

## JURIDICAL REVIEW OF CRIMINAL SANCTIONS AGAINST PERPETRATORS OF INTELLECTUAL PROPERTY RIGHTS VIOLATIONS

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### ABSTRACT

*Copyright is the exclusive right of the Creator or Copyright Holder to regulate the use of the results of casting specific ideas or information. Copyright applies to various types of works of art or copyrighted works. With the existence of Law Number 28 of 2014 concerning Copyright, it is hoped that it will facilitate proof in copyright disputes, especially in works of art, as well as the originality of ideas, content, and digital products.*

***Keywords: Juridica, Violation, Intellectual property rights***



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### INTRODUCTION

Copyright is an intangible property of individuals and arises because human intellectual property rights as copyrights can also be transferred by the creator or those entitled to the creation itself (Alghofiki, Iskandar, & Wardana, 2021). Copyright can be transferred to individuals or legal entities, one way of transferring copyright is known under the name of a copyright license or better known as a license agreement. The transfer of copyright must be written in the form of a Notary Deed to make the license (Jaelani, Fauzi, Aisah, & Zaqiyah, 2020).

The reason producers hijack other people's work is because from a cheap capital perspective and an economic point of view, they can get more profits, as well as the reason consumers buy pirated products because the price is very cheap and consumers say that buying pirated goods is only used for themselves/privately, on the one hand, manufacturers who commit piracy argue that the design is different from the original product design, even though the difference is only slight piracy is often carried out openly and resembles the original product, these two (2) sides later become pirated products. behavior in Indonesia which then emerged the perception that the Indonesian nation is a nation of plagiarism. The role of intellectual property

rights in the creative industry is very large because it will accelerate the acceleration of the creative industry if it is carried out properly (Amin, 2018).

Digital content is currently included in the realm/group of intellectual property rights (Intellectual Property Rights). It is a right that arises as a result of human intellectual abilities in various fields that produce a process or product that is beneficial to mankind. These works include works in the fields of science, art, literature, or inventions in the field of technology. Technology is one of the creative works as a result of human intellectual creativity, through creativity, work, and initiative. The copyrighted work creates property rights for the creator of the invention (Santoso, 2009).

In general, IPR (Intellectual Property Rights) is nothing but a chart of property rights, property rights can be divided into two groups, namely:

- a. Real Property, namely: rights to tangible objects (for example in the form of rights to land, buildings, vehicles)
- b. Intellectual Property, namely: rights to intangible objects, for example, intellectual property rights. In this case, someone must do certain creativity to have rights. For example, making books, songs, computer programs, making paintings, sculptures, and so on (Santoso, 2005).

The definition of Copyright can be found in Article 1 paragraph (1) of Law Number 28 of 2014 concerning Copyright. Mentions (Permana, Windari, & Mangku, 2018):

"Copyright is the exclusive right for the creator or recipient of the right to announce or reproduce his creation or give permission for it without reducing the restrictions according to the applicable laws and regulations."

Copyright is born because of the creation or work of humans. Furthermore, what is meant by a creation according to Article 1 paragraph (3) of Law Number 28 of 2014 concerning Copyright are (Akbar, Bachtiar, & Hasanah, 2014):

"The result of every work of the creator that shows its authenticity in the field of science, art, or literature".

Referring to the statement above, therefore, IPR is a right that arises based on the results of one's intellectual creativity, provided that it is stated in a tangible form (there is a physical dimension) (Amini, 2019). There is creativity, not just ideas, ideas, concepts, and certain facts that do not have a physical dimension. Thus, it is important to remember that IPR only protects the expression of certain ideas, concepts, or facts.

### **Problem**

The problem in the paper is how to apply criminal sanctions for perpetrators of violations of Intellectual Property Rights in Indonesia.

## **RESEARCH METHOD**

The method used in the writing for the applied paper is the descriptive analytical method by using data that clearly describes the problems directly in the field, then the analysis is carried out and then concluded to reach a problem solution. The method of collecting data is through observation and literature study to obtain problem-solving in the paper preparation (Jaelani et al., 2020).

The normative juridical approach is the juridical approach method used to examine the problem from a legal and systematic perspective and as a guide to legal rules, norms, or other applicable legal regulations regarding the implementation of criminal sanctions for perpetrators of Intellectual Property Rights violations in Indonesia (Ina Helianny, 2019).

## RESULT AND DISCUSSION

### Basic Copyright Legal Protection

The copyright law (UUHC) is regulated in Law No. 28 of 2014. In addition, there are several other regulations, in the field of copyright, such as the following (Kurnianingrum, 2016):

- a. RI Government Regulation No. 14 of 1986 Jo Government Regulation No. RI. 7 of 1989 concerning the Copyright Council;
- b. RI Government Regulation No. 1 of 1989 concerning the translation and/or reproduction of creations for education, science, research, and development.
- c. Presidential Decree No. 17 of 1988 concerning Approval Regarding the Reciprocal Protection of Copyrights for Sound Recording Works between the Republic of Indonesia and the European Community;
- d. Presidential Decree No. 25 of 1989 concerning Ratification of Approval Regarding Reciprocal Legal Protection of Copyrights between the Republic of Indonesia and the United States of America;
- e. Presidential Decree No. 38 of 1993 concerning Ratification of Agreements Regarding Reciprocal Legal Protection of Copyrights between the Republic of Indonesia and Australia;
- f. Presidential Decree No. 18 of 1997 concerning Ratification of the Berne Convention For The Protection Of Literary And Artistic Work;
- g. Presidential Decree No. 19 of 1997 concerning the Ratification of the WIPO Copyrights Treaty;
- h. Presidential Decree No. 74 of 2004 concerning Ratification of the WIPO Performances And Phonogram Treaty (WPPT);
- i. Regulation of the Minister of Justice of the Republic of Indonesia No. M.01.HC.03.01 of 1987 concerning Registration of Works;
- j. Decree of the Minister of Justice No.M.04.PW.07.03 of 1988 concerning Copyright Investigation;
- k. Circular Letter of the Minister of Justice of the Republic of Indonesia No.M.01.PW.07.03 of 1990 concerning the Authority to Investigate Copyright Crimes;
- l. Circular Letter of the Minister of Justice of the Republic of Indonesia No.M.02.HC.03.01 of 1991 concerning the Obligation to Attach TIN in Applications for Registration of Works and Registration of Transfers of Registered Copyrights.

### Application of Criminal Sanctions for Perpetrators of Intellectual Property Rights Violations in Indonesia

One of the justifications for criminalizing Intellectual Property Rights is that every Digital Work or Content is an intangible object that must be treated equally with tangible assets or objects. In the Law of Materials, which is included in the

realm of civil law, the grouping of classified object into tangible (material) and intangible (immaterial) objects (Badruzaman, 1997). This intellectual property right is very abstract compared to ownership rights. Thus, the violation of intellectual property belonging to another person is the same as the violation of the ownership of tangible objects, by treating the two acts equally as an act of theft. (Manta, 2010) The theft itself is included in the group of criminal offenses.

Violation is "overtrading" or means an act that violates something and is related to the law, means nothing but an act against the law (Prodjodikoro, 2003). Violation is politic-on recht and crime is crimineel-on recht. Politic-on-recht is an act that does not comply with the prohibitions or requirements determined by the state authorities (Poernomo, 2002).

Law No. 28 of 2014 regulates the provisions and/or sanctions for criminal acts of copyright infringement (Rahaditya, Yusuf, & Julianto, 2022). The following is a description of these Articles:

Article 112 : Any person who unlawfully commits the act as referred to in Article 7 paragraph (3) and/or article 52 for Commercial Use, shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of Rp.300,000,000.00 (three hundred million rupiahs).

Article 113 : (a) Any person who unlawfully violates the economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000. (One hundred million rupiahs). (a) Any person without rights and/or without permission of the Author or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use. Commercial shall be sentenced to a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000 (five hundred million rupiahs). (c) Any person without rights and/or without permission of the Author or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use. Commercial shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). (d) Any person who fulfills the elements as referred to in paragraph (3) which is committed in the form of piracy, shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiahs).

article 114 : Any person who manages a trading place in all its forms who knowingly and knowingly allows the sale and/or reproduction of goods resulting from infringement of Copyright and/or Related Rights in the trading place he manages as referred to in Article 10, shall be punished with a maximum fine of Rp. 100,000,000. ,00 (one hundred million rupiahs).

Article 115 : Any Person who without the consent of the person being photographed or his/her heirs performs Commercial Use, Reproduction, Announcement, Distribution, or Communication of the Portrait as referred to in Article 12 for advertising or advertising for Commercial Use, both in electronic and non-electronic media, shall be subject to criminal sanction. with a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs).

Article 116 : a) Any person who unlawfully violates the economic rights as referred to in Article 23 (21) letters e for Commercial Use shall be punished with imprisonment for a maximum of 1 (one) year nor a maximum fine of Rp. 100,000,000 (one hundred million rupiahs). b) Any person who unlawfully violates the economic rights as referred to in Article 23 paragraph (21) letters a, b, and/or f, for Commercial Use shall be punished with imprisonment for a maximum of 3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs). c) Any person who unlawfully violates the economic rights as referred to in Article 23 paragraph (2) letter c, and/or letter d for Commercial Use shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine a maximum of Rp. 1,000,000,000.00 (one billion rupiah). d) Everyone who fulfills the elements as referred to in paragraph (3) committed in the form of Piracy shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiahs).

Article 117 : a) Any person who intentionally and without rights violates the economic rights as referred to in Article 24 paragraph (2) letter c for Commercial Use shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100.000000 (one hundred million rupiahs). b) Any person who intentionally and without rights violates the economic rights as referred to in Article 24 paragraph (2) letter a, letter b, and/or letter d for Commercial Use, shall be sentenced to a maximum imprisonment of 4 (four) years. ) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). c) Any person who fulfills the elements as referred to in paragraph (21) committed in the form of Piracy shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah).

Article 118 : a) Any person who intentionally and without rights violates the economic rights as referred to in Article 25 paragraph (2) letter a, letter b, letter c, and/or letter d for Commercial Use, shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). b) Everyone who fulfills the elements as referred to in Article 25 paragraph (2) letter d committed with the intention of Piracy shall be subject to a criminal sanction imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 4,000,000.00 (four billion rupiah).

Article 119 : Any Collective Management Institution that does not have an operational permit from the Minister as referred to in Article 88 (3) and conducts Royalty withdrawal activities shall be subject to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Article 120 : The crime as referred to in this law is a complaint offense.

For the protection of the moral rights of digital content creators, namely by having copyright management information which includes methods or systems that identify the originality of the substance of the creation and its creator, as well as information codes and access codes. While electronic copyright information includes information about a work, which appears and is attached electronically in connection with the announcement of the work in the form of the name of the creator, his alias or pseudonym, the creator as the copyright holder, the period and conditions of use of the work, number, and information code.

## CONCLUSION

Recognition of the birth of Copyright rights is when an idea is poured or realized in a tangible form (tangible form). The acknowledgment of the birth of Copyright rights does not require a certain formality or proof, in contrast to the rights of other intellectual property rights, such as Patents, Trademarks, Industrial Designs, and Layout Designs of Integrated Circuits.

The basic concept of the birth of Copyright will provide legal protection for a copyrighted work that has a distinctive form and shows authenticity as a person's creation based on his personal abilities and creativity.

The personal nature contained in Copyright gives birth to the conception of moral rights for the creator or his heirs. Moral rights are considered personal rights owned by an author to prevent deviations from his copyrighted work and to get respect or appreciation for his work. Moral rights are a statement of the continuing relationship between an author and his or her work, even if the author dies or transfers the copyright to another person that the rightsholder. Even if the author's name is removed, the author or his/her heirs retain ownership. Right to sue rights holders. Create so that the name of the creator is still included in his creation.

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