

# GOVERNMENT COEXISTENCE IN THE IMPLEMENTATION OF LAW NUMBER 28 OF 2014 CONCERNING COPYRIGHT IN PROTECTING CREATOR'S EXCLUSIVE RIGHTS REGARDING MORAL RIGHTS AND ECONOMIC RIGHTS

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## ABSTRACT

*Exclusive rights are rights owned by a creator when a work is born or created. These exclusive rights are related to moral rights and economic rights. The number of forms of violation of a work belonging to the creator is of course very detrimental to the creator. Legal protection as regulated in the Copyright Law is provided automatically without having to go through with registration. Related to the royalty agreement made between the author and publisher of the book as a form of protection by applying moral rights and economic rights in the clauses of agreement made. The research was conducted using empirical juridical methods. The results of the study conclude that protection of the exclusive rights of the creator can be done by means of preventive protection and also by repressive protection, this is done in order to provide a sense of security for a copyrighted work belonging to the creator.*

**Keywords:** Exclusive Rights, Legal Protection, Moral Rights and Economic Rights

## INTRODUCTION

In Indonesia, along with the advanced development of a creativity or even the ability possessed by every human being to be able to produce a work of high value. Human creativity to produce a work does not just come, but is supported by the presence of intellectual intelligence in mastering technology and even existing knowledge (Saidin, 2003). The higher level of ability in the mastery of science and technology, of course, will advance the development of IPR. A work produced by every human being is an intellectual work that must be protected.

This protection is carried out by making arrangements in IPR in order to provide legal certainty for a work produced. As is known (IPR) Intellectual Property Rights are a material right, the right to an object that originates from the work of brain and the work of ratio. In addition, with the protection of intellectual property rights to protect a creation or creativity owned by someone from irresponsible parties by using someone's creation or creativity without prior permission.

Based on the concept of copyright, namely to protect the results of intelligence, thoughts, and expressions or human reflections that are poured in the form of books or films. One form of an intellectual work is a book which is a creation, someone in the form of a literary work by pouring writings related to knowledge based on their abilities and creativity and then writing them down. the

book is one of protected works contained in article 12 paragraph (1) UUHC.

In this case the book is one of the works protected by UUHC because it relates to exclusive rights owned by the creator. Copyright consists of economic rights and moral rights. Economic rights are rights to obtain economic benefits from creations and related rights products. Economic rights regulated in article 2 UUHC. While moral rights are rights inherent in the creator or actor that cannot be removed or deleted without any reason even though the copyright has been transferred. content of the work, omitting the name of original creator, changing the title of work, etc. Moral rights are regulated in article 24 UUHC. A creator as a copyright holder has the right to determine whether or not a creation is allowed to be reproduced and also published which is related to a work of creation (Sutedi, 2010). When a creator will reproduce his work in this case in the form of a book, it is necessary to make an agreement with the publisher. This agreement is also to avoid inappropriate piracy carried out by irresponsible parties.

Such as the occurrence of a violation of the exclusive rights of creator in this case in relation to the creation in the form of books. This violation is carried out by piracy or plagiarism of books which are then sold without permission from the author as the owner of rights to the book. Of course, the violation committed by the person in the Wilis bookstore in Malang is very detrimental to the creator, which is also related to the moral rights and economic rights of copyrighted work of the book. The piracy that is carried out is of course nothing but to benefit the person who did this.

Associated with the violation of exclusive rights of the creator of the party to prevent further violations by making a royalty agreement with the creator. The agreement made is nothing but related to the publication of the book by the publisher with the approval of the author. This agreement is made to protect copyrighted works published by the publisher in relation to the existence of exclusive rights owned by the creator in relation to his creation, in which case the publisher undertakes an obligation to fulfill the economic rights and moral rights of the creator. So that the creator is not harmed and gets what is his right

Example: cases of copyright infringement of music and songs as outlined in the form of Video Compact Disc/Digital Video Disc (Lutviansori, 2010). The trading location of pirated Video Compact Discs/Digital Video Discs which are very popular in the Capital City area (Jakarta) is a very strategic area because it is located in one of the shopping business centers in Jakarta. From their socio-economic background, they can be categorized as low-income people, Video Compact Disc traders. Pirated Digital Video Discs themselves come from the surrounding environment and the rest are from outside the Jakarta area and these traders have been trading in the Capital City area (Jakarta) for more than 3 (three) years, while the pirated Video Compact Discs/Digital Video Discs are traded it includes Video Compact Discs/Digital Video Discs containing Music and Songs as well as Movies and even blank Video Compact Discs/Digital Video Discs. With the circulation of Video Compact Discs and Digital Video Discs containing Music, Songs and Films originating from within the country and even from abroad, generally pirated Video Compact Disc/Digital Video Disc traders who sell best are dominated by Video Compact Discs/Digital Video Discs which the content is up to date. The trade of pirated Video Compact Discs and also Digital Video Discs each kiosk trades approximately 1,000 (one thousand) pieces of Video Compact Discs and Digital Video Discs while in the area it is estimated that there are more than 350 (Three Hundred and Fifty).

Law Enforcement against Rights (130 fifty) stall trading pirated Video Compact Discs and Digital Video Discs. Of the number of stalls, there are permanent and temporary stalls, please note that around these pirated Video Compact Disc/Digital Video Disc traders there are also permanent stalls that trade original (legal) Video Compact Discs/Digital Video Discs, in Video Compact trading transactions. These pirated discs/Digital Video Discs are often found and there are many parties involved, the parties here are not only between traders and buyers (consumers) but there are other parties, namely distributors, security, police and retribution officers and parking attendants (Hadjon, 2005). From the trading practice of pirated Video Compact Discs/Digital Video Discs, it is

very clear that this trading practice is an act of violating copyright law. Violation of this copyright law can cause very broad losses for the owner or rights holder, but on a wider scale it also has a negative impact on the government and wider community which in total causes enormous losses.

## RESEARCH METHODS

This study aims to identify, describe and analyze the protection of exclusive rights protection of the exclusive rights of creators related to moral rights and economic rights in royalty agreements at UB Press, UM Press and Bayumedia Publishers. To identify, describe and analyze related to the implementation of moral rights and rights. economics in royalty agreements related to the exclusive rights of creators at UB Press, UM Press and Bayumedia Publishers.

## DISCUSSION

### **Government Consistency in Implementing Law Number 28 of 2014 Concerning Copyright 2014**

It can be argued that an act of copyright infringement violates Article 9 paragraph (1) letter a, b, e, and/or letter g of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599), and penalties or sanctions from the case are contained in Article 113 paragraph (3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599) states: any person without rights and/or without permission of the creator or copyright holder commits a violation of the economic rights of the creator as referred to in Article 9 paragraph (1) letters a, b, e and/or letter g for commercial use shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of 1,000,000,000.00 (one billion rupiah). With all forms knowingly and allowing the sale and/or reproduction of goods resulting from copyright infringement and/or economic rights as referred to in Article 9 paragraph (1) letters a, b, e, g shall be punished with imprisonment of 4 (four) years. And /or a maximum fine of Rp. 1,000,000,000.00 (One Billion Rupiah).

In the Decision of Jakarta District Court Number 844/Pid.D/2015/PN.JKT.UTR the defendant was found guilty by the court for committing a copyright crime and the defendant was sentenced to 6 (six) months' probation and/or a fine of Rp. 10,000,000. 00 (Ten Million Rupiah). Supposedly in Article 113 paragraph (3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599) the probationary criminal sanctions and/or fines are less burdensome for suspect copyright infringement.

In the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599) it has been clearly stated that it provides a criminal sanction of 4 (four) years and/or a fine of Rp. IDR 1,000,000,000,000 (one billion rupiah), without a maximum imprisonment sanction (Imprisonment) the perpetrators do not have a deterrent effect for carrying out such actions.

**Thus, Exclusive Rights are Rights Owned by a Creator When a Work is Born or Created. These Exclusive Rights are related to Moral Rights and Economic Rights.**

Legal protection in copyright is divided into 2 (two) types, legal protection for the people,

namely preventive legal protection (preventing) and repressive legal protection (suppressing), in preventive legal protection, people are given opportunity to submit objections or opinions before something government decisions take a definitive form. Thus preventive legal protection aims to prevent disputes with criminal prosecution sanctions, while on the contrary repressive legal protection aims to resolve disputes with civil lawsuit sanctions. preventive measures, the government encourages to be careful in making decisions based on discretion, with such an understanding that the handling of legal protection for the people by the general courts in Indonesia is included in the category of repressive legal protection. 7 In relation to copyright ownership, the law acts and guarantees the creator to control and enjoy exclusively the results of his work and if necessary with the help of the state to enforce punishment, this shows that legal protection is in the interests of copyright owner, both individually and groups as the subject of rights, to limit the prominence of individuals, the law guarantees that the interests of the community are maintained and guarantees a creation that is reflected in the intellectual property rights system that is currently developing, by balancing 2 (two) interests, namely the interests of copyright owner and public interest. (Hasibuan, 2008)

Thus, the protection and/or enforcement of copyright law in the creative industry. *Mimbar Justice Journal of Legal Studies* February 2018 Zainul Amin 131 music and songs as outlined in the form of Video Compact Discs and/or Digital Video Discs in violation of Article 9 paragraph (1) letters a, b, e, and/or letter g and sanctions Article 113 paragraph (3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599), the lack of maximum sanctions enforcement in order to burden the perpetrators of copyright infringement. The State of Indonesia stipulates that copyright protection is given to works that are personal by meeting the requirements of authenticity, based on the ability to think, imagine, be creative, and in a unique form.

### **Protection of Creator's Exclusive Rights Regarding Moral Rights and Economic Right**

According to Philipus M Hadjon, legal protection is divided into two, namely preventive and repressive protection. Preventive protection is a form of protection that is given to object to his opinion before a government decision is given. While repressive protection is given after legal rules are violated or if someone feels that their rights have been violated. With this legal protection, it is nothing but to be able to protect a copyrighted work owned by the creator. Preventive Protection.

Preventive protection is given to prevent an infringement of a copyrighted work, especially in this case in the form of a book. In this case, protection is provided by means of: protection in accordance with UUHC and also protection in accordance with the agreement. Regarding the protection in accordance with UUHC, it is known that UUHC is one of the regulations used to provide protection for a copyrighted work. The book is a copyrighted work produced by the author, so in this case the author has copyright to the book. Referring to article 2 paragraphs 1 UUHC where the protection of exclusive rights of the creator is very important related to the existence of copyright on the copyrighted works owned. This exclusive right is a right that is given after the creation is created or born. This exclusive right is a right that is solely given specifically to the holder so that no one is allowed to use it without prior permission, which is related to the copyrighted work of the creator.

This exclusive right is related to moral and economic rights, so the need to provide legal protection for copyrighted works is nothing but infringement. Referring to article 35 paragraph (4) UUHC that there is no obligation to register related to the work because protection is given if really as the creator of copy righted work and protection is given automatically. Even so, if registered, it will provide more guarantees with formal evidence in the form of a certificate of registration of the

work so that if there is a violation, the author can file a lawsuit to the court.

Meanwhile, protection in accordance with the agreement is carried out by applying related to moral and economic rights as a form of protection that can prevent a violation from occurring. As is known by UB Press, UM Press and Bay media Publishers, this is nothing but to protect a copyrighted work belonging to the creator which is published to the general public.

Referring to article 2 paragraph (1) UUHC which explains that exclusive rights are rights that are granted after a work is created or born. So that the creator has the right to his copyrighted work to be announced or not this is related to the moral and economic rights attached to his copyrighted work.

## **Repressive Protection**

This repressive protection is given after an infringement is committed on a copyrighted work belonging to this creator. In addition, this protection is given to seek a form of settlement to be able to defend the rights of the creator. In this case, protection is provided, namely protection in accordance with UUHC. With regard to violations committed that can harm the creator, of course, this needs to be stopped and impose sanctions or fines for what is done to the creator's copyrighted work. In accordance with the existing regulations in UUHC, it refers to Article 56 paragraph (1) and 72 paragraph (1), (2) and (6) and also Article 73 paragraph (1) which explains the sanctions and fines that will be given if there is an infringement of the copyright of the creator of a work he owns.

For example, cases that occur are related to violations of the exclusive rights of the creator. This can be seen as a case of violations committed by individuals in bookstore 13. Where this violation is related to copyrighted works in this case is a book. Books sold in stores are the result of reproduction carried out by individuals without prior approval from the creator. The results of this reproduction are carried out by piracy or plagiarism of the copyrighted work.

Implementation of Moral and Economic Rights at UB Press, UM Press and Bay media Publishers.

Moral and economic rights are very important aspects related to a copyrighted work that is born or created. Moral rights are rights inherent in the creator that cannot be separated. Moral rights are also regulated in UUHC which refers to article 24, namely: 14

Article 24 the creator or his heirs have the right to sue the copyright holder so that the name of the creator is still included in his creation.

A work may not be changed even though the copyright has been handed over to another party except with the consent of the creator or with the consent of his heirs in the event that the creator dies.

The provisions as referred to in paragraph (2) also apply to changes in the title and sub-title of the work, inclusion and changes to the name or pseudonym of the creator.

The creator still has the right to make changes to his creation in accordance with the propriety in society. Meanwhile, this economic right is the right owned by the related creator over the rights of published and reproduced copyrighted work. The economic rights granted to the author are related to royalties from the sale of the author's book as well as the reproduction rights of published book. Economic rights regulated in UUHC which refers to article 2, namely: 15 Article 2 Copyright is an exclusive right for the creator or copyright holder to publish or reproduce his work, which arises automatically after a work is born without reducing restrictions according to laws and regulations.

The creator or copyright holder of cinematographic works and computer programs has the right to give permission or prohibit other people who without their consent rent out the work for commercial purposes.

So that moral and economic rights are very important when a copyrighted work belongs to the creator to be published. In this case, UB Press, UM Press and Bay media Publisher in

establishing a cooperative relationship with the creator are also inseparable.<sup>14</sup> See article 24 UUHC  
<sup>15</sup> See in article 2 UUHC to apply the moral and economic rights of the creator, this is done nothing but to provide protection for the copyrighted work that will be announced or published.

| <b>Table 1</b>  |  |  |   |   |
|---|--|--|---|---|
| <b>COMPARISON BETWEEN UB PRESS, UM PRESS AND BAYUMEDIA PUBLISHERS</b> |  |  |   |   |
| <b>Publisher Name</b>   | <b>Contents of Agreement</b>   |  | <b>Preventive Protection</b>                  | <b>Repressive Protection</b>  |
|   | <b>Moral Rights</b>  | <b>Economic Rights</b>   |   |   |
| UB Press  | Included in the royalty agreement: article 4 paragraph (1)   | Included in the royalty agreement: article 6.  | It is in the content of the royalty agreement | Efforts are made only by giving a warning without any action or strict sanctions. |
|   | Article 7 paragraph (1), (2)   | These rights are related to  |   |   |
|   | These rights are related to  | Existence  |   |   |
|   | The right to prohibit changes to his copyrighted work.   | Granting a royalty of 15% of the sales   |   |   |
|   | Right to make a change.  | Existence<br>Incentives Giving.  |   |   |
| UM Press  | Included in the royalty agreement: article 6   | Included in the royalty agreement: article 5   | It is in the content of royalty agreement.    | -   |
|   | Article 9 paragraph (1)  | Article 9 paragraph (2)  |   |   |
|   | These rights relate to:<br>The right to be prohibited from making changes to his copyrighted work  | These rights are related to :<br>a. Existence  |   |   |
|   | Right to hold change.  | 7.5% royalty from sales.   |   |   |
| Bayumedia Publisher   | Included in the royalty agreement: article 2<br>Article 6 paragraph (1)<br>Article 7 paragraph (1) | Included in the royalty agreement: article 3<br>Article 6 paragraph (4),(5)          | It is in the content of royalty agreement.    | -   |
|   | These rights are related to :<br>The right to be recognized as the creator.                        | These rights are related to :<br>a. There is a royalty of 10% of the sales proceeds. |   |   |
|   | The right to prohibit changes to his copyrighted work.   |  |   |   |
|   | Right to make changes.   |  |   |   |

Based on the Table 1, it can be seen that there are differences and similarities in the application of moral and economic rights in UB Press, UM Press and Bayumedia Publishers. It can be seen that there are similarities between UB Press, UM Press and Bayumedia Publishers in terms of implementing related with moral rights. Where the arrangement in the content of royalty agreement is still lacking to give the moral rights of the creator to his copyrighted work. With this regulation on the moral rights of the creator, it is nothing but a form to respect and protect the creator's copyrighted work from plagiarism or piracy by irresponsible persons. So that it can harm the creator if there is a violation of his copyrighted work.

Regarding the implementation of the moral rights of the regulations contained in the content of royalty agreement, Bayumedia publishers have provided enough as stated in the agreement, which is still lacking in implementing the moral rights in the contents of the agreement. Of course this needs to be considered so that creators also feel safe when their copyrighted work will be published to the public. This moral right is a right inherent in the creator so that the creator has full rights over his copyrighted work. Where not only the right to make changes and the right to prohibit making changes to his copyrighted work.

### **Things that need to be Regulated in the Agreement for Each Publisher and Creator and the Development of the Form of Creation**

Things that need to be regulated in the agreement are related to the existence of a clause on repressive protection in the form of sanctions or fines that are given if there is a violation of the rights of the creator. Of course, from the creator's side, it is a form of protection used to protect his copyrighted work. Meanwhile, the publisher as the party who has been given permission to publish or reproduce the copyrighted work of the creator is also obliged to protect it.

The existence of this clause is very important in an agreement that is made, because the agreement made has legal force and is binding on the parties doing it. So if there are individuals who commit violations as creators or publishers, they have the right to impose sanctions or fines related to the work.

As is known, publishers publish books in hard copy which are then published to the public. This is done after obtaining permission or on the basis of an agreement in the agreement made. Even so, it is possible if the book is published through electronic media in the form of an e-book or pdf. Of course this can be done if you have obtained permission from the creator.

So in a royalty agreement it is necessary to make a clause that states if the book to be published is through electronic media. This is because it cannot be separated from the moral and economic rights of the creator. The publisher writes a clause in the agreement made for the fulfillment of economic rights given to the author if the book to be published has been sold. Besides that, there is no reproduction through electronic media such as books published through hard copies. so that the economic rights obtained by the author are only in the form of rights to the sale of books through the electronic media.

While the moral rights are still owned by the creator even though it is published through electronic media. Just as there is a clause that the name of the author must always be listed in the published work, besides that, if there is a change, it is also with the permission of the creator, so that there is no deviation from the moral rights of the author. Even so, it is necessary to make arrangements if the book published through electronic media is the author still has moral and economic rights to his creation as contained in UUHC contained in article 2 (economic rights) and article 24 (moral rights). So that the creator's creation still gets the protection as it should be given.

1. The form of legal protection provided to protect the exclusive rights of the creator in the agreement is carried out through preventive protection as well as repressive protection. The preventive protection provided is adjusted

according to UUHC, which is related to article 2 paragraph (1), article 35 paragraph (4), article 37 and also from royalty agreements made with the fulfillment of moral and economic rights, this is a form of protection to prevent violation of exclusive rights. Meanwhile, the repressive protection provided is adjusted according to UUHC, which is related to article 56 paragraph (1), article 72 paragraph (1), (2), (6) and also article 73 paragraph (1). given as provided in the UUHC as well as the absence of a clause on repressive protection in the royalty agreement.

2. The application of moral and economic rights has been carried out by as stated in the agreement. Regarding the implementation of moral rights, it is in accordance with Article 24 UUHC where the creator has the right to the copyrighted work published, while the application of economic rights is different for each publisher from UB Press, UM Press and Bayumedia Publishers. In this case, the implementation of large economic rights is given by UB Press because not only royalties are given but also incentives for creators' works.

## CONCLUSION

1. Music and songs contained in the form of Video Compact Discs and/or Digital Video Discs that violate Article 9 paragraph (1) letter a, b, e, and/or letter g and are subject to sanctions in Article 113 paragraph (3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright (State Gazette of the Republic of Indonesia of 2014 Number 266, Supplement to the State Gazette of the Republic of Indonesia Number 5599), the lack of enforcement of maximum sanctions so that it is burdensome for perpetrators of copyright infringement. The State of Indonesia stipulates that copyright protection is given to works
2. Protection of exclusive rights to economic rights and moral rights is  
 Things that need to be regulated in the agreement for each publisher and creator and the development of the form of creation  
 Things that need to be regulated in the agreement are related to the existence of a clause on repressive protection in the form of sanctions or fines that are given if there is a violation of the rights of the creator. Of course, from the creator's side, it is a form of protection used to protect his copyrighted work. Meanwhile, the publisher as the party who has been given permission to publish or reproduce the copyrighted work of the creator is also obliged to protect it.

## SUGGESTION

Related to research on the protection of the exclusive rights of creators related to moral and economic rights in royalty agreements with book publishers, the authors hereby provide the following suggestions:

- a. For the Creator, it is better before making an agreement with the publisher first to understand and pay attention to the arrangements contained in Law Number 19 of 2012 concerning Copyright so that they can find out related to forms of preventive and repressive protection. This is very important to understand so that if there is a form of violation of the copyrighted work, it can take an action in accordance with the form of protection that has been given.
- b. For publishers, they should pay more attention to and perfect the royalty agreements made because deficiencies were found, especially the absence of clauses related to repressive protection, this is a form of protection in the event of a violation of the creator's exclusive rights. So that creators can feel safe when a copyrighted work they own is announced to the public.

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