

Legal Protection For Book Piracy Traded Through Marketplaces In Indonesia

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Abstract

Introduction: According to Law Number 28 of 2014 concerning Copyright, an act is considered a Copyright violation if it violates the exclusive rights of the creator, which includes the right to publish or reproduce his work and the right to give permission or prohibit other people from doing so. create, reproduce or broadcast it without their consent.

Purposes of the Research: This research aims to analyze how the law accommodates the protection of book piracy cases in the marketplace which is easy to do.

Methods of the Research: The research method used in this paper is a normative legal research method. A conceptual approach and a law-based approach were used in this research. Legal materials are identified through document study. The approach and analysis applied is qualitative.

Results of the Research: The research method used in this paper is a normative legal research method. A conceptual approach and a law-based approach were used in this research. Legal materials are identified through document study. The approach and analysis applied is qualitative.

Keywords: Legal Protection; Privacy; Marketplace.

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INTRODUCTION

According to the Republic of Indonesia Law Number 28 of 2014 concerning Copyright, Article 5 paragraph 1 describes the moral rights inherent in the creator, which include the ability to use his name or not in connection with the public use of his creation, to use a pseudonym or pseudonym, change his creation according to public propriety, change the title and subtitle of the creation, and defend his rights if it occurs (distortion of the creation, mutilation of the creation, modification of the work, or anything that harms his honor or personal reputation), Meanwhile, in accordance with Articles 8-9, the creator has the right to financial compensation for his creation if his creation is published, replicated in all media, translated, changed, compiled, changed, distributed, or copied, performed, announced, communicated, or sold.

Certain rights, such as the right to be identified as the author of a book, are granted to producers of creative works who have special expertise. In short, a written work is granted a unique set of rights under the Republic of Indonesia Law Number 28 of 2014 concerning Copyright. These rights include the ability to translate the work into other languages, copy

it as a book published by a publisher under license, create broadcast works, display the work in any format, and more.¹

But nowadays, it is common to find actions that go beyond the talents and abilities of non-creators. Nowadays, as in the past, violations are often found, including copyright infringement. Rahmi Janed claims that if someone uses the exclusive rights of the creator or copyright holder without permission, then it is considered a copyright infringement. On the other hand, it can also be considered a violation if the other party ignores unlawful standards (restrictions) or fair use (fair banking). Copyright infringement can be in the form of duplication or piracy. Currently, the practice of book piracy has spread to the online market for buying and selling books. One famous writer who experienced his work experiencing copyright infringement (book piracy) is Tere Liye whose books are sold in the online marketplace for 20,000 to 30,000 per book.²

Violating copyright by exploiting the popularity of famous authors, such as best-selling novelists, among readers. If you look at the Shopee online marketplace program, it can be seen that Tere Liye, the author of the best-selling novel *Boy Candra*, also sells his books there at a lower price than when they were first published. Looking at one of the vendors, "Pesona Buku" which sets a price of IDR 16,900 for the book "Senja Hujan dan Kisah yang Sudah Berakhir" by Boy Candra, in addition, the seller from "Pesona Buku" (Shopee merchant) added that the information in the book is still the same as in the original. The online marketplace is still a common place for sellers (merchants) to sell books without the author's permission because the quality varies but the material is still valuable to read. As if saying this term frees potential customers from all mistakes. One writer said that those who buy pirated works, whether intentionally or not, have contributed to the economic and personal rights and lives of the author. Additional words included in the description of each book sold include: "paper books or opaque paper are often found; The price is cheap but it doesn't make sense because it exceeds the discount." This phrase is considered different from piracy.³

The internet market is essential for the proper sale of books and the government's willingness to combat widespread book piracy there to prevent irresponsible third parties from stealing the authors' copyrights. In order to protect the copyrighted works of book authors, it is important for different parties to fulfill their obligations. Examining the Law of the Republic of Indonesia Number 28 of 2014, Article 10 which states that "managers of trading places are prohibited from allowing the sale and/or duplication of copyrighted goods," raises the question of whether online market managers are fully responsible? (fully responsible) for copyright infringement such as piracy.

The author of the book has full rights over the information he chooses to share about his discovery and maintains his anonymity as the creator and owner. Thought and wisdom are bestowed upon the human mind, and given the freedom and latitude to develop its creative abilities, piracy of books in the digital marketplace violates the copyright of creators and authors. In order to provide legal protection against piracy of books through the marketplace, this project aims to investigate and evaluate potential legal actions.

¹ Achmad Chosyali, "Perlindungan Hukum Hak Cipta Buku Pengetahuan Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 1 (2018): 49-66, <https://doi.org/10.24246/jrh.2018.v3.i1.p49-66>.

² Failin Alin, "Sistem Pidana Dan Pemidanaan Di Dalam Pembaharuan Hukum Pidana Indonesia," *JCH (Jurnal Cendekia Hukum)* 3, no. 1 (2017): 14-31, <https://doi.org/10.33760/jch.v3i1.6>.

³ Ni Ketut Supasti Dharmawan, *Buku Ajar Hak Kekayaan Intelektual* (Yogyakarta: Deepublish, 2016).

METHODS OF THE RESEARCH

This study uses doctrinal legal research methodology as its research methodology. Because legal studies are prescriptive and view law as a social norm and not a social phenomenon, this legal research is doctrinal. Normative legal research is a type of research conducted. Normative legal research involves the collection and evaluation of secondary data. Only secondary data sources in the form of books, regulations, court decisions, legal theories, and scientific opinions are used in normative legal research. Type of research: Using the criminal law instrument method, this descriptive research analyzes, examines, and explains how to eradicate land mafia crimes. Primary, secondary, and tertiary data sources are used as data sources in this study.

RESULTS AND DISCUSSION

Literary, scientific and creative works, copyright is a form of protected intellectual property.⁴ This interpretation is in line with Article 1 paragraph 3 of Law Number 28 of 2014 concerning Copyright which states that "every creative work in the fields of science, art, and literature produced through inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in concrete form" meets the requirements as a copyrighted creation.

Miller and Davis state that the requirement of authenticity or purity, namely the originality or origin of a work, is the basis for granting copyright.⁵ In addition, reading Article 1 (Paragraph 1) of the Republic of Indonesia Law Number 28 of 2014 concerning Copyright makes it clear that in this interpretation the emergence of copyright gives unique rights to its creators over the creative works they produce. This shows that the work belongs to the artist himself, and the creator himself has the right to decide how the work is used.⁶

One type of written work is a book. A written work is an intellectual or creative human effort expressed through language and/or punctuation. A book is a collection of written works and/or illustrations on bound pages and often printed in certain quantities.⁷ There are three different ways that copyright can be used illegally: directly, indirectly, and in violation of basic authority. Copyright is the exclusive right of the creator to reproduce, publish, and sell a work without the consent of the copyright holder or other related rights. Direct infringement is the act of directly violating copyright.⁸ The Dutch High Court in 1919 issued the following decision, which became the basis for the definition of a legal act: "An act or omission that violates the rights of another person, or is contrary to the obligations of the person who committed the act, or which, out of good faith and caution, requires the addition of another person or thing belonging to another person."⁹

Munir Fuady is of the opinion that the elements of an unlawful act must be present in order to be considered unlawful according to the provisions of Article 1365 of the Civil

⁴ Direktorat Jendral Hak Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, *Buku Panduan Hak Kekayaan Intelektual* (Jakarta: Direktorat Jendral Hak Kekayaan Intelektual Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2013).

⁵ Dwiyatmi, *Pengantar Hukum Indonesia* (Bogor: Ghalia Indonesia, 2013).

⁶ Eddy Damian, *Hukum Hak Cipta* (Bandung: Alumni, 2017).

⁷ Etry Mike, "Perlindungan Hukum Hak Kekayaan Intelektual Terhadap Tindakan Pelanggaran Pembajakan Buku Elektronik Melalui Media Online," *AL-IMARAH: Jurnal Pemerintahan Dan Politik Islam* 2, no. 2 (2017): 135-44, <https://doi.org/10.29300/imr.v2i2.1449>.

⁸ Hasan Alwi, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2002).

⁹ Helena Lamtiur Simangunsong, Budi Santosocopus, and Anggita Doramia Lumbanraja, "Perlindungan Hak Cipta Terhadap Pembajakan Karya Sastra Novel Versi E-Book Di Tokopedia," *NOTARIUS* 13, no. 2 (2020): 442-54, <https://doi.org/10.14710/nts.v13i2.30504>.

Code: 1) Something is happening; 2) The law is violated by this behavior; 3) The person who committed the offense did something wrong; 4) The sufferer experiences a loss; 5) Activities and losses are causally related;¹⁰ 6) In an effort to resolve copyright disputes, an out-of-court settlement is required. When copyright holders file a request to have their work removed from a digital platform where it was posted without permission, an out-of-court settlement for copyright infringement on a digital platform is usually resolved.¹¹

The last option available if preventive measures are deemed insufficient or ineffective is to enforce regulations that protect oppressive laws in Indonesia. The purpose of understanding repressive legal protection is to create an environment where the process of law enforcement can be carried out through fines or compensation, judicial nomination, criminal prosecution, and other sanctions. The state immediately regulates and announces these measures, and they will be enforced after a transaction or violation occurs. The basis and content of the Copyright Act have been carefully considered so that it is impossible to separate it from the legal politics that surround it. A convincing demonstration of how the ideals of science, art, and literature in Kenya essentially guide and uphold the state, and how these things strategically contribute to the future development of the nation and state.

Repressive protection against copyright violations can be subject to fines or possible imprisonment for those who do so, whether intentionally or unintentionally. This is what is called the idea of "repressive protection", which holds that there must be an element of law enforcement that "demands" that the resolution can be attempted either through criminal or civil charges, both of which have the potential to be sued. revoked.

Until now, the market has developed into a place for almost every social class to do business while making purchases or sales. Article after article in the Copyright Law explains the legal protection for creators covering everything from what is protected by their creations to the understanding of moral rights and economic rights. However, in actual social events, legal problems related to new piracy in the market have proven to be very difficult to resolve. Some online retailers openly sell copies of their works without the creator's consent, even though the creator's moral and financial rights have been asserted – even in the product description, which states that the book is "not original or not authentic" in this case.

According to the definition given in Article 1 Paragraph 23 of the Copyright Law, "piracy is the unauthorized duplication of works and/or related rights products and the widespread distribution of the resulting goods intended to obtain economic benefits." The unauthorized distribution or duplication of literary works, whether by scanning or photocopying, is referred to as piracy. This falls under the category of Creation Multipliers – those who appropriate the rights of others and resell them on the open market. Determining whether someone is involved in "piracy" is fairly simple as long as they meet two requirements: they must duplicate the content without permission and distribute it for financial gain.

"Any person without permission from the Creator or Copyright Holder is prohibited from duplicating and/or using their creations commercially," according to Article 9

¹⁰ Khoiril Hidayah, *Hukum Hak Kekayaan Intelektual* (Malang: Setara Press, 2018).

¹¹ Tim Hukumonline, "Perlindungan Hukum: Pengertian, Unsur, Dan Contohnya," www.hukumonline.com, 2023, <https://www.hukumonline.com/berita/a/perlindungan-hukum-1t61a8a59ce8062>.

Paragraph (3) of the Copyright Law. The act of selling pirated books on the market is carried out by parties who do not have permission from the creator or copyright holder. In fact, the act of duplicating novels through photocopying is considered a criminal act. Moreover, instead of being "believed" to be protected by Indonesian law, the results of crime in the form of pirated novels are being marketed again on the platform. The market must behave with greater empathy and compassion, be aware of any behavior related to piracy, and take swift and firm action against violators if anything is found. Copyright protection is important because even though some parties are indifferent to the problem of piracy, negligence has caused many novelists to lose their careers. Not to mention the additional problem of a quiet, uninterested, or apathetic platform itself. Platforms that operate as markets or places of activity can be subject to sanctions under the Copyright Law if they refuse to accept responsibility for violations.

According to Article 114 of the Copyright Law, this case can be sued if injustice still occurs and the regulation or policy only serves as an "anti-prosecution shield". To maintain credibility, market managers must take action to eradicate new forms of piracy. Even if the violation is obvious, the author does not have the authority or access to take action; therefore, until the case is finally brought to court, only the forum provider can act. This is when repressive legal protection takes over and overcomes this problem if the market is unable to manage it.

Any act that violates moral or economic rights is regulated in the Copyright Law, which provides two options for resolving violations: through litigation or non-litigation. According to Margono, enforcing a lawsuit is an act of asserting a conflict that arises from the competition of the parties' choices and submitting it to the decision maker to replace the actual conflict.¹² Due to the conditions contained in Article 95 Paragraph (3) of the Copyright Law which states that "Courts other than the Commercial Court as referred to in paragraph (2) do not permit the settlement of Copyright disputes," the Commercial Court will decide whether or not there has been a copyright infringement in this case.

Only when the Creator is given the full choice to decide whether to first make reparations through civil proceedings or immediately punish the perpetrators to teach them a "lesson" will repressive legal protection truly succeed. The Author has the right to warn the infringer to stop or remove the innovative material marketed in the market catalog before continuing or expanding the scope of the complaint. After that, they can file a report to the appropriate platform. "The creator, copyright holder, or owner of related rights may file a claim for damages with the Commercial Court for copyright infringement or product related rights," reads Article 99 Paragraph 1 of the Copyright Law, if ignored. If it is later proven to have violated the creator's economic rights through a court decision that has permanent legal force and is included, then the first step that can be taken to fight for the creator's rights and prosecute the perpetrator is to take action. file a claim for damages with payment of a nominal amount of money that must be borne by the perpetrator. how much loss occurred due to the failure. The next defense that can be done by the author based on his rights is to "criminalize" the perpetrator as an effort to teach a lesson or provide a deterrent effect, which will cause pain to the victim. The fact that the inventor has been sued in civil court

¹² Indirani Bastian Christy Wauran, *Pengantar Hukum Kekayaan Intelektual* (Salatiga: Tisara Grafika, 2017).

for copyright infringement does not automatically mean that his ability to sue in criminal court is reduced or eliminated.

However, the creator has full control over this choice, because the punishment for copyright infringement still requires the fulfillment of the complaint crime component, meaning that the perpetrator can only proceed if the victim reports the violation. According to Prof. Sudarto, criminal law is a punishment imposed by the government on those who break the law.¹³ This indicates that those who intentionally break the law should be punished, namely suffering, especially suffering. A person who has completed his prison sentence will continue to experience the "stamp" of detention long after being released. Given that this is the purpose of the law, repressive law enforcement against this activity, if widely publicized and taken seriously, can certainly reduce the possibility of similar crimes in the future.

Giving people a reason to be afraid or as a form of warning without taking away their rights, so that everyone protected by the Copyright Law can continue their daily lives as long as they do not violate applicable laws and regulations. For the sake of environmental quality of life, this is done as an effort to bridge the community with the perpetrators. The market will not only face penalties for allowing piracy to pollute its platform, but the criminal restrictions outlined in Article 113 of the Copyright Law also regulate any violation of intellectual property.

The four articles specifically regulate the threat of criminal acts and related penalties for each violation. New market-based piracy certainly meets the requirements of Article 113 Paragraph 3 of the Copyright Law, which states that: According to Article 9 paragraph (1), "Any person who violates the economic rights of the Creator as referred to in letters a, b, e, and/or g for Commercial Use shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)." Even if an original work is marketed or sold, this action is still against the law without the creator's consent because it is considered detrimental to the creator's economic rights.

Not only that, Article 113 Paragraph 4 of the Copyright Law states that "Any person who fulfills the elements as referred to in paragraph (3) which is carried out in the form of piracy, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah)" if it turns out that what is commercialized is the result of piracy by illegally copying the work of others and distributing it on the market.

These stories show that anyone brave enough to engage in copyright infringement through piracy can face benefits or consequences, such as sanctions or lawsuits seeking restitution. Because it ignores the moral and financial rights of the original creator, piracy is an illegal or prohibited act. When creators find something that seems to have been compromised, they can immediately report it to the police and provide credible evidence, so that the matter can be further investigated and ultimately decided by a judge in a criminal case or commercial court lawsuit.

In addition to the District Court and law enforcement agencies, assistance can also be requested from the Ministry of Law and Human Rights. Article 55 Paragraph 1 of the

¹³ Joni Emirzon, *Alternatif Penyelesaian Sengketa Di Luar Pengadilan (Negosiasi, Mediasi, Konsiliasi, Dan Arbitrase)* (Jakarta: Gramedia Pustaka Utama, 2000).

Copyright Law states that "Any person who knows of a violation of Copyright and/or Related Rights through an electronic system for Commercial Use may report it to the Minister." The Minister, who is the authorized party, will then verify the complaints received, so that any site or platform that is proven to be irresponsible will be given a warning or may be closed.

Repressive or post-incident legal protection seems to receive more attention in Indonesia than preventive measures that are not covered in detail in the legislation, even when each organization or institution concerned offers guidelines or reporting alternatives. In contrast to the repressive attitude that is truly depicted in the points of the article, which include criminal law and legal processes, this shows that the Creator really does have a variety of protection alternatives available to be requested or removed.

The last option that can be done is non-litigation or Alternative Dispute Resolution (APS) outside the court, in addition to settlement in court or litigation as previously mentioned. The enactment of the Arbitration Law regulates this settlement. According to Article 95 Paragraph 1 of the Copyright Law, "copyright settlement can be carried out through alternative settlement, arbitration or court" if the parties wish, and the decision is submitted to the arbitrator or "arbitration" (Winarta, 2013).) problems that arise in the market related to piracy are only allowed to be resolved outside the jurisdiction of the court.

The out-of-court settlement procedure is based on a written arbitration agreement made before or at the time of settlement, and assisted by an arbitrator who serves as a referee and is chosen based on mutual agreement between the parties. The parties must comply with the decision which is final and can be enforced forever. There are often many forms of APS regulated by arbitration law. First, the Creator in this case meets with the consultant to gather his ideas according to his wishes and specifications. Initially, consultation was a "private" act that occurred between certain individuals. In this case, the Creator meets with the consultant to gather their thoughts based on their wishes and specifications.

Second, peaceful and innovative discussions that seek to reach a mutually agreed solution with the violating party to remove the pirated book catalog without taking legal action. Third, to obtain an agreement from the parties with the assistance of a mediator, mediation is carried out through a negotiation process. Fourth, conciliation is an agreement made between the parties by offering a solution that is acceptable to the creator and the interested parties, with the assistance of a conciliator or mediator. Fifth, expert evaluation as a reference or technical recommendation relevant to their field of competence. New piracy cases that are now widely occurring in the market are considered less successful if resolved non-litigation or out of court, in accordance with the understanding of repressive legal protection, which tends towards law enforcement through the imposition of fines.

Since piracy is widespread and it is difficult to identify and bring down the "mafia" responsible, if this happens, it will cause concern and attract attention. Authors, copyright holders, and even publishers have lost a lot of money due to piracy, especially when piracy occurs in the open market and works are sold without the necessary permits. The books are then repackaged as pirated novels that are sold at prices lower than the going rate, and the violators are not even required to pay a penny to the government. The perpetrators do not have the right to get a chance to resolve the problem without facing legal repercussions. Moreover, APS is essentially more concerned with achieving peace in relation to the legal

rights that are completely under the control of each party as a result of their agreement.¹⁴ So what rights do those who violate the moral and financial rights of others by taking other people's work, reusing it as "non-original" and then buying and reselling it have? This raises doubts because obtaining anything without permission for business use is illegal, and this is made worse by piracy techniques that intensify content distribution.

Even if the actions taken are illegal, a mutually beneficial arrangement between the parties will only "calm" the pirates temporarily; once the legal process has subsided, the sale of stolen publications will resume. This is because the sanctions are severe and have little deterrent effect on piracy, and because the proceeds of the sales can be obtained without being subject to state taxes, the profits from such sales can be very large, sometimes even exceeding the income of the original artist. In order to take proper revenge and prevent similar situations from happening in the future, the creators should not let the problem be resolved for free without filing a criminal case or civil litigation. It is appropriate to file a lawsuit for the rights that have been taken away. Although it seems small, book piracy can have an impact on society, the nation, the market, artists, and even individuals. To ensure that the sale of pirated novels in the market in the future can be prevented due to the achievement of copyright protection through legal channels in Indonesia, each segment must work together to prevent and encourage the eradication of others. It is clear from this argument that oppressive protection will ultimately raise one issue: the idea of politics as it relates to the state.

Even today, there is still a perception that the rule of law has not achieved its goals in improving security, stability, and maintenance. Simply put, the problem of piracy is not new in Indonesia; rather, these problems are ongoing problems that must be addressed aggressively in order to be resolved. Once again, to eradicate the criminal pirates who always appear to "escape" from supervision and fix the structures that operate below them, government agencies or institutions at the highest level must be persistent, diligent, and cooperative.¹⁵

The government must enforce the Copyright Law and other copyright-related laws and regulations with full enthusiasm and seriousness in order to fulfill its duties and obligations. Normative efforts have also been made with the enactment of the Copyright Law, so it is advisable to register creations with the DJKI. However, due to the imbalance or inequality between oppressive law enforcement, this type of effort has not yet produced significant results. In reality, literary works are automatically attributed to their Creators based on the declarative principle if they adhere to the concept and interpretation of copyright and apply it in the same way as the contents of the regulations, even though there is no registration. Of course, the question of piracy will never arise if this is truly implemented and achieved.¹⁶ Various methods of protection have been offered, ranging from repressive and preventive measures to litigation and non-litigation based dispute resolution. All that remains is to return it to the state, along with the steps that will be taken to truly end all evil deeds and the cycle of piracy, for the sake of the state and the future of the state.

¹⁴ Kementerian Hukum dan Hak Asasi Manusia Direktorat Jenderal Kekayaan Intelektual, *Modul Kekayaan Intelektual Hak Cipta* (Jakarta: Kementerian Hukum dan Hak Asasi Manusia Direktorat Jenderal Kekayaan Intelektual, 2020).

¹⁵ Leila S Chudori, "Parasit Bernama Para Pembajak Buku," Kompas.com, 2021, <https://entertainment.kompas.com/read/2021/09/29/110300966/parasit-bernama-para-pembajak-buku?page=all>.

¹⁶ Suyud Margono, *Hukum Kekayaan Intelektual* (Bandung: Pustaka Reka Cipta, 2015).

CONCLUSION

Repressive protection against copyright violations can be subject to fines or possible imprisonment for those who do it, whether intentionally or unintentionally. This is what is called the idea of "repressive protection", which holds that there must be an element of law enforcement that "demands" so that the resolution can be attempted either through criminal or civil lawsuits, both of which have the potential to be sued. The market has developed into a place for almost every social class to do business while making purchases or sales. Article by article in the Copyright Law explains the legal protection for creators, covering everything from what their creations are protected to the understanding of moral and economic rights. However, the legal problems related to new piracy in the market have proven to be very difficult to resolve. The market must take quick and firm action against violators if something is found. Repressive protection takes over and overcomes this problem if the market is unable to manage it. Any act that violates moral or economic rights is regulated in the Copyright Law, which provides two options for resolving violations: through litigation or non-litigation.

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