



# Reposition of the Author's in Copyrights Law Enforcement in Indonesia Post Act No. 28, 2014

C. Kastowo<sup>(✉)</sup>

Atma Jaya Yogyakarta, Yogyakarta, Indonesia  
kastowo@uajy.ac.id, maskatho@gmail.com

**Abstract.** Copyright includes economic rights and moral rights as a state appreciation for creative subjects. Copyright has a civil law and a criminal law dimension. Copyright infringement is one form of tolerating individual rights and crime. Copyright infringement in Indonesia is a very high number, but law enforcement is very minimal. Changes in copyright crimes, from ordinary offenses to complaint offenses, have fundamental implications for the state's and creator's roles. This article analyzes the consequences of the creator's role in law enforcement. This normative legal research relies on primary and secondary legal materials. The results show that changes to copyright offenses place the creator as a central factor in law enforcement. Economic considerations determine the existence of complaints as an initial process of enforcement. The creator's apathy to complain about copyright infringement will significantly affect the performance of law enforcement.

**Keywords:** Copyright · complaint offense · law enforcement

## 1 Introduction

Humans are blessed with high intelligence and creativity. Creativity is meant in the form of works of art, literature, music, and other fields. The process of creation at the expense of time, energy, and cost. The sacrifice makes a work has value [1]. Since ancient times and in the history of human life, various works are very monumental and can still be found today. These works result from human creativity and are a form of pouring ideas into media. Human creativity with one another can be very different both in terms of form and function. The great variety of human works is evidence of the diversity of human capabilities.

The state recognizes subjects who work through legal instruments of intellectual property rights. One of the instruments of intellectual property rights is copyright law. Copyright law appreciates the subjects who created a work in the literary arts and science field. The regulation of intellectual property rights has developed internationally since the Paris Convention for the Protection of Industrial Property was held on March 20, 1883, in Paris [2]. In particular, the international Convention in the field of Copyright was held in 1886, which became known as the International Convention for the Protection of Literary and Artistic Works or more commonly known as the Bern Convention.

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Indonesia's participation in the WTO evidences Indonesia's commitment to respecting intellectual property. Indonesia consistently seeks to protect the rights that arise from human creativity through intellectual property law. Indonesia proves this by periodically revising laws in the field of intellectual property, including changes to copyright law. Since the first time Indonesia regulated Copyright in 1982 until now, it has changed and added in succession in 1987, 1992, 1997, and 2002. The last time a revision of the copyright law was implemented in 2014 was the enactment of Law No. 28 of 2014.

Law No. 28 of 2014 on Copyright cancels and replaces Law No. 19 of 2002 on Copyright. Changes that have implications for law enforcement for copyright infringement are changes in offense. According to Law No. 19 of 2002, copyright infringement is a complaint but was later amended and is now declared as a complaint offense, so it all depends on the creator or copyright holder for the legal review process.

Indonesian copyright law protects creators according to internationally applicable provisions contained in TRIPs. The irony is that, successively, As of 2019, Indonesia generally does not provide legal protection for intellectual property rights, including legal protection for authors. This is a situation highlighted by the inclusion of Indonesia as one of the countries on the US Department of Commerce's Priority Watch List [3]. Based on the above legal facts, the legal issue is a consequence of the repositioning of creators in the application of copyright law after Law No. 28 of 2014.

## 2 Research Method

The study used to collect the data analyzed in this article is a normative law study. The object of the study is law, which is conceptualized in terms of norms applied in society and considered as codes of conduct. The approach used in this research is the conceptual approach and the Statute Approach. The legislative approach is carried out by studying the statutory regulations, policy regulations, or judiciary decisions relevant to the legal issues that are the subject of the study [4]. Besides, this study also uses secondary legal material from principles, doctrines, and legal opinions published in journals or textbooks. Descriptive qualitative analysis is an analysis of data that cannot be calculated. Legal materials obtained are then subjected to discussion, examination, and grouping into certain parts to be processed into information data. The results of the analysis of legal materials will be interpreted using the method of systematic interpretation, grammatical, and teleological [5].

## 3 Findings and Discussion

### The Basic Concept of Copyrights

Philosophically, two theories explicitly state that the intellectual property of a system of ownership (property) [6]. John Locke put a very influential theory in countries that adhere to the Common Law and Hegel's legal traditions, providing a basis for thinking about intellectual property that influences the views of the Civil Law tradition countries about intellectual property. John Locke based on the teachings of human rights (Human Rights) that the very famous statement, "Life, Liberty, and Property." On the other hand,

Friedrich Hegel developed the concept of “Right, Ethic and, State,” which is essentially the existence of the personality (the existence of personality). According to Hegel: “The property is, among other things, the means by which an individual could objectively express a personal, singular will. In property, “a person exists” for the first time as a reason.” Intellectual property rights are rights that originate from creative activities of the ability of human thought power expressed to the public in various forms, which have benefits and help support human life and economic value. The simple form of the ability of intellectual work is in the fields of science, art, and literature. Property can be interpreted as wealth where the right gets legal protection so that other people are not allowed to use the right without permission from the owner of the right. Intellectual deals with intellectual activities based on creativity and thought in the form of expressions of creation and art and science and in the form of inventions as immaterial objects [7].

Copyright in the United Kingdom, the United States, and countries with the concept of the Common Law system define Copyright as Copyright, which means the right to copy. The initial idea of copying rights (Copyright) is the right to copy (right to copy). History records that Copyright has nothing to do with creating inventions but copy copying. This is based on the historical development of printing technology [8]. Publishers and printing entrepreneurs proposed to the King of England to provide protection for them from monopolizing the copying of certain texts. The right to copy is given to the copyright owner.

The explanation above shows the cultural, historical, and etymological differences in Copyright in the two cultural systems of Civil Law and Common Law. The doctrine of moral rights is a cultural symbol of the rights of creators who flourished in France and countries with Civil Law traditions. Conversely, in the United States and countries that adhere to the customary law tradition of the UK (Common Law), copyright law is centered on the consideration of users that try to balance the interests of producers and consumers in works protected by Copyright without regard to the rights of the creator. The basis for the doctrine of fair use appears in United States copyright law in heading 17 of USC section 107.

Humans produce using their intellect is natural. Humans think using their intellect and culture; humans who think are humans who live their nature as humans. Philosophically, the concept of intellectual property ownership cannot be separated from the thoughts of John Locke, who said that every human being has himself as his own [9]. Nobody has the right to other people except the owner himself, including the work of his body.

In essence, intellectual property rights aim to give appreciation to creative subjects for their creativity. This appreciation is outlined in the form of articles in the rule of law, which as a whole gives the right to creative subjects to take economic benefits from the creative work produced and recognition of the work produced in the form of moral rights. With the Right to Wealth intellectuals, then the creative subject is given the right to monopolize profit-taking from the production, importation and distribution activities of the product. Provisions on intellectual property law also provide protection for subjects not to be disturbed by giving restrictions and legal threats to other parties without the right to take advantage of the creative work of others.

The pouring of concepts into regulation is an affirmation of the concept at the level of state practice. Countries set out in regulation on the recognition and justification of the concept of ownership that arises from the work of human creativity.

International agreements in the field of Intellectual Property have started since the Paris Convention on Industrial Property in 1883 and the Bern Convention in 1886 concerning the Protection of Literary and Artistic Work. Both Conventions are international treaties that start and underlie other international treaties in the protection of Intellectual Property Rights. Article 27 (2) Declaration of Human Rights states, "everyone has a right to the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author." Article 27 (2) is the basis in international agreements for international trade matters. Intellectual property rights provide monopoly rights for owners to take advantage of their rights within a certain period. The consequence is that the subject of the rights owner has the authority to prohibit other parties from doing the same thing without permission from the rights owner. In thinking about property rights, it provides opportunities to use or not use them.

### **Copyright Characteristics in Material Concepts**

Copyright Characteristics in Material Concepts. The meaning of objects regulated in Article 499 of the Civil Code, namely: "According to the understanding of the law called material, is each item and each right, which property rights can control." Article 499 of the Civil Code (Civil Code), meaning *zaak* is all goods and rights. Furthermore, it is known that *zaak* is a part of wealth [10]. Whereas what is meant by objects in the legal sense are all objects of ownership. The right attached to an object is called the material right, which is a right that gives direct power over an object, which can be defended against each person. Property rights Article 570 of the Civil Code states that ownership rights are the right to enjoy an object to the fullest extent and to control the object freely, as long as it does not conflict with laws or general regulations. Property rights without prejudice to the possibility of revocation in the public interest, with payment of appropriate compensation and under the law Property rights give two fundamental rights to their holders, namely: 1. The right to enjoy the usefulness of material, and 2—the right to exercise freedom over that material with complete sovereignty. Beyond the two rights, Article 571 and 574 Civil Code gives two owners more rights, namely: 1. For objects in the form of land, the right to use the land vertically, namely to obtain rights to plants or buildings on it, and to get a treasure that lies beneath the land. 2. The right to be retained in his position as the owner if the object is separated from his control.

Characteristics - property rights as property rights are the most perfect, which have the following characteristics: 1. Property rights are the parent rights to other material rights, while other material rights constitute children's rights to property rights; 2. Property rights in terms of quality are exclusive rights; 3. Property rights are permanent, meaning they will not disappear from other material rights, while other property rights may disappear if they face property rights; 4. Property rights are the most basic rights (primary), while other material rights are only part of the property rights.

Article 584 of the Civil Code states five ways to obtain ownership rights, namely by way of recognition, attachment, due to expiration, due to inheritance, and the existence of surrender based on a civil event to transfer ownership rights. Introductory provisions regarding the transfer of this right were adopted in the regulation regarding IPR, which

states that IPR can be transferred by inheritance, grant, will, written agreement, or other reasons justified by law.

The value system of wealth institutions regulates two things, namely the use and allocation of welfare [11]. Authority as an owner means that as a subject, he is given the right to use what belongs to him for his welfare freely. The owner subject has the freedom to carry out activities related to what is under his ownership in order to prosper himself. The concept of ownership gives the right to subjects to prosper themselves through various legal activities related to the object of ownership. Another dimension of ownership is that the owner is given the authority to control the use of his ownership by another party. Owners are given the authority, also to control the use of these resources by other parties and act for themselves, and to accumulate all (material) social welfare as part of their welfare; the greater their authority to expand, the broader the spectrum of ownership.

Soedikno stated that: "Rights are interests protected by law. Interests are the demands of individuals or groups that are expected to be fulfilled" [12]. The material rights that provide perfect enjoyment for the owner are called "ownership rights," which in various state laws are called "property rights." Wealth is defined as that is the release or right to any person that belongs exclusively to one; In the strict legal sense, an aggregate of rights that are guaranteed or protected by the Government; the word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible visible or invisible real or personal everything that has an exchangeable value or which goes to make up wealth or estate [13]. Based on the concept above, it can be stated that IPR is an object of ownership and is confirmed by legislation as an exclusive right. From the material aspect, IPR is a non-bodied movable object that contains rights that contain the authority to take economic benefits and also has control rights over the use of these rights by other parties.

### **Strengthening Protection**

Since the days of the Dutch East Indies in 1912, Indonesia has known Copyright. Based on the principle of concordance, which underlies the enactment of the law in the Netherlands to apply to Europeans in the Dutch East Indies. The Netherlands signed the Bern Convention manuscript on April 1, 1913. As mentioned in the 1914 Staatsblad Number 797, since the signing of the Bern Indonesia text as a Dutch colony at that time was included in the Convention. On June 2, 1928, the Bern Convention was reviewed in Rome; the results of the review also took effect in Indonesia (Staatsblad 1931 Number 325). This Convention applies in Indonesia, which at that time was a Dutch colony as a liaison with the international world, especially related to the rights of authors (Copyright). Provisions in Auteurswet 1912 at the time of independence were considered obsolete, with a lot of losses and irregularities in practice. The term Auteurswet experienced a change to Copyright at the Cultural Congress held in Bandung in 1952 [14].

Indonesia enacted the Copyright Act for the first time in 1982, namely Law No. 6/1982. 1987 The law was amended and supplemented by the enactment of Law No. 7 of 1987 concerning the amendment. The next improvement occurred in 1997, namely the enactment of Law Number 12 of 1997. The Government improved the regulations of Law Number 19 of 2002 to be more in line with the times, then Act No. 28 of 2014 was the latest regulation concerning Copyright prevailing in Indonesia until now.

Amendments and improvements to copyright law are intended to respond to developments in situations relating to Copyright. There are things that stand out when associated with changes in the Nature of copyright Infringement Offenses. The penalty provision of the Copyright Act No. 6 of 1982 states that copyright infringement is classified as a claim offense. Section 45 of the Copyright Act No. 6 of 1982 provides that criminal acts, as referred to in section 44, cannot be prosecuted unless claimed by the copyright owner. In 1987 the Indonesian Government revised the copyright law with the enactment of Law No. 7 of 1987 concerning Amendment to Law Number 6 of 1982 concerning Copyright. The abolition of the article concerning the need for complaints from the creator for prosecution makes a copyright offense, not a complaint offense, namely an ordinary offense. The consideration of changing the complaint offense to an ordinary offense can be traced from the consideration of Law No. 7 of 1987, which states: b. This is at a time of increasing national development enforcement activity, especially in the fields of science, art and literature, in fact, there have also been activities to develop copyright infringement, especially in the form of piracy. c. This piracy has reached dangerous levels and could affect the order of life of the entire community, especially its interest in creation.

Further, in a general explanation stated: in the implementation of Law No. 6/1982 concerning Copyright up to now, it has been found that there have been many violations, especially in the form of piracy against Copyright. Public reports in general, and in particular those belonging to various professional associations with a strong interest in copyrights in the fields of song or music, books and publishing, films and video recordings, and computers, state that violations of copyrights have taken place from time to time with more widespread and now has reached a dangerous level and reduce creativity to create. In a broader sense, these violations will also endanger the joints of life in the broadest sense. The change from complaint offense to ordinary offense clearly can be captured that there is a desire from the state in the micro to give more protection to the creators and holders of Copyright. At the macro level, there is a desire to give appreciation, not only from the economic aspect but also from the aspect of the creator's moral rights, in the Indonesian Government's 1997 and 2002 revised copyright law. Amendment is the publication of Act No. 12 of 1997 amending Copyright Act No. 6 of 1982 as amended by Act No. 7 of 1987.

Furthermore, the law was again revised with the enactment of Law No. 19 in 2002 relating to copyright. Changes in 1997 and 2002 do not change the nature of criminal offenses in copyright infringement; both laws use ordinary offenses in case of copyright infringement. The Indonesian Government revised the copyright law by issuing Law No. 28 of 2014 concerning Copyright. The fundamental change the government made by amending this law concerns the nature of piracy. Section 120 of the Copyright Act No. 28 of 2014 only states that crimes covered by this Act constitute reported crimes.

Opinions vary on the changing facts of this copyright crime. The first part argues that it is appropriate to treat copyright infringement as a violation of common law. The argument used is that aspect of the state's role that has a duty to protect the interests of its citizens, including state property. Copyright is the property and property of citizens. Based on this consideration, an ordinary infringement is appropriate for copyright protection. Reasoning for infringement is generally considered a better defense, because

copyright infringement can be brought to court quickly and without the need to wait for a claim from the creator or owner. Author's copyright. Copyright infringement is used to empower law enforcement officials to take direct action against copyright infringement without waiting for a complaint from the author or copyright owner. Creators and copyright owners feel supported by the upbeat attitude of law enforcement. Enthusiasm of law enforcement should also reduce piracy and increase protection for creators and copyright owners.

### **The Nature of the Offense and Its Consequences**

The criminal law concept of whistleblowing has a completely different meaning than that of whistleblowing. In criminal cases, claims by authors or owners of copyright or related rights are the primary cause of prosecution by PPNS or the police. Even copyright infringement cannot be prosecuted by PPNS or the police without a claim by the author or intellectual property owner or related right holder. Different opinions are expressed on the basis of thinking that Copyright is a private right, and it is not proper for the state to interfere with private rights too far. Damarsasongko (2014) states that copyright ownership is personal, so the personal (personal) ratio that feels harmed will complain to the authorities so that the case is investigated. In connection with the premise that Copyright is a private right, the offense of complaint is appropriate for use in copyright law [15].

Based on the idea that Copyright and other intellectual property rights are private rights related to private human property, civil settlement is the main thing. Consistent with these thoughts, criminal prosecution is a last resort. Criminal law is known as "ultimum remedium" or as a last resort if other efforts cannot be carried out; this is due to the nature of the criminal that causes misery. However, not everyone believes that the criminal causes are suffering. At least the criminal contains thoughts -thoughts protect and correct the perpetrators of crime.

The concept of complaints or prosecutions in the concept of Copyright in principle is intended to provide protection to subjects who are entitled. Therefore, copyright law provides space for the owner of the right to protect themselves from violations that always have the potential to occur. The mechanism that can be prosecuted is civil lawsuits and lawsuits. Civil lawsuits can be submitted against subjects who violate the law. There are several ways for creators to make civil claims. Effective dispute settlement can be through mediation, arbitration, or commercial court processes. The law stipulates that civil disputes can be settled quickly, cheaply and inexpensively in accordance with the legal principles applicable to the Indonesian civil justice system. The alternative dispute resolution as the first attempt, it is proposed that the settlement through arbitration be placed in second and court in third because the settlement of copyright disputes is mandated in the copyright law. Whereas the civil court authorized in the sense of having absolute competence, in this case, is the Commercial Court. Other courts, besides the Commercial Court, do not have the authority to resolve copyright disputes. For the parties to the dispute, it is known that their existence in the territory of the Republic of Indonesia must first resolve the dispute through mediation channels before making criminal charges.

Changing the nature from Administrative Offenses to Criminal Offenses can be given a meaning other than the aspects of the management process and procedures if the prosecution is carried out. Changing the nature of an infringement from an ordinary violation to a claimed violation can make sense from the point of view of the concept of owner rights management. In material law, there is a distinction between physical and non-bodily and non-bodily objects and movable and immovable objects. Intellectual property, including Copyright, is explicitly stated as intangible movable property.

Changes in regulation from ordinary offenses to complaints offenses must undoubtedly be followed by a paradigm and understanding that Copyright as a property right is always within the authority and supervision of the subject of the creator or holder of Copyright or related rights. Legal action for violations of rights, whether necessary or not, is very dependent on the owner of these rights- the active role of the creator or copyright holder to actively report any copyright infringement on their work.

## 4 Conclusion

Based on analyzing the problems, it can be concluded that the change in offense in Law No. 28 of 2014 concerning Copyright requires an active role from the creator for law enforcement. The economic loss factor suffered by the creator in real terms is the main determining factor in whether the creator will make a complaint or allow the occurrence of copyright infringement. The creator's apathy in protecting himself from infringement of rights by other parties will significantly affect the enforcement of copyright law and intellectual property rights.

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