

## REALIZE HALAL COPYRIGHT PRINCIPLES THROUGH PROTECTION OF COPYRIGHT HOLDERS' ECONOMIC RIGHTS

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### *Abstract*

*IPR has an important meaning, this is because with IPR a copyright can be valued economically and non-economically, however, economic pressure has made various parties irresponsible to make a living through piracy and other copyright infringement. So it needs to be discussed more deeply related to the Disposition of Justice in the Protection of Economic Rights in the Perspective of Law no. 28 of 2014 concerning Copyrights Based on the Value of Justice. The method used in this article is sociological juridical.*

**Keywords:** *Halal, Economic rights, Protection, Copyright*

### **A. Introduction**

Intellectual Property Rights (IPR) or *Intellectual Property Rights* (IPR) have become an important part in the development of the national and international economy. Various types of information on policies, regulations, the latest developments in the practice of implementing and protecting Intellectual Property Rights, have become materials that are needed by various groups of people, such as academics, professionals, industry, and the government in national and international scope.

The existence of Intellectual Property Rights (IPR) in relations between humans and between countries is something that cannot be denied. Intellectual Property Rights (IPR) always follow the dynamics of the development of society itself. Likewise, the Indonesian people and nation inevitably come into contact with and are directly involved with IPR issues.<sup>1</sup>

*The term* or phrase copyright comes from foreign terminology, namely *copyrights* in English or *auteursrecht* in Dutch. Before this description reaches an understanding according to Indonesian legal terminology, this section first introduces the background of the issuance of Law no. 28 of 2014 in lieu of Copyright Law no. 19 of 2002.

At first, Indonesia wanted to make its own Copyright Law, which referred to *the original paradigmatic values of Indonesian culture* crystallized in the Pancasila ideology. For this reason, the Indonesian people try in their legal political choices to formulate the Copyright Law applicable in Indonesia in accordance with the values in question. The Copyright Act which was first born in Indonesia to replace *the 1912 Auteurswet Staatblad* Number 600 of the Dutch Colonial heritage is the Copyright Law no. 6 of 1982.<sup>2</sup> The philosophical and political reasons for the birth of this law can be referred to in the preamble to the law as follows:

This law was issued in the context of realizing the mandate of the GBHN (1978), especially developments in the legal field which are intended to encourage and protect creators and their creations.

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1 Muhammad Danuri, *Increasing Professionalism of Information Technology Copyright Works with Intellectual Property Rights*, (INFOKAM Number II/Th. XI/Sept/15), page. 84.

2 OK Saidin, *Legal Aspects of Intellectual Property Rights*, (Jakarta: RajaGrafindo Persada, 2015), page. 194

Thus, it is hoped that the dissemination of cultural results in the fields of scientific, artistic and literary works can be protected legally, which in turn can accelerate the process of growing the intelligence of the nation's life.

Even though the birth of Law no. 6 of 1982 can be ascertained as an attempt to end the validity period of *Auteurswet* 1912 Stb, No. 600, however, the hope of realizing the Copyright Law in accordance with Indonesian values is still far from expectations. Because in its journey, foreign influence is so strong and so thick in an effort to make the countries of the world submit to the legal system offered by developed countries through various international agreements. The international agreement is used as the basis for Indonesia's participation in the agreement to establish a world trade organization ( *Agreement Establishing the World Trade Organization* ) which includes the TRIPs agreement. This last-mentioned international legal instrument also requires Indonesia to participate in ratifying several of its accompanying conventions, including: the Berne Convention and the WIPO *Copyrights Treaty*, *the Rome Convention* and others. On this basis, Indonesia is also obliged to adapt its national copyright law to the TRIPs *Agreement* and its accompanying conventions.<sup>3</sup>

According to *the World Intellectual Property Organization* (WIPO), IPR consists of copyright and related rights, as well as industrial property rights. Administratively, international IPR protection is linked to the WIPO categorization of IPR:<sup>4</sup>

1. Copyright and related rights ( *Copyright and related rights* ). Copyright protects copyrighted works in the fields of science, literature, and the arts such as novels, poetry, plays, films, musical works, paintings, drawings, photographic works, sizes, and architectural works. Meanwhile, related rights consist of the rights of performing artists to their performances, sound recording producers to their work, and broadcasters to their radio and television programs.
2. rights ( *Industrial property* ). Consists of *trademarks* (rights to trademarks, including service marks), *geographical indicators* (geographical indications), *industrial designs* (industrial design rights ), patents (patents), *layout-designs ( topographies) of integrated circuits* (layout design rights ). integrated circuits), *undisclosed informations, including trade secrets* .

The objectives of intellectual property protection through IPR generally include:<sup>5</sup>

1. provide legal clarity regarding the relationship between assets and inventors, creators, designers, owners, users, intermediaries who use them, the working areas of their use and those who receive the consequences of using IPR for a certain period of time;
2. give an award for a success of an effort or effort to create an intellectual work;
3. promote the publication of inventions or creations in the form of IPR documents that are open to the public;
4. stimulate the creation of efforts to transfer information through intellectual property and transfer of technology through patents;
5. provide protection against the possibility of being imitated due to intellectual work because there is

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3 *Ibid*, page. 195.

4 Muhammad Danuri, *Ope. cit.*, page. 85.

5 *loc.cit.*

a guarantee from the state that the implementation of intellectual work is only given to those who are entitled.

Along with the swift currents of globalization, Indonesia realizes that the influence of capitalism and the liberal spirit is so strong that it characterizes world economic policies that permeate all aspects of economic life in various countries in the world, but there are many factors that have caused this country to be unable to fight against the wishes of other countries. forward in voicing their desire to protect their copyrighted works. This is evident from the last 3 (three) changes to the Indonesian Copyright Law, which shows that the dominance of capitalist values is entangled in the norms of the Indonesian Copyright Law.<sup>6</sup>

The development of information and communication technology has become one of the important variables that have a major influence on changes to the Copyright Law. Information and communication technology on the one hand has a strategic role in the development of Copyright, but on the other hand it is also a medium for violating the law in the field of copyright. Proportional arrangements are needed, so that positive functions can be optimized and their negative impacts can be minimized. 19 of 2002 concerning Copyright with Law no. 28 of 2014.

The government calls it a genuine effort by the state to protect the economic rights and moral rights of the creators and owners of related rights as an important element in the development of national creativity. The reason is that the denial of economic rights and moral rights can erode the motivation of creators and related rights owners to create. This loss of motivation will have a broad impact on the collapse of the macro creativity of the Indonesian nation. Reflecting on developed countries, it appears that adequate protection of copyright has succeeded in bringing significant creative economic growth and making a real contribution to the economy and people's welfare.

The important parts that are changed in this new law are:<sup>7</sup>

1. Copyright protection is carried out for a longer period in line with the application of rules in various countries so that the period of copyright protection in certain fields is applied for the life of the creator plus 70 years after the author's death.
2. Better protection of the economic rights of creators and/or owners of related rights, including limiting the transfer of economic rights in *sold flats* .
3. Effective dispute resolution through mediation, arbitration or court processes as well as the application of complaint offenses for criminal prosecution.
4. The manager of the trading place is responsible for the place of sale and/or infringement of copyright and/or related rights in the center where the shopping center is managed.
5. Copyright as an intangible movable object can be used as an object of fiduciary guarantee.
6. The Minister is given the authority to delete a work that has been registered if the work violates religious norms, moral norms, public order, state defense and security as well as the provisions of laws and regulations.
7. Authors, copyright holders, related rights owners become members of a collective management agency in order to collect rewards or royalties.
8. The creator and/or the owner of the related rights will receive royalties for the creation or product of

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6 OK. Saidin., *Op. cit.*, page. 196.

7 OK. Saidin., *Op. cit.*, page. 197.

the related rights made in an official relationship and used commercially.

9. Collective management institutions that function to collect and manage the economic rights of creators and related rights owners are required to apply for an operational permit to the Minister.
10. Use of copyright and related rights in multimedia facilities to respond to developments in information and communication technology.

Along with the changes regulated in Law no. 28 of 2014 provides legal protection for creators who have registered their creations. The problem that exists is the lack of awareness from the public about the appreciation of their creations, resulting in copyright infringement. The copyrighted works are not registered for various reasons, including the registration process which is often considered expensive and complicated. This has an impact on the weak legal protection of the work of copyright and the economic value of the product .

Whereas the issue of legal protection in the field of trade or business is absolutely necessary, especially at this time where there is a lot of counterfeiting, piracy, unfair competition between one entrepreneur and another. Apart from that, it is undeniable that these unscrupulous acts have made consumers feel disadvantaged. In the business world anything can happen, we are no longer social beings anymore but rather the assumption that one human being can eat another human ( *Homo Homoni Lupus* ). Problems like this must be addressed by all elements of the nation, both from the legal structure and the parties involved in the world of trade.<sup>8</sup>

In addition, the low level of public understanding of the importance of registering works, the presence of several individuals or companies having the attitude and desire to gain trade profits in an easy way and the lack of a common understanding of attitudes and actions of law enforcement officers in dealing with copyright infringement are factors factors that cause violations of Intellectual Property Rights.<sup>9</sup>

As an illustration Reog Ponorogo, has been claimed by the State of Malaysia, that they were the first to discover the tradition or dance. In fact, from our ancestors until now that Reog Ponorogo is a native art of the Ponorogo area, another example is the song of compassion. This shows that not only in the fields of trade and business, but the legal protection of Indonesian cultural/creative products is also still low.

The lack of awareness of the urgency of IPR protection is also an indicator of the public's lack of understanding to appreciate the work of others. This needs intensive attention from the government so that the implementation of legislation in the field of IPR law, especially copyright law, can be enforced.

The area that is the center of craftsmanship in Bali is the Gianyar area which has many artists who have the imagination to think in producing brilliant works of art and their artistic spirit cannot be separated from the customs of the Balinese area, so that in their daily life they produce works full of creativity and develop them. follow progress.

In addition, such as works in the form of painting, traditional sculpture, carving and silver. All of these works of art have not received legal protection of Intellectual Property Rights due to the ignorance and indifference of the craftsmen to this protection. The lack of public understanding of a copyright is because the culture of the Gianyar Regency community is traditional and considers a work of art to be enjoyed by others and is more inclined to accept the exploitation of its work, so that an error is considered

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8 Sanusi Bintang, *Copyright Law*, (Bandung: Citra Aditya Bakti, 1998), page. 11.

9 Agus Sarjono, *Traditional Knowledge: Studies on the Protection of Intellectual Property Rights on Drugs, Dissertation* , (Jakarta: University of Indonesia, Postgraduate Law Faculty, 2004), page. 23.

as a common thing.<sup>10</sup>

This results in the idea that if they work and their work is useful for many people, they will feel proud and not really care if it turns out that other people imitate them, even feel that they have benefited because their work has been disseminated and known by many people. This situation is evident in the appreciation of creativity and works of art in the traditional society of Gianyar Regency. The original artwork is not affixed with the name or other mark to identify the creator.<sup>11</sup> This phenomenon has an impact on the many practices of piracy of copyrighted works in the community, including piracy which results in an economic right in the field of performance which is widely circulated in the form of recording performances as regulated in Article 23 of Law Number 28 of 2014 illegally and against the law.

Article 23 of Law Number 28 of 2014 states that performers have economic rights. The economic rights of performing performers include the right to carry out themselves, to give permission or to prohibit other parties from performing:

- a. Broadcasting or Communication of Performers' performances;
- b. The fixation of his unfixed performances;
- c. Reproduction of the Fixation of the show in any way or form;
- d. Distribution of Fixation of performances or copies thereof;
- e. rental of the Fixation of performances or copies thereof to the public; and
- f. provision of publicly accessible Fixation of performances.

Seeing the above facts, the role of law enforcement officers in this case the local government is very necessary. Local governments are expected to pay attention to regional potentials that are original and become the characteristics of an area.<sup>12</sup>

The issue to be discussed in this article is related to the legal protection of copyright which is currently ineffective, resulting in injustice to the actual copyright owner.

## B. Research Methods

The method used in this paper is sociological juridical where the research is also seen from the aspect of implementing the law in society.

## C. Result and Discussion

### 1. Implementation of Copyright Protection

#### a. Understanding of Copyright

Copyright is an intellectual property in the fields of science, art, and literature that has a strategic role in supporting the development of the nation and advancing the general welfare as mandated by the 1945 Constitution of the Republic of Indonesia. According to Law no. 28 of 2014 concerning Copyright, copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.

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10 Onky Nata Alamsyah Aziz, *Legal Awareness of Copyright Registration of Traditional Carved Artworks in Bali (Study in Batubulan Village, Sukawati District, Gianyar Regency, Bali)*, (Malang: University of Muhammadiyah Malang, 2013), page. 4.

11 Susilo SP, *Intellectual Property Rights Law, Legal Issues*, FH-Diponegoro University, Semarang, 1998, page. 12

12 Onky Nata Alamsyah Aziz, *Op. cit.*, hlm. 5.

Copyright is granted to every copyrighted work in the fields of science, art, and literature that is produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form. The subjects of copyright are:

- 1) Creator, is a person or persons who individually or jointly produce a creation that is unique and personal;
- 2) Copyright Holder is the Creator as the Copyright owner, the party who legally receives the right from the Author, or another party who further receives the right from the party who legally receives the right.

While the object of copyright is a creation that is the result of a copyrighted work in the fields of science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in a tangible form.

## **b. Copyright Protection**

Protected works include works in the fields of science, art, and literature, consisting of:

- 1) books, pamphlets, presentations of published works, and all other written works;
- 2) lectures, lectures, speeches, and other similar creations;
- 3) teaching aids made for the benefit of education and science;
- 4) songs and/or music with or without subtitles;
- 5) drama, musical drama, dance, choreography, wayang, and mime;
- 6) works of art in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, or collage;
- 7) applied art;
- 8) architectural works;
- 9) map;
- 10) batik art or other motif art;
- 11) photographic works;
- 12) Portrait;
- 13) cinematographic works;
- 14) translation, interpretation, adaptation, anthology, database, adaptation, arrangement, modification and other works 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 with a Computer Program or other media;
- 17) a compilation of traditional cultural expressions as long as the compilation is an original work;
- 18) video games; and
- 19) Computer program.

Works are protected as separate works without prejudice to the Copyright of the original Works. Protection of Works that have not been or have not been Announced but have been real-

ized in a tangible form that allows Reproduction of the Works.

## c. **The Relevance of the Value of Justice in Copyright Protection**

Copyright is an exclusive right consisting of moral rights and economic rights. Moral rights are rights that are eternally attached to the Creator to:

- 1) continue to include or not include his/her name on the copy in connection with the public use of the Work;
- 2) use his alias or pseudonym;
- 3) change the Creation in accordance with the decency in society;
- 4) change the title and sub-title of the Works; and
- 5) defend their rights in the event of distortion of Works, mutilation of Works, modification of Works, or things that are detrimental to their self-respect or reputation.

Moral rights cannot be transferred as long as the Creator is still alive, but the exercise of these rights can be transferred by will or other reasons in accordance with the provisions of the legislation after the Creator dies. In the event of a transfer of the exercise of moral rights, the recipient may waive or refuse the exercise of his rights on condition that the waiver or refusal of the exercise of the right is stated in writing. In order to protect moral rights, the Author may have Copyright management information; and/or Copyright electronic information.

Economic rights are the exclusive rights of the Author or Copyright Holder to obtain economic benefits from the Works. The Creator or Copyright Holder has the economic right to:

- 1) publication of Works;
- 2) Reproduction of Works in all its forms;
- 3) Translation of Works;
- 4) Adaptation, arrangement, or transformation of Works;
- 5) Distribution of Works or copies thereof;
- 6) Creation Show;
- 7) Announcement of Works;
- 8) Creative Communications; and
- 9) rental of Works.

Every person exercising economic rights must obtain permission from the Author or Copyright Holder. However, any person without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of the Works. The manager of a trading place is prohibited from allowing the sale and/or reproduction of goods resulting from infringement of Copyright and/or Related Rights in the trading place they manage. The economic right to distribute Works or copies thereof does not apply to Works or copies thereof that have been sold or whose ownership of the Works has been transferred to anyone. The economic right to lease a Work or a copy thereof does not apply to a Computer Program in the event that the Computer Program is not an essential object of the lease.

Copyright is an intangible movable object. Copyright can be transferred or transferred, either in whole or in part because:

- 1) inheritance;
- 2) grant;
- 3) waqf;
- 4) will;
- 5) written agreement; or
- 6) other reasons that are justified in accordance with the provisions of the legislation.

Economic rights to a work remain with the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work. Economic rights that are transferred by the Author or Copyright Holder in whole or in part cannot be transferred a second time by the same Author or Copyright Holder.

The creation of books, and/or all other written works, songs and/or music with or without text which is transferred in a cut-off agreement and/or an indefinite transfer, the Copyright reverts back to the Author when the agreement reaches a period of 25 ( twenty five years. Copyrights owned by Authors that have not been, have been, or have not been announced, distributed, or communicated after the Author dies, become the property of the heirs or the property of the beneficiary.

Because not many parties understand the importance of registering their copyright in order to get legal protection, most of the copyrighted works experience many legal problems, however for every registered copyrighted work also becomes the target of copyright infringement, this also shows a lack of role law enforcement in eradicating copyright infringement. It was noted that throughout early 2020 there had been seven complaints of copyright infringement to the Ministry of Law and Human Rights.<sup>13</sup> Meanwhile, piracy of vcd of music and film copyrights is still the highest.<sup>14</sup> This clearly contradicts the Second and Fifth Precepts of Pancasila as well as Article 28D of the 1945 Constitution of the Republic of Indonesia, and is definitely contrary to Law Number 28 of 2014 concerning Copyright.

#### **d. Right Create In perspective Halal According to Islam**

Copyright in Sharia Review Copyright in contemporary Islamic treasures is known as *Haq Al-Ibtikar* (راكتبإلا). This word consists of two series of words, namely lafadz “haq” and “al-ibtikar”. Among the meanings of “haq” is the specificity possessed by a person or group of people over something. Within the scope of haq alibtikar (copyright), the word “haq” is the authority or ownership of a newly created copyrighted work (alibtikar). The word *را* (alibtikar) etymologically comes from Arabic in the form of isim mashdar. The past tense verb (fi’il madhi) of this word is *رتبا* (alibtikara) which means to create. If it is said *رتبا اءشلا* (alibtikara alsyai’a) means “He has created something”.<sup>15</sup>

All these words have meanings that are close to each other. If you say *رتكها* it means “Come quickly (hurry)”, or it also means *ءاب لءم* “Everyone who hastens to something”. hastened He *ءل* to him at the appointed time”. In Lisan Al-’Arab mentioned the word Bakara,

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13 CNN, *Copyright Infringement is on the rise*, Downloaded via m.cnn.com on June 12, 2020.

14 *Loc, cit.*

15 Al-Fairuz Abadi, *Al-Qamus Al-Muhith Juz I*, page. 451.



namely (تركيبا) al-bukrah) means (تودغلا) al-ghudwah) which means early in the morning. Imam Sibawaih a linguist scholar stated “In Arabic someone who says كتيأت means “I will come to you soon (in the morning)”<sup>16</sup>

Majma` Al-Fiqh Al-Islamy Council stated that in general, the right to a scientific work, the right to a trademark and a trade logo is a property whose validity is protected by Islamic law. And especially nowadays it is `urf which is recognized as a type of wealth in which the owner is entitled to all of it. Can be traded and is a commodity.<sup>17</sup>

In the fatwa of the Indonesian Ulema Council, it is stated that copyright is Exclusive rights for creators or recipients of rights to publish or reproduce their creations or give permission for it without reducing the restrictions according to the applicable laws and regulations. The definition of copyright mentioned in this fatwa refers to the existing copyright laws in Indonesia.<sup>18</sup>

A copyright contains economic rights (haq aliqtishadi) and moral rights (haq al-adabi). Regarding economic rights, every creator of a copyrighted work has the right to obtain material from his or her copyrighted work . Abdullah Al-Mushlih and Salah Al-Shawi who stated: Copyright is a number of privileges owned by an author/author that can be valued with money, sometimes this right is also called abstract right, artistic/literary ownership rights or intellectual rights, rights This also means the commercial price of his writings or essays, the price is limited by the quality and commercial benefits that can be realized by publishing the results of these writings and commercializing them.<sup>19</sup>

Violation to right create that can harm party holder right create basically \_ hurt halal principle because far from religious teachings about appreciation to results creation creator in culture humans who can create civilization new .

## e. Conclusion

Copyright law policies have not been able to effectively provide copyright protection at this time, this is because not many parties understand the importance of copyright registration and also the lack of government and law enforcement roles to provide information about this matter, including lack of enforcement and eradication. Copyright infringement.

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16 Muhammad Syamsu Al-Haq Al-'Adzim Abadi, 'Aun Al-Ma'bud Syarah Sunan Abu Dawud Juz VII, Beirut: Dar Al-Kutub Ilmiyah, 1415 H, page. 170 .

17 Fathi Al-Durainy, Al-Fiqh Al-Islamy Al-Muqaran Ma'a Al-Madzahib, page. 223.

18 Qoror Majma` Al-Fiqh Al-Islami no. 5 at the fifth congress 10-15 December 1988 in Kuwait See also the MUI fatwa on the protection of intellectual property rights.

19 Sa'duddin bin Muhammad Al-Kibi, Muamalah Al-M'ahirah Fi Dhau' Al-Islam., page. 316.

## REFERENCE

- Agus Sarjono, 2004, *Traditional Knowledge: Studies on the Protection of Intellectual Property Rights on Drugs, Dissertation*, University of Indonesia, Postgraduate Law Faculty, Jakarta
- Al-Fairuz Abadi, *Al-Qamus Al-Muhith Juz I*,
- CNN, *Copyright Infringement is on the rise*, Downloaded via m.cnn.com on June 12, 2020
- CNN, *Copyright Infringement is on the rise*, Downloaded via m.cnn.com on June 12, 2020.
- Fathi Al-Durainy, *Al-Fiqh Al-Islamy Al-Muqaran Ma'a Al-Madzahib*
- Muhammad Danuri, *Increasing Professionalism of Information Technology Copyright Works with Intellectual Property Rights*, INFOKAM Number II/Th. XI/Sept/15
- Muhammad Syamsu Al-Haq Al-'Adzim Abadi, 'Aun Al-Ma'bud Syarah Sunan Abu Dawud Juz VII, Beirut: Dar Al-Kutub Ilmiah, 1415 H,
- OK. Saidin, 2015, *Legal Aspects of Intellectual Property Rights*, RajaGrafindo Persada, Jakarta
- Onky Nata Alamsyah Aziz, 2013, *Legal Awareness of Copyright Registration of Traditional Carved Artworks in Bali (Study in Batubulan Village, Sukawati District, Gianyar Regency, Bali)*, University of Muhammadiyah Malang, Malang
- Qoror Majma' Al-Fiqh Al-Islami no. 5 at the fifth congress 10-15 December 1988 in Kuwait See also the MUI fatwa on the protection of intellectual property rights.
- Sa'duddin bin Muhammad Al-Kibi, *Muamalah Al-M'ahirah Fi Dhau' Al-Islam*
- Sanusi Bintang, 1998, *Copyright Law*, Citra Aditya Bakti, Bandung
- Susilo SP, 1998, *Intellectual Property Rights Law, Legal Issues*, FH-Diponegoro University, Semarang