

LAW ENFORCEMENT EFFORTS FOR COPYRIGHT INFRINGEMENT IN INDONESIA

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Abstract

The purpose of this study is to analyze: 1) How far is the understanding of Copyright and its relationship to Intellectual Property Rights? 2) What is the legal basis for copyright and protected works? 3) How is law enforcement of copyright-related infringement cases? The research method used is normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) In the Copyright Law 2002, the definition of copyright is formulated as the exclusive right of the creator or recipient of the right to publish or reproduce his work or give permission for it without prejudice to restrictions according to applicable laws and regulations. The definition of copyright as an exclusive right in the 2002 Copyright Law is felt to need further explanation, because even though copyright is exclusive, copyright holders are not easy to maintain it. Meanwhile, the definition of copyright according to the 2014 Copyright Law, is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations. 2) Copyright is one of the rights protected internationally through international treaties and binds Member States to ratify it into state law. In Indonesia, copyright is regulated in Law Number 19 of 2002 and amended through Law Number 28 of 2014. 3) Copyright infringement is not explicitly defined in Law Number 28 of 2014 concerning Copyright (Copyright Law). However, in the law, it can be concluded that copyright infringement is the use of a copyrighted work or material protected by copyright without permission from the creator or copyright holder. Copyright infringement itself in the wider community is often known as piracy.

Keywords: Effort, Enforcement, Law, Infringement, Case, Copyright, Indonesia.

INTRODUCTION

Background

Copyright is basically the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form and without prejudice to restrictions in accordance with the provisions of laws and regulations. And it can be said that copyright is one of the intellectual property regulated by positive national and international law can raise questions about *who has the right to a work* and how to exploit or exploit a work protected by law.¹ Intellectual property rights essentially provide economic benefits to the creator or copyright holder and also to the state. Among European countries that are members of the *European Union* (EU) and in the Americas, awareness of these economic benefits has been firmly ingrained. In these developed countries, several economic studies conducted have proven the rapid growth of copyright contributions to the country's national income.²

The need to recognize, protect, and reward a person or company for their creation and access to their work for human benefit is beginning to be felt in Indonesia. In relation to copyright ownership of anything related to intellectual property rights, the law acts and guarantees the creator to control and enjoy exclusively the work and if necessary with the help of the state for law enforcement, this shows that legal protection is the interest of copyright either individually or in groups, as a subject of the right to limit the interests of individuals, the law guarantees the preservation of society. This guarantee is reflected in the IPR system that develops by balancing between two interests, namely the editing of copyright owners and the needs of the community.³

The legal protection provided by the state for copyright holders is Law No. 28 of 2014 concerning Copyright which gives rights to creators and copyright holders in announcing and reproducing works as an effort to guarantee the economic rights of creators of their works. Based on Article 1 point 1 of Law No. 28 of 2014 concerning Copyright stipulates that copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form. The essence of Law No. 28 of 2014 concerning Copyright is to group forms of protection into 2 (two) groups. First, copyright protection is aimed at the moral rights of the creator of his work, so that the moral rights of the creator arise. Second, economic protection of the creator's copyrighted work so that economic rights arise to the creator. Copyright protection on the internet becomes crucial when copyrighted works are announced and reproduced without regard to these 2 (two) rights. This leads to copyright infringement.⁴

Copyright naturally gives economic rights and moral rights to creators. In the context of talking about the economic rights of the creator, it is closely related to how to make the creation able to bring economic value to the creator in various ways, depending on the creativity of the creator, in the current era often known as copyright monetization. However, the use of creators' economic rights is also a social space, meaning that the use of works by other parties is not classified as copyright infringement under certain conditions. The word Social Function is historically juridical often found when talking about rights related to land ownership, as stipulated in the Basic Agrarian Law of 1960.⁵

The form of copyright infringement basically revolves around two main things. The first is intentionally and without the right to announce, reproduce, or give permission for it. The second is intentionally exhibiting, distributing, or selling to the public a work or item resulting from copyright infringement.⁶

Problem Statement

1. How far is the understanding of Copyright and its relationship to Intellectual Property Rights?
2. What is the legal basis for Copyright and protected Works?
3. How is copyright infringement case enforced?

Theoretical Framework

1) Law Enforcement Theory

Satjipto Rahardjo said that law enforcement is a process aimed at maintaining law and order involving human, social, cultural, political, and other interactions.⁷ The existence of strict law enforcement and clear boundaries will make the social function of copyright with *fair use* more balanced. Developing a *model of fair use / fair dealing* Copyright on copyrighted works in the development of science and technology by fulfilling easy, affordable and quality accessibility based on aspects of moral rights, economic and social rights, which of course have their respective rights and obligations.

The definition of law enforcement can also be interpreted as the administration of law by law enforcement officers and by everyone who has interests in accordance with their respective authorities according to applicable legal rules. Criminal law enforcement is a unified process beginning with the investigation, arrest, detention, trial of the accused and ending with the correction of the convict. According to Soerjono Soekanto⁸, said that law enforcement is an activity to harmonize the relationship of values described in steady rules and attitudes of action as a series of final stage value elaboration. To create, maintain and maintain social peace.⁹

Research Methodology

This research will be prepared using a type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.¹⁰ This type of research is normative legal research, in accordance with Soerjono Soekanto's opinion, that normative¹¹ legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied.

Data collection techniques in this study were obtained based on *library research*. The study conducted was a literature study (*library research*) using secondary data. Secondary data in this study was obtained through literature studies, by seeking information as complete and as much as possible with journal literature, newspapers, articles, scientific papers and laws and regulations related to those related to the research theme.¹² The research technique in this dissertation is descriptive analytical, where analysis is carried out critically using various theories of research problems. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*), based on words arranged in a scientific setting.¹³

RESEARCH RESULTS

An understanding of copyright and its relationship to intellectual property rights

Copyright is one of the Intellectual Property Rights (IPR) or *Intellectual Property Rights* that is, rights that arise as a result of thought that produces a product or process that is useful for humans.¹⁴ In essence, IPR is the right to enjoy economically the results of intellectual creativity. Objects regulated in IPR are works that arise or are born due to human intellectual abilities.

Broadly speaking, IPR is divided into 2 (two) parts, namely copyright (*Copyright*) and industrial property rights (*Industrial Property Rights*), which includes patents (*Patent*), industrial design (*Industrial Design*), brand (*Trademark*), countermeasures against repression of unfair competition, layout design of integrated circuits, and trade secrets (*Trade Secret*).¹⁵

Copyright has given great authority to creators. In accordance with the definition of Intellectual Property Rights (IPR), copyright can be interpreted as property rights attached to copyrighted works in the fields of literature, art, and science such as written works, musical works, paintings, sculptures and so on. In essence, copyright is the right that the creator has to exploit in various ways the copyrighted work produced.¹⁶

In the Copyright Law 2002, the definition of copyright is formulated as the exclusive right of the creator or recipient of the right to publish or reproduce his work or give permission for it without prejudice to restrictions under applicable laws and regulations. The definition of copyright as an exclusive right in the 2002 Copyright Law is felt to need further explanation, because even though copyright is exclusive, copyright holders are not easy to maintain it. Meanwhile, the definition of copyright according to the 2014 Copyright Law, is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations.¹⁷

Copyright as property rights carries the consequence that the creator gets protection or legal protection against unauthorized use of copyright or without the author's permission. The use of a creation by the creator does not last forever or forever. If the free use of works by society is unfair to the creator, on the contrary, the indefinite use of works by the creator also brings injustice to society. The compromise that occurs between copyright proponents and those who reject copyright is that copyright has a limited validity period (copyright is limited *in time*). The rights included in copyright, are exclusive rights and economic rights and moral rights. Some exclusive rights that are generally granted to copyright holders are the right to:

- a. make copies or reproductions of the work and sell such copies (including, in general, electronic copies);
- b. import and export the work;
- c. create derivative works or derivatives of the work (adapting the work);
- d. publicly display or exhibit the creation; and
- e. sell or transfer such exclusive rights to another person or party.¹⁸

Legal Basis of Copyright and Protected Works

Copyright protection in Indonesia began on 1 November 1912 when the Dutch colonized Indonesia enforced their participation in *Berne Convention for the Protection of Literary and Artistic Works 1886* (Bern Convention on the Protection of Artistic and Literary Works-Bern Convention) based on the principle of concordance in Indonesia. In other words, Indonesia since 1912 has had a Copyright Law (*Auteurswet*) pursuant to the Act of the Netherlands of 29

June 1911 (Dutch Staatsblad No. 1912) which authorizes the Queen of the Netherlands to enforce the Berne Convention following its revision on 13 November 1908 in Berlin, for the Netherlands itself and its colonies.¹⁹

Copyright promulgation since the Dutch era, namely through *Aufers Wet Year 1912 Staatsblad No 600*, initially legal protection was given to an author. Furthermore, there was a development of thinking about the term *Aufers Wet* or Copyright, especially after so many years of Indonesian independence. Furthermore, it is proposed to be a copyright whose content means more precise and broader.²⁰ In 1982 the Indonesian government had formally regulated law no. 6 of 1982 concerning copyright which came into force on April 12, 1982, as well as revoking the enactment of *Auters wet 1912*. In its development, Law No. 6 of 1982 was amended by Law No. 7 of 1987, then reamended by Law no. 12 of 1997.

Then, in addressing the global situation, the Law on Copyright in 1997 has contained several adjustments to the articles contained in Trade *Related Aspects of Intellectual Property Rights* (TRIPs, in order to adapt to international conditions, changes need to be made, namely with Law no.19 of 2002. The main objective is to be able to develop the intellectual capabilities of the Indonesian people and provide adequate legal protection so that there is a healthy business competition climate both nationally and internationally.²¹

Copyright is one of the rights protected internationally through international treaties and binds member states to ratify it into state law. In Indonesia, copyright is regulated in Law Number 19 of 2002 and amended through Law Number 28 of 2014.²²

If observed, in the provisions of the Copyright Law 2002, the application of copyright protection time is 50 (fifty) years when the creator dies. Meanwhile, in the 2014 Copyright Law, copyright protection is carried out with a longer period of 70 (seventy) years for the reason of respecting and protecting creators so that they have more time to enjoy their economic rights. This is done to honor the creators and provide a long opportunity for the creators to enjoy their rights.

The authenticity of a work is essential in legal protection through copyright. The work must actually be the work of a person who recognizes the work as his creation.²³ The works protected by the Copyright Law are regulated in Article 40 paragraph (1) of the Copyright Law of 2014 covering works in the fields of science, art, and literature, consisting of: a. books, pamphlets, faces of published written works, and all other written works; b. lectures, lectures, speeches, and other similar creations; c. teaching aids made for the benefit of education and science; d. songs and/or music with or without captions; e. drama, musical, dance, choreography, puppetry, and mime; f. works of fine art in all forms such as paintings, drawings, carvings, calligraphy, sculptures, sculptures, or collages; g. works of applied art; h. architectural works; i. maps; batik artwork or other motif art; k. photographic works; l. portrait; m. cinematographic works; n. translations, interpretations, interpretations, potpourri, databases, adaptations, arrangements, modifications and other works of transformation; o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions; p. compilation of works or data, whether in a format that can be read with computer programs or other media; q.

compilation of traditional cultural expressions as long as the compilation is an original work; r. video games; and s. computer programs.

This protection includes protection of works that have not been announced or have not been announced but have been realized in a tangible form that allows reproduction of the work (Article 40 paragraph (3) of the Copyright Law). Copyright protection is not given to ideas or ideas because the creation must have been expressed in tangible form in the fields of science, art, and literature.²⁴

The protection of a creation arises automatically from the moment it is manifested in tangible form. Registration of a work is not an obligation to obtain copyright. However, creators and copyright holders who register their works will receive a work registration letter that can be used as initial evidence in court if a dispute arises in the future against the work. Copyright protection is not given to ideas or ideas because copyright must have a distinctive form, be personal and show authenticity as a creation born based on ability, creativity or expertise, so that the work can be seen, read or heard.

Copyright lasts for different lengths of time in different jurisdictions for different types of works. The validity period may also depend on whether or not the work is published. In Indonesia itself, according to the 2014 Copyright Law, the term of copyright protection has been increased to 70 (seventy) years.¹⁴ This addition is done for the reason of respecting and protecting creators so that they have more time to enjoy their economic rights.

In the Copyright Law 2014, new material regarding protection against the transfer of economic rights in the form of sold flat will return to the creator after 25 (twenty-five) years. Based on the explanation of Article 18 of the Copyright Law 2014, what is meant by sale and break is an agreement that requires the creator to submit his work through full payment by the buyer so that the economic rights to the work transfer entirely to the buyer without time limit, or in practice known as *sold flat*. In simple terms, it can be said that the definition of selling flat here is a form of agreement that transfers copyright in whole or in part to another party indefinitely and absolutely.²⁵

Please note, the emergence of protection of a work begins from the moment the work exists or materializes and not because of registration. In other words, a work, whether recorded or unrecorded, is protected. This is in line with the principle of direct protection where protection does not require certain formalities. Therefore, if a person listed in the public register of works is declared a creator because others cannot prove that he or she is the creator, then it is a form of neglect of the principle of *automatic protection*.²⁶

Regulations regarding copyright are regulated in Law Number 28 of 2014 Article 1 point 1 which states that copyright is a special right for creators that automatically appears based on the declarative principle after a work and is realized in tangible form without reducing restrictions in accordance with applicable laws and regulations. That copyright as a form of legal protection facilitated by the state in appreciating someone's copyrighted work. Copyright is an intellectual right that can be transferred or transferred by another person. Copyright is a right that can be realized in a valuable form in nominal money.²⁷ Giving appreciation to creators

as creative subjects for the results of their creativity is contained in IPR. This appreciation is expressed in the form of the right to the subject to take economic benefits from the creative work produced and recognition of the work produced in the form of moral rights.²⁸ So that the rights given in the form of legal protection guarantees and owners are given privileges in exercising their rights.²⁹

Government policy in the Copyright Law that sets limits in producing a Work that must not conflict with the public interest and applicable norms is contained in Article 50 of the Copyright Law, which states that:

"Everyone shall not make any Announcement, Distribution, or Communication of Creations contrary to religious morals, public order, or the defense and security of the state."

Copyright restrictions and exceptions have justification in consideration of restrictions on the exclusive rights of creators on the basis of human rights by providing freedom of expression, freedom of the press and the right to information. Second, copyright exemptions concern public interest based on public interests that are fulfilled through public libraries, educational institutions, museums and archiving activities etc. So that people can access works without any restrictions. Third, it involves exceptions designed to address market dysfunction in situations where it is impossible for copyright owners to exercise their exclusive rights.³⁰

The restrictions according to the law are of course intended so that in every use or function of copyright must be in accordance with its purpose. Actually, what is desired in this restriction on copyright is that any person or legal entity does not arbitrarily exercise their rights. Any use of copyright must first be considered whether it does not conflict or does not harm the public interest. This gives the impression that the rights of the individual are actually respected. However, with the restrictions, in fact its use is still based on public interest. Individual rights are respected as long as they do not conflict with the public interest.³¹

Law Enforcement of Copyright-Related Infringement Cases

Generally, copyright infringement is encouraged to seek immediate financial gain by ignoring the interests of creators and copyright license holders. The actions of the perpetrators clearly violate the legal fatsun that determines that everyone can obey, respect, and respect the rights of others in civil relations including new inventions as creations of others that are recognized as property by legal provisions. Factors that influence citizens to violate Intellectual Property Rights include:

1. Infringement of Intellectual Property Rights is carried out to take shortcuts to get the maximum benefit from the violation;
2. Violators consider that the legal sanctions imposed by the courts so far are too light and there are no preventive or repressive measures taken by law enforcers;
3. There are some community members as creators who are proud when their works are imitated by others, but this has begun to disappear thanks to increased legal awareness of Intellectual Property Rights;

4. By committing an infringement, the tax on the infringing product need not be paid to the government; and
5. People do not pay attention to whether the goods purchased are genuine or fake, which is important for them to be cheap and affordable with economic capabilities.

Copyright infringement has been more common in developing countries because it can provide economic benefits that are not small for infringers (pirates) by taking advantage of weaknesses in the system of monitoring and monitoring copyright crimes. Admittedly, efforts to prevent and crack down on copyright infringement have not been able to deter pirates from repeating their actions, because efforts to overcome them are not optimal.

Forms of copyright infringement include taking, quoting, recording, questioning, and announcing part or all of someone else's work in any way without the permission of the creator / copyright holder, contrary to the law or violating the agreement. Copyright law does not allow actions to be committed by unauthorized persons, because of three things, namely:

1. Harm the creator / copyright holder, for example photocopying part or all of someone else's work and then selling it to the wider community;
2. Harm the interests of the State, for example announcing creations that are contrary to government policy in the field of defense and security; or
3. Contrary to public order and decency, for example reproducing and selling video compact discs (VCDs);³²

Copyright infringement is not explicitly defined in Law Number 28 of 2014 concerning Copyright (Copyright Law). However, in the law, it can be concluded that copyright infringement is the use of a copyrighted work or material protected by copyright without permission from the creator or copyright holder. Copyright infringement itself in the wider community is often known as piracy.³³ Copyright infringement can also occur when the copyright material is used without permission and there must be similarities between the two existing works. The prosecution must prove that his work was imitated or infringed or plagiarized, or that the other work was derived from his creation. Copyright is also infringed when all or substantial portions of a work that has been protected by copyright have been copied or copied without permission. According to article 74 of the Indonesian Copyright Law, criminal infringement is an infringement that is intentionally committed to reproduce or publish copyright. This violation qualifies as a criminal offense to display, distribute or sell material resulting from copyright infringement.³⁴

If someone violates copyright, they will be subject to criminal fines stipulated in the criminal provisions of Law Number 28 of 2014 concerning Copyright as in Article 112 Paragraph (1) which explains that:

- (1) *"Any person who without the right to commit acts as referred to in Article 7 paragraph (3) and/or Article 52 for Commercial Use shall be punished with a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp300,000,000.00 (three hundred million rupiah)."*

Then, in Article 113 Paragraphs (1), (2), (3), and (4) it is also explained that:

- (1) *"Any person who without rights violates economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be punished with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp100,000,000 (one hundred million rupiah)."*
- (2) *"Any person who without rights and/or without permission of the Creator or copyright holder violates the economic rights of the Creator as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be punished with a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000, 00 (five hundred million rupiah)."*
- (3) *"Any person who without rights and/or without permission of the Creator or copyright holder violates the economic rights of the Creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000, 00 (one billion rupiah)."*
- (4) *"Any person who fulfills the elements as referred to in paragraph (3) committed in the form of piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah)."*³⁵

In addition, there are also preventive efforts from the legal side, namely based on the provisions of Articles 66-67 of Law No. 28 of 2014 concerning Copyright, namely:

Article 66 (

- 1) *"Recording of Works and Related Rights products shall be submitted by Request in writing in Indonesian by the Creator, Copyright Holder, Related Rights owner, or his Attorney to the Minister."*
- (2) *"The application referred to in paragraph (1) shall be made electronically and/or non-electronically by: a. including examples of the Work, Related Rights products, or substitutes thereof; b. attach a statement letter of ownership of the Work and Related Rights; and c. pay fees."*

Article 67

- (1) *"In the event that the Application referred to in Article 66 paragraph (1) shall be submitted by:*
 - a. *several persons jointly entitled to a Work or Related Rights product, the Application is accompanied by a written statement proving that right; or*
 - b. *legal entity, The application is accompanied by a certified copy of the deed of establishment of the legal entity that has been certified by the competent authority.*"³⁶

The main problems in copyright enforcement in Indonesia are: 1) The Indonesian government has not shown a strong will to enforce copyright protection in Indonesia, 2) Copyright legislation has not been comprehensive, 3) In general, public knowledge is still very lacking about copyright in particular and intellectual property rights in general including the laws that govern it. In fact, even among people who are directly related to the protected work, such as creators and related rights holders, many do not know copyright and the laws that govern it, 4) Because knowledge about copyright is still very lacking, in general people do not realize the importance of copyright protection for cultural development, increasing community creativity, and economic development, 5) Due to lack of knowledge about copyright and lack of awareness about the importance of copyright protection, people commit many violations of copyright. On the part of creators and related rights holders, the lack of understanding about copyright and related rights makes them less resentful to see the rampant infringement of copyright and related rights, 6) Many law enforcement officials also lack understanding of copyright, including the laws that govern it and also lack awareness of the importance of its protection 7) Due to the lack of knowledge of law enforcement officials 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 bring copyright infringers to justice and pursue them to the maximum.³⁷

CONCLUSION

The results showed that;

- a. In the Copyright Law 2002, the definition of copyright is formulated as the exclusive right of the creator or recipient of the right to publish or reproduce his work or give permission for it without prejudice to restrictions under applicable laws and regulations. The definition of copyright as an exclusive right in the 2002 Copyright Law is felt to need further explanation, because even though copyright is exclusive, copyright holders are not easy to maintain it. Meanwhile, the definition of copyright according to the 2014 Copyright Law, is the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations.
- b. Copyright is one of the rights protected internationally through international treaties and binds member states to ratify it into state law. In Indonesia, copyright is regulated in Law Number 19 of 2002 and amended through Law Number 28 of 2014
- c. Copyright infringement is not explicitly defined in Law Number 28 of 2014 concerning Copyright (Copyright Law). However, in the law, it can be concluded that copyright infringement is the use of a copyrighted work or material protected by copyright without permission from the creator or copyright holder. Copyright infringement itself in the wider community is often known as piracy.

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