Intellectual Property Rights Protection Function in Resolving Copyright Disputes

Rachmad Abduh¹, Fajaruddin²
¹,²Faculty of Law, Universitas Muhammadiyah Sumatera Utara, E-mail: rachmadabduh@umsu.ac.id (CA)

Abstract
Copyright is the exclusive right of the creator or Copyright Holder to regulate the use of the results of casting certain ideas or information. Basically, copyright is the “right to copy a work”. Copyrights can also enable such holders to restrict unauthorized copying of creations from. In general too, copyright has a certain specified validity period. Based on the problems that often occur in copyright, there are mutual claims of creations that always appear at the Director General of Intellectual Property Rights, Menkum HAM, which ultimately in the Commercial Court, this is due to the absence of mandatory registration of works. Law Number 28 of 2014 explains "that copyright is an intellectual property in the field of art and literature that has a strategic role in supporting national development and promoting public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. This research uses normative legal research with descriptive analytical research. Descriptive research was conducted to see the function of protecting intellectual property rights in resolving copyright disputes. Empirical data found in the field are then compared with legal norms in the form of Law Number 28 of 2014 concerning Copyrights. Government Regulation Number 16 of 2020 concerning the Registration of Works and Related Products. So that in the end it can be formulated the functioning of the Protection of Intellectual Property Rights in Resolving Copyright Disputes. 

Keywords: Copyright Protection, Copyright Disputes.

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A. Introduction
Intellectual Property Rights can be studied from several perspectives. Intellectual Property Rights (IPR) can be studied from an economic perspective, politics (global economic politics) and a legal perspective. The economic aspect or aspect can show the study that IPR is an object of wealth that can be transacted in the process of exchanging human economic needs. Likewise, the political aspect, IPR became an instrument for developed countries to "influence" developing countries after the issue of IPR was included as a main issue in the World Trade Organization (WTO) which gave birth to The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement), and other legal instruments.¹

Definition of Intellectual Property Rights (IPR) are rights derived from the results of human intellectual activities that have economic benefits. Intellectual Property Rights (IPR) are rights that arise from the results of the human brain's thinking that produces a product or process that is useful for human interests.

The basic concept of Intellectual Property Rights (IPR) and Intellectual Property Rights (IPR) is the right to enjoy economically the results of an intellectual creativity. Based on this understanding, there is an award for the work that has been produced, namely legal protection from the state for the intellectual property. The goal is to encourage and develop the spirit of continuing to work and create. A person is free to apply for or register Intellectual Property Rights or not. The exclusive rights granted by the state to individual IPR actors (inventors, creators, designers, and so on) are nothing but appreciation for the work (creativity) and so that other people are stimulated to further develop it, so that with the IPR system the interests of the community are determined through market mechanism. In addition, the IPR system supports the establishment of a good documentation system for forms of human

¹ OKSaidin,2019, Aspek Hukum Hak Kekayaan Intelektual, (Intellectual Property Rights), Depok, Rajawali Press,p.54
creativity so that the possibility of producing the same technology or other works can be avoided/prevented.

The term Intellectual Property (hereinafter written KI) or in English is Intellectual Property in Indonesia has gone through a long journey and underwent several changes in terms. The term Intellectual Property was first translated to “intellectual property rights”, then to “intellectual property rights”, then to “intellectual property rights - HAKI”, then changed to “intellectual property rights” (with the abbreviation IPR and changed to IPR) and now the term is “Intellectual Property”

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Article 3 states that this Law regulates Copyright and Related Rights. 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. Creation is any copyrighted work in the field of science, art and literature that is produced based on inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in a tangible form.

Related rights are exclusive rights which include:

a. Performers’ moral rights
b. Performers’ economic rights
c. Phonogram producer’s economic rights
d. Economic rights of Broadcasting Institutions.

Copyright is a private right. Property rights attached to the creator. The creator may be an individual, a group of people, a public legal entity or a private legal entity. Copyright is born on the creator's creation. Creations that arise from "thought" and "heart". Or in anthropological terminology, rights born of human creativity, taste, and initiative. Therefore, copyright must really be born from human creativity, not something that already exists outside of human activity or creativity.

From the above understanding, a person's creation is the result of a work in the form of a distinctive form and describes the authenticity of the concept in the fields of education, science, art and literature. Meanwhile, the creator is a person or several people who together with his inspiration a creation was born based on the ability of the mind, imagination, dexterity, skill, or expertise as outlined in a distinctive form and personal nature.²

Historically, laws and regulations in the field of intellectual property rights in Indonesia have existed since the 1840s. The Dutch colonial government introduced the first law on the protection of intellectual property rights in 1844. Subsequently, the Dutch government enacted the Trademark Law (1885), the Patent Law (1910), and the Copyright Law (1912). Indonesia, which at that time was still called the Netherlands East-Indies, has been a member of the Paris Convention for the Protection of Industrial Property since 1988, a member of the Madrid Convention from 1983 to 1936, and a member of the Berne Convention for the Protection of Literary and Artistic Works since 1914. During the Japanese occupation, from 1942 to 1945, all laws and regulations in the field of intellectual property rights remained in effect.

² [Link to the source](https://www.seputarpengetahuan.co.id/2017/11/pengertian-hak-cipta-fungsi-ciri-ciri-sifat-dasar-hukum.htm)
1986 can be called the beginning of the modern era of the IPR system in the country. On July 23, 1986, the President of the Republic of Indonesia formed a special team in the field of Intellectual Property Rights through Decree No. 34/1986 (This team is better known as the Presidential Decree 34 Team). The main task of the Presidential Decree 34 Team is to cover the formulation of national policies in the field of IPR, drafting laws and regulations in the field of IPR and socializing the IPR system among relevant government agencies, law enforcement officers and the wider community.

The term copyright in the legal literature in Indonesia was first proposed by Prof. St. Moh. Syah, SH, at the Cultural Congress in Bandung in 1951 (which was later accepted by the congress). As a substitute for the term author’s rights which are considered less broad in scope of understanding. The term author rights itself is a translation of the Dutch term Auteurs Recht.³

The classification of intellectual property rights into copyrights and industrial property rights is due to differences in the nature of the creation and the findings. Copyright protection is automatic. The state will immediately protect and recognize a work from the first time the creation appears in the community even though the work has not been published or registered. Copyright registration is not mandatory except for transitional purposes such as licensing, inheritance and other transfers permitted by law.

Industrial Property Rights such as patents, trademarks, industrial designs, DTLST, Trade Secrets and PVP, will get protection after the party who first registered the intellectual property rights with the Director General of Intellectual Property Rights is accepted or approved. Based on the principle of first to file rights applicants must immediately register their intellectual works.

The term author is said to be "less broad" because the term author contains a very narrow meaning, as if it is only intended for an author and only concerns the results of the essay. Compared to the term Copyright which has a broad meaning which includes creations as regulated in Law No. 28 of 2014 concerning Copyright (hereinafter referred to as the Copyright Law).

Article 1 point 1 which reads: "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." In Indonesia, the appreciation of this copyright is still low, so sometimes there are still those who think that this copyright is not needed. In fact, copyright is useful to protect creators from the possibility of using their rights without permission. Therefore, it is important for creators to register their creations so that they have legal protection⁴.

This research is a normative legal research using a research method in the form of library research, namely research on written documents as data sourced from secondary data including primary legal materials, secondary legal materials and tertiary legal materials.⁵ Primary legal materials are legal materials that bind or make the public understandable, including legal products that are subject to study and legal products as tools to form critical law. Secondary legal materials include explanations of primary legal materials in the form of expert doctrine found in books, journals and websites.⁶ The procedure used to collect data in this study is in the form of documentation, namely guidelines used in the form of notes or quotes, searching for legal literature, books and others related to the identification of problems in this study both offline and online.⁷ Analysis of legal materials is carried out using the content analysis method (centent analysis method) which is carried out by explaining the material of legal events or legal products in detail in order to facilitate interpretation in the discussion, through a statutory approach.⁸

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³Rosidi,Ajib,1982,Undang-undang Hak Cipta 1982, Pandangan Seorang Awan, Jakarta,Djambaran,p67
⁴Ibid.
⁶Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, (Jakarta: PT. Raja Grafindo Persada, 2001), hlm. 23-24
B. Discussion

1. Application of Protection of Intellectual Property Rights to Copyright Holders

The term Intellectual Property (hereinafter written KI) or in English is Intellectual Property in Indonesia has gone through a long journey and underwent several changes in terms. The term Intellectual Property was first translated to “intellectual property rights”2, then to “intellectual property rights”, then to “intellectual property rights - HAKI”, then changed to “intellectual property rights” (with the abbreviation IPR and changed to IPR) and now the term is "Intellectual Property"

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Based on this understanding, there is an award for the work that has been produced, namely legal protection from the state for the intellectual property. The goal is to encourage and develop the spirit of continuing to work and create. A person is free to apply for or register Intellectual Property Rights or not. The exclusive rights granted by the state to individual IPR actors (inventors, creators, designers, and so on) are nothing but appreciation for the work (creativity) and so that other people are stimulated to further develop it, so that with the IPR system the interests of the community are determined through market mechanism. In addition, the IPR system supports the establishment of a good documentation system for forms of human creativity so that the possibility of producing the same technology or other works can be avoided/prevented. Article 3 states that this Law regulates Copyright and Related Rights.

Intellectual Property Rights first appeared in Venice (Italy) in 1470 and began to be adopted by many countries in the world and harmonization was carried out for the first time in 1883 with the birth of the Paris Convention for patents, trademarks and designs.1 Substantively, the notion of Intellectual Property Rights (hereinafter referred to as IPR) can be described as property rights that arise due to human intellectual abilities. Intellectual Property Rights are categorized as property rights considering that Intellectual Property Rights ultimately produce intellectual works in the form of; knowledge, art, literature, technology, which in realizing it requires the sacrifice of energy, time, cost, and thought. The existence of these sacrifices makes the intellectual work has value. When coupled with the economic benefits that can be enjoyed, then the inherent economic value fosters the conception of property (property) of intellectual works.10

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10 Much. Nurrachmad, 2012, Segala tentang HAKI Indonesia, , Yogyakarta, Buku Biru, p67
terminology, rights born of human creativity, taste, and initiative. Therefore, copyright must really be born from human creativity, not something that already exists outside of human activity or creativity.

In a period of national development which is marked by globalization in all fields, the boundaries of a country will become blurred and the relationship between the national economy and the international economy will be increasingly tight, as well as domestic competition. For that we need good regulations to control the competition.

Lately, it is often heard that there are disputes between Intellectual Property Rights holders, especially Copyrights. This right occurs for various reasons, including the lack of awareness to respect the rights of others. Because Intellectual Property contains two rights, namely moral rights and economic rights. Copyright is the exclusive right for the Creator or the recipient of the right to publish or reproduce his work or give permission for it without reducing the restrictions according to the applicable laws and regulations.\(^{11}\)

Intellectual Property Rights are intellectual property that is protected by law. Legal protection of intellectual property rights is based on two reasons. First, because in intellectual works there is a moral right that reflects the personality of the creator. Second, because of economic factors or commercial rights contained in the intellectual work. This last factor is what encourages countries in the world to provide full and firm legal protection for intellectual works.\(^{12}\)

The above factors can be described by three theories regarding intellectual property rights, namely:

1. Monism Theory According to this theory, moral rights and commercial rights contained in intellectual property rights are a unified whole that cannot be separated.
2. Dualism Theory According to this theory, moral rights and commercial rights are two separate things.
3. Modern Theory Contrasting the two theories above, a middle ground is taken by modern jurists pioneered by Ulmer, Schricker et al, with modern theory, which states that the two rights are one unit, but they can be distinguished or separated from each other. This third theory is what many countries today are institutionalized in national legislation.\(^{13}\)

Law Number 28 of 2014 concerning Copyright, Copyright is defined as 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 also part of intellectual property in the fields of science, art, and literature which has a strategic role in supporting the development of the nation and promoting public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Copyright itself includes two other rights, namely moral rights and economic rights. This is enshrined in Law no. 28 of 2014 concerning Copyright articles 5 to 19.

The protection of a work in the form of a work that is produced has the potential or is intentionally made to take its economic value, so this is where the role and benefits of registering copyright are. This is related to the protection function. By first registering copyright with the Directorate General of Intellectual Property (DGIP), there is no longer any need to worry about other parties being able to sabotage and take advantage of a work that was built with difficulty.

As for the protection function, the benefit of registering copyright to DKJI is an economic function. If another party wishes to use a registered work or its trade for certain purposes such as marketing, that

\(^{11}\) Ibid.  
\(^{12}\) Ok. Saidin, 2010, Aspek Hukum Hak Atas Kekayaan Intelektual, , Jakarta, PT Raja Grafindo Persada ,p 86  
\(^{13}\) Henry Soelistyo, 2011, Hak Cipta Tanpa Hak Moral, Rajawali Pers, Jakarta, p 34
party must first ask permission from the creator. The creator also has the authority to refuse or agree with certain collaborations such as a certain amount of money to be paid or so on.

Some activities that are considered as copyright infringement include quoting part or all of other people's creations which are then included in their own creations (without citing the source) so as to make the impression as if their own work (called plagiarism), taking other people's creations to be reproduced, without changing the form or content to be published later, and reproduce other people's creations intentionally without permission and used for commercial purposes.

As for the limitations on the use, retrieval, duplication, or alteration of a work either in part or in whole which is not included in an act that violates copyright if the source is fully stated for the benefit of:

1. education, research, educational writing, research, writing scientific papers, compiling reports, writing criticism or reviewing a problem without prejudice to the reasonable interests of the Author or Copyright Holder;
2. security and administration of government, legislature and judiciary;
3. lectures for educational and scientific purposes only; or
4. performances or performances that are free of charge provided that they do not harm the legitimate interests of the Creator.  

For clarity, the limitations regarding actions that are not considered copyright infringement can be seen in Articles 43 – 53 concerning Copyright Restrictions in the Copyright Law. As the creator of the work, you will certainly feel disappointed when you see other parties claiming the work as their own, especially if they get such a large profit. Therefore, the copyright holder has the right to file a claim for compensation to the Commercial Court for copyright infringement as regulated in Articles 95 – 104 of the Copyright Law. There are several forms of activities that are considered copyright infringement, including quoting part or all of other people's creations which are then included in their own creations (without including the source). so as to make the impression as if his own work (called plagiarism), take other people's creations to be reproduced without changing the form or content to be published later, and reproduce other people's creations intentionally without permission and used for commercial purposes.  

To get Copyright protection in two ways, namely:
1. by declaring or announcing;
2. by registering with the Director General of Intellectual Property Rights

There is a weakness in the first way, by announcing or declaring the work, when there is a dispute, it may be difficult to submit evidence. In contrast to the registration method, the copyright holder will get a copyright certificate issued by the Director General of Intellectual Property Rights as proof that the work has been registered. If the right has been handed over to another person, this right will not reduce the right of the Author or his heirs to sue if without his consent the party receiving the right:
1. negate the name of the Creator on his creation
2. to include the name of the Creator on his creation
3. change or change the title of the work; or
4. change the content of the creation.

If that happens, the Copyright holder has the right to file a claim for compensation to the Commercial Court for the infringement of his Copyright against the published object or the reproduction.

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14 Ibid
15 https://pdb-lawfirm.id/manfaat-pendaftaran-hak-cipta/
of the creation. The Copyright Holder is also entitled to request the Commercial Court to order the surrender of all or part of the income derived from the Copyright infringement.

Protection of a creation arises automatically since the creation is manifested in a tangible form. Registration of works is not an obligation to obtain copyright. However, the creator and copyright holder who registers their creation will receive a work registration letter that can be used as initial evidence in court if a dispute arises in the future against the work. Works can be registered with the Copyright Office, Directorate General of Intellectual Property Rights-Ministry of Law and Human Rights (Ditjen HKI-KemenkumHAM).

The Copyright registration model through the Director General of Intellectual Property Rights is the most appropriate way to obtain legal protection in the event of a Copyright dispute. The Ministry of Law and Human Rights of North Sumatra always conducts socialization to the public to register Intellectual Property Rights owned by the community, whether they are Copyrights, Trademarks, Patents, Trade Secrets and other Intellectual Property Rights.

2. Intellectual Property Rights Protection Function for Copyright Holders

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. Article 40 of Law No. 28 of 2014 concerning Copyright explains:

1. The protected works cover the fields of science, art, and literature consisting of:
   a. Books, pamphlets, presentations of published papers and all other written works;
   b. Lectures, lectures, speeches and other similar creations;
   c. Teaching aids made for education and science;
   d. Songs and/or music with or without subtitles;
   e. Drama, musical, dance, choreography, puppet and mime;
   f. Fine art works in all forms such as paintings, drawings, carvings, calligraphy, sculptures, sculptures or collages;
   g. Applied works of art;
   h. Architectural works;
   i. Map;
   j. Batik artwork or other motifs;
   k. Photography works;
   l. Portrait;
   m. Cinematographic works;
   n. Translation, interpretation, adaptation, anthology, database, adaptation, arrangement, modification and other works resulting from the transformation;
   o. Translation, adaptation, arrangement, transformation, or modification of traditional cultural expressions;
   p. Compilation of Works or data, either in a format that can be read by computer programs or other media;
   q. The compilation of traditional cultural expressions during the compilation is an original work;
   r. video games.
   s. Computer programs.

The work as referred to in paragraph
1. letter n is protected as a separate work without prejudice to the copyright of the original work.
2. The protection as referred to in paragraphs (1) and (2), includes the protection of Works that have not been or have not been Announced but have been realized in a tangible form that allows the Reproduction of the Works.

Unprotected Works.

Article 41 works that are not protected by Copyright include:

a. The results of the work that have not been realized in real form;
b. Any ideas, procedures, systems, methods, concepts, principles, findings or even though they have been expressed, stated, described, explained or combined in a work; and
c. Tools, objects, or those created only to solve technical problems or whose form is only intended for functional needs.

From the contents of the article above, it is clear what works can be protected by copyright and what works do not get copyright protection. Based on the declarative principle of copyright, it is very easy to obtain these rights. The function of copyright protection is to protect the creator of his intellectual property. In addition, copyright protection will give birth to moral rights and economic rights, copyright holders will get protection as creators of their creations. As also regulated in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works where Indonesia is also a party to this international agreement, UUHC gives the creator the right to continue to include or not to include his name on the copy in connection with the use of his work for the public or using his alias or pseudonym, which is known as moral rights. Moral rights are separate from economic rights and will continue to follow the creator even if the creator has transferred his economic rights to another party, because moral rights are rights that are eternally attached to the creator. UUHC also protects the moral rights of the creator in terms of changing the title and sub-title of the written work, the inclusion and change of the name or pseudonym of the author, and to defend his rights in the event of distortion, modification, mutilation or other forms of change related to the copyrighted work that is detrimental to self-respect or reputation. It should be noted that UUHC also regulates copyright restrictions known as "fair use" or "fair dealing" which permits the use, retrieval or reproduction of a work without the permission of the copyright holder as long as the user mentions the source and it is limited to activities that are non-commercial, including for social activities. Fair use regulated in UUHC include:

a. retrieval of actual news;
b. the use of another party's creation for the purposes of education, research, scientific writing, report preparation, writing criticism or reviewing a problem without prejudice to the reasonable interests of the author;
c. taking other parties' creations for the purpose of lectures solely for educational and scientific purposes;
d. reproduction of a work other than a computer program, by public libraries, scientific or educational institutions, and non-commercial documentation centers solely for the purposes of their activities;
e. the making of a backup copy of a computer program by the owner of the computer program for his/her own use.16

Copyright serves to appreciate a work and encourage the creator of the work to produce new works. The purpose of implementing copyright law is to protect the exclusive rights, moral rights, and economics of the creator of the work. The following is the explanation: Exclusive rights are the rights of the creator of the work to control the mechanism of ownership and distribution of his work. Exclusive rights mean that anyone who wants to use, copy, reproduce, and sell a copyrighted work must first obtain permission from the author. Moral rights mean that even if the work has been purchased, the buyer must still include the name of the author of the work. The moral right to make a work will always be attached to who made it. Economic rights mean that the creator of the work is entitled to economic rewards from the parties who use it.

C. Conclusion

There is an award for the work that has been produced, namely legal protection from the state for the intellectual property. The goal is to encourage and develop the spirit of continuing to work and create. There is a weakness to obtain Copyrights by announcing or declaring the work, when there is a dispute, it may be difficult to submit evidence.

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16 https://m.hukumonline.com/klinik/detail/ulasan/lt50089334b47f/tips-hindari-pelanggaran-hak-cipta-dalam-menulis
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