

## LEGAL PROTECTION OF COPYRIGHT BASED ON LAW NUMBER 28 OF 2014 CONCERNING COPYRIGHT

**Maria Tambunan, Bernat Panjaitan, Nimrot Siahaan**

*Faculty of Law, Universitas Labuhanbatu*

*[mariatambunan@gmail.com](mailto:mariatambunan@gmail.com), [bernat.pjt@gmail.com](mailto:bernat.pjt@gmail.com), [nimrotsiahaan4@gmail.com](mailto:nimrotsiahaan4@gmail.com)*

### ABSTRACT

One of the issues that arise in this free trade era is in the field of intellectual property rights. Intellectual property rights are becoming an issue in the context of today's international trade. This research aims to protect the law of copyright and know and analyze the juridical consequences of moral rights and economic rights from the act of transferring copyright. This research belongs to the normative type of research. So it can be known that in Law Number 28 of 2014 concerning Copyright, criminal and civil sanctions have been stipulated for everyone who commits copyright infringement, then the juridical consequence of moral rights and economic rights from the act of copyright transfer is that moral rights remain with the creator even though there has been a transfer of copyright in any form. Legal protection for copyright holders through licenses can lead to multiple interpretations in their application.

**Keywords:** *Legal Protection, Copyright, Transfer of Rights*

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### INTRODUCTION

One of the issues that arise in this free trade era is in the field of intellectual property rights (Reichman, 2009). Intellectual property rights are becoming an issue in the context of today's international trade (Maskus, 2000).

This problem arises because intellectual property rights are an inseparable area of the approval package for the establishment of the World Trade Organization.

Efforts to formulate and formulate the concept of intellectual property rights are increasingly being carried out, both through the government and organizations (Helfer, 2004). The concept of intellectual property rights itself is always developing along with the development of science and technology so with such conditions, intellectual property rights develop dynamically (David, 1993).

Intellectual property rights are rights derived from human works, charities, and creations because they are born from human intellectual abilities and are the result of creative activities of a human thinking ability expressed to the general public in various forms, which have benefits and are useful in supporting human life, also have economic value.

The most important essence of any part of intellectual property rights is the existence of a particular creation. The real form of creation can be in the fields of technology, science, art, and literature.

The rapid development of life, especially in the economic sector, both at the national and international levels, provides increasingly effective legal protection for intellectual property rights.

Especially in the field of copyright, it needs to be further improved in order to create a better climate for the growth and development of the spirit of creation in the fields of science, art, and literature which is indispensable in the implementation of national development aimed at creating a just, prosperous, advanced, and independent Indonesian society.

Copyright is intellectual property in the fields of science, art, and literature that has a strategic role in supporting nation building and promoting general welfare as mandated by the Constitution of the Republic of Indonesia Year 1945.

The development of copyright law in Indonesia has undergone a long process, starting from the reign of the Dutch East Indies until now in the context of global economic development. There are many things that have been perfected from copyright law in Indonesia.

The refinement itself is intended as a form of responsiveness of copyright law which always develops parallel to the development of science and technology.

Copyright law talks about the protection of copyrighted works in the fields of science, art, and literature whose nature has been manifested and has an element of originality (Patterson, 1991).

The embodiment of works in the current context is not only expressed in conventional mediums that can be seen and touched with the naked eye, but this embodiment can also be expressed through digital media such as the internet.

In fact, the currently formulated copyright law is still experiencing several problems in order to provide protection for copyrighted works in the fields of science, art, and literature expressed through the internet medium.

Not everyone can and is able to employ the brain (reason, ratio, intellectual) to the maximum. This is what makes the ownership of IPR exclusive because only certain people can give birth to such rights (Saidin, 2015).

At first glance, the definition of IPR is a property right that arises or is born because of human intellectual abilities in the fields of science, art, literature or technology, which are born or created by the sacrifice of energy, time, mind and also often at great cost.

In this paper, the author focuses on the discussion of IPR in the field of copyright. It's important to understand about creators and copyright holders. The law not only provides protection to the creator but also to the copyright holder.

That is, copyright holders are not only by the creator but can also be owned by other parties through the transfer of rights as stipulated in article 16 paragraph 2 of Law Number 28 of 2014 concerning Copyright (UUHC) that copyright can be transferred or transferred either in whole or in part due to inheritance, grants, endowments, wills, written agreements or other causes justified in accordance with the provisions of laws and regulations.

The transfer of copyright by the creator is one form of absolute rights that the creator has over his work (Hollander, 1984). From the act of transferring copyright will cause different juridical consequences for copyright holders obtained through transfer as well as a form of legal protection guarantee for them.

This is closely related to the authority to act for copyright holders in the future. The author argues that the transfer of copyright in the form of inheritance, grants, zakat and waqf causes the transfer of ownership of economic rights either partially or wholly without being followed by the obligation to hand over royalties to the creator.

While the transition through agreement is in the form of an agreement granting permission to enjoy the economic rights of the work within a certain period of time and certain conditions called licenses.

Within that certain period of time, the licensee is obliged to provide royalties to the creator. And in the license agreement there is not always a transfer of rights because it depends on the agreement of the parties.

Only in the license agreement where there is a transfer of rights does the licensee have rights as the copyright holder. As well as having the authority to act on third parties. That is, not all licensees can be said to be copyright holders.

However, there is no clear distinction in the arrangement, giving birth to multiple interpretations in its application.

The purpose of this study is in accordance with the formulation of the problem that has been put forward. Therefore, the purpose of his research is to know and analyze about the Legal Protection of Copyright and to know and analyze the juridical consequences of moral rights and economic rights of copyright transfer actions.

## **METHOD**

The research method used in this study is the normative legal research method. Normative legal research is legal research conducted by examining library materials or secondary data (Soekanto, 2007).

According to Marzuki (2017), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in laws and regulations or the law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

## **RESULTS AND DISCUSSION**

### **Legal Protection of Copyright**

Copyright is the exclusive right for 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 (Hiariej, 2016)

In line with that, according to Law Number 28 of 2014 concerning Copyright, copyright 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.

Copyright consists of economic rights and moral rights (Sirvinskaite, 2010). Economic rights are the right to obtain economic benefits from works and related rights products.

The creator or copyright holder has the economic right to publish the work, Duplicate the work in all its forms, Translate the work, adapt, arrange, or transform the work, Distribute the work or copies thereof; Performance of creation, Announcement of creation, Communication of creation, and Rental of creation.

Basically, to protect copyright, of course, it must be registered. If a person wants his intellectual property to be protected by law, he must be willing to follow the registration procedures set by the state.

The importance of copyright registration is because in the era of globalization like today information circulates very quickly without taking into account national borders, so it is not surprising that copyright is one of the business objects that is in great demand because it has high economic value (Hanifah, 2015).

Moral rights are inherent rights of the creator or perpetrator that cannot be removed or deleted without any reason, even though copyright or related rights have been transferred.

Moral rights are the rights eternally inherent in the creator to keep his name on or not put his name on copies in connection with the public use of his work;

Use his alias or pseudonym; Transform his creation in accordance with propriety in society; Change the title and child titles of the work, and;

Defend its rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything that is detrimental to its self-honor or reputation.

Speaking of copyright law enforcement, it is something that stands alone that is independent of law enforcement in general.

Copyright law enforcement is only a subsystem and an integral part of the law enforcement system in Indonesia. Problems and obstacles that occur and are experienced in law enforcement in general are also experienced and faced in copyright law enforcement.

Including law enforcement officials, ranging from police, prosecutors, judges, and advocates who are widely highlighted and criticized seem unprofessional when dealing with copyright law violations.

The approach used in tackling copyright infringement can be done in two ways, namely through legal steps and non-legal steps. Legal action means legal remedies in the face of any changes or developments.

Copyright legal protection of songwriters whose songs are downloaded through internet media can be carried out in state administrative law, criminal law, and civil law.

In state administrative law, namely by registering the copyright it owns to the Director General of Intellectual Property Rights at the Ministry of Law and Human Rights. In criminal law, namely perpetrators can be subject to criminal sanctions in accordance with Article 113 Paragraph (3) of the Copyright Law.

In civil law, the copyright owner can demand that the perpetrator be used for commercial purposes in accordance with Article 99 Paragraph (1) of the Copyright Law (Kusno, 2016).

Furthermore, Criminal Sanctions for Copyright Infringement based on Law Number 28 of 2014 concerning Copyright.

The birth of Law Number 28 of 2014 concerning Copyright further strengthens the legal basis for regulation regarding copyright in Indonesia.

Law enforcement of copyright based on Law Number 28 of 2014 concerning Copyright can be resolved through civil dispute resolution or criminal settlement (Kilanta, 2017).

In Law Number 28 of 2014, it is affirmed that any person who without the rights and / or without permission of the creator of the copyright holder violates the economic rights of the creator in the form of publishing works, copying works in all their forms.

Distribution of the work or its copies, or announcement of the work for commercial use, is punishable with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000 (one billion rupiah).

In addition, any person who manages a trading place in all its forms that intentionally and knowingly allows the sale and/or duplication of copyright-infringing goods in the trading place he manages, shall be punished with a maximum fine of Rp. 100,000,000 (one hundred million rupiah).

Legal protection of copyright is one of the most important parts in providing legal certainty to the creator of a work.

In Law Number 28 of 2014 concerning Copyright, criminal and civil sanctions have been stipulated for everyone who violates copyright.

Law enforcement is still considered weak, so as a result Indonesia is included in the Priority Watch List (PWL). That is, Indonesia is considered as a country where efforts to eradicate copyright infringement are still very lacking.

In actual laws and regulations, the government has poured it in the form of legislation and implementing regulations (Turkamun, 2017: 11-12).

### **Juridical consequences of moral and economic rights of copyright transfer actions**

The copyright of a work is not only held by the creator, but can also be held by other parties. Based on article 1 number 4 of the UUHC states that what is meant by copyright holder is:

1. The creator as the copyright owner. According to article 1 number 2 of the UUHC, a creator is one or several people who individually or jointly produce a creation that is distinctive and personal.
2. The party receiving the right is lawfully from the creator.
3. Other parties who receive further rights from those who legitimately receive rights.

One of the purposes of copyright protection is to protect the moral and economic rights of creators of the works they produce. Copyright is an intangible movable object.

So that as a material right, copyright can also be transferred or transferred to another party by the creator. This transfer of copyright must be done clearly and in writing either with or without a notarial deed.

Based on Article 16 paragraph (2) of the UUHC, it has been regulated that copyright can be transferred or transferred either in part or in whole due to: inheritance, grant, endowment, will, written agreement, or other causes justified in accordance with the provisions of laws and regulations.

Every legal act will have consequences or consequences for the legal subject who committed the act. The same is true for the copyright transfer process.

After the transfer of rights from the creator to the copyright holder, juridical consequences will arise both for the creator and for the copyright holder as the recipient of the copyright transfer.

In this case, the author sees the juridical consequences of moral rights and economic rights of the act of transferring copyright.

The transfer of copyright does not remove or diminish the moral rights of the creator. Moral rights remain attached to the creator even if there has been a partial or complete transfer of rights to another party.

Copyright holders remain bound to recognize and respect the moral rights of creators. Moral rights as referred to in Article 4 of the UUHC are rights that are eternally inherent in the creator to:

- a. Keep or not include his name on the copy in connection with the public use of his work;
- b. Use his alias or pseudonym;
- c. Transform his creation in accordance with propriety in society;
- d. Change the title and child title of the work; and
- e. Defend its rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything that is detrimental to its self-honor or reputation.

Unlike moral rights, economic rights will transfer to other parties as the act of transferring copyright occurs.

In this case, the author argues that it is necessary to distinguish the form of copyright transfer as stipulated in article 16 paragraph 2 of the UUHC, because it will cause different consequences from each form of copyright transfer action.

The form of copyright transfer through endowments, grants and wills is different from the process of transferring copyright through agreements.

The most fundamental difference is in the point of "agreement" on which the agreement is based. The transfer of copyright through endowments, grants and wills does not need to go through an agreement process embodied in the form of an agreement.

While the transfer of copyright through an agreement requires an element of agreement between the two parties that bind themselves. This is very important to be studied because it has different juridical consequences from the 2 (two) forms of diversion actions, especially on economic rights.

1. If the transfer of copyright from the creator to the copyright holder through endowments, grants and wills.

Economic rights will pass to the copyright holder based on the transfer given by the creator either in part or in full.

In this case, the copyright holder is fully entitled to all economic rights of the work. That is, there is no obligation for the copyright holder to give royalties to the creator.

This consequence occurs as a manifestation of the transfer of rights. The transfer of rights results in the transfer of ownership of rights. If the transfer of copyright from the creator to the copyright holder is through an agreement.

Economic rights will transfer to the copyright holder based on the agreement that occurs and is stated in the agreement in writing.

Each party to the agreement must fulfill the rights and obligations and conditions that have been agreed. This legal relationship takes place during the agreed period of time.

Copyright holders are entitled to receive royalties on the economic rights of the work based on an agreement with the creator. While the creator is also entitled to royalties for his work based on the agreement that occurs.

In fact, it is often found that creators "sell" their work to rights holders, resulting in him no longer entitled to royalties for his work.

This is based on several cases that the author has found from previous research, where the creator of a book sells his work entirely to publishers.

So that the publisher is fully economically entitled to the publication and sale of the book without the obligation to give royalties again to the creator.

However, the provisions of the UUHC only mention the mode of transfer of copyright. The interpretation that occurs is that every transfer of copyright is done through an agreement, where this interpretation greatly impacts the control of economic rights by copyright holders.

In principle, the legal relationship that occurs begins with different legal acts so that the juridical consequences are different. How much control a copyright holder who is not the creator depends on the form of transfer action taken.

That is, in terms of economic rights, the copyright holder can have full or partial power in accordance with the will of the creator as the giver of endowments, grants and zakat.

And it can also be based on the agreement that occurs between the creator and the party receiving the transfer of rights if the transfer of rights is through an agreement.

## **CONCLUSION**

Legal protection for copyright holders through licenses can lead to multiple interpretations in their application.

Not all licensees can be said to be copyright holders, this must be seen from 2 (two) things:

- a. Based on the form of agreement between the creator and the licensee as stated in the license agreement.
- b. If there is a transfer of rights in the license agreement, these rights must be registered based on the Regulation of the Minister of Law and Human Rights Number 8 of 2016 concerning Terms and Procedures for Applying for Recording of Intellectual Property License Agreements.

Furthermore, the juridical consequence of the moral and economic rights of the act of transferring copyright is that the moral rights remain with the creator despite the transfer of copyright in any form.

While the transfer of economic rights of the creator is largely determined by the form of transfer carried out. Diversion through endowments, grants and wills has different consequences than transfer through agreement.

The provisions of the UUHC only mention the mode of transfer of copyright. The interpretation that occurs is that every transfer of copyright is done through an agreement, where this interpretation greatly impacts the control of economic rights by copyright holders.

## **REFERENCES**

- Amiruddin, H. (2012). *Zainal Asikin, Pengantar Metode Penelitian Hukum*. Jakarta: Rajawali Pers.
- David, P. A. (1993). Intellectual property institutions and the panda's thumb: patents, copyrights, and trade secrets in economic theory and history. *Global Dimensions of Intellectual Property Rights in Science and Technology*, 19, 29.
- Hanifah, M. (2015). Perlindungan Hukum Terhadap Hak Cipta Hasil Tenun Songket Melayu Menurut Undang-Undang No 28 Tahun 2014 Tentang Hak Cipta. *Jurnal Ilmu Hukum*, 6(2), 183–188.
- Helfer, L. R. (2004). Regime shifting: the TRIPs agreement and new dynamics of international intellectual property lawmaking. *Yale J. Int'l L.*, 29, 1.
- Hiariej, E. O. S. (2016). *Prinsip-prinsip hukum pidana*. Cahaya Atma Pustaka.
- Hollander, A. (1984). Market structure and performance in intellectual property: The case of copyright collectives. *International Journal of Industrial Organization*, 2(3), 199–216.

- Kilanta, D. R. (2017). Penegakan Hukum terhadap Hak Cipta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta. *Lex Crimen*, 6(3).
- Kusno, H. (2016). Perlindungan Hukum Hak Cipta Terhadap Pencipta Lagu Yang Diunduh Melalui Internet. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 10(3).
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Maskus, K. E. (2000). *Intellectual property rights in the global economy*. Peterson Institute.
- Patterson, L. R. (1991). *The nature of copyright: A law of users' rights*. University of Georgia Press.
- Reichman, J. H. (2009). Rethinking the role of clinical trial data in international intellectual property law: the case for a public goods approach. *Marquette Intellectual Property Law Review*, 13(1), 1.
- Saidin, O. K. (2015). *Aspek hukum hak kekayaan intelektual (Intellectual property rights)*.
- Sirvinskaite, I. (2010). Toward Copyright Europeanification: European Union Moral Rights. *J. Int'l Media & Ent. L.*, 3, 263.
- Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.