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RELEVANCE ECONOMIC CONSIDERATIONS FOR OMITTING COPYRIGHT INFRINGEMENT IN INDONESIA

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Abstract--- *Indonesia is committed to protecting copyright. Indonesia participates in various international conventions in the field of intellectual property and amends copyright laws. Indonesia changed the nature of the ordinary offense to complaint offense as a form of recognition that copyright is a personal right. This change in the offense should change the paradigm of copyright as private property. This article will discuss how this paradigm shift in copyright has implications for the enforcement of copyright law in Indonesia. This article base on normative legal research focusing on secondary data. The analysis in this study uses a conceptual approach. The results showed that copyright regulation as individual rights. The right owner is personally responsible for the copyrights he owns. Until now, copyright violations are still widespread in society. Copyright infringement does not always have the economic motivation, so it does not always result in losses for the creator—the results in violations of rights, which does not always lead to disputes. The absence of a dispute does not mean there is no copyright infringement. Based on economic considerations, the creator allowed the budgeting to occur, and without a law enforcement process. Copyright rules as an expression of appreciation from the state for creative subjects are meaningless if there is the elimination of violations. The creator should support all efforts to protect copyright, mainly if copyright infringement occurs.*

Keywords: *economic right; infringement; law enforcement; omission.*

I Introduction

Indonesia commits to protect intellectual property rights in general, including copyrights. Indonesia from time to time always carries out revisions to the Copyright law. Indonesia adopted the provisions of the Dutch East Indies law by applying Indonesia, which began in the Dutch East Indies era with the enactment of Auteurswet 1912. (Sardjono, 2010) Indonesia first published copyright law in 1982. Since 1982 until now, it has been periodically revised in line with the development of rights protection. Copyright globally. Indonesia, since having its first copyrights law, has revised five times and currently applies Law No, 28 of 2014 concerning Copyright. Indonesia has also participated in several international conventions in the field of Copyright, including ratifying the Bern Convention, WIPO Copyrights Treaty, WTO rand the approval of TRIPs.

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Participation in various international conventions shows Indonesia's commitment to protecting intellectual property, including copyright.

Indonesia, consistently from time to time, increasingly provides adequate protection against copyright. One thing that stands out is one of the periods of copyright protection, which initially grew during the life of the author plus 25 years and was subsequently changed to 50 years and finally at present is 70 years. Another change is about the nature of the offense in the rights of copyright infringement. The nature of offense there is copyright before using ordinary offense then changed to offense complaint. Changes like this offense emphasize that copyright is a personal right as well as ownership rights to other things.

Changes do not automatically follow changes to the law that underlie and affirm the importance of copyright in the legal context in people's attitudes. Changes should follow changes in the rule of law in the mentality of the people as regulated subjects. This situation is very contrary to the concrete situation in Indonesia. Changes in the rule of law as the will of the state were not followed by the behavior and mindset of Indonesian people. Awareness of citizens does not accompany the commitment of the state to provide copyright protection both as creators and as users.

The high number of piracy (https://dgip.go.id/images/humas/Images/Media-HKI-vol-5.pdf, 2020) and copyright infringement both resolved through the court or without prosecution. Various kinds of violations of rights both those with economic motivations and those that are not intended for profit. Overall, it shows that copyright infringement is a very urgent matter for Indonesia. Until now, Indonesia is still included in the category of countries that are prioritized to be monitored according to the United States trade agreement. (https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2020, 2020) The contradiction between the attitude of the government and the public in the face of copyright piracy is very urgent to study. Based on the juridical and empirical facts, the problem discussed in this article is what is the juridical factor that determines the lawsuits for copyright infringement in Indonesia. Based on these ideas, a framework that is consistent with the will of the government and the community will be proposed to protect the one hand and efforts to halt piracy over copyright.

II Literature Review

2.1. Justify the concept of copyright and content rights

The justification of the Copyright concept can be referenced from natural law, as stated by John Locke. Locke states that every person naturally has a right to himself. Anything on earth is created for humankind together. The universe and its contents are shared property. Man's mind in managing the universe is what then gives human differences from one another. The results of personal work on this universe, which then take ownership of something that previously became common interest. The results of that work then justify the distinction of the objects they have. Human labor will determine what it will have. Therefore, Locke stressed the importance of giving rewards to people who have made "sacrifices" to find and process something that comes from nature, in the form of property rights. (Antariksa, 2020) Locke's opinion is the basis of the concept of property rights that can be taken advantage of by rich people. Someone is recognized as having individual wealth or rights because that person has done something, produced something, and therefore has something.

Georg Wilhelm Friedrich Hegel had a different opinion from Locke. Hegel based the concept raised by Locke by providing enrichment that everything that exists in nature, then humankind manages the problem by its uniqueness. A human with one another over the same thing can respond differently to produce something different. The results of personal work with one another from the same object can be different. It is the personality, creativity, and imagination ability of one person to another that causes the difference. Hegel complements Locke's theory that human works, of all forms and types, are properties that show human intellectual capacity and creativity. (Jened, 2014) Hegel provides a basic concept of the existence of moral rights and complements Locke's opinion, which emphasizes economic rights.

From the concepts as mentioned earlier, it can be stated that copyright includes economic rights and moral rights. Economic rights have the understanding as to the exclusive right of an Author or a Copyright Holder to obtain economic benefits for a Work. This economic benefit can be obtained in various ways according to the type of creative work. In other words, the creator can carry out activities that are oriented towards obtaining economic benefits. Anyone can easily find a plan that postulates a loss or loss of respect for the creator's economic rights. Whereas with the moral rights of work, a person has inherent rights, which cannot be removed or deleted without any reason even though the copyright or related rights have been transferred to someone else. Moral Rights, i.e., the right of the creator to prohibit his work from being changed without the relevant consent. Moral rights also contain understanding as to the right to defend their rights in the event of a distortion of the Work, a mutilation of the Work, a modification of the Work, or a matter which is detrimental to their self-respect or reputation.

2.2. Rights and Property Rights

Various theories explain the basic concepts and nature of rights. Rights are given meaning as the basis of absolute authority over an object that is their right. A variety of literature found various terms that are associated with rights. For example, use rights, rental rights, liens, and others. These various rights give authority to the subject of the right to use these rights for self or others' interests. The authority attached to the subject of the right-holder becomes very important because the subject can have the opportunity to exercise the rights he has. Economically, the rights possessed by the subject will distinguish one subject from another subject.

There are two theories about the nature of rights, as stated by Lord Loyd of Hamstead and M.D.A. Freeman cited by Peter Mahmud MZ (Mahmud, 2017), namely the theory of the will and the theory of self-reliance. Will theory is held by people who hold that the purpose of the law is to give individuals as much freedom as they want. According to the adherents of the will theory, right holders can do anything about their rights, including using, releasing, or not doing anything about the rights they have. Benefit theory is based on the purpose of law intended to protect a particular will and not the will of an individual, so rights are defined as interests protected by law. These interests were not created but existed in the community, and the country only had to determine which interests were protected.

Furthermore according to Paton as quoted by Peter Mahmud that interest is a demand or desire of individuals or groups of individuals who want to be fulfilled by individuals or groups of individuals, the law gives rights not to human desires as a goal but to human desires that pursue the goals allowed by law. Likewise, Meijers defines that a right is the authority of someone who gives rights to be recognized by law to represent their interests. (Mahmud, 2017)

In much of the literature, it has been revealed that rights as a terminology are born from Natural law. Rights are consequences that arise in the application of the law, and each type of law determines the rights contained therein. (Sumaryono, 2003) The right always gives absolute authority to the subject, which is then known as the authority that arises from the rule of law or positive law.

According to Mertokusumo, those rights have the meaning as an interest that has a legal basis. Therefore rights can be defended from other disturbances. The right owner can sue another party who violates these rights and who incurs a loss.

Interests, in essence, contain the powers guaranteed and protected by law in carrying them out. (Mertokusumo, 2018) Purnadi states that rights are given understanding as a role for a person or a party that is the holder to act on something that becomes the object of his right to another person. (Halim, 1996) Based on this understanding, it is further explained that rights are things that "may" be exercised. Ability cannot be interpreted as something that must be so that the rights holder: (a). cannot be forced to exercise their rights if they do not wish to exercise their rights. (b). It cannot be impeded when he will use his rights, as long as their use is carried out correctly and in practice does not harm the interests of others.

Understanding rights or rights in the Black's Law Dictionary (Campbell, 1997) are: In principle, it states that the right includes elements of justice, ethical, moral, and juridical values. This means that the right to a substance gives juridical authority to use and prohibit other parties from taking advantage of unlawfully.

Campbell (Campbell, 1997) provides a differentiation into several rights, namely:

1. Rights are given a distinction according to the clarity of application or scope. If the scope is clear and specific, then it is categorized as perfect right, whereas if the scope is unclear and not specific, it is said to be imperfect right.

2. It is said as Right in personam if it places an obligation on a person. A Right in brake if the obligation is placed not only on individual people but on people in general.

3. Rights can be distinguished as primary rights and secondary rights. Primary rights are original rights in the sense that the right does not have to be based on the preceding rights. Secondary rights intend to provide efforts to protect primary rights.

4. Preventive rights are rights to prevent violations or losses from primary rights.

The courts can impose this, or it can also be carried out by the parties voluntarily. They might be divided into:

(1) the right to obtain remedies, (2) rights are respected and (3) the right to obtain compensation

The rights mentioned above can be divided into (a) the right to return to its original state, (b) the right to act according to law, and (c) the right to compensation.

Concerning the ownership of external objects of property, rights may be classed as absolute and qualified. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all purposes. A qualified right gives the possessor a right to the object for specific purposes or under certain circumstances only. Concerning ownership of the object of wealth, rights are divided into absolute rights and limited rights. Absolute rights give a person the object of ownership in full at all times and for all purposes. Limited rights give the owner an object that is given to someone for specific purposes or only under certain

situations. Rights are also either legal or equitable. Rights-based on the law (legal rights) and based on equity (equitable rights)

III Methodology

In order to answer the problems raised, this study uses normative legal research, research that focuses on secondary data in the form of legal concepts and regulations. The concept of law that is observed is the concept of property rights and authority attached to these rights. The statutory regulations which are subject to study are the concept of regulations on property rights, which are in our Indonesian civil law and Indonesia Copyright Law. This study did not use primary data from respondents obtained from the community. The secondary data is structured in the synchronization and harmonization of concepts and ideas and then analyzed in a juridical manner in order to obtain answers to the juridical factors as a cause of paying for violations of copyright infringement by the copyright holder or the creator.

IV Results and Findings

4.1. Obtaining Rights in the Indonesian Legal System

Regarding ownership rights regulated in Chapter Three, Articles 570 - 624 of the Indonesia Civil Code. Article 570 explains that the right of ownership is the right to enjoy the use of material freely, and to act freely with that material with complete sovereignty, as long as it does not conflict with regulations and does not interfere with the rights of others, by not reduce the possibility of revoking these rights in the public interest based on the provisions of the law accompanied by payment of compensation.

Thus property rights can be said to be the essential material rights when compared to other material rights. The characteristics of property rights (Sofwan, 2000) are:

1. Property rights are the parent's rights to other material rights.
2. Property rights are complete rights.
3. Property rights are permanent, meaning that they will not disappear from other material rights.
4. Property rights are the core of other things.

Although property rights are the most prestigious property rights, towards
property rights, there are several restrictions, namely: (Sofwan, 2000)

1. General Laws and regulations
2. Does not cause interference
3. The possibility of revocation of rights (onteigening).
4. Legal neighbor
5. Abuse of rights.

From the various methods of acquisition, it appears clearly that the acquisition, according to article 584 of the Indonesia Civil Code, is the acquisition of an object in the form of an existing object. Thus it can be understood that the acquisition of material in the Civil Code concept is on material that was not previously owned by anyone else or on material that was previously in possession of another person. So that the acquisition of these rights in

Article 548 of the Civil Code is a legal basis that can be justified to be the basis of a person having a specific material.

Article 606 and Article 608 of the Civil Code regulates the acquisition of property rights that are suitable for studying the acquisition of intellectual property rights within the framework of property rights. Article 606 of the Civil Code states: "Anyone with material belonging to another person makes goods in a new type, becomes the owner of the goods, as long as the price of the material is paid, and all costs, losses, and interest are replaced if there is a reason for that." This article explains the significance of actions in actions for the existence of a new object. This article illustrates the meaning of a border to be the basis for the emergence of property rights. Ownership of objects in the form of new types of goods, even though the material for the production belongs to other people, the new types of goods belonging to the person making them. Further, Article 608 states:

If the new goods are formed from various materials belonging to several people due to the actions of one of the owners, then the latter becomes the owner, with the obligation to pay the prices of materials belonging to other people, plus reimbursement, losses, and interest, if there is a reason for it.

The essence of the article is that even though the materials are owned by many people but then made by one of them, the person who is said to be the owner of the new type of goods is the person who made them. The above article makes it clear that a person's actions can be the basis of ownership.

Both articles have a closeness to the basis of the acquisition of copyright that is based on someone's work or actions to get results in the form of new objects. Copyright emphasizes the elements of creativity and originality, can be fulfilled in personal work as the formulation of the two articles above.

Historically, the regulations in the field of Intellectual Property Rights in Indonesia have existed since before Indonesia's independence from Dutch colonialism. The tendency of Western European countries to participate in the Berne Convention has pushed the Dutch kingdom to renew its copyright law, which has been in force since 1881, with new copyright law on November 1, 1912, known as Auteurswet 1912. As a colony, the Dutch Government also enacted the 1912 Auteurswet in Indonesia with the principle of concordance. Auteurswet 1912, enacted through Staatblad No. 600 in 1912, also applied to the Dutch people in Indonesia. After August 17, 1945 (Indonesia's Independence day), in order to avoid a legal vacuum, the Government of Indonesia continued to enforce all existing regulations before Indonesia's independence. Indonesia has a legal basis for implementing regulations that existed during the colonial period. Article II of the Indonesian Constitutional Transitional Rules, in essence, states that existing Regulations still apply before any new ones are based on the Indonesian constitution. The consequence of that article is that the 1912 Auteurswet, as one of the legislation from the Dutch colonial legacy, has a legal basis to remain in force in Indonesia.

In 1982 the Government of Indonesia drafted and enacted the National Copyright Act Auteurswet 1912, namely Law Number 6 of 1982, concerning Copyright. It is the first copyright law in Indonesia. Furthermore, copyright law has changed, namely Law No. 6/1982, concerning Copyright amended by Law Number 7 of 1987, Law Number 12 of 1997, and Law Number 19 of 2002. Developments and progress technology and the development of the global community pushed the Indonesian government to revise the 2002 copyright law in 2014. Indonesia officially enacted the new copyright Act Number 28 of 2014 concerning Copyright. Promulgation of Law No. 28 of 2014 concerning Copyright provides a new nuance in copyright protection. Through copyright law, the state grants monopolistic rights to creators both morally and economically. This right

can be maintained if anyone commits the violation. The facts show that the development of information technology has a very significant influence on copyright infringement.

Indonesia, as a member of WIPO (World Intellectual Property Organization), ratified the International Agreement in the field of copyright by Presidential Decree Number 19 of 1997. The international agreements include the WIPO Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT). This ratification affirms that Indonesia is committed to providing legal protection for creators, holders of copyright, and related rights. Besides being involved in WIPO, Indonesia, as a member of the WTO, is obliged to implement an Agreement on Trade-Related to the Aspects of Intellectual Property Rights. Indonesia promulgated Law No. 7 of 1994 concerning Ratification of the Agreement Establishing the World Trade Organization to provide a basis for the application of norms in the TRIPs Agreement in national law. Based on Law Number 7 of 1994, Indonesia is required to carry out systemic improvements in the protection of intellectual property so that all elements and elements of intellectual property protection can run as they should. The implementation of an excellent intellectual property system not only requires legislation in the field of appropriate intellectual property rights, but it also needs to be supported by a more optimal administration, law enforcement, and socialization programs on the relationship of intellectual property rights.

Indonesia made revisions to copyright law based on the awareness of respecting intellectual work in the fields of literature, art and science, and technology. Indonesia realizes that in the present and future intellectual works are the primary capital to achieve the welfare of citizens.

An acknowledgment of a concrete situation is noted that progress in the fields of science, art, and literature is so rapid that it requires increased protection and guarantees of legal certainty for the creator, the copyright holder. As a consequence, Indonesia has become a member of various international agreements in the field of copyright. Indonesia needs concrete steps to implement this commitment. The implementation can take the form of revamping the copyright legal system as a preventive legal protection and law enforcement in the event that the copyright customer occurs as a form of repressive legal protection (Hadjon, 2007). The fulfillment of preventive and repressive legal protection places the creator in an adequate protected position.

4.2. Strengthening of Copyright as Personal Rights

Copyright in juridical construction has a basis as a fundamental right. Copyright gets a constitutional justification in Indonesia. Indonesia amended the Constitution in 2000 to confirm that every citizen has the right to make efforts to improve prosperity through the development of arts and culture, technology, and science. This will ultimately lead to the welfare of citizens. Based on the Declaration of Human Rights in Article 27 (2), it states That the protection of moral interests and economic interests of works resulting from production activities from the development of scientific works, art, and art is the right of every human being. "WIPO formulates that the results of intellectual activities in the fields of science, industry, art, and literature are protected based on the rules of intellectual property. The People's Consultative Assembly accommodates the concepts contained in the World Declaration of Human Rights. The Indonesian Human Rights Charter which is an attachment to the Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII / MPR / 1988 concerning Human Rights. Furthermore, in 1999 Indonesia enacted the Republic of Indonesia Law on Human Rights (No.39 of 1999). Article 13 provides regulations that carry out the development and utilization of art and

culture and develop technology, science in the framework of obtaining human welfare is the right of every citizen as long as it is carried out in accordance with human dignity

The legal documents above provide a solid foundation for the concept of ownership arising from human creativity. In addition to recognizing the object, the law on human rights in Indonesia stipulates that the acquisition of benefits from science, art, and culture. Copyright, through various legal bases, has gained a position from both the subject and object aspects.

The position of the creator as a subject who has rights is not only governed by the Law on copyright but has a strong foundation as a right that must be respected. The shift from ordinary offense to complaint offense is one of the phenomena that permits the concept of confirming ownership as a personal right. Violation of copyrights, which previously could be a state matter that was handled by the police, then shifted to a private matter. Likewise, the formation of a collective management institution as a party that helps the creator to collect royalties proves the position of the creator to be more reliable. The presence of the National Collective Management Organization also confirms as a deadlock channel for the right to gain access to profits to copyright users.

4.3. Forms of Copyright Infringement.

Advances in information technology in Indonesian society can easily enjoy creative work from around the world. Technology is not only an instrument for the benefit of humans but also has the potential to be used to commit violations. Copyright contains two kinds of rights, namely moral rights and economic rights. This right contains economic rights and moral rights. If you examine the form of copyright infringement, it can be stated that there are two types of violations, namely violations of economic rights and violations of moral rights.

Moral rights exist with the creator forever, which includes: (Saidin, 2013) a. the right not to be deprived of their identity removed. b. disguise their identity. c. make changes in creation due to changes in the situation of society. d. change subtitles or titles of copyrighted works; and e. keep the creation from mutilation, distortion, mutilation, modification, and actions that can damage the reputation of the creator.

Moral rights as a form of appreciation for the personality of the creator, there is no opportunity to be transferred moral rights. Transfer by law will occur when the creator dies. After the creator passed away, the copyright passed to his heir. This transfer of moral rights is by law, so the rejection of the transfer of heirs must make a written statement. (Budi, 2011)

The economic right gives the author the power to earn income from his intellectual work. Activities to earn income depends on the type of work, among others: (Ashok, 2009). a. publishing; b. multiply; c. switch language; d. circulate; f. demonstrate; g. show off, or h. rent out to other parties.

Every person who exercises economic rights is required to get permission from the copyright holder or the creator. Everyone is also prohibited from copying and using commercially, without permission. Based on the juridical facts of the content of the said rights, the violation of copyright can have different consequences. Violations of economic rights will result in losses that can be calculated in amount. This is different if the violation of moral rights. Violation of moral rights does not have an economic orientation, so the consequences that arise are certainly not economic losses.

Cases in Indonesia, if observed from a court decision, show that all cases handled by the court are copyright disputes that lead to economic rights. Not one of them was found in the verdict of the Supreme Court, which

tried the case, which resulted in a violation of moral rights. Therefore, if viewed more deeply, there does not appear to be a correlation between the number of copyright violations and the number of cases resolved through the courts. Not comparable between the number of violations with the number of cases shows there is a possibility, the first copyright infringement is resolved through a dispute resolution mechanism outside the court, and the second is the creator leaves copyright infringement, and the creator does not file lawsuits.

Seeing the two trends, the tendency that occurs is the omission by the creator. Although there is a violation of rights, the creator does not submit a claim to the violator if examined in more depth about the factors that cause omission can be analyzed through the basic concepts of copyright itself.

As explained earlier, copyright is a moral right and then shifts to economic rights. In the beginning, the creator only needed recognition and respect. If the creator has gained recognition and respect, then that is enough for the creator. In connection with the development of the concept of rights, which are then associated with financial benefits, copyright is always associated with economic rights. The economic rights of the creator become the main thing in the activity of creating a work.

Based on research shows that what happens is there is apathy from the creator to make lawsuits for violators. The primary consideration as a reason for not prosecuting a violation is the benefit aspect of the claim. The creator can always make lawsuits to the offender, but then what is obtained by the creator if there is a proven violation.

A claim can be made in a civil form in the form of a loss but can also be in the form of a criminal suit. A civil claim in the form of compensation, it is necessary to prove the amount of loss suffered in real terms by the creator. Proof of the magnitude of this loss will put the creator in an awkward position. Difficulties arise at an early stage where the creator must be able to assess the loss suffered for an offense. Assessing losses is undoubtedly talking about the prospects of profit from the exploitation of works in the future, and this is not easy to do.

Likewise, in the right of the creator to submit criminal charges, then if a violation is proven and the perpetrator is subjected to criminal sanctions, the question that arises is, what the creator directly obtains economic benefits. There is no economic benefit that is directly received by the creator, even if there is evidence of copyright infringement.

V Conclusion

From the analysis above, the conclusion that can be put forward is that the omission of copyright violations is a very reasonable and understandable attitude. This is because the understanding of the concept of copyright is not fully understood as a union between moral rights and economic rights. Copyright is seen as an economic commodity. The creator loses the value of his personality in viewing his creation. Creation is only seen as limited to economic commodities, not as self-expression in the form of works that articulate the identity of the creator.

There is a contradiction in the pattern of wills and intentions between states that seek to strengthen instruments' protection of rights granted to the creator with the intention of the copyright holder and the creator. The country from time to time seeks to lay a more adequate and solid foundation of protection, but the creator only looks at aspects of personal gain. This situation places the country in an awkward position because the legal

protection performance is abysmal. After all, the creator's apathy in protecting themselves with available legal instruments is very small. The high level of copyright infringement is not followed by the will of the creator to utilize legal instruments to protect their rights.

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