

RELEVANCE OF CREATOR'S ECONOMIC RIGHTS PERIOD WITH PUBLIC ACCESS RIGHT IN THE BOOK OF KNOWLEDGE**Kholis Roisah**Faculty of Law, Diponegoro University
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Telp./Fax: +62-24-76918201 Email: kholisroisah.fh.undip@gmail.com*Submitted: Sep 07, 2018; Reviewed: Dec 14, 2018; Accepted: Dec 31, 2018***Abstract**

Economic rights are creator's or Copyright holder's exclusive rights to gain economic advantages over his creation. The history of economic rights in Indonesia continuously experiences changes until the most recent is Copyright Act Number 28 Year 2014 about Copyright of creators' economic rights is protected for a lifetime plus 70 years after the death of the creator. This change has affected public people, particularly in access to the book of knowledge. This research was conducted using juridical normative method. From the result of the research, it can be concluded that prolonged protection of economic rights causes difficulty for public to access the book of knowledge because public highly depends on books that has become public domain. The book of knowledge is difficult to be accessed because its price tends to be expensive. It is probably useless to wait for the book to be publicly owned because by the time the book is going public, the content will no longer relevant.

Keywords: *Copyright; Economic rights; The Book of Knowledge***INTRODUCTION**

Intellectual property rights have always been an interesting issue because it significantly influences an economy of a country thus its existence is always fought for either through regulations in each country or through diplomatic approaches with another country. According to Suyud Margono¹, protection of IPR is divided into two big regimes, namely copyright regime and industrial property right re-

gime that is differentiated into other IPRs protection such as patent, brand, industrial design, trade secret, geographical indication, and layout design of integrated circuit.²

Copyright as one part of IPR protection was previously regulated in law systems in west European countries. Protection of copyright in United Kingdom began with the existence of The Statute of Anne in 1710 as a result from the emer-

¹ Suyud Margono, 2011, *Hak Milik Industri (Pengaturan dan Praktik di Indonesia)*. Bogor, Ghalia Indonesia, page: 3.

² World Intellectual Property Right, 2016, (Understanding of Copy Rights and Related Rights), Second Edition, Geneva Switzerland, page 4

gence of protection conflict about exclusive right between author and publisher. The presence of The Statute of Anne has become guidance to protect copyrights for countries around the world. *As stated by Bugbee,*³ “the practice of recognizing the rights of authors has begun, other European countries, including Belgium, Holland, Italy, and Switzerland, followed the example set by England.”

Protection of copyright is continuously developed not only in territorial region but also in international region. Bern Convention is the first Copyright Convention held in 1886. Many countries have taken part in ratifying Bern Convention. One of them is Indonesia. After Bern Convention, IPR once again attracted the world's attention and was regulated through Trade Related Aspect of Intellectual Property Rights Agreement (TRIP's Agreement). Countries that took part in ratifying TRIP's Agreement are obliged to obey what is stated in that agreement including anything regarding the protection of copyright.

Copyright is an exclusive right that arises automatically based on declarative principles. The declarative principle is the principle of ownership that is non-formal

³ Bugbee, B., 1967, *Genesis of American Patent and Copyright Law*. Washington DC, Public Affairs Press, page: 211.

registration or as automatic protection.⁴ The creator has exclusive rights during the protection period for the right to reproduce the work, the right to distribute copies of the work to the public, the right to make "Derivative works," the right to appear in public, and the right to show the works in public.⁵

Regulation of copyright is associated with protection of economic rights and moral rights.⁶ Protection of economic rights is an important element in the discussion about intellectual property rights considering the important role of economy sector gained by a country through their intellectual property rights. Regulation of economic rights deals with Bern Convention and TRIP's Agreement. The regulation of the economic rights has caused continuously changing in the protection of economic rights in Indonesia.

Copyright in Indonesia has been recorded to have five times amendments since the adoption of Auteurswet 1912

⁴ Stef Van Gopel, 2013, Copyright formalities In The Internet Age : Filter of Protection or Facilitators of Licensing, *Barkeley Technology Law Journal*, Vol. 28:1425, page 1426

⁵ Menesha A. Mannapperuma, Brianna L. Schofield, Andrea K. Yankovsky, Lila Bailey, and Jennifer M. Urban, 2014, Is it in the Public Domain? A handbook For Evaluating The Copyright status of Works Created in The United States Between January 1, 1923 and december 31, 1977, *Samuelson Law Technology and Public Policy Clinic*, Barkeley Law University, Page 1

⁶ Arathi Ashok, 2010, Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends, *Journal of Intellectual Property Rights*, Vol 15, January 2010, page 47

Stb. No. 600 belonging to Netherland. A question arose whether lifetime plus twenty five (25) years after his/her death expiry of copyrights in Act Number 6 Year 1982 can protect creators' economic rights. Then, there was another amendment, particularly for Act Number 7 Year 1987, Act Number 12 Year 1997 and Act Number 19 Year 2002 that protects creator's economic rights for a lifetime plus fifty (50) years after the death of creators. Protection of economic rights keeps changing until the latest one is in Act number 28 Year 2014 about Copyright protecting economic rights for a lifetime of creators plus seventy (70) years after their death.

Prolonged protection of economic rights does not only affect creators but also affect public people. Knowledge as one of field that is protected by copyright is an important element in national development, particularly the book of knowledge. The book of knowledge as an important element in national education system surely needs special attention from government because it is covered by copyright protection. Protection for creators over the book of knowledge as their creation needs to be balanced with public access right to the book of knowledge as an important element in national education

system.

The book of knowledge has a very important role in education system in Indonesia. Education is one of national development instruments; in order to educate the nation thus people access to the book of knowledge needs to be well considered. The principle of the implementation of Indonesia's Education as stated in Article 4 section (5) Act number 20 Year 2003 about National Education System is promoting the culture of reading. This principle can be realized if public access to books, particularly the book of knowledge, is available easily.

1. Research Method

Research method used in this study was qualitative method. Qualitative research method is a research method used to research the scientific condition of an object, (the opposite is experiment) in which researcher is a key instrument. Data were collected using triangulation. The analysis was inductive. Result of qualitative research emphasizes more on meaning than generalization.⁷ Meanwhile, the type of research was juridical normative. Juridical normative research approach is a procedure of scientific research to

⁷ Afifudin dan B.A. Saebani, 2007. *Metodologi Penelitian Kualitatif*, Bandung, CV. Pustaka Setia, page: 57.

seek for truth based on the logic of law science knowledge from its normative side, and the object is the law itself.⁸

2. The Purpose of The Research

This research is aimed at examining and analyzing the relevance of protection expiry of creator's economic rights with people access in the field of knowledge particularly the book of knowledge; and examining and analyzing the comparison of creators' economic rights in countries with common law legal system such as America, Australia, and Malaysia and countries with civil law legal system such as Indonesia, Netherland, Thailand, and Brazil.

RESULT AND DISCUSSION

Relevance of Creator's Economic Rights Expiry with People Access Right in the Book of Knowledge Field

The terms of book/*kitab*, book (English), *boek* (Dutch), *biblion* (Germany), *livres* (France) and *libros* (Spanish) are terms originating from various countries. According to *Kamus besar Bahasa Indonesia* (The Dictionary of Indonesian Lan-

guage),⁹ book is binding sheet of paper containing text or blank. Books containing text can be categorized as books containing knowledge and books containing literature. Both the book of knowledge and the book of literature contribute significantly in national development.

Books known as binding sheet of paper have proven to be very effective to spread and preserve information about knowledge, technology and culture. By education, information of research and assessment, even as a media of communication, books has significant contribution in developing understanding among nations thus a better and dynamic cooperation among nations can be realized.¹⁰

Education is one of national development infrastructure to educate a nation life. Therefore, people access to the book of knowledge needs to be paid attention. One of principle of Indonesian education implementation as stated in Article 4 section (5) Acts Number 20 Year 2003 about National Education System is promoting the culture of reading. This principle can be realized if people can access books especially books of knowledge easily.

Chapter V about The Use of Books

⁸ Johnny Ibrahim, 2005, *Teori dan Metode Penelitian Hukum Normatif*. Cet. 1, Malang, Bayumedia Publishing, page: 57.

⁹ <http://kbbi.web.id/buku> access in December, 5th 2016 at 21.45.

¹⁰ Fatimah Zuhrah. *Book, Library, and Student's Interest In Reading*, Jurnal Iqra. Voume 03 Number 01. May 2009. page: 50.

in Education Unit Article 6 section (1) Ordinance of Minister of National Education The Republic of Indonesia Number 2 Year 2008 about book states that:

“Textbook is used as compulsory reference by educators and students in learning process.”

Textbook is used as compulsory reference. This means that text book as a part of knowledge is a principal and essential component for the implementation of learning process.

One of problems faced by Indonesian people is the lack of interest in reading, besides the expensive price of books causing the emergence of piracy. Another problem is the lack of interest in writing because there is lack of appreciation to the author themselves. Author is reluctant to force government to make an effort to keep improving the protection of copyright. The effort is realized in the renewal of legal regulation particularly copyright in Act Number 28 Year 2014 about copyright. One of the regulations in this Act is giving a longer expiry of economic rights which is a creator’s lifetime plus seventy (70) years after his/her death.

In this case, there is overlapping between individual and public interest. Individual interest is interest of creators or in this case the authors themselves. Meanwhile, public interest is interest of con-

sumers as party who needs books particularly the books of knowledge.¹¹ Author’s interest that is protected by government basically cannot be fully enjoyed by the author him/herself because there are parties that are related to the process of the creation of the book until it reaches consumer’s hand.

Book is one of creations that are protected by various national regulations and two main copyright conventions thus it can be denied that the presence of books as creation has to be protected. This is because books is the intellectual property of an author, meaning that besides having economic values for the one who exploits them, books also has important meaningful value for the development of spiritual and material values of a nation.¹²

Prolonged expiry protection of economic rights can be an obstacle for public to access the book of knowledge. Public monopoly right over the creation depends on the completion of protection expiry, until the time when it becomes public domain.¹³ When expiry of economic rights

¹¹ Myra Tawfik, 2010, History in The Balance Copyright and Acces to Knowledge, University of Widsor, Law Faculty, Law Publication, Page 71, avaiable at <https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article>

¹² Eddy Damian, 2014, *Hukum Hak Cipta*. Bandung, PT. Alumni Bandung, page: 157.

¹³ J.J. Hua, Toward A More Balanced Approach: Rethinking and Readjusting Copyright 39 Systems in the Digital Network Era, Springer-Verlag Berlin Heidelberg , 2014, DOI 10.1007/978-3-662-43517-5_2, Page 39

has ended, the creation will belong to public domain thus public can freely access the creation without asking permission or paying royalty.

The ending of protection expiry means that the creation becomes public domain. Meaning that, people can use it without permission. However, this public domain status does not eliminate obligation to remain admitting and appreciating the creators. Public domain status tends to be driven by economic reason not moral reason.¹⁴

The granting of quite long expiry for the economic rights protection makes a creation in the form of book of knowledge that finally belongs to public will not be relevant anymore. For book of knowledge, there will be constant revision considering that knowledge is always changing and improving. Consequently, the granting of freedom of access right to public over a creation until it becomes public domain will be useless.

As stated by Candra Irawan,¹⁵ during the period of the protection, the owner of Intellectual Property Rights or IPR has a right to monopolize its use, and when

the period of protection ends, the IPR will belong to public. It means that it can be accessed by all people without asking permission of the owner. The weakness of this regulation is when IPR finally becomes public domain, the technology informed in the book will already be outdated or even the IPR will no longer economical in supporting any production activities, selling goods or service activities because it has been replaced by new IPR that is protected by IPR law.

Technology meant by Candra Irawan in this case is the object that is protected. Like technology, knowledge also keeps changing over the years. The rapid development of knowledge has made creations that finally become public domain no longer relevant with the recent era.

According to Neil Netanel in Kholis Roisah¹⁶, in this context, IPR protection is related to its social function. It is also stated that the expiry of the protection should be shortened and should also give a lot of rooms for public domain. Control owned by the author for some derivatives works should be reduced. The regulation should give balance between author's or inventor's interest and consumer or public's

¹⁴ Henry Soelistyo. *Plagiarisme: Pelanggaran Hak Cipta dan Etika*. Kanisius. Yogyakarta. 2011. page: 74.

¹⁵ Candra Irawan. *Politik Hukum Hak Kekayaan Intelektual Indonesia (Kritik terhadap WTO/TRIPs Agreement dan Upaya Membangun Hukum Kekayaan Intelektual demi Kepentingan Nasional*. Bandung. Mandar Maju. 2011. page: 191.

¹⁶ Kholis Roisah, 2015, *Konsep Hukum Hak Kekayaan Intelektual (Sejarah, Pengertian dan Filosofi Pengakuan HKI dari Masa ke Masa)*, Malang, Setara Pres, page: 79.

interest. Access of the use of intellectual works for public will not spontaneously exist. Government's role and involvement is necessary to realize justice and *attrictie culture for civil society*.

Decision to prolong the expiry of copyright protection is also criticized by OK Saidin.¹⁷ Idea about limiting expiry of copyright is actually based on philosophical foundation of each material rights including copyright of social function. Thus, by having limitation of expiry of owner's copyright, it is expected that the copyright is not held for a long period of time in the author's hand that is also the owner. Therefore, the creation can be enjoyed by people or public as the realization of principles of each right that have social function. So far, copyright that has expired only benefits certain parties, particularly producer, in this case the producer of song as creation, and publisher, in this case creation in the form of books or other scientific works. OK Saidin also adds that there is indication that by having 70 years expiry of author's copyright (the lifetime of the creator plus 70 years after his/her death), Indonesian UHC intends to emphasize individual right.¹⁸

Henry Soelistyo added that the de-

¹⁷ OK Saidin, 2015, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, Cet. 9, Jakarta., Rajawali Pers, page: 217.

¹⁸ *Ibid.* page: 220.

velopment of conception and regulation of copyright is pragmatically considered not conducive and even against the effort to educate the nation. Views stated in copyright seminars highlighted the need of "freedom" to use the creation for free in order to help educate children in this country to be smart, clever, and civilized. The targets are books and other scientific works. In his opinion, such books should be duplicated for free without permission or agreement of the author and without paying royalty.¹⁹

In his paper entitled *Intellectual Property and Information Control: Philosophic Foundations and Contemporary Issues*, Adam D. Moore stated:²⁰

"On this view, a necessary condition for promoting the creation of valuable intellectual works is granting limited rights of ownership to authors and inventors. Absent certain guarantees, authors and inventors might not engage in producing intellectual property. Thus control is granted to authors and inventors of intellectual property, because granting such control provides incentives necessary for social progress. Although success is not ensured by granting these rights, failure is inevitable if those who incur no investment costs can seize and reproduce the intellectual effort of others."

Adam D. Moore statement can be interpreted that Oppenheim's view regard-

¹⁹ Henry Soelistyo. *Op.Cit.* page: 50.

²⁰ Adam D. Moore. *Intellectual Property and Information Control: Philosophic Foundations and Contemporary Issues*. New Brunswick NJ. Transaction Publishing. 2001. page: 65.

ing incentive-based stated that it is necessary to promote a creation by granting limited ownership right to author or inventor. There is no certain guarantee that author or inventor involves in production process of his/her creation so that control is given to authors or inventors of the creation. This control gives incentive to authors or creators. Even though there is no guarantee that this method will be successful, at least this method can prevent owner to fully control creations of authors or inventors.

The process of book writing until the book can be in public hand is long. In this case, it is publishers or distributors who are benefited the most over this protection, not the creators. Thus, it can be concluded that only certain groups, particularly publishers and distributors, who gain the benefit, neither creators nor public. Protection given to the authors of the book of knowledge in long term basically cannot directly felt by creators because most creators do not print their works in the form of books independently, they invite publisher instead to mass print their works. Protection of economic rights that is supposed to be enjoyed by creators is cut by production cost. This cutting is done by other parties aside from creators.

Book publishing activity is basically

a manufacture process managed by publisher as a business unit. Publisher is a party that realizes a creation of an author. To publish a book, it is necessary for a publisher to have fund and insight or entrepreneurship.²¹

Granting of the longer expiry of economic rights does not fully give economic rights to creators. The economic rights also go to publisher and distributor business units. However, this can inhibit public access to the books. The books of knowledge that have been printed by publishers have higher economic value considering that the publisher will surely get profit from the selling price of the books. Moreover, distributors also have significant influence in the setting of selling price, and consequently, the price of the books will tend to be higher when they get to the consumer's' hand.

Public access right to the books of knowledge is getting difficult with the granting of longer expiry of copyright protection. Effort from various parties is needed in order to make public access right and the expiry of copyright protection realized in balance²². The availability of public access to the books of knowledge has been provided by Indone-

²¹ Eddy Damian. *Op.Cit.* page: 175.

²² Colston, Catherine & Middleton, Kirsty, 2005, *Modern intellectual property law* (2. ed., Cavendish Publishing, London), p. 3

sian government through various different ways. As stated by Hettinger.²³ *“One alternative to granting intellectual property rights to investors as incentive is government support of intellectual labour.”*

Hettinger stated that one of alternatives to granting intellectual property rights to creators as incentive is by having government support of creators' hard works in creating something. Indonesian government implements this by making regulations as a way to make balance between the interest of creators and the interest of public. This regulation is stated in Minister of National Education of The Republic of Indonesia Ordinance Number 11 Year 2005 about Lesson TextBooks in some Articles. Article 8 section (4) Minister of National Education Of The Republic of Indonesia Ordinance Number 11 Year 2005 about Lesson Text Books. :

“In order to help students who are unable to have access to school textbooks, education units have to provide at least ten (10) exemplars of school textbooks for each school subject for each class as library collection.”

Article 10 section (3) Minister of National Education Ordinance Number 11 Year 2005 about School text books:

“Government, local government, and/or people can help the provision of school text books in education units in the form of money grant/subsidy.”

²³ Edwin C. Hettinger, 1989, *Justifying Intellectual Property*. Philosophy and Public Affairs, 18, page: 31.

Another regulation regarding the books of knowledge in Minister of National Education Ordinance is stated in Minister of National Education of The Republic of Indonesia Ordinance Number 2 Year 2008. Article 3 Minister of National Education of The Republic of Indonesia Ordinance Number 2 Year 2008 about books:

- (1) *Department, Department in charge of religion affairs, Local Government, and/or people make an effort to provide books that are qualified and meet national standard of education and also suffice the need of educators and students.*
- (2) *In order to work on the availability of books as meant by section (1), Department, Religion Department, Local Government, and/or people can donate fund for prospective book author in the form of grant.*
- (3) *The use of fund grant by prospective author as meant by section (2) is implemented based on grant agreement and legal regulations.*
- (4) *Department, Department in charge of religion affairs, and/or Local Government can buy book copyright from the owner in order to facilitate the provision of books for educators, education workers, and students with reasonable price.*

Section (4) of the Article is mostly applied by government nowadays. The existence of sold flat regulation in Act Number 28 Year 2014 about Copyright surely makes both regulations relevant. The books of knowledge whose copyright are bought by government are one of gov-

ernment ways to control the price of books in the market. Government has a right to monopolize the books. Government can also publish the books independently so that this can cut down production cost and no more royalty payment. However, in this case, government does not publish independently. Government uses eBooks or online books as access facility for people to the books of knowledge instead.

Government is targeting to buy copyrights of 295 titles of school books. Budget as much as Rp 20 billion has been prepared. Books whose copyright have been owned by government can be access for free through Information technology network and Communication network of National Education.²⁴

Government performs the effort to buy copyright from creators and later the creation, in this case a book, is uploaded into a media so that people can download it for free and print it independently that later the book can be multiplied.²⁵ This way has been proven effective considering that the price that people must bear becomes pretty cheap because the production of the book is not related to any pub-

lisher companies which gain profit from the printing.

Article 7 Minister of National Education of The Republic of Indonesia Ordinance Number 2 Year 2008 about Books states that:

- (1) *Educators can suggest financially able students to have the book.*
- (2) *Suggestions as what are meant by section (1) are not forcing or not compulsion.*
- (3) *To have the book as what is meant by section (1) and section (2), students or students' parents buy directly to the retail.*
- (4) *Education units have to provide text books in library, and educators suggest to all students to borrow school textbooks from the library of the education units or to buy it.*

Article 8 section (1) Ordinance of Minister of National Education of The Republic of Indonesia Number 2 Year 2008 about books states that:

“Department, department in charge of religion affairs, and/or local government can allow individual, group, and/or legal entity to multiply, print, copy, media-convert, and/or sell books whose copyright has been bought as what is meant in Article 3 section (4). ”

Article 3 section (4) meant is the buying of copyright by government over a school text book from its author. By buying the copyright, Government has a right to monopolize the creation, in this case the books. One form of monopoly actions is by giving freedom for an individual,

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<http://news.kompas.com/read/2008/04/18/20225013/pe-merintah.beli.hak.cipta.295.buku.pelajaran>, access in January, 5th 2017 at 14.35 WIB.

²⁵Those book can be access in <http://bse.kemdikbud.go.id/>

group or legal entities to multiply, print, copy, media-convert, and/or sell the books.

Regulation of Economic Rights in Some Countries and Comparison of Economic Rights in Civil Law Legal System and Common Law Legal System

Protection of economic rights in countries with civil law legal system and common law legal system has its own differences and similarities considering that both systems refer to the same standard.

Basic difference from the two legal systems in the principle of copyright protection is in the philosophy of moral rights protection given. Along with moral rights, economic rights will also attach in every creation. Therefore, when both legal systems are compared, there will be differences and similarities. The following table is about the comparison of economic rights protection in various countries with civil law and common law legal system.

Table 1
Comparison of Economic Rights Protection Term of Time in Some Countries

Distinction	Civil Law				Common Law		
	Indonesia	Netherlands	Thailand	Brazil	America	Australia	Malaysia
Term of time of creator's economic rights protection	A lifetime of creators plus seventy (70) years after their death. Derivatives creation is protected for fifty (50) years after the creation is announced or completed.	A lifetime of creators plus seventy (70) years after their death. Derivatives creation is protected for seventy (70) years after the creation is announced or completed.	A lifetime of creators plus fifty (50) years after their death. Derivatives creation is protected for fifty (50) years after the creation is announced or completed.	A lifetime of creators plus seventy (70) years after their death. Derivatives creation is protected for seventy (70) years after the creation is announced or completed.	A lifetime of creators plus seventy (70) years after their death.	A lifetime of creators plus seventy (70) years after their death. Derivatives creation is protected for fifty (50) years after the creation is announced or completed.	A lifetime of creators plus fifty (50) years after their death. Derivatives creation is protected for fifty (50) years after the creation is announced or completed.

The table above shows both differences and similarities of the granting of term of time of economic rights protection in

some countries. Differences occurred in every legal regulation in those countries is reasonable considering that Bern Conven-

tion and TRIPs Agreement are as their references. Therefore, legal regulation of copyrights in those countries which ratify them should fully obey what has been stipulated in the agreement.

As mentioned in Article 7 sub (1) and (2) Berne Convention for the Protection of Literary and Artistic Works:

- (1) *The term of protection granted by this Convention shall be the life of the author and fifty years after his death.*
- (2) *However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making such a work, fifty years after the making.*

In addition, generally, standard regulation of creator's economic rights protection in TRIPs Agreement refers to Bern Convention. This is stated in *Article 9 sub (1) Trade Related Aspects of Intellectual Property Rights Agreement*:

"Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom."

Based on the information in the table, none of those seven countries grants term of protection time less than a lifetime of creator plus fifty (50) years after the death of the creator. There are only two

countries, Thailand and Malaysia, which still grant term of protection time for a lifetime of a creator plus fifty (50) years after his/her death. The other five countries, such as Indonesia, Netherland, Brazil, United States and Australia protect copyright by granting longer term of protection, which is a lifetime of a creator plus seventy (70) years after his/her death.

Indonesia, in this case, is the only country in Southeast Asia which grants longer protection compared to Thailand and Malaysia. As what is aforementioned, Indonesian people have not been able to fully accept Intellectual Property Rights. However, legal regulations regarding copyright are not relevant with the condition of its people. This is different from Netherland, United States, and Australia. These three countries are developed countries thus the people has been aware of Intellectual Property Rights. Thus, having longer copyright protection is not a big deal.

The term of time for copyright protection, some countries like Indonesia, Netherland, Australia and United States applies term of copyright protection for a lifetime of a creator plus seventy (70) years after his/her death in their latest Act of Copyright. Nevertheless, before the existence of TRIP Agreement, on the aver-

age, protection of copyright protects creations for the lifetime of creators plus fifty (50) years after their death. It is clearly seen that Act of copyright in each country before the existence of TRIP's Agreement protects creations for not more than a lifetime of a creator plus seventy (70) years after his/her death. This shows that the influence of TRIP's Agreement brings wide changes in the protection of economic rights for some countries either with civil law or common law legal system.

Based on the information the table, term of derivative copyright protection time in Indonesia, Thailand and Malaysia as countries in Southeast Asia region is agreed that is fifty (50) years after the creation is announced or after the creation is completely made. Besides those three countries, protection of derivative copyright is seventy (70) years after the creation is announced or completed.

There is no difference in case of granting term of time of economic rights protection between countries with civil law legal system and countries with common law legal system because some of those countries grant the same term of time for economic rights protection without any significant different. Based on history of the protection of copyright, the influence of civil law and common law legal

system lies on the principle of moral rights protection, not on economic rights, thus there is no significant difference in the implementation of term of economic rights protection in those countries. Besides that, the protection of economic rights that is dominant is initiated by United States which holds common law legal system.

Particularly in case of Intellectual Property Rights, both main legal systems in the world, that are European Continental legal system (civil law) and Anglo Saxon legal system (common law), grow approaching each other. Thus, in the field of Intellectual Property Rights, it seems that there is almost no difference in legal system held by each country growing based on the influence of both legal systems.²⁶ This condition also influences Copyright as part of Intellectual Property Rights.

The philosophy of French copyright emphasizes on protection to creators thus it focuses on moral right. This view makes protection of copyright ownership right as aforementioned in the previous chapters, thus moral interest of creators is so important that economic rights are put aside. This influence is no longer seen now. Based on the information in the table

²⁶ OK. Saidin. *Op.Cit.* page: 29.

above, countries with civil law legal system no longer emphasize the protection of copyright only on its moral right, but also on its economic rights.

Conversely, the view or philosophy of copyright protection held by countries with common law legal system emphasizes on the protection of the creation, not the creator. This view puts aside moral rights and prioritizes on economic rights in the protection. Therefore, protection of economic rights that is applied in Acts of copyrights in countries with common law legal system is relevant with the philosophy of its protection that emphasizes more on the protection of economic rights as incentives for creator hard work.

CONCLUSION

Protection of author's economic rights stated in Act Number 28 Year 2014 about Copyright lasts for the lifetime of the author plus seventy (70) years after his/her death. Prolonged protection of economic rights has caused difficulty for public to get access to the creation, particularly the creation in the form of the book of knowledge. In part, because Indonesian people have not got the copyright completely. Moreover, the economic condition of Indonesian people that mostly is below average has worsened the problem. Public access right to the book of knowledge

is given after the book becomes public domain or after the expiry of economic rights protection ends. The longer the expiry protection, the more irrelevant the book when it becomes public domain. Prolonged protection of author as creator is not merely enjoyed by the creator him/herself. Longer expiry of economic rights is, instead, enjoyed by the owner, or in this case is the publisher because publisher is an important element in the creation of a book.

The expiry of author's economic rights in countries with civil law legal system and in countries with common law legal system has differences and similarity that are not significant. There is no difference in protection of copyright in some of those countries because all refer to the standards of copyright protection, Bern Convention and TRIPs Agreement. Thailand and Malaysia are two countries that have the shortest period of protection expiry. In those two countries, the protection is given for the lifetime of the author plus fifty (50) years after his/her death. Meanwhile, in the other five countries, Indonesia, Netherland, Brazil, United States, and Australia, the protection is given for the lifetime of the author plus seventy (70) years after his/her death. Between countries with civil law legal system and coun-

tries with common law legal system, the difference is only seen in the regulation of moral rights as philosophy that make the difference.

Knowledge that is obtained from the book of knowledge will never be apart from the author. Therefore, the rights of author that have been protected needs to be reinforced because author is party that is supposed to get the biggest benefit from his works, not the publisher company or distributor. The implementation of National Education Minister Ordinance also needs to involve technology infrastructure like social media such as Twitter, Facebook and also Instagram so that both people who need and people who intend to participate in facilitating the availability of the book can have access to clear information.

BIBLIOGRAPHY

- Afifudin dan B.A. Saebani, 2007. *Metodologi Penelitian Kualitatif*. Bandung: CV. Pustaka Setia.
- Arathi Ashok, 2010, *Economic Rights of Authors under Copyright Law: Some Emerging Judicial Trends*, *Journal of Intellectual Property Rights*, Vol 15, January 2010, page 47
- Bugbee, B., 1967. *Genesis of American Patent and Copyright Law*. Washington DC: Public Affairs Press.
- Colston, Catherine & Middleton, Kirsty, 2005, *Modern intellectual property law* (2. ed., Cavendish Publishing, London), p. 3
- Damian, Eddy. 2014. *Hukum Hak Cipta*. Bandung: PT. Alumni Bandung.
- Henry Soelistyo. 2011. *Plagiarisme: Pelanggaran Hak Cipta dan Etika*. Yogyakarta: Kanisius.
- Hettinger, Edwin C. *Justifying Intellectual Property*. *Philosophy and Public Affairs Journal*, Vol. 18. 1989.
- Ibrahim, Johnny. 2005. *Teori dan Metode Penelitian Hukum Normatif*. Cet. 1. Malang: Bayumedia Publishing.
- Irawan, Candra. 2011. *Politik Hukum Hak Kekayaan Intelektual Indonesia (Kritik terhadap WTO/TRIPs Agreement dan Upaya Membangun Hukum Kekayaan Intelektual demi Kepentingan Nasional*. Bandung: Mandar Maju.
- J.J. Hua, 2014, *Toward A More Balanced Approach: Rethinking and Readjusting Copyright 39 Systems in the Digital Network Era*, Springer-Verlag Berlin Heidelberg 2014, DOI 10.1007/978-3-662-43517-5_2, Page 39
- Margono, Suyud. 2011. *Hak Milik Industri (Pengaturan dan Praktik di Indonesia)*. Bogor: Ghalia Indonesia.
- Menesha A. Mannapperuma, Brianna L. Schofield, Andrea K. Yankovsky, Lila Bailey, and Jennifer M. Urban, 2014, *Is it in the Public Domain? A handbook For Evaluating The Copyright status of Works Created in The United States Between January 1, 1923 and december 31, 1977*, Samuelson Law Technology and Public Policy Clinic, Barkeley Law University, Page 1
- Myra Tawfik, 2010, *History in The Balance Copyright and Acces to Knowledge*, University of Widsor, Law Faculty, Law Publication, Page 71
- Moore, Adam D. 2001. *Intellectual Property and Information Control: Philosophic Foundations and Contempo-*

- rary Issues. New Brunswick NJ. Transaction Publishing.
- Roisah, Kholis. 2015. Konsep Hukum Hak Kekayaan Intelektual (Sejarah, Pengertian dan Filosofi Pengakuan HKI dari Masa ke Masa). Malang: Setara Pres.
- Saidin, OK.2015. Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights). Cet. 9. Jakarta: Rajawali Pers
- Stef Van Gopel, 2013, Copyright formalities In The Internet Age : Filter of Protection or Facilitators of Licencing, Barkeley Technology Law Journal, Vol. 28:1425, page 1426.
- World Intellectual Property Right, 2016,(Understanding of Copy Rights and Related Rights), Second Edition, Geneva Swiszerland, page 4
- Zuhrah, Fatimah. Buku, Perpustakaan, dan Minat Baca Siswa. Jurnal Iqra. Volume 03 Nomor 01. Mei 2009.
- <http://kbbi.web.id/buku> diakses pada tanggal 5 Desember 2016 pukul 21.45
- <http://news.kompas.com/read/2008/04/18/20225013/pemerintah.beli.hak.cipta.295.buku.pelajaran>, diunduh pada tanggal 5 Januari 2017 pukul 14.35 WIB.
