

# Analyza Legal Protection of Copyright to the Creator of Books By Law Number 28 Year 2014 on Copyright in Medan

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## ABSTRACT

A Books as protected creations have been regulated in Article 40 paragraph or sub-paragraph an of Copyright Act no. The UUHC has arranged for the recording of the work in Article 64, so that the creator may record his book creation to the Director General of HAKI in Jakarta or through the Provincial Dept. of Regional Officers (as an extension of the registration process in the region). A Based on the Decree of the Minister of Justice of the Republic of Indonesia Number M.09-PR.07.06 of 1999, the person whose name as registered in the Regional Office of the Ministry of Law and Human Rights as considered as the creator (centralized system), which can facilitate proofs in case of dispute. This study aims to find out why the creators of the book do not record his creation and the barriers to register his production and the protection of copyright law on book creation gave the Copyright Act No. 28 of 2014. In this research an conducted by using descriptive qualitative research model and information will be an extracted from various data sources and types of data sources that will utilize in this research, including secondary data related to Copyright, legislation, scientific journals, papers and others. Primary Law Material in this research consists of UUHC 2014, Government Regulation, Ministerial Decree and Ministerial Regulation. Secondary Law Material comprises of literature books related to Copyright. The Tertiary Law material comprises of the Great Indonesian Dictionary. An output of scientific publication in the form of writing in Journal of Abdi Ilmu which has ISSN, obtained the level of understanding on the protection of Copyright law on the book's creation regarding Law no. 28 of 2014 on Copyright.

**Keywords:** Legal Protection, Copyright, Book Creation.

## 1. INTRODUCTION

The rapid development of life, especially in the field of the economy both at the national and international levels has contributed to the change of Intellectual Property Rights (IPR), especially in the area of Copyright. Therefore, adequate legal protection of copyright is required to create a pleasant climate for the growth and development of the spirit of building in the field of science, art, and literature. Furthermore, the issue of copyright protection in the world as divided into 2 (two) sides. The first side is the side influenced by the United States with the UCC (Universal Copyright Convention) and Continental European side with the Bern Convention (Insan Budi Maulana, 1997: 154).

The regulation of Copyright in Indonesia begins with the entry into force of Auterswet 1912 (Stb.1912 No. 600). This 1912 Auterswet was later revoked after the Indonesian government succeeded in creating its own National Copyright in 1982, by the enactment of Law no. 6 of 1982 on "Copyright" (LN 1982 No. 15 and TLN No. 3217). Furthermore, in 1987, the Copyright Act of 1982 was perfected by Law no. 7 of 1987 (LN No. 3362 and TLN No. 3362). The

Law no. 7 of 1987 refined again with Law no. 12 of 1997 (Statute Book No. 29 and TLN No. 2679) and Law no. 12 of 1997 was replaced by Law no. 19 of 2002 (LN No. 85 and TLN No. 4220).

Based on Law no. 7 of 1994 on Ratification of Agreement Establishing The World Trade Organization, from now on abbreviated as WTO, Indonesia becomes a participant of the World Trade Organization. This Convention dramatically affects the various national legal systems in general including Indonesia and copyright law in particular (Eddy Damian, 2002: 78). Furthermore, regarding the "registration or registration" arrangement of copyright, the influence of the Doctrine of Continental Copyright can be considered in the explanation of the Copyright Act stating that the registration is not necessary because without registration any copyright is protected (Insan Budi Maulana, 1997: 157).

This Continental European doctrine does not require registration as proof of rights because Copyright enjoys automatic protection when copyright is in the form of expression, which can already see, read, heard and so on. Copyright law does not protect creation that is still an idea, which is different from the patent protection system and trade know-how that protects the idea.

Copyright consists of economic rights and moral rights. Economic reasons are the right to obtain financial benefits over the creation of products and related rights products. While the moral right is the inherent right of the creator that cannot be removed for no reason even though the power has been transferred (Pipin Syarifin and Dedah Jubaedah, 2004: 202).

Based on the provisions contained in Article 40 paragraph (1) letter a mentioned above previously that the book is a creation that as protected under UUHC Year 2014 on Copyright. Placing the book as a protected creation, mainly because in addition to fulfilling the strong desire of the Indonesian nation to educate the nation's life as mentioned in the Preamble of the 1945 Constitution as well as related to the 4 (four) positive functions contained in the book are:

1. Book as media or intermediary. Meaning: a book can be a background for us or a driver to do something;
2. Book as property. Here it is intended: the book is a treasured treasure, invaluable because it is the source of knowledge;
3. Book as the creator of the atmosphere. Means: the book at any time can be a friend in any situation, the book can create a familiar atmosphere able to influence the development and character of a person for the better;
4. Books as a source of creativity. With a lot of reading books, can encourage creativity and usually have a broad insight. It is well known that one of the qualities of human power is insight and indeed broad insight can be achieved by reading a lot (Eddy Damian, 2002: 153).

Unlike the patents or brands that are required by law to registered for legal protection, copyright is not necessary to be so. Copyright may also be registered, or not because of the unregistered creations as protected by law (Sanusi Bintang, 2006: 45).

An Applications for registration of Copyright shall be submitted to a Minister of Law and Human Rights of the Republic of Indonesia through Directorate General of Intellectual Property (DJKI) in Jakarta and if domiciled in an area like Medan, it may be a registered at the Regional Office of the Department of Law and Human Rights of the Province of North Sumatra.

## 2. LITERATURE REVIEWS.

According to the provisions of Article 1 Sub-Article 1 of Copyright Law. 28 of 2014 which reads: Copyright is the exclusive right of an author or a copyright recipient to announce or multiply his creation or permit it without prejudice to restrictions under applicable copyright laws. From the aforementioned article

there are 2 (two) elements of the rights contained in that article, namely: a) The reasons that can be transferred, transferred to another party; b) The moral right which in any case cannot be abandoned from it, such as announcing his work, establishing its title, listing its real name or pseudonym and maintaining the integrity of its story (M. Hutauruk 1997: 11).

Copyright is an exclusive right granted by a country to the newly awarded state-of-the-art printed work in the field of science and art, including painting, sculpture, software and data cumulation (database), (M. Hutauruk, 1997: 2).

While the Creator is a person or persons together who upon inspiration creates a creation based on the ability of the mind, imagination, skill/skill, ability, which is poured into a distinctive and personal form. And what is meant by Creation is the result of every work of the creator showing its authenticity in the field of science, literature and / art.

### 2.1 Copyright Holder

Copyright Holder is the creator of the copyright owner/copyright receiving party from the creator / another party who further accepts the copyright. While copyright announcements are readings, exhibitions, broadcasting, sales, distribution / dissemination of a work (copyright) by any means, including the internet / performing in any way so that work can be read, seen or heard by others (UUHC 2014).

Copyright may be reproduced, in whole or in part very substantially by using the same or unequal materials, including permanently transferring or temporarily copyrights.

Copyright in Indonesia is also familiar with the concept of "economic rights" and "moral rights". Economic rights are the right to the economic benefit to creation, whereas moral freedom is an inherent right of the author or actor (art, record, broadcast) which can not be eliminated for any reason, even if the copyright or related rights have been transferred.

### 2.2 Protected Creations

The fields protected by copyright can be classified into 3 (three), namely:

1. Covering the work specified in the Berne Convention, literary, artistic work, including drama, music and musical drama.
2. Categories that appear later because of technological developments, such as cinematography, photography, sound recordings, broadcasting (radio and television).
3. Group-related computer, namely: about computer programs. In France this computer

program began to be protected in 1985, in the UK set out in the Copyright Amendment Act 1985, in the United States regulated in the Computer Software Copyright Act 1980 and in Indonesia is governed by the Copyright Act 1987 (Muhamad Djumhana and R. Djubaedillah, 2003: 61).

### 2.3 Recording of Books Copyright

Registration or registration in the Indonesian Copyright Act is carried out passively or is called a declarative negative registration system. That is, all record or record is received by not researching the applicant's right unless there is a copyright infringement. This registration system is emphasized on the assumption of being the author of the listed or registered right until someone else can prove otherwise.

The provisions regulating the procedure for the recording of works are Articles 66 to Article 73 UUHC Year 2014. Then the Regulation of the Minister of Justice Number: M.01-HC.03.01 of 1987 on "registration of creation" and Government Regulation (PP) no. 26 of 1999 on "tariffs on non-tax state revenues applicable to the Department of Justice". PP no. 26 of 1999 is refined again with PP. 75 The year 2005 and PP No. 75 of 2005 replaced by PP no. 19 of 2007 on "the types and tariffs on the types of non-tax state revenue applicable to the Department of Law and Human Rights".

Elucidation of Article 64 of Law no. 28 The year 2014 states:

"The recording of the creation and the product of the Related Rights shall not constitute a requirement for the Creator, the copyright holder or the owner of the Related Rights. The protection of a Creation begins at the beginning of the Creation or is manifested and not due to recording. This means that a work of both recorded and unrecorded remains protected".

From the above provision, it can be concluded that the recording or registration of a work is intended only to register a work formally. DJKI does not materially examine any created inventions. This is based on a description which states that registration is not absolute to obtain copyright. Moreover, the law already considers the first announcement of work to be a copyright registration.

But if a copyright is registered or registered it will be more profitable to its own creator, because the person whose name is registered in the Regional Office of the Department of Justice and Human Rights (Decree of the Minister of Justice of the Republic of Indonesia Number: M.09-PR.07.06 of 1999) still as an extension of the hand in the registration process in their respective areas, is regarded as the creator

(centralized system). This can facilitate proofs in case of a dispute.

### 3. METHOD OF RESEARCH.

The material to be used in this research is related to Legal Protection of Copyrights of Book Creation According to Law Number 28 the Year 2014 About Copyright with Statute Approach and Conduct Legal Review reference research used, i.e., from textbooks, scientific journals, papers and legislation.

The data or information collected and reviewed in this study is mainly qualitative. Information will be an extracted from various data sources, and types of data sources that will be utilized in this study include Secondary Data consisting of literature books related to Copyright, legislation, scientific journals, papers, and others.

#### 3.1 Research Procedures

The research is done in 3 (three) stages, that is data analysis is done by observing the object of law study with a series of scientific questions that will be poured in the form of words, the preparation of data is done by recording documents. Further analyzed to find out why the Creator of the Book did not record his creation and obstacles in registering his creation as well as the protection of Copyright law on Book Creation under the Copyright Act No. 28 of 2014.

#### 3.2 Parameters Observed

The execution of the study is limited only in the matter of reasons the Creator of the Book does not record his creation and the barriers in registering his creation as well as the protection of the Copyright law of the Book Creation under the Copyright Act No. 28 of 2014.

#### 3.3 Research Model

This research model is conducted by using qualitative descriptive research, by focusing on solving the problems that exist now, especially the problems that are actually by way of data that has been collected initially compiled, explained and then analyzed, where a description can represent the objective against the phenomenon - the phenomenon being addressed.

#### 3.4 Research Design

The data or information collected and reviewed in this study is mainly qualitative. Information will be extracted from various data sources, and types of data sources that will be utilized in this study include Primary data from

interview with PPNS at Regional Office of Depkumham of North Sumatera Province and secondary Data consisting of literature books related to Copyright, legislation, scientific journals, papers, and others.

#### 4. ANALYZE AND RESULT.

To find out why the creators of the book do not record their creations and obstacles in registering the book, which To know the protection of Copyright law on Book Creation reviewed from Copyright Act No. 28 of 2014. Where this study is expected to provide knowledge about the reasons of the creators of the book does not record his creation and obstacles experienced by the creators of the text in the record creation is expected to provide input for the Directorate General of Intellectual Property Rights (DJKI) Republic of Indonesia and the Regional Office of the Department of Law and Human Rights of the Province of North Sumatra related to the protection of Copyright law on Book Creation in terms of Law Copyright No. 28 of 2014.

In Indonesia since the time of the Dutch East Indies, the Old Order era, the New Order era and the Reformation era that continues to this day, the juridical arrangement of one of the protected creations, the book has got its place in the national legislation of various countries. To name a few of them are the Decree of the People's Consultative Assembly of the Republic of Indonesia no. II / MPR / 1993 on Outlines of State Policy, Chapter IV: Sixth Five-Year Development, under the heading of People's Welfare, Education, and Culture, Social Welfare Points, the letter r has directed development of the books in Pelita VI, the following: "Writing, translating and copying textbooks, reading books, especially reading children containing folklore, science, and technology books, and other educational publications are encouraged to help improve the quality of education and broaden the horizons of thinking and fostering reading culture. The amount and quality need to be continuously improved and spread evenly throughout the country at a price affordable by all levels of society. At the same time developed a climate that can encourage the writing and translation of books with adequate appreciation and assurance of copyright protection".

The directive of GBHN 1993, developed further with the enactment of UUHC 2002 which, like its predecessor's legislation, placed the book as one of creation that needs protection.

Released UUHC No. 19 of 2002, the regulation on copyright provisions in Indonesia has received the most important place in the life of society.

With the birth of this new UUHC which complements the previous UUHC, namely Law no. 6 of 1982, Law no. 7 of 1987 and Law no. 12 of 1997 and the Law no. 28 of 2014, then this law has added new things that were not previously regulated in the four laws mentioned above.

In UUHC No. 28 In 2014 is a protected one who is the creator who for his inspiration produces each work in a distinctive form in the fields of science, art, and literature. There needs to be creator expertise that can create copyrighted works. The created creation must have a distinctive form and show authenticity as a creature by the creator's ability and creativity.

Creation of books produced by the creator is a place of pouring the concept of science based on human creations (creativity) and will be more profitable if registered to the Directorate General of IPR in Jakarta by submitting registration creation according to the requirements and procedures outlined in the Minister of Justice Decree Number: M.09-PR.07.06 the Year 1999.

Although UUHC has regulated the provisions on copyright registration, there are still book authors who do not record their creations through IPR registration at the Directorate General of Intellectual Property (DJKI) or through the Office of Law and Human Rights Department of North Sumatra Province.

Based on the results of interviews with Mr. Jawasmer Saragih as PPNS in the Regional Office of North Sumatra Province Depkumham known that as for the reasons that the book's creators do not record their creations is because they are not meant to be sold commercially or are seeking profit. The books are not registered to the Directorate General of HKI in Jakarta or through the Regional Office of the Department of Law and Human Rights of the Province of North Sumatra because the creators are more aimed at educating the public through the work of their books.

But there is one difference that is considered quite important between Auterswet 1912 with UUHC Indonesia is the subject of copyright registration. Auterswet 1912 does not include copyright registration at all.

According to Kollewijn as quoted R. Sukardono said when giving advice to the board of importers' associations in Batavia (sub 2 advisories, the full suggestion is contained in T.124 pp.357 and so on) "there are two types of ways or stelsel registration, constitute stelsel constitutive and declarative stelsel "(R. Sukardono, 1981: 151).

First, it means that the copyright of the new creation is due to the already powerful registration. The second is that the registration is not the issuing of rights, but merely gives allegations or presuppositions under the law that

the person in whom the copyright is registered is the rightful person who is the author of the right to which it is registered.

In the constitutive stelsel, the emphasis of the existence of copyright depends on the registration. If it is registered (with the constitutive system), the copyright is de jure and de facto de facto existence, whereas in the declarative stelsel the emphasis is placed on the presupposition as the creator of the registered rights, until someone else can prove otherwise. In other words, on the declaration system.

## 5. CONCLUSIONS.

The conclusions of this study are as follows. Reasons causing the author of the book not to record his creation because the book is not sold commercially or make a profit only, and the creator is more aimed at educating the public through the copyrighted works of their books, so that the books are not registered to the Directorate General of HKI in Jakarta or through the Regional Office Department of Law and Human Rights of North Sumatra Province. While the obstacle for the creator of the book to register his creation is to go to Jakarta to register his book creation, the procedure of registration of production which takes a long time for 9 (nine) months, the registration fee of a nature which reaches Rp 300.000, - (three hundred thousand rupiah) every single creation that is considered too expensive by the creator of the book and creator is also still less understood about the importance of copyright book registration.

Legal protection has been granted by the state to the author of the book through the recording of a work regulated in UUHC which may prevent the occurrence of copyright disputes such as piracy or claims by others who are not eligible. In the event of a dispute, it can be settled by law through the Commercial Court, and if found guilty, then the person infringing copyright may be sentenced by the applicable law.

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