

LAW ENFORCEMENT OF COPYRIGHT AS AN EFFORT TO STRENGTHEN THE CREATIVE ECONOMY

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ABSTRACT

The Indonesian state is currently aggressively developing the creative economy sector so that it can increase rapidly in supporting the country's economic growth. To be able to realize a creative economy that can support the country's economic growth, legal enforcement of intellectual rights (property rights) is needed, one of which is protecting and enforcing statutory regulations regarding Copyright. This research aims to find out how the law is enforced against the Copyright Law in Indonesia in order to strengthen the creative economy and what are the obstacles in realizing law enforcement against Copyright in Indonesia. This type of research is library research. The data source used in this research is secondary data. Data collection techniques are carried out through conventional and online searches. Innovative works that emerge as part of the creative economy must be protected under copyright law, so that the Indonesian creative economy can make a significant contribution to the national economy. The main problem with weak legal enforcement of the copyright law is in terms of substance, structure and legal culture.

Keywords: Creative Economy, Copyright, Law Enforcement.

INTRODUCTION

Copyright as part of intellectual rights protected by law, especially in Indonesia, is contained in Law Number 19 of 2002 which was later changed to Law Number 28 of 2014 concerning Copyright, has become the main topic in order to increase the competitiveness of the Indonesian nation in international world scene. If in the past, competition was focused on military strength, nowadays competition is focused on intellectual strength through mastery of science and technology (Arifin, 2016). which is directly proportional to a country's copyright control. The more copyrights a country owns and protects, the stronger a country's strength in facing global competition.

The Indonesian state is currently aggressively developing the creative economy sector so that it can increase rapidly in supporting the country's economic growth. Based on data from BPS and the Creative Economy Institute (Bekraf) in 2018, the

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contribution to national economic growth from the creative economy reached 5%. It still needs to be increased further because the country's target is 12%. Meanwhile, the contribution to labor absorption reached 17.4%. The latest data on the contribution of the creative economy contributes around IDR 400 trillion, the number 4 contributor after oil, gas, coal and palm oil. Compared with Singapore, Indonesia is still quite far away. Singapore, the creative economy contributes to the country 9.2 billion Singapore dollars, absorbing 144,000 workers from Singapore's population of under 6 million people (Degelseger, et al, 2016).

To be able to realize a creative economy that can support the country's economic growth, legal enforcement of intellectual rights (property rights) is needed, one of which is protecting and enforcing statutory regulations regarding copyright. In Singapore, copyright is an intellectual right that is protected by the state, even The University provides invaluable financial donations to inventors of new fields, as this will make a major contribution to Singapore's progress on the international stage (Barizah, 2017). So, reflecting on this, in the arena of ASEAN countries today, Singapore has become a role model for successful implementation of property rights and has had a big impact on the progress of a country (World Intellectual Property Organization). At the same time, countries in ASEAN have actually held regional multilateral meetings among ASEAN countries to jointly initiate the issue of Intellectual Property Rights into a joint solution for the progress of the ASEAN region.

Currently all countries are focusing on discovering new discoveries in the field of technology, increasing progress in the industrial world, advancing non-oil and gas exports due to the increasingly scarce natural resources of oil and gas, as well as developing and strengthening small and medium-sized economies. The main strategy so that this program and focus can run is that law enforcement of the Copyright Law is mandatory and needs to be enforced. Copyright enforcement is also an effort by the state to protect the human rights of its citizens, namely getting the rights and obligations to get protection for the work of the nation's children and being able to get economic contributions. for its citizens through the discovery of new fields for the advancement of themselves and their nation (Munawar, 2014).

Based on the description above, the research formulates the problem of how to enforce the law against the Copyright Law in Indonesia in order to strengthen the creative economy? and What are the obstacles in realizing law enforcement regarding Copyright in Indonesia?

RESEARCH METHODS

The nature of this research is library (library research). Library research is research carried out by examining library materials or secondary data. This research includes library research because the data used is mostly secondary data in the form of legal documents. The approach used in this research is philosophical. The philosophical

approach in legal research is to examine law from an ideal perspective. This research uses a philosophical approach because the law studied is at an ideal level. The data source used in this research is secondary data. Secondary data is data obtained indirectly or provided by other parties. Secondary data is used as the main reference which is available in written form in books, scientific journals or other written sources. Data collection techniques are carried out through conventional and online searches. Conventional literature searching is the activity of searching for library sources in data storage places. Meanwhile, online review is the activity of searching for library sources in cyberspace via the internet network. Conventional literature searches are carried out by searching for library materials in libraries, purchasing books, journals and attending scientific activities (seminars). Meanwhile, online searching is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories and basic units of description so that themes can be found which are presented in narrative form. This research uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

DISCUSSION

1. Law Enforcement of Copyright in Indonesia in the Context of Strengthening the Creative Economy.

Indonesia is a country based on law. So all things and problems are all based on law. One of the elements of the rule of law is the protection of human rights, which is based on the idea that humans, as creatures created by God Almighty who carry out the task of managing and maintaining the universe with full devotion and responsibility for the welfare of mankind, have been given rights by their Creator. human rights to guarantee the existence of dignity and honor of oneself and harmony in the environment. Article 28C paragraph (1) of the 1945 Constitution, "Everyone has the right to develop themselves by fulfilling their basic needs, has the right to receive education and benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of humanity." The right to obtain benefits from science, arts and culture, in order to improve the quality of life and for the welfare of humanity can be interpreted as a right that is owned because of the results of intellectual thought, in the fields of science, arts and culture which is called Intellectual Property (KI) so that its owner receives protection to make use of his creations (Sudjana, 2019).

According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a human right of power to him to act in the context of his interests (Rahardjo, 2003). One effort to protect copyright is as proof that the state protects the human rights of its citizens in realizing prosperity and opportunities for a better life.

Talking about copyright, copyright is actually included in the scope of Intellectual Property Rights (IPR) law. As do brands, patents, industrial designs and trade secrets. Formally, Indonesia was introduced to the issue of copyright in 1912, namely when the Auteurswet was promulgated (Wet van, 23 September 1912, Staatblad 1912 Number 600), which came into effect on 23 September 1912 (Usman, 2003). Copyright is; "A special right owned by the creator of a work in the fields of science, art and literature which can be defended against anyone who violates this right in accordance with the provisions of the applicable law." For example, copyrights include books, music, films, computer programs, drama, painting and so on.

Copyrights for works of science, art and literature are priceless national treasures. If in the past a country was great because it had abundant natural resources, now, in the modern and global era, a great nation is a nation that has very broad and diverse intellectual wealth. The form is not physically visible but has a huge reach and benefits for the expansion of extraordinary economic value. So the existence of the Copyright Law in Indonesia, which already has the Copyright Law, namely number 28 of 2014, needs to be legally enforced so that it can have a tremendous impact on the Indonesian economy, especially the creative economy.

In the post-GATT (General agreement on Tariff and Trade) era of globalization and welcoming the WTO (World Trade Organization) era, there are important issues included in the structure of the WTO institution, namely TRIPs (Trade Related Aspects of Intellectual Property Rights) which specifically deal with matters relating to Intellectual Property Rights. In reality, it can be seen that international trade is not just about dealing with trade. But it also includes various pressures that have been carried out in areas that are not actually trade, such as issues of human rights, freedom to hold strikes and so on (Sudargo, 1992: 21). This suggests that the protection of IPR is as important as the protection of economic interests, especially from an international perspective. Protection is no longer a technical legal issue, but also concerns business disputes in achieving profits (Yanto, 2015).

Serious protection of IPR is vital for access to the growth of the information technology industry. International IPR protection requires countries to be able to provide strict legal sanctions against perpetrators of copyright crimes within their legal systems. For Indonesia, this is then stated in Article 72 (1) of the Copyright Law (UUHC) Number 19 of 2002 concerning Copyright. Meanwhile, in the new UUHC, namely UUHC Number 28 of 2014, the criminal provisions are regulated in article 113 paragraph 4.

Criminal sanctions for copyright violations in Indonesia are generally threatened with imprisonment for a minimum of one month and a maximum of seven years which may or may not be accompanied by a fine of at least one million rupiah and a maximum of five billion rupiah, while creations or goods which are the result of acts copyright crimes and the tools used to commit these crimes are confiscated by

the state to be destroyed (Law No. 19 of 2002 CHAPTER XIII). The Criminal Code (KUHP) also regulates copyright crimes. In Article 480 of the Criminal Code, it is stated: "Subjected to imprisonment for a maximum of four years or a fine of up to nine hundred rupiah: 1) Because he is guilty of arrogance, anyone who buys, rents, exchanges, receives a pawn, accepts it as a gift or because he wants to make a profit, selling, renting, exchanging, pawning, carrying, keeping or hiding an item that he knows or reasonably suspects that the item was obtained as a result of a crime; 2) Anyone who makes a profit from the proceeds of an item, which he knows or reasonably suspects that the item was obtained through a crime. From this article it is clear that buyers, renters, exchangers, recipients of pledges and gifts as well as keepers of goods obtained through crimes can even be punished. The key is in the sentence "an item which he knows or reasonably suspects, that the item was obtained as a result of a crime".

In the philosophy of criminal law, it is very appropriate that perpetrators of piracy of someone's copyrighted work can be subject to maximum criminal penalties. Legal protection of copyright as private property has been a key factor in the growth of capitalism and the free market economy. The legal system places wealth in three categories, namely; first, most societies recognize private ownership rights in personal wealth, known as intangible things; second, wealth in the real sense, such as land and buildings; and third, property known as intellectual property, such as copyright. This concept is tried to be used as a rationale for protecting intellectual property rights (Tanjung, 2007). In practice, sometimes the criminal law system is unable to provide protection. This phenomenon means that legal rules are sometimes not used as a basis for upholding legal authority by the relevant authorities who are supposed to enforce the law. Even though a legal rule relies on the authority of law enforcers or legislators (Bruggink. 1999). Therefore, for the law to work, it certainly requires support from the legal apparatus itself. Specifically regarding copyright infringement and piracy, the role of law here is very important, especially criminal law. The working of criminal law must be supported and implemented by state equipment which is usually called the law enforcement apparatus whose work procedures can also be unique in a law enforcement system (Poemomo. 1988).

Indonesia is a country that has ethnic/ethnic, cultural and religious diversity as well as abundant wealth in the fields of science, art and literature and their development. As a national potential, all of this requires adequate protection for intellectual property, especially creations and related rights products that arise from this diversity and wealth. Copyright is a part of intellectual property that has the broadest scope of protected objects, because it covers science, art and literature, which also includes computer programs.

In fact, regulations regarding copyright have undergone several changes. Starting from Law Number 6 of 1982 concerning Copyright as amended by Law

Number 7 of 1987, which was then amended by Law Number 12 of 1997. Then amended again by Law Number 19 of 2002 concerning Copyright, and most recently with Law Number 28 of 2014 concerning Copyright. Even though these changes have contained several adjustments to articles in accordance with TRIPs, and have accommodated the provisions of other international agreements in the field of copyright and rights related to copyright, in fact there are still several things that need to be refined to provide greater protection and advance the development of intellectual works in the field of copyright and related rights.

New materials regarding changes to the Copyright Law have been regulated in detail and clearly in the 2014 Copyright Law, including regulations regarding the extension of the copyright protection period, piracy, regulations regarding collective management institutions, and so on. This step is a serious effort by the state to better protect the economic and moral rights of creators and related rights owners as an important element in the development of national creativity. The 2014 Copyright Law is expected to contribute to the enforcement of legal protection for copyright and related rights in accordance with protection standards in international conventions, considering that comprehensive regulations are very necessary to guarantee legal certainty so that they can support increased investment in the country and trade prospects for Indonesian products in the country. international level (Kurnianingrum, 2015).

The definition of copyright according to the 2014 Copyright Law is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations. Copyright as a property right has the consequence that the creator receives legal protection or protection against unauthorized use of copyright or without the creator's permission. The use of a creation by the creator does not last forever or forever. If the use of creations by society is carried out freely, it is unfair to the creator, conversely, the use of creations without time limits by creators also brings injustice to society. The compromise that occurs between copyright supporters and those who reject copyright is that copyright has a limited validity period (copyright is limited in time). The rights included in copyright are exclusive rights, economic rights and moral rights. Some of the exclusive rights generally granted to copyright holders are the right to: 1. make copies or reproductions of works and sell these copies (including, generally electronic copies); 2. import and export creations; 3. creating derivative or derivative works based on the creation (adapting the creation); 4. display or exhibit the work in public; and 5. sell or transfer the exclusive rights to another person or party.

Roscoe Pound stated that law is a tool of social engineering (law as a tool of social engineering). Human interests are demands that are protected and fulfilled by humans in the legal field. Roscoe Pound divides human interests protected by law into

3 (three) types, namely: first, interests in the state as a juridical body. Second, interests as a state as a guardian of social interests. Third, the interests of individuals consist of personal (privacy) (Tanya, et al, 2010).

Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with statutory provisions. In this way, every act of intentionally or without the right to publish or reproduce a work can be categorized as a copyright crime. The Copyright Law basically stipulates that copyright crimes are ordinary offenses. In practice, copyright disputes or violations usually occur when the party whose copyright is violated prefers to receive compensation rather than subjecting the copyright violator to imprisonment or a fine. For this reason, the idea of establishing the implementation of effective dispute resolution through arbitration and mediation in the 2014 Copyright Law emerged (Article 95 paragraph (1) Law Number 28 of 2014 concerning Copyright), because the formation of this body is considered to provide a better alternative dispute resolution than through the courts (Results of the DPR RI Copyright Bill Working Committee and the Government, 26 August 2014).

Creativity is the main capital in facing global challenges. Forms of the creative economy always appear with unique added value, create their own "market", and succeed in absorbing labor and economic income. The Ministry of Trade of the Republic of Indonesia took advantage of this momentum by preparing a Creative Economy Development Plan. To develop a creative economy, a number of qualified human resources with high innovative power and creativity are needed. However, in addition to the need for quality human resources, the development of the creative economy also requires space or a platform as a place to explore ideas, work, as well as self-actualization and creative ideas.

Globalization and global trade are inevitable aspects of technological progress. Rapidly developing information and communication technology has blurred regional boundaries because one region can be connected to other regions at the same time. The importance of information in this era then gave rise to the information economy, namely economic activities based on the provision of information. After almost all regions in the world were connected in the information economy era, the challenges of globalization became increasingly real. In the context of globalization, competitiveness is the main key to success and survival. This competitiveness appears not only in the form of products in large quantities but also in quality. This product quality can be obtained through imaging or creating innovative products that are different from other regions. High creativity is required to be able to create innovative products. Starting from this point, the creative economy finds its existence and develops Suparwoko, 2010.

So innovative works that emerge as part of the creative economy must be protected in the copyright law, so that the Indonesian creative economy can make a significant contribution to the national economy. This opportunity will be obtained if law enforcement of the Indonesian Copyright Law can run well and effectively, through the participation of all policy stakeholders and the Indonesian people.

2. Obstacles in Enforcing Copyright Law in Indonesia in Supporting the Creative Economy.

Law enforcement of the copyright law is the duty of the community, law enforcers and the government to work together to create an effective law enforcement system. However, in its implementation there are many obstacles faced. If you refer to Lawrence M Friedman's opinion in legal system theory, there are 3 factors in building a legal system effective (friedman, 2018). First, legal substance, this factor concerns the material in copyright legislation. It is known that material in copyright legislation in Indonesia has undergone several changes, the most recent being changes in Law Number 19 of 2002 which was changed to Law Number 28 of 2014. Several of the latest regulations have been incorporated into it taking into account input from various parties. However, there are several weaknesses in the Copyright Law, for example regarding authorship claims. This law gives trademark holders the right to sue others without their consent for using or imitating their trademark, but it is uncertain whether parallel imports fall within the scope of this provision. This means that if there are other parties who use the brand, there are no clear sanctions involved. In the biopharmaceutical sector, patents for copyright have not been implemented properly, with the emergence of similar products with the same composition as manufactured biopharmaceutical products. In technology transfer law, which is an important part of each country's foreign capital investment regulations, usually there needs to be an important article instrument related to the function of technology transfer. The problem here is localization barriers in patent rights which include technology transfer requirements for all patented technology and its processing. in Indonesia. The enactment of the 2014 UUHC has strengthened copyright protection on the internet, one of which is by synergizing technical protection into copyright provisions. However, in reality this arrangement still has several caveats, which include the inability to allow restrictions and exceptions related to public interests in the fields of education, non-profits, and personal data protection, as well as criminal sanctions which do not appear to be able to recover state losses due to these actions (Hawin, et al, 2018).

With regard to the protection of traditional knowledge, the 2016 Patent Law contains new provisions, including disclosure obligations and access and benefit sharing. The 2016 Trademark and Geographical Indications Law can protect traditional knowledge by preventing unauthorized registration of traditional knowledge signs, and allowing registration of traditional knowledge signs to be protected as brands or

geographical indications. In relation to Traditional Cultural Expressions (EBT), the 2014 UUHC protects EBT by determining its holder, namely the State. The weakness is that this law does not contain provisions regarding benefit sharing. However, this UUHC contains LMK facilities which can be utilized in order to determine the conditions for EBT utilization.

UUHC 2014 is a new chapter in the development of the Indonesian music and song creative industry. With the 2014 UUHC, it is hoped that the creative music and song industry will achieve two interests, namely legal protection interests and incentive interests. In terms of legal protection, the provisions of the 2014 UUHC have provided protection for the music and song creative industry for even longer, namely for life plus 70 years. Meanwhile, the importance of incentives for the music and song creative industry is proven by the recognition of royalty payments through the Collective Management Institute system. The problem here is whether the Collective Management Institution is running well, and how the monitoring function in the field will be, if intensive provision is not provided by the state budget.

On the side of the structure in sThe 2014 UUHC legal system is the extent to which the government and legal apparatus implement supervision and law enforcement functions. Many of the rules in intellectual property rights receive little supervision from the authorities, this is because the authorities have not been able to distinguish between legal and economic understanding (the rules of property regime must be understood in their diversity and from both legal and economic standpoints, nothink that there may be intersection between them) (Mello, 2016). This condition causes copyright violations to appear everywhere. The legal apparatus plays itself by getting quite large material incentives from piracy players, both products and distribution, under the pretext of supporting the people's economy. Meanwhile, on the other hand, this condition causes low competitiveness of global entities. Many Indonesian products are then patented abroad, which provides greater prosperity to field inventors.

Legal and government officials at both central and regional levels also understand the UUHC context with a monolithic understanding. The existing political forces cannot move the creation of the nation's children as the nation's competitiveness which is very valuable for the nation's progress. Rewards for the achievements of the country's children receive little attention, in addition to the low state incentives for inventors. In fact, with a contribution to the creative economy that reaches IDR 400 trillion, the country should be proud. Imagine with non-natural capital, but based on the creativity of its citizens, the country does not incur large costs, but the impact on the economy is extraordinary. Of course the Rp figure. 400 trillion can still be increased to an even higher figure, because the potential of Indonesian citizens is very rich in literacy and intellectual treasures..

The third obstacle in enforcing the HC Law legal system is related to the low level of public culture regarding intellectual property rights. Piracy is everywhere, in the market, in online stores, there are lots of non-original products everywhere. Indonesia is a country that has a very high rate of piracy of copyrighted products, both domestic and foreign products (Butt, 2008). This low public culture in law enforcement is what causes Indonesia's prosperity and competitiveness to not be able to compete globally. In the end, it is the inventors of copyrights and patents who sell their rights abroad, because there law enforcement is strict. Those who violate receive a very large fine to provide a deterrent effect to violators.

These are the obstacles faced in law enforcement of the Copyright Law in Indonesia. It is a joint task that homework becomes a note for policy makers to be immediately addressed, if we want Indonesia to be able to take part in the international arena and Indonesia's creative economy can make a big contribution to the nation's economy. It is not impossible, if in the next year, effective law enforcement will provide great leverage for creative economic entities to make the Indonesian nation and state proud.

CONCLUSION

Innovative works that emerge as part of the creative economy must be protected under copyright law, so that the Indonesian creative economy can make a significant contribution to the national economy. This opportunity will be obtained if law enforcement of the Indonesian Copyright Law can run well and effectively, through the participation of all policy stakeholders and the Indonesian people.

The main problem with weak legal enforcement of the copyright law is in terms of substance, structure and legal culture. On the substance side, there is still some material whose legal implications are not yet clear. The structure side cannot yet differentiate between legal and economic perspectives, which are particular. Then on the cultural side, the public's low level of participation in enforcing copyright law has implications for the low welfare and competitiveness of the Indonesian nation on the international stage.

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