

LEGAL SANCTIONS FOR INTELLECTUAL PROPERTY RIGHTS VIOLATIONS IN INDONESIA

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Abstract: *Intellectual property rights not only recognize individual intellectual property rights but also the existence of communal intellectual property rights. Recognition of communal intellectual property rights governs intangible cultural heritage through various expressions, representations, practices, skills, knowledge and instruments. They also consider culturally related objects, artefacts, and environments for various groups and communities and in some cases, individuals recognized as part of the cultural heritage. The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data. Submission of claims for copyright infringement can also be carried out criminally. UUHC has formulated actions that are categorized as copyright crimes. Originally, this copyright crime was an offense, but was later changed to a complaint offense under Article 120. By becoming a complaint offense, the action taken is solely based on a complaint from the creator or copyright holder who feels aggrieved, so that law enforcement becomes less effective. disputes that give rise to legal consequences, either because of a violation of positive law rules or because of a conflict with the rights and obligations of a person regulated by positive law provisions.*

Keywords: *Legal Sanctions, IPR Violations in Indonesia*

Introduction

In essence, intellectual property rights do not only recognize individual intellectual property rights but also the existence of communal intellectual property rights. Recognition of communal intellectual property rights governs intangible cultural heritage through various expressions, representations, practices, skills, knowledge and instruments. They also consider culturally related objects, artefacts, and environments for various groups and communities and in some cases, individuals who are recognized as part of the cultural heritage (Philippe, 2006).

Copyright infringement is basically a violation of individual interests in copyrighted works where the creator/copyright holder/related rights holder tends to settle it through a civil compensation lawsuit. However, Law no. 28 of 2014 concerning Copyright and the copyright law regime in general also provides a criminal settlement mechanism for copyright infringement. In order to provide justification for criminal penalties in copyright, it is better to first understand the justification for the protection of intellectual property in general.

Efforts to overcome crime through the help of making criminal laws on intellectual property, are an integral part of efforts to protect society (social defence) and efforts to achieve social welfare (social welfare). Therefore, it is only natural that criminal law policies or politics are also an integral part of social policies or politics (social policy). Sanctions for determining actions as criminal offenses Copyright, is an effort to protect society from good deeds, actions that are detrimental or actions that violate community norms. Based on these reasons, the stipulation, the stipulation of an act as a criminal act contains an element of

reproach. With the existence of penal arrangements in the copyright law, it means that the legislators have criminalized copyright infringement. In every criminalization there must be an intention to provide protection for certain legal interests.

Basically copyright is used to protect a work of creation in the form of science, art and literature to reduce piracy on the work it creates. Copyright can be transferred to other parties in order to publish or reproduce works with the permission of the author (Adisumarto, 1990). It is hoped that the Copyright Law can provide guarantees to creators, so that in the end it will create a better condition for the development and protection of copyrights in Indonesia. On the other hand, it can encourage creators to work even better.

Literature Review

1. Intellectual property rights

Intellectual Property Rights are rights relating to wealth arising from human intellectual abilities. These abilities can be in the form of works in the fields of technology, science, art and literature. In general, intellectual property rights can be divided into two categories: copyright and industrial property rights. While industrial property rights include patents, brands, industrial designs, layout designs of integrated circuits, trade secrets and plant varieties. Intellectual property rights have been regulated by various laws and regulations in accordance with the demands of TRIPS, namely Law No. 29 of 2000 (protection of plant varieties), Law no. 30 of 2000 (trade secret), Law no. 31 of 2000 (industrial design), Law no. 32 of 2000 (integrated circuit layout design), Law no. 14 of 2001 (patent), Law (Setyowati, 2005).

Intellectual Property Rights are private rights in which an creator/inventor is free to apply or not to apply for the registration of his intellectual work. Meanwhile, the granting of exclusive rights to the perpetrators of intellectual property rights (creators, inventors, designers, and so on) is intended as a reward for their creative work, so that other people are stimulated to develop further. The development of intellectual property rights is determined through a healthy market mechanism and is directed at advancing society, so that intellectual property rights recognize certain restrictions to protect the interests of society. The Intellectual Property Rights system encourages a good documentation system so as to prevent the occurrence of the same creation or finding. Through good documentation of intellectual property rights, individuals in society are encouraged to always be creative and innovative in producing unique and new intellectual works for the advancement of the nation and human civilization (Hariyani, 2010).

There are 4 basic principles in the IPR system to balance individual interests with the interests of society (Syafrinaldi, 2008):

- a. Principle of Fairness: Investors are entitled to receive compensation in the form of material or immaterial for their work based on their intellectual abilities.
- b. Economic Principle: Intellectual Property Rights that are presented in various forms to the public have benefits and economic values that are beneficial to human life.
- c. Principles of Culture: The development of science, art and literature is very significant for the improvement of living standards, civilization and human dignity.
- d. Social Principle: Law functions to balance the interests of individuals and society, especially in a global world that views all human communities in all parts of the world as one society.

2. Legal sanctions

Legal Sanctions are legal consequences for violators of the provisions of the law. Or sanctions are a tool of coercion to comply with a rule or law. Sanctions are suffering given or caused intentionally by someone after an offense, crime or mistake has occurred. A sanction is a punishment or coercive measure given because the person concerned fails to comply with a law, rule or order (Wiyono,2019).

Law is understood as a coercive order, that is, as an order that applies sanctions in the form of coercive action, then the provisions explaining the law in the law will appear as a statement that under certain conditions, determined by that legal order, certain forced actions determined by that order should be carried out. . Legal sanctions can be imposed by state institutions against someone who violates the provisions of the law, so as to guarantee the creation of order, tranquility and peace. The function of legal sanctions is for a person to become obedient and obedient in carrying out legal provisions. But legal sanctions are not an essential element of law. That is, not every law must contain legal sanctions (Bakri, 2013).

Method

The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Zainuddin, 2022). This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. Soerjono Soekanto states that there are five scopes of legal research, namely research on legal principles, legal systematics, level of legal synchronization, legal history and comparative (Koto, 2022).

Result and Discussion

Legal Sanctions for Intellectual Property Rights Violations in Indonesia

1. Criminal Law Sanctions for Intellectual Property Rights Violations in Indonesia

Intellectual Property Rights have the goal of channeling individual creativity for the benefit of humanity at large. However, in reality in Indonesia the creations of artists are not legally respected as they should be by the public or the artists themselves. In Indonesia, these protection arrangements are stated in Law no. 28 of 2014 concerning Copyright Article 78 of the Act. Article 2 of the Law states that Copyright is an exclusive right for creators and copyright holders. This means that the right is solely intended for the holder so that no other party may take advantage of the right without the permission of the holder. So, as an exclusive right, IPR cannot be contested. This is in line with the principle of *droit inviolable et sacre* of the rights of *melik* itself. The exclusive right itself is not only directed at the community (Usman, 2003).

Based on Article 96 and Article 112 to Article 119 UUHC 2014, perpetrators of copyright infringement, apart from being prosecuted civilly, can also be prosecuted criminally. Thus the 2014 UUHC has also provided two legal means, which can be used to take action against perpetrators of copyright infringement, namely through the means of criminal law and civil law instruments, in fact, in the 2014 UUHC, dispute resolution in the field of copyright can be done outside the court through arbitration or other alternative dispute resolution as stated in Article 95 paragraph (1). Article 113 paragraph (4) UUHC states that anyone who commits copyright piracy is subject to a maximum imprisonment of ten years and/or a maximum fine of Rp. 4 billion.

Submission of claims for copyright infringement can also be carried out criminally. UUHC has formulated actions that are categorized as copyright crimes. Originally, this copyright crime was an offense, but was later changed to a complaint offense under Article 120. By becoming a complaint offense, the action taken is solely based on a complaint from

the creator or copyright holder who feels aggrieved, so that law enforcement becomes less effective. In addition, the criminal penalties are too light and incapable of being an antidote to copyright infringement, so the criminal penalties are also intensified in order to better protect copyright holders and at the same time allow for detention as stipulated in the Criminal Procedure Code.

2. Civil Law Sanctions for Intellectual Property Rights Violations in Indonesia

Legal disputes are disputes that give rise to legal consequences, either because of a violation of positive law rules or because of a conflict with the rights and obligations of a person regulated by positive law provisions. The distinctive feature of legal disputes is that their fulfillment (settlement) can be prosecuted before state legal institutions (courts/other law enforcement agencies).

Law Number 28 of 2014 concerning Copyright, states in Article 96 paragraph:

1. Authors, Copyright holders and/or Related Rights holders or their heirs who experience loss of economic rights are entitled to Compensation.
2. Compensation as referred to in paragraph (1) is given and stated at the same time in the court decision regarding the criminal case of Copyright and/or Related Rights.
3. Compensation payments to creators, copyright holders and/or related rights owners are paid no later than 6 (six) months after a court decision that has permanent legal force.

In accordance with the provisions that apply in Article 96 paragraphs (1) (2) and (3), it can be understood that the law guarantees and protects the rights of creators, copyright holders and/or related rights holders or their heirs who experience loss of rights. the economy is entitled to compensation. This is stated in the court decision which has permanent legal force. This shows that there is legal certainty regarding compensation that must be imposed on certain parties who have committed copyright infringement, as a legal sanction. (Tutik, 2006).

Law Number 28 of 2014 concerning Copyright, Article 95:

1. Copyright dispute settlement can be done through alternative dispute resolution, arbitration, or court.
2. The competent court as referred to in paragraph (1) is the Commercial Court.
3. Other courts other than the Commercial Court as referred to in paragraph (2) are not authorized to handle Copyright dispute resolution.
4. In addition to violations of Copyright and/or Related Rights in the form of Piracy, as long as the parties to the dispute are known to exist and/or are located in the territory of the Unitary State of the Republic of Indonesia, they must first seek settlement of disputes through mediation before filing criminal charges..

The legal provisions in force in Article 95 paragraphs (1) to (4) indicate that copyright dispute resolution can be carried out through litigation and non-litigation channels. Non litigation such as alternative dispute resolution and arbitration. Alternative dispute resolution can be through negotiation, conciliation, mediation, consultation, or expert judgment, and litigation, namely through the courts.

Broadly speaking, the form of dispute resolution is divided into two parts, namely (Firmansyah, 2011): Forms of litigation (judicial) dispute resolution, Forms of non-litigation dispute resolution (alternative dispute resolution). Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Article 1 number 1: 1. Arbitration is a method of settling a civil dispute outside of general court based on an arbitration agreement made in writing by the parties to the dispute. Article 1 number 10: Alternative Dispute Resolution is an institution for settling disputes or differences of opinion through procedures agreed upon by the parties, namely settlements outside the court by way of consultation, negotiation, mediation, conciliation, or expert judgment.

The provisions as stipulated in Article 28 paragraphs (1) to (6) clearly and firmly regulate the procedure for filing lawsuits against parties who have suffered losses as a result of copyright infringement. In accordance with these provisions, the parties involved in copyright disputes will be notified and summoned by the bailiff by order of the commercial court in accordance with the specified time to resolve cases of copyright infringement. In order for these regulations to continue and be accepted by all members of society, the existing legal rules must be appropriate and must not conflict with the sense of justice in society. Thus, the law aims to guarantee legal certainty in society and must be based on justice, namely the sense of community justice (Silandoe, 2011).

The procedure for filing lawsuits regarding copyright infringement and settling cases regarding copyright infringement has provided legal certainty for creators, copyright holders, or owners of related rights if they are harmed as a result of copyright infringement. This shows the existence of legal protection for parties who have rights to copyright.

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