
THE PROTECTION OF COPYRIGHT LAW (COPYRIGHT) IN THE PIRACY OF CREATION

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ABSTRACT

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Intellectual Rights have now spread to both traditional and modern sectors. In its copyright one of the regulations is copyright. Researchers define copyright itself as one of the rights that govern the ownership of a physical item, where everything related to creation must have permission from the party concerned. The development of technology that is increasingly advanced, causing HAKI itself to adjust to the changes that occur, the use of e-books is one of the results of technological developments that are increasingly advanced over time. The results of research related to the Article entitled Legal Protection of The Creator's Economic Rights in The Doubling of Creation are expected to be a consideration and benchmark for existing copyright.

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1. Introduction

1.1 Background

Currently, the world economy is entering the era of creative economy industries caused by the era of globalization. Thus, the era of globalization negates the boundaries of economic relations between one country and another. The era of globalization and free trade has had a significant impact on activities in all countries of the world in general, especially developing countries. The rapid development of the world economy must be followed by the development of positive laws that apply in Indonesia.¹

The development that occurred one of them involves Intellectual Property Rights, in this case, for example, copyright, which is born and the exclusive right to the moral of creation, in this case, the moral right to a creation that will continue to be eternally attached to its Creator, in addition, there is also an exclusive right to the right to use creation, to obtain economic benefits for the Creation, known as the Economic Right to a Creation, attached to the Creator and/or Copyright Owner.²

The development of digitalization of information and communication technology in the form of social media exposes society to a new reality that is the mortal world that is visible from the screen of devices/gadgets but in sync with real life. Digitalization is ushering people into a new era of disruption³.

According to Copyright Law No. 28 of 2014 Copyright is an exclusive right for the creator or recipient of the right to announce or reproduce his or her creation or give permission for it without prejudice to restrictions according to applicable laws and regulations.⁴

Humans can be said to be creatures that have specialties. The existence of this privilege gives birth to the right of the human being to be recognized, appreciated, and respected. The theory that often appears in the history of the human mind is that human privilege lies in the form of man himself, as found through his mind, then the human privilege is rational. The rights that people find rationally are considered eternal and remain valid. Everyone else, including the government, must heed it, by making laws based on those natural rights.⁵

¹ Riko Sulung Raharjo, M. Khoidin, Ermanto Fahamsyah, "Perlindungan Hukum Terhadap Pencipta atas Pencatatan Suatu Ciptaan yang Sama", *Lentera Hukum*. Volume 5 No.3, Desember 2018, hlm. 438.

² Billy Handiwiyanto, Wisnu Aryo Dewanto, "Perlindungan Hukum Terhadap Hak Pencipta Software Yang Nomor Serialnya Dikomersialkan Tanpa Hak di Cyber Space Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang hak Cipta", *Jurnal Ilmu Hukum*. Vol. 16 No. 1, Februari-Juli 2020, hlm. 78.

³ Moh. Rusdiyanto U. Puluhalawa, Riski Husain. (2021). *Body Shaming Through Social Media As A Digital Crime In The Era Of Disruption*. *Jalrev*, 3(1), 112-123.

⁴ Tim Redaksi, *Himpunan Lengkap Undang-Undang Hak Cipta, Paten, Merek, dan Indikasi Geografis, Serta Hak Kekayaan Intelektual (HKI)*, (Yogyakarta: Laksana, 2018), hlm. 279-280.

⁵ Dolot Alhasni Bakung, Mohamad Hidayat Muhtar. (2020). *Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right*. *Jalrev*, 2(2), 65-82.

Copyright as an absolute right can be defended against anyone and can sue for infringement. Absolute rights have a flip (passive aspect), that for everyone there is an obligation to respect that right. By the regulations regarding copyright, ideally, the copyright owner gets legal protection of his or her creation, considering that copyright is a monopoly right to reproduce or announce the creation owned by the creator or other copyright holders who in their implementation pay attention to applicable laws and regulations.⁶

Legally IPR is divided into two parts, namely, Copyright (*copyrights*), and Industrial Property Rights (industrial property rights). Copyrights (*copyrights*) can then be divided again into several sub-types. The sorting can be different in each country. In Indonesia, the sorting is based on existing laws, namely, copyright, patents, brands and, geographical indications.

Thus we have known that the copyright that we often hear in the mass media is part of Haki.⁷

The reality that occurs in society still shows the existence of copyright infringement that can damage the order of life of society in general, especially creativity to create. Among them is copyright infringement on the piracy of a Copyrighted Work, such as Books, Movies, Music, Works of Art, Design, Applications, Software, etc. This is certainly very detrimental for the Creator / Copyright Holder or for business actors in increasing revenue and developing their business.

The lack of copyright protection is due to an understanding in some societies that digital works on the internet are essentially a public right, to which the public is entitled to it and this is protected by the international convention on human rights. This assumption is clear in the end to lead to increasingly weak efforts to provide copyright protection for digital works.⁸

The Creator or holder of copyright has the economic right to publish a creation, a doubling of the creation in all its forms, translation, etc. Economic rights such as this are what must be protected by the state.

Although Indonesia already has a legal device that regulates the field of copyright, the enforcement of copyright crimes is still inadequate. The rules alone can not guarantee the reduction of copyright infringement. (Detiknet Source) The results of research from the International Data Corporation (IDC), Indonesia is recorded as a country with a high level of software piracy. The results showed that in 2009 software piracy in Indonesia reached 86%, meaning that of the 100 devices installed, 86 units were using pirated

⁶ Hendra Tanu Atmaja, "Konsep Hak Ekonomi Dan Hak Moral Pencipta Menurut Sistem Civil Law Dan Common Law", *Jurnal Hukum*. Vol. 10 Nomor 23 Mei 2003, hlm. 154.

⁷ Haris Munandar, Sally Sitanggang, *Mengenal HAKI Hak Kekayaan Intelektual Hak Cipta, Paten, Merk dan Seluk beluknya*, (Jakarta: Esensi Erlangga group), hlm. 03.

programs. The results of this study showed the number of losses estimated at 888 million US dollars (US). While in 2010 the rate of piracy in Indonesia reached 87% increased by 1% from 2009 with almost the same loss in 2009. Then in 2011 and 2012 IDC research results still showed a fairly high percentage of 86%.⁹

Envisional (2011) discovered that digital product piracy activities occur massively in the world. Judging by internet usage traffic, 23.76 percent of the world's internet usage traffic in 2010 was used for piracy, which is the second-ranked internet usage destination. In Indonesia, intellectual property piracy of both traditional products and digital formats occurs with losses that reach 5 trillion rupiahs per month (Tribun News 2014). According to data published by Business Software Alliances (2010), losses due to software product piracy in Indonesia reached the US \$ 886 million in 2009. Another fact is that 39% of software installed on computers is not an officially licensed product. From this fact, there is a danger of losses that lurk companies that produce digital format products because they cannot capitalize on the opportunities that should be obtained (Carmen, Carmen, and Javier 2014).

Specifically, in 2015, the value of circulation in software piracy products in Indonesia reached 14.4 trillion with a percentage of 84% of the amount of software in circulation (Kompas 2016). The adoption of the internet which is currently very easily accepted by the public has opened up new opportunities in information sharing including file-sharing that encourages individuals to enjoy pirated products (Chalkiti and Sigala 2008; Altschuller and Benbunan-Fich 2009). This is reinforced by the existence of a fast internet connection and the cheapness of online storage facilitates the occurrence of digital product piracy (Smith and Telang 2010). Therefore, piracy behavior is an easy behavior to do and no one is physically hurt.¹⁰

In addition, along with the hijacking of a product, be it digital or non-digital products, one and which is often hijacked is a printed product such as a book. Books are a source of information and provide benefits and inspiration when we read, but unfortunately, many people hijack, duplicate, multiply copies, without permission from the author or publisher, even worse until the coffee product is redistributed for economic benefits, this certainly violates the copyright and economic rights of the creator. With the advancement of technology as it is today everyone can easily hijack books. The rise of crime in the form of book piracy can not be separated from the public's power to get the same goods at a cheap price. Regarding pirated products sold, not only is the price cheaper but access to it is also easy. Difficulty finding book literature at a low price, many experienced by students to students.¹¹

⁹ Turkamun, SH., MH, "Perlindungan Dalam Anggaran Hak Ciptaa Software Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta", *urnal Sekretari* Vol. 4 No. 2 - Juni 2017, hlm. 2

¹⁰ *Ibid*, hlm. 24-25.

¹¹ Lina Shabrina, Budi Santoso, Rinitami Njatrijani, "Implementasi Perlindungan Karya Cipta Buku Berdasarkan UUU Nomor 28 Tahun 2014 Tentang Hak Cipta (Studi Pada Toko Buku Di Area Stadion Di Ponegoro Semarang)", *Diponegoro Law Journal*, Vol. 6 Nomor 2, 6 Februari 2017, hlm 2.

The books sold are very diverse ranging from children's books, textbooks at every school level from elementary school to college, novels, literature, to magazines. The price of books sold varies greatly, from RP. 5,000 to around Rp. 200,000 per unit. Of course, the price is much more economical than the price sold in official bookstores such as Gramedia, etc.¹²

1.2 Problem Statment

1. What is the Legal Protection of Copyright in The Piracy of Creation?
2. What are the inhibiting factors of copyright protection against piracy?

1.3 Research Methods

This study uses a type of normative juridical research which is doctrinal legal research or theoretical legal research. Because this normative research focuses on written studies, namely using secondary data such as laws and regulations, court decisions, legal theories and concepts, and the views of leading legal scholars.¹³

2. Analysis and Discussion

2.1 Protection of Copyright Law Against Piracy of Creation

Copyright protection in Indonesia is marked by the enactment of a new law, Law No. 28 of 2014. The presence of copyright laws is expected to play an important role in law enforcement in the event of copyright infringement. With the presence of this copyright law is expected to be able to contribute and maximum potential to the creator to improve the quality of life as a social creature, expected to be realized with this regulation.¹⁴

The Economic Rights of creators or copyright holders are exclusive rights to the holders of creation to obtain economic benefits for creation, of course, requires legal protection of creation. Copyright Protection is divided into two, namely Protection of moral rights (Article 5 paragraph (1) of Law No. 28 of 2014) and Protection of economic rights (Article 8 of Law No. 28 of 2014).

Law is used as one aspect of the constitution.¹⁵ Based on these arguments, it can be seen that in terms of constitutionality, it is not excessive to say that the state of law can be said to be one of the goals of the Indonesian nation and state to establish this country.¹⁶

¹² *Ibid*, hlm. 4

¹³ Suratmandan H. Philips Dillah, 2015, *Metode Penelitian Hukum*, Alfabeta CV, Bandung, hal 11

¹⁴ Arif Fitrawan, *Perlindungan Hukum Terhadap Hak Untuk Mendapatkan Royalti Atas Hak Cipta Karya Lagu di Kota Makassar*, <https://core.ac.uk/download/pdf/77623944.pdf> (Diakses 5 Mei 2021).

¹⁵ Ahmad, Ahmad, and Novendri M. Nggilu. "Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution." *Jurnal Konstitusi* 16.4 (2020): 785-808.

¹⁶ Ahmad Wijaya, Nasran Nasran. (2021). *COMPARISON OF JUDICIAL REVIEW: A CRITICAL APPROACH TO THE MODEL IN SEVERAL COUNTRIES*. *Jurnal Legalitas*, 14(2), 85-105.

Property is property belonging to a person or entity that has economic value, is recognized and protected by law based on valid evidence, and can be transferred to other parties, either because the agreement is also due to the Law. There are many violations of the doubling of creation and course detrimental to the creator itself, some of which are in the form of Music, Film, Art, and also print media such as books is one of the most often in the plow. The legal protection of the economic rights of the wrong creator on the copyright of the Book is part of the protected copyright as referred to in article 40 paragraph 1 of Law 28 of 2014 concerning copyright. Preventive efforts can also be done by registering the copyright of the book to get legal certainty if when there is a Sangeeta can be made evident in court against moral rights and economic rights which have been mentioned stipulated in article 5 and article 8 of Law No. 28 of 2014 on Copyright, while for repressive efforts through civil and criminal law channels. The path of civil law aims to demand material losses, while the criminal law track aims to give a deterrent effect to the perpetrators of Copyright violations stipulated in article 95 of Law No. 28 of 2014 on Copyright.

In law No. 28 of 2014, there is also a rule that protects creators who sell flats, creations such as books, and/or all other written works, songs, and/or music with or without text transferred in the sale agreement break and/or transfer indefinitely, the copyright switches back to the creator when the agreement reaches 25 years (article 18). This also applies to performance works in the form of songs and/or music that is transferred and/or sold economic rights, the economy is transferred back to the performer after 25 years (article 30).¹⁷

To obtain economic rights or royalties, the creator may enforce his or her rights to the institution that makes the royalty withdrawal known as the Collective Management Institution. The Management team of groups operating in Indonesia are WAMI, YKCI, ASIRI, and now *Creative Common*. *Creative Commons* does not claim royalties from users but seeks to protect free copyright from the Internet.

But basically, copyright itself is born automatically based on declarative principles when creation is realized in real form. So in protecting copyright the creator does not have to register/record his creation first if he wants to make a prosecution or lawsuit when the creator feels that his rights are violated. A creation is copyrighted and protected by the state, the copyright of creation is born automatically when it is realized in real form, announced, or propagated.¹⁸

¹⁷ *Ibid*

¹⁸ Ruhiat Sobirin, "Perlindungan Hukum Terhadap Hak Ekonomi Pencipta e-book Atas Proses Pendistribusian e-book Berdasarkan UU No. 28 Tahun 2014 Tentang Hak Cipta Dikaitkan Dengan UU No. 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik",

The recording of Creation is not a condition for obtaining copyright, in article 64 paragraph (2) of UUHC it is stated that the recording of creation and related rights products is not a condition for obtaining copyright and related rights. The recording of creation needs to be done by the creator of what maximizes the commercialization of creation when Sangeeta occurs as a means of proof or confirmation. Since UUHC No. 28 of 2014, copyright infringement has not become mandatory or absolute to obtain copyright protection. Thus the recording of creation is optional when the creator registers his creation in the Directorate General of Intellectual Property. The cost of converting the creation is Rp 400 thousand paid to the Directorate General of Intellectual Property. The record is included in the PNPB (Non-tax state revenue).

2.2 Factors Inhibiting Copyright Protection Against Piracy of Creation

The application of the existing IPR system is less balanced with the understanding of the community (law enforcement, practitioners, scientists, entrepreneurs, and other communities) about the conception of protection and appreciation of intellectual work in the form of rights, both collective rights (collective rights) and individualistic (individualism) to the scope of exclusive rights (exclusive right) protection of IPR.¹⁹

Criminal sanctions for copyright infringement in Indonesia, in general, are threatened with imprisonment of at least one month and a maximum of seven years that can be accompanied or not accompanied by a fine of at least one million rupiahs and at most five billion rupiahs, while creation or goods that are the result of copyright crimes and tools used to commit such crimes are seized by the State to be destroyed (Law No. 19 of 2002 bab XIII). The main issues in copyright enforcement in Indonesia are:²⁰

1. The Indonesian government has not shown a strong desire to enforce copyright protection in Indonesia,
2. Copyright legislation is not yet comprehensive,
3. In general, public knowledge is still very lacking about the copyright of its specifics and intellectual rights including the laws governing it. Even people who are directly related to protected creation, such as creators and related rights holders, are less aware of the copyright and the laws governing it,
4. Because knowledge of copyright is still very lacking, in general people do not realize the importance of copyright protection for cultural development, increased community creativity, and economic development,
5. Due to a lack of knowledge about copyright and lack of awareness about the importance of copyright protection, many people infringe copyright. On the part

¹⁹Suyud Margono, *Hukum Hak Kekayaan Intelektual HKI*, agustus 2015, PRC Pustaka Reka Cipta, hlm.07.

²⁰ Giovanni Pandita, *Perlindungan Karya dari Plagiat dengan Hak Cipta*, <https://www.jojonomic.com/blog/hak-cipta/>, (Diakses 5 Mei 2021)

of creators and related rights holders, a lack of understanding of copyright and related rights makes them less reactive to the rampant infringement of copyright and related rights,

6. Law enforcement officials also lack understanding of copyright, including the laws that govern it and are also less aware of the importance of its protection.
7. Due to the lack of knowledge about copyright and the laws that govern it, as well as the lack of awareness about the importance of its protection, most law enforcement officials are reluctant to drag perpetrators of copyright infringement to justice and prosecute them to the fullest.²¹

The steps taken by law enforcement officers are carried out in the form of copyright law enforcement. Law enforcement is done by taking repressive legal action. This repressive legal action is usually carried out with a scheduled system. The known term is the act of raids. Enforcement of copyright law by the police positions the police must be proactive. This is in line with the criminal like that is embraced, namely ordinary like. This ordinary delinks means that the police are given the authority to take legal action at any time if there is a copyright infringement, without having to wait for a complaint from the aggrieved party.

As is known, for the people of Indonesia the rise of copyright infringement is not solely because it is not aware of the enactment of copyright law, but the pretext that has been growing that the act of violation is carried out given the low socio-economic level of Indonesian society. As a result, this low economic level makes the public dare to commit violations of copyright law. For them, the principle is not how copyright law can be enforced, but what takes precedence is how their economic needs can be met.²²

3. Conclusion

Legal Protection of The Creator's Economic Rights in The Multiplication of Creation is: Efforts in protecting copyright have been specifically regulated under Law No. 28 of 2014 on Copyright. Preventive legal efforts in the legal protection of the creator's economic rights in the multiplication of creation can be made by registering a copyrighted work. And the repressive efforts to file damages and ask the judge to stop copyright infringement activities in the form of the removal of pirated copyrights that violate the copyright and can be criminally sanctioned by applicable laws and regulations in Indonesia. Repressive measures carried out have less impact so that criminal acts against the doubling of creation still often occur.

Inhibiting factors from the protection of the law against the economic rights of the creator in the multiplication of creation:

²¹ Ayup Suran Ningsih, Balqis Hedyati Maharani, "Penegakkan Hukum Hak Cipta Terhadap Pembajakan Film Secara Daring", *Jurnal Meta-Yuridis* Vol. 2 No. 1 Tahun 2019, hlm. 22-23.

²² Budi Agus Riswandi, "Permasalahan Pelanggaran dan Langkah Hukum Hak Cipta Atas Musik dan Lagu yang di Tuangkan Ddalam Bentuk VCD dan DVD", *Jurnal Hukum* Vol. 16. No 4. 16 Oktober 2009, hlm. 588-589.

1. Public knowledge that is still very lacking related to copyright and the laws that government;
2. The cost of registration/recording of copyright is still quite expensive;
3. Lack of raids in places that have the potential for copyright crimes.

4. Suggestion

Legal protection of the economic rights of creators in the multiplication of creation: Efforts to protect through repressive measures carried out by the government and law enforcement have not run optimally, this is because there is no main reference that clearly describes preventive measures in protecting copyright itself.

The government should hold various socializations about the importance of copyright and copyright protection.

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