefit economically.

Early development of intellectual property rights oriented to obtain economic benefits, namely patents, trademark rights, and rights to industrial designs.¹⁵ Second, intellectual property rights in their development also consist of various new rights guarantees whose orientation is to optimize and utilize economic aspects optimally.¹⁶ Types of intellectual property rights such as rights to geographical indications, traditional cultural expressions, integrated circuit layout designs, to plant varieties are all oriented to get the economic impact of the guarantee of intellectual property rights.¹⁷ *Third*, intellectual property rights also include the role of international trade where the role of international organizations is very dominant in regulating and determining provisions regarding intellectual property rights.¹⁸

This can be seen from the development of TRIP's Agreement whose orientation is that intellectual property rights are part of international trade commodities so that it cannot be denied that the economic aspect is the dominant aspect in intellectual property rights.¹⁹ In addition to international trade, the role of each country is also important in formulating policies regarding intellectual property rights. This is because intellectual property rights can be a strategic economic commodity for each country. From the three arguments regarding the relevance of intellectual property rights to economic aspects, it can be concluded that judging from the history of the birth of intellectual property rights to their development, intellectual property rights are indeed oriented to be optimized economically so that economic rights are attached to the holders and creators of intellectual property rights. The importance of economic aspects in intellectual property rights is what makes the importance of the conception of *Unjust Enrichment* in intellectual property rights.

14 Rowena Rodrigues., Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities, *Journal of Responsible Technology*, Vol. 4, No. 1, 2020, page. 100005

15 Vikas H. Gandhi., Intellectual Property Disputes and Resolutions, *Journal of Intellectual Property Rights*, Vol. 26, No. 1, 2021, page. 14–19.

16 Ke Mao and Pierre Failler, Does Stronger Protection of Intellectual Property Improve Sustainable Development? Evidence from City Data in China, *Sustainability (Switzerland)*, Vol. 14, No. 21, 2022, page.1–15

17 Sunny Ummul Firdaus Rian Saputra, Pujiyono., Un Synchronized Registration Regulation Of Geographic Indications In Indonesia On Products Traditional Alcoholic Drink, *Journal of Legal, Ethical and Regulatory Issues*, Vol. 25, No. 4, 2022, page.1–13.

18 Nurul Barizah., Analysis Regional Regimes for the Protection of Intellectual Property Rights Related to Biodiversity and Community Rights, *Talent Development & Excellence*, Vol. 12, No. 2, 2020, 1995-2006

19 Putu Ayu Sriasih Wesna., Urgency of TRIPs Waiver in Patent Legal Protection against Covid 19 Vaccine, *Udayana Master Law Journal*, Vol. 10, No. 4, 2021, page. 692

The conception of *Unjust Enrichment* is basically a concept that developed in countries with common law legal systems.²⁰ However, the development of modern law cannot be narrowly understood by providing a strict separation between each legal system. The main characteristic of the modern legal system is the phenomenon of universalization and the orientation of "legal unity" in which the conception and values of common law apply universally and influence each other regardless of the legal system.²¹ This phenomenon shows that although the conception of *Unjust Enrichment* is part of the development of the common law legal system, in practice the conception of *Unjust Enrichment* can also develop in countries with civil law legal systems as in Indonesia, of course, by adjusting to the characteristics of the legal system applicable in each country.

The formulation and practice of applying the conception of *Unjust Enrichment* is also formulated in the Netherlands which adheres to the civil law legal system, namely as stated in Article 212 Book 6 Nieuw Burgerlijk Wetboek (NBW).²² Teleologically, the adoption of the conception of *Unjust Enrichment* in the Netherlands through Article 212 Book 6 NBW is aimed at dealing with the development of increasingly massive business practices and even causing unhealthy business competition. One of the unfair business competition in the Netherlands is the acquisition of profits that are carried out improperly, either due to the fault of other parties or taking profits secretly without sharing them with other parties who are business partners.²³ From the above facts, Article 212 Book 6 NBW was formulated in the Netherlands. The facts regarding the formulation and practice of implementing the conception of *Unjust Enrichment* in the Netherlands show that the conception of *Unjust Enrichment* is formulated as a solution to the development of business practices that require comprehensive regulation to protect the economic rights of parties involved in the business world.

Black's Law Dictionary substantively characterizes *Unjust Enrichment* as an unfair taking of profit, that is, by taking advantage without sharing or involving other parties involved.²⁴ The view of *Unjust Enrichment* is also concerned with efforts to gain disproportionate advantage. This means, although business practices emphasize profit as the main goal, the conception of *Unjust Enrichment* actually emphasizes that profits in business can only be obtained if they are done

20 JC Sonnekus., A Claim Founded on Unjustified Enrichment or Delict Should Succeed Only If All the Applicable Requirements Have Been Met, *Journal of South African Law*, Vol. 4, No. 1, 2021, page.16.

21 Stefan Koos., Digital Globalization and Law, *Lex Scientia Law Review*, Vol. 6, No. 1, 2022, page. 33–68

22 Tatiana Cutts., Unjust Enrichment: What We Owe to Each Other, *Oxford Journal of Legal Studies*, Vol. 41, No. 1, 2021, page.119.

23 Łukasz Dominiak., Unjust Enrichment And Libertarianism, *Polish Political Science Review*, vol. 10, No. 2, 2022, page. 8.

24 Henry Campbell Black Bryan A. Garner, *Black's Law Dictionary*, 11th ed., Minnesota, West Publishing Co, St. Paul, 2019

proportionally and properly. If profits in business are obtained in a way that is contrary to the aspects of propriety and balance, then profits in the business can be categorized as illegal profits.²⁵ Although the concept of *Unjust Enrichment* in Indonesia has not been formulated in laws and regulations, especially in the KUHPer, there are several court decisions related to civil aspects that use the conception of *Unjust Enrichment* as in Supreme Court Decision No. 1749 K / Pdt / 2010 to Supreme Court Decision No. 732 K / Pdt / 2013.²⁶

In the context of intellectual property rights, the conception of *Unjust Enrichment* has long been used as part of legal considerations, especially in the 1994 Supreme Court *Unjust Enrichment* Decision. The 1994 Supreme Court *Unjust Enrichment* decision was actually a ruling related to the Giordano brand dispute which later became jurisprudence for the Supreme Court.²⁷ Court decisions are referred to as jurisprudence when in the decision there are certain principles, conceptions, and legal criteria that fill or reinforce a legal provision so that the substance of the decision can be applied to other cases that have relevance.²⁸ In addition, court decisions are referred to as jurisprudence, which is when factually there are courts that quote or base their decisions on the substance of court decisions that are used as jurisprudence²⁹. Referring to the two characteristics of a court decision referred to as jurisprudence, the 1994 Supreme Court *Unjust Enrichment* Decision is jurisprudence because the decision confirms that improperly benefiting from another party's brand has actually qualified as *Unjust Enrichment* so that a trademark rights claim based on the conception of *Unjust Enrichment* can be justified according to the 1994 Supreme Court *Unjust Enrichment* Decision.

Further developments, legal considerations using the conception of *Unjust Enrichment* are becoming more comprehensively used in court decisions, one of which is in the 2013 Supreme Court *Unjust Enrichment* Decision which affirms that the obligation to return goods or services obtained due to an improperly obtained profit. This also has a correlation with the Supreme Court *Unjust Enrichment* Decision 2015 which substantively affirms that improperly obtained profits are a violation of the essence of the principle of good faith. Therefore, the party who commits the act to obtain an improper advantage must compensate the

25 Pablo Letelier Cibié., Sopesando Consideraciones En Conflicto: Derecho Civil y Common Law Frente Al Problema Del Vínculo Entre Las Partes En Acciones de Enriquecimiento Injustificado, *Derecho PUCP*, Vol. 87, No. 1, 2021, page.14.

26 Fausto Corvino and Alberto Pirni, Discharging the Moral Responsibility for Collective Unjust Enrichment in the Global Economy, *Theoria*, Vol. 36, No. 1, 2021, page.139–58.

27 Muhammad Yasin, *Argumentasi Unjust Enrichment Dalam Sengketa Kekayaan Intelektual*, www.hukumonline.com, 2022, <https://www.hukumonline.com/stories/article/lt6216026fae986/argumentasi-unjust-enrichment-dalam-sengketa-kekayaan-intelektual> (accessed on 28 April 2023).

28 Nurul Adhha Asep Saepudin Jahar, Raju Moh Hazmi., Construction of Legal Justice, Certainty, and Benefits in the Supreme Court Decision Number 46P/HUM/2018, *Cita Hukum*, Vol. 9, No. 1, 2021, page.162.

29 Enrico Simanjuntak, *Peran Yurisprudensi Dalam Sistem Hukum Di Indonesia, Konstitusi*, Vol. 16, No. 1, 2019, page. 89.

injured party. From the development of court decisions regarding *Unjust Enrichment*, especially in the Supreme Court Decisions of *Unjust Enrichment* 1994, 2013, and 2015 actually use the conception of *Unjust Enrichment* as part of legal considerations in its decisions.

In addition, in relation to intellectual property rights, the 1994 Supreme Court *Unjust Enrichment* Decision and the 2015 *Unjust Enrichment* Supreme Court Decision actually affirm that benefiting from an intellectual property right is improperly qualified as an act of *Unjust Enrichment* and therefore, the party doing so is obliged to provide compensation for the injured party. If analyzed carefully, in addition to the Supreme Court Decisions of *Unjust Enrichment* 1994, 2013, and 2015, the conception of *Unjust Enrichment* has actually been stated in Article 21 paragraph (3) of the Trademark Law which explains that if the trademark applicant commits an action that does not reflect good faith, the trademark application can be rejected.

Based on the analysis above, the implications of the concept of *Unjust Enrichment* in the realm of intellectual property rights are aimed at protecting the creator of the work or the holder of intellectual property rights. This is also to fulfill economic rights which are one of the essential rights in intellectual property rights in addition to moral rights that must be guaranteed application. Therefore, in the realm of intellectual property rights, the concept of *Unjust Enrichment* is important to maintain that the economic benefits of an intellectual property right can be utilized by parties who are legally entitled to receive and utilize economic rights.

2. *Unjust Enrichment* In Intellectual Property Rights: A Prophetic Legal Paradigm

The application of the conception of *Unjust Enrichment* in intellectual property rights actually has relevance to the idea of prophetic law. The prophetic legal perspective is actually a legal idea that emphasizes the dimensions of humanization, liberation, and transcendence in law.³⁰ Good law in the perspective of prophetic law must fulfill these three aspects. The humanization aspect is related to the essence of humanity, namely the guarantee of the rights of each human being. The rights of each human being are limited by the rights of other humans so that the existence of human rights is limited by the obligation to respect the rights of others.³¹ The liberation aspect emphasizes the power of human creativity as the realm that makes the law alive and applicable. This aspect of liberation is relevant to intellectual property rights which in essence emphasize human creativity as a "masterpiece"

30 Arief Budiono Khudzaifah Dimiyati, Haedar Nashir, Elviandri, Absori, Kelik Wardiono., Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis, *Heliyon*, Vol. 7, No. 8, 2021, page.1–8.

31 Joseph Andy Hartanto., The Philosophy of Legal Reason in Indonesian Law, *Beijing Law Review*, Vol. 11, No. 01, 2020, page.119–27

that must be respected and guaranteed the fulfillment of moral rights and economic rights.

The transcendence aspect emphasizes the dimension of legal religiosity where law is not only seen as a set of rules passed but is a value that is then manifested in various forms, one of which is through the rule of law.³² This aspect of transcendence in prophetic law emphasizes how every human being treats other humans appropriately so that impropriety in treating humans is a form of denial of legal religiosity. In the context of the application of the conception of *Unjust Enrichment* in intellectual property rights, the value of propriety is the basis for the enactment of the conception of *Unjust Enrichment*.³³ Referring to the three aspects of prophetic law above, the conception of *Unjust Enrichment* in intellectual property rights actually has relevance to the idea of prophetic law, which is to protect rights, dignity, and treat humans appropriately. Therefore, a prophetic legal perspective can be a guiding concept for the application of the conception of *Unjust Enrichment* in intellectual property rights.

The application of the conception of *Unjust Enrichment* in intellectual property rights in Indonesia has actually been facilitated in the development of Supreme Court decisions, especially in the Supreme Court Decisions of *Unjust Enrichment* 1994, 2013, and 2015. Especially in the Supreme Court Decision *Unjust Enrichment* 1994 which later became jurisprudence and was followed by various other court decisions under the Supreme Court. The existence of the conception of *Unjust Enrichment* in intellectual property rights in the 1994 Supreme Court Decision is actually interesting because although the Supreme Court decision focuses on trademark disputes, the judge's legal considerations expressed are general in nature which means they apply to all intellectual property rights.

The 1994 Supreme Court *Unjust Enrichment* decision has an orientation towards the application of the *Unjust Enrichment* conception in intellectual property rights in three aspects. *First*, the establishment of the 1994 *Unjust Enrichment* Supreme Court Decision as jurisprudence which was then followed by various other court decisions shows that the true conception of *Unjust Enrichment* is relevant to be applied in the field of intellectual property rights. This is because one of the orientations of intellectual property rights is the guarantee and fulfillment of the economic rights of parties who should benefit from intellectual property rights which is precisely in line with the spirit of the conception of *Unjust Enrichment* which also emphasizes the need for fair sharing of economic benefits in which in this case every form of profit obtained improperly

32 M. Syamsuddin., ed., *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, Dan Kemungkinan Penerapannya Di Era Postmodern*, 1st ed., Yogyakarta, FH UII Press, 2013.

33 Santiago Truccone-Borgogno., *Climate Justice and the Duty of Restitution*, *Moral Philosophy and Politics*, Vol. 1, No. 1, 2022, page. 203–24,

qualifies as an act of *Unjust Enrichment* that is unlawful.³⁴ Therefore, the following of the 1994 Supreme Court *Unjust Enrichment* Decision by various court decisions below shows that in the aspect of jurisprudence the conception of *Unjust Enrichment* has gained a place in the field of intellectual property rights.

Second, although substantively the Supreme Court *Unjust Enrichment* 1994 Decision is a decision that addresses trademark disputes, in general the substance of the 1994 Supreme Court *Unjust Enrichment* Decision can be applied to all types of intellectual property rights. This is because essentially the 1994 Supreme Court *Unjust Enrichment* Decision affirms that essentially any benefit obtained through economic benefits of intellectual property rights but obtained improperly and unfairly is actually an unlawful act of *Unjust Enrichment*. Therefore, broadly the Supreme Court Decision *Unjust Enrichment* 1994 is not only a jurisprudence for trademark disputes, but a jurisprudence for efforts to obtain economic benefits from intellectual property rights.

Third, the Supreme Court *Unjust Enrichment* Decision of 1994 can be known to be one of the aspects considered in formulating the 2016 Trademark Law. This can be seen from the substance of Article 21 paragraph (3) of the Trademark Law which confirms that an application for trademark registration can be rejected if the applicant does not have good faith. Good faith in this case is interpreted as an effort to obtain economic benefits from trademark rights based on aspects of legal certainty and propriety.³⁵ This means, if it is related to the construction of the Supreme Court Decision *Unjust Enrichment* 1994, Article 21 paragraph (3) of the Trademark Law confirms that *Unjust Enrichment* efforts in trademark registration are considered part of legal acts that do not reflect good faith and therefore registration must be rejected.

Referring to the three orientations of the 1994 Supreme Court *Unjust Enrichment* Decision in practice in the field of intellectual property rights, in fact in practice in court decisions, the conception of *Unjust Enrichment* has gained relevance with the 1994 *Unjust Enrichment* Supreme Court Decision as jurisprudence and is used as a benchmark and guideline in adjudicating similar cases. However, in the realm of legislation in the field of intellectual property rights, the conception of *Unjust Enrichment* is still partially accommodated. It can be seen that the conception of *Unjust Enrichment* is only accommodated in Article 21 paragraph (3) of the Trademark Law, while in the field of intellectual property rights, similar provisions have not been optimally accommodated. Even so, the provisions in Article 21 paragraph (3) of the Trademark Law are also still not optimal in implementing the conception

34 Jazz Oswald., Unjustly Enriching the Richer: A Doctrinal Analysis of Unjust Enrichment and Its Application to Cryptocurrency Hard Fork and Airdrop Events, *Australian National University Journal of Law and Technology*, Vol. 1, No. 1, 2020, page.15.

35 Jan Halberda, The Principle of Good Faith and Fair Dealing in English Contract Law, *Pravovedenie*, Vol. 64, No. 3, 2020, page. 313.

of *Unjust Enrichment* which only emphasizes the conception of *Unjust Enrichment* preventively at the beginning of trademark registration.

The regulation of the repressive conception of *Unjust Enrichment* as a result of improper profiteering in the realm of intellectual property rights accompanied by sanctions has not yet received regulation in the Trademark Law. The formulation of the conception of *Unjust Enrichment* in laws and regulations in the field of intellectual property rights is arguably still weak so that it is necessary to refine various laws and regulations in the field of intellectual property rights to adopt the conception of *Unjust Enrichment* optimally. Associated with the prophetic legal perspective, the formulation of the conception of *Unjust Enrichment* in laws and regulations in the field of intellectual property rights actually reduces the humanization aspect in prophetic law which is not optimal for the formulation of the conception of *Unjust Enrichment* in laws and regulations in the field of intellectual property rights, the parties harmed by the action of *Unjust Enrichment* do not have legal certainty to take legal remedies.

From the aspect of liberation, the formulation of the conception of *Unjust Enrichment* in laws and regulations in the field of intellectual property rights has the potential to make low individuals who optimize their creativity to create a work that has intellectual property value. This is because instead of making a work that has intellectual property value, it is better to use a work by taking *Unjust Enrichment* of the intellectual work. From the aspect of transcendence, the formulation of the conception of *Unjust Enrichment* in laws and regulations in the field of intellectual property rights has neglected the value of propriety in legal relations in the field of intellectual property rights. In fact, the value of propriety, especially propriety in economic division, is an important value so that profits in the field of intellectual property rights can be received by parties who should reasonably receive these benefits.

Orientation of the application of the concept of *Unjust Enrichment* in the realm of intellectual property rights in the perspective of prophetic law, the concept of *Unjust Enrichment* which has become the jurisprudence of the 1994 *Unjust Enrichment* Supreme Court Decision must be a guideline and guide for judges in resolving cases related to *Unjust Enrichment* in the realm of intellectual property rights. The Supreme Court decision *Unjust Enrichment* 1994 should serve as a general guideline for all areas of intellectual property rights. The main finding in this study is referring to the perspective of prophetic law based on three aspects, namely humanization, liberation, and transcendence must be one of the considerations in the application of the concept of *Unjust Enrichment*. This is so that in practice, the concept of *Unjust Enrichment* can be interpreted broadly and comprehensively so that aspects of humanization, liberation, and transcendence can be one of the perspectives that support the optimization of the application of the concept of *Unjust Enrichment*.

D. CONCLUSION

The implication of the concept of *Unjust Enrichment* in the realm of intellectual property rights is aimed at protecting the creator of the work or the holder of intellectual property rights. This is also to fulfill economic rights which are one of the essential rights in intellectual property rights in addition to moral rights that must be guaranteed application. The orientation of the application of the concept of *Unjust Enrichment* in the realm of intellectual property rights in the perspective of prophetic law, the concept of *Unjust Enrichment* which has become the jurisprudence of the 1994 Supreme Court Decision must be a guideline and guide for judges in resolving cases related to Unjust Enrichment in the realm of intellectual property rights.

The main finding in this study is referring to the perspective of prophetic law based on three aspects, namely humanization, liberation, and transcendence must be one of the considerations in the application of the concept of *Unjust Enrichment*. This is so that in practice, the concept of *Unjust Enrichment* can be interpreted broadly and comprehensively so that aspects of humanization, liberation, and transcendence can be one of the perspectives that support the optimization of the application of the concept of *Unjust Enrichment*.

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