



A Comparative Analysis of Digital Copyright Protection in the United States and Indonesia as Members of the World Intellectual Property Organization

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Abstract. In the current era, rapid advancements in digital technology, posing heightened risks of infringement upon creative works. Copyright owners strive for legal protection through robust enforcement mechanisms. Meanwhile Indonesia is lacking in specific regulations and enforcement strategies established to safeguard digital content distributed on the Internet. The United States, on the other hand, has equivalent regulations that protect digital intellectual property rights that contain more precise provisions that can be implemented to address copyright issues arising from the development of digital technology. Despite Indonesia's membership in the World Intellectual Property Organization (WIPO) and the enforcement of intellectual property regulations by the government, digital creations remain inadequately protected. Intellectual property rights, representing creators inherent human rights, necessitate comprehensive legal policies to ensure protection. The purpose of this paper is to examines Indonesia and the United States roles in safeguarding individual creators digital copyrights against various infringements, considering rights such as freedom of expression, access to justice, information accessibility, and privacy. It also analyzes how both nations align their WIPO obligations with international law principles. This article method uses a legal approach by a comparative study supported by secondary data based on a library study of national law, international conventions, or existing articles. The text examines how these nations embrace the problems and opportunities of globalization in order to strengthen copyright protection in the face of developing digital technological advances, while also exploring possibilities for international collaboration.

Keywords: Digital Copyright, Copyright Protection, Intellectual Property Rights, World Intellectual Property Organization.

1 Introduction

The rise of digital technology has transformed global connectivity, significantly changing the way people are linked through technological and scientific progress. Thanks to digitization, individuals can easily access and create digital content. In this digital age, the topic of intellectual property rights has gained significant importance. As both information and technology evolve, the protection of intellectual property rights is also advancing. One of the key challenges in safeguarding these rights in the

digital era is combating copyright infringement piracy, which involves the unauthorized distribution or use of copyrighted materials without the permission of the creators[1]. As a result, piracy and other violations of digital copyright act as a driving force for global cooperation in protecting digital intellectual property. The need for an international legal framework to tackle intellectual property issues in the digital era is becoming more crucial. The World Intellectual Property Organization (WIPO), a specialized agency of the United Nations, addresses various facets of intellectual property rights on a global level. WIPO requires all member states to implement specific laws to regulate copyright protection, aiming to promote sustainable development and ensure the protection of intellectual property rights (IPRs) worldwide[2].

Both Indonesia and the United States face comparable challenges in protecting intellectual property rights in the digital age. As members of the World Intellectual Property Organization (WIPO), both nations are obligated to implement legal systems that ensure copyright protection. This research will explore the increasing difficulties associated with copyright protection in the context of digital technology, specifically examining the roles of Indonesia and the United States as WIPO member countries[3].

2. Methods

The methodology utilized in this research is known as normative jurisprudence, which indicates that it is a library study that was conducted with reference to a secondary source. The aim of this research is to acquire a body of legal theory, legal conceptions, and legal foundations that align with the requirements of the laws and regulations pertaining to this study. This study employs a qualitative technique, which involves analyzing main legal sources such as international laws and conventions, as well as secondary legal materials such as articles and legal literature that pertain to the research topic [4].

3. Resultt and Discussion

Indonesia and the United States are both parties to multiple multilateral agreements regulated by WIPO, including the Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Bern Convention on the Protection of Literary and Artistic Works, and the WIPO Copyright Treaty. Both nations have implemented national law that aligns with the requirements and provisions outlined in the WIPO convention.

The protection of intellectual property rights in Indonesia is regulated under Law No. 28 of 2014, known as the Copyright Act. A key reason for the creation of this law is Indonesia's status as an archipelagic country with a rich variety of arts and culture. The nation's potential for protection is rooted in its diversity of tribes, ethnic groups, languages, traditions, and religions. As stated in Article 1, Paragraph 1 of the Copyright Act, copyright is recognized as an exclusive right of the creator, arising automatically when a work is created, in line with the declarative principle[5].

Under the Copyright Act, copyright grants the creator a moral right. Article 5, paragraph 1 of the Copyright Act outlines this concept, which refers to the creator's

inherent and enduring rights. These include: a) the option to include or omit their name when their work is publicly displayed, b) the option to use a pseudonym or alias, c) the right to modify their work in ways that align with societal standards, d) the ability to change the title or subtitle of their work, and e) the protection of their rights against any distortion, mutilation, alteration, or other actions that could harm their reputation or honor.

In broad terms, the Copyright Act primarily governs the extent of copyright protection as an entire entity. In relation to safeguarding digital copyright, the copyright law implements measures aimed at preventing violations of copyright related to information and communication technology. The result is achieved by granting authority to the ministry, in collaboration with relevant government entities responsible for governing Information and Communication Technology matters, to supervise digital copyright content [6].

Addressing the violation of digital copyright, article 1, paragraph 23 of the Copyright Act defines piracy as the illegal use of creative and/or products protected by associated rights, as well as the widespread dissemination of pirated goods with the intention to earn profit. The Copyright Act governs the resolution of problems related to any type of copyright infringement, including alternative dispute resolution, arbitration, and litigation. The selection of the dispute resolution mechanism is determined by the scale of damage resulting from the committed violation. The trade court is the appropriate authorities for resolving copyright infringement matters when a dispute is settled through litigation [7].

The protection of digital-based copyright in Indonesia is not solely governed by the Copyright Act. Section 25 of the Information and Electronic Transactions Act also offers protection for Electronic Information and/or Electronic Documents that are organized into intellectual works, websites, and the intellectual property they contain. These are protected as Intellectual Property Rights under the relevant Legislative Regulations.

In examining the comparison between Indonesia and the United States regarding responses to sustainable development in digital-based copyright, the United States has implemented the Digital Millennium Copyright Act (DMCA). This law enacts the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, focusing particularly on protecting copyright in the digital era.

The DMCA does not provide a detailed definition of copyright, as its primary focus is on safeguarding digital copyrights and addressing violations. It establishes that copyright grants the owner the rights to reproduce the original work, distribute it publicly, display it digitally, and transmit it through other mediums, such as music performances or theatrical events[8].

Regarding copyright infringement, the DMCA specifically defines digital piracy as the utilization or dissemination of technology, software, or services that directly or indirectly facilitate the act of pirating a copyrighted digital work. The DMCA specifically recognizes certain types of digital piracy, such as the utilization of a Circumvention Device as stated under section 1201. This device may consist of whether software or hardware, and its intended use is to allow users to avoid or deactivate

copyright protection systems, such as encryption or other security measures established to safeguard digital content [9].

Settlement of digital copyright disputes under DMCA can be conducted through several methods that are available. As stated under section 512, one of the primary mechanisms offered is the DMCA Takedown Notice. This approach allows copyright owners to formally notify Internet Service Providers (ISPs) to remove content published by the ISP without the permission of the owner of the copyright. Once the ISP is notified, they are required to immediately delete the content or pursue appropriate actions to prevent legal responsibility for copyright violation. Otherwise, if the taken down content is determined to be valid and compliant with copyright regulations, the content owner has the option to submit a Counter Notification to the Internet Service Provider. The counter notification should include adequate information to authorize the reinstatement of the removed content, allowing the ISPs to conduct a subsequent re-evaluation of the copyright claim's legitimacy. Section 512 of the Digital Millennium Copyright Act contains a provision known as the Safe Harbor, which protects Internet Service Providers from legal responsibility for any kind of copyright infringement carried out by their users. The provision remains in force as long as Internet Service Providers comply to the requirements specified by the safe harbor regulations.

If the resolution obtained through the Takedown Notice is not successful or sufficient, the parties involved in the dispute might turn to litigation in federal courts, as provided by the DMCA in section 416 paragraph d. The DMCA has also governed the penalties imposed on a party involved in digital copyright infringement [10].

4. Conclusion

Both Indonesia and the United States, as members of the World Intellectual Property Organization (WIPO), have created legal structures to safeguard copyright protection. In Indonesia, the Copyright Act recognizes copyright as an exclusive right automatically granted to the copyright holder. While the United States' Digital Millennium Copyright Act (DMCA) does not provide a direct definition of copyright, it focuses on combating digital copyright piracy. To keep pace with ongoing advancements in information technology, Indonesia has introduced regulations aimed at protecting digital intellectual property, including copyright laws and electronic transaction laws, which address the prevention of digital infringements and the resolution of copyright-related disputes.

In the United States, the DMCA was enacted to enhance digital copyright protection. It includes provisions such as the Circumvention Device, which prevents bypassing digital copyright protections, the Safe Harbor provisions that shield Internet Service Providers (ISPs) from liability for copyright violations, and the Takedown Notice, which empowers copyright owners to remove illegally shared digital content. These provisions are designed to streamline the process of resolving digital copyright conflicts.

AUTHORS' CONTRIBUTIONS

The author's contribution to the article involves carrying out an extensive comparative study of digital copyright protection in the United States and Indonesia, both of which are member countries of the World Intellectual Property Organization.

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