

Flexibility Protection of Copyright in Indonesia

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ARTICLE INFO	ABSTRACT
<p><i>Keywords:</i> Copyright, information technology, originators</p>	<p><i>Information technology developments with various functions of application has become public needs on performing activities of daily life. Information technology development and duplication have a positive contribution to human civilization in modern times, but has given distortion of copyright protection in Indonesia. Establishment Copyright Act No. 28 of 2014 is expected to provide protection originators without extinguish of information technology. Normative juridical approach used in this research to described descriptive analytical assessment phase which focuses on the assessment of secondary data. Data was collected with literature study to support the object assessment. The results showed that Copyright Act No. 28 of 2014, not be able to restrict application functions of user as protection for originators. Surveillance, prevention and control of information technology user and duplication should be done in an integrated manner with involvement of businesses and third parties who have the technological ability to control digital devices in the process of duplication.</i></p>
<p>email: dijan.widijowati@gmail.com</p> <p>The Southeast Asia Law Journal Volume 1 Nomor 2 Januari - Juni 2016 ISSN 2477-4081 hh. 55-62</p>	<p><i>Perkembangan teknologi informasi dengan berbagai fungsi aplikasi telah menjadi kebutuhan masyarakat dalam melakukan aktivitas kehidupan sehari-hari. Perkembangan teknologi informasi dan duplikasi memiliki kontribusi positif bagi peradaban manusia di zaman modern, namun telah memberikan distorsi perlindungan hak cipta di Indonesia. Pembentukan Undang-Undang No. 28 tahun 2014, diharapkan dapat memberikan perlindungan tanpa menghambat perkembangan teknologi informasi. Pendekatan yuridis normatif yang digunakan dalam penelitian ini untuk menggambarkan tahap penilaian deskriptif analitis dan berfokus pada penilaian data sekunder. Data dikumpulkan dengan studi literatur untuk mendukung objek penilaian. Hasil penelitian menunjukkan bahwa Undang-Undang Hak Cipta No. 28, tidak dapat membatasi fungsi aplikasi dari pengguna sebagai perlindungan bagi pencipta. Pengawasan, pencegahan dan pengendalian pengguna teknologi informasi dan duplikasi harus dilakukan secara terpadu dengan keterlibatan pelaku usaha dan pihak ketiga yang memiliki kemampuan teknologi untuk mengontrol perangkat digital dalam proses duplikasi.</i></p> <p>©2016 SALJ. All rights reserved.</p>

INTRODUCTION

At present, digital devices have become an important part of human life. Digital devices can help everyday human activities (i.e., assisting in the areas of employment, education, entertainment and the arts). Digital device capable of performing the functions of creation, production, transmission to duplication of functions that simply can't be separated from everyday human activities needs. Duplication of functions and transfer data to a digital device owned or digital device to the property of others has resulted displacement of copyright protection, due to a copyrighted work can be very easily duplicated and dispersed among digital devices, either with or without a deliberate motive to commit copyright infringement.

Base on Berne Convention, the protected originators are all creations in the field of literature, science and art in diverse forms and manifestations (unless determined by reservation), as well as arranging a set of moral rights which entitles each originator to declare as originators and objected to the use of copyright works by others (Fitzgerald et al., 2015; Mándi, 2003).

Indonesia as a member of the World Trade Organization (WTO) have to adjust all provisions of intellectual property rights with the provisions of TRIPs (Trade Related Aspects of Intellectual Property Rights) with a note that in this case should be pursued as far as possible so that the implementation and enforcement of the provisions of TRIPs does not harm the interests of Indonesia (May and Sell, 2005; Sardjono, 2004; Samuelson, 1999). Historically, Indonesia has made some changes to legislation to improve the protection of copyright in the country, namely:

1. Copyright Act No. 6 of 1982.
2. Copyright Act No. 7 of 1987 on the Amendment of Copyright Act No. 6 of 1982.
3. Copyright Act No. 19 of 2002.
4. Copyright Act No. 28 of 2014.

An idea not yet be said as a creature, although the idea is already translated into a creation. Only ideas and original creative works that can be used as a copyright work that has rights (Meese, 2015; Damian, 2002). Copyright protection acquired automatically, every originator directly protection without prior registration process. Contrast with patent, trademark and industrial design, registration at the

Directorate General of Intellectual Property Rights is obtained (Yusuf, 2000).

The word "originator" itself defined as a person or several persons who individually or jointly produce a work that is unique and personal. The copyright holder is the originator as the owner of the copyright, receiving rights lawfully from the originator, or other parties that receive more rights than those who received the rights lawfully. Originator called party in creation, expressed as the creator of a work, registration mentioned in the letter of creation and/or parties listed in the general list of creation as originator. The problems in practice is the development of digital devices that adopt and duplication of information technology in society have an adverse effect on copyright protection in Indonesia. And duplication of information technology has been used by people without considering the exclusive rights are owned by the originator.

The problems become more complex when the development of information technology and the duplication is not matched with legal awareness in society and the lack of dissemination of copyright protection has worsened the condition of copyright protection in Indonesia. Duplication technology use, both to its own devices or devices of others have resulted in displacement of copyright protection, because of a copyrighted work can be very easy to spread out and duplicated between devices without giving the opportunity for originators to stop, control or use of its exclusive rights.

Based on the background of the problems described, the formation of Act No. 28 of 2014 have challenges in preventing, addressing and controlling copyright infringement in the development of information technology and duplication, since Act No. 28 of 2014 has challenged futuristic nature of the ever-changing dynamic in tune with developments in information technology and duplication. Therefore, this research intends to study the effectiveness of Act No. 28 of 2014 in following the development of information technology and duplication that has been linked to the people's needs copyright protection in Indonesia.

Effectiveness of Act No. 28 of 2014 the copyright protection associated with the development of information technology and duplication that has become a public demand for digital devices are faced with a variety of questions issues, such as: (1) How is Act No. 28 of 2014 set the reproduction of copyrighted works in the community? (2) How is Act No. 28 of 2014 can control the use of digital devices that

adopt and duplication of information technology in society and? (3) What are the forms of flexibility and the rule of law after the enactment of Act No. 28 of 2014 in Indonesia?

Effectiveness in the protection of copyright information technology developments and post establishment duplication Act No. 28 of 2014.

Copyright is the intellectual property in the fields of science, art and literature which has a strategic role in supporting the development of the nation and promote the general welfare (Larsson, 2014; Postigo, 2012), as mandated by The Constitution of the Republic of Indonesia 1945. Indonesia has been a member of various international agreements in the field of protection of copyright and related rights, therefore need proper implementation of the legal system to improve the international competitiveness for national originators and creators.

In law conception, copyright is an intangible right to material that can be controlled as property rights under the provisions of Article 499 Civil Code. Article 570 of the Civil Code explains that, proprietary material is the right to enjoy the usefulness of something material freely and to act freely against the material fully, if not contrary to law or general rules established by an authority which is entitled set and do not interfere with the rights of others without prejudice to the right of revocation is likely to be in the public interest based on the provisions of law and the payment of compensation.

Offenses committed on copyright as a proprietary material resulted in the perpetrators can be charged to legal liability, because the principle of copyright as an object can be maintained to anyone who has been detrimental to the owner of the object (the originators and rights holders), both detrimental economically and adverse psychological or moral (Malagi, 2016). In the Paris version of the Stockholm Convention 1967 (in particular Article 6 could be) the protection of copyright infringing goods that have been replicated can be requested revocation or cancellation ex officio by the registration officials so that the perpetrators can't be protected by existing laws and applicable (Yu, 2016; Gautama, 1977).

The violations referred in any use of retrieval, copying, modification and distribution of copyrighted works which caused function digital devices are adopting information technology and duplication, so having the ability to transfer data, data backup, data transmission, data storage (data storage), data duplication and in all forms, be done using a wired

or wireless are not based on evil motives deliberately to commit offenses (Fisk, 2011).

The violations referred in this research is the only access violations as a negative of the use of digital devices that have duplication technology to provide convenience for the people in duplicating and transfer of data as a part that can't be separated with the needs of today's modern man.

Reviewing the duplication of technology development and the type of copyrighted work is easy and often done in the community associated with the type of protection of copyright works as stipulated in Article 40 from Act No. 28 of 2014 is as follows:

1. The copyrighted work in the form of songs and/or music with or without text.
2. The copyrighted work in the form of books, pamphlets, typographical arrangement of papers and all other written works.
3. The copyrighted work in the form of photography, portraits and cinematography.
4. The copyrighted work in the form of creation or data compilation, either in a format that can be read by computer programs and other media.
5. The copyrighted work in the form of video games and computer programs.

The process of duplication and dissemination to other forms of copyrighted works are often not recognized by the community as a violation of the law (Milanese, 2016). Society generally happy to share its files without realizing that the acts committed an offense which obviously has hurt originators and rights holders, both economic loss and moral damages (Bonelli, 2014).

Some examples of copyright infringement are often done by people and not recognized as a violation of which is as follows:

1. The music that we copied to your smartphone (digital device) will be divided with pleasure to those who ask, and both like music that we have. Perhaps the music that we have been purchased legally. The music that we have carried out in accordance with the format conversion support digital devices owned. Music conversion result will be very easy to share with others without realizing that we have violated the law.
2. Photos with relatives and friends that we capture will happily we post and share on social media. The photos we took with friends and

relatives are essentially stuck the copyrights of others, because each person in the photo has the exclusive right needs approval of each. The act of posting and sharing on social media actually is a violation for not having the consent of one person who is in the photo.

3. Collection of digital books that we have happily we share via e-mail or instant messenger message to friends and relatives in order to both read it. Digital books that we have can be scanned from a conventional book purchased or obtained legally to help us read on digital devices with mobility steeper. We often share digital books that we have to friends and relatives for both read it, we unknowingly have violated the law.
4. The music files, videos, photos, applications and other forms can be very easy to get on the internet, then we pick it up easily and distribute them back to a personal blog or other services. It is no secret anymore, we can very easily get a digital file that we want on the internet. Any files that have spread on the Internet would be difficult to determine the offender real, because everyone can share and duplicate a file just by clicking on the button "share" or "shared" without realizing files are distributed and duplicated is the result of a violation or not.

Reviewing substantively Act 28 of 2014 associated with the development of information technology usage and duplication in the community, Act 28 of 2014 had a positive contribution in providing the rules in the use of digital devices by the public. It can be seen from Article 42 and Article 43 from Act No. 28 of 2014, which in principle allow measures duplication of copyrighted works by digital devices in people with a condition: "the manufacture and distribution of copyright content through the medium of information and communication technology that is not commercial and / or lucrative originator or related parties, or the originator of the states do not object to the creation and dissemination".

The use, collection, reuse and conversion of the substance of copyrighted works, either in whole or in part is not considered as infringement of copyright provided that: states and included in full for the benefit of:

1. Preparation of a report, criticizing or reviewing an issue does not harm the normal interest of the originator or copyright holder.
2. Security and governance, legislative and judicial.

3. 3. Lectures are only for the purpose of education and science.
4. 4. Performances or performances that are free provisions do not prejudice the normal interest of the originator.

In addressing the use of digital devices in the community, Act 28 of 2014 gives the tolerance limit for the process of duplication as stipulated in Article 46 Act No. 28 of 2014 explaining that, reproduction for private purposes of creation that has been made the announcement can only be made as much as 1 (one) copy and can be done without the permission of the originator or copyright holder.

This research has the view of Article 46 paragraph (1) of Act No. 28 of 2014 has contributed positively to the development of information technology at the moment, but the author regretted the article in substance contrary to the content of Article 46 paragraph (1) of Act No. 28, 2014, which indirectly restrict the use of a digital device itself. It can be seen from the existence of Article 46 paragraph (2) of Act No. 28 2015 explaining that, the duplication of copyrighted works for private purposes can't be made to:

1. The work of architecture in the form of buildings or other constructions.
2. Some or all of a substantial part of a book or musical notation.
3. Most or all of a substantial part of the database in digital form.
4. Computer programs.
5. Copying for personal interests whose implementation is contrary to the interest of the originator or copyright holder.

Further review of the restrictions on the duplication process regulated by Act No. 28 of 2014, Article 49 in Act No. 28 of 2014 explained that, while the doubling of creation is not considered a violation of copyright provided that:

1. When implemented digital transmission creation or manufacture of digital storage media.
2. Implemented by everyone permission to transmit creation originator.
3. Using a tool equipped with the mechanism of automatically deleting a copy that does not allow the creation displayed again.

To review the effectiveness of the restrictions stipulated in Act No. 28 of 2014 on the use and devel-

opment of technology duplication, it is necessary to review some of the basic principles of copyright protection (Menell, 1989), such as:

1. Reward Theory Principal.

Principles of recognition and awards given by the community to the efforts and success of a person by giving protection to the originator for his work.

2. Recovery Theory Principal.

The principle that gives originators the opportunity to gain and regain what has been issued, such as thought, time, effort and money.

3. Incentive Theory Principal.

The principle that gives incentives to originators so that they can carry out their activities.

4. Expanded Public Knowledge Theory Principal.

Principle which requires the importance of the publication of the originator in the form of documents easily available to the public, in order to carry out further research.

5. Principal Risk Theory.

The principle that sees the copyrighted work as a result of a research that involve risks, because of the efforts that are pioneering heavily influenced by the steps wrong and the wrong direction, so that originators need to be protected from the risks.

Based on the contents of Berne Convention (Fisk, 2011), copyright protection has five fundamental principles, namely:

1. National Treatment Principle

The principle of the protection of creation that comes from one of the participants must obtain the agreement of copyright law protection the same as the protection obtained by the participant's own citizens.

2. Automatic Protection Principle

The principle of legal protection given directly without having to meet certain conditions when the work is created (must not be conditional upon compliance with any formality).

3. Independent of Protection Principle

The principle of legal protection granted without having to rely on the legal protection setting national authors.

4. Minimum Duration of Copyright Principle

The principle of protection is given at least during the life of the author plus 50 years after the originator's death.

5. Moral Rights Principle

The principle of protection in the form of the right to object to the change, addition or subtraction of authenticity creation.

Reviewing the moral rights attached to the originators and rights holders, Koops (2011) explains the four meaning that the fundamental principle of moral rights, namely:

1. The right to perform or not perform announcement creations.
2. The right to make changes deemed necessary over the creation, and the right to withdraw from circulation the creation of which was announced to the public.
3. The right not to approve changes to be made over the creation by another party.
4. The right to include the name of the originator, the right not to approve any change in the name of the originator to be included and the right to announce as the originator of any desired time.

Assessing the effectiveness and flexibility of Act No. 28 of 2014 on the development of information technology and duplication resulting in duplication process more easily and quickly in the community. Cotterrell (2006) explained that there are four (4) The implementation of the concept of law has been established in practice, namely:

1. Legal Structure which is the body, frame, enduring form of a system. The Act No. 28 of 2014 which is the legal reform of Act No. 19, 2002. Copyright will be very difficult to apply, where law enforcement officials only use conventional methods in dealing with the development of information technology and the duplication of the ever-changing dynamic in accordance with changes in society. Prevention, surveillance and control of digital technology will be very effective, if upheld together with businesses and third parties that are substantially has the expertise and ability to prevent, supervise and control the use of digital devices that adopt information technology and duplication.

2. Legal Substance that the rules and actual norms used by the institutions, the reality, the form of the behavior of the perpetrators were observed in the system. Substantially Act 28 of 2014 has been qualified philosophical and juridical, but Act 28 of 2014 less a positive contribution to the sociological aspects. Sociological aspects in question, namely: Act No. 28 of 2014 is considered incapable of answering the protection of copyright connected with the development of information technology and the current duplication. This is one of them can be seen from the existence of Article 46 of Act No. 28 of 2014 explaining that, reproduction for private purposes of creation that has been made the announcement can only be made as much as 1 (one) copy and can be done without the permission of the originator or copyright holder. Article 46 of Act No. 28 of 2014 considered the article stiff and not futuristic, as it only allows duplication performed one (1) time, while in the public process of duplication and deployment can be done on a massive scale although only with one (1) the "shared" or "share" the thing this usually done by the community.
3. Legal Culture which are ideas, attitudes, beliefs, expectations and any opinion on the law. Advances in information technology and massive duplication have formed the habit of people to share. Society has gotten used to share files that are owned by others without being based on economic or commercial reasons. Society just want to share with others' and can also take benefit and enjoy the distribution files without understanding the true copyright protection. The Act No. 28 of 2014 will be very difficult to apply to the people of Indonesia, because the culture has been formed to share files with others. Legal and ethical awareness in the dissemination and duplication is in upholding the principles of Act No. 28 of 2014 which is contrary to the culture and needs of the community at this time.
4. Legal Impact, which is a result of a legal judgment enforced in society.

The establishment and implementation of Act No. 28 of 2014 as a renewal of the Act 19 of 2002 on Copyright yet provide a systematic impact in providing copyright protection in Indonesia. Sharing culture inherent in the society is still very dominating in comparison to the impact of law enforcement and the application of Act No. 28 of 2014.

Law and order needed by humans, is an authentic order to create conditions that allow humans naturally embodies his personality as a whole, so as to develop all the potential of humanity as freely what pleases (Hadfield and Weingast, 2012).

CONCLUSION

Act No. 28 of 2014 set the reproduction of copyrighted works in public on a limited basis. Act No. 28 of 2014 allowing only one (1) duplication of copyrighted works with some of the requirements that essentially cannot provide a positive contribution to the harmonization of copyright protection and the use of digital devices in the community.

Act No. 28 of 2014 can control the use of digital devices supported in the community during the active role of the company's digital devices and third parties who may conduct surveillance, prevention and control of digital duplication process. Digital duplication process will continue to evolve in harmony with the development of science in the field of technology, so that the process of surveillance, prevention and control of the duplication process must be carried out also with a technological approach.

Forms of law enforcement after the enactment of Act No. 28 of 2014 in Indonesia only rely on the government as an aspect of the legal structure and not involve businesses and third parties to monitor, prevent and control the process of duplicating the features of digital devices. Law enforcement must be done in an integrated manner in the aspects of the legal structure, the substance of the law, the legal culture and the impact of the law in order to achieve optimal protection of copyrighted works.

REFERENSI

Civil Code.

Act No. 28 of 2014.

Bonelli, L. (2014). Low-tech security: Files, notes, and memos as technologies of anticipation. *Security Dialogue*. Vol. 45 No. 5, pp. 476–493.

Cotterrell, R. (2006). *Law, culture and society: Legal ideas in the mirror of social theory*. Aldershot: Ashgate.

- Damian, E. (2002). *Hukum Hak Cipta*. PT. Bandung: Alumni.
- Fisk, N. W. (2011). *Digital Piracy*. New York: Chelsea House.
- Fitzgerald, B., Shi, S. X., Foong, C., and Pappalardo, K. (2015). *Country of origin and internet publication: Applying the Berne Convention in the digital age*. In B. Fitzgerald and J. Gilchris (Eds.). *Copyright Perspectives Past, Present and Prospect*. Switzerland: Springer International Publishing, pp. 29–50.
- Gautama, S. (1977). *Hukum merek Indonesia*. Bandung: PT. Alumni.
- Hadfield, G. K. and Weingast, B. R. (2012). What is law? A coordination model of the characteristics of legal order. *Journal of Legal Analysis*. Vol . 4 No. 2, pp. 471–514.
- Information and Electronic Transactions Act, No. 11 of 2008.
- Koops, B. (2011). The Evolution of privacy law and policy in the Netherlands. *Journal of Comparative Policy Analysis: Research and Practice*, Vol. 13 No. 2, pp. 165–179.
- Larsson, S. (2014). Karl Renner and (intellectual) property—how cognitive theory can enrich a sociolegal analysis of contemporary copyright. *Law & Society Review*. Vol. 48 No. 1, pp. 3–33.
- Malagi, S. (2016). The role of international framework in promoting copyright protection in cyber space. *Research Journal Science and Technology*. Vol. 8 No. 2, pp. 107–112.
- Mándi, A. (2003). Protection and challenge of pharmaceutical patents. *Journal of Generic Medicines*. Vol. 1 No. 1, pp. 72–82.
- May, C., and Sell, S. K. (2005). *Intellectual property rights: A critical history*. Colorado: Lynne Rienner Publisher.
- Meese, J. (2015). User production and law reform: A socio-legal critique of user creativity. *Media, Culture & Society*, Vol. 37 No. 5, pp. 1–15.
- Menell, P. S. (1989). An analysis of the scope of copyright protection for application programs. *Stanford Law Review*. Vol. 41 No. 5, pp. 1045–1104.
- Milanese, C. (2016). Lights, camera, legal action: Assessing the question of acting performance copyrights through the lens of comparative law. *Notre Dame Law Review*. Vol. 91 No. 4, pp. 1641–1674.
- Postigo, H. (2012). *The digital rights movement: The role of technology in subverting digital copyright*. Cambridge, Mass: The MIT Press.
- Samuelson, P. (1999). Implications of the agreement on trade related aspects of intellectual property rights for cultural dimensions of national copyright laws? *Journal of Cultural Economics*. Vol. 23 No. 1: 95–107.
- Sardjono, A. (2004). *Pengetahuan tradisional: Studi mengenai perlindungan hak kekayaan intelektual atas obat-obatan*. Jakarta: Program Pascasarjana FH UI.
- Yu, P. K. (2016). Five decades of intellectual property and global development. *WIPO Journal*, Vol. 8. Available at SSRN: <http://ssrn.com>.
- Yusuf, E. (2000). *Penataran dan lokakarya gugus HaKI*. Jakarta: Departemen Kehakiman dan Hak Asasi Manusia RI, Dirjen Hak Kekayaan Intelektual.