

Copyright Proof of Creation in the Field of Science in Declarative Systems in Indonesia

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Abstract—One of Intellectual Property Right (IPR) areas is Copyright, in deciding copyright, it is applied a system which is called as Declarative System. It means that copyright is created automatically when a creation is created which is realized in a form that has a specificity, without any obligation to register. With the enactment of such a system it is certainly not easy to prove the rights of the creator in the event of a dispute. The copyright fields are the fields of science, art and literature. Violations is very susceptible happened in a creation in the field of science, both in taking certain parts as material for writing a creation by other parties in limited quantities or even in amounts that exceed the limits of reasonableness. This research was conducted using a normative method supported by empirical data through field research. In the event of a dispute, the copyright proof of the scientific work, uses proof of rights in the form of work, for example; in the form of books, manuscripts, journals, and writings published in certain media as well as letters of registration if registered with valid evidence; The basis for determining copyright infringement, such as not mentioning the source completely or exceeding the fairness limit.

Keywords—*declarative system; copyrighting*

I. INTRODUCTION

A copyright is one of the parts of intellectual property (HKI) consisting of science, art and literature, computer program. At the beginning, it has been written and set in the laws in Indonesia. A copyright of a creation will be had by itself automatically when it is brought into a reality. According to the present valid rules, the law number 28 of 2014 concerning copyright or UUHC (copyright law). Therefore, it does not require a registration for a creation, even though a creation is registered or in a current term, a registration does not determine the existence of a creation, because the copyright already existed at a time when a creation was manifested in a special and personal form.

In article 64 paragraph (2) of the copyright law (UUHC) states a registration of a creation and products related to paragraph 1 is not a condition for obtaining copyright or related rights. According to the explanation in article 64 paragraphs (2) the copyright law is a registration of a creation and related rights of product is not an obligation for a creator, a copyright holder or a related rights owner. Protection of a copyright is begun from the moment of the creation is in existence or

materialized and not due to registration, this means that both registered and unregistered creation are still protected. It is just that the creation is written and registered and also has copyright, it will be easy to prove if there is a dispute or legal action. Copyright is a measure of legal protection to prove the creator has the right of the results of his creation [1].

In the world trade, Indonesia follows the system that has been agreed upon by the countries that have been member of world trade organization (WTO). Every copyright of creation should be completed with copyright certificate that has been issued by intellectual property rights institution, as a real form and it cannot be negotiable, if you want to be safe and get legal protection [2]. But based on the copyright law that applies in Indonesia adheres to a declarative system, is that copyright is issued by itself when a creation is brought into reality, so that the registration to obtain copyright certificate is not an obligation.

As a right like a right to other property so that copyright obtains a law protection which has been written in the law of copyright number 28 of 2014 concerning copyright. Copyright is a right to be protected, so if there is copyright infringement, the copyright owner can do law enforcement or legal remedy in civil law or criminal law. Copyright is one of the right intellectual property field which is protected as a law of ownership that appears from a will, a work, and a creative power or it is mentioned as a right of property that appears from human intellectual ability which consist of economic rights that is able to give the benefit to the owner. Due to economic benefit so that law infringement can appear financial loss for the copyright owner. If there is copyright infringement and cause of dispute or legal action, it will be necessary to prove to the ownership of these rights. Therefore, there is no obligation to register and the copyright owner has no a registration certificate so that it will not be easy to prove that right, especially copyright for science, for instance book, journal or electronic media.

This research is based on some problems, namely; First, how to prove copyright of science if there a dispute or legal action. Second, what is the basic to determine copyright infringement of science? In this research applies normative method which is based on document study to the rules of law and some court ruling.

II. METHOD

The method of this research is normative research method, which is using data sources in the form of legislation, court decisions, theories or legal concepts and views of legal scholars, which the results are analyzed using normative-qualitative methods, Waluyo by reviewing several documents, in the form of judicial decisions and applicable law [3], including: Law number 28 of 2014 concerning copyrights, and several court decisions. In the discussion of normative research results are analyzed normatively-qualitatively, by making efforts to determine the criteria for identification, classification, and systematic as well as reaching the legal discovery efforts, whether in the form of legal interpretation or legal construction to create a legal argument [4], so the conclusions can be scientifically justified.

III. RESULTS

A. Understanding and Copyright Protection

Copyright was first regulated in Indonesian national legislation in 1982 concerning copyright, with the issuance of law number 6 of 1982 concerning copyright then a change was made in 1987, so that the law number 7 of 1987 concerning changes the law number 6 of 1982 concerning copyright was put into effect, and then there was a change again with the enactment of the law number 12 of 1997 concerning changes to the law number 6 of 1982 concerning copyright, as amended by the law number 7 of 1987 until it was replaced by the law number 19 of 2002 concerning copyright, and finally it was changed again by enactment the law number 28 of 2014 concerning copyright, hereinafter refers as copyright law (UUHC).

In article 1 point 1 UUHC is explained that copyright is the creator's exclusive rights that appears automatically based on declarative principle after the creation is manifested into a real form without reducing restriction in accordance with the provisions of the legislation.

Copyright is included in the group intellectual property rights. The scope of HKI is very comprehensive, including the various rights that arising from the result of human intellectual creativity [5]. In WIPO is as an intellectual property rights provides and explanation called intellectual property, namely:

"Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce". The explanation shows that intellectual property rights including mind creation: names, images, and design used in commerce. The definition of intellectual property rights is formulated in the sentence:

"The term intellectual property refers broadly to the creations of the human mind. The Intellectual property rights protect the interests of creators by giving them property rights over their creations" [6].

In the Dictionary of Ellipse economic law, intellectual property is interpreted as the type of human copyright produced on the basis of one's intellect, while the intellectual property right, are rights of intangible objects which are the work and knowledge of human given by government, for

example copyright, patent rights and trademark rights [5]. In essence, IPR is the right to enjoy economically the result of intellectual creativity. The object regulated in IPR is works which arises because of human intellectual abilities [2].

Since the beginning, it is regulated in the law in Indonesian law since 1982 with the law number 6 of 1982 concerning copyright along with the changes up to now with the enactment of copyright is not determined by a registration but it appears automatically as long as the copyright works already exist in a typical form.

Registration of the work is done passively; it means that all registration of applications is accepted by not conducting too much research on the applicant's rights unless it is clear that there is copyright infringement [7].

With the copyright of a copyrighted work created under the law, the copyright holder obtains legal protection. The legal protection is a protection given to the legal subjects through legal norms both written and unwritten, both preventively and repressively. Therefore, a legal protection is a description of the function of law, the function of law is to create justice, order, certainty, benefit and peace in people's lives. In the event that the creator's economic rights are used by another party without permission, means that it has violated the creator's exclusive rights. Creator and rights holder protected from using their rights illegally [8].

By the law protection to the copyright, then preventively, it can prevent or at least avoid copyright infringement. And then while repressively by giving rights to rights holders to be able to make legal efforts for copyright infringement either civilly through a lawsuit to the court or criminal by making a complaint to the authorities to carry out criminal proceedings. Therefore, the law gives rights to right holders who are entitled to them such as obtaining compensation for copyright infringement and gives penalties for those who commit infringement. The problem of plagiarism is an act that is detrimental to the rights of the creator, so that some countries have regulated copyright protection. Despite the fact that the regulatory bodies and scientific communities have recently been paying much attention to the problem of plagiarism, making certain amendments to the norms and regulations [9].

B. Understanding and Copyright Protection

Copyright concerns more about civil rights, such as the right to the ownership of other property. Therefore, in the event of copyright infringement, the law gives freedom to the creators whether to use civil law efforts by filing a lawsuit or making criminal efforts by filing a complaint with the competent authorities. In this case, according to the copyright law (UUHC) criminal offences in the field of copyright is considered a complaint of offense.

In a case to prove a right that is determined, proof plays a very important role. From this proof, the judge will consider the consideration in making a decision. The proof is the presentation of legal evidence that according to the judge who examines a case and to provide certainty about the truth of what is stated or demanded by the party who claims his right.

In civil cases, there is a principle that someone who complains about his rights must have proof.

According to the civil procedures of law in Indonesia, in article 283RBg/163 HIR is stated that: the person who says he has the right or expresses an action to confirm his right or to refute another person, have to prove the existence of the action.

The proof is needed in a case that adjudicates a dispute before the court (*Juridicto contentiosa*) and in cases of petition that result in a determination (*Juridicto voluntair*). In a civil process, one of the duties of the judge is to investigate whether the legal relationship on which the claim is actually there or not. The legal relationship must be proven if the plaintiff wants victory in a case. If the plaintiff fails to prove the arguments which is the basis of the claim so that the claim will be rejected, but on the contrary the claim will be granted.

In a civil procedure of law, there are several evidences that are arranged enumerative in article 1866 the code of civil law (KUHP) (*burgerlijk wetboek*) and article 164 HIR consists of:

- Recorded/Written
- Witness
- Presumption
- Recognition/Acknowledgement
- Asseveration

In the principle of procedural law, the requirements for two evidences and fulfilling the principle *unus testis nullus testis* must be fulfilled. The aim is to the evidence has the power of proof to support the truth argued or put forward by the party who submitted a claim for rights.

The proof in a case of copyright infringement is not easy because the proof of his right is not required to have a letter or certificate of registration. It will be different from brand right or patents that required registration, so that the proof their rights can be proven by the registration certificate in which the name of the owner of the rights is included. Except for a work that is registered and provided with the proof of registration in the form of a certificate of registration in a creation, but if a work is not registered, it can use the proof of the work itself. In the copyright law (UUHC) is determined that the copyright is given to a work that already exists and is manifested in a real, distinctive and personal form so that the necessity of this creation exists and is manifested in distinctive form that can be used as an evidence. In the case of scientific works, the forms include books, manuscripts, journals and writings that are published in certain media, in addition to other valid evidence. In resolving business disputes including the field of Intellectual Property Rights it can also be resolved through mechanisms outside the court, which is through the mechanism of arbitration. The period of conflict resolution is far shorter than in the case of a judicial court [10].

IV. DISCUSSION

In the copyright law (UUHC), it is not regulated regarding copyrights restrictions. It is stated that in the certain limits can be used by other parties and it is not copyright infringement as

long as it is done within the specified limits according to the applicable provisions.

The copyright restrictions include those relating to scientific works such as books, in article 44 copyright law (UUHC) paragraph (1) states that the use, retrieval, duplication, and/or product rights related to all or partially substantial are not considered as copyright infringement if the source is mentioned completely for purposes, such as education, research, scientific writing preparing reports, writing criticism or reviewing a problem by not harming the reasonable interest of the creator or copyright holder.

The reasonable interest of the creator or the copyright holder is specifically related to the economic rights contained in the copyright and as an economic right because HKI includes an object that can be valued with money. The economic right is in the form of a sum of money gained due to the use of their own HKI or the use of other parties based on license [11]. As one of the material rights, there are two rights in the intellectual property rights, those are economic rights that can provide benefits in the form of royalties and also moral rights that are always inherent in the owner [12].

In the provision of restrictions on copyright, there are two main elements, namely; the source elements mentioned or included completely, and the elements by not harming the reasonable interests of the creator or the copyright holder of the citations of written works such as books. Mention the source must be complete, at least mention the name of the author, title of the paper, and the name of publisher if any. Reasonable interest is an interest based on a balance in enjoying economic benefits of a creation.

From that provision of copyright restriction, it can be identified the measure/criteria of how a person committed copyright infringement. If in taking the work of someone else's creation is not appropriate or exceeds the limit specified in the copyright law (UUHC) then an infringement is likely happen. For example, quoting part of the work created by another person does not mention the source clearly, or exceeds the limits of reasonableness and can cause harm to the creator.

The measure to determine harm to a reasonable interest for the creator is indeed not easy, because it depends on the subjectivity of the creator himself. In this case, a judge who examines and decides an copyright infringement plays an important role based on several considerations that can be used as a basis for determining reasonable losses for the creator and the decision was based on copyright law (UUHC) in a civil claim for copyright infringement.

AS stipulated in article 95 copyright law (UUHC), basically the resolution of copyright disputes can be done through an alternative dispute resolution, arbitration or court. The competent court is the commercial court. Furthermore, article 99 paragraph (1) states that the creator, copyright holder or related rights owner has the right to file a claim for compensation to the commercial court for copyright infringement or related rights products.

The elements detrimental to reasonable interests are also implied in several provisions governing criminal sanctions for copyright, namely the publication of the word ".....for

commercial use.....”, like in article 112 copyright law, every person who without the right to do

The act referred to in article 7 paragraph (3) and/or article 52 for commercial use, it is punishable by imprisonment for a maximum 2 years and/or a maximum fine Rp. 300.000.000,- (three hundred millions). Likewise, in article 113 paragraph (1), every person who without the right to commit infringement of economic rights as referred to in article 9 paragraph (1) letter I for commercial use, it is convicted with a maximum 1 year imprisonment and/or maximum fine penalty Rp. 100.000.000,- (one hundred millions).

Thus the copyright infringement can be made a legal effort whether civil or criminal, the main measure is that the infringement is intended for commercial purposes. This commercial purpose can be considered to cause a reasonable loss to the creator, as this reasonable loss is a limitation in provisions of copyright restrictions that within a work can be used by another party as long as it is not harmful to the interest of the creator.

As copyright is contained of moral rights and economic rights, the moral and economic rights is always attached to the creator wherever the work of copyright is transferred, so that the right can be maintained against anyone who violates this right. In respect to the personal (or moral) rights of the author, the Berne Convention reads as follows: “Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation” [13].

In accordance with the principle of copyright protection which is intended to provide protection for the creator from the economic interests contained in a creation, so that it priorities the civil aspect even though it is regulated by criminal sanctions but this criminal act in the field of copyright is an offense, so that the criminal process for copyright infringement depends on the creator whether or not to file a criminal complaint. Economic rights are rights which owned by the Creator to get benefit from his creation [14].

V. CONCLUSION

This Based on the description of the problems stated above, the inferences can be drawn as follows: In the event of a dispute, proof of the copyright of the scientific work, using proof of rights in the form of the work, for example; in the form of books, manuscripts, journals, and writings contained in certain media as well as letters of registration if it is registered with evidence legitimate; The basis for determining the copyright restrictions, such as not mentioning the source completely or exceeding the limits of the reasonableness can

result in a loss of reasonable interest to the creator, especially those related to the economic rights contained in copyright.

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