

**LEGAL PROTECTION OF PUBLISHERS AS COPYRIGHT HOLDERS  
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Submitted: June 13, 2021; Reviewed: Jul 07, 2021; Accepted: Oct 05, 2021

**Abstract**

*The formulation of the problem in this study are: 1. How is the legal protection of publishers against the rampant acts of book piracy?. 2. What is the cause of the rise of book piracy? The objectives of this study are: To determine the legal protection of publishers against the rampant acts of book piracy. To find out the cause of the rise of book piracy. Based on the characteristics of this research, to find answers to the problems raised, normative legal research methods are used. The normative legal research method is based on the characteristics of normative legal science, which is carried out through a normative juridical approach. The normative juridical approach is a legal research approach that is carried out by examining library materials as the basic material for research by conducting a search on regulations and literature related to the problems studied. The conclusions in this study are: Protection of a copyrighted work, especially books that are widely offered in the market, in this case the*

*appreciation for copyrighted works is still low, so that protection cannot be fulfilled optimally, even far from perfect. It can be said that the need and economic conditions, and the need for books support the circulation of pirated books. This phenomenon seems to be a familiar culture and interrelated with each other, namely between publishers, traders, and book lovers, namely the community itself. Apart from cultural factors, the weak role of the apparatus in conducting raids will also make the presence of pirated books on the market a factor. The cause of the rise of book piracy, the lack of respect for copyright is a personal reason for someone in viewing the level of respect for copyright.*

**Keywords:** *Copyright Holder; Legal protection; Book Piracy*

## INTRODUCTION

Cases of piracy are getting higher and more and more common nowadays, starting from the piracy of music, films, software, databases, literary works, books, science, and pictures or photography. The ranking of piracy in Indonesia, especially Copyright, is the third largest in the world. The more advanced information and technology, the more cases of piracy occur and experience a very sharp increase every year. Piracy seems to have become a culture and difficult to overcome, especially in Indonesia. In Indonesia, the act of piracy of books is also very easy to find in addition to piracy of other commercial goods such as CDs, cassettes, software programs or whatever. Especially if we look at the definition of book piracy that is usually listed in every book, namely the effort to reproduce books by printing, photocopying or other means without obtaining written permission from the publisher of the book concerned. Then there

will be many parties who consciously or unconsciously can be called hijackers. In Article 40 Paragraph (1) Letter (a) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, a book is one of the works protected by Copyright: (1) Works that are protected include Works in the fields of science, art, and literature, consisting of: (a) Books, pamphlets, presentations of published written works, and all other written works.

In the context of the welfare of the people, the Indonesian state has an obligation to facilitate all the fulfillment of the rights of every citizen. Therefore, the role of the state is born which is carried out by a government with the main function of bringing together and regulating the various needs and interests of citizens, both only for individuals and community groups in a fair and non-discriminatory manner.<sup>1</sup> Indonesia is also rich in various

<sup>1</sup>Awaluddin Awaluddin, "STATE'S AUTHORITY RIGHTS OVER LAND IN INDONESIA," *Tadulako*

kinds of culture and arts which are known in a copyright, including songs, or music, batik motifs, dances, written works, etc. Copyright as an exclusive right that is automatically obtained due to declarative principles after the creation is realized (Article 1 point 1 of Law Number 28 of 2014 concerning Copyright, hereinafter written UUHC) (Ministry of Law and Human Rights of the Republic of Indonesia, 2014).

Copyright consists of moral rights and economic rights. Moral rights are rights that are eternally attached to the creator, and economic rights are the exclusive rights of the creator or copyright holder to obtain economic benefits from his creation. These economic benefits will be obtained when the copyright holder or creator grants a license to a third party to use, publish, or reproduce their copyrighted work by obtaining compensation called royalties. The development of copyright arrangements prior to the TRIP's Agreement in Indonesia Since 1886, the Berne Convention has been enacted among countries in the western region of Europe, which is intended to protect literary and artistic creations. The tendency of West-

ern European countries to become parties to this Convention, this has prompted the Dutch kingdom to renew its copyright law which has been in effect since 1881.<sup>2</sup> The views that are often expressed in copyright seminars postulate the need for "freedom" to use creations free of charge to help educate the nation's children to be smart, intelligent, and cultured. The target is books and other scientific writings. In his mind, such books are as free to reproduce as possible without the permission or consent of the author and without the payment of royalties.<sup>3</sup>

Under normal conditions, such an act is a violation of the law but here we discuss matters that are normatively qualified as a violation of the law but wish to be legalized, therefore, the Copyright Law has been revised again with the enactment of Law No. 12 of 1997. This change is actually more due to the consequence of the Indonesian government having ratified the approval of the establishment of the World Trade Organization. One of the aspects contained in the agreement concerns

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*Law Review* 2, no. 2 (31 Desember 2017): 107–23. Akses 14 Januari 2022.

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<sup>2</sup>Suyud Margono, *Hukum Hak Cipta Indonesia: Teori dan Analisis Harmonisasi Ketentuan World Trade Organization/ WTO-TRIPs Agreement*, Ghalia Indonesia, Bogor, 2010, hlm. 53.

<sup>3</sup>Henry Soelistyo, *Plagiarisme Pelanggaran Hak Cipta dan Etika*, Kanisius, Yogyakarta, 2011, hlm. 50.

the issue of Intellectual Property Rights.<sup>4</sup> In terms of acknowledgment of copyright, it is since the birth or since the creation of a work, that is, legal protection of the rights of the creator has existed even though the creator has not registered his creation with the Ministry of Justice c/q the Directorate General of Intellectual Property Rights.<sup>5</sup> According to Soetan Moh. Shah in a paper at the congress. According to him, the translation of *Auteursrecht* is the right of the author, but for purposes of simplicity and practicality it is shortened to Copyright.<sup>6</sup> Moving on from the terminology of copyright, copyright itself arises because there is a creator and there is a copyrighted work or creation. However, the origin of the creation of a creation was born, the author quotes the sentence written on the ceiling of the dome of the roof of the WIPO Headquarters building in Geneva which was summarized by Arpad bogsch, Director General of WIPO which was read by Eddy Damian on his research visit to Geneva, it reads “ Human genius is the source of all

works, of art and inventions”. These works are the guarantee of a life worthy of men. It is the duty of the state to ensure with diligence the protection of the arts and inventions, which means, “Human intelligence is the source of all works, art and inventions. "These works are a guarantee of a decent human life".<sup>7</sup>

The rationale for the need for legal protection of this creation cannot be separated from the dominance of natural law doctrine thinking which emphasizes the human factor and the use of reason as known in the civil law system which is the legal system adopted in Indonesia.<sup>8</sup> In the process of obtaining profits from a work, the creator or copyright holder involves various parties to exercise their economic rights in the form of a license. In UUHC which was passed in 2014 which replaces Law Number 19 of 2002 concerning Copyright, there is a norm renewal in it. One of them is related to copyright as an object of fiduciary guarantee so that on that basis the creator or copyright holder can obtain

<sup>4</sup>Budi Agus Riswandi, *Hak Cipta di Internet Aspek Hukum dan Permasalahannya di Indonesia*, FH UII Press, Yogyakarta, 2009, hlm. 140.

<sup>5</sup>Sopnar Maru Hutagalung, *Hak Cipta Kedudukan dan Peranannya dalam Pembangunan*, Sinar Grafika, Jakarta, 2012, hlm. 125.

<sup>6</sup>J.C.T. Simorangkir, *Hak Cipta Lanjutan*, Penerbit Jembatan, Jakarta, 1973, hlm. 21-24.

<sup>7</sup>Eddy Damian, *Hukum Hak Cipta Menurut Beberapa konvensi Internasional, Undang- Undang Hak Cipta dan Perlindungannya terhadap Buku serta Perjanjian Penerbitannya*, PT. Alumni, Bandung, 2002, hlm. 15.

<sup>8</sup>Satjipto Rahardjo, *Ilmu hukum*, PT. Alumni, Bandung, 1958, hlm. 292.

a loan from a bank by guaranteeing the copyright.

Violation of the law that becomes a habit in a state of law is not a culture that must be preserved. Therefore, it is necessary to take practical steps that are played by all related elements in creating protection for the Creator for his work. According to Wirjono Prodjodikoro, the definition of violation is: "overtredingen" or violation means an act that violates something and is related to the law, means nothing but an unlawful act.<sup>9</sup> Meanwhile, according to Bambang Poernomo, he stated that violations are political-on-recht and crimes are criminal-on-recht. Political-on recht is an act that does not comply with the prohibitions or requirements determined by the state authorities.<sup>10</sup>

According to JM Van Bemmelen in his book "Handen Leer Boek Van Het Nederlandse Strafrecht" states that the difference between these two groups of criminal acts (crimes and offenses) is not qualitative, but only quantitative, namely crimes are generally threatened with heavier penalties than violations. and it seems that this is based on the heavier nature of

evil.<sup>11</sup> Seeing the conditions that should not be done, the author wants to examine the rules governing the protection of economic rights owned by publishers. With that the author raises the title, namely Legal Protection of Publishers as Copyright Holders Against Book Reproduction.

### Issue

1. 1. What is the legal protection of publishers against the prevalence of book piracy?
2. 2. What is the cause of the rise of book piracy?

### DISCUSSION

#### Legal Protection of Publishers Against the Rise of Book Piracy

Judging from the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, copyrighted works of books have been protected by copyright in Article 40 paragraph (1) letter (a) of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. Protection of a copyrighted work, especially books that are sold, appreciation for copyrighted works is still low, so that the pro-

<sup>9</sup>Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana*, Refika Aditama, Bandung, 2003, hlm. 33.

<sup>10</sup>Bambang Poernomo, *Dalam Asas-Asas Hukum Pidana*, Ghalia Indonesia, Jakarta, 2002, hlm. 40.

<sup>11</sup>JM Van Bemmelen, *Dalam Asas-asas Hukum Pidana*, Ghalia Indonesia, Jakarta, 2002, hlm. 40.

tection cannot be fully fulfilled, even far from perfect. Economic needs, economic conditions, and the need for books support the circulation of pirated books. This phenomenon seems to be a familiar culture and are interrelated with each other. Between publishers, traders, and book lovers, the community itself. The weak role of the apparatus in conducting raids or inspections is also the next factor in the existence of pirated books in the market. Protection of creations is closely related to the dominance of natural law thinking which emphasizes the human factor and the use of common sense as known in the civil law system used in Indonesia. This legal theory underlies the concept of civil law which recognizes that humans have intellectual property rights (IPR) that are natural in nature from humans as their thoughts, so they must be protected using legislation. Taking copyright on other people's works by not compensating the owner is an act that is not justified because it violates a rule that exists in society.

Protection is also not only based on written law but also includes unwritten law in the hope that there is a guarantee for the objects owned in carrying out their rights and obligations. The principle of

legal protection for the Indonesian people is the principle of recognizing and protecting human dignity which is based on the principle of a state of law based on Pancasila.

Protection of a copyrighted work, especially books that are widely offered in the market, in this case the appreciation for copyrighted works is still low, so that the protection cannot be fulfilled optimally, even far from perfect. It can be said that the need and economic conditions, and the need for books support the circulation of pirated books. This phenomenon seems to be a familiar culture and interrelated with each other, namely between publishers, traders, and book lovers, namely the community itself. Apart from cultural factors, the weak role of the apparatus in conducting raids will also make the presence of pirated books on the market a factor. Copyrights and/or copyright holders are divided into economic rights and moral rights. Economic rights are to allow or forbid others to publish and/or reproduce their creations, while moral rights are rights attached to the creator, namely the right that the author's name is always included in each of his creations, the rights to each of his creations to changes in content or title. These moral

rights cannot be transferred like economic rights.

In the case of book piracy, the police cannot go directly to raid pirated books without a report from the publisher. The police are also waiting for complaints from the injured party, namely the Creator and/or Copyright Holder and Publisher. If the reality is that they are waiting for each other because the law stipulates that piracy is a complaint offense, then those who are harmed from book piracy must be more responsive and brave to take action, namely to complain about piracy cases that occur in the field. But in fact, the parties involved and disadvantaged in this case of book piracy seem to allow the case to occur and get worse from time to time, without any movement to reduce or even eradicate cases of book piracy that occur.

The development of the Right To Copy legal culture that is increasingly happening is one of the reasons for the need for collective management institutions to provide counseling, guidance and various other activities to promote the world of copyright and legal protection, especially in the field of copying books with photocopiers. In this case. In practice, law enforcers such as police, prosecutors and judges have not carried out

their duties properly. This is because there is an article that stipulates that piracy is a complaint offense. so that the Police, Prosecutors and Courts can only take action on this piracy case when there are complaints from related parties. Existing regulations are only contained in a law, have not been enforced in their implementation. The socialization of the Copyright law should be carried out by the Police, the Prosecutor's Office, and the Court to the public as an effort to make changes and the culture of copyright infringement in society that has been attached to it.

A book publishing license agreement is an agreement between the author on the one hand and the publisher on the other, where in the agreement the author gives the right to reproduce and distribute his manuscript to publishers. So it can be said that the book publishing license agreement is an agreement that contains the author's permission by the publisher who uses the author's publishing rights with certain conditions, which are embodied in the clauses in the content of the agreement. The contents of the agreement are very diverse, the contract drawn up by a publisher may be different from that drawn up by another publisher, however, basically there are clauses that are always

included in the contract such as the subject and object of the agreement.

Voluntary licenses are based on the principle of freedom of contract as regulated in article 1338 of the Civil Code. In the implementation of a voluntary license agreement, the agreement must meet the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code in the form of agreement, skills, certain objects, and permitted powers. A non-voluntary license is a license that is imposed through a court decision, usually related to cases where the owner or holder, including the creator or copyright holder, acts anti-competitively by exploiting their rights outside of normal exploitation. A compulsory license (Compulsori License) is a license that is required and explicitly regulated in the law, including the procedures and requirements for its implementation

### **Causes of the Rise of Book Piracy**

The cause of the rise of book piracy in Indonesia is the lack of public awareness of book piracy in the surrounding environment, the lack of public interest in official books from authors because official books generally have a high enough price so that public interest in pirated

books in the community becomes high, finally book piracy is more active in producing pirated books. There is an assumption that the price of original books is more expensive than pirated books, this will certainly affect the circulation of pirated books and will be increasingly in demand by the public. The majority of buyers at the Palu Bookstore are students, so they tend to prefer lower prices to suit their pocket capabilities. The people's perception of "if there is something cheaper, why should you choose an expensive one", makes people tend to choose cheaper goods, regardless of quality. The lack of firm legal action for book pirates is due to the lack of complaint reports from the book's creators. The reason for the lack of complaints from the creators is the fairly large investigation costs, so that they become indifferent in taking care of piracy which is increasingly prevalent among the public.

The Creators and/or Copyright Holders and Publishers do not make firm efforts against piracy cases that occur in their books. Although they did make efforts for this case, they did not take much action when they found the books were hijacked and sold. This was done because they did not get satisfactory results when



the piracy was reported to law enforcement, namely the Police. This will happen and be repeated even though it has been prosecuted legally, which makes it useless to do so. Cases like this occur because small traders who act as intermediaries for the trade of pirated books are being prosecuted, not producers or wholesalers of pirated books who are the center or source of pirated books. Not to mention that when solving this case, of course it takes time, energy, and money. However, again and again cases of piracy will be repeated. Meanwhile, on the part of Traders and Buyers as well as the Community itself, it is still very rare to find awareness to take measures to protect the Economic Rights of the Creator and/or Copyright Holder. The demands for conditions and economic needs are getting higher, requiring them to pirate other people's copyrighted works and enjoy the pirated creations of others in the form of pirated books. Even though some of them already appreciate a work of art by starting from themselves.

### **Legal Sanctions for Copyright Infringement**

One of the violations of copyright on books is carried out by students because of the limitations that students have, especially limitations in terms of econom-

ics. It is possible for students to be smart in dividing their money for living needs, both for academic needs and also for non-academic needs. Meanwhile, on the part of Traders and Buyers as well as the Community itself, it is still very rare to find awareness to take measures to protect the Economic Rights of the Creator and/or Copyright Holder. The demands for higher economic conditions and needs, require them to pirate other people's copyrighted works and enjoy the pirated creations of others in the form of pirated books.

If the transfer is not carried out legally according to law, there will be violations. The Copyright Law does not provide clear details about what constitutes the criteria for a customer, only that the law regulates what is not or is not considered an infringement, so actions that constitute an aberration and which have been regulated in the law is a violation. To find out and explain criminal sanctions for copyright infringement according to Law Number 28 of 2014, and also to know and understand the process of transferring copyrights according to Law Number 28 of 2014. Criminal sanctions for copyright infringement according to Law Number 28 2014 is a criminal sanction of imprisonment and a fine, as stated in Article

112, any person who without rights commits an act as referred to in Article 7 paragraph (3) and/or Article 52 for commercial use, shall be sentenced to a maximum imprisonment of 2 (two) years and/or a maximum fine of IDR 300,000,000 (three hundred million rupiah). The process of transferring copyright according to Law Number 28 of 2014 is: (a) inheritance, (b) grants, (c) waqf (d) wills, (e) written agreements, or (f) other reasons justified in accordance with with the provisions of laws and regulations. Keywords: Criminal sanctions against copyright customers.

### **Enforcement of Copyright Laws on Book Piracy**

Efforts that must be made include increasing awareness and respect for other people's copyrighted works. It is not an easy job, therefore it must be supported by facilities and infrastructure that require very large costs, besides that, support for academics, students, law enforcement officials, the government and the general public regarding copyright must also be increased. Next, create a campaign with posters, writings about invitations or prohibitions on copyright and then paste them in places as objects of copyright such as

libraries, photocopiers and library collection books.

The government as the maker and examiner of laws, has regulated Copyright in a Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright, where regarding book copyright is regulated in Chapter XVII of Criminal Provisions Article 113 Paragraphs (3) and (4), Article 114, and Article 120 of the Law of the Republic of Indonesia Number 28 of 2014 concerning Copyright. In practice, the enforcers of copyright law, in this case the copyright investigator, are the police and the Civil Servant Investigator (PPNS).

### **CLOSING**

#### **Conclusion**

1. Protection of a copyrighted work, especially books that are widely offered in the market, in this case the appreciation for copyrighted works is still low, so that the protection cannot be fulfilled optimally, even far from perfect. It can be said that the need and economic conditions, and the need for books support the circulation of pirated books. This phenomenon seems to be a familiar culture and interrelated with each other, namely between publishers, traders, and book lovers, namely the com-

munity itself. Apart from cultural factors, the weak role of the apparatus in conducting raids will also contribute to the existence of pirated books on the market.

2. 2. The cause of the rise of book piracy, the lack of respect for copyright is a personal reason for someone in viewing the level of respect for copyright.

### Suggestions

1. It is important to explain the act of duplicating books for the category of educational interest, the author's intention is to explain the categories and examples so that it can be understood what kind of book doubling is included in the interest of education.
2. The importance of socialization to the public and the authorities regarding the importance of protecting a copyrighted work needs to be given, because after all this problem is not a problem that can be underestimated, it is aimed at making law enforcers more assertive regarding copyright infringement and also book traders and the public understand the importance of copyright.

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