



Legal Perspective of Law No. 28 of 2014: About the Moral Aspects on Digital Works

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Abstract

The current utilization of digital content platforms has a serious impact on Intellectual Property Rights. Platforms that display digital copyright works are indeed much in demand by netizens today because it is practical and efficient but not only the perceived benefits of digital content platforms but there is a moral responsibility that must be known by all parties both content lovers and content creators. In today's digital era, copyrighted works in the form of digital content are widely misused by various parties, the occurrence of violations of their main rights moral rights is less realized by various parties. It is the duty of all parties to create the protection of moral rights because rights are elements that must be protected in a digital copyright work. This research aims to find out the regulation of aspects of moral rights in Law No. 28 of 2014 on Copyright. This research uses normative juridical research methods using the legal sources of literature. The protection of moral rights is an important issue in the protection of intellectual property. National regulations are expected to protect the moral rights of copyright creators/owners, especially digital copyright works.

Keywords: *digital copyright, legal protection, moral rights*

INTRODUCTION

The rapid progress of the times encourages the rapid development of science and technology, including intellectual work/creation. Today's digital age is bringing social change to humanity. Not only urban communities but almost the entire wider community today relies on internet-based digital platforms. The Internet with various advantages and conveniences turns out not only to benefit business actors but also cause losses that have an impact on unlawful acts such as security and data privacy as well as legal protection of human rights owned by every netter.¹ Nowadays people enjoy digital work/creation. The concept of digitalization today has transformed work from conventional or physical into a digital form. With its digital form, a copyrighted work is considered easier to disseminate or distribute through the internet network.

¹ Evelyn Angelita P. Manurung, "Perlindungan Hukum Terhadap Hak Cipta Atas Karya Cipta Digital Di Indonesia", *Premise Law Journal*, Vol 1 No.2 (2013).

The influence of digital technology advancements today has a more dangerous impact compared to its convenience and benefits, especially among net citizens beginners or adults. The more accessible the principle of carrying a threat, the more accessible it becomes, the more it duplicates, duplicates or disseminates and the weaker the legal protection of the creator. The potential violation of the moral rights of the creator and/or copyright holder is greater when the copyright is accessed without listing the identity let alone using the copyrighted work is not in accordance with its designation.

Copyright gives very broad authority to the creator. Conceptually the position of the creator is in a very respectable place in society². Copyright gives very broad authority to the creator. Conceptually the position of the creator is in a very respectable place in society. The digital era and copyrighted works in the digital form cannot be avoided because now it has become a common thing (not an oddity) in the lives and activities of the wider community. Digital copyright works in general, have been published and even traded digitally. Nowadays digital copyright works are in high demand and already have their consumers/markets. Digital copyright works are becoming popular among the internet community because they have advantages over physical products, digital products are considered more efficient and more practical compared to physical products that require special storage space to store their products compared to digital copyright works that do not require a physical place to be stored, as well as how to get digital copyright works just by downloading is also a plus because of its fast and effective nature.

In addition to providing benefits, the high use of the internet has been a result of threats to the existence of copyrighted works and inventions found by intellectual property rights producers. The Internet has several technical characteristics that make intellectual property rights issues thrive.³ The problems faced by the Indonesian nation to protect the moral right to digital copyright work is the process of law enforcement and legal protection through its legal regulation of copyright work resulting from the process of media transfer/digitization and made directly in digital format accompanied by problems such as public awareness of moral rights in copyright and economic conditions of Indonesian people who indirectly support copyright infringement actions because they are unable to obtain copyrighted works legally.

METHOD

The problems that will be discussed in this study are related to the title of the study then this research is carried out using normative juridical research methods (normative legal research methods). Normative juridical research methods are literature law research conducted by examining literature materials or secondary data. This research is conducted to obtain materials in the form theories, concepts, legal principles and the rule of law related to the subject matter. Thus the object analyzed with a qualitative approach is a research method that refers to legal norms contained in the laws and regulations⁴.

² Otto Hasibuan, *Hak Cipta Di Indonesia*, (Bandung: Alumni, 2008).

³ Sutan Remy Syahdeini, *Kejahatan & Tindak Pidana Komputer* (Jakarta: Pustaka Utama Grafiti, 2009).

⁴ Soekanto S., & Mahmudji S., *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2003).

FINDINGS

MORAL RIGHTS AS A RIGHT TO PRIVACY

The history of copyright development is very rapid. New issues emerged against copyright such as the beginning of the emergence of the internet as a rustic digital era. The World Intellectual Property Organization (WIPO) held a conference in Geneva in December 1996, to update intellectual property norms in the face of the digital environment. This WIPO conference invited as many as 160 countries, the scope of which was discussed in the conference was the creation, adoption, transmission, and distribution of works through digital mediums.⁵

Moral principles become one of the characteristics of property rights inherent in copyright in various countries. Indonesia as one of the countries adherents of the Continental European legal system must certainly regulate this in an sich. Given the importance of moral principles as manifestations of the right of material, there is an international consensus governing this regarding the creation of the right, namely: Bern Convention, Geneva Convention, Paris Convention, TRIPS and so on. All of the above international conventions in principle affect the rule of law on copyright.⁶

Like copyright in general, the protection of digital media-based copyright works is obtained automatically (automatic protection) for all forms of work included in the copyright protection qualification, so that the owner and/or holder of copyright on the internet has exclusive rights, namely as follows:⁷

1. The copyright rights

Copyright grants the creator exclusive rights to duplicate and give permission to others to do the same. According to Copyright Act, reproduction or propagation is a very substantial increase in the number of things, both in whole and in parts, which is very substantial by using the same or unequal materials, including permanent or temporary transfer.

2. The right to make derivative works (the adaptation right)

Copyright gives the owner exclusive rights to create derivative works (derivative work) for the copyrighted work he has created. Derivative work is a new work that is realized because it is based on previous works that have existed. It can be a revision of the original work, a translation from one language to another, or it can be a work that is composed, altered or adopted into another form. The right of adaptation, which is the right to create derivative works, has now become quite an important issue for copyrighted works that exist in online communication environments such as the internet, because they become easy to change, modify, or relate to other works digitally.

3. The right to distribute copyrighted works to the public (the distribution right)

Copyright Act grants the copyright owner exclusive rights to distribute his or her copyrighted work. Virtually any work or information enjoyed or communicated from one computer to another will involve the distribution of digital payloads.

⁵ Budi Agus Riswandi, "Hukum Dan Teknologi: Model Kolaborasi Hukum Dan Teknologi Dalam Kerangka Perlindungan Hak Cipta Di Internet", *Jurnal Hukum IUS QUIA IUSTUM NO. 3* 23 (2016).

⁶ Bambang Pratama, "Prinsip Moral Sebagai Klaim Pada Hak Cipta Dan Hak Untuk Dilupakan (Right To Be Forgotten)", *Jurnal veritas et justitia* Vol 2 No.2 (2016), DOI: <https://doi.org/10.25123/vej.v2i2.2270>.

⁷ Yusran Isnaini, *Hak Cipta Dan Tantangannya Di Era Cyber Space*, (Jakarta: Ghalia Indonesia, 2009).

4. The right to show the copyrighted work to the public (the public performance right)

Owners of copyrighted works also have the exclusive right to display their work in public. This right relates to all kinds of works that can be performed or demonstrated, such as works of literature, music, drama, pantomime, film and so on. The nature of which must be done in public causes this right does not apply to shows that are private in nature.

5. The right to exhibit copyrighted works to the public (the public display right)

Copyright is concerned with works that can be seen and enjoyed by the public. In the copyright act, this is called an "announcement". This concept of exhibiting or showing in public includes all the actions of showing work, either directly or by using movies, slides, including certain tools or processes, such as the use of a computer. The right to show and the right to show have the same understanding about public activities. Virtually all activities showing copyrighted works over the internet can be said to be "showing in public."

While the moral right includes two great things, namely:⁸

1. The Right of Integrity is a right that concerns all forms of attitudes and treatment related to the integrity or dignity of the creator. In its exercise, the right is expressed in the form of prohibitions on altering, reducing, or undermining creation that could destroy the integrity of its creator. The principle is that creation must remain intact in accordance with the original creation.
2. Moral Rights are The Right of Attribution (Attribution/right of paternity). In this case, moral rights require the identity of the creator to be placed on creation, both by self-name and pseudonym. In certain matters and on the basis of the consideration of the creator, the creator can negate his identity and allow his creation to be anonymous. This particular thing, for example, is motivated by the complexity of the collective creation process and consideration to simply facilitate the writing of the identity of the songwriter by only listing one name and eliminating other names.

When digital technology emerged many conventional/physical copyright works have been transformed into digital media. Concerning this digital technology, today many products / copyrighted works can be easily accessed by all levels of society with the help of digital devices supported by the internet network. In this digital era, the producers of copyrighted works are increasingly the choice to determine the right technological tools to be able to help in working and creating more effectively and efficiently. Copyright creators and/or holders also have technological options to get closer to the wider community in conveying their copyrighted work.

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The development of science and technology in the global world has an impact on various aspects of life. The invention that made the most impact of the development of science and technology was the emergence of internet technology that allowed humans to live more practically. The practicality offered to humans even more threatens the existence of protection against intellectual property.⁹

⁸ Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*, (Jakarta: RajaGrafindo Persada, 2011).

⁹ Sartika Nanda Lestari, "Perlindungan Hak Moral Pencipta Di Era Digital Di Indonesia", *Diponegoro Law Review*, Vol 4 No 3 (2019).

Copyright arrangements in Indonesia are contained in Law No. 28 of 2014 on Copyright. The definition of Copyright based on Law No. 28 of 2014 article 1 is: "the exclusive right of the creator that arises automatically based on declarative principles after a creation is realized in real form without reducing restrictions in accordance with the provisions of the laws and regulations". Article 4 is an exclusive right consisting of moral rights and economic rights. Based on article 5 paragraph 1 of Law No. 28 of 2014 Moral Rights are inherent rights of creators or copyright holders. Moral rights cannot be transferred to anyone as long as the creator is alive. Unless transferred if there is a will and refers to the law after the creator dies.

The moral principle of a copyright contained in Law No. 28 of 2014 on Copyright is stated in Article 5 stated:

1. Moral rights are the eternally inherent right of the Creator to:
 - a. keep or do not include his name on the copy in connection with the public use of his Creation;
 - b. using his alias or pseudonym;
 - c. change his Creation in accordance with the propriety in society;
 - d. change the title and child title of Creation; and
 - e. defend its rights in the event of distortion of Creation, mutilation of Creation, modification of Creation, or anything detrimental to its self-respect or reputation.
2. Moral rights referred to in paragraph (1) cannot be transferred as long as the Creator is alive, but the exercise of such rights may be transferred by will or other cause in accordance with the provisions of the laws and regulations after the Creator dies.
3. In the event of a transfer of the exercise of moral rights as referred to in paragraph (2), the recipient may waive or deny the exercise of his or her right provided that the release or rejection of the exercise of the right is stated in writing.

The moral right of the creator applies during the duration of the Copyright to the creation in question, namely in the case of changing his creation in accordance with the propriety in society; b. change the title and child title of the creation. If creation is owned by 2 (two) or more persons, copyright protection applies for the life of its deceased creator last and lasts for 70 (seventy) years thereafter. Copyright protection of copyrights owned or held by legal entities is valid for 50 (fifty) years from the first announcement. Article 59 of Law No. 28 of 2014 states that: a. Copyright Protection of Creation: 1. Photographic works; 2. Portrait; 3. Cinematographic works; 4. Video games; 5. Computer program; 6. The face of the written work; Translation, interpretation, rampage, database, adaptation, arrangement, modification and other works of the results of transformation; Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions; Compilation of Creation or data, either in a format that can be read with computer programs or other media; Compilation of traditional cultural expressions during the compilation is an original work; It has been valid for 50 (fifty) years since the first announcement was made.

Utilization of a work or creation is not considered to violate copyright if the source is clearly mentioned, and it is for non-commercial activities such as social activities, activities in the scope of education and science, as long as it does not harm the reasonable interests of its creator. A reasonable interest is one based on balance

in enjoying the economic benefits of a creation, such as the taking of creation for performances or staging that is not charged.¹⁰

Digital copyright works are so easy to duplicate even the results of duplication are also almost indistinguishable from the original (the first work). Even people can modify the duplication and spread it around the world digitally at no cost. The ease of being a reason for many people to infringe the copyright of others on a very large scale and not consider the moral aspects of the violation.

Moral rights are actually in the creator or copyright holder. It is meant that moral rights are inherent even if the creator has died. Moral rights have an exclusive perception of intellectual property rights in the creator. Moral rights are also seen as a differentiating value compared to other rights in other intellectual property fields, be it patents, trade secrets, brands and others. Simply put, the implementation of moral rights is to include the name of the creator on the copyrighted work/creation attached without taking economic or material advantage.

CONCLUSION

Law No.28 of 2014 on Copyright normatively regulates the copyright of a person's digital copyright. But as the development of digital technology is increasingly rapid Law No.28 of 2014 on Copyright faces the challenge of being able to accommodate the moral right to one's digital copyright work. The protection of moral rights is an important issue in the protection of intellectual property. National regulations/regulations are expected to protect the moral rights of copyright creators/owners, especially digital copyright works. . Weak law enforcement efforts in the field of digital technology-based copyright is the main task of law enforcement can strictly minimize the level of violations and even expected to prevent violations and provide legal protection for digital copyright works in Indonesia. Indonesia as a country with a large population of digital device users should pay attention to the need for moral rights in one's digital copyright work. It is important to protect the creator/owner of copyright enjoying the economic benefits of his work.

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¹⁰ Haris Munandar & Sally Sitanggang. *Mengenal HAKI (Hak Cipta, Paten, Merek dan Seluk-beluknya)*, (Jakarta: Esensi Erlangga, 2008).

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