

Law Enforcement Urgency on Copyright Infringement (Response to the Lack of Legal Protection of Copyright in Indonesia)

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Abstract

Intellectual Property Rights (IPRs) are generally classified into two main categories of which are copyright and industry property rights. The scope of copyright is a creative work in the field of science, art, and literature, while the scope of the Industrial Property Rights is in technology. In IPR terminology known term creators and/or inventors. The current study uses a legal approach with data collection procedures that are characterized by library research that is deductively processed. Qualitative research analysis aimed to find out how the law urgency was setting up copyright. Based on the results of the study, it is concluded that there are laws and regulations governing copyright. In Indonesia, the legal regulation of copyright has been regulated in the Law Number 28 of 2014 on Copyright. After being reviewed, the authors discovered some disadvantages and advantages contained in the legislation governing local artworks that are expected to be review material for improvement on the next legislation.

Keywords: Urgency, Law Enforcement, Copyright, Intellectual Property Rights, Industrial Property Rights.

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INTRODUCTION

Large nations are constantly improving the regulation imposed on their country, whether the regulation concerns the relationship between the individual and the regulation to individuals with the public interest. Perhaps the weak state's role as a controller and social controls led to anxiety and setbacks especially from the aspects of civilization. The advancement of human civilization will be aimed at while the government has a serious attitude and position in order to protect and respond to all that is being done by the nation's next generation. The absence of legal certainty in providing legal protection causes mutual respect, competitiveness but no common sense is one of the factors of human civilization that will never go ahead. As one of the leading triggers of human civilization is the creation of discoveries, both of which are abstract and concrete and that is what is considered intellectual property rights.

The common sense of Intellectual Property Rights is the legal rights granted to protect the economic value of creative enterprises. Types of Intellectual Property Rights protection cover Copy Rights, Patents, Trademarks, Industrial Designs, Trade Secrets, Geographical Indications and Layout Design of Integrated Circuits. From this description, IPR

(Intellectual Property Rights) is not just a PATENT that we have heard. There is often a mistake with the term PATENT on an object of Intellectual Property Rights. For example, if the individual wants to protect the intellectual property of a song, then to protect the song is mentioned patent the song, protect the brand mentioned patent brand; protecting a design mentioned patent design. The word patent should only be used if we want to register our invention or discovery to the country.

The invention itself is a discovery in the field of technology that should be a novelty. The discovery can be a product, a tool, or a composition. It can also be a process or method for the manufacture or use of a product. Other conditions later create an invention that can be classified as an ordinary patent or simple patent. Since the word 'patent' can only be used within the scope of the patent, then for the protection of the other intellectual work may be referred to as 'registering'. Moreover, do not see any significant progress in law enforcement on Intellectual Property Rights in Indonesia until now. She presented it at the seminar on Indonesian Property Rights in Jakarta on October 20, 2000.

According to Amalia, the enforcement of Intellectual Property Rights is far from expected. She noted that to date, in civil litigation in the courts of copyright and branding, never made decisions related to damages. Also, in imposing criminal penalties on the case of Intellectual Property Rights infringement, its criminal offense is far from the maximum criminalized damages. Both of these things according to Amalia have made hijackers and counterfeit Intellectual Property Rights still eager to run their business

Intellectual property can be a source of income and sustainable revenue, both for the inventor (inventor) and the institution in which the inventor is sheltered. The primary condition of the intellectual property can be a source of sustainable revenue is if (1) that intellectual property gets legal protection and (2) can be applied for the benefit of society. Without law protection then such intellectual property will be the property of others, and if it cannot be applied for the benefit of society, then no intellectual property is to purchase.

One of the Agreements reached through the Agreement on Establishing the World Trade Organization, hereinafter referred to as the WTO is the Agreement on the Trade-Related Intellectual Property Rights as hereinafter referred to as TRIPs. Through the TRIPs of developed countries, the protection and enforcement of protection rules in the field of Intellectual Property Rights (hereinafter abbreviated as IPRs) are carried out within the framework of the world trading system. Thus, the arrangement and enforcement of the rules in the area of IPRs is subject to the principles of GATT (General Agreement on Tariffs and Trade) which form the basis of WTO Establishment Agreement, the principle of National Treatment, Most Favored Nations and Transparency. National Treatment Principle, determines that IPR holders from other countries will receive the same protection as holders of IPR citizens from WTO member countries. The Most Favored Nations Principle determines the same treatment of IPR holders from other countries. The transparency principles require WTO member states to be more open in regulating and implementing national legislation in the field of IPR protection.

National IPR law including Indonesia, which accommodates public interest in its provisions, also becomes ineffective with the existence of a bilateral or FTA agreement. There is a possibility that bilateral or FTA agreements in Indonesia's IPR with developed countries will ignore the economic principles set out in the 1945 Constitution as a constitutional basis in economic activity. As an economic constitution, the 1945 Constitution should be understood as the highest economic policy that should be used as a reference.

References in developing each national economic development policy. In the Indonesian

perspective is the same as considering the national interest of Indonesia. Economic policies, which are set out in the form of its laws and regulations, including in the field of IPR, should not be contrary to the 1945 Constitution. The individualism philosophy underlying bilateral agreements or FTAs will contradict the economic principles of the 1945 Constitution, Pancasila value, which emphasizes the balance of the individual's interests with the interests of society, or the public interest.

In Indonesia alone, to encourage and protect the creation, dissemination of cultural outcomes in the work of science, art, and literature and accelerate the growth of intelligence for the nation's life, it is imperative that the need for legal protection of copyright. The protection of the law is intended as an effort to realize a better climate for the growth and development of passion in the field of science, art, and literature in the midst of Indonesian society.

In Indonesia, the Law that protects the creative work is Law No. 6 of 1982 on copyright, and it has undergone some changes and has been enacted the latest Law, Law No. 19 of 2002 concerning the Copyright which has come into force twelve months since it was enacted. Includes copyrighted works, inventions in technology (patents) and creations about mergers of shapes, colors, lines (industrial product designs) and signs used for trade and service (brand) activities also need to be recognized and protected under legal protection. In other words, Intellectual Property Rights need to be documented and enable the creation of the same technology or other works to be avoided or prevented.

Based on the background description above, then the general problem statement on this paper is as follows:

- How is the legal effectiveness of copyright protection in Indonesia?
- How the law enforcement efforts against Copyright infringement in Indonesia?

RESEARCH METHODS

The method used in this study is the normative juridical approach. The juridical approach is an approach that refers to applicable laws and regulations [1], while the normative approach is an approach by researching libraries or secondary data on legal principles and case studies with Another word is often referred to as law research literature [2].

In collecting data, authors need data sourced from books, literature, and legal experts related to this research, or other sources available in the field to support the success and effectiveness of research, used in this study are secondary data. Secondary data is data derived from library research whose legal material comes from primary legal materials and secondary legal

materials. Primary material is a library material which contains scientific knowledge of known facts about an idea. The secondary materials are legal materials that closely relate to primary legal materials and enable them to analyze and understand primary legal materials [3].

In normative law research, data processing is essentially an activity to institute systematization of written law materials. Systematization is to classify the written law materials to facilitate analysis and construction work [4]. Normative law research consists of research on legal principles by emphasizing secondary data by studying and reviewing fundamental or legal principles, either in positive legal rules, relevant national and international legal cases and provisions with the underlying issues studied, namely: the effectiveness of copyright law regulation in protecting traditional artworks. The approach taken in this study is a qualitative approach to the emergence of a postulate or theoretical in the future and allows for use in the research process.

Data analysis uses descriptive qualitative methods by providing a specific lens based on data collected systematically. In normative law research, which examines secondary data then data presentation is done with the analysis at once. The nature of the descriptive analysis is that the researchers in the analysis want to give an overview or explanation on the subject, and the object of research as the result of the research has been done [5].

The present study is limited to just one section of library research, and through data collection, through a search of primary legal materials in the form of research on national and international laws and regulations. Secondary legal materials were covering various works of literature that are relevant and relevant to this research such as books, journals, articles, academic scripts and research results and tertiary legal materials such as papers, newspapers, dictionaries, and encyclopedias. (2) Field research was conducted to obtain primary data to support secondary data analysis. This method is used to obtain direct data from competent parties who can support the implementation of the research.

The source of the research data is by doing document research and observation and also interview with parties related to the problem studied. Data collection techniques used instead of directly investigating documents related to the topic studied, also conduct interviews with related parties about matters on issues to be investigated. The collected data were analyzed using the qualitative juridical analysis method, and the results of the analysis were presented using the descriptive analysis method.

DISCUSSION

Legal Effectiveness of Copyright Protection In Indonesia

The Intellectual Property Rights first appeared in Venice (Italy) in 1470 and related to patent rights later on in the adoption of the United Kingdom in the 1500s and began adoption in many countries in the world and the first harmonization took place in 1883 with the birth of the Paris Convention for patent, trademark and design issues [6].

In substantive terms, the Intellectual Property Rights (hereinafter referred to as IPR) can be described as the right to property that arises or is born of human intellectual ability. IPRs is categorized as the right to wealth as IPRs ultimately produces intellectual works such as; knowledge, art, literature, technology, in which to realize it requires the sacrifice of energies, times, and mind. The existence of such sacrifices makes the intellectual work a value. When added with the economic benefits that can be enjoyed, then the inherent economic value fosters the conception of intellectual property on these intellectual works [7]. The reason is that IPRs is an exclusive right that exists only and it is attached to the owner or right holder, and therefore the other parties if they wish to utilize or use the right to create or produce the material of its transformation form, they must obtain the license from the owners or right holders [8].

IPRs can generally be ranked into two main categories, namely copyright and industrial property rights. The scope of copyright is the creative work of science, art, and literature, while the scope of the Industrial Property Rights (IPR) is in technology. In IP terminology known as "creator" and/or "inventor" [9]. Copyright consists of economic rights and moral rights. Economic rights are the right to obtain economic benefits for the invention and related rights products. Moral rights are the rights attached to the creators or perpetrators that cannot be removed or removed without any reason, even if the Copyright or Related Rights have been transferred [10].

In 2014, passed Law Number 28 the Year 2014 (hereinafter referred to as UUHC) replaces Law Number 19 the Year 2002, as the Law is considered to be incompatible with the development of law and the needs of society. The steps of the House of Representatives of the Republic of Indonesia and the Government to replace UUHC 2002 with this Law is a serious effort from the state to protect the economic rights and moral rights of "creators" and "associated rights holders" as an essential element in the development of national creativity.

The escalation of economic rights and moral rights can erode the motivation of "the creators" and "associated rights holders" to create. The loss of such motivation will have a widespread impact on the

collapse of Indonesia's macro creativity. Reflecting on developed countries appears that adequate protection against copyright has succeeded in bringing significant creative economic growth, and contributing significantly to the economy and people's welfare. The development of information and communication technology has become one of the variables in this copyright law, given the information and communication technology but on the one hand has a strategic role in the development of copyright, on the other hand, is also a tool for violation of law in this area. Proportional arrangements are needed.

The legal state has several features, including the protection of human rights, namely: "Everyone has the right to develop themselves through the fulfillment of their basic needs, be entitled to education and benefit from science and technology, art and culture, to improve the quality of life and for the welfare of humanity".

Intellectual property holders are essentially the property rights that the creator of the science, art, and literature utilizes to improve his welfare in the perspective of the law state. Based on that, Indonesia not only protects the rights of its citizens but also further to improve the quality of life for its well-being. Indonesia embraces the concept of a welfare state (law state in the sense of material). The theory of welfare state explains that States play a role in increasing the equality of economic growth towards the improvement of the well-being of the people. This concept is the juridical philosophical foundation as set out in the opening of the 1945 Constitution, paragraph IV and then elaborated in article 33 of the 1945 Constitution.

Intellectual Property Rights are the property of science, art, literature, technology, business, and industry as a result of their intellectual creations or innovations. Eddy Damian argues that Intellectual Property arising from one's intellectual abilities is a manifestation of alter ego (personality reflection) or quality of taste, intention, and creativity [11]. IP commonly is the result of solving problems faced by a person, by his or her nature will be encouraged to think creatively to solve a problem he/she experienced.

Referring to the records of the Directorate General of Intellectual Property in 2004, the Creativity then sparked creativity to produce intellectual work. W.R Cornish [12] says "IP protects the use of ideas and information that has commercial value or economic value." While David I Bainbridge says "Intellectual property" is the collective name given to legal rights which protect the product of human intellect. The term intellectual property seems to be the best available to cover that body of legal rights which arise from the mental and artistic endeavor [13].

The legal protection of Copyright is intended to encourage individuals within the society who have the intellectual and creative ability to be more eager to create as many works as possible for the nation's progress [9]. Soerjono Soekanto said that law enforcement is an activity that sustains the relationship of values imposed in the rules/values of a firm and concealed value and acts of conduct as a final stage value chain, to create, preserve and harmonize the peace of life. Generally, as stated by Soerjono Soekanto, five factors influence law enforcement, namely: its legal factors, law enforcement, facilities, society, and culture. These five factors are closely interrelated because it is the essence of law enforcement, is also a measure of the effectiveness of law enforcement.

Copyright infringement is generally classified into two main parts, namely infringement of Copyright from the aspect of civilization and infringement of Copyright from criminal aspects. Copyright infringement from a criminal aspect means a violation of the law that may affect the interests of the state, while infringement of Copyright from the aspect of civilization means the existence of an infringement of the law resulting in a loss to the Copyright holder.

The basic concept of the origin of Copyright will provide legal protection to a work of creativity that has a distinctive form, and it indicates the originality of a person's creation by their ability and creativity. The personal nature contained in the Copyright creates the conception of moral rights for the creator or heir.

Such moral rights are regarded as a personal right owned by a creator in order to prevent the deviation of his work and to gain respect or reward for his work. The moral right is the realization of the continuing relationship between the creator and the work of his creations even if the creator has passed away or has transferred his Copyright to others, so that when the right holder removes the name of the creator, the creator or beneficiary shall be entitled to claim to the right holder Keep the name of the creator stuck in his creation.

In addition, the copyright holder is not allowed to make changes to a creation except with the consent of the creator or his heirs, and if the creator has surrendered his copyright to others, during which the creator is still alive he/she needs his consent to make a change, but if the creator has passed away the permission from his heirs.

Related to the issue of protection against artworks including portraits of a person in Indonesia is also growing as the Law no. 28 of 2014 on Copyright, which the State provides for protection exclusively through such laws. Often violations indicate numerous violations and are difficult to overcome. Along with the

problems that occur, to appreciate the Creator's creativity, and to give due respect and protection to his work and his rights with law enforcement through non-litigation paths that constitute dispute settlement through off-line courts. This dispute resolution is due to the fact that copyright holders who are infringing on their work do not want to be too long in solving this problem. In the case of such violation between the Malayintpro and the perpetrators of the violation have agreed to settle the solution through the non-litigation because it does not cost much for only one type of creation other than that the deliberation does not have to be complicated in the settlement because only the agreement between the parties in granting royalty as compensation for the party whose right has been infringed.

Legal protection of basic copyrights and the protection of copyright is the exclusive right of the creator or assignee to announce or reproduce the creation without prejudice to the limitations of the laws and regulations. The basic protections of creation are:

- The copyright protects the expression of ideas or ideas rather than protecting ideas alone
- The copyright comes after the copyrighted work is completed, registration is not an obligation
- The creation is genuine or original, not a novelty.
- a) Creation is made of a particular result of creativity and skill outlined in the expression or notion of Law 28 of 2014, of Copyright. The granting of protection to the creator in this Law shall govern the Rights of the Moral and the Rights of a Creator or the Copyright Holder, the term of the Protection of a Creation, and the sanction of the Copyright Infringer.
- b) Law No. 11 of 2008, on information, and electronic transactions. This Law further regulates the protection of Copyright in the Information System. Movies that are processed or incorporated into a computer or similar device are referred to as Electronic Documents. In article 25 it has been said that electronic information and/or electronic documents prepared into intellectual works, internet sites, and intellectual works contained therein are protected as Intellectual Property Rights under the provisions of the Laws and Regulations.

Joint Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia number 14 the Year 2015 and the Minister of Communication and Information of the Republic of Indonesia number 26 the Year 2015 concerning the Implementation of Closure of Content and /or

- User Rights Copyright Infringement and/or Related Rights in Electronic Systems.
- In this regulation, there is a function of the Copyright Law and the ITE Law.

This joint rule is an implementing regulation

which can be viewed in the Copyright Law article 56 paragraph (2). This regulation is governed by the reporting procedures that anyone who feels their Copyright is infringed on the information system, in this case, the Internet for the closure of the content and/or access rights to the copyrighted work being infringed

Law Enforcement efforts against Copyright infringement in Indonesia

The protection systems in Intellectual Property laws, in particular, copyright include protection subjects, protection objects, and the exceptions or restrictions, registration stelsels, protection periods, and other acts of the law and actions by the creator or copyright holder in the event of a breach by another party. The protection system needs to be harmonized with Cyber Law as a result of the development of information technology via the internet.

In general, Indonesia has a law enforcement agency in charge of implementing the functions of the Law and the law itself, including Police, Attorneys, Judges, Civil Service Investigators (PPNS). Copyright law enforcement is made by the government involving ministries, including:

1) Ministry of Law and Human Rights

In the Copyright Law, the Ministry of Justice and Human Rights is authorized to regulate everything in the form of administration and law enforcement in the Copyright field.

2) Ministry of Communications and Informatics

Article 56 of the Copyright Law, the Ministry of Communication and Information is authorized to enforce the law of administration in the event of violation of the Copyright contained in the information system with the form of content closure and/or the user's access rights to infringement of Copyright on the internet.

3) Police

Article 120 of the Copyright Law provides for a criminal offense against Copyright is a complaint. In the event of a criminal offense against copyright, the disadvantaged party may complain to the police accompanied by evidence of reinforcement. For example in film piracy in the form of a CD in the shopping center, the creator of the film who feels his right to be infringed may complain to the Police to take action on the store selling the pirated CD or in other words there is no authorization from the Creator to do the duplication of the invention.

Bambang Waluyo, S. H. [14] states that a judge is a part of a court considered to be lawful, which has been laid down in his obligation and responsibility in order that the law and justice be enforced, whether written or unwritten (to judge a matter posed under the

pretext that the law does not or less clear), and there should be no contradiction with the principle and judicial joints of God Almighty.

In the copyright Law is regulated in the provision of criminal sanctions for offenders, provided in articles 112 to 119 of the Copyright Law with a minimum penalty of 2 years and a maximum of 10 years and a fine of at least IDR 100,000,000 (one hundred million rupiah) and a maximum of IDR 4,000.000.000 (4 billion Rupiah). However, the decision on the size of the sanctions dropped depends on the confidence that the judge owns. The legal efforts the creator or copyright holders can make copyright infringement. The copyright Law has regulated legal steps that the creator or copyright holders may take to obtain legal protection in the copyright field, including:

Mediation is a process of problem-solving negotiations, where non-aligned parties work with the disputing parties to seek mutual-agreement. The outsider is called a mediator, who is not authorized to dispute a dispute, but only helps the parties to resolve the matters empowered to him [15]. The legal complaints are made through a criminal law process. Inventors who feel detrimental to economic rights or their moral rights committed by other parties without seizing from them the Copyright infringement may file a criminal complaint to the Directorate General of Intellectual Property Rights in co-operation with the police following article 120 of the Copyright Law that imposes a complaint. The indemnification of the creator or Copyright holder may file a lawsuit in the event of a violation of the Economic and Moral Rights. Then civil law may be applied, the lawsuit filed with the Court of Commerce by giving all or part of the proceeds of Copyright infringement.

Legal remedies made in the case of the closing of the content and/or access rights on the internet are forms of legal protection in the field of administration. The law enforcement is made by the government in this case the Director General of Intellectual Property in cooperation with the Directorate General of APTIKA pursuant to the order of Copyright Law article 56 verse (2) which mandates the establishment of joint regulations for the execution of the closure of the content and / or the user's access rights in violation of Copyright.

Sanctions for infringers are contained in article 9 paragraph (1) point h that will be imposed Article 113 paragraph (2) of the Copyright Law, namely: "Any Person who without the right and / or without the permission of the Author or Copyright holder violates the economic rights of the Author 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 imprisonment for a maximum of 3 (three) years and / or

fine of at most IDR 500,000,000.00 (five hundred million rupiah)."

Protected inventions cover creations in the fields of science, art, and literature. Full details of the copyrighted object can be seen from the provisions of Article 40 Paragraph (1) of the UUHC. Creations of translation, interpretation, plating, spoils, databases, adaptations, arrangements, modifications and other works of the transformation result are protected as separate creations by not suppressing Copyright on original creations. Protection as referred to, including protection against Creation that has not or has not been done Announcement but has been manifested in a form that allows the Multiplication of Creation. In Cyber Law's perspective, uploaded creations include protected objects, such as online books or in connection with the download of MP3 songs through internet media. The computer program is a set of instructions that are expressed in the form of language, code, scheme, or in any form intended for the computer to perform certain functions or to achieve results.

CONCLUSIONS

- The findings show that in Cyber law's perspective, some provisions governing the protection system of inventions under the Law No. 28 of 2014 have not fully accommodated the development of information technology virtually, concerning protection subjects, protection objects, registration stelsels, periods, restrictions on rights copyright and educational and research interests. Some provisions in Law No. 28 of 2014, the subjects of protection, protection objects, registration stelsels, timeframes, copyright restrictions, and education and research interests need to be harmonized with the development of technology virtually, thereby ensuring legal certainty, fairness, and usefulness.
- Legal protection arrangement for Copyright is governed by Law no. 28 of 2014 about Copyright containing the Right to Economic and Moral Rights, with the development of information technology need to extend the coverage of Copyright protection with the adoption of Law no. 11 of 2008 about ITE. And the Joint Regulation of the Minister of Justice and Human Rights of the Republic of Indonesia number 14 of 2015 and the Minister of Communication and Information of the Republic of Indonesia number 26 Year 2015 concerning the Implementation of Content Closure and / or User Rights Copyright Infringement and / or Related Rights in the Electronic System which governs technical closure of the content and / or access rights to sites infringing the Copyright.

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