

DISPOSISI KEADILAN DALAM PERLINDUNGAN HAK EKONOMI DALAM PERSPEKTIF UNDANG-UNDANG NO. 28 TAHUN 2014 TENTANG HAK CIPTA YANG BERBASIS NILAI KEADILAN

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Abstract

IPR has an important meaning, this is because with IPR a copyright can be respected economically and non-economically, however economic pressure has made various parties irresponsible to make a living through piracy and other copyright infringements. So it is necessary to discuss more deeply related to the Disposition of Justice in the Protection of Economic Rights in the Perspective of Law No. 28 of 2014 concerning Copyright Based on Justice Values. The method used in this article is sociological juridical. Copyright law policies have not been able to effectively provide copyright protection at this time, this is because not many parties understand the importance of copyright registration and also the lack of the role of the government and law enforcers to provide information about this, including the lack of enforcement and eradication of violations Copyright.

Keywords: *Disposition, economic rights, protection, copyright*

A. BACKGROUND

Intellectual Property Rights (IPR) have become an important part of the development of the national and international economy. Various types of information regarding policies, regulations, the latest developments in the implementation and protection of Intellectual Property Rights, have become indispensable material for various groups of society, such as academics, professionals, industry, and government in the national and international scope.

The existence of Intellectual Property Rights (IPR) in human relations and between countries is something that cannot be denied. Intellectual Property Rights (IPR) always follow the dynamics of the development of society itself. The same is the case with the Indonesian people and nation who like it or not and are directly involved with IPR issues¹.

Copyright terms or phrases come from foreign terminology, namely copyrights in English or auteurrecht in Dutch. Before this description reaches an understanding according to Indonesian legal terminology, this section introduces the background of the issuance of Law No. 28 of 2014 in lieu of the Copyright Law No. 19 of 2002.

At first, Indonesia wanted to make its own Copyright Law which referred to the values of the original paradigmatic value of Indonesian culture which were crystallized in the Pancasila ideology. For this reason, the Indonesian nation tries in its political choice of law to formulate a Copyright Law applicable in Indonesia according to the values referred to. The Copyright Law which was first born in Indonesia to replace Auteurswet 1912 Staatblad Number 600, a legacy from the Dutch Colonial, is the Copyright Law No. 6 of 1982². The philosophical and political reasons for the birth of this law can be referred to in the preamble to the law as follows:

This law was issued in the context of realizing the mandate of the GBHN (1978), especially development in the field of law which is intended to encourage and protect creators and their works. Thus, it is hoped that the dissemination of cultural results in the fields of scientific, artistic and literary works can be legally protected, which in turn can accelerate the growth process of the nation's intelligence.

Despite the birth of Law no. 6 of 1982 can be ascertained as an attempt to end the validity period of Auteurswet 1912 Stb, No. 600, however, the hope of realizing a Copyright Law in accordance with Indonesian values is still far from expectations. Because in its journey, foreign influence is so strong and so thick in the effort to make countries in the world comply with the legal system offered by developed

1 Muhammad Danuri, *Peningkatan Profesionalisme Karya Cipta Teknologi Informasi Dengan HAKI*, (INFOKAM Nomor II/Th. XI/Sept/15), hlm. 84.

2 OK. Saidin, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, (Jakarta: RajaGrafindo Persada, 2015), hlm. 194

countries through various international agreements. This international agreement is used as the basis for Indonesia's participation in the agreement to establish a world trade organization (Agreement Establishing the World Trade Organization), which includes the TRIPs agreement. This latter international legal instrument also requires Indonesia to participate in ratifying several of its associated conventions, including: the Bern Convention and the WIPO Copyrights Treaty, the Rome Convention and others. On this basis, Indonesia is also obliged to adapt its national copyright law to the TRIPs Agreement and its associated conventions³.

According to the World Intellectual Property Organization (WIPO), IPR consists of copyrights and related rights, as well as industrial property rights. Administratively, international IPR protection is linked to the WIPO categorization of IPR⁴:

1. Copyright and related rights (Copyright and related right). Copyright protects copyrighted works in the fields of science, literature, and art such as novels, poetry, plays, films, musical creations, paintings, drawings, photographic works, sizes, and architectural works. Meanwhile, the related rights consist of the rights of performing artists to their performance works, producers of sound recordings of their work, and broadcasters to their radio and television programs.
2. Industrial property rights. Consists of trademarks (rights to trademarks, including service marks), geographical indicators, industrial designs, patents (patents), layout-designs (topographies) of integrated circuits. integrated circuit), undisclosed informations, including trade secrets (trade secrets).

The objectives of protecting intellectual property through IPR in general include⁵:

1. to provide legal clarity regarding the relationship between wealth and inventors, creators, designers, owners, users, intermediaries who use it, the working area for which it is used and who receive as a result of the use of IPR for a certain period of time;
2. give awards for the success of an effort or effort to create an intellectual work;
3. promote the publication of inventions or works in the form of IPR documents that are open to the public;
4. stimulating the creation of information transfer efforts through intellectual property and technology transfer through patents;
5. provides protection against the possibility of being copied due to intellectual works because there is a guarantee from the state that the implementation of intellectual works is only given to those who have the right.

Along with the swift flow of globalization, Indonesia realizes that the influence of capitalism and the liberal spirit is so strong coloring world economic policies that pervade all aspects of economic life in various countries in the world, but many factors cause this country to be unable to fight the wishes of the countries. came forward in voicing a desire to protect their copyrighted works. This is evident from the last 3 (three) changes to the Indonesian Copyright Law, it is seen that the domination of capitalist values is entangled in the norms of the Indonesian Copyright Law⁶.

The development of information and communication technology has become one of the important variables that have had a major influence on changes to the Copyright Law. Information and communication technology on the one hand has a strategic role in copyright development, but on the other hand it is also a medium for violating laws in the field of copyright. Proportional regulation is needed, so that positive functions can be optimized and negative impacts can be minimized. That is one of the reasons for the government to replace Law no. 19 of 2002 regarding Copyright with Law No. 28 of 2014.

3 *Ibid*, hlm. 195

4 Muhammad Danuri, *Op.cit.*, hlm 85

5 *Loc.cit.*

6 OK. Saidin., *Op.cit.*, hlm. 196.

The government calls it a serious effort by the state to protect the economic rights and moral rights of Creators and related Rights owners as an important element in the development of national creativity. The reason is that the denial of economic rights and moral rights can erode the motivation of creators and the owners of related rights to create. The loss of motivation like this will have a far-reaching impact on the collapse of Indonesia's macro creativity. Reflecting on developed countries, it appears that adequate protection of copyright has succeeded in bringing about significant growth in the creative economy and contributing significantly to the economy and welfare of the people.

As for the important parts amended in this new law are:⁷

1. Copyright protection is carried out for a longer period of time in line with the application of regulations in various countries so that the period of copyright protection in certain areas is enforced for the life of the creator plus 70 years after the author's death.
2. Better protection of the economic rights of creators and / or owners of related rights, including limiting the transfer of economic rights in sold flat.
3. Effective dispute resolution through mediation, arbitration or court proceedings and the application of complaint offenses for criminal prosecution.
4. The manager of the trading place is responsible for the place of sale and / or infringement of copyright and / or related rights in the shopping center where it manages.
5. Copyright as an intangible movable object can be used as an object of fiduciary security.
6. The Minister is given the authority to delete a work that has been registered, if the work violates religious norms, moral norms, public order, state defense and security and the provisions of laws and regulations.
7. Creators, copyright holders, related rights owners become members of collective management institutions in order to collect fees or royalties.
8. The creator and / or the owner of the related rights will receive a royalty fee for the work or related rights product made in an official relationship and used commercially.
9. Collective management institutions that function to collect and manage the economic rights of creators and related rights owners are required to apply for an operational permit to the Minister.
10. Use of copyright and related rights in multimedia facilities to respond to developments in information and communication technology.

Along with the changes regulated in Law no. 28/2014 provides legal protection for creators who have registered their creations. The problem that exists is the lack of public awareness of the appreciation of their creations, resulting in copyright infringement. Copyright works are not registered for various reasons, including the registration process which is often considered expensive and complicated. This has an impact on the weak legal protection of copyright works and the economic value of the product⁸.

In fact, the issue of legal protection in the trade or business sector is absolutely necessary, especially at this time when there is a lot of counterfeiting, piracy, and unfair competition between one entrepreneur and another. In addition, it is also undeniable that this dishonorable act has made consumers feel disadvantaged. In the world of business anything can happen, we are no longer social creatures but rather the assumption that one human can eat another human (*Homo Homoni Lupus*). Problems like this must be addressed by all elements of the nation, both from the legal structure and the parties involved in the world of trade⁹.

7 OK. Saidin., *Op.cit.*, hlm. 197.

8 Sri Endah Wahyuningsih, Jawade Hafidz, *The Development Of The Indonesian Criminal Cod-ederived From The Yudicial Pardon Value In Islamic Law*, ADDIN Journal, Volume 11, Number 2, August 2017, P.5.

9 Sanusi Bintang, *Hukum Hak Cipta*, (Bandung: Citra Aditya Bakti, 1998), hlm. 11.

In addition, the low level of public understanding of the importance of registration of works, the existence of several individuals or companies have attitudes and desires to obtain trade profits easily and there is not enough understanding of the attitudes and actions of law enforcement officials in dealing with copyright infringement. factors that cause violations of Intellectual Property Rights¹⁰.

As an illustration of Reog Ponorogo, it has been claimed by the Malaysian State, that they were the first to invent this tradition or dance. In fact, from our ancestors until now, Reog Ponorogo is a native art of the Ponorogo region, another example of a song of love. This shows that not only in the field of trade and business, but also legal protection of the cultural / creative output of Indonesians is still low.

The lack of awareness of the urgency of IPR protection is also an indicator of a lack of understanding by the community to respect other people's work. This needs intensive attention from the government so that the implementation of laws and regulations in the field of IPR law, especially copyright law, can be enforced.

The area that is the center of craftsmen in Bali is the Gianyar area which has many artists who have the imagination to think in producing brilliant works of art and their artistic soul is inseparable from the customs of the Balinese area, so that in their daily lives they produce works full of creativity and develop them. keep up with progress.

In addition, for example works of painting, traditional sculpture, carvings and silver. All of these works of art have not received intellectual property rights protection due to the craftsmen's ignorance and indifference to these protections. The lack of public understanding of a copyright is because the culture of the Gianyar regency is traditional and considers a work of art to be enjoyed by others and is more inclined to accept the exploitation of its work, so that an error is considered as a common thing¹¹.

This results in the thought that if they work and their work is beneficial to many people, they will feel proud and not really bother if it turns out that other people imitate them, even feel that they have benefited because their work has been disseminated and known by many people. This situation is evident in the appreciation of creativity and works of art in the traditional society of Gianyar Regency. The original artwork does not have a name or other mark to identify its creator¹². This phenomenon has an impact on the many piracy practices of a copyright work in the community, including piracy which results in an economic right in the field of performance which is widely circulated in the form of recording performances as regulated in Article 23 of Law Number 28 Year 2014 illegally and against the law.

Article 23 of Law Number 28 Year 2014 states that performers have economic rights. The economic rights of performers include the right to carry out themselves, give permission or prohibit other parties from doing:

- a. Broadcasting or communication of Performers' performances;
- b. The fixation of the show that hasn't been fixed;
- c. Reproduction of the fixation of the performance in any way or form;

10 Agus Sarjono, *Pengetahuan Tradisional: Studi Mengenai Perlindungan Hak Kekayaan Intelektual atas Obat-obatan, Disertasi*, (Jakarta: Universitas Indonesia, Fakultas Hukum Pasca Sarjana, 2004), hlm.23.

11 Onky Nata Alamsyah Aziz, *Kesadaran Hukum Pendaftaran Hak Cipta Atas Karya Seni Ukir Tradisional di Bali (Studi di Desa Batubulan Kecamatan Sukawati Kabupaten Gianyar Bali)*, (Malang: Universitas Muhammadiyah Malang, 2013), hlm. 4.

12 Susilo SP, *Hukum Hak Atas Kekayaan Intelektual, Masalah-masalah Hukum*, FH-Universitas Diponegoro, Semarang, 1998, hlm. 12

- d. The distribution of fixations of performances or copies thereof;
- e. rental of fixations of performances or copies thereof to the public; and
- f. the provision of fixation shows that can be accessed by the public.

Seeing the above reality, the role of law enforcement officers in this case local government is very necessary. The regional government is expected to pay attention to the regional potentials that are genuine and characterize an area¹³.

In connection with the facts above, the author thinks there is a need for a deeper study related to “THE DISPOSITION OF JUSTICE IN PROTECTING ECONOMIC RIGHTS IN THE PERSPECTIVE OF LAW NO. 28 OF 2014 ON COPYRIGHT BASED ON JUSTICE VALUE ”.

B. PROBLEM FORMULATION

The issue that will be discussed in this article is related to legal protection of copyright, which is currently ineffective, resulting in injustice to the real copyright owner.

C. RESEARCH METHOD

The method used in this writing is sociological juridical where research is also seen from the aspect of law enforcement in society.

D. DISCUSSION

1. Implementation of Copyright Protection

a. Understanding of Copyright

Copyright is intellectual property in the fields of science, art and literature which has a strategic role in supporting national development and advancing public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. According to Law No. 28 of 2014 concerning Copyright, copyright is the exclusive right of an author that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.

Copyright is granted to any scientific, artistic, and literary works that are produced based on inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in real terms. The subject of copyright is:

- a. Creator, is a person or several people who individually or collectively produce a unique and personal creation;
- b. A copyright holder is a creator as the owner of a copyright, the party who legally receives the right from the creator, or another party who receives further rights from the party legally accepting the right.

Whereas the object of copyright is a creation which is the result of a scientific, artistic, and literary work that is produced on the basis of inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form.

b. Copyright Protection

Protected works include Works in the fields of science, art and literature, consisting of:

- a. books, pamphlets, appearance of published papers, and all other written works;
- b. lectures, lectures, speeches, and other similar works;
- c. teaching aids made for the benefit of education and science;
- d. songs and / or music with or without subtitles;
- e. drama, musical drama, dance, choreography, puppetry, and pantomime;
- f. fine arts in all forms such as paintings, drawings, carvings, calligraphy, sculpture, sculpture or collage;
- g. work of applied art;

13 Onky Nata Alamsyah Aziz, *Op.cit.*, hlm. 5.

- h. architectural works;
- i. map;
- j. batik artwork or other motif art;
- k. photographic works;
- l. Portrait;
- m. cinematographic works;
- n. translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works resulting from the transformation;
- o. translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
- p. compilation of Works or data, either in a format that can be read by a computer program or other media;
- q. compilation of traditional cultural expressions as long as the compilation is original;
- r. video games; and
- s. Computer program.

A work is protected as a separate work without prejudice to the copyright of the original work. Protection of Works that have not been announced or have not yet been made but have been manifested in a tangible form that allows reproduction of the work.

c. The Relevance of Fairness Value in Copyright Protection

Copyright is an exclusive right consisting of moral rights and economic rights. Moral rights are rights that are eternally attached to the Creator to:

- a. keep or not including his name on the copy in connection with the use of his Work for the public;
- b. using his alias or pseudonym;
- c. change his work in accordance with the appropriateness of society;
- d. change the title and sub-title of the Work; and
- e. defend their rights in the event of a work distortion, mutilation of a work, modification of a work, or anything that is detrimental to one's honor or reputation.

Moral rights cannot be transferred as long as the Creator is still alive, but the exercise of these rights can be transferred by will or other causes in accordance with the provisions of laws and regulations after the Creator dies. In the event of a transfer of the exercise of moral rights, the recipient can relinquish or refuse the exercise of his rights provided that the release or refusal of the exercise of that right is stated in writing. To protect moral rights, Authors may have Copyright management information; and / or Copyright electronic information.

Economic rights are the exclusive rights of creators or copyright holders to obtain economic benefits for works. The Creator or Copyright Holder has the economic right to:

- a. publishing of works;
- b. Reproduction of work in all its forms;
- c. Translation of Works;
- d. Adapting, arranging, or transforming Works;
- e. Distribution of Works or copies thereof;
- f. Creation Show;
- g. Announcement of Works;
- h. Communication of Creation; and
- i. leasing a work.

Every person exercising economic rights must obtain permission from the Creator or Copy-

right Holder. However, any person without the permission of the Creator or the Copyright Holder is prohibited from reproducing and / or Commercial Use of the Work. Managers of trading premises are prohibited from allowing the sale and / or duplication of goods resulting from violations of Copyright and / or Related Rights in the trading place they manage. The economic right to distribute works or copies thereof does not apply to works or copies thereof that have been sold or whose ownership of the work has been transferred to anyone. The economic right to rent Works or copies thereof does not apply to Computer Programs in the event that the Computer Program is not an essential object of the lease.

Copyright is an intangible movable object. Copyright can be transferred or transferred, either in whole or in part because:

1. inheritance;
2. a grant;
3. waqf;
4. testament;
5. written agreement; or
6. other reasons justified in accordance with the provisions of laws and regulations.

Economic rights to a work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work. Economic rights that are transferred by an Author or Copyright Holder for the whole or in part cannot be transferred a second time by the same Author or Copyright Holder.

The creation of books, and / or all other written works, songs and / or music with or without text that are transferred in the sale agreement is terminated and / or transfer without time limit, the copyright is transferred back to the Creator when the agreement reaches a period of 25 (twenty five years. Copyright owned by an Author that has not, has been, or has not been made public, distributed, or communicated after the Creator's death becomes the property of the heirs or the property of the recipient of the will.

Because not many parties understand the importance of registering their copyright in order to obtain legal protection, most of the copyrighted works experience many legal problems, even if every registered work is also subject to copyright infringement, this also shows a lack of role. law enforcement in the prevention of copyright infringement. It is noted that during the beginning of 2020 there have been seven complaints of copyright infringement to the Ministry of Law and Human Rights¹⁴. Meanwhile, VCD piracy of music and film creations is still the highest¹⁵. This clearly contradicts the Second and Fifth Precepts of Pancasila and Article 28D of UD NRI of 1945, and is definitely against Law Number 28 of 2014 concerning Copyright.

E. Conclusion

Copyright law policies have not been able to effectively provide copyright protection at this time, this is because not many parties understand the importance of copyright registration and also the lack of the role of the government and law enforcers to provide information about this, including the lack of enforcement and eradication of violations. Copyright.

14 CNN, *Pelanggaran Hak Cipta Makin Marak*, Diunduh melalui m.cnn.com pada 12 Juni 2020.

15 *Loc, cit.*

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