

PROGRESIVITY OF DIGITAL COPYRIGHT LEGAL PROTECTION

Apriady Miradian¹ & Aulia Muthiah²

¹School of Law,

Sultan Agung Islamic University, Indonesia

²School of Law,

Universitas Achmad Yani Banjarmasin, Indonesia

Email : ¹ r4di230034345@gmail.com & ² auliamuthiah@gmail.com

Abstract

Digital products are the result of current scientific developments. The development of science assisted by internet media is able to produce works of high economic value. Digital works have an advantage in terms of their distribution and products that are more practical. The advantages of this digital work cause the circulation of the product to sometimes get out of control, this causes a loss for the creator of the digital product. The economic and moral rights inherent in the creator require comprehensive legal protection.

Legal problems occur when the distribution of products cannot be controlled, causing product creators to suffer losses, because they do not get proper royalties from the products they have created. Juridically, a product creator is entitled to economic and moral rights from the product he creates.

The pace of development of science and technology is related to digital copyrighted works where legal protection for product creators is focused only on inflexible statutory provisions. So that progressive legal theory offers analytical jurisprudence which is based on the premise of rules and logic. For Positive (dogmatic) Legal Studies, the truth lies in the body of regulations. This is what Progressive Law criticizes, because seeing a law that is only in the form of articles clearly cannot describe the truth of a very complex law. So that digital copyright protection cannot only focus on the Copyright Law, but also uses the thoughts of legal experts and judges.

Keywords: *Digital product, Creator, Progressive Law,*

Introduction

Science and technology continue to develop rapidly, making the pattern of our daily lives slightly changing. The development of science and technology is assisted by the internet network. So that the emergence of digital products. The internet network changes the work that was originally in conventional form into digital form.

Digital products in terms of distribution are easier because they are not limited by time and place. In essence, digital products circulating are the result of someone's creation which of course has economic value. So that digital products are traded through digital services.

Digital products are currently becoming very popular among the public, because they have advantages over physical products, digital products are considered more efficient and more practical than physical products that require a special storage space to store their products compared to digital products that do not require a physical place to store their products. stored, the method of obtaining digital products by downloading is also an added value because it is fast and easy to obtain.

Some examples of digital products include: Ebooks in PDF or kindle format, music in MP3 or MP4 format, videos in MP4 or FLV format, Software, images in JPEG or PNG format, Online Tickets,

Android applications or Iphone applications, Fonts, and etc.¹ The main characteristic that supports the reproduction and distribution of digital objects is their ease of reproduction and distribution (especially with the rapid use of internet technology). This characteristic causes circulation to exceed the limit.

This uncontrolled distribution causes the copyright owner of digital products to feel disadvantaged because he cannot fully enjoy the economic rights and moral rights of these digital products. Both of these rights are attached to the copyright owner, where the law must provide a special form of protection to those who have taken the time, energy and thought to produce a copyrighted work. Regarding the moral rights and economic rights of a copyrighted work, it is specifically regulated in Law Number 28 of 2014 concerning Copyright, hereinafter referred to as the Copyright Law.

Digital works which are the work of the nation's children are part of the creative economy where the regulation is Law Number 24 of 2019 concerning the Creative Economy, hereinafter referred to as the Creative Economy Law. This law mandates to provide protection to creative economy business actors who have succeeded in creating a creative work of art. This protection is needed so that creative economy producers can continue to innovate in order to produce their newest works. Likewise, those who produce digital copyrighted works must also get protection related to the rights attached to themselves as creators of the work.

The pace of economic development is earlier than the rate of legal reform. However, the ideals of the law must remain balanced because the law must be able to become a tool of social engineering that will guide social changes and the legal ideals of society. In terms of providing legal protection to society, human ability to reason and understand and human conscience to make legal interpretations that prioritize the moral values of community justice. This legal theory is called progressive legal theory.

The development of the creative economy is in line with the pace of rapid development of information and communication technology, one of which is the result of digital copyrighted works. The ease of obtaining digital works causes many violations related to economic and moral rights. Not infrequently losses are suffered by the creator of the work because the results of his work are obtained without giving him proper royalties. Based on data obtained by the Ministry of Industry through input from the Indonesian Anti Counterfeiting Society (MIAP), it is estimated that the loss to the circulation of counterfeit goods and products is Rp. 65 trillion. Losses consisted of food and beverage products of Rp 13.39 trillion, clothing and leather goods products of Rp 41.58 trillion, medicine and cosmetic products of Rp 6.5 trillion and software and ink products of Rp 3.6 trillion.²

To overcome this, it is necessary to have a proportional arrangement, so that the function of positive law can be optimized. Protection of copyright holders can be optimized by considering the progressive legal theory initiated by Satjipto Rahardjo. Progressive law enforcement is carrying out the law not just black-and-white words from regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law or law in a broad sense.

Method /

In this case, the author uses normative legal research methods, which are legal research conducted by researching and using legal materials, namely primary legal materials, secondary legal materials, tertiary legal materials obtained from library research. This research also uses a statutory approach and a conceptual approach.

Discussion / Results and Discussion

1 Kwarizmi Maulana Simatupang, 2021, *Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital*, Jurnal Ilmiah Kebijakan Hukum, Volume 15 Number 1

2 Sudjana, 2020, *Progresivitas Perlindungan Terhadap Pencipta Dalam Mendorong Ekonomi Kreatif di Indonesia*, Jurnal Ilmiah Kebijakan Hukum, Volume 14 Number 2.

Progressive Legal Theory

Progressive law in Indonesia was initiated by Satjipto Raharjo for the first time. The background of the birth of this theory is because the teachings of positive law (analytical jurisprudence) are practiced in empirical reality. The positive law applied was deemed unsatisfactory for some groups. Progressive legal theory arises because of a sense of concern for the quality of law enforcement in Indonesia. The ideals of law are essentially to solve the problems that are being faced by the Indonesian people. However, in his empirical study the application of positive law is in fact the opposite of what has been the ideals of the law so far.

Legal expert Sajtipto Raharjo tried to find a solution to his anxiety as a person who understands the science of law. The solution to the failure to apply analytical jurisprudence is to restore the basis of the relationship between law and humans. The theory offered by progressive law rests on the view of humanity, that humans are basically good, have compassion and care for each other. So the basis of the progressive theory starts from the nature of law and human beings. The law is not only present for itself to achieve human welfare and happiness, but the law always proceeds to bring happiness, peace and prosperity to humans.

Progressive law is different from the positive law school which uses analytical jurisprudence which is based on the premise of rules and logic. For Positive (dogmatic) Legal Studies, the truth lies in the body of regulations. This is what Progressive Law criticizes, because seeing a law that is only in the form of articles clearly cannot describe the truth of a very complex law. Science that cannot explain complex truths from empirical reality is clearly very doubtful in its position as a true science of law (genuine science). Progressive Law consciously places its presence in a close relationship with humans and society. In such a position, Progressive Law can be related to the development metal model of Nonet and Selznick's law. Progressive Law also shares ideas with Legal Realism and Freirechtslehre. To borrow the terms Nonet and Selznick, Progressive Law has a responsive type. Law is always associated with purposes outside the textual narrative of the law itself.³ It is stated by Mulyana and Paul S. Baut that responsive law tries to overcome the short-sightedness (prochialism) in the morality of society and encourages a problem-oriented approach that is socially integrated.

So it can be concluded that the progressive legal theory of scientific building is based on the social goals to be achieved and the causes and effects that will arise from legal performance. So that progressive law becomes an understanding that the law is not absolutely driven by positive law or legislation, but is also driven on non-formal principles. Where this progressive law places law as a human institution that complements one another with the ultimate goal of improving human relations.

The characteristics of progressive law that need to be known together are: a. The law follows the development of people's aspirations (the law depends on the situation and conditions of the community's regulatory needs); b. The law must be in favor of the interests of the people and in the interests of justice; c. The law aims to deliver humans to prosperity and happiness; d. Law always moves in the process of change (law as a process, law in the making); e. The law emphasizes a better life as the basis of a good law; f. The law has a responsive type; g. The law encourages the role of the public; h. The law builds a conscientious rule of law.⁴

Aspects of Legal Protection for Digital Copyrights

The digital era by using internet technology makes changes to copyrighted works. At first the

3 Mulyana W. Kusumah dan Paul S. Baut, 1998, *Hukum, Politik dan Perubahan Sosial*, Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia, hlm. 11

4 Ahmad Muliadi, 2012, *Makalah Politik Hukum*, Jakarta: SAP S-2 Universitas Jayabaya, hlm. 16

copyrighted works were in physical/conventional form, now digital works are developing. Digital works are becoming more popular nowadays because digital works are more efficient and more practical than physical products. The only way to get digital works is by downloading them without any time and place restrictions.

Digital copyrighted works are born from the results of human thought in the fields of science, art or literature. Digital copyrighted works contain civil rights attached to the person who produces the digital work. This civil right was born due to the creation of the creator of the work that was initiated by human thought and creativity.

Digital copyright works in the Copyright Law are described in article 1 paragraph 1, namely “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.” “Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is realized in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations.”

Based on the provisions in the Copyright Law, digital copyrighted works in the form of science, art or literature must meet the criteria of originality and reality. What is meant by originality is ownership of copyright or claims of creations/works. Shows that a creation / work is really made and comes from the creator. Originality does not require novelty in a creation, but requires that a creation/work is truly the result of the creator’s thought/creation. Does not give birth to the copyright of a work / work that imitates the creation / work of others or public domain works.⁵ While what is meant by real work is that copyright only protects ideas that have been expressed / realized. The creation/work must be expressed in a form and medium in which the work can be presented, reproduced, and communicated in a format that is more than just a temporary expression of material.⁶

So a work produced by thought must be tested for originality and also the work is in real form so that it can be used by others. Digital copyrighted works that meet these criteria are exclusive rights consisting of moral rights and economic rights. Exclusive rights in question are rights that are only reserved for the creator of the work. So that the use of moral rights and economic rights can be limited by the owner of the right. Meanwhile, copyright holders who are not copyright owners cannot take full advantage of economic rights. As the owner of digital works, it is necessary to have legal protection provisions so that if the copyright owner gets what he should get from the economic value generated by these digital works.

Progressivity of Copyright Law Protection of Creator’s Rights

Based on the Copyright Law Article 1 point 1 Copyright is “the exclusive creator that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with statutory provisions.” As for what is meant by “restrictions” in this Copyright Law, these include: first, the limitation of protection, which means that copyright is not absolutely protected, for the public interest, namely the provision of actual information and the interests of research and teaching purposes can be limited.³⁹ Second, restrictions on Rights Copyright, namely the law determines that certain creations even though they qualify as Copyrights are excluded.

Discussions related to copyright of objects that must get protection are the creator, copyright holder and creation. What is meant by the creator under the Copyright Law is one or several people who individually or together produce a creation that is unique and personal. Copyright holder is the Creator as the owner of the Copyright, the party who receives the right legally from the Author, or another party who further receives the right from the party who receives the right legally. one or several people who

5 Khoirul Hidayah, 2017, *Hukum HKI Hak Kekayaan Intelektuan*, Jatim: Setara Press.

6 Kwarizmi Maulana Simatupang, *op.cit*, hlm 14

individually or jointly produce a creation that is unique and personal. Copyright holder is the Creator as the owner of the Copyright, the party who receives the right legally from the Author, or another party who further receives the right from the party who receives the right legally. Furthermore, what is meant by creation is any copyrighted work in the fields of science, art, and literature produced on inspiration, ability, thought, imagination, dexterity, skill, or expertise that is expressed in a tangible form.

These three aspects must receive legal protection. There is some progressivity contained in the Copyright Law, where the substance of these articles aims to protect the economic and moral rights of creators and copyright holders. The latest provisions related to the problem in question are:

1. Copyright protection related to the extended ownership period
2. Better protection of economic rights, including limiting the transfer of economic rights in the form of sold flats
3. Copyright as an intangible movable object can be used as an object of fiduciary guarantee
4. Authors, Copyright Holders, Related Rights owners become members of the Collective Management Institute in order to be able to withdraw rewards or Royalties.

The progress of copyright protection is also regulated in Law Number 24 of 2019 concerning the Creative Economy, hereinafter referred to as the Creative Economy Law. Article 23 paragraph 1, namely “The Government and/or Regional Governments facilitate the recording of copyright and related rights as well as the registration of industrial property rights to Creative Economy Actors.” Article 24 paragraph 1, namely “The Government and/or Regional Governments protect the creativity of Creative Economy Actors in the form of intellectual property.”

The copyright of digital copyrighted works is part of intellectual property as regulated in the Creative Economy Law. The correlation between the creative economy and digital copyrighted works and other intellectual property is very close. Digital works are recorded as being able to improve the economy of a country. So that the application of digital copyright protection must be progressive.

Noted in Fobes Magazine the 20 richest people in the world, because as creators or copyright holders, the top ranking of the richest people in the world is still occupied by Bill Gates (Total Wealth US \$ 86 billion = IDR 1,143 trillion), the founder of Microsoft, 68 ranked 5th Mark Zuckerberg (Total Wealth US \$ 56 billion = IDR 744.8 trillion) The founder of Facebook has managed to achieve success and is recognized as the 4th richest person in the world according to Forbes magazine. Rank-7 Larry Ellison (Total Wealth US\$52.2 billion = Rp.694.2 trillion) founder of Oracle, the world’s largest database company. Rank 10 Michael Bloomberg (Total Wealth US\$47.5 billion = Rp631.7 trillion) who founded Bloomberg LP, a financial software and financial information services company to companies on Wall Street.⁷

The Creative Economy Law mandates the existence of facilities in each region for the registration of intellectual property as an effort to protect the rights contained therein. This is so that the works of the Indonesian people are not easily hijacked and commercialized. Especially digital copyrighted works whose marketing can enter the global market. The government must be progressive to participate in providing protection to the community, so that owners of digital products do not feel restless to continue working.

Regarding the government’s performance in providing rules that are beneficial to the community, according to Lawrence W. Fiedman,⁸ the success of the legal system is not only determined by the sub-

7 Kriswangsa Terkaya Di Bagus Kusuma Yudha, “20 Orang Dunia Tahun 2017 Versi Majalah 73 Forbes,” last modified 2017, accessed January 15, 2019, <https://www.finansialku.com/orang-terkaya-di-dunia-tahun-2017/>.

8 Iman Pasu Marganda and Purba Hadiarto, “Penguatan Budaya Hukum Masyarakat Untuk Meng-

stance of the law, but also the legal structure and legal culture. Lawrence W. Fiedman further explained: The legal structure is a structural component or organ that moves within a mechanism, both in making regulations, as well as in implementing or implementing regulations. Legal substance is a product of the legal structure, either regulations made through formal structure mechanisms or regulations born of habit. While legal culture (legal culture) is the values, thoughts, and expectations of the rules or norms in the social life of society. These three elements that make up the legal system have a harmonious relationship with each other in the context of the process of achieving the legal goals themselves.

The success of law enforcers in providing legal protection to owners of digital copyrighted works and digital copyrighted products must have the courage to interpret regulations related to a broad understanding that prioritizes intellectual intelligence as well as spiritual intelligence. Law enforcement is carried out with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find other ways than what is usually done.

Progressive law desired by its originators is that the application of law must refer to the eyes of the law itself and also from the social goals it wants to achieve and the consequences that arise from the operation of the law. Because the presence of law is associated with its social goals, Progressive Law is also close to Roscoe Pound's Sociological Jurisprudence which rejects the study of law as the study of rules. Thus, in practicing science, Progressive Law goes beyond positivistic regulations and legal documents.

Moral and economic protection owned by digital copyright owners are given the maximum possible protection because the purpose of this protection is to improve the economy of the community and the state. So the desired protection does not only refer to the applicable positive law but also the social goals desired by the community of copyright activists. Because if they have to be busy with applicable regulations, of course, their creativity in making works will also be disrupted.

Conclusion

Science and technology that are currently developing are able to produce works in digital form. This work has an advantage in terms of distribution and a more practical product. The advantages of this digital work cause the circulation of the product to sometimes get out of control, this causes a loss for the creator of the digital product. The economic and moral rights inherent in the creator require comprehensive legal protection.

Progressive legal theory offers a means of analytical jurisprudence that departs from the premise of rules and logic. For Positive (dogmatic) Legal Studies, the truth lies in the body of regulations. This is what Progressive Law criticizes, because seeing a law that is only in the form of articles clearly cannot describe the truth of a very complex law.

Digital copyright protection cannot only focus on the Copyright Act, but also uses the thoughts of legal experts and judges to provide protection to product creators and their products. This will be one way to protect the economic and moral rights of the creators whose ultimate goal is to improve the economy of the community in particular and the economy of the country in general.

References

Hidayah, Khoirul, 2017, *Hukum HKI Hak Kekayaan Intelektuan*, Jatim: Setara Press.

hasilkan Kewarganegaraan Transformatif,” *Civics* 14, No. 2 (2017): 146–153

- Kusumah , Mulyana W. dan Paul S.Baut , 1998, *Hukum, Politik dan Perubahan Sosial*, Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia
- Muliadi , Ahmad, 2012, *Makalah Politik Hukum*, Jakarta: SAP S-2 Universitas Jayabaya
- Marganda, Iman Pasu Marganda and Purba Hadiarto, 2017 “Penguatan Budaya Hukum Masyarakat Untuk Menghasilkan Kewarganegaraan Transformatif,” *Civics* 14, No. 2
- Simatupang, Kwarizmi Maulana, 2021, *Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital*, *Jurnal Ilmiah Kebijakan Hukum*, Volume 15 Nomor 1
- Sudjana, 2020, Progresivitas Perlindungan Terhadap Pencipta Dalam Mendorong Ekonomi Kreatif di Indonesia, *Jurnal Ilmiah Kebijakan Hukum*, Volume 14 Nomor 2.
- Kriswangsa Terkaya Di Bagus Kusuma Yudha, “20 Orang Dunia Tahun 2017 Versi Majalah 73 Forbes,” last modified 2017, accessed January 15, 2019, <https://www.finansialku.com/orangterkaya-di-dunia-tahun-2017/>.