

LOOKING FOR A NEW PARADIGM IN COPYRIGHT IN INDONESIAN REGULATIONS

Bernard Nainggolan

Universitas Kristen Indonesia, Jakarta, Indonesia
bnainggolan.uki@gmail.com

Abstract

This research examines the copyright landscape in Indonesia with a focus on regulatory dynamics, public awareness and law enforcement. The research approach uses normative methods and literature reviews to examine the development of copyright law, public moral awareness, and the implementation of policies related to copyright protection. Despite progress in copyright regulations, research shows that copyright infringement remains a serious problem in Indonesia. Piracy practices are still common and accepted as a cultural norm, while copyright law enforcement faces challenges in increasing public awareness and enforcement effectiveness. The findings of this research highlight the urgency of education to increase public awareness about copyright. The importance of further action to strengthen law enforcement and effectively protect copyright in Indonesia was also emphasized. This research has important implications for policy makers, law enforcers, and the general public to increase understanding of copyright, change cultural norms regarding piracy, and increase awareness of the importance of protecting copyright for sustainable social and economic development in Indonesia.

Keyword: Law, Legal Protection, Regulation, Copyright, Intellectual Property Rights

A. INTRODUCTION

Intellectual works are recognized and protected by the legal notion of copyright. With the use of this right, authors and other copyright holders can manage how and where their works are used. Copyright develops together with invention, giving artists permission to legally copy or duplicate their creations. This right creates a link between creators and their works that has fundamental economic components and applies to a variety of professions, including science, art, and literature. Industrial Property Rights and Copyright are the two primary components of intellectual property rights.¹ Industrial Property Rights involve technological innovation and industrial design, while Copyright focuses more on artistic and literary creations. Both play crucial roles in fostering innovation and creativity. A deep understanding of the differences

¹ Raihana Raihana, Syafruddin Syafruddin, Dion Welli, and Sugiharto Sugiharto. "Analisis Yuridis Pengaturan Tentang Hak Cipta Di Indonesia." *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 1468.

and implications of these two aspects is key in seeking a new paradigm in copyright, especially considering the rapid advancements in technology.²

The development of digital technology brings new challenges and opportunities for copyright.³ The internet and online platforms facilitate the distribution and access to works, but also pose issues related to copyright infringement. Seeking a new paradigm in copyright also entails addressing these new challenges, such as copyright protection in the digital realm, justice for creators, and sustaining economic models for the creative industry. Finding a new paradigm in copyright requires a holistic and adaptive approach.⁴ Collaboration between government, industry, and society is needed to develop regulations that align with the times. Education and public awareness about copyright are also crucial in creating an environment that supports innovation and creativity⁵. Additionally, the use of blockchain technology and justice-based business models can be innovative steps in responding to the new dynamics faced by copyright in the digital era.⁶

In facing the widespread abuse of copyright in the modern era, many copyright holders now tend to register their works on the public registry through the Directorate General. This step is taken as a proactive effort to provide stronger legal protection for the copyrights they own. Registration allows creators or copyright holders to have stronger evidence in disputes, with an Authentic Deed as a perfect proof. Thus, the registration process on the public registry is not only an administrative step but also a wise strategy to enforce copyrights and minimize the risk of abuse in an increasingly open and digitally connected environment.⁷

The high level of piracy in Indonesia is a source of significant losses due to the low awareness of the public regarding the respect for copyright. This phenomenon is more concerning because copyright infringement does not seem to be considered a serious violation in society. This situation inspires this research to conduct a normative analysis of the legal policy governing copyright in Indonesia and evaluate the copyright conditions in the country.⁸ This research aims to deeply understand the legal and political framework regulating copyright in Indonesia and explore the reasons behind the lack of

² Michèle Finck, and Valentina Moscon. "Copyright law on blockchains: between new forms of rights administration and digital rights management 2.0." *IIC-International Review of Intellectual Property and Competition Law* 50 (2019): 79.

³ Postigo, Hector. *The digital rights movement: The role of technology in subverting digital copyright*. The MIT Press, 2012.

⁴ Ujang Badru Jaman. "Legal Analysis of The Impact of Industrial Development on The Environment." *The Easta Journal Law and Human Rights* 1, no. 03 (2023): 89.

⁵ Cohen, Julie E. "Creativity and culture in copyright theory." In *Copyright Law*, pp. 473-527. Routledge, 2017.

⁶ Drexl, Josef. "Data access and control in the era of connected devices." *Report for BEUC* (2018).

⁷ Osgar Sahim Matompo. "Perlindungan Hukum Terhadap Hak Kekayaan Intelektual Atas Pembajakan Di Indonesia." *Legal Standing: Jurnal Ilmu Hukum* 2, no. 1 (2020): 108.

⁸ Niru Anita Sinaga. "Pentingnya Perlindungan Hukum Kekayaan Intelektual Bagi Pembangunan Ekonomi Indonesia." *Jurnal Hukum Sasana* 6, no. 2 (2020): 219.

public awareness of the importance of copyright. Through a normative approach, this research will examine existing legal instruments and analyze their effectiveness in protecting copyrights and preventing misuse. By highlighting the state of copyright in Indonesia, this research seeks to present a comprehensive overview of the factors supporting the high level of piracy as well as the challenges and opportunities in increasing public awareness of the importance of copyright.

B. RESEARCH METHODS

This research uses the literature review method as the main framework to explore insights about the social forces that influence law and the role of law in society. The applied research approach is normative legal research, with a focus on the analysis of legal theories and principles. Specifically, this research explores discussions regarding the dynamics of social forces that impact law and how law functions in a societal context. Normative legal research methods are defined as investigations that refer to legal norms contained in statutory regulations and court decisions. The research process includes a series of stages, starting from collecting literature data, reading, taking notes, observing, to collecting concepts or manuscripts. The legal materials used include Law Number 6 of 1982 concerning Copyright, Law Number 19 of 2002 concerning Copyright and Law Number 28 of 2014 concerning Copyright. Next, an explanation and explanation of the data or text that has been collected is carried out, especially related to the main topic of this research. With this approach, research aims to produce an in-depth understanding of the role of law in society, with a focus on how social forces influence legal dynamics and how law plays a role in regulating and responding to societal developments.

C. DISCUSSION

In the context of the dynamics of copyright law regulation in Indonesia, fundamental legal-political studies touch on the configuration aspects between politics and law. In this regard, legislation becomes a central instrument in copyright regulation, playing a crucial role in determining policies and legal frameworks governing copyright in Indonesia. Indonesia, as a country rich in arts and culture, has a responsibility to provide adequate legal protection for this intellectual wealth. This is reflected in the laws that serve as the legal basis for copyright regulation in Indonesia. Legislation is not only an integral part of the legal system but also a crucial instrument in maintaining the sustainability and protection of the nation's artistic and cultural heritage.⁹ Legal-political

⁹ Hari Sutra Disemadi, and Cindy Kang. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual dalam Pengembangan Ekonomi Kreatif di Era Revolusi Industri 4.0." *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 56.

studies on copyright in Indonesia need to understand the dynamic relationship between political and legal aspects, and how legislation plays a role in safeguarding and managing the intellectual property owned by the Indonesian people.

The wealth of Indonesian arts and culture not only plays a role in shaping the character and pride of the nation but also serves as a potential resource to drive the growth of the creative and cultural industries. The management of copyright plays a crucial role in optimizing the utilization of this artistic and cultural wealth, with the hope of making a significant contribution to the advancement of the national economy. It is important to note that Indonesia's legal system in copyright regulation has undergone several changes. This is not only due to the push to enhance copyright protection but also as a response to the dynamics of society moving towards positive changes. The law serves not only as a regulatory tool but also as an aid in supporting the dynamic process of societal change. Rapid changes in society require adaptive and responsive laws to provide a strong foundation for the development of the creative economy.¹⁰

Indonesia continued to enforce the Auteurswet 1912 copyright laws, which date back to the Dutch colonial period, until 1982. Law Number 6 of 1982 concerning Copyright (Copyright Law) was the reaction to the demand for copyright restrictions more in accordance with national interests. Revisions to copyright laws have been consistently attempted over time in order to accommodate the ever-changing national and global landscape. The Copyright Law was significantly revised and its scope of protection was expanded in 1987.¹¹ Videos and recordings are now included in the list of works that are covered by copyright, and the period of protection has been increased to 50 years following the creator's passing. Additionally eliminated was the absolute notion that permitted the government to appropriate copyright in support of national security.¹²

An additional step toward harmonizing Indonesia's Copyright Law with the TRIPs agreement was taken with the revision of 1997. Copyright-related rights were explicitly acknowledged and safeguarded.¹³ In accordance with international norms, the evaluation of copyright breaches switched from

¹⁰ Maman Lukman, and Happy Yulia Anggraeni. "Tantangan Penegakan Hukum Hak Kekayaan Intelektual Dalam Pengembangan Ekonomi Kreatif Di Era Revolusi Industri 4.0." *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 10, no. 6 (2023): 2975.

¹¹ Samuelson, Pamela. "Why copyright law excludes systems and processes from the scope of its protection." *Tex. L. Rev.* 85 (2006): 1921.

¹² Hulman Panjaitan. "Undang Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Dan Perlindungan Hukum Bagi Pencipta Karya Cipta Musik Dan Lagu." *Jurnal Hukum To-ra* 5, no. 1 (2019): 21.

¹³ Hugenholtz, P. Bernt, Mireille van Eechoud, Stef Van Gompel, and Natali Helberger. "The recasting of copyright & related rights for the knowledge economy." *Report to the European Commission, DG Internal Market* (2006): 308.

quantitative to qualitative metrics. The definition of originality of creative works was added in Article 1 Paragraph (2), which reflects Indonesia's attempts to further expand and enhance copyright-related legal elements.¹⁴ The long-term viability of the voluntary copyright registration scheme received particular consideration. In essence, copyright registration acts as proof in legal disputes. The 1997 Copyright Law was repealed and replaced in 2002 by Law No. 19 of 2002, a new copyright law. This law supports the growth of works stemming from the diversity of traditional Indonesian arts and culture, while also accommodating adjustments to conform with TRIPs and refining parts deemed necessary to ensure best protection for intellectual works.¹⁵

The Copyright Law was amended in 2014, leading to the creation of Law No. 28 of 2014. Law No. 28 of 2014, which stipulates that copyright and related rights products are protected for all Indonesian citizens, residents, and legal entities, is one of the major improvements brought about by this law. Additionally, as long as the initial announcement is made in Indonesia, protection is extended to works and Related Rights items that do not belong to citizens, residents, or legal organizations in Indonesia.¹⁶ Products and works owned by non-Indonesian parties that have bilateral agreements with the Republic of Indonesia on copyright protection are also covered by copyright and related rights protection. Furthermore, protection is given if that nation and the Republic of Indonesia are involved in the same multilateral agreement concerning the protection of related rights and copyright.

1. The Actual Landscape of Copyright in Indonesia

The reality of copyright in Indonesia shows that, besides a lack of legal understanding, the level of moral awareness to respect copyright is still relatively low in society. This is evident from data indicating that sellers of pirated DVDs continue to operate freely on the roadside without feeling guilty. This condition reflects deficiencies in the moral quality of our society. Field facts, which should be a direct reflection of legal and moral awareness, depict challenges in addressing piracy practices.¹⁷ The researcher feels that the sale of DVD cassettes has significantly declined due to technological advancements and the skills of human resources in technology. However, with these developments, a new, more massive problem has emerged online piracy. Online piracy practices pose a serious challenge due to their broader and more

¹⁴ Raihana Raihana, Syafruddin Syafruddin, Dion Welli, and Sugiharto Sugiharto. "Analisis Yuridis Pengaturan Tentang Hak Cipta Di Indonesia." *Innovative: Journal Of Social Science Research* 3, no. 2 (2023): 1471.

¹⁵ Siti Wahdah. "Perpustakaan digital, koleksi digital dan undang-undang hak cipta." *Pustaka Karya: Jurnal Ilmiah Ilmu Perpustakaan dan Informasi* 8, no. 2 (2020): 77.

¹⁶ Widya Marthauli Handayani. "Keberlakuan Hukum Hak Cipta Sebagai Objek Jaminan Fidusia Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." *Jurnal Legislasi Indonesia* 16, no. 2 (2019): 217.

¹⁷ Straub Jr, Detmar W., and Rosann Webb Collins. "Key information liability issues facing managers: Software piracy, proprietary databases, and individual rights to privacy." *Mis Quarterly* (1990): 143-156.

difficult-to-monitor impact. Therefore, further efforts are needed to enhance legal and moral awareness in society and implement more effective measures to combat copyright piracy, both in physical and online realms.¹⁸

The low awareness of the public, as revealed in the previous survey, is triggered by a lack of understanding of Intellectual Property Rights (IPR). The consequences of this low understanding not only harm creators but also negatively impact the country and society as a whole.¹⁹ The state loses tax revenue from the sale of genuine products, while creators experience financial losses due to the lack of income from their creations used by the public.²⁰ Society itself faces the risk of internal conflict, where awareness of IPR is uneven, causing inequality and tension between those who understand and those who do not understand copyright. Furthermore, another negative impact is the decrease in the quality of goods used by the public due to a lack of originality.

The limitations of Indonesia's natural resources, especially in the oil and gas sector, significantly impact the country's foreign exchange. With the declining contribution of this sector to foreign exchange earnings, expanding the utilization of intellectual property becomes a crucial strategy to overcome dependence on the natural resource sector. Developing an IP culture can be a solution, focusing on national economic development based on the use of patent technology, trade secrets, trademarks, industrial designs, copyrights, and integrated circuit layout designs.²¹ By implementing this approach, Indonesia can diversify its foreign exchange sources, not relying solely on the increasingly limited natural resource sector.²² Concrete steps to realize the utilization of IP in economic development can be taken through synergy between the potential held by the Directorate General of Intellectual Property (*Direktorat Jenderal Kekayaan Intelektual*/Ditjen HKI). Ditjen HKI plays a key role in shaping policies, providing legal protection, and optimizing the utilization of IP aspects. By maximizing the potential of IP, including efforts to synergize various elements such as patents, trademarks, and copyrights, Indonesia can open up new opportunities to enhance economic

¹⁸ Mohamad Nur Kholiq, Dinda Ajeng Puspanita, and Prawitra Thalib. "Copyright Protection of Art Containing Nudist Elements Under Positive Law In Indonesia." *Law and Justice* 6, no. 2 (2022): 165.

¹⁹ Prior, Diego, Jordi Surroca, and Josep A. Tribó. "Are socially responsible managers really ethical? Exploring the relationship between earnings management and corporate social responsibility." *Corporate governance: An international review* 16, no. 3 (2008): 160-177.

²⁰ Rachmad Abduh, and Fajaruddin Fajaruddin. "Intellectual property rights protection function in resolving copyright disputes." *International Journal Reglement & Society (IJS)* 2, no. 3 (2021): 173.

²¹ Kanagavel, P. "Intellectual property rights: A comprehensive overview." *J. Pat. & Trademark Off. Soc'y* 85 (2003): 663.

²² Ferol Mailangkay. "Kajian Hukum tentang Hak Moral Pencipta dan Pengguna Menurut Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta." *Lex Privatum* 5, no. 4 (2017): 211.

competitiveness, drive innovation, and create added value in national industries and creativity.²³

The role of the Directorate General of Intellectual Property (*Direktorat Jenderal Kekayaan Intelektual/Ditjen HKI*) is not limited to administrative tasks such as resolving intellectual property applications or disseminating information about intellectual property laws; it must also be capable of eradicating potential obstacles that may hinder law enforcement and the government's credibility in building an effective and efficient intellectual property system. While the number of obstacles within the institution is not significant, the potential for their growth needs to be taken seriously. Decisive actions are required to prevent these obstacles from damaging the integrity of officials who still have a good and honest mentality in performing their duties.²⁴ The eradication of obstacles that could harm the nation's image should also involve other institutions such as the Indonesian National Police (*Kepolisian Negara Republik Indonesia/Polri*) and the Prosecutor's Office. This collaboration is essential to ensure that the pillars of law enforcement, especially in criminal intellectual property, can operate smoothly, in line with the principles of justice and truth. The management of Directorate General of Intellectual Property should be directed towards creating an environment free from practices that can undermine the integrity and effectiveness of law enforcement. Joint efforts between Directorate General of Intellectual Property, Indonesian National Police, and the Prosecutor's Office will ensure that law enforcement in the field of Intellectual Property becomes a strong foundation for the protection of copyrights, innovation, and sustainable national economic development.²⁵

The enactment of several implementing regulations for the Intellectual Property Rights (IPR) Law in the form of Government Regulations and lower-level implementing regulations needs to be implemented promptly, especially if these regulations can provide concrete benefits to society. By ensuring synergy between regulations and the interests of the public, the government can provide a strong legal foundation for the protection of Intellectual Property Rights. Currently, the pattern of IPR socialization, which focuses on disseminating information as general knowledge, law, and ceremonial aspects, needs to undergo a change.²⁶ The government should promote public

²³ Hari Sutra Disemadi, Raihan Radinka Yusuf, and Novi Wira Sartika Zebua. "Perlindungan Hak Eksklusif Atas Ciptaan Digital Painting Dalam Tatanan Hak Kekayaan Intelektual Di Indoensia." *Widya Yuridika: Jurnal Hukum* 4, no. 1 (2021): 44.

²⁴ Rachmad Abduh, and Fajaruddin Fajaruddin. "Intellectual property rights protection function in resolving copyright disputes." *International Journal Reglement & Society (IJS)* 2, no. 3 (2021): 175.

²⁵ Nanda Dwi Rizkia, and Hardi Fardiansyah. "Patent Protection for The National Interest." *Jurnal Hukum Sasana* 8, no. 1 (2022): 75.

²⁶ Yati Nurhayati, Ifrani Ifrani, Abdul Halim Barkatullah, and M. Yasir Said. "The Issue of Copyright Infringement in 4.0 Industrial Revolution: Indonesian Case." *Jurnal Media Hukum* 26, no. 2 (2019): 125.

awareness that the successful development of IPR will drive economic growth. However, it is also essential to explain that the incorrect implementation of IPR, without considering the social and cultural conditions of the local community, can have negative impacts. Therefore, an inclusive and locally informed approach should be applied so that the public can understand the importance of IPR in supporting national economic development without sacrificing the cultural and social values held by the Indonesian community.²⁷

D. CONCLUSION

The development of copyright regulations in Indonesia reflects a responsive dynamic to societal needs. However, copyright violations remain a serious and routine issue in Indonesia. The practice of piracy seems to have become a habit or even considered a cultural norm in our society. This situation is concerning as it indicates a mindset that views piracy as commonplace and not entirely prohibited. The misuse of copyrights for purely commercial purposes also remains a significant challenge. The reality shows that the enforcement of copyright-related laws still faces many weaknesses, both in public awareness and enforcement. The difficulty in resolving this issue involves societal awareness as the primary foundation of the law and the lack of attention from law enforcement officials regarding copyright in Indonesia. With the continued prevalence of these illegal practices, without a change in attitudes and an increase in awareness, there is a concern that it will continue to erode respect for Intellectual Property Rights (IPR) in Indonesia, especially regarding Copyright. The importance of education to enhance public awareness of the significant financial benefits from the proper implementation of IPR should be the primary focus in addressing this issue.

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²⁷ Imam Wicaksono. "Politik Hukum Pelindungan Hak Kekayaan Intelektual Di Indonesia Pasca Di Ratifikasinya Trips Agreement." *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 18, no. 1 (2020): 23.

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