

Sanctions For Moral Rights Violations in Law No. 28 Of 2014 Concerning Copyright

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Abstract

The purpose of writing this article is to analyze the regulation of moral rights in Copyright Law no. 28 of 2014 and examines the regulation of sanctions for violations of moral rights. The research method used is normative legal research using a statutory approach and analysis of legal concepts. The results of this research are that the regulation of the protection of moral rights in copyright law is clearly regulated in Article 5. Furthermore, the regulation of sanctions in copyright law has not been regulated. Copyright law only regulates sanctions for violations of economic rights. In contrast to the previous copyright regulations in 2002, sanctions for violations of moral rights were stipulated, but these regulations are not included in the current copyright regulations.

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1. INTRODUCTION

Intellectual property is very essential for a country's economy because recognition of intellectual property will create an environment that is able to encourage increased creativity and innovation in human resources in a positive direction. In ownership of Intellectual Property, exclusive rights arise that are only owned by an author. Intellectual Property Rights are rights to property that have an abstract nature or do not have a form obtained from a creative, rational and logical thinking process so as to provide the final result in the form of intellectual property. Intellectual Property is an important component in the development of the creative economy, because ownership of anything resulting from creativity must be legalized so that it is not misused. In short, Intellectual Property Rights can provide a legal umbrella for a certain period of time for creators to exploit the benefits of their creations to the maximum.[1]

Intellectual property rights are a translation of *Intellectual Property Rights* which are categorized as personal property rights or intangible property rights.[2] Intellectual property rights have several types of rights, one of which is copyright. In creating a creative work, the creator requires a sacrifice in time, costs and energy. Therefore, other people are required to appreciate the creator and society and the government also need to recognize the work and the creator.

Copyright is part of intellectual property. Copyright in Indonesia is regulated through Law no. 28 of 2014 concerning Copyright, hereinafter abbreviated to the HC Law. Based on the provisions of Article 1 paragraph (1) of the HC Law, it regulates that "Copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations." From the meaning of these regulations, it can be stated that a work receives copyright protection when it has been realized in real form, not just an

idea. A work of intellectual creativity receives copyright protection unless the work has been expressed in the form of a real work (*expression works*), is also unique and personal.

In the context of protecting copyrighted works, according to the provisions of Article 4 of the HC Law "exclusive rights in copyright consist of moral rights and economic rights." Moral rights are regulated through Article 5 that "moral rights are the rights that are eternally inherent in the creator to include his name and defend changes to his work that could damage his reputation and dignity." Meanwhile, economic rights are regulated in Article 8 of the HC Law and Article 9 Paragraph (2) and Paragraph (3) of the HC Law which essentially regulate that a person Those who exercise economic rights must have permission from the creator or copyright holder. Furthermore, in Law no. 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) Article 25 provides protection for intellectual property rights which determines that "electronic information, internet sites and intellectual works contained therein are protected as intellectual property rights based on the provisions of statutory regulations". The copyright protection system adheres to a system *automatically protection* that is, protection will be provided directly from the time the work is created in real form. According to *Berne Convention*, copyright protection does not have an obligation to be registered, but it is important to register it in accordance with the regulations of the Director General of Intellectual Property Rights to ensure legal certainty and can be used as legal evidence in the event of a copyright infringement dispute. Although Article 64 Paragraph (2) stipulates that "registration of copyright and related rights is not a condition for obtaining copyright".

By referring to Article 1 point 1 of the HC Law, it can be understood that the existence of the creator's exclusive rights is a right that is only granted to the creator or another party who has obtained permission from the creator to utilize that right. Exclusive rights essentially relate to only the creator who has the right to reproduce, translate, adapt, arrange, convert, import or export, exhibit, perform to the public, broadcast, record and communicate the work to the public through any means.[3]

If it is related to the 5th principle of Pancasila, regulations regarding the protection of moral rights which are based on respect for the personality of the creator, are in accordance with the 5th principle. Moral rights, as an important part of the creator's personality, must be respected, respected and protected. In this case, demeaning the person of the creator is the same as treating the creation inappropriately. Such behavior may also amount to invading people's privacy or harming the author's dignity. Therefore, it is very important to protect moral rights to prevent actions that degrade the dignity of authors through stopping various forms of treatment that are detrimental to works. Maintaining and protecting the identity and character of creators is basically the importance of protecting moral rights. Both of these aspects are revealed in creation.[4]

The system for protecting moral rights and economic rights depends on the legal system adopted by each country. Countries that adhere to it *common law system* Prioritizes economic protection, even though moral rights are still protected, these countries think that the concept of moral rights can hinder scientific progress. Meanwhile, countries that adhere to *civil law system* both prioritize the protection of moral rights and economic rights. Even countries It considers that moral rights have a more important position because every hard work that has been done by the creator must be given respect and protection.

Indonesian people's knowledge about copyright is still very low and the lack of law enforcement causes many violations to occur. One example of copyright infringement is through *digital platform*. When discussing violations, there is another party who violates someone's rights. In the context of copyright, the right that is violated is the exclusive right of the creator which consists of moral rights and economic rights.

Copyright as previously discussed can be thought of as a collection of rights in an original work. Works here include artistic works, sound recordings, literary or dramatic works, cinematography, photographs and software. Copyright holders are given a set of rights which include: the right to reproduce the work, the right to issue copies of the work, to communicate or perform the work in public, to adapt and translate the work. On copyright (*copyright*) itself gives exclusive rights to the creator in the form of economic rights and moral rights. Economic rights are the rights given to creators to be able to use the creative work they produce in order to obtain economic benefits for themselves, while moral rights are related to the right to respect the dignity and reputation that accompanies the creator where no one can take away or eliminate these rights. except for certain reasons. To guarantee this exclusive right, of course there needs to be legal protection that can be used as a basis if a violation occurs.

Based on the description above, it is necessary to conduct research regarding the regulation of sanctions for violations of moral rights in the HC Law. This research is different from previous research, one of which is ""Violations of Copyright and Moral Rights Committed by Yuser Can Be Threatened with Criminal Punishment"[5] and "Distortion of Moral Rights in the Digital Orbit"[6]. The difference lies in the examination of moral rights sanctions from a civil law perspective. Thus, this research can be ensured to have originality.

2. METODE PENELITIAN

The type of research used in writing this article is normative legal research with a statutory approach and a legal concept analysis approach. Normative legal research is used in legal research to provide juridical arguments when there is a vacuum, ambiguity and conflict of norms.[7] In this research, a type of normative legal research is used because there is a vacuum in norms in the HC Law regarding sanctions for violations of moral rights. Therefore, it is necessary to study legislation as a legal product which will be raised as a problem in writing this article. The primary legal material used in this article is legislation, namely Law no. 28 of 2014 concerning Copyright. Then the secondary materials used are books and related scientific articles, and the tertiary materials used are dictionaries as support in writing this article.

3. RESULTS AND DISCUSSION

3.1 Protection of Moral Rights in Law No. 28 of 2014 on Copyright

A work of intellectual creativity receives copyright protection unless the work has been expressed in the form of a real work (*expression works*), is also unique and personal. [8] Moral rights are a form of right that provides protection for the personal interests of the creator. In other words, moral rights are defined as rights given to the creator to prohibit other parties from adding or removing the content and title of the work and not mentioning the name of the creator. Based on Article 1 number 1 of the HC Law, it is stipulated that "copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations". The definition of moral rights is regulated in Article 5 of the HC Law which states that "moral rights are rights that are eternally inherent in the creator to continue to include or not to include his name on the copy in connection with the use of his work for the public; using an alias or pseudonym; changing his creations according to appropriateness in society; change the title and subtitle of the work; and defend their rights in the event of distortion of the work, mutilation of the work, modification of the work, or anything that is detrimental to their personal honor or

reputation.” Moral rights, also known as creator integrity, are rights that are unique between the creator and himself. These rights may include the right to include the author's name in the work, as well as the right to change the title, content or name of the work. Moral rights cannot be transferred, so they are always eternally embedded in the creator. In an international perspective, moral rights are regulated in *Berne Convention* on Article 6 which includes the right to be recognized as the creator by including his name or alias in his creative work and the right to be prohibited from distorting, mutilating and/or modifying the work which could harm the reputation and honor of the creator.

Moral rights include two major things, namely the right of integrity and the right of attribution. Integrity rights or what is also called *right of integrity* is an attitude or treatment related to the integrity or dignity of the creator, while the right of attribution or *attribution right of paternity* It is the creator's right to include or not include his identity in his work. The creator has the right to include his name or alias in his work and his work cannot be changed through distortion, mutilation, *modification* without the permission of the creator and the title of his work can be changed with permission from the creator, this is based on Article 5 of the HC Law. Moral rights include the right to protect works from being changed or damaged without consent. Basically, creative works must remain intact as the original creation and moral rights are given with the aim of maintaining the honor and reputation of the creator for the sacrifices he made in producing the creative work. Therefore, moral rights cannot be transferred and are eternally inherent in the creator.

Moral rights also exist in other areas of IPR such as industrial design. In Law no. 31 of 2000 concerning Industrial Design regulates that the creator of an industrial design or also known as a designer has the exclusive right to include his name in an industrial design certificate and then prohibit other people from using his design without the approval of the designer. Moral rights are part of property rights which, when violated, can be sued because property rights are part of property. In Article 570 of the Civil Code, "property rights are the right to enjoy an item more freely and to act with that item as long as it does not conflict with statutory regulations." These objects can be enjoyed freely and fully. Moral rights are ethics and respect for the creator even though the creator has died. The principle of moral rights is the right to include the name or pseudonym of the creator and the right to prohibit other people from changing their work without permission. The book entitled *Copyright* provides an explanation that the Creator has moral rights which include:

- a. the right to publish or not the copyrighted work;
- b. the right given to the creator if he wishes to change or replace his creative work, including withdrawing the work that has been published;
- c. the right to be given credit and respect so that other parties do not change their work;
- d. The right of attribution, namely the right to publish the identity of the creator, even to disagree if there is a change in his identity.

The system for protecting moral rights and economic rights depends on the legal system adopted by each country. Countries that adhere to it *common law system* prioritizing economic protection, even though moral rights are still protected, these countries think that moral rights can slow down scientific progress. Meanwhile, countries that adhere to *civil law system* both prioritize the protection of moral rights and economic rights. In fact, these countries consider that moral rights have a more important position because every hard work done by the creator must be given respect and protection.

There is a period of protection for moral rights in Article 57 of the HC Law, namely "moral rights apply without time limit". In the protection of moral rights, creators are provided with copyright management information and electronic copyright information. This information contains methods or systems that can determine the originality, number and code, real name of the creator, announcement of the work, copyright holder, period and conditions of use of the work. All this information must not be removed, changed or damaged. This is stated in Articles 6 and 7 of the HC Law. In *Berne Convention* contains provisions governing the legal protection standards contained in *Article 5*, that is:

1. principle *national treatment* is a creator who comes from one of the countries that has bilateral or multilateral agreements is entitled to receive the same copyright legal protection;
2. principle *automatic protection*, is copyright protection provided by the system *automatically* unconditionally; and
3. *independence of protection* is that legal protection does not have to comply with the legal regulations of the author's country of origin.

Article 5 paragraph (1) letter e of the HC Law regulates that "moral rights are rights that are eternally inherent in the creator to defend his rights in the event of distortion of the work, mutilation of the work, modification or anything that is detrimental to his personal honor or reputation." The HC Law does not provide a definite definition of the word moral rights itself, but rather regulates it through several provisions related to moral rights as part of copyright. Thus, moral rights can be interpreted as rights that always accompany the creator to the recognition of his creative work so that there is no change or destruction. Moral rights include two aspects, including:[9]

1. The right of integrity is the right to prohibit changing, destroying or reducing a work that could destroy the integrity of the creator. This right relates to the dignity of the creator;
2. The right of attribution is the right to include the identity of the creator in the work with his own name or alias, but in certain circumstances, the creator has the right to provide anonymous status in his work

Someone who has created a work has worked hard by sacrificing energy, thought, money and time. Therefore, other people are required to respect the creator of the work and require recognition by society and the law.[10] Various parties really need legal protection because legal protection provides protection for human rights (HAM) provided by the law itself for actions that are considered detrimental to their parties by other parties. The law also provides protection for the community so that they can enjoy all the rights granted by law. Preventive and repressive legal protection protects against violations before they occur. Article 4 of the HC Law regulates copyright protection to prevent infringement, which states that creators or copyright holders are given exclusive rights in the form of moral rights and economic rights. Meanwhile, repressive legal protection functions as protection after a violation.[11]

3.2 Regulation of Sanctions for Violations of Moral Rights in Law no. 28 of 2014 concerning Copyright

Article 120 of the HC Law regulates that copyright infringement can be punished based on the offense of complaint, but not all parties can report that a copyright infringement has occurred because they are deemed to have no interest in the copyright. In this case, only the creator or copyright recipient can make a complaint because economic rights and moral rights are only owned by that party. The implementation of this complaint offense cannot be separated from the government's obligation to protect

the economic and moral rights of creators as an important part of developing national creativity. The creator has the right to give permission or not to give permission to other parties to use the rights of his work so that it is up to the creator to take action against violations of his rights. Please remember that copyright registration is not mandatory, but it is important to register it so that if there is a violation and you want to make a complaint, the registration can be used as evidence that has legal force.

Technological developments have made it possible for copyright crimes to occur without the creator's knowledge, this is because technology knows no boundaries. This means that if an Indonesian citizen's creation is used by a foreigner or vice versa, it can be done without the knowledge of the victim or creator.[12] Creators who previously published their work only domestically have now been given unlimited access through technological advances. Apart from publications, highly advanced technology can help increase the creativity of creators in creating their ideas.

Article 5 letter e of the HC Law regulates that modifying someone else's work without permission is a violation of moral rights. Furthermore, the HC Law provides protection for copyrighted works that are modified through Article 40 letter n, modifying a work must be with the permission of the creator and must not harm the reputation and dignity of the creator as regulated in Article 5 of the HC Law but does not include sanctions if there is a violation of moral rights. . Provisions regarding sanctions are only regulated for violations of economic rights. The creator has the right to fight for his rights if a violation occurs. It should be understood that there are three forms of copyright infringement, namely unlawful acts, licensing agreements and disputes regarding royalties. When a violation occurs, the creator or holder of copyright or related rights or their heirs has the right to file a lawsuit and choose a dispute resolution. Dispute resolution in copyright infringement is regulated through Article 95 of the HC Law.

Article 56 of the HC Law actually regulates sanctions regarding the Government's right to close content and user access that violates copyright, specified as follows: (9) "The Minister who administers government affairs in the field of telecommunications and information technology based on the recommendations as intended in Article 55 paragraph (3) can close content and/or user access rights that violate Copyright and/or related Rights in electronic systems and make electronic system services inaccessible; (10) (2) Further provisions regarding the implementation of closing content and/or user access rights that violate Copyright and/or Related Rights in electronic systems or making electronic system services as intended in paragraph (1) are determined by joint regulations of the Minister and ministers. whose duties and responsibilities are in the field of communications and informatics." In this article there appears to be no certainty because it states that violating copyright or related rights can result in the content and access rights being closed. This regulation can be interpreted to mean that the copyright violation in question is a violation of moral rights and economic rights, but the sanctions are in the form of moral sanctions, namely the closure of access and content.

In the previous regulation, namely Article 72 Paragraph (6) of Law no. 19 of 2002 concerning Copyright clearly states "if there is a violation of Article 24" where the article regulates moral rights, it regulates that violations of moral rights can be punished by imprisonment for 2 (two) years, but in the HC Law which is currently in force, the provisions it is not listed again.

In connection with the urgency of regulating the protection of moral rights, the copyright law currently in force in Indonesia does not yet regulate sanctions for violations of moral rights. Current technological developments have the impact of making it easier for parties to violate copyright, especially moral rights. Not everyone

understands that using other people's work can not only be materially detrimental but also in terms of moral rights. However, not all violations of moral rights also include violations of economic rights. Moral rights are related to the philosophical values that exist in every creation. If the creator only feels disadvantaged from a moral perspective, such as not having his name included in his work which is used by others and not used for commercial purposes, then this cannot be said to be a violation of economic rights.

Indonesia is a country of law and in carrying out its obligations the government must be based on statutory regulations in order to guarantee human rights.[13] It seems important for the Indonesian HC Law to clarify the moral rights policy and its sanctions in the HC Law so that it does not only regulate sanctions for violations of economic rights, but sanctions for violations of moral rights also need to be regulated. This is because sanctions are a form of suffering, heavy burden losses that must be created by the government to force people to obey the applicable regulations. Sanctions are also an important part of the conclusion of a legal rule and a form of coercion from the government to citizens regarding orders, obligations and prohibitions regulated through statutory regulations. Sanctions can take the form of criminal sanctions, civil sanctions and administrative sanctions.[14]

4. CONCLUSION

Based on the discussion described in the previous chapters above, the following conclusions can be drawn in this research:

1. The provisions for the protection of moral rights in the HC Law are clearly regulated in Article 5. This moral rights protection is given to creators to include and publish their names, even if the creator does not want to include their name, which is included in these moral rights. Someone who wants to use someone else's copyrighted work must have permission so as not to violate the creator's exclusive rights. Moral rights apply indefinitely. To protect moral rights, creators can have copyright management information and copyright electronic information. This information contains methods or systems that can determine the originality, number and code, real name of the creator, announcement of the work, copyright holder, period and conditions of use of the work. All this information is prohibited from being removed, changed or damaged.
2. Regulations on sanctions for violations of moral rights in the copyright law currently in force in Indonesia do not yet regulate sanctions for violations of moral rights. If we look back at the previous copyright law in 2002, sanctions for violating moral rights were regulated in Article 72. However, in the current copyright law, these sanctions regulations are not included again.

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