

Legal Efforts Related to Legal Protection Against Book Piracy Through Marketplace

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Abstract.

In Law No. 28 Of 2014 on Copyright it is confirmed that an act is considered copyright infringement if it violates the exclusive right of the creator to publish or reproduce and to grant permission or prohibit others who without his consent make, reproduce, or broadcast his copyrighted work. The online marketplace is classified as an Electronic Trading System Operator. The research conducted uses normative legal research. The type of research used in this research is descriptive. The result of this research is that the Marketplace is responsible for prohibiting all sales and duplication of goods resulting from copyright infringement in the trading place it manages. Any marketplace manager is obliged to act in cracking down on novel piracy so as not to lose trust. If the marketplace is unable to overcome it, then it is time for repressive legal protection to take over to solve it.

Keywords: Copyright, Marketplace and Piracy.

I. INTRODUCTION

Article 5 paragraph 1 of Law of the Republic Indonesia Number 28 of 2014 on Copyright states the moral rights inherent in the creator, among others, continue to include or not include his name on copies in connection with the use of his work for the public, use his alias or pseudonym, change his work in accordance with the propriety in society, change the title and subtitle of the Creation, and defend his rights in the event of a distortion of the Creation, mutilation of the Creation, (distortion of the work, mutilation of the work, modification of the work, or things that are detrimental to his/her honor or reputation), while under Article 8-9 the creator has the right to obtain economic benefits from his/her work for publishing, duplicating the work in all its forms, translating the work, updating, arranging, transforming the work, distributing the work or its copies, performing the work, announcing the work, communicating the work, and renting the work. For copyrighted works produced by the creator of a special skill has several rights including the author of the book. In summary, based on the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, a written work has a set of special rights that receive protection such as the right to reproduce in the form of a book published by the publisher to create performance works in any form, the right to create broadcast works and so on [1]. However, actions that exceed the capacity and ability of those who are not creators are often found today. Violations in modern times such as today are often found including copyright infringement. Copyright infringement according to Rahmi Janed, arises if there are other parties who exercise what is the exclusive right of the creator or copyright holder without permission. *A contrario* can also be considered an infringement if the other party violates the norm of *limitation or fair dealing*. Forms of copyright infringement can include piracy and duplication.

The act of book piracy has now penetrated into the world of *online marketplaces* for sale. One of the famous authors who experienced copyright infringement (book piracy) is Tere Liye whose books are sold in the *online marketplace* at a price of 20,000 to 30,000 per book [2]. Pirates take advantage of the popularity of a famous book author such as the author of a *best-selling* novel among readers to carry out their actions that violate copyright. Reviewing directly in the Shopee *online marketplace* application in addition to Tere Liye, the author of the *best-selling* book, Boy Candra, his book is also traded in the *online marketplace* at a low price from the original book price. Looking at one of the *merchants*, namely “Pesona Buku”, selling the book “Senja Hujan dan Cerita Telah Usai” by Boy Candra for Rp. 16,900,- besides that the seller from “Pesona Buku” (a *merchant* from Shopee) also stated that the contents remained the same as the original, only the

quality was different but very worth reading. The reason for the different quality but the content remains the same and is worth reading convinces the seller (*merchant*) to sell books without the author's permission and this is still freely found in the online marketplace. As if the use of these words makes potential buyers not feel guilty.

One book author said that those who buy pirated books, consciously or unconsciously, have participated in stealing the life and economic rights of the author. Other terminology in the description of each book sold: "non-original or kw, cheap but unreasonable price because it exceeds the discount, and opaque paper or book paper is often found." These terms seem to be considered not similar to piracy[3]. The *online marketplace* has an important role to achieve sales of books that are appropriate and the government's alertness to tackle the act of book piracy in the *online marketplace* that continues to be rampant so that the authors's copyright is not seized by parties who are not responsible for their work. The responsibility of various parties is important in creating protection for the copyrighted works of a book author. Reviewing Article 10 of the Law of the Republic of Indonesia Number 28 of 2014 states "the manager of the trading place is prohibited from allowing the sale and/ or duplication of copyrights goods" this is a question whether the manager of the trading place, namely the *online marketplace*, is absolutely responsible (*strict liability*) in the event of copyright infringement such as piracy. The author of the book who has full rights to his creation both in providing information about the creation to related to his own identity as the author of the book or who owns the creation. Humans are given reason and mind and have the right and freedom to develop their creativity, but book piracy in the *online marketplace* is an act that deprives the Copyright of the author as well as the owner of the creation. The purpose of this study is to examine and analyze what legal efforts can be made regarding legal protection against book piracy through the *marketplace*.

II. METHODS

The type of research used in this research is descriptive, namely legal research that is explanatory in nature with the aim of obtaining a complete picture (description) of the state of the law that applies in a certain place and at a certain time that occurs in society. The problem approach used in this research is a statute approach and conceptual approach. The technique of collecting legal materials used by the author in this research is the study of documents or library materials. This research uses data analysis technique with the deduction method.

III. RESULT AND DISCUSSION

Copyright is an intellectual property right that is guaranteed over literary, scientific, and artistic works [4]. This interpretation is stated in accordance with Article 1 (paragraph 3) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright which defines creation or work as copyright is "*any copyrighted work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in tangible form.*" According to Miller and Davis, the granting of copyright is based on the criteria of authenticity or purity (*originality*), which means that the original creation comes from the actual creator or is original [5]. In addition, reviewing Article 1 (paragraph 1) of the Law of the Republic of Indonesia No. 28 of 2014 on Copyright, it is known that with the birth of copyright creators get special privileges over the copyrighted works produced. That is, only the creator who has the right to the creation and the use of the creation is the full authority of the creator [6]. Books are one form of written work.

Written work is creation or intellectual work of humans expressed in language and/ or with certain punctuation marks [7]. A book is the publication of a written work and / or accompanied by images in the form of pages, bound, and usually produced in a certain number of copies [7]. The types of illegal use of copyright or copyright infringement are direct infringement, indirect infringement, and infringement on the basis of authority [8]. *Direct infringement* is an act that violates copyright directly is an act that violates the exclusive right of the creator of his work to reproduce or reproduce, publish, and rent a work without the permission of the copyright holder or related rights [8]. The meaning of unlawful act is derived from a 1919

decision of the Dutch High Court as: "An act or silence which impairs the rights of another, or is contrary to the obligation of the perpetrator of the act, or deviates from the good faith, prudence required in dealing with another person or the property of another" [9].

According to Munir Fuady, in accordance with the provisions of Article 1365 of the Civil Code, an unlawful act must contain the following elements;

- 1) The existence of an action.
- 2) These actions are against the law
- 3) There is fault on the part of the perpetrator
- 4) There is harm to the victim
- 5) There is a causal relationship between the act and the loss [10].

As an effort to resolve disputes in copyright, there is one effort to resolve disputes through out of court. Legal efforts made with out-of-court dispute resolution for copyright infringement that occurs on digital platforms are generally resolved by the copyright holder filing a *take a down* of his work that has been uploaded without rights by someone on the *digital platform* [11]. The regulation of repressive legal protection in Indonesia is the last resort that can be taken if preventive efforts are deemed unsatisfactory or even fruitless. The theory of repressive legal protection is specifically designed to provide a space for the enforcement process to be achieved through the imposition of fines or compensation, judicial decisions, criminal proceedings and other additional penalties. These actions are regulated and directly supervised by the state and will be enforced after the occurrence of a dispute or violation. Every foundation and substance contained in the Copyright Law has been carefully thought out, so it cannot be separated from the legal politics behind it. A concrete proof that in essence the state is guided and upholds the values of science, art, and literature in IP which plays a strategic role in building the future of the nation and state. If there is a violation of the Copyright Act, then repressive protection will lead to sanctions and threats of imprisonment against parties who have intentionally or unintentionally violated it. This is what is referred to as the theory of repressive protection, that there is an element of law enforcement by means or nature of "demanding" so that it can adjudicate a dispute, either through civil suits or punishment, both of which are equally possible to be filed.

Marketplace has been a place for almost all levels of society in conducting sales or purchase transactions. The legal protection of creators has been detailed through article by article in the Copyright Law, starting from what creations are protected, to the description of moral rights and economic rights. However, in concrete events that occur in the community, there are legal problems that are quite difficult to resolve related to the case of novel piracy in the marketplace with some *online* stores openly selling photocopied creations without the permission of the Creator as the holder of moral and economic rights and even in the product description states that the book is "non-original or non-ori". Article 1 Paragraph (23) of the Copyright Law defines, "Piracy is the unauthorized duplication of Creation and/or Related Rights products and the widespread distribution of the duplicated goods for economic gain". Piracy means that there is unauthorized distribution or copying in the field of literary works, either by scanning or photocopying. This itself is included in the class of Copy of Creation, where the perpetrator passes through the marketplace with the spoils of someone's rights. It is quite easy to declare or categorize the perpetrator as "piracy" if two elements have been fulfilled, namely that the copying is done without permission and distributed for commercial gain. Article 9 Paragraph (3) of the Copyright Law also states that, "any person who without the authorization of the Creator or Copyright Holder is prohibited from copying and/or commercial use of the work." Actors who sell on the *marketplace* with pirated books certainly do not ask permission from the Creator or Holder first.

Copyright, even the way of reproduction through photocopying novels alone is an offense or crime. Not to mention that the results of crime in the form of pirated novels are even being commercialized on *platforms* that are "trusted" to take refuge under Indonesian legality. Marketplaces are required to be more sensitive, concerned, and continue to trace whether there are activities related to piracy and immediately take firm action against the perpetrators if related matters are found. Copyright protection must be taken seriously, because ignorance has caused many novelists to face losses, while not all parties really care about the issue

of piracy. Not to mention the problem of the forum itself being indifferent or apathetic. The Copyright Law could have penalized the platform as the market or parent in the activity if it refused to take responsibility in eradicating piracy. If negligence continues to occur and the application of rules or policies only acts as an "anti-prosecution shield", then this case can be brought up to criminalization in accordance with Article 114 of the Copyright Law. Boycott or prosecution of the marketplace is very likely to occur if it is deemed unable to handle. Copyright infringement is not a trivial matter that continues to be underestimated. Any *marketplace* manager must act to crack down on novel piracy so as not to lose trust. The author does not have the power or access to take action when the violation is clearly displayed, so only the marketplace provider can take action before the case is finally submitted to the judicial process. If the marketplace is unable to deal with it, then it is time for repressive legal protection to take over to resolve it. The Copyright Law regulates any acts of infringement related to moral rights and economic rights, where dispute resolution can be pursued in two ways, namely litigation and non-litigation. Margono defines litigation law enforcement as a process of lawsuit over a conflict that is realized to replace the real conflict, where the parties have conflicting choices and delegate them to a decision maker [12].

In the practice of copyright infringement, this case will be resolved by the Commercial Court because it has been given the authority as stated in Article 95

(3) Copyright Law, that: "Courts other than the Commercial Court as referred to in paragraph (2) are not authorized to handle the settlement of Copyright disputes". Repressive legal protection only really works when the creator is fully faced with the right to choose whether to seek compensation first in the form of a lawsuit through civil channels or directly provide a "lesson" for the perpetrator in the form of punishment. Before going further or entering the scope of complaints, the creator is first given the right to warn the violator to stop or remove the novel content commercialized in the marketplace catalog before being submitted to the platform concerned through the filing of a report.

If ignored, then the Creator can then refer to Article 99 Paragraph

(1) Copyright Law:

"The Creator, Copyright Folder, or owner of Related Rights has the right to file a lawsuit for compensation with the Commercial Court for infringement of Copyright or Related Rights products". The first effort that can be made to fight for the rights of the Creator as well as to take action against the perpetrator is in the form of a lawsuit for compensation with the payment of a sum of money or a nominal amount that must be borne by the perpetrator if later it is legally proven to have violated the economic rights of the Creator after a court decision with permanent legal force and include the amount of loss suffered to be paid. Further protective measures can be taken by the Creator as part of his rights is to "criminalize" the perpetrator in order to provide a deterrent effect or lesson so as to cause a sense of suffering. Although the Creator has filed a civil lawsuit for copyright infringement, this does not necessarily reduce or eliminate his right to file criminal charges. However, this decision is fully returned to the Creator, because in the punishment related to copyright infringement still requires the fulfillment of the elements of the complaint offense, so that the perpetrator can only be processed after receiving a report from the victim. Prof. Sudarto defines punishment as a penalty imposed by the state to someone who commits a crime against the provisions of the law [13]. This means that punishment is the suffering above all suffering and this should be given to those who have deliberately committed an offense.

A person who has served a criminal sentence even after the end of his confinement period will still feel the "stamp" from the community that he has been imprisoned. Repressive enforcement of this act if disseminated and taken seriously can certainly reduce the potential or occurrence of the same crime in the environment, because that is the use or function of the law itself. Causing fear or acting as a kind of warning for the community without eliminating their rights, so that everyone who is bound by the Copyright Law can still live their lives as usual as long as it does not conflict with applicable law. This is enacted to build a bridge of separation between the perpetrators of crime and the layers of society for the quality of life in the environment. It is not only the marketplace that can be punished if it allows its container to be polluted by piracy, but also every act of copyright infringement has been regulated by the criminal provisions of Article 113 of the Copyright Law. The four articles explicitly regulate the criminal threats and fines that will be

borne based on each violation committed. Novel piracy carried out within the scope of the marketplace certainly fulfills the elements in Article 113 Paragraph 3 of the Copyright Law which states that: "Any person who without rights and/or without the permission of the Creator or Copyright holder infringes the economic rights of the Creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)".

Marketing or selling one's work without the authorization of the Creator even if the work is original is still included in the offense because it is considered detrimental to one's economic rights. Not to mention if it turns out that what is commercialized is the result of piracy by unlawfully duplicating other people's creations and distributing them in the marketplace, the threat can increase according to Article 113 Paragraph 4 of the Copyright Law that: "Every person who fulfills the elements as referred to in paragraph (3) which is carried out in the form of piracy, shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp4,000,000,000.00 (four billion). rupiah" These articles are proof that anyone who dares to commit acts of Copyright infringement in the form of piracy will face rewards or penalties, either in the form of compensation claims or sanctions. Piracy is an illegal or prohibited act, because it does not pay attention to the moral and economic rights of the Creator itself. When finding an act that is indicated to have violated. In this case, the creator can go directly to the police and include valid or legitimate evidence so that later this delegation will be investigated through a series of processes before finally being decided by a judge through a criminal case process or a lawsuit through the Commercial Court. Not only limited to the District Court or police agencies, but the Ministry of Law and Human Rights (Kemenkumham) can also be asked for help. This is regulated through Article 55 Paragraph (1) of the Copyright Law that,

"Any person who is aware of infringement of Copyright and/or Related Rights through an electronic system for Commercial Use may report to the Minister". The complaints received will later be validated by the Minister as the authorized party, so that any site or platform deemed negligent can be given a reprimand or even ended by closure. Each related institution or agency provides rules or options that can be used when reporting, so that repressive or post-incident legal protection seems to be prioritized in Indonesia rather than preventive efforts that have not been detailed in the rules. In contrast to repression, which is precisely mentioned in the points of the article complete with criminal provisions and lawsuit procedures, causing the creator to actually have many protection options that can be requested or submitted. In addition to dispute resolution in court or litigation as explained, the last way that can be passed is nonlitigation or Alternative Dispute Resolution (APS) outside the realm of the court. This settlement is regulated in line with the enactment of the Arbitration Law. Problems that occur in the marketplace related to novel piracy are allowed to be resolved outside the court power based on Article 95 Paragraph (L) of the Copyright Law, namely, "settlement of Copyright disputes can be done through alternative dispute resolution, arbitration, or court" if the parties want it and then the decision will be submitted to the arbitrator or "arbitration" (Winarta, 2013). This way of resolving disputes outside the realm of the court is based on a written arbitration agreement, either formed before or after a dispute occurs, and in the process is assisted by an arbitrator as a referee who is handpicked by agreement of the parties. The decision is final, legally binding, and binding on the parties. APS regulated in the Arbitration Law generally consists of several types.

First, consultation which is a "personal" action between certain parties in this case in the role of the Creator by meeting a consultant to be given an opinion according to needs and needs. Second, negotiation which seeks to resolve the problem with the infringer to remove the pirated book catalog without going through the court process with the aim of reaching a mutual agreement in a harmonious and creative manner [14]. Third, mediation through a negotiation process, so that an agreement is obtained from the parties with the help of a mediator. Fourth, conciliation as an agreement from the parties that has been reached by providing a solution that is acceptable to the creator and the party concerned through the opinion of the mediator or conciliator. Fifth, expert judgment as a reference or guideline that is technical in nature and in accordance with the field of expertise. Judging from the theory of repressive legal protection that tends to enforce the law through sanctions, cases of novel piracy that are currently rampant in the marketplace are considered less effective if resolved using non-litigation or out of court. If it does happen, it will be surprising

and attention-grabbing, considering that this problem has become large-scale and it is difficult to reveal and crack down on the "maña" behind rampant piracy. There have been too many losses suffered by creators, copyright holders, and even publishing houses after piracy cases, especially those that occur in the marketplace by selling works without obtaining permission from the relevant parties, then the book is repackaged into a pirated novel that is sold below the market price, and unfortunately the perpetrators of piracy do not even need to deposit a penny of money to the state.

The perpetrators are simply not entitled to the opportunity to resolve the problem without going through criminal sanctions. Not to mention that APS essentially focuses more on regulating disputes regarding rights under the law that are fully controlled by each party through the basis of their agreement. So what are the rights of the perpetrator when taking or stealing someone's work by repackaging it as a "non-original" work and then selling it in violation of someone's moral and economic rights. This is a question mark, because the act of taking without permission for commercial purposes is already a crime, not to mention the aggravation of piracy, which further increases the magnitude of the prosecution. A mutually beneficial agreement between the parties when the act is a crime will only make the perpetrators of piracy temporarily "calm", after the case begins to subside, the sale of pirated novels will reappear. This is due to the absence of a deterrent effect and strict sanctions on piracy, while the profits reaped from sales without having to deposit taxes to the state can reach extraordinary figures even exceeding those of the creator who has given birth to his work. The creator should not let the problem be resolved for free without filing a civil lawsuit or punishment, it is only natural to sue for the rights that have been taken away in order to provide appropriate compensation and prevent the same incident from happening in the future. Novel piracy may sound trivial, but it can affect various layers ranging from the state, marketplace, society, or the creator himself. Each part needs to prevent each other and support the eradication, so that in the future there will be no more sales of pirated novels in the marketplace because of the achievement of legal protection of copyright in Indonesia.

Through this explanation, it can be seen that repressive protection will ultimately lead to one problem, namely the concept of politics that affects the state itself. The role of the rule of law in building security stability and maintaining order has yet to be realized. If it is to be said, piracy is not a new issue in Indonesia, but an old issue that must be dealt with and addressed firmly in order to be eradicated. Once again, perseverance, hard work, and cooperation from government agencies or institutions as the top level are needed to improve the structure of the connectivity underneath and combat piracy perpetrators who seem to always "escape" from supervision. The government in carrying out its duties and obligations must be firm and serious in enforcing the Copyright Act and other rules relating to the protection of Copyright. Normative efforts have even been made by enforcing the Copyright Law to encourage the registration of Creation to the DJKI. However, this kind of effort still does not provide significant results because it is not balanced or balanced. There is a confusion between repressive law enforcement. Whereas it should be if following the principles and understanding of Copyright then linked to the application that is as good as the substance of the rules, without any registration, literary works have automatically attached to the Creator based on the declarative principle. If in practice this is really applied and realized, of course the issues of piracy will never be raised. Various means of protection have been provided, ranging from preventive and repressive prevention as well as settlement through litigation and non-litigation. It is only up to the state to take steps to seriously eradicate all acts of piracy for the sake of the future and progress of the nation.

IV. CONCLUSION

Although novel piracy sounds trivial, it can have an impact on various layers ranging from the state, marketplace, society, or the creator himself. Each part needs to prevent and support the eradication of each other, so that in the future there will be no more sales of pirated novels in the marketplace because of the achievement of legal protection of Copyright in Indonesia. Through this explanation, it can be seen that repressive protection will ultimately lead to one problem, namely the concept of politics that affects the state itself.

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