

The Urgency of Understanding the Law Number 28 Year 2014 on Copyright to Minimize Copyright Infringement in Indonesia

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ABSTRACT

This research aims to study: first, the effectiveness of Indonesian Copyright Law or “UUHC” in force in relation to the growing concern of copyright piracy carried out offline and online; second, the form of protection of economic rights of creators or copyright holders. A research on the effectiveness of Copyright Law to overcome copyright piracy in Indonesia is important because copyright infringement at present happens almost like an industry, for instance book piracy. This research uses empirical legal research methods that use empirical facts drawn from human behaviors. A normative juridical approach to be applied will focus on studying of the meaning, purpose and existence of the Copyright Law, and the economic rights of the creator or copyright holder. The empirical juridical approach in this study intends to analyze the problem by examining and testing the effectiveness of Law Number 28 Year 2014 and conducting a field study in the forms of interviews, observations and opinion collections from parties related to the Law. Primary data from collected the field research and secondary data obtained from library research are analyzed using inductive qualitative analysis. The results of the research prove that the current Indonesian Copyright Law has not been effective in addressing copyright piracy, especially if the perpetrators of copyright crimes distribute pirated products in marketplaces. The implementation of the Copyright Law has not been effective yet because it stipulates that a copyright crime is an offense on condition of complaint. This leaves an impression that the UUHC does not sufficiently regulate the copyright issues.

Keywords: *The Urgency, Copyright Law or “UUHC”, Copyright*

1. INTRODUCTION

This article aims to examine the effectiveness of copyright law in Indonesia. Given that piracy committed against copyrighted works such as songs, films and books, has harmed the nation and state. The worst victims of piracy cases are creators and art workers who create creative works. The issue of copyright apart from the interests of the copyright holder itself, also indirectly affects the publisher (publisher) because it is the publishers who are directly involved in preserving the works of the authors [1].

In preserving the creations of authors, namely by creating a written work of an author, publishers do not promise and generate attractive profits for publishing businesses in Indonesia [2]. This is due to the low level of public interest in reading and also the lack of public awareness about appreciating someone's creation. The rampant case of book piracy in the society is most probably influenced by people's attitude of purchasing cheaper goods regardless of the originality of the products. This preference has led to the circulation of many illegitimate books. “Piracy” as stated in article 1 number 23 of UUHC No. 28

Year 2014 is an unauthorized multiplication of works and / or products of related rights and distribution of goods referred extensively to gain economic advantage. Meanwhile, based on the provisions article 1 number 12 of UUHC, “cloning” a process, act, or how to duplicate one copy of works and / or phonogram or more in the manner and in any form, permanently or temporarily.

Whereas the sanctions for piracy are regulated in article 113 paragraph (4) UUHC, namely that every person without rights and / or without the author's permission or copyright holder violates the creator's economic rights, one of which is duplication for commercial use committed by way of piracy shall be punished with imprisonment of a maximum of 10 (ten) years and / or a maximum fine of Rp. 4,000,000,000 (four billion rupiahs).

The prevalence of illegal books circulation can disadvantage authors and publishers because this is a practice unfair trade competition. This can cause congestion for publishers because books are circulated without the author's or publisher's permission and are then traded to the public, in addition to the material losses that are actually experienced by publishers and writers, there is also an immaterial loss in the form of declining passion and ability

to create high quality works on the part of the author. Furthermore, publishers who have been given the trust of an author to reproduce, distribute and sell to the general public [2].

In fact, Intellectual Property Rights (IPR) are the rights that arise from the results of brain thinking which produces a product or process that is useful for humans [3]. The purpose of the existence of IPR is to ensure that the human creative process continues by providing adequate legal protection and providing sanctions against those who use the creative work without permission. In article 1 number 1 and article 24 paragraph (1) and (2) UUHC 2014, it is explained that creators or copyright holders have rights that must be protected by the government, namely economic rights and moral rights. With the existence of economic rights and moral rights, someone's copyrighted work will have its own values, so that it is not easy for illegitimate people to seize their rights, a case in point is an author of a book, with the ability and creative ideas to produce a scientific work that can be enjoyed by everyone.

2. RESEARCH METHODS

The research method contains a description of the methods used by the authors to obtain data or information. The methods to be used in this research are:

1. Type of Research

The type of legal research used by the researcher is the type of empirical or sociological legal research. Empirical or sociological legal research as research that wants to see the correlation between law and society, so as to reveal the effectiveness of law enforcement in society.

2. Research Specification

The specification of this research according to its nature is descriptive analytical research which systematically describes the facts, both data from primary legal materials in the form of statutory regulations, secondary legal materials in the form of doctrines or laws and data on tertiary legal materials such as legal dictionaries, encyclopedia and so on. The data that have been collected, both primary and secondary, are compiled and analyzed.

3. Research Approach

The approach applied is a normative juridical approach / normative legal research and empirical juridical / empirical legal research. Normative legal research is applied on grammatical interpretation of the law, namely legal interpretation carried out on words or sentences used in certain legislation, in this case Law Number 28 Year 2014 concerning Copyright, as well as systematic interpretation, by connecting various articles. Meanwhile, empirical legal research is carried out by reviewing and testing the effectiveness of Law Number 28 Year 2014, and conducting field studies in the forms of interviews, observations and published opinion from experts and other parties pertaining to the issue.

3. ANALYSIS AND DISCUSSION

3.1. The Effectiveness of Law Number 28 Year 2014 Concerning Copyright

To find out the effectiveness of the current Copyright Law, it is important to look at legal theory through legal principles. According to Friedman, legal theory is a science that studies the essence of law that is related between legal philosophy on the one hand and political theory on the other. The legal theory discipline is not an independent science and it must have a place in the legal discipline independently whereas legal principles are the basic norms elaborated from a positive law. The principle of general law is a positive law deposition in a society. Meanwhile, legal theory is a scientific discipline that studies the essence of law. Legal principles are contained in legal theory since legal theory, in addition to studying the history and philosophy of law, also studies legal principles [4].

The function of legal principles in law is to validate; they have a normative effect and bind the parties. It is legitimate because it bases its existence on formulations by legislators and judges. Additionally, legal principles have a function to complement a legal system. They function, among others, to determine the area of application of a legal rule in legal interpretation or discovery (*rechts finding*), as a critical rule of law, an appraiser's rule in determining the legitimacy of legal rules, rules that unite rules or legal principles, maintain / maintain consistency and coherence of legal rules.

In practice, various legal principles may conflict with one another. In this case, the use of certain legal principles will be determined by human reason and conscience. Classifying the principles of law can be classified into the following classifications:

1. Material legal principles:

- a. Respect for human personality.
- b. Respect for the spiritual and physical aspects of human existence as a person.
- c. There is a trust principle that demands reciprocity.
- d. There is a principle of accountability.
- e. There is a principle of justice.

2. Formal legal principles:

- a. The principle of consistency.
- b. The principle of certainty.
- c. Equality principle.

In addition to the general principles of law above, in every field of law there are various specific legal principles. In the field of civil law, for example, the principle of freedom of contract is known, or in the field of constitutional law there is a principle of division or separation of powers, in the field of administrative law there are general principles of good governance, and in criminal law there is known as the principle of legality.

In general, if positive law does not heed legal principles, no special sanctions will be imposed. However, there are times when a legal principle is taken into consideration by the

judicial body in adjudicating certain cases.

In practice, various legal principles may conflict with one another. In this case, the use of certain legal principles will be determined by human reason and conscience.

From the above description, it is revealed that Law Number 28 Year 2014 [5] has fulfilled the legal principles. The current copyright law in theory favors the creator of a work such as:

1. Respect for human personality
2. Respect for the spiritual and physical aspects of human existence as a person.
3. There is a trust principle that demands reciprocity.
4. There is a principle of accountability.
5. There is a principle of justice.

However, in its implementation there are things that are not suitable because of the many practices of infringement of legitimate creators' copyrighted works, for instance book and music piracy. This type of copyright crime cannot be separated from issues previously discussed regarding legal protection of protected works as contained in article 40 paragraph (1), (2), and (3) of the UUHC in lieu of Law Number 19 Year 2002 concerning Copyright Article 12 paragraphs (1), (2) and (3). It is then accumulated in article 50 of the UUHC which states: "Everyone is prohibited from making announcements, distributing, or communicating works that are contrary to morals, religion, decency, public order, or state defense and security." Nevertheless, the UUHC does not stipulate some detailed types of copyright crimes. It only contains criminal provisions regulated in articles 112 through 119 which were previously regulated by Law Number 19 Year 2002, article 72 paragraphs (1) through (9) [6].

Apart from the types of criminal provisions, a further analysis of the criminal act of copyright found that it also violates the provisions in other laws and regulations, for example with the Taxation Law (Law Number 28 Year 2007 concerning General Provisions. and Taxation Procedures State Gazette of the Republic of Indonesia 2007 Number 85 with Supplement to the State Gazette 2007 Number 4740); Industry Law (Law Number 3 Year 2014 concerning Industry; State Gazette of the Republic of Indonesia Year 2014 Number 4); and Cinema Law (Law Number 33 Year 2009 concerning Film. Considering the relationship between these provisions, it is highly hoped that law enforcement officers, especially Civil Servant Investigators (The General Directorate of the Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia) are able to reveal the copyright piracy practices comprehensively and transparently which can later be delegated to court.

In the advanced and global development of science and technology, it does not preclude the perpetrators to produce counterfeits that are close to perfect or similar to the original, especially in the field of copying pirated books, recording, cassette tape, compact disc, video compact disc, and digital video disc. In many cases the infringement actions are uncovered only after a long time, probably because the hijacker can move from one place to another which will make it difficult for investigators to probe into

the case so that it can be revealed completely. On the other hand, only the creator or copyright holder knows whether their invaluable works have been cloned or duplicated. They know exactly the distinctive features or characteristics of their work. Moreover, the criminal act referred to in this law, as implied in article 120 of UUHC, is one which is based on creator's complaint. Therefore, the processing and prosecution can only be carried out if a creator or copyright holder files a complaint about the occurrence of a criminal act of piracy that disadvantage their copyrights. Without a complaint or report from the creator, the authority or law enforcer cannot take action.

To report or file a complaint to the authorities is often lengthy and costly for the creator or copyright holder. According to the General Chair of the Indonesian Publisher Association, up to now there are still many publishers who have not recorded or registered their works at the the office of the General Directorate of Intellectual Property Rights (Ditjen HKI) of the Ministry of Law and Human Rights of the Republic of Indonesia. Recording a work is important because if a creator reports a copyright infringement to the competent authority, the authority must ask for a proof of recording of the work besides asking for other evidence. This is applicable, for instance, in reporting a case of book piracy. Due to these factors, many book publishers being the copyright holders are not enthusiastic about filing a complaint or reporting a book piracy which is detrimental to them.

The most common form of copyright piracy is the duplication of books, both printed and electronic books. The cloning of cassette tape, compact disc (CD), video compact disc (VCD), and digital video disk (DVD) are unfortunately on the rise. On one hand, the perpetrators deliberately ignore the copyright laws. On the other hand, a number of people are looking to purchase pirated cassette tapes, CD's, VCD's, and DVD's. Some people say that the costs of original cassette tape, CD, VCD, and DVD are not affordable. In a condition when they have to trade or resell them, they will lose financially. Ironically, it has become commonplace that people search counterfeit books, cassette tapes, CD's, VCD's, and DVD's for the sake of low prices. Both traders and buyers also well know the risk of using pirated items, for instance, the blurred images which may damage eyesight.

From the description above we found that copyright infringement grows because of the illicit demand and supply in the marketplace. This condition is not tolerable; it is despicable and prohibited by law. To the state, these copyright-related crimes are detrimental to government income from taxation. Both the criminals and the users can damage people's livelihoods in general and break their morale to create a quality work.

3.2. Factors that Cause Copyright Piracy to Occur

The main factor that motivates copyright-related crimes is economy. Perpetrators seek to reap quick profits by disrespecting the interests of copyright holders. In other

words, profits justify violations of the law. The impact of the piracy crimes on the nation economy and laws is high. Moreover, from the social-cultural point of view, the widespread piracy incurs manifold impact. For the criminals, a prolonged situation without any action will increasingly lead to the attitude which sees piracy as something ordinary rather than a criminal act. Based on our observations, ignorance has led some people to commit piracy. They are not literate in legal aspects of copyrighted works. That copyright crime has grown from an ordinary offense into a complaint offense (*klach delict*) has actually increased the opportunity for perpetrators to repeat the practice massively. They understand that without a complaint or report from the creator or copyright holder, the Indonesian National Police will not be able to take any enforcement measure.

In addition to the factors mentioned above, there are some other factors that cause a violation of copyright, for example the general perceptions and assumptions of the society which are still different from the considerations of the law due to a lack of understanding. A copyrighted goods is falsely viewed as a joint property (*res communis*), while in the law stipulates that it is a private property. The result of not understanding this aspect of copyright is one of the causes of the rampant copyright infringement in the community. Piracy of books and other copyrighted works is still common because there are people who are involved in the transactions of counterfeit cassette tape, compact disk, video compact disk, and digital video disk. Some sellers think that selling pirated products is an act that does not violate the laws. We can find such a practice in several trade centers in Greater Jakarta and Bandung, West Java Province, where observations and interviews with several booksellers were conducted.

They might assume that once a work is created, its copyright can be owned collectively. Then they think that anyone may clone the copyrighted work anywhere and anytime and there will be no legal problem about it. Due to this uninformed perception, they find themselves practicing illegal business which is punishable by copyright law.

3.3. The Application of Sanctions on Copyright Infringement

With regards to penalties for copyright-related crimes, both Law Number 19 Year 2002 and Law Number 28 Year 2014 concerning copyright are not able to play an effective role in overcoming copyright piracy. It can be proven by the rampant practice of book and other copyrighted works piracies business carried out openly and with various modus operandi. We can take a few examples, such as the Indonesian Publisher Association (IKAPI) team has been overwhelmed by book piracy and so has the Indonesian Cipta Reproduction Association (PRCI) as a Collective Management Institute. In music business the Indonesian Recording Industry Association (ASIRI), and other associations related to computer programs complain about rising number of copyright infringement. In their opinion, copyright crime is becoming so concerning that it threatens

the creativity of persons as well as harms the state [7].

To get a better description of the stipulations in Law Number 19 Year 2002 and Law Number 28 Year 2014, some articles dealing with sanctions are cited below.

The provisions of Criminal Sanctions in Article 72 of Law Number 19 Year 2002 concerning Copyright:

- (1) Anyone who deliberately and without the right commits the act referred to in Article 2 paragraph (1) or Article 49 paragraph (1) and (2) shall be sentenced to imprisonment for at least 1 (one) month and / or a fine of at least 1 (One) million rupiahs, or a maximum imprisonment of 7 (seven) years and / or a maximum fine of Rp. 5,000,000,000.00 (Five billion rupiahs).
- (2) Anyone who deliberately broadcasts, displays, listens to, or sells to the public a work or goods resulting from an infringement of Copyright or Related Rights as referred to in paragraph (1) shall be subject to imprisonment for a maximum of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiahs)
- (3) Anyone who deliberately and without rights reproduces the commercial use of a computer program will be punished with a maximum imprisonment of 5 (five) years and / or a maximum fine of Rp. 500,000,000.00 (five hundred rupiahs).
- (4) Anyone who deliberately violates Article 17 shall be sentenced to imprisonment for a maximum of 5 (five) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiahs).
- (5) Anyone who violates Article 19, Article 20, or Article 49 paragraph (3) shall be punished with imprisonment of up to 2 (two) years and / or a maximum fine of Rp. 150,000,000.00 (One hundred and fifty million rupiahs).
- (6) Anyone who deliberately and without rights violates Article 24 or Article 55 shall be sentenced to imprisonment of up to 2 (two) years and / or a maximum fine of Rp. 150,000,000.00 (One hundred and fifty million rupiahs).
- (7) Anyone who deliberately and without rights violates Article 25 shall be sentenced to imprisonment of up to 2 (two) years and / or a maximum fine of Rp. 150,000,000.00 (One hundred and fifty million rupiahs).
- (8) Anyone who deliberately and without rights violates Article 27 shall be sentenced to imprisonment of up to 2 (two) years and / or a maximum fine of Rp. 150,000,000.00 (One hundred and fifty million rupiahs).
- (9) Anyone who deliberately and without rights violates Article 28 shall be sentenced to imprisonment of 5 (five) years and / or a maximum fine of Rp. 1,500,000,000.00 (One billion five hundred million rupiahs).

Criminal Sanctions Provisions Article 113 of Law Number 28 Year 2014 concerning Copyright:

- (1) Every person who without rights violates economic rights as referred to in Article 9 paragraph (1) letter i for commercial use shall be punished with

imprisonment of up to 1 (one) year and / or a maximum fine of Rp. 100,000,000.00 (One hundred million rupiahs).

- (2) Every person who without rights violates economic rights as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and / or for commercial use, shall be sentenced to imprisonment for a maximum of 3 (three) years and / or criminal. a maximum fine of Rp. 500,000,000.00 (Five hundred million rupiahs).
- (3) Every person without rights and / or without permission from the Author or Copyright holder violates economic rights as referred to in Article 9 paragraph (1) letter a, letter b, letter e and / or letter g for commercial use, shall be punished with imprisonment. a maximum of 4 (four) years and / or a maximum fine of Rp. 1,000,000,000.00 (One billion rupiahs).
- (4) Any person who fulfills the elements as referred to in paragraph (3) who is committed in the form of piracy, will be punished with imprisonment of up to 10 (ten) years and / or a maximum fine of Rp. 4,000,000,000.00 (Four billion rupiahs).

Apart from the aforementioned sanctions which have been amended, another fundamental change is stipulated in article 120 of Law Number 28 Year 2014 where it states that an act is a criminal offence if a creator files a complaint. Hence a violator of copyright cannot be prosecuted with an absence of complaints from the creator or copyright holder whose interests are harmed. This means that the provision appears to only protect individual interest, i.e. the interest of a copyright holder who has been disadvantaged. Whereas in the previous Law Number 19 Year 2002 article 72 paragraphs (1) to (9) it was stated that a perpetrator's act is not an offense on condition of a complaint but an ordinary or general offense. As such, the interest of the public as well as the interest of the copyright holder will be protected. In addition, another article that relates to Copyright Law of 2002 which regulates criminal sanctions is article 73 paragraph (1) which reads "Works or goods that are the result of criminal acts of copyright or related rights, as well as other tools used to commit acts of crime. The state confiscates the punishment to be destroyed." Therefore, the rampant copyright piracy which we find in many marketplaces is, among others, caused by the provisions of the article 120 of UUHC whereby a copyright crime is defined as an offence on condition of a complaint.

With the increasing prevalence of piracy practices carried out offline and online along with advances in the field of information technology in the digital era, the offense based on creator's complaint as stipulated in article 112 of UUHC requires amendment so that the law enforcement process against the perpetrators of the copyright-related crimes can be done optimally.

3.4. Efforts to Settle Copyright Crime Cases

In general, a criminal case emerges when there is a violation of a person's right to a copyright. A copyright is an exclusive right that is owned by the creator/ copyright holder to announce or reproduce his work or to grant licenses to other parties. A copyright crime occurs when someone announces or reproduces a work without permission from the creator or copyright holder and the act is motivated by some commercial interest. Copyright crime does not apply to a perpetrator who has a good intention of appropriating a work solely for their own interests and free from commercial purpose, referring to articles 43 to 49 of UUHC. One of the most important things to pay attention to in copyright-related crimes is the existence of commercial motive. According to our observation, the persons who commit a copyright crime are encouraged by some economic factors.

The copyright crimes that are commonly found in marketplaces are book, music and film piracy in the forms of the cloned cassettes, CD's, VCD's, and DVD's. After successfully counterfeiting these works, the results are sold to the public usually at a lower price than the original. The perpetrators gain some profits because they do not pay taxes, production costs such as honoraria for singers, songwriters or film actors and actresses and advertisement cost. These actions indeed cause harm to the creator/ copyright holder because they will affect the turnover of the sale of a creative work. The creator or copyright holder abhors this kind of practice and they will act to resolve the dispute through the available legal system.

Criminal settlement and civil settlement may result in the possibility of obtaining different decisions, for example the perpetrator is acquitted in a criminal court while in a civil court the perpetrator is found guilty of violating copyright, or vice versa. The existence of this asynchronous decision is influenced by several factors. Firstly, it is the court where the charge is settled, in this case the district court for criminal case or the commercial court for a civil case. Secondly, the judge who presides over court proceeding will also be different in the district court. In the commercial court, this duty is performed by special judges who handle commercial cases. Thirdly, the evidence presented. In a criminal case an evidence drawn from a witness is prioritized whereas in a civil case an authentic documentary evidence. Among these influencing factors, the most crucial is resolving a copyright-related crime is the law enforcement officers.

Some parties who are involved in the enforcement of the copyright law are as follows:

1. The litigation starts from the creator or the party entitled to a creation. It is necessary that they or their representatives make a statement/ solution to the existence of a copyright-related crime. Only the creator knows best whether a copyrighted work in circulation is original or counterfeited. As has been mentioned before, a copyright is a special right endowed upon creators and recipients of rights to reproduce their works or to publish them. It means that no one is allowed to

reproduce or announce a creation without the permission of the creator or from those who have the right. Consumers and traders are expected to stop purchasing or trading faked creative works. UUHC is put into effect in order to ward off perpetrators from committing copyright-related crimes by applying a heavy imprisonment term or a fine, namely imprisonment of a maximum of 10 (ten) years and/ or a maximum fine of Rp. 4,000,000,000 (four billion rupiahs) even though it is an alternative. Apart from the weak law enforcement and the negative impact incurred by copyright piracy, efforts to educate and counsel the public about copyright in a persuasive and continuous manner must continue. Disseminating intellectual property rights (HKI) to the public needs to be carried out consistently so as to create a good level of understanding which later might become a common awareness about the meaning of intellectual property rights. In the end, the society will get many benefits from a protection of the intellectual property rights. It will create a situation which encourages creativity. Ultimately it will play a role in the national economy and support the national development.

2. Collaboration between the government agencies and associations engaged in copyright works is needed. The Indonesian Publisher Association (IKAPI), the Indonesian Recording Industry Association (ASIRI), the Indonesian National Recording Association (APNI), Indonesian Chamber of Commerce and Industry (KADIN), Indonesian Computer Industry Association (AIKI), Video Recording Industry Association (ASIREVI), Indonesian Recording Music Creation Artist Association (PAPPRI), Indonesian Film Companies Association (PPFI), Indonesian Cipta Reproduction Association (PRCI), and other related institutions should work hand-in-hand to monitor the development of copyright-related activities and to facilitate detections by law enforcement officers of potential conditions for copyright crimes.
3. No less important is the role of law enforcers in the efforts to resolve copyright criminal cases, they are the men behind the guns who has the final say. For law enforcers, the extent to which they are prepared to handle copyright-related crimes is paramount. The Special Investigators of the General Directorate of Intellectual Property Rights at the Ministry of Law and Human Rights of the Republic of Indonesia, the General Investigators of the Indonesian Police, the Public Prosecutors, and the Judges must share a common perception [8].

4. CONCLUSION

The results of this study indicate that the low level of understanding of copyright laws has influenced piracy behavior in the society. The Law Number 28 Year 2014 on Copyright has theoretically important substances, in which four articles, 16 through 19, contain criminal provisions. Nonetheless, this Law is in practice not yet

effective in overcoming crimes in the area of copyright that occur in Indonesia due to the fact that the criminal act is defined the Law as an offence that conditions a complaint filed by a creator as stipulated in the provisions of article 120.

Furthermore, in order for the economic rights of creators to be better protected and the lives of creators to be elevated to a better direction, the UUHC must be better empowered, including efforts such as a revision of the copyright law, a firm implementation by law enforcement officers and public education about intellectual property rights. Besides, it is necessary that the Indonesian Police, the Attorney General's Office, the Court, and the General Directorate of IPR at the Ministry of Law of the Republic of Indonesia have common ground on the copyright issues. They also need to take further steps by co-operating with creators, authors, directors, musicians, producers, the industry, and other related parties to protect their intellectual property rights from infringement.

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