

## INFLUENCE OF COPYRIGHT LAWS ON ECONOMIC GROWTH TO REALIZE CERTAINTY , JUSTICE AND LEGAL EFFECTIVENESS

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### ABSTRACT

Translated into Indonesian with intellectual property rights or intellectual property rights abbreviated as IPR. Between two this term, the second term used in our legislation. For example, it is contained in the general explanation of Law No. 29 of 2000 concerning the protection of plant varieties. In Law No. 30 of 2000 concerning trade secrets. Likewise in other IPR laws. Between the two terms, especially between the word "property" and the word "wealth", the term possession or ownership is more appropriate . Because the notion of property rights has a more specific scope than the term wealth. According to the civil law system, property law has material law and contract law . Intellectual Property Rights are immaterial objects which are also objects of property rights as stipulated in material law. What is meant by Intellectual Property Rights ?. This understanding can be explained in general that IPR is the right to ownership of works that arise or are born due to the existence of human intellectual abilities in the field of science and technology. These works are intangible objects which are the result of a person's or human's intellectual ability in the field of science and technology through creativity, taste, initiative and work. From the history of Intellectual Property Rights legislation in Indonesia, several laws have been formed formed the Copyright Law before the current one (Law No. 28 of 2014). First, namely Law No. 6 of 1982 amended by Law No. 7 of 1987 and then amended again by Law No. 12 of 1997. Then replaced by Law No. 19 of 2002, and replaced by what is currently in effect, namely Law No. 28 of 2014 concerning Copyright. The function of Copyright for creators or copyright holders is to announce or reproduce creations, and/or give permission to other parties to announce or reproduce their creations. Copyright is an intangible movable object ( immaterial objects ) that can be transferred or transferred to another party , either in whole or in part.

**Keywords :** Legal certainty, legal benefits

### ABSTRACT

Hak Kekayaan Intelektual atau Hak Kekayaan Intelektual yang disingkat dengan HKI. Antara dua istilah ini, istilah kedua yang digunakan dalam undang-undang kita. Hal itu misalnya tertuang dalam penjelasan umum Undang-Undang Nomor 29 Tahun 2000 tentang Perlindungan Varietas Tanaman. Dalam UU No 30 Tahun 2000 tentang Rahasia Dagang. Demikian juga dalam undang-undang HKI lainnya. Di antara kedua istilah tersebut, khususnya antara kata "harta" dan kata "kekayaan", istilah pemilikan atau pemilikan lebih tepat . Karena pengertian hak milik memiliki ruang lingkup yang lebih spesifik dibandingkan dengan istilah kekayaan. Menurut sistem hukum perdata, hukum properti memiliki hukum material dan hukum kontrak . Hak Kekayaan Intelektual adalah benda immaterial yang juga merupakan objek hak milik sebagaimana diatur dalam hukum materil. Dari sejarah legislasi Hak Kekayaan Intelektual di Indonesia, telah terbentuk beberapa undang-undang membentuk UU Hak Cipta sebelum yang sekarang (UU No. 28 Tahun 2014). Pertama yaitu UU No. 6 Tahun 1982 diubah dengan UU No. 7 Tahun 1987 dan kemudian diubah lagi dengan UU No. 12 Tahun 1997. Kemudian diganti dengan UU No. 19 Tahun 2002, dan diganti dengan yang berlaku saat ini yaitu UU Nomor 28 Tahun 2014 tentang Hak Cipta. Fungsi Hak Cipta bagi pencipta atau pemegang hak cipta adalah mengumumkan atau memperbanyak ciptaannya, dan/atau memberikan izin kepada pihak lain untuk mengumumkan atau memperbanyak ciptaannya. Hak Cipta adalah benda bergerak yang tidak berwujud ( tidak penting benda) yang dapat dipindahtangankan atau dipindahtangankan kepada pihak lain, baik sebagian maupun seluruhnya.

**Kata Kunci :** Kepastian Hukum, Manfaat Hukum, Kekayaan Intelektual

## A. BACKGROUND OF RESEARCH

Since the Proclamation of Indonesian Independence was proclaimed throughout the world, constitutionally all relations between the Indonesian legal order and the Dutch East Indies legal order were severed, but historically this relationship has had a broad impact on the legal system and the judicial *system* in Indonesia.

Substantively, the material of the Dutch colonial heritage laws and regulations cannot easily be replaced with the laws and regulations of an independent Indonesian product in line with the birth of an Indonesian state that was free from colonialism. Likewise with the legal order that is aspired to, namely that which is based on Pancasila and the 1945 Constitution, it is not easy to formulate in a short time, because compiling legislation material requires accuracy and is based on results. research with all kinds of academic scientific requirements. All of this required a long time, although in the end the demands of the community's legal needs overcame (time) the process of making the legal material itself. That is, the material law itself. This means that legal material may be left behind when it is enacted.

It took time to draw up a legal order based on Pancasila and the 1945 Constitution. Therefore, the atmosphere after the proclamation was declared a "transitional" period. Realizing this, the makers of the 1945 Constitution placed in its provisions several articles of transitional rules.

Article II of the transitional rules of the 1945 Constitution is the most important article. The article states that, "all existing State Bodies and Regulations are still in effect immediately as long as there is nothing new according to this Law". This means the regulations contained in the Civil Code, the Commercial Code. The Criminal Code, *Algemeene Bepalingen van wetgeving voor Indonesia* and various other regulations which are scattered in partial form originating from the period before the proclamation are still in effect. Thus all State Bodies, including the judiciary continue to function and play their role to fill the institutional vacuum until an institution is formed. in accordance with the soul and spirit of independence.

After experiencing a long period of time, gradually the contents of the

Civil Code and other laws and regulations were declared repealed. Arrangements regarding copyrights, patents, brands and other intellectual property rights if you want to classify them included in the field of civil law which is part of the law of objects. Specifically regarding the law of objects, there are provisions regarding material rights. Material rights consist of material and immaterial property rights. There are also many kinds of rights over material objects . There are rights to bills , rights arising from the issuance of securities , including within this scope are lease rights, business use rights and building use rights.

The significance of Rights on Intellectual Property will become more than a necessity after the GATT ( *General Agreement on Tariffs and Trade* ) agreement is reached and after the Marrakesh conference in April 1994 it was agreed that the GATT framework will be replaced with a world trade system known as the WTO ( *World Trade Organization* ) which the ratification was carried out by the Indonesian government through Law Number 7 of 1004 concerning ratification of the *Agreement Establishing the World Trade Organization* (Organization Establishment Agreement World Trade), promulgated in LNRI 1994 number 57 dated 2 November 1994. In the structure of the WTO Institution there is a General Council which is under the Directorate General of WTO, this General Council then oversees three boards, one of which is the TRIPs Council ( *Trade Related Aspects of Intellectual Property Rights* )

TR I P s can be said to be a new issue in the international economic arena. TRIPs within the WTO framework are more of a very effective mechanism to prevent transfer of technology which plays a key role in the process of economic growth and development.

For Indonesia and the Southern Countries, this will of course create its own problems, which tend to put these countries in a difficult position. not to say in the position of the oppressed. Therefore special attention and separate understanding of Intellectual Property Rights within the framework of the WTO is very important.

It turns out that the problems above do not stop there. Globalization era which is marked by the tendency of countries in the world to form economic blocs also brings its own problems in the legal protection of Intellectual Property

Rights.

The entry of types of food such as K FC , Pizza Hut, Mc Donald and others made the food and beverage business world boom in Indonesia. Legal instruments that protect rights related to these types of food are trade secrets *or* undisclosed *information* . The recipient of the right can carry out business operations and inventions (findings) that are kept secret based on the agreement and conditions agreed with the right holder. This kind of business is known as a *franchise business* or in legal terminology in Indonesia it is called a franchise.

*franchise* business transaction , there are Intellectual Property rights offered. Starting from copyrights, brands and industrial product designs (packaging) to patents.

*franchise* legal figure has not yet had a definite place within the framework of the civil law system . Several notes in various seminars regarding *franchising* there has not been a discussion regarding the place of *franchising* within the legal framework of objects. Even within the legal framework of the agreement, even though there are immaterial objects that are also transferred in the agreement between the franchisor and *the franchise* .

New legal figures that are still covered by *intellectual property rights* are currently emerging such as *integrated circuits* ( integrated electronic circuits or integrated circuit layout design ), new *varieties of plants protection* and other legal aspects. relating to engagements whose object is intellectual property rights or property such as broadcasting rights, rental rights or copyrights and so on.<sup>1</sup>

## B. RESEARCH METHODS

The research method used in this study is an empirical legal research method, namely a research that seeks to examine positive practices in society and is protected by law. Thus it can be said that empirical legal research methods in dissertation research are used to find out various statutory provisions governing the implementation of Intellectual Property Rights. The secondary data will

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<sup>1</sup>Zaim saidi, *Welcome to the WTO*, Republika, Jakarta 4 January 1995, page 6

provide an explanation regarding primary legal materials. Collected in this research are the following legal materials;

Secondary data collection was carried out by means of literature study which included laws and regulations, jurisprudence, and legal literature books or other written legal materials. Normative juridical research uses secondary data, namely:

- a. Primary legal materials, namely binding library materials which include statutory regulations, among others, the 1945 Constitution, Law No. 28 of 2014 concerning copyright and related regulations
- b. Secondary legal materials that provide an explanation of primary legal materials, namely in the form of scientific writings in the fields of law, customs, Customs and Excise, journals, papers related to Customs, as well as online searches.
- c. Tertiary legal materials, namely legal materials that provide instructions and explanations of primary and secondary legal materials, for example, are legal dictionaries and Indonesian language dictionaries.

## **C. FINDING & DISCUSSION**

### **1. The impact of economic development in Indonesia with the existence of the Copyright Law**

The drastic change of communicators from using paper to using electronics has changed the human life system and then also changed the existing legal system. The pattern of searching information through electronic realms called virtual space ( *cyberspace* ) has become a new trend in life socialize. In the field of private business law, activities in cyberspace occur in the form of electronic trading contracts.

Therefore, in the future Indonesia as expressed by the Indonesian Electro Communication and Information Society (MEKKI), need:

1. Internet regulatory agencies and cyberlaw to regulate some crucial

matters in internet use.

2. The supervisory agency is preparing legal infrastructure related to internet crimes in Indonesia.
3. A clearer reinterpretation of the criminal code.
4. Government protection for privacy through cyberlaw.
5. Expansion of the meaning of the Civil Code , Copyright Law and Trademark Law related to this matter.
6. The legal scope of *online contracts* , privacy, *e - commerce*, electronic payments, the responsibility of the creator of the *homepage*, *email* and *chat*.

The parties entering into the contract in this case are the *internet service provider (ISP)* with a *website/keybase* (electronic space). ISP itself is an entrepreneur who offers access to the internet. The internet is one way for computers to communicate.

The components in the contract between the ISP and the keybase/website are:

1. *Domain name*. email address.
2. The owner of the device used.
3. Price and method of payment.
4. Copyright or other IPR.
5. confidentiality.
6. Guarantee.
7. Announcement.
8. How to communicate.
9. Fees
10. Payment

The types of agreements are as follows:

1. The electronic network development and arrangement agreement ( *website design and website development agreement* are:
  - Setting the function hue of the site
  - Project plans

- Evaluation criteria
- The owner of the device used
- Price and method of payment
- Copyright
- Confidentiality
- Guarantee
- Announcement

2. Agreement with *virtual mall*.

In deciding whether to register an e-business with virtual mall operator a virtual shop entrepreneur must pay attention some of the following:

- Is there any right to advertise the business privately over the virtual mall?
- Will the virtual mall operator get a certain percentage of the business's revenue?
- Is part of the target business to be developed using certain virtual facilities.
- What security does the virtual mall operator provide as input for future competition?
- What services are provided by virtual mall operators?

3. Procurement agreement for payment by credit card.

Matters that need to be considered in the agreement between the merchant and the credit card entrepreneur are:

- The type of rights required by credit card employers.
- Approval of additional new products offered on the website.
- The cost of providing entrepreneur accounts
- Sbrinkwrap or clickwrap contract.

It is possible for ISPs to offer software to keybase through licensors with sbrinkwrap or clickwrap.

A special electronic transaction agreement which includes two aspects , namely:

1. Real electronic transaction agreement.
2. Pseudo electronic transaction agreement.
3. Parties to a contract between keybase/website and costumers
4. Process of the contract.

The process of the occurrence of a contract begins with a meeting of two or more parties who agree to take certain actions. In most cases the contract is the result of bargaining from the parties involved. In determining when a contract occurs, it can be seen from the terms or elements required by law, namely offer (offer ) acceptance (acceptance) and consideration Components of e-commerce (keybase / website /e - merchant to e-customer ):

- Doing business activities
- Distinctive features

The distinctive features of providing keybase services are additional facilities over the provision of general network services:

- The rights and obligations of the parties.
- Security and privacy
- Payment method

Payment for services or goods can be made via credit card or electronic cash.

The types of contracts between websites and customers are:

1. An online contract is a standard type of contract known as a take it or leave it contract

There are several common ways to show the terms contained in an on-line agreement, namely:

- a. Statements of clauses and conditions as well as requirements are stated directly and are not given on the link to another page.
- b. The inclusion of the terms of the contract on the next linked page is directly related
- c. Shows full terms to customers in an interactive form.



## 2. Shrinkwrap contract and click-warp contract

A shrinkwrap contract is a contract in which a seller offers to use his product with the terms accompanying the product. Meanwhile, a clickwrap contract is an online shrinkwrap contract for the procurement of digital goods or a clickbrough contract. A clickwrap contract avoids the problems that can be caused by a clickwrap contract because customers are required to express their intention to be bound by the contractual terms within the clickwrap before a specific product or service can be loaded/retrieved from the internet.

### 1. Conditions for a valid contract:

If the regulation of e-commerce is carried out by applying the Civil Code by analogy, e-commerce will apply the provisions of the Civil Code and the Commercial Code in that regard, in line with the provisions that are important in contract law, for example Article 1320 of the Civil Code. legal principles which are sometimes included in engagement law.

### 2. Fill in an agreement

An agreement does not only bind what is expressly stipulated in it, but everything that by its nature requires agreement based on justice, custom and law. Such is the sign set forth in Article 2339 of the Civil Code and 1347 of the Commercial Code.

### 3. Break promises and anti-loss

The provisions concerning this point to the provisions of default and onrechtmatigheid (articles 1243 and 1365 of the Civil Code) .

### 4. E-commerce forms and contracts

If we look at the legal development of *e-commerce* , especially with regard to formality issues to be made in written form, then several contracts that still have to be made in written form are:

1. Contract the sale or other disposition disposition of immovable property or any interest in immovable

2. Powers of attorney
3. Negotiable in instruments

#### Documents of law

With the development of more increasing needs in trade today, it is time for Indonesia to have its own regulations:

1. UNCRITAL model law of e-commerce.
2. Electronic transaction act in singapore.
3. Eu model law of generic commerce.

The main principles outlined therein:

1. All electronic information in the form of electronic data can be said to have legal consequences, validity or force of law.
2. In the event that the law requires that information must be in written form, then an electronic data can fulfill the requirements for that.
3. In terms of signature , an electronic signature is valid signature.
4. In terms of the strength of proof of the data in question , the data message has the power of proof.

There are important things to note:

1. Each member country will ensure that the legal system they allow contracts to be made using electronic means.
2. However, member countries can also make exceptions to the above provisions in terms of:
  - Contracts in creating/conducting the transfer of real estate
  - contract stipulated in family law.
  - Guarantee contract.
  - Contracts involving court authority.
3. Each country should be able to provide the relevant arrangements above ongoing electronics .

Some regulations that are closely related to e-commerce regulations are:

1. Law No. 5 of 1999 concerning the prohibition of monopoly practices  
And unfair business competition in this law needs to pay attention to several important things, some important things to pay attention to in terms of using the internet site.
  2. Law No. 8 of 1999 concerning consumer protection. Basic consumer rights that need to be considered include:
    - a. Right to be heard
    - b. The right to obtain correct information on goods consumed
    - c. The right to obtain compensation for goods consumed that are not in accordance with what was notified by the entrepreneur
    - d. equal treatment .
  3. The entire law on intellectual property rights  
Here the active role of the government is needed to immediately see the existence of developments in this e-commerce arrangement, especially the contract issue so that every contract offered in the community on the internet site must first be legislated in a state state.
- 2. Protection of the legal interests of creators, copyright holders and rights owners is reviewed from the aspects of legal certainty, justice and benefits.**

Copyright functions for creators or copyright holders to publish or reproduce creations and or give permission to other parties to publish or reproduce their creations. Copyright is an intangible movable object (immaterial object) that can be transferred or transferred to another party, either in whole or in part.

Legal protection for Copyright according to UUHC is not only administrative in nature, it is also civil and criminal in nature. As well as Law No. 19 of 2002 with the inclusion of the rights of the creator or copyright holder to file a civil lawsuit to the Commercial Court, and what is requested in the lawsuit (*petitum*)<sup>1</sup>, as also contained in Law No. 28 of 2014. It is a form

of legal protection for creators or copyright holders from civil violations of copyright. Even without such a special arrangement, such a lawsuit can be filed with the District Court using the reasons for Article 1365 BW. However, because now it has been specifically determined, civil disputes regarding copyright based on copyright law are solely the authority of the commercial court<sup>2</sup>.

Copyright legal interests that are protected by the UUHC are for creations in the fields of science, art and literature, which consist of:

1. Books, pamphlets, published versions of written works, and all other written works;
2. Lectures, lectures, speeches and other similar creations;
3. visual aids made for the benefit of education and science;
4. Songs and/music with or without subtitles;
5. Drama, musical drama, dance, choreography, puppetry and pantomime;
6. Fine art in all forms such as paintings, carvings, drawings, calligraphy, sculpture, sculpture, or collages;
7. applied art;
8. Architectural artwork;
9. Map;
10. Batik artwork or other motif artwork;
11. topographic works;
12. Portrait;
13. cinemagraphic works;
14. Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications, and works of art resulting from the transformation;
15. Translation, adaptation, arrangement, transformation or modification of traditional cultural expressions;
16. Compilation of works or data, either in a format that can be read by a computer program or other media;
17. Compilations of traditional cultural expressions as long as they are original works;

18. video games; and
19. Computer programs<sup>3</sup>

UUHC contains criminal law, both material criminal law and formal criminal law. There are nine articles of material law, namely articles 112 to 120. Meanwhile, there are two articles in formal criminal law, namely articles 110 and 111 UUHC.

Copyright criminal acts are formed to protect the legal interests of the creator of his inspiration that gave birth to copyrights from the actions of other people who attack legal interests arising from copyrights. In particular to protect legal interests arising from copyrights, in particular to protect legal interests in terms of ownership and use of copyrights by creators or copyright holders, especially their economic rights.

In the previous HaKi Law (UU No. 19 of 2002) there were 14 types of criminal acts in the field of Intellectual Property Rights. In the law currently in effect (Law No. 28 of 2014) there are far more, regulated in 8 articles, which, if differentiated in form, there are 18 forms of criminal acts of intellectual property rights.

When compared with other criminal acts in the old Copyright Law, namely Law No. 6 of 1982 which was amended by Law No. 7 of 1987 and lastly amended by Law No. 12 of 1997, the current copyright crime (Law No. 28) 2014) more and more complete. The role and function of criminal law is getting stronger in terms of providing copyright law protection. As is the reality so far, copyright law enforcement still faces quite formidable obstacles. Eddy Damian said, the cause was the lack of Indonesian culture or ethics to respect someone's creations; and lack of public understanding and law enforcement regarding the meaning and function of Copyright; as well as the lack of deterrent function of the old *UUHC*.

#### **D. CONCLUSION**

Copyright functions for creators or copyright holders to announce or reproduce creations and or give permission to other parties to publish or reproduce their creations. Copyright is an intangible movable object (intangible object) that can be transferred or assigned to another party, either in part or in whole. Copyright legal protection according to UUHC is not only administrative, but also civil and criminal. As well as Law no. 19 of 2002 by including the rights of the creator or copyright holder to file a civil lawsuit to the Commercial Court, and what is requested in the lawsuit (petite) 1 , as also contained in Law no. 28 of 2014. This is a form of legal protection for creators or copyright holders from civil copyright infringement. Even without special arrangements, the lawsuit can be submitted to the District Court on the grounds of Article 1365 BW. However, because at this time it has been specifically determined, civil disputes regarding copyright based on copyright law are solely the authority of the commercial court.

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