

The Important Role of Collective Management Organization in the Field of Literary Works in Indonesia

Cita Citrawinda Noerhadi

Article Info	Abstract
<p>Article History</p> <p>Received: May 25, 2021</p> <p>Accepted: December 30, 2021</p> <hr/> <p>Keywords : Copyright Law; Literary Works</p> <p>DOI: 10.5281/zenodo.5810626</p>	<p><i>Copyright is one of the fields of Intellectual Property Rights which has the broadest extent of secured objects as since it is the field of logical, imaginative, and abstract works that play an essential part in supporting the advancement of the country and advancing general government assistance as ordered by the 1945 Constitution of the Republic of Indonesia. However, as far as limitation and exception are concerned with the use, recovery, multiplication, as well as change of works and additionally related freedoms items in entire or significant part are not viewed as a copyright encroachment, there is no clear provision in Indonesian Copyright Law Number 28 of 2014 concerning the use that does not harm reasonable interests, as well as the balance in enjoying the economic benefits of work as regulated in Article 44 para (1) letter an of Law Number 28 of 2014 concerning Copyright which requires more legal certainty. Moreover, the government needs to anticipate of digital copyright protection to ponder a layered arrangement of computerized copyright protection, where more grounded controls are permitted in return for the way that copyright owners cannot use existing laws as an effective deterrent against the production of books without the right of the owner. Utilization of literary works for the purposes of education, teaching, literature, documentation for legal and/or other non-economic purposes, research, review, including comments and or criticism of works need more explanation in the implementation of the provisions of Indonesia Copyright Law.</i></p>

Introduction

Intellectual Property involves an interrelated arrangement of legitimate systems securing monetary and, in certain specific circumstances, individual interests in creations, data, and works of origin, pictures, images, and sound accounts. Copyright is the select appropriate for a creator or the beneficiary of the option to distribute or repeat his work or to concede consent for said purposes, without diminishing the limits as per the overall laws and guidelines. The protection of copyright arises automatically based on declarative principles after a work is realized. No need for copyright to be registered at the Directorate General of Intellectual Property Office in Indonesia to obtain protection. Moreover, the most important aspect of copyright protection is the originality of the works. As long as the creation meets the criteria of originality, it will automatically obtain copyright protection. The registration of copyright is a prima facie evidence to anticipate in case copyright infringement occurs in the future.

Creation is any protected work in the areas of science, craftsmanship, and writing delivered on motivation, creative mind, mastery, ability, or skill communicated in an unmistakable structure. Until now, copyright infringement in the field of literary in Indonesia is still rampant and even more massive and easy. The magnitude of the loss due to book piracy is very worrying and law enforcement is still ineffective as the right holders do not accept royalties from illegal reproduction of literary works. Copyright infringement in the form of copying books without permission is very detrimental to creators, copyright holders and publishers and disrupts the book ecosystem. Advances in technology have made everything easier. Printing is becoming more and more developed, duplication that occurs in universities or publishers who do not want to pay taxes and royalties is growing.

Copyright is the creation of the creator published in real form, such as books, audio books, e-books and others. The copyrighted work whose ownership is protected has the right to economic rights for the use of the copyrighted work. The creator cooperates with the publisher to realize the creation in a tangible form so that it can be reproduced, marketed, and distributed. The publisher then pays royalties to the creator for the proceeds from the sale of the copyrighted work. Authors and publishers can take advantage of copyright to obtain economic rights when the work is reused in various ways and in various forms. In order to realize the creation of sustainable copyrighted works so that science and knowledge continue to develop and build a good book ecosystem and support the welfare of creators, copyright holders, the Indonesian Reproduction Rights

Organization (PRCI) as a Reproduction Rights Organization (RRO) in collaboration with the government institution that responsible for law and regulations and other government institution that in charge with the creative economy continues to disseminate information about the importance of understanding the copyright of written works, art and literature. It is also important to know that PRCI as an institution that manages the monetary privileges of makers and copyright holders, PRCI also cooperates with institutions or associations related to publishing, writing and in connection with the use of copyrighted works, the Indonesian Publishers Association (IKAPI), Indonesian Women Writers (PWI), and the Indonesian Writers Association (Satupena) jointly signed the Memorandum of Understanding having the same goal to effectively combat the copyright piracy in the literary works.

How to improve copyright and related rights protection in Indonesia? The author especially hopes that there will be strong political will from the government to enforce copyright and increase public awareness to better respect the rights of creators and related rights owners. There are many things the Government can do to enforce copyright and related rights for the better. In addition to perfecting legislation in the field of copyright, among others: encouraging in various ways and issuing concrete policies so that law enforcers are active and consistent in enforcing copyright law; carry out a good campaign so that people are more passionate about creating and appreciating the works of others; and contain and facilitate institutions that play a role in realizing the economic rights of creators such as PRCI as the RRO in the field of literary works.

Method

This research is normative legal research using secondary data, which are data available to the public, mainly consisting of primary, and secondary legal sources. Analysis was conducted using a qualitative approach.

Finding and Discussions

I. The Role of Indonesian Reproduction Rights Organization (PRCI) as a Reproduction Rights Organization (RRO) in the Field of Literary Works

Indonesian Reproduction Rights Organization (PRCI) is the only organization in the field of literary works in Indonesia that can collectively manage the rights for private and other internal uses of written works and the rights that will be given originally on behalf of the author and publisher in the domain of the Republic of Indonesia. The rights originally granted on behalf of the authors and publishers will include rights to fees collected through the first sale or import of new copiers and rights to compensation for photocopies made that are intended to be sold, reasonably paid or legally the person performing the photocopying services, namely equipment retribution and operator fees. Members include the respective authors and publishers as well as associations of authors and publishers. The universities and educational institutions should have blanket license agreement with the Indonesian Reproduction Rights Organization (PRCI) in order to legally may reproduce books and pay royalties for creators and/or copyright holder. However, this has become an obstacle as it is not easy to persuade universities and educational institutions to sign blanket license agreement with the Indonesian Reproduction Rights Organization (PRCI). A definite mechanism to collect and distribute royalties by Indonesian Reproduction Rights Organization (PRCI) within universities and educational institution should govern more clearly so that the Indonesian Reproduction Rights Organization (PRCI) has the authority to collect royalties and the amount of royalties should be fixed.

PRCI is looking forward to working with authors and publishers from other countries that it represents for an effective collective management of their rights.

Every year PRCI as a CMO is obliged to make financial reports including regarding the collection, and distribution of royalty receipts accepted by creators. Whereas CMO financing, originating from the management of the use of CMO operational funds should not exceed 30% (thirty percent) of the proceeds from the collection of royalties.

II. Limitations and Exceptions in International Copyright Regulations

Several multilateral treaties and treaties governing international copyright, namely the TRIPs Agreement (Law Number 14 of 1997 concerning the Establishing of the World Trade Organization - TRIPs Agreement), The Protection of Literary and Artistic Work (The Berne Convention 1886), the WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, and the Marrakesh Treaty. Indonesia is a country that has signed these treaties, therefore Indonesian Copyright Law must be consistent with these treaties and the works of foreign should be given the same protections to those nationals (Heller, 2004).

A huge distinction between intellectual property law in the USA and in different nations is the treatment of moral rights. According to Issac Gilman (2013), moral rights generally offend one side of the creator of the work to be distinguished as the maker of the work, and to maintain the honesty of the work, to specifically refuse outsiders to change the work and the author has the agency to publish his work. Based on Thomas F. Cotter (1997), in the US, the term moral rights normally alludes to one side of a creator to forestall amendment,

change, or bending of her work, paying little mind to who claims the work. For instance, in some European nations, moral rights are allowed to a creator independently from the copyrights, which are intended to ensure the financial interests of the creator. Be that as it may, in the USA, moral freedoms are not expressly allowed to creators/makers of copyrightable works (with the exception of visual craftsmanship); intellectual property law centers principally around property (financial) privileges (Bird and Ponte, 2006). Moral rights in Indonesia can not be moved as long as the creator is alive, however, the activity of these privileges is transferrable by confirmation or different reasons as per the arrangements of laws and guidelines later their passing. In case of an exchange of the activity of moral rights, the beneficiary might deliver or reject the activity of their freedoms with the condition that the delivery or refusal to practice these privileges is communicated recorded as a hard copy (Copyright law No.28/2014).

The use, recovery, proliferation, and additionally change of works as well as related freedoms items in entire or considerable part are not viewed as a copyright encroachment, therefore the provision concerning the limitations and exceptions in international copyright regulations should be considered be governed in Indonesian Copyright Law as certain standards that reflect the type of copyrighted material and/or the appropriate scope of copyright. For example, Article 9 of the TRIPs Agreement regulates its relation to the Berne Convention, namely paragraph (2) that copyright protection must cover expressions and not such mathematical ideas, procedures, methods of operation or concepts. What is implied by copyright is the selective right of the creator that emerges naturally dependent on explanatory standards later a work is showed in an unmistakable structure without decreasing limitations as per the arrangements of laws and guidelines. With regard to the foregoing justification, ideas and other excluded subject matter, such as a procedure, method of operation or mathematical concept are generally considered to be the major structure squares of innovative articulation.

Schooling, research, logical composition, report composing, composing of investigating or survey of an issue without prejudicing the sensible interests of the creator or the copyright holder are not viewed as a copyright encroachment on the off chance that the sources referenced or referred to in full.

The implementation of the provisions concerning the use that does not hurt sensible interests of the creator requires more explanation and legal certainty in Law Number 28 of 2014 concerning Copyright. It is needed of the Republic of Indonesia to further stipulates the understanding and implementation of provisions concerning restrictions and exceptions on copyright and the use of literary works that do not harm reasonable interests in the fields of education, research, and literature.

Institutions of higher learning use Article 44 paragraph (1) letter a, as an exception not considered as infringing the reproduction of books without asking a consent from the creator or copyright holder. This is often categorized as "fair use" or "fair dealing" as long as it is not commercial in nature. Although licensing mechanisms and rights clearance systems can be applied to photocopy, republish, digitize and disseminate for internal copyright use for distribution and use for closed networks and commercial purposes. Actually, WIPO is not in a position to provide further justification that the reproduction of books in universities without the authorization of the creator/copyright holder is a copyright violation by overriding the aspect of fair use or fair dealing. This depends on the formulation of each law. Although Article 44 paragraph (1) letter a of Copyright Law Number 28 of 2014 concerns restrictions, the Article clearly states as long as it does not harm the copyright holder. This is clearly detrimental, so you still have to ask for permission from the copyright holder and pay at a reasonable rate.

In fact, the phrase Article 44 paragraph (1) does not necessarily allow educational institutions, including universities, to reproduce/multiply works, including the conversion of works that are detrimental to Publishers/Creators/Heirs. Educational institutions cannot hide behind this Article 44. Regarding the use of the work for research purposes, the form of taking, citations must also meet the methodological rules in research.

III. The Use of Digital Literary Works

Literary works including digital literary works are any copyrighted works in the field of literary or writing that are verified outside or inside the information technology media.

The Copyright Law requires more further regulations as follows:

1. Advancement and promotion of copyright in order to uphold the rights, obligations and dignity of the creator and/or copyright holder or owner of digital and/or virtual literary works;
2. People who have an interest in duplicating digital and/or virtual literary works legally and not violating the law;
3. Implementation of collection and distribution of royalties, remuneration and/or profit-sharing from duplication of digital and/or virtual literary works.

Creators, copyright holders and owners of digital literary works who are entitled to economic benefits from the implementation of ministerial regulations as implementing regulations include, namely:

- 1) creator of digital literary works
- 2) digital literary copyright holders;and/or

- 3) owners of digital pages who are copyright holders who conduct electronic commerce and/or open virtual shopping places.

Users of digital literary works may include, namely:

- 1) Individuals;
- 2) Entrepreneurs, including micro, small and/or medium entrepreneurs;
- 3) Corporate companies and/or offices;
- 4) Government agencies;
- 5) Commercial educational institutions;
- 6) Research institutes conducting research commercialization;
- 7) library institutions; and/or
- 8) Internet users or other digital communication media.

Legal use of digital literary works commercially must be done through, namely: a) Standard license agreements, including online agreements; or b) Blanket License.

The economic benefits of digital literary works can be obtained in the form of royalties, remuneration, profit sharing, awards or bonuses. However, there is no provision concerning remuneration in Copyright Law Number 28 of 2014. Actors of adaptation and/or transformation from literary works into digital literary works are required to pay royalties on the economic rights of literary works, that is adapted and/or transformed based on an agreement that has been agreed upon between the actors of adaptation and/or transformation with the Collective Management Organization (CMO) for literary works.

Provisions regarding the authority of the Collective Management Organization (CMO) for literary works to collect and distribute literary works must apply *mutatis mutandis* to the authority to collect and distribute digital literary works. Collective Management Organization (CMO) for literary works have the authority to collect and distribute digital literary works based on the mandate of their members, as well as reciprocal agreements with the Collective Management Organization (CMO) of other countries in accordance with national laws and regulations and international agreements.

The internet made it undeniably more feasible for IPR makers to distribute and sell their work, yet then again presented them to far greater risk of having their IPR taken subsequently. The rights of the author and/or copyright holders to digital and/or virtual literary works need to be protected, therefore requiring further regulation. Communities who are interested in efforts to reproduce both digital and/or virtual literary works legally and do not violate the law require a clear legal basis. Whereas in addition to the things mentioned above, the implementation, collection, and distribution of royalties, remuneration, and/or profit-sharing from duplicating digital and/or virtual literary works require a clear legal basis so that regulations are needed. Users of digital literary works can include, namely: individuals; business people; including micro, small, and/or medium entrepreneurs; corporate companies and/or offices; government agencies; commercial educational institutions; research institutes conducting research commercialization; library institutions; and/or internet users or other digital communication media.

IV. Literary Works in the Field of Education, Research and Libraries

In Indonesian Copyright Law Number 28 of 2014, it is necessary to further stipulate the authors, copyright holders, and owners of copyright works, whose works are used for the development of education, libraries, and research must still be able to enjoy benefits, incentives, and recognition. and appreciation for the use of their work.

Matters that require further regulation and a clear legal basis in Law Number 28 of 2014 regarding Copyrights, namely: 1) utilization of literary works for the purposes of education, teaching, literature, documentation for legal and/or other non-economic purposes, research, review including comments and or criticism of works; 2) people who have an interest in efforts to reproduce literary works legally and do not violate the law; and 3) implementation of the collection and distribution of literary works.

There is no system regarding public lending rights stipulated under the Indonesian Copyright Law Number 28 of 2014. The provision of public lending right has to be governed to respect the economic right of authors as an exclusive right beside the moral right to lend out. The author works or if nothing else furnish them with compensation for the loaning out of their works. The role of libraries is very important to apply the remuneration to respect authors. Public lending right is legally necessary to give creators an elite right to loan out their works or if nothing else give them compensation for the lending out of their works. Creators and other rights holders have an exclusive right to permit or restrict the loaning of their works by libraries. Nonetheless, Part States might discredit from a selective right given that they compensate right holders for the credit of their works. Part States should remember public libraries for their public lending right plans yet are allowed to reject from the right the lending of creators' works from different classifications of the library. They may likewise give a need to their public social destinations in establishing public lending right plans.

The public lending right is the lawful right that permits writers and different privileges holders to get instalment from the public authority to make up for the free advance of their books by people in general and

different libraries. Most importantly, public lending right maintains the guideline of 'no utilization without installment'. This is the reason for the idea of reasonable compensation which then, at that point, extends into copying and computerized employments. It depends on the Widespread Announcement of Human Rights by which we are qualified for getting pay for any double-dealing of our work. Assuming it is guaranteed that this meddles with another all inclusive right to admittance to information and culture – our response is that it upholds the making of new work, and we do not request that educators work in vain. Therefore, it is important to govern a special provision of public lending rights in Indonesia Copyright Law Number 28 of 2014.

In order to uphold the rights, obligations and dignity of creators, copyright holders and owners of literary works, further regulation is needed on issues regarding the limits of copying copyrighted books for digital and non-digital educational purposes, mechanisms for collecting and distributing royalties and arrangements regarding remuneration. digital and non-digital literary works in the fields of education, research and development (R&D), literature and public lending rights as implementing regulations of Copyright Law.

Conclusion

Literary works, the use of digital literary works and literary works in the fields of education research and literature require effective management of the rights of authors and publishers; therefore, regulations regarding the duplication of literary works, the use of digital literary works and literary works in the fields of education, research and literature need further guideline, with respect to the assortment and distribution of royalties on digital literary works, the amount of remuneration for educational units, research institutions and libraries in the use of literary works that do not harm the interests in the fields of education, research and literature also need further regulation to improve the weaknesses of the provisions regarding Copyright in Indonesia.

Acknowledgment

No acknowledgment.

References

- Dr. Jim Parker (Coordinator of the PLR International Network), *Public Lending Right (PLR): An Introductory Guide*, www.plrinternational.com, June 2018.
- Heller. J.S, *The Librarian's Copyright Companion*, Buffalo NY: William S Hein & Co, 2004
- Isaac Gilman, *Library Scholarly Communication Programs: Legal and Ethical Considerations*, Chandos Publishing, Oxford Cambridge, New Delhi (2013).
- Robert C. Bird and Lucille M. Ponte, *Protecting Moral Rights in the United States and the United Kingdom: Challenges and Opportunities Under the U.K.'S New Performances Regulations*, Boston University International Law Journal (2006).
- Thomas F. Cotter, *Pragmatism, Economics, and the Droit Moral*, 76 N.C.L.Rev. 1 (1997).
- The Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 38 of 2018 concerning Procedures for Application and Issuance of Operational Permits and Evaluation of Collective Management.
- Law of the Republic of Indonesia Number 7 Year 1994 regarding the Agreement Establishing the World Trade Organization.
- Law of the Republic of Indonesia Number 28 Year 2014 regarding Copyright
- PresidentialDecree of the Republic of Indonesia Number 18 of 1997 regarding the Berne Convention for the Protection of Literary and Artistic Work (1886).
- PresidentialDecree of the Republic of Indonesia Number 19 of 1997 regarding the Ratification of the WIPO Copyrights Treaty.
- Presidential Decree of the Republic of Indonesia Number 74 of 2004regarding the Ratification of the WIPO Performances and Phonograms Treaty, 1996.
- Presidential Decree of the Republic of Indonesia Number 1 of 2020 regarding Approval of Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired, or otherwise Print Disabled (Marrakesh Tract to Facilitate Access to Public Creations for People with Blind, Visual Disabilities, or Reading Disabilities Printed Works).
- WWW. Wikipedia.com

Author Information

Cita Citrawinda Noerhadi

Faculty of Law Universitas Krisnadwipayana,
Kampus Jatiwaringin Beaksi.

Jalan Raya Jatiwaringin, RT. 03 / RW. 04, Jatiwaringin, Pondok Gede, RT.009/RW.005, Jaticempaka,
Kec. Pondokgede, Kota Bks, Jawa Barat 13077