

Juridical Review of CC License as Protection Copyright for Author That Provides Justice

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ABSTRACT

The existence of justice in the law is an aspiration to be achieved. Every people have a different value about Justice and it makes justice relative. However, justice is the goal of law enforcement in society. The CC license tries to provide justice for the author (creator) and the use of his work that was published in a scientific journal. CC license appears at the journal website that uses an Open Journal System, but sometimes on closed journal or paid journal, it appears too. Actually, Journal administrators use CC License is to protect their copyright holder from everyone who uses the articles they publish. How about diversion copyright for the author to the administration journal, does it use CC license or not. Mostly, they do not use CC license. This study wants to use the theory of justice to analyzes the philosophy issue from CC license that protects the author. Because of it, this study uses the legal research method, and then uses the source of law like legal theory (theory of justice), legal concept, agreement theory, regulation to analyze and discover that CC license gives protection for the author. The result, that CC license does not provide justice yet. It protects journal's copyright and provides justice for them. The author's copyright is switched from author to administration journal based on an agreement and not CC license.

Keywords: Protection, CC License; justice; copyright

1. INTRODUCTION

Publication of scientific articles for the academic community is an obligation because it is one way of scientific communication between the academic community and the general public. The publication is an embodiment of our constitutional norms, namely the 1945 Constitution of the Republic of Indonesia, namely Article 28C paragraph (1) "the right of citizens to benefit from science". Scientific articles are generally the result of research or research conducted by academics on campus. So that the results of this research can be known to the wider community, the publication of the research results in the form of scientific articles is carried out. Academicians as writers who compile scientific articles, of course, cannot do their publications, even though in the digital era that is currently developing, publications can be done easily and independently through the author's personal pages. However, the author cannot do this because there are rules in publication, including

publication of scientific articles that must be carried out in official journals, with the aim that the publication of scientific articles will be recognized, not only as works but also in credit score assessment. for lecturers and students.

Scientific articles are the results of research conducted by the academic community so that the idea or research theme is the result of the academic community's thinking which is then realized in the form of writing, in this case, the research proposal or scientific article. On that basis, scientific articles are prepared because of the competence of the author in a particular science. The idea which was later realized as a scientific article is the result of the thought of the author so that this scientific article is intellectual property and the author is the party who has the intellectual property rights over the scientific article. The protection of intellectual property rights for this scientific article is copyright, where the scope of copyright lies in art, literature, and science. Scientific articles are the scope of science. Copyright and its

protection are regulated in Law Number 28 of 2014 concerning copyright (hereinafter referred to as UUHC).

Because the author cannot publish his scientific articles, the author needs another party as the publication media, in this case, the journal managed by the journal manager. Copyright is an exclusive right granted by the state to its creator, meaning that the author as the creator has a monopoly right on scientific articles as his creations, especially in the use of economic rights in copyright, such as announcements, duplication, and so on. The author's exclusive right to copyright in scientific articles then needs to be transferred before the publication of the scientific article is carried out. Article 16 paragraph (2) UUHC, copyright can be transferred by inheritance, endowments, grants, wills, written agreements, or other causes permitted by law. Legal fact, the transfer of the author's copyright to the journal manager is carried out with a transfer statement, copyright transfer agreement and use of a license from CreativeCommons (hereinafter referred to as CC License).

Creative Commons is a non-profit organization that focuses on copyright issues by compiling a license that can be used by internet users to protect their creations [1]. This CC license is represented by symbols indicated by letters, such as CC (licensed by CreativeCommons), BY (the author's name must be mentioned when using his work), SA (the work can be shared with anyone), ND (the work is not allowed to be modified), and NC (non-commercial works) [2].

These symbols can be used together or a combination of them. The use of the CC License as a transfer of the author's copyright on scientific articles to the journal manager raises an idea as to whether it can realize the principle of balance in the agreement. We know a license is a license to do something as the owner of the right itself. On that basis, the use of this CC License has fulfilled the principle of justice which is implemented in the principle of balance in the agreement.

2. METHODS

This study uses the legal research method, and then uses the source of law like legal theory (theory of justice), legal concept, agreement theory, regulation.

3. RESULTS AND DISCUSSION

3.1 Article as Creation

From a copyright perspective, especially in positive Indonesian law, scientific articles are one of the creations that can be protected by copyright. This is stated in Article 40 paragraph (1) letter a UUHC. As a type of creation and protected by copyright, scientific articles must meet the standards of copyright ability, which consist of fixation, creativity, and originality. Copyright

does not protect ideas, copyright protection is automatically granted when ideas are realized. Likewise, creativity, ideas that are realized without creativity, the creation is not necessarily original.

Scientific articles are the embodiment of the author's or creator's ideas within the scope of science. Article 16 paragraph (1) UUHC states "copyright is an intangible movable object". In this norm, it appears that there are 2 phrases that we need to pay attention to, namely "moving objects" and "intangible objects". The concept of Civil Law divides objects in general into 2, immovable objects and intangible objects. Generally, objects are tangible objects, both movable and immovable, such as land, chairs, computers and so on. While intangible objects, in civil law, exemplified are rights. Examples of moving objects such as chairs, cars, pens, and so on, while objects are not attached to the ground either vertically or horizontally.

Copyright as an object, of course, will have the properties of objects in general, such as being transferable, can be owned by legal subjects as well as tangible objects in general. As explained earlier, Copyright is an intangible movable object, and copyright is attached to moral rights and economic rights. In simple terms, moral rights are rights for the author so that his name will always be attached and mentioned in his work, in this case, his scientific article. Meanwhile, economic rights are the rights to take advantage of their creations, in this case it is to commercialize the creations.

The economic use of a copyright is the author's exclusiveness to the work. As an object, copyright consists of moral rights and economic rights, which can be transferred are economic rights. Article 5 paragraph (1) UUHC states that moral rights are rights that are eternally attached to the author. In scientific articles, economic rights are transferred based on article 9 paragraph (1) UUHC between publishing, duplication, distribution, and announcements. Authors or creators need to transfer publishing, copying, distribution, and announcements to other parties, in this case, the journal manager, because the authors cannot carry out these activities themselves.

3.2 Transfer of Copyright

The transfer of copyright, especially on economic rights, is based on Article 16 paragraph (2) of the UUHC, that copyright can be transferred or transferred partially or completely. The transfer of copyright to the journal manager needs to be done because the monopoly of the creation is with the author, by transferring it to the journal manager, the journal manager becomes the copyright holder. The process of transferring the author's copyright to the journal manager is as follows:

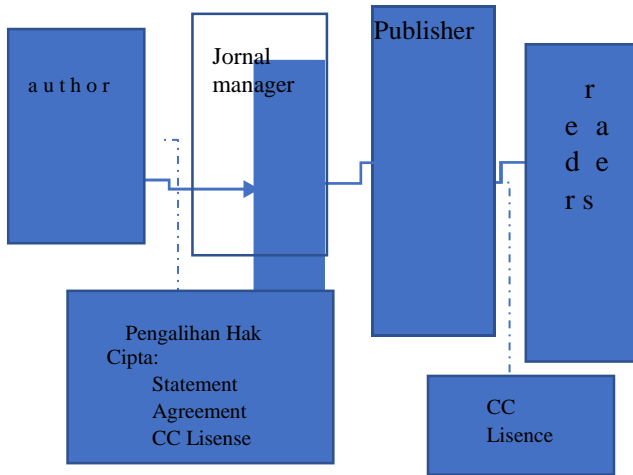


Fig. 1. Publication Process

If you look at Figure 1, it is known that the transfer of the author's copyright to the journal manager is by a statement, agreement, or CC license. While scientific articles are published, the journal manager is given protection using a CC License by embedding the CC

license logo on the journal page, as shown in the following figure:



Fig.2. use of CC License

The transfer of copyright from the author to the journal manager is certainly not allowed to override the economic fairness obtained by the author as the creator. That is, the transition must be carried out most fairly without compromising the rights of the author. As already explained, copyright consists of moral rights and economic rights. The moral rights of the author will certainly not be lost, because in the publication of the article the author's name will be listed in the scientific article published in the journal because moral rights are also eternally attached to the author. Economic rights, as transferable rights to take economic benefits, this is what needs to be placed fairly. The reason is that some journals are managed commercially by applying a download fee for their readers who want to read the complete text of the article.

The three ways of transition that are generally carried out by journal managers are through a copyright transfer statement, copyright transfer agreement, and CC

licenses. Article 16 paragraph (2) of the UUHC states that copyright can be transferred using grants, inheritance, wills, waqf, written agreements, and other reasons justified by law. Copyright in scientific articles, of course, cannot be transferred using grants, inheritance, waqf, or wills. However, with a written agreement or other reasons permitted by law. Further explanation regarding other reasons permitted by law is a transfer due to a court decision that has permanent legal force, merger, acquisition, or dissolution of a company or legal entity where there is a merger or separation of company assets. Thus, the basis for the transfer of copyright in scientific articles is a written agreement. This indicates that the transfer is not allowed to be made by verbal agreement.

In the concept of contract law, an agreement is conformity of will between two or more parties to bind themselves or an agreement between two parties to do or not do something [3]. An agreement is a legal event that occurs because of a legal act. An agreement is a two-sided legal act, where both parties declare their respective wills and then an agreement is obtained between them. In addition, there is a one-sided legal action in an engagement where legal action is carried out by one of the parties which is manifested in the form of a statement. The principles of the agreement include the principle of freedom of contract, the principle of consensual, the principle of legal certainty (*pacta sunt servanda*), the principle of good faith (good faith), the principle of personality, the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the principle of morals, the principle of propriety and the principle of protection [3]. In order for an agreement in this case a copyright transfer agreement to be considered fair, it is necessary to harmonize these principles.

It is explained that legal actions in an agreement can be one-sided or two-sided, namely by the existence of legal actions in the form of statements or based on consensus for two-sided. The transfer of copyright using a CC License, in principle, is a legal act in a two-sided agreement. The journal manager who will publish the article, by using the CC License, submits it to the author for approval or not. The CC license which consists of symbols in the form of letters, which is chosen by the journal manager is then agreed upon by the author at the time of certainty of article publication.

3.3 CC License as a Transfer of the Author's Copyright

The use of the CC License as a transfer of the author's copyright to the journal manager. We need to understand, First, based on UUHC, the transfer of copyright is based on a written agreement. Second, the agreement is a two-sided legal act. On that basis, the legality of the transition to the CC License has been fulfilled, namely, the CC License is a written agreement which in this case is a two-sided legal act. Next, if we

want to know that the transfer of copyright using the CC License provides justice, then the principles that apply to the agreement are used as an optic in seeing the clauses in the CC License (in this case through symbols), especially on the principle of balance.

The CC License symbols are indicated by letters, such as CC (licensed by Creative Commons), BY (the author's name must be mentioned when using the work), SA (the work can be shared with anyone), ND (the work is not allowed to be modified), and NC (the work is not allowed to be changed). not commercialized). It has been explained that these symbols can be combined according to what the journal manager wants to do in protecting the published articles or when the copyright is transferred.

The harmony between the principles with the CC license symbol as a clause of the agreement mainly must meet the principle of balance [4]. That is, in the transfer of copyright using the CC License as the basis, the parties have the same rights and obligations and the same position. For example, the transfer of copyright uses a CC License with the symbol CC-SA-BY-NC-ND, meaning that the author transfers his copyright to the journal manager on a license basis on the condition that the journal manager may not change the work, the author's name is still written, the journal manager may publish, and the manager does not commercialize the published articles.

On that basis, when the author's scientific article is published, the journal manager is not allowed to do what is prohibited in the CC License, such as non-commercial publication (anyone can download), the author's name is attached to his work or the author's name is still written, the downloader of the article can redistribute it. or cite along with the source. Publication of scientific articles for the academic community is an obligation because it is one way of scientific communication between the academic community and the general public. The publication is an embodiment of our constitutional norms, namely the 1945 Constitution of the Republic of Indonesia, namely Article 28C paragraph (1) "the right of citizens to benefit from science". Scientific articles are generally the result of research or research conducted by academics on campus. So that the results of this research can be known to the wider community, the publication of the research results in the form of scientific articles is carried out.

Academicians as writers who compile scientific articles, of course, cannot do their publications, even though in the digital era that is currently developing, publications can be done easily and independently through the author's personal pages [5]. However, the author cannot do this because there are rules in publication, including publication of scientific articles that must be carried out in official journals, with the aim that the publication of scientific articles will be

recognized, not only as works but also in credit score assessment. for lecturers and students.

Scientific articles are the results of research conducted by the academic community so that the idea or research theme is the result of the academic community's thinking which is then realized in the form of writing, in this case, the research proposal or scientific article. On that basis, scientific articles are prepared because of the competence of the author in a particular science.

The idea which was later realized as a scientific article is the result of the thought of the author so that this scientific article is intellectual property and the author is the party who has the intellectual property rights over the scientific article. The protection of intellectual property rights for this scientific article is copyright, where the scope of copyright lies in art, literature, and science. Scientific articles are the scope of science. Copyright and its protection are regulated in Law Number 28 of 2014 concerning copyright (hereinafter referred to as UUHC).

Because the author cannot publish his scientific articles, the author needs another party as the publication media, in this case, the journal managed by the journal manager. Copyright is an exclusive right granted by the state to its creator, meaning that the author as the creator has a monopoly right on scientific articles as his creations, especially in the use of economic rights in copyright, such as announcements, duplication, and so on [6]. The author's exclusive right to copyright in scientific articles then needs to be transferred before the publication of the scientific article is carried out. Article 16 paragraph (2) UUHC, copyright can be transferred by inheritance, endowments, grants, wills, written agreements, or other causes permitted by law. Legal fact, the transfer of the author's copyright to the journal manager is carried out with a transfer statement, copyright transfer agreement and use of a license from Creative Commons (hereinafter referred to as CC License). Creative Commons is a non-profit organization that focuses on copyright issues by compiling a license that can be used by internet users to protect their creations.

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4. CONCLUSION

Based on the analysis, that CC license does not provide justice yet. It protects journal's copyright and provides justice for them. The author's copyright is switched from author to administration journal based on an agreement and not CC license.

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