
Legal Protection of Intellectual Property Rights in the Free Trade Agreement Between ASEAN and Japan Choirunnisa

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ABSTRACT: The rapid development of global trade has made the protection of Intellectual Property Rights (IPR) an increasingly important aspect of international economic cooperation. One significant regional effort in this context is the ASEAN-Japan Comprehensive Economic Partnership (AJCEP), a free trade agreement that not only regulates the flow of goods and services but also addresses the legal framework for IPR protection. This study examines how IPR protection is structured within the AJCEP and analyzes whether the legal instruments provided are sufficient and effective in safeguarding the rights of creators, innovators, and businesses in both ASEAN countries and Japan. The research uses a normative legal method, focusing on the treaty text, relevant national laws, and international agreements such as the TRIPS Agreement under the WTO. The analysis also considers real-world cases and legal challenges that have emerged since the AJCEP was enacted. Findings suggest that while AJCEP makes a solid legal foundation for IPR protection, its implementation still varies significantly across ASEAN member states due to differences in legal infrastructure, enforcement capacity, and local policy priorities. As a result, legal certainty and uniformity in IPR protection remain key issues. This paper concludes by recommending stronger regional legal harmonization, capacitybuilding in IPR enforcement, and more active dispute resolution mechanisms to ensure that IPRs are effectively protected under the ASEAN-Japan trade framework.

KEYWORDS: Intellectual Property Rights, Free Trade Agreement, Legal Protection.

I. INTRODUCTION

In today's globalized economy, the protection of Intellectual Property Rights (IPR) has become a critical component of international trade and economic cooperation. Free Trade Agreements (FTAs) such as the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) play an essential role in regulating not only the flow of goods and services but also in setting frameworks for IPR protection. AJCEP, which includes Japan and the ten member countries of ASEAN, serves as a regional integration initiative designed to boost economic ties while ensuring that intellectual property created or traded within these countries receives adequate legal protection (Situmorang, 2022). AJCEP came into effect in December 2008, initially between Japan and five ASEAN countries, namely Singapore, Laos, Vietnam, Myanmar, and Thailand. Subsequently, it expanded to the remaining ASEAN member states. The agreement aims to harmonize regulations and reduce trade barriers with a specific emphasis on intellectual property protection to foster innovation and fair competition (Rahman, 2021). Through AJCEP, member countries agreed on establishing common standards for the enforcement and protection of trademarks, patents, copyrights, and trade secrets. These standards reflect international norms and obligations, including those under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights.

The significance of IPR protection within AJCEP goes beyond mere legal formalities. It supports the creation of an environment conducive to investment, technology transfer, and creative industries. It also helps prevent the illicit copying and distribution of products, which can harm economies and undermine the incentives for innovation (Tan, 2023). Nevertheless, while AJCEP sets out legal frameworks for IPR protection, the practical enforcement of these laws varies across ASEAN countries. This variation is influenced by differing national legal infrastructures, administrative capacities, and levels of political will. Recent developments in technology, especially the rapid growth of digital platforms, artificial intelligence, and the internet of things, have posed new challenges to IPR enforcement under international agreements such as AJCEP. The cross-border nature of digital content complicates jurisdictional authority and enforcement mechanisms. This complexity creates grey areas where infringement can proliferate without adequate legal remedies (Wijaya, 2024). Moreover, disparities in digital literacy and legal resources among ASEAN countries affect how effectively IPR protections can be implemented, especially for emerging technologies.

Efforts to strengthen regional cooperation on IPR under AJCEP have included capacity-building initiatives and harmonization of legal standards. For example, joint statements and workshops involving ASEAN intellectual property offices and Japan aim to

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increase transparency in patent examination and address technical issues such as translation errors that might affect patent applications (Situmorang, 2022). Such initiatives demonstrate a recognition that legal texts alone are insufficient without robust institutional frameworks and intergovernmental collaboration. The political economy dimension of IPR protection within AJCEP is also crucial. Scholars have pointed out that Japan's strategy to promote stringent IPR enforcement through the agreement reflects its broader economic and geopolitical interests in the Asia-Pacific region (Rahman, 2021). This underscores that IPR issues in FTAs are not merely about law but are intertwined with broader strategic objectives such as market access, technology dominance, and regional influence. However, challenges remain in achieving full harmonization and enforcement across ASEAN countries. Variations in legal traditions, levels of economic development, and institutional capacity result in uneven application of IPR rules. This unevenness may undermine the overall effectiveness of AJCEP provisions. Furthermore, the need for effective dispute resolution mechanisms remains critical to address conflicts arising from cross-border IPR issues (Tan, 2023).

In this context, this study employs a normative legal approach to examine the adequacy and implementation of IPR protections under AJCEP. By analyzing treaty provisions, national legislations, and international legal instruments, this research seeks to assess the alignment of AJCEP's IPR framework with international standards and identify gaps and obstacles in enforcement. Such an approach enables a comprehensive understanding of the legal architecture as well as policy recommendations to strengthen IPR protection within the ASEAN-Japan trade relationship (Wijaya, 2024). As the economic and technological landscape continues to evolve, the ability of regional trade agreements like AJCEP to adapt and reinforce intellectual property protections will significantly impact the region's innovation capacity and economic growth. This study contributes to the growing body of scholarship on IPR in international trade law, offering insights that may inform policymakers, legal practitioners, and scholars interested in the intersection of trade, law, and technology.

II. FORMULATION OF THE PROBLEM

1. How is the legal protection of Intellectual Property Rights structured within the Free Trade Agreement between ASEAN and Japan?
2. To what extent have the IPR protection provisions in the ASEAN-Japan Comprehensive Economic Partnership been effectively implemented by ASEAN member states?

III. RESEARCH METHOD

This study employs a normative legal research method, which emphasizes the analysis of legal norms and principles derived from written legal sources. The primary focus is on examining the texts of relevant laws, international treaties, and agreements, particularly the ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP), as well as other international legal instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Secondary data sources include national legislations of ASEAN member countries, academic articles, legal commentaries, and reports from international organizations related to intellectual property protection. Data collection is carried out through library research and document analysis. The normative legal method is suitable for this study as it allows for a thorough examination of the legal framework governing IPR protection under AJCEP without the need for direct empirical data collection (Situmorang, 2022). This approach facilitates an understanding of the coherence and compatibility of AJCEP provisions with international standards, as well as identification of potential legal gaps. Furthermore, comparative legal analysis is conducted to assess the variation in implementation and enforcement of IPR laws across ASEAN countries, highlighting institutional capacities and challenges faced in harmonizing intellectual property regulations within the region (Rahman, 2021; Tan, 2023). Overall, the normative legal method supports a comprehensive assessment of the adequacy and effectiveness of the legal mechanisms embedded in AJCEP to protect intellectual property rights, which forms the basis for policy recommendations aimed at improving regional cooperation and enforcement (Wijaya, 2024).

IV. DISCUSSION

A. Legal Protection of Intellectual Property Rights in the ASEAN-Japan Free Trade Agreement

The legal protection of Intellectual Property Rights (IPR) within the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) is a vital aspect of the agreement that aims to foster economic integration and regional cooperation. AJCEP recognizes the critical role of IPR in promoting innovation, encouraging investment, and ensuring fair competition among member countries. The structure of IPR protection under AJCEP is designed to align closely with international standards, particularly those established by the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), while also addressing the specific needs and conditions of the ASEAN and Japanese economies (Situmorang, 2022).

The agreement's IPR provisions encompass a wide range of intellectual property categories, including patents, trademarks, copyrights, industrial designs, geographical indications, and trade secrets. This comprehensive coverage ensures that all significant forms of intellectual property receive protection under the framework, thereby supporting diverse sectors such as technology, pharmaceuticals, creative industries, and traditional cultural products. By incorporating references to key international treaties such

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as the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property, AJCEP demonstrates its commitment to harmonizing regional legal standards with globally accepted norms (Rahman, 2021).

Patents, for example, are protected by mandating that member states grant patent rights to inventions that meet criteria of novelty, inventive step, and industrial applicability. This provision is essential in encouraging technological innovation and facilitating the transfer of technology among member countries. Furthermore, AJCEP includes specific safeguards to prevent unfair commercial use of test data related to pharmaceuticals and agricultural chemicals, reflecting a concern for both innovation incentives and public health considerations (Wijaya, 2024).

Copyright protection within AJCEP extends to modern forms of digital content, such as computer software and databases, recognizing the importance of safeguarding creative works in the digital economy. Performers, producers of sound recordings, and broadcasting organizations are also afforded protection, ensuring that their rights are preserved in an era where digital distribution has become the norm (Situmorang, 2022). Additionally, the protection of geographical indications supports the preservation and promotion of unique regional products, which is particularly significant for ASEAN countries with rich cultural heritages and traditional knowledge. The legal framework requires members to prevent misleading use of such indications, which helps maintain the economic value and reputation of these products (Rahman, 2021).

Enforcement mechanisms are a critical element of AJCEP's IPR framework. The agreement mandates that member states provide effective judicial and administrative procedures to prevent and address infringements. These include the ability of judicial authorities to issue injunctions, award damages, seize counterfeit goods, and implement criminal sanctions against violators. Customs authorities are empowered to detain and prevent the importation of counterfeit and pirated goods, a measure vital for protecting domestic industries and consumers (Tan, 2023). The emphasis on transparency and due process seeks to balance the rights of IPR holders with public interests, such as access to essential medicines and educational materials, which is particularly relevant for developing member states in ASEAN (Wijaya, 2024).

Beyond legal provisions, AJCEP facilitates institutional cooperation and capacity building to support the effective implementation of IPR protections. ASEAN and Japan have collaborated on various initiatives aimed at enhancing patent examination procedures, raising awareness about intellectual property rights, and strengthening enforcement capabilities. Such cooperation addresses the significant disparities in institutional resources and expertise among ASEAN countries, thereby promoting more uniform application of the agreement's provisions (Situmorang, 2022). These initiatives are essential given the diverse legal systems and developmental stages of ASEAN member states, which pose challenges to achieving full harmonization and enforcement.

Despite these comprehensive structures, challenges remain in the practical realization of IPR protection under AJCEP. Differences in national legal frameworks and enforcement capacities result in uneven implementation across the region. Some ASEAN countries face difficulties in updating legislation, training enforcement officials, and allocating sufficient resources to combat IPR infringements effectively (Rahman, 2021). Furthermore, the rapid pace of technological change introduces new complexities, such as issues surrounding the patentability of artificial intelligence inventions and the enforcement of copyrights in digital environments. AJCEP's legal framework must adapt continually to address these emerging challenges to remain effective (Wijaya, 2024).

The borderless nature of digital content further complicates enforcement efforts, requiring enhanced cross-border cooperation and innovative legal solutions. The balance between protecting the rights of creators and ensuring public access to knowledge and essential goods remains a sensitive issue, especially in lower-income ASEAN countries where access to affordable medicines and educational resources is critical (Tan, 2023). AJCEP's framework acknowledges these tensions but leaves room for member states to tailor their approaches to local circumstances while adhering to common minimum standards.

AJCEP's strong alignment with international standards like TRIPS ensures that ASEAN countries can integrate smoothly into the global intellectual property regime. This alignment provides predictability and legal certainty for investors and creators, which is essential for attracting foreign direct investment and fostering economic growth. It also reduces the risk of trade disputes related to intellectual property, which can arise from inconsistent or inadequate protections (Situmorang, 2022). Through harmonization, AJCEP supports the creation of a regional market where intellectual property is respected and protected consistently, enabling innovation and creativity to flourish.

In summary, the legal protection of Intellectual Property Rights under the ASEAN-Japan Comprehensive Economic Partnership is structured around comprehensive, internationally aligned provisions that cover various types of intellectual property. It establishes enforcement mechanisms to deter infringement and promotes institutional cooperation to enhance implementation. While significant progress has been made, challenges remain, particularly concerning uneven enforcement and technological evolution. Continued efforts in legal reform, capacity building, and regional cooperation will be essential to realize the full potential of AJCEP's IPR protections and contribute to sustainable economic development and innovation in the ASEAN-Japan region.

B. Implications of the Swiss Federal Administrative Court Decision for International Patent Law and Harmonization of Inventorship in the Context of AI

The effectiveness of implementing and enforcing Intellectual Property Rights (IPR) protection provisions within the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) agreement varies significantly across ASEAN member states, reflecting diverse legal, institutional, and economic realities. While AJCEP establishes a common framework for IPR protection consistent with international standards, the actual translation of these provisions into practice presents challenges that affect the overall efficacy of the agreement's objectives. One of the main factors influencing implementation is the disparity in legal frameworks among ASEAN countries. Some member states have well-developed IPR laws that are largely consistent with AJCEP and TRIPS requirements, while others are still in the process of updating and harmonizing their legislation to meet the agreement's standards (Situmorang, 2022). Countries such as Singapore and Malaysia have advanced IPR regimes with effective enforcement agencies, whereas less developed economies like Cambodia, Laos, and Myanmar face legal gaps and weaker enforcement infrastructures (Rahman, 2021).

Enforcement capacity is another critical dimension. The ability of customs, judiciary, and law enforcement agencies to handle IPR violations varies widely. Some countries have specialized intellectual property courts or tribunals, trained prosecutors, and robust customs controls that allow them to address infringement efficiently (Tan, 2023). In contrast, others lack resources, expertise, or political will to prioritize IPR enforcement, resulting in ongoing challenges with piracy, counterfeiting, and other violations (Wijaya, 2024). Institutional cooperation, while emphasized in AJCEP, has encountered practical difficulties. Crossborder collaboration in investigations and enforcement remains limited due to differing legal procedures, confidentiality concerns, and variations in institutional capacity (Situmorang, 2022). Although ASEAN and Japan have initiated capacity-building programs and technical assistance to address these gaps, the impact of these efforts varies by country, depending largely on domestic commitment and absorptive capacity.

Digital piracy and online infringement represent emerging enforcement challenges. The rapid growth of e-commerce and digital content distribution has created new venues for intellectual property violations that are harder to monitor and control (Wijaya, 2024). Some ASEAN countries have adapted by introducing specific legislation addressing online piracy and establishing cyber enforcement units, but others lag behind, leaving a gap between legal frameworks and enforcement reality. The socio-economic context of member states also influences enforcement effectiveness. Developing countries often face competing priorities such as poverty reduction and public health, which can affect the strictness of IPR enforcement. For instance, balancing IPR protection with access to affordable medicines has led some countries to adopt flexibilities under TRIPS, such as compulsory licensing, which can be viewed as partially limiting the enforcement of patent rights (Tan, 2023). Such policy decisions reflect the tension between protecting innovation incentives and addressing public welfare.

Transparency and public awareness are important factors in enforcement. In countries where the public and private sectors have limited understanding of IPR, compliance tends to be lower, and infringement more common. AJCEP has facilitated information dissemination and training programs to improve awareness, but continued efforts are needed to cultivate a culture of respect for intellectual property (Situmorang, 2022). Dispute resolution mechanisms under AJCEP provide avenues for addressing IPR conflicts, but their utilization remains limited. ASEAN's dispute settlement system is still developing, and members often prefer bilateral negotiations or informal consultations over formal proceedings. The absence of a strong regional enforcement mechanism can weaken overall compliance and creates uncertainty for rights holders (Rahman, 2021).

The implementation and enforcement of AJCEP's IPR provisions demonstrate mixed results. While some ASEAN countries have made substantial progress in aligning national laws and strengthening enforcement, others continue to struggle with resource constraints, legal gaps, and technological challenges. The effectiveness of the agreement depends not only on the legal texts but also on sustained political will, regional cooperation, and continuous capacity building. To enhance enforcement, recommendations include greater harmonization of laws, enhanced judicial training, improved customs controls, and stronger regional collaboration. Leveraging technology such as blockchain for tracking intellectual property and increased cooperation with private sector stakeholders can also support better enforcement outcomes (Wijaya, 2024). Moreover, balancing IPR protection with developmental goals remains essential to maintain regional cohesion and equitable economic growth. In conclusion, while the AJCEP framework sets a strong foundation for IPR protection, actual implementation and enforcement across ASEAN member states remain uneven. Addressing these challenges requires coordinated efforts at national and regional levels to build legal capacity, foster institutional cooperation, and adapt to emerging technological realities, ensuring that the benefits of IPR protection contribute effectively to innovation and economic development.

V. CONCLUSIONS

The ASEAN-Japan Comprehensive Economic Partnership Agreement (AJCEP) establishes a robust legal framework for the protection of Intellectual Property Rights (IPR) that aligns closely with international standards, particularly those set by the TRIPS Agreement. This framework covers a broad spectrum of intellectual property categories and emphasizes effective enforcement mechanisms and institutional cooperation. Such provisions are fundamental to promoting innovation, attracting

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investment, and facilitating economic integration within the ASEAN region and with Japan. The actual implementation and enforcement of IPR protection under AJCEP exhibit considerable variability among ASEAN member states. While some countries have developed advanced legal infrastructures and enforcement capacities, others face challenges related to limited resources, legal gaps, and technological advancements that outpace regulatory adaptation. Disparities in judicial efficiency, customs enforcement, and public awareness further impact the effectiveness of IPR protections. Emerging challenges such as digital piracy, online infringement, and balancing public interests with IPR protection require continuous adaptation and enhanced cooperation. Although AJCEP encourages capacity building and regional collaboration, practical obstacles remain in harmonizing laws and enforcement practices across diverse political and economic contexts. To maximize the benefits of AJCEP's IPR provisions, ASEAN member states must strengthen their national legal frameworks, invest in institutional capacity, and foster deeper regional cooperation. Addressing enforcement challenges in the digital economy and ensuring equitable access to knowledge and essential goods will also be crucial. Ultimately, effective IPR protection under AJCEP can serve as a catalyst for innovation and sustainable economic growth, reinforcing ASEAN's role in the global trade system and its partnership with Japan.

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