



The Problem of Implementation De Minimis Principle in Copyright Dispute Resolution

Hanita Mayasari

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
hanitamayasari2828@student.uns.ac.id

Pujiyono Suwadi

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
pujifhuns@staff.uns.ac.id

Yudho Taruno Muryanto

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ketingan, Jl. Ir Sutami No.36, Kec. Jebres, Kota Surakarta, Jawa Tengah, Indonesia 57126
yudhotaruno@staff.uns.ac.id

Abstract—In the context of Indonesia, this study looks at the legal difficulties that arise when copyright disputes are resolved by applying the De Minimis principle. A normative research methodology is used in this study. Applying the De Minimis Principle to settle copyright disputes in Indonesia presents challenges because the formal inclusion of copyright needs to be strengthened in Indonesian legislation. The principle's potential as a guiding framework and point of reference is limited by this lack, which keeps it from becoming a generally acknowledged and accepted standard within Indonesian society. The De Minimis Principle has many benefits but has yet to be incorporated into the legal system, making it challenging to apply. The research methodology utilized in this work is normative legal research. To effectively address the legal issues under review, this methodology comprises a thorough analysis and evaluation of legal statutes, tenets, and doctrines. The de minimis principle may be incorporated into copyright laws as a result of the study's findings, making it a social standard and a workable strategy for settling copyright disputes. This study adds to a thorough grasp of the subject by highlighting the legal difficulties involved in applying the de minimis concept to the resolution of copyright disputes in Indonesia

Keywords— Intellectual Property Rights; Copyright; De Minimis Principle;

I. INTRODUCTION

Globalization of the economy has always been intimately linked to free trade and the rapid transfer of wealth. Globalization, trade openness, and faster rates of economic growth are positively correlated, according to several previous research. The strongest correlation between economic growth and globalization occurs when knowledge flows across national borders to facilitate advances in R&D. International conferences facilitate the exchange of ideas among academic researchers. Information is shared in both business dealings and casual social interactions. The legal system is impacted, either directly or indirectly, by these changes. In order to guarantee that the flow of human contacts in the context of globalization stays uninterrupted and conflict-free, the legal system must grant legal legitimacy to all changes that occur.[1]

As stated by M. Wu, the different dynamics surrounding globalization are greatly influenced by the interaction between technology and globalization. Many emerging countries realize how important international participation is to promoting social and economic advancement. As a result, these nations aggressively compete with one another and employ a range of legislative

strategies to draw in businesses and investment from industrialized nations—the vanguard of the global economy. These developed countries are depending more and more on intellectual property to give them a competitive edge. They therefore look for guarantees that their intellectual property rights will be protected in the markets they join. Because intellectual property affects how quickly economies advance in the context of globalization, it is an interesting field of research. The need to protect intellectual property rights became even more critical following the creation of the General Agreement on Tariffs and Trade (GATT). The World Trade Organization (WTO) and its adopted framework from January 1995 covered trade-related intellectual property rights (TRIPS) aspects, including commerce in counterfeit goods. This framework is a very useful tool for reducing technology transfer, which is important for promoting development and economic growth.[2]

A legal notion known as copyright is created when people create original works in the fields of science, art, and literature. Copyright is established subsequent to the work's creation. A work's copyright is a natural legal entitlement held by the person who created it. Since the work results from the creator's creativity, this copyright is a private right. Intellectual property law—especially copyright—is important in the economic sphere. The goal of Law Number 28 of 2014 respecting Copyright is to promote public welfare and aid in the growth of the country, as stated in the preamble.[3]

Because copyrighted goods may be easily accessed and downloaded through the internet, increasing the risk of copyright infringement, copyright protection has become increasingly important in the digital era. One of the contributing factors is the existence of several similarities or parallels in a copyrighted work, whether such similarities are intentional or not. A common cognitive framework or a lack of knowledge about the copyright protection of the corresponding work could be the causes of this behavior. However, copying ideas often results in similar productions because they are based on the opinions of earlier works that were created by other people.

Data from the National Police Criminal Investigation Agency (Bareskrim) indicates that 958 cases of infringement on intellectual property rights were reported between 2016 and 2021. Trademark infringement (650 points), copyright infringement (243 points), and patent infringement (18 cases) are included in the figure. 169 of the 958 cases went on to be prosecuted. The remainder were terminated or moved to different organizations. Drawing from this observation, the author suggests that copyright issues come in second place behind brand disputes. It is important to note that some of the 243 cases are classified as *De Minimis Non-Curat Lex*, or simply *De Minimis*, because they are considered too small or unimportant to be prosecuted. Here, the writer uses the example of a court case involving Zidan and Tri Suaka, who performed an unapproved version of a song owned by Erwin Agam. Because it's such a popular platform, people use YouTube to share a variety of content, including covers of songs. It is common for a piece that is sung or reinterpreted by a different artist to become even more well-known than the original version. As long as the body is not being used for commercial purposes, performing a cover of a song does not violate copyright rules. In certain situations, the *de minimis* principle can be applied to resolve disagreements emerging from this issue.

In common law jurisdictions, the principle of *de minimis* is widely used. This is especially true for people who are acquainted with the concept of *de minimis non-curat lex*, which asserts that the legal system does not address insignificant cases. According to the *de minimis non-curat lex* principle, there is a distortion of legal regulations in the particular case, but it has little effect.

The punishment's inflexibility does not always mean that there should be no mercy. The author gives examples of how judges in different jurisdictions have applied the De minimis principle while making decisions in court. Judges will sometimes reject copyright claims filed on content that has been changed into the public domain, especially if the changes are small. In the legal domain, there have also been cases where copyright infringement lawsuits have been dropped on the grounds that the alleged infringer's use of the copyrighted material—for example, sampling—does not have a significance level that would be deemed de minimis. Using the "Vogue" sample, Madonna won a case in the Court of Appeal. This decision upheld a California Court finding from 2013, which held that a 0.23-second sample of a musical instrument from the 1976 song "Love Break" qualified as de minimis.

In light of the cases as mentioned earlier and when compared to Indonesia's system for resolving disputes pertaining to intellectual property rights, particularly with regard to copyright, it is clear that there is cause for concern regarding the suitability of Law Number 28 Year 2014's copyright regulations about Indonesian law. The Copyright Act's provisions state that it is illegal to reproduce all or a significant portion of a work that is protected by copyright. The court will consider the importance, presence of identifying characteristics, and ease of recognition of the copied work when determining whether or not it is distinctive or substantial. A component's importance is independent of its dimensions or outward appearance. The principle in question is known as Substantial Similarity, and it is a court strategy used to evaluate copyright infringement claims by determining how similar two works are to one another. Furthermore, where appropriate attribution is given, the use, duplication, reproduction, or modification of a creation or the rights associated with it—in whole or in substantial part—is not considered to be a violation of copyright, the court may also apply the fair use principle to determine the bounds of reasonableness.

However, it is the responsibility of the artist or copyright holder to provide proof of whether their work has been copied or whether the purportedly infringing work has actually appropriated their original position. The evidence that has been given is entwined with the subjective viewpoints of all parties—including the judge who will be making the final decision on the case. The author claims that conflict resolution may require fairly considering the interests of all parties involved and may fall short of providing a feeling of justice if it only depends on the principles of substantial similarity and fair usage. This is because determining how similar two copyrighted works are is inherently subjective, and litigation takes a significant amount of time and money. Because of how quickly technology is developing, there is a chance that the lawsuit process will involve lengthy wait times. Consequently, this could lead to a rise in copyright issues. Some of these conflicts might be viewed as unimportant or inconsequential, which would put the costs of the judicial system and the damages suffered out of balance.

The De Minimis principle, which holds that some cases shouldn't be tried in a court of law because they are deemed to be little or unimportant, is what spurs academics to investigate this topic. When an accused party admits to participating in acts of infringement, such as the use, appropriation, replication, or modification of a work protected by copyright, the de minimis concept is applied in the context of copyright protection. But they argue that the part of the stance taken was insignificant, hence it shouldn't be seen as an infringement. Consequently, copyright issues are settled by the de minimis concept. It serves as a filter to decide whether a dispute needs to be resolved through litigation in the Commercial Court or can be sufficiently addressed through this approach. It is imperative to have the capacity to significantly contribute

to the advancement of Indonesia's economy. In the context of dispute resolution, this research will provide a new perspective on the regulation and application of Indonesian copyright law. The report is therefore named "The Legal Challenges in Applying the De Minimis Principle in Resolving Copyright Disputes in Indonesia."

II. LITERATURE REVIEW

A. *The Urgency of Mediation as an Alternative Resolution of Copyright Disputes.*

Several factors should be considered as reasons for choosing mediation to resolve copyright disputes, namely, the litigation process is expensive, mediation is an alternative solution for sharing copyright, mediation is a suggestion for building networks and business reputation, the difficulty of proving copyright disputes, the will of Pancasila In peaceful dispute resolution, litigation can damage business relationships or the importance of the parties, and mediation is part of Indonesian legal culture. Copyright infringement dispute resolution can be resolved through alternative dispute resolution consisting of mediation, negotiation, conciliation, arbitration, and court. This research is limited to examining the resolution of disputes that occur in copyright, which can be resolved only by litigation and non-litigation methods.

B. *Resolution of copyright disputes*

Resolving copyright disputes through non-litigation is often referred to as resolving copyright disputes carried out outside of court. The existence of dispute resolution outside of court is a breakthrough because many cases that have not been resolved still need to be in court. Dispute resolution through non-litigation is commonly known as alternative dispute resolution. Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely resolving disputes outside the court using consultation, negotiation, mediation, conciliation, , or expert assessment. Non-litigation dispute resolution has many advantages, namely informal resolution, which resolves the dispute between the parties themselves, the dispute resolution period is not long, the costs are low, the relationship between the parties is cooperative, and the intended result is win-win. Furthermore, copyright dispute resolution through litigation can be done by filing a claim for compensation to the commercial court if there is a copyright violation because the only court with the authority to hear or decide copyright disputes is the commercial court. However, copyright holders can also bring criminal charges against their works that violate economic rights to provide a deterrent effect against copyright violators. The procedure for filing a lawsuit in resolving copyright disputes through litigation is that the copyright holder can take legal steps to file a lawsuit as regulated in Article 100 of the Copyright Law.

III. METHOD

The research methodology employed in this study is normative legal research, which entails the systematic exploration of legal rules, principles, and doctrines to address the pertinent legal questions.[15] The research methodology employed in this study, specifically the literature approach, involves the utilisation of legislative texts and legal resources pertaining to the specific legal matters under examination. This method entails an examination of legal philosophy and theory within the context of development law, particularly as it pertains to the primary foundation of legal norms and the corresponding rules that govern them in addressing contemporary challenges.

IV. RESULT AND DISCUSSION

Numerous changes have been sparked by globalization in the local, national, and worldwide arenas. Changes in community life, according to Soerjono Soekamto, include adjustments to social institutions that impact the social structure, such as beliefs, attitudes, and patterns of conduct among different groups living in the community. The political, economic, sociocultural, and legal spheres of society have all changed due to globalization, which has also influenced the creation and application of several policies. One of the main effects of globalization is the changes that have been seen in the legal system.[4] This is consistent with the phrase "ubi societas ibi ius," according to Cerero, which states that law is present wherever society exists. The regulation is deeply ingrained in the fabric of community life, and its effects have a substantial impact on the direction of current efforts to create a strong system of governance. Given the dynamism of social transformation, legal reforms must be put into effect as soon as possible. Legal reform refers to a variety of actions intended to adapt dominant ways of thinking, acting, and following social norms in order to better meet the requirements and expectations of modern society. Three main elements make up the legal reform agenda in reaction to globalization: legislative reform (often instrumental reform), institutional reform, and legal culture transformation (sometimes called cultural reform).[5]

When two copyrighted works bear a striking similarity to one another, it can be determined that copyright infringement has occurred. However, the plaintiff has to prove that there are similarities between the defendant's work and the plaintiff's original creation in order to establish the defendant's liability for copyright infringement. Article 1865 of the fourth book of the Civil Code, which deals with establishing proof, says that anyone citing an incident to support their claim of a right, to establish their own rights, or to contest the rights of others must produce proof of the right's existence. The plaintiff must prove the defendant's guilt in front of the court in order to obtain a favorable decision. To do this, you must provide enough evidence to win the case and defeat the defendant.[6]

Applying the concepts of Substantial Similarity and Fair Use has long been the norm for resolving copyright disputes in nations with standard law legal systems, like the United States. It is noteworthy that Indonesia's copyright laws have also taken these concepts into account. In copyright law, "substantial similarity" usually refers to an essential similarity. According to Law No. 28 of 2014 on Copyright, Article 44, paragraph (1), a substantial part is the crucial and distinctive component that characterizes a creative work. Daryl Lim states that the purpose of the Substantial Similarity test is to determine whether two works have similar copyright phrases, which would make one work illegally infringing upon the other and making copying it.

Because two works of creation are similar, the substantial similarity concept will be confusing to someone reviewing the infringement of a protected work. The plaintiff must demonstrate to the defendant that his work is the original creation to establish a violation. In reaching a decision, the judge looks at a work that has elements proven by applying the principles of substantial similarity, i.e., through a significant similarity test, which verifies the essential similarities between the two creations that are accused of copying or duplicating, as well as the necessary expertise of judges regarding the components of a more detailed and exact formulation of substantial similarity when comparing two creations that are thought to mimic. It goes on to say that reproducing all or a significant portion of a work that is protected by

copyright likewise violates that right. If a section that is essential, has a distinguishing feature, or is easily identifiable is utilized, the court will find that the imitation is substantial. The amount may be insignificant or significant in scope. Here, "substantial" refers to a significant role or limited number of components. Therefore, rather than using a quantity measure, a qualitative measure is employed.

The De Minimis No Curat Lex tenet logically leads to considering substantial resemblance. [20] "De Minimis non Curat Lex," or "the law doesn't concern itself with trifles" in English, is the legal principle that is generally known as De Minimis. The De Minimis principle has sparked a scholarly debate on the most appropriate definition, and it is also described in other ways, such as "The law doesn't regard trifles" and "The law cares not for small things." Still, it is clear what the De Minimis principle is all about. According to this theory, cases that are too little or unimportant should not be tried, and the courts should not decide cases that are too small or unimportant.[7]

In Indonesian law, the De Minimis principle is mostly still uncontrolled, especially when it comes to copyright issues. The two main tenets of Indonesia's current legal system for resolving intellectual property rights disputes are the directive of fair use and the principle of substantial similarity, as outlined by existing legislation. The main focus of Indonesia's Law on Intellectual Property Rights is on the material aspects of the law, often known as material law. It is imperative to acknowledge that the Commercial Court is responsible for overseeing the implementation of the dispute settlement procedure through civil procedural laws. The De minimis principle is not included in Indonesia's statutory legal structure as a stage or alternative conflict resolution procedure when it comes to intellectual property rights, notably copyright.[8]

The author contends that more research is necessary to fully understand how troublesome it is to use the De Minimis Principle to settle copyright issues in Indonesia. Remarkably, this idea has yet to be enshrined in Indonesian law, especially when it comes to copyright, and it is not a generally acknowledged standard in Indonesian culture. As such, it is necessary to investigate the reasons for the principle's lack of adoption as well as its possible benefits, given that it has several advantages that may be put into practice. Both litigation and non-litigation are viable strategies for resolving copyright disputes between two parties. It is important to remember that the de minimis principle found in the Copyright Act is not explicitly addressed by the current legislation. As such, the central concern is the requirement for a legal structure based on this idea.[9]

According to Paul Scholten, a legal notion must be reasonable and sufficient in its scope and application to be recognized as a rule of law. A legal principle, also known as "rechtbeginsel," should not be confused with a rule of law, also known as a "rechtsregel." Generally, it is not possible to apply a legal principle directly through content or classification; instead, it must be evolved into a more concrete form. Stated differently, legal principles are not the same as the law, yet understanding the law requires a grasp of these principles. In Scholten's opinion, legal science positively identifies and studies legal principles. Positive law is based on a legal principle that conceptualizes a more general rule with a broader application than the rules that make up positive legal norms. The legal principles stem from human beings' innate ability to apply reason and moral judgment, allowing them to distinguish between ideas like compassion and cruelty, equity and injustice, and morality and immorality.[10]

Additionally, a court decision or body of jurisprudence may be used as a prospective legal reference in situations when the opposing parties choose to litigate their dispute. It is noteworthy, therefore, that no Indonesian court ruling has yet handled copyright matters utilizing the *de minimis* theory. This is because there isn't any legislation that helps. The cornerstone of any legal system comprises fundamental guidelines or, more specifically, legal principles. Paul Scholten defines principles as the essential concepts that guide the legal system and are articulated in legislative acts and judicial decisions. As a legal study, jurisprudence includes the methodical examination and interpretation of legal precepts. It, therefore, comprises legislative requirements that are legally binding on judges. According to Enrico Simajuntak's written work, jurisprudence is essential since it fills in legal gaps and ensures that clear, consistent legal standards are established. Jurisprudence must be added to legislation for it to be able to control everything entirely and exhaustively.[11]

Furthermore, it is significant that Indonesia, a civil law state, does not recognize the *de minimis* principle when going to trial is the sole option. Law has a specific purpose and represents societal dynamics while protecting human well-being. The goal of the law is to achieve a particular result. Establishing and preserving an organized society with principles of order, balance, and conformity is the major goal of the law. Setting social order is expected to protect the community's interests as a whole. Habits are behaviors that fit within a regular, common, and accepted pattern of conduct within a community or civilization. They can develop from symptoms of society. Moreover, it is an ongoing behavior that is regularly carried out in a particular social setting. Any deviation from a practice universally accepted by a community and regularly carried out because it is seen as necessary is considered a violation of the rules governing that community. As a result, a legal custom becomes part of the social fabric and legally binding.

The author's reasoning above suggests a big problem with using the *De Minimis* Principle to settle copyright issues in Indonesia. First, there are two ways to resolve copyright problems between disputing parties: litigation and non-litigation. Nevertheless, the law does not explicitly cover the *de minimis* principle's application in copyright dispute resolution. Thus, the most problematic element is the need for a legislative framework based on this idea. Additionally, a court decision or body of jurisprudence may be used as a prospective legal reference in situations when the opposing parties choose to litigate their dispute. It is noteworthy, therefore, that no Indonesian court ruling has yet to handle copyright matters utilizing the *de minimis* theory. The lack of affirmative action laws is the cause of this phenomenon.[12]

It should also be mentioned that, because Indonesia is a civil law country, the *de minimis* principle is not recognized in situations when the disagreement only concerns the trial selection. It is clear from the preceding study that the three aforementioned elements are where the problem at hand is located. Positive law is the main issue since it directly impacts how people form their behaviors. People can form reliable behavioral patterns when there are favorable regulations in place. Positive law, on the other hand, creates a structure that encourages people to obey and comply.[13]

V. CONCLUSION

According to the *De minimis non-curat lex* theory, the legal system ignores cases with little bearing. This well-known legal precept is primarily relevant to states that follow the Common Law System. In the field of copyright law, the aforementioned concept is used to address

instances of copyright infringement. The positive law system, which is closely related to the civil law legal system, is widely acknowledged as being adhered to by Indonesia. In this framework, the imposition of a rule is contingent upon the existence of a written regulation, or legislation, that governs explicitly it. However, the author makes the argument that applying the de minimis approach could help Indonesian courts decide instances involving copyright infringement. This strategy is seen as a way to implement legal changes that are in line with Indonesia's current State of globalization and the country's quickening pace of technological development. The Indonesian legal system is thought to be able to keep up with the advancements in the international arena by regulating or improving the country's current intellectual property laws and regulations, particularly those about copyright, and by putting the de minimis principle into practice as a first step or alternative dispute resolution method for intellectual property rights disputes. It can act as a buffer against unforeseen international threats. Additionally, a more thorough understanding of the role that law plays in promoting the State's economic development allows for the realization of the values of justice and benefit, both of which are essential for the efficient application of the law in Indonesia. It is also expected that applying the de minimis principle to intellectual property will provide confidence to various stakeholders, such as investors, innovators, and artists, enabling them to contribute to the Indonesian economy.

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