

Comparison of Copyright Laws in Indonesia and Japan as WTO Member

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Abstract

The aim of this research is to determine the comparison of Copyright Laws in Indonesia and Japan because as members of the WTO they are obliged to refer to the TRIPs Agreement in harmonizing copyright law as their national regulations. This research uses normative legal methods with statutory and comparative conceptual approaches. The results of this research are that basically the copyright provisions in Indonesia and Japan are the same, including regarding the purpose, creator's rights, objects of protection, related rights, registration, transfer of copyright and actions that are considered infringement, but there are differences regarding the period of protection. The Indonesian Copyright Law does not yet clearly regulate sanctions for violations of moral rights.

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1. INTRODUCTION

Copyright is part of intellectual property. Copyright in Indonesia is regulated through Law no. 28 of 2014 concerning Copyright, hereinafter abbreviated to the Copyright Law. Based on the provisions of Article 1 paragraph (1) of the Copyright Law, Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a work is realized in real form without reducing restrictions in accordance with the provisions of statutory regulations. Based on this understanding, 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.^[1]

Intellectual property rights are a translation of Intellectual Property Rights which are categorized as individual property rights or intangible property rights.^[2] One type of intellectual property right is copyright. Someone creating a creative work is not an easy thing to do, therefore other people are required to respect the existence of the creator and require recognition by both society and the law.^[3]

Protection of creative works that originate from human creativity, rationality, thinking and intellectual abilities cannot be separated from the amount of time, energy and effort of the individual who created the work. Therefore, it is appropriate for creators to obtain legal protection in the form of exclusive rights and be recognized by the state. In an international perspective, copyright or copyrights arranged by Bern Convention and also arranged through agreement Trade-Related Aspects of Intellectual Property Rights (TRIPs), which requires WTO member countries, including Indonesia, to harmonize intellectual property protection standards, including copyright, in accordance with regulations TRIPs Agreement.

The aim of TRIPs has general and fundamental objectives, one of which is to reduce distortions and things that make progress for international trade difficult (to reduce distortions and impediments to international trade) and to protect personal rights (to protect private property right) member countries.^[4] In an international perspective, TRIPs Agreement become a reference for protection standards and regulatory norms that are very protective, strict and uniform for all WTO member countries. Like in Indonesia, TRIPs Agreement become a platform in the development of the national intellectual property legal system.^[5]

In the 20th century and the beginning of the 21st century, countries reached an agreement to raise the concept of intellectual property rights into an agreement together in Agreement Establishing the World Trade Organization" (WTO Agreement). TRIPS is part of the WTO agreement which is an international agreement that includes developing countries in the spotlight with certain issues. According to World Intellectual Property Organization (WIPO), intellectual property is the creation of thoughts, inventions, works of art, literature used in commerce. Article 4 of the Convention on the Establishment of the World Intellectual Property Rights Organization, the aim of establishing WIPO is to encourage human activities to think creatively and produce intellectual works as well as provide efficient protection facilities for intellectual property.

Apart from Indonesia which is a member of the WTO, there is Japan which is one of the member countries. In 1990, Japan joined the Paris Convention, at that time Japan was under pressure to provide access to its intellectual property from foreign countries such as France and the United States but Japan still did not provide access to its intellectual property. The reason is that Japan realized that investment would flow to Japan, so Japan used the Paris Convention as a bargaining tool in carrying out revisions or "Unequal Agreements" made with several western countries. Japan joined the Paris Convention and the Berne Convention after the revision of the Unequal Agreement but Japan still joined on the grounds that the majority of Japan's exports were aimed at countries that had not joined the agreement so that for Japan, joining this agreement would not provide practical benefits in advancing the Japanese economy. After the conclusion of the San Francisco Peace Treaty in 1952, Japan was obliged to ratify the Madrid agreement.

The discussion in this research includes examining a comparison of copyright laws in Indonesia and Japan as WTO member countries. Indonesia is one of them WTO member states are World Trade Organization or the world trade organization. The WTO has several agreements, namely TRIMs which regulate investment, TRIPs which regulate intellectual property and GATTs which regulate trade and services. Because intellectual property protection is regulated through the WTO, Indonesia, which is bound by multilateral agreements, becomes relevant if a comparison is made with WTO member countries.

Regarding the originality of the research, this research uses comparisons from previous studies that have similarities, but have a different study focus. Some research related to this research is "Perbandingan Perlindungan Pendaftaran Sistem Paten Di Indonesia Dengan Sistem Paten Di Jepang"[6]. In this research, the focus is on the study of Patent law, while in this research the focus is on copyright law. Apart from that, there is previous research, namely "Perbandingan Perlindungan Hukum Hak Kekayaan Intelektual Komunal Antara Indonesia dan China"[7]. In that research the focus is on the study of communal intellectual property, while in this research the focus is on the study of copyright law. From this comparison, it can be concluded that this research is original.

2. RESEARCH METHOD

This research is normative or doctrinal legal research with a statutory and comparative conceptual approach. Normative legal research is used in legal research to provide juridical

arguments when there is a vacuum, ambiguity and conflict of norms.[7] The sources of legal materials used are primary legal materials and secondary legal materials. The technique used in collecting legal materials in this research is literature study or document study. This research uses analytical techniques using the syllogism method through a deductive mindset to develop an analysis of legal issues so that a conclusion can be drawn.

3. RESULTS AND DISCUSSION

3.1 Copyright Regulation in Indonesia

As part of the WTO members, Indonesia itself is obliged to carry out retaliation for the TRIPs agreement agreed to in the Uruguay round. The regulations in TRIPs which are minimum regulations can be more widely developed in their application in Indonesian law. The issuance of Law Number 12 of 1947 concerning Amendments to Law Number 6 of 1982 concerning Copyright is an effort by the Indonesian government to harmonize laws on Indonesian IPR, in the field of copyright, with the approval of TRIPs. This can be clearly seen from the preamble to the law that adjustments to copyright law are a logical consequence of Indonesia's participation in the TRIPs agreement. The 1997 Copyright Law is intended to provide increasingly effective legal protection for intellectual property rights, specifically in the field of copyright. Along with the development of the concept of intellectual property rights, especially copyright, the Indonesian government ultimately has to adjust the laws and regulations based on current developments. So in 2014, the Indonesian government made changes to the Copyright Law with the issuance of Law Number 28 of 2014 concerning Copyright. The rapid development of life values, especially in the economic sector, both at the national and international levels, encourages the need for legal protection that is also effective in enforcing intellectual property rights in the field of copyright. This is needed to maintain a good trade climate and rapid growth in the fields of science, arts and literature.

In Indonesia, copyright regulations have been regulated since 1912 Copyright law which provides protection regarding the author's rights. Then the Copyright Law in Indonesia was amended to become Law no. 6 of 1982, later became Law no. 7 of 1987. Furthermore, after Indonesia became a member of the WTO, the Copyright Law was harmonized with standards TRIPs Agreement and in 2022 Law no. 19 of 2022 was then amended again to become Law no. 28 of 2014 which is currently in effect.

These changes were made in order to adapt to the needs of society in the field of copyright and to harmonize with international agreements, among others Berne Convention which has been ratified through Presidential Decree No. 18 of 1997, World Intellectual Property Organization (WIPO) through Presidential Decree No. 19 of 1997, WIPO Performances and Phonogram Treaty (WPPT) through Presidential Decree No. 74 of 2004, TRIPs Agreement through Law No. 7 of 1994 and has been in effect since 2000.

The term copyright was first used in the term author's rights which comes from the Dutch translation, namely Author's right namely a legal regulation of an object or work created by someone. The term copyright was proposed by Prof. Moh. Soetan Moh. Sjah at the Cultural Congress in Bandung in 1952. The proposal to replace the term author's rights with copyright was made because it was felt that the term author's rights seemed to cover authorship rights only and the term copyright had a broader meaning.[8]

Based on Article 1 Number 1 of the Copyright Law, it regulates the definition of Copyright, namely 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. Exclusive rights

What is meant is in the form of moral rights and economic rights based on Article 4 of the Copyright Law. With the existence of this exclusive right only reserved for the creator or copyright holder, then other parties cannot take advantage of an invention without the permission of the creator or copyright holder. This exclusive right is also permanently attached to the creator.

Copyright is an honor for a creator who can be rewarded with moral rights and economic rights. This privilege is also called dynamic freedom, the freedom to have full control over his creation, so that the creator has the exclusive right to benefit both substantially and ethically from his protected work.[9] Copyright includes both the right to reproduce and reproduce the work in any material form and the right to perform the work in public.[10]

Exclusive rights are generally granted to creators which include the right to make copies or reproductions of the work and sell the copies, import and export the work, create derivative works, displaying or exhibiting works in public and selling or transferring exclusive rights to other parties, in which case only economic rights can be transferred while moral rights are always inherent in the creator.

This term for intellectual property protection originates from western countries. In the international dimension, intellectual property is regulated through several conventions. In particular, regulations regarding Copyright which is regulated via Berne Convention 1886 then reaffirmed in TRIPs Agreement on Section 1 Copyright and Related Rights, that is Article 9 up to you Article 14.[11]

Berne Convention is the first legal basis in the world that provides protection for copyright. Countries that have signed the convention are obliged to comply with it by protecting every creative work in the fields of literature, art and science. The Berne Convention initially only protected works of art and literature, but currently its protection is expanding in other fields such as patents and computer programs.[12] Besides Berne Convention And TRIPs Agreement, international agreements governing copyright are also found in World Intellectual Property Organization (WIPO) but this provision does not explicitly regulate the meaning of copyright (copyright). It only emphasizes that intellectual property protects the interests of innovators and creators by giving them rights to creations. Copyright relates to literary and artistic works such as books, music, paintings, sculptures and computer programs.

Apart from regulating the protection of individual copyrighted works, the Copyright Law also regulates the protection of communal copyrighted works, namely regarding Traditional Cultural Expressions and Copyright for works whose creator is unknown, this is based on Article 38 of the Copyright Law.

The copyright protection system adopts an automatic protection system, which means that this protection system does not require a recording or registration process. Creators who have created a work that has been realized in the form of a real creative work will automatically receive legal protection. This is based on the principle of Berne Convention namely that the copyright protection system adheres to the system automatically protection.

Apart from that, copyright has a social function. Determining the period of copyright protection is a form of social function. If the protection period has expired, use of the work by other people does not require permission from the creator because it is considered public property. This social function aims to create a harmonious balance between the interests of the creator and the interests of the people who use it.[13]

3.2 Copyright Regulation in Japan

Then through Presidential Decree No. 18 of 1997 on Validation Bern Convention For The Protection Of The Literarry and Artistic Works which by ratifying the agreement can become the basis for positive law in Indonesia. Objects of protection regulated through Article 2 Berne Convention including literary and artistic works, scientific works, books, pamphlets and other writings, choreographic works, pantomime performances, music, cinematography, drawings, paintings, sculptures, architecture, photography, applied works such as maps, plans and sketches. Relating to cinematographic works, in essence Berne Convention has guaranteed the protection of the rights of creators through Article 5 Paragraph 1 which regulates about national treatment "authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention."

Principle national treatment Basically, it regulates that a creation must receive the same legal protection between creations by citizens of one's own country and creations by citizens of other countries participating in the agreement. Whereas prinsip automatic protection that is, legal protection is provided directly without any conditions or principles independence of protection that is, legal protection is provided without depending on the legal regulations of the author's country of origin. However, each country has a different legal and cultural system, therefore further regulation is needed by each country, for example in Indonesia through Law no. 28 of 2014 concerning Copyright, in Japan via Japanese Copyright Law.

Regarding copyright regulations between Japan and Indonesia, the principles are the same, but there are differences regarding the unfair business competition regulations regulated in Japanese Copyright Law Meanwhile, in Indonesia, unfair business competition regulations are regulated through different regulations, namely through Law no. 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition. Regarding copyright infringement in both countries, it is a complaint offense. However, the Japanese police remain active in doing so cyber patrol for copyright infringement. If a violation is found, the police will inform the original creator so that prosecution can be carried out.

Japanese Copyright Law regulates the object of protection through Article 10 paragraph 1 "The creator of a work has the right to maintain the integrity of the work and its title, and must not undergo changes, cuts or other modifications that are contrary to the creator's intentions." Then Article 27 "The author of a work has the exclusive right to translate the work, compose the musical arrangement, reformulate it, dramatize it, make a cinematographic adaptation, or adapt the work." Article 23 Paragraph 1 "The creator of a work has the exclusive right to transmit the work to the public (including the right to make the work available for transmission, if the work is to be distributed to the public via automatic public transmission)."

Moral rights are regulated in Subsection 2 Moral Rights of Authors Article 18-20 which consists of the right to publish the work, the right to determine the indication of the author's name, the right to maintain its integrity. Meanwhile, economic rights are regulated in Article 24-28 which consists of reading rights, exhibition rights, distribution rights, ownership transfer rights, lending and borrowing rights, translation rights, adaptations and the rights of the original creator in the use of derivative works.

Comparison of Copyright Laws in Indonesia and Japan

Table 1: Comparison of Copyright Regulations

	Law No. 28 of 2014 of Copyright	Copyright Law of Japan
Objective	Copyright has an important role in supporting nation development and promoting well-being general supported by the rapid development of science and technology so that protection and guarantee of legal certainty in the field of copyright is required	This law aims to regulate copyright and rights related to works, also related to performances, sound recordings, broadcasts and cable broadcasts, and to guarantee the protection of the rights of creators and other such persons. while paying attention to the fair exploitation of these cultural products, and thereby contributing to cultural development

Protection object	Written works, lectures, speeches, teaching aids for education and knowledge of songs and/or music with or without text, drama, dance, choreography, wayang, pantomime, works of fine arts, works of applied arts, architecture, maps, batik or other motifs, photography, cinematography; alteration of works including translations, adaptations, arrangements, modifications, video games, computer programs, copyrighted works from EBT (Article 40)	Novels, screenplays, articles, lectures and other literary works; musical works; choreography and pantomime; paintings, woodblock prints and other works of fine art; architectural works; map; cinematography; photography; computer programs; news (Article 10)
Unprotected objects	Creations that are not yet tangible, ideas, procedures, systems, methods, concepts, principles, findings, data, tools, objects, products for functional needs (Article 41) Meeting results, statutory regulations, state speeches, court decisions, holy books and religious symbols (Article 42)	Legislation; government circulars; court ruling; translations and compilations made by government agencies (Article 13)

Registration	Copyright applications are submitted by several people who are entitled to the invention to the Minister and then recorded in the general register of inventions (Articles 64-69)	Made by the Commissioner of the Cultural Affairs Agency at the request of the creator and recorded as a copyright register and then announced in the official gazette (Article 78)
Related rights	Given to performers, phonogram producers and broadcasting institutions (Article 20)	Given to performers, record producers, broadcasting institutions (Article 89)

Actions that are considered violations	plagiarism, taking someone else's work and reproducing it and using it for commercial purposes.	Distribution of protected objects for the purpose of illegal export or import trade, use of copies of computer programs for personal gain, deliberate addition of false information as rights management information, deletion or alteration of the work, exploitation of the work in violation of the author's moral rights (Article 113)
Actions that are not considered violations	Announcement, distribution, duplication of the national anthem, national symbol, portraits of state leaders and their staff, original portraits of heroes, actual news, creation and dissemination of non-commercial copyrighted content, for the purposes of education, research, scientific work, people with disabilities, as well as the use of copyrighted works where the source and purpose of use are stated are not considered violations. (Article 43)	If an original work or copy is transferred when someone does not know that the work is a copy or original it is not considered an infringement.

Creator's rights	<p>Moral rights: the right to use the identity of the creator, change the work, title and sub-titles, defend changes to the work that may harm honor and reputation (Article 5)</p> <p>Economic rights: rights of publication, reproduction, translation, modification, distribution, performance, announcement, communication and rental (Article 9)</p>	<p>Moral rights: the right to publicize inventions (Article 18), the right to include the name of the author (Article 19), the right to defend the integrity of creation (Article 20);</p> <p>Economic rights: reproduction rights, performance rights, publication rights, reading rights, exhibition rights, distribution rights, ownership transfer rights, borrowing rights, adaptation rights, translations, rights to use derivative works (Article 21-28)</p>
Copyright restrictions	Use of works as a provider of actual information, duplication of works for the purposes of science and teaching (Article 26)	Reproduction for personal use, scientific and educational institutions, disability, news, legal proceedings (Article 30-47)

Protection period	<p>Protection for written works, lectures, educational performance tools, songs, drama, fine arts, architecture, maps and batik applies as long as the author lives and continues 70 years after the author dies. (Article 58)</p> <p>Protection for works of photography, portraits, cinematography, video games, computer programs, alterations to copyrighted works and traditional cultural expressions, EBT compilations is valid for 50 years from the time it was first announced. (Article 59)</p> <p>Works of applied art are valid for 25 years from the time they are first announced (Article 60)</p>	Copyright for a work lasts for 70 years from the time the work is published (Article 51- 54)
Transfer of copyright	Only economic rights can be transferred in whole or in part due to inheritance, gift, endowment, will, written agreement, or other reasons based on law (Article 16)	Copyright can be transferred in whole or in part through an agreement or contract (Article 61)

Dispute resolution	<p>Civil: copyright dispute resolution is carried out through APS, arbitration or filing a lawsuit in a commercial court (Article 95)</p> <p>Criminal: prison sentences and fines vary according to the action committed. Violation of economic rights for commercial use is punishable by a maximum of between 1 – 10 years and a maximum fine of IDR 100,000,000 – IDR 4,000,000,000. Violations of copyright piracy have the most severe penalties among other copyright violations. (Articles 112-120)</p>	<p>Civil: demanding termination, restoration of honor, compensation and restitution of profits (article 112-115)</p> <p>Criminal: violation of copyright, right of publication, related rights is punishable by imprisonment for a maximum of 10 years or a fine of up to JPY 10,000,000. Violation of the creator's rights is punishable by imprisonment of up to 5 years or a fine of up to JPY 5,000,000. Illegal downloading offenses are punishable by imprisonment of up to 2 years or a fine of up to JPY 2,000,000. The violation of illegal manufacture and/or distribution is punishable by imprisonment for a maximum of 3 years or a fine of up to JPY 3,000,000 (Article 119-120)</p>
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Source: processed by researchers from the provisions of Law no. 28 of 2014 concerning Copyright, Japanese Copyright Law

Basically, the copyright provisions in Indonesia and Japan are the same, including regarding the purpose, creator's rights, objects of protection, related rights, registration, transfer of copyright and actions that are considered violations, because they are adapted from TRIPs Agreement And Berne Convention. However, there are differences regarding the protection period. In Indonesia, the period of copyright protection varies according to the object, namely 70 years, 50 years and 25 years. Meanwhile, Japan determines the same protection period, namely 70 years. Then there are also differences in Traditional Cultural Expressions (TCE) which are only regulated through the Indonesian Copyright Law. Copyright Law of Japan does not regulate TCE in its copyright law. TCE in Japan is regulated through Bunkazai Hogo-ho (Law For The Protection of Cultural Properties).

In prosecuting compensation for violations of economic rights according to Article 114 Copyright Law of Japan which determines that: "if the copyright owner, print right owner, or related right owner demands compensation for losses arising from infringement, against a person who intentionally or through negligence violates the copyright, print right, copyright owner, or related right and the infringer has made a profit from the infringement action, the amount of that profit is deemed to be the amount of loss owned by the copyright owner, print right owner, or related right owner."

Furthermore Copyright Law of Japan also regulates the return of honor to the creators listed in Article 115: "A creator or performer may file a lawsuit against a person who intentionally or through negligence has violated the moral rights of the author or performer, by demanding that that person take appropriate action to ensure that the creator or performer is identified as the creator or performer, to correct modifications to the work or performance, or to restore the honor or reputation of the creator or performer, either in lieu of or in addition to claiming compensation." Meanwhile, the Indonesian Copyright Law does not yet clearly regulate the calculation of the amount

of compensation for violations of economic rights and regarding sanctions for violations of moral rights.

4. CONCLUSION

Based on the discussion described in the previous chapters above, the following conclusions can be drawn in this research is basically the copyright provisions in Indonesia and Japan are the same, including regarding the purpose, creator's rights, objects of protection, related rights, registration, transfer of copyright and actions that are considered infringement, but there are differences regarding the period of protection. The Indonesian Copyright Law does not yet clearly regulate sanctions for violations of moral rights.

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