



Copyright Legal Responsibility for Illustrated Literary Works (Comics) Published on Online Sites Without Author's Permission

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Abstract

Introduction: Comics are also creations that are equally important in the copyright protection system. This is because the importance of protecting comics is not only related to the development of human culture and civilization, as well as supporting economic progress, but can also stimulate the creativity of creators with the existence of a comic copyright protection law.

Purposes of the Research: Focuses on legal responsibility for comics that are published without permission from the creator, analysis of regulations and legal sanctions obtained for the creators. Parties who violate the copyright of comics by using online sites to take action against them.

Methods of the Research: Using normative juridical research methods, or in other words normative legal research.

Results of the Research: The results of this study are that the legal liability of parties or actors who publish copyrighted comics on online sites without the permission or approval of the Creator/Copyright Holder is civil and criminal liability, in civil liability, can be sued for compensation and in criminal liability. Legal protection for creators/copyright holders in the event that their comics are published on online sites without the consent of the copyright holder has the right to take legal action through litigation and non-litigation. These legal efforts are criminal and civil legal efforts.

1. INTRODUCTION

Comics are reading books that contain pictures and writing. Comics are an art form which uses a series of static imagery in a number of defined events, and also Comics themselves contain stories told in motion, as well as actions that show an arrangement or series of images combined with interesting and specially made words that aim to provide or convey information to readers. Meanwhile, according to Daryanto comic is a form of a cartoon in which the characters in the comic tell and apply the story in several arrangements or sequences related to the image and are made in such a way as to provide entertainment to the reader.¹ Comics are creations that are equally important in the copyright protection system. This is because the importance of protecting comics is not only related to the development of human culture and civilization, as well as supporting economic

¹ I Putu Maha Widharta and I Gede Agus Kurniawan, "Perlindungan Hak Cipta Bagi Pencipta Komik Berbentuk Aplikasi Dalam Telepon Pintar," *Jurnal Kertha Semaya* 9, no. 9 (2021): 1676-87.

development, but can also stimulate the creativity of creators with the existence of comic copyright protection laws.

In terms of the economy due to the very rapid development of comics. In Indonesia there are legal institutions established to administer economic rights to a work or product related rights to represent and on behalf of the rights holder. The legal institution is the Collective Management Organization (LMK) or also known as the Collective Management Organization (CMO). With an institution that regulates the collection of royalties by obtaining a power of attorney from the creator/copyright holder or owner of related rights to assist the creator/copyright holder in receiving payment for the use of works for commercial purposes. Although the creator or copyright holder can theoretically collect royalties directly, in practice this is usually done through LMK. Therefore.²

Copyright is a component of Intellectual Property Rights (IPR), or Intellectual Property Rights (IPRs) in English, which is a western notion of rights, property, and the results of human reason.³ Intellectual property rights are material rights, namely rights to an object or work that arises from the work of reason, where the work is intellectual property, so that if something is done from the work of the brain it is considered intellectual property. And that is what is always imagined when talking about an object or work.⁴ Copyright has become part of the creative sector where creators do not want their work to be pirated, reproduced, imitated, or plagiarized by other parties who are not responsible since they were born 3 (three) centuries ago. Initially, copyright only applied to written works. The purpose of copyright protection is to prevent duplication or piracy carried out by other parties who are not responsible. Reproduction of other people's works without the permission of the creator is commonplace nowadays, both for commercial and non-commercial purposes.⁵ An creator can own a copyright on his own work if he has fulfilled his obligations, that is, after creating his work he must immediately register the work. Copyright itself is regulated in the Republic of Indonesia Law Number 28 of 2014 Concerning Copyright in Article 1 point 1 that: "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing restrictions in accordance with statutory provisions."

This can also be seen from the perspective of current developments and the increasingly rapid development of today's technology, more specifically the current era of globalization which has brought many fundamental changes in the renewal and use of technology.⁶ Everything is available on the internet, even print media, which are gradually being abandoned and are starting to switch to online media because it's easier and faster to access wherever we are, comics are no exception now that they are not only published in the form of books but also in the form of online comics that can be easily read by everyone via smartphones both on the official website and the comic application.

² 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, 2020), p. 27.

³ R. Diah Imaningrum Susanti, *Hak Cipta Kajian Filosofis Dan Historis* (Malang: Setara Press, 2017), p. 20.

⁴ Muchtar Anshary Hamid Labetubun, "Aspek Hukum Hak Cipta Terhadap Buku Elektronik (E-Book) Sebagai Karya Kekayaan Intelektual," *SASI* 24, no. 2 (2018): 138–49, <https://doi.org/10.47268/sasi.v24i2.128>.

⁵ Yunus Marlon Lopulalan, Rory Jeff Akyuwen, and Marselo Valentino Geovani Pariela, "Hak Cipta Logo Yang Didaftarkan Sebagai Merek," *TATOHI: Jurnal Ilmiah Hukum* 1, no. 1 (2021): 17–30.

⁶ Nurhaidah and M Insyah Musa, "Dampak Pengaruh Globalisasi Bagi Kehidupan Bangsa Indonesia," *Jurnal Pesona Dasar* 3, no. 3 (2015): 1–14.

The development of internet use does not always have a positive impact but also has a negative impact, in a positive impact we can access and obtain various kinds of things or information needed without any time, bureaucracy or demographic restrictions. In addition to the various positive benefits that we get easily through the internet, there are also negative impacts that some people do who really take advantage of the complexity or sophistication of the internet to do negative things such as pirating other people's work or forging or publishing other people's work without permission. Permission from the creator or copyright holder of the work such as comics which can be accessed online or available in digital form. Available comics in online form or digital media makes it easier for comic readers to meet their entertainment needs. However, the circulation of comics on internet sites is often not accompanied by the will or permission of the creators which are carried out by several irresponsible parties. Circulation of comics that have gone through the process of scanning, translating, and editing may result in copyright losses, which are detrimental to the author and only benefit site owners and readers, which are similar to the nature and consequences of piracy, especially in the field of Intellectual Property Rights (IPR).⁷

Even though there are already many comic publishers with valid licenses that are allowed or permitted to publish and sell comics in the territory of Indonesia by PT. Elex Media Komputindo, for example, is one of the comic publishers in Indonesia that publishes a comic entitled *One Piece* from a Japanese comic creator, Eiichiro Oda, by obtaining an official license from Shueisha, a comic publishing company in Japan that has given official permission to publish the comic in Indonesian territory. Those who suffer losses due to the circulation of comics for free and without permission on online sites as a result of comic scanning or comic piracy, and not only in Indonesia.⁸ Based on a survey released by the Authorized Books of Japan (ABJ), a Tokyo-based organization dedicated to fighting piracy, that the comic industry suffered a total loss of around 1.19 Trillion Yen which, if converted to a total of around Rp. 148 Trillion in 2021.⁹ Even though in Law Number 28 of 2014 concerning Copyright Article 9 Paragraph (3) it is explained that: "Every person without the permission of the Creator or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works," and Article 10 also explains that: "Managers of trading venues are prohibited from allowing sellers and/or duplicating goods resulting from copyright infringement and/or related rights at trading venues they manage." However, in Law Number 28 of 2014 Concerning Copyright (hereinafter abbreviated as UUHC) there is no explicit regulation regarding comic piracy and regulations governing the protection of comic creators whose comic works are published on online sites without the permission of the comic creator. This raises concerns due to the absence of legal norms due to the fact that this has not been properly regulated in UUHC in Indonesia. Even though this rule is really needed to provide legal protection for comic creators in the current era of globalization.

⁷ Emiko Iwasaki, "The Manga Phenomenon," www.wipo.int, 2011, https://www.wipo.int/wipo_magazine/en/2011/05/article_0003.html.

⁸ Andika Satyakusuma B, "Legalitas Eksistensi Manga-Scanlation 'One Piece' Dan Perlindungan Hak Cipta Yang Diberikan Terhadap Komik 'One Piece' Terbitan PT. Elex Media Komputindo Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Skripsi: Universitas Gadjah Mada, 2016), <http://etd.repository.ugm.ac.id/penelitian/detail/96794>.

⁹ Tia Agnes, "Duh! Manga Bajakan Masih Merajalela, Industri Rugi Sampai Rp 148 T," *detikhot*, 2022, <https://hot.detik.com/book/d-5905037/duh-manga-bajakan-masih-merajalela-industri-rugi-sampai-rp-148-t>.

The purpose of this study focuses on legal liability for comics that are published without permission from the creator, analysis of regulations and legal sanctions obtained for the authors. Parties who violate the copyright of comics by using online sites to take action against them. Because even though comic creators have received legal protection, their works cannot be used without the creator's permission in terms of UUHC. And even though there are efforts to protect copyright which are more specific in increasing economic income as well as encouraging innovation and creativity of creators in creating and getting guaranteed protection for their work, especially in the form of copyright infringement and to prevent the occurrence of a legal event that does not benefit the creator.¹⁰ However, it can still be seen that comics are still very vulnerable to piracy as a result of certain parties who are irresponsible and aware of the current copyright regulations in Indonesia. In addition, this also emphasizes that the government at least makes regulations regarding legal protection or liability for creators whose works are published on online sites without the creator's permission.

2. METHOD

The research method used is normative juridical, using problem approaches such as the statutory approach and conceptual approach. While the sources of legal materials are The materials used are sources of primary, secondary and tertiary legal materials. Collection of legal materials is done by conducting literature studies, then analyzed qualitatively.

3. RESULTS AND DISCUSSION

3.1 Accountability of Publishing Illustrated Literary Works (Comics) Without Author's Permission

Law enforcement is aimed at maintaining social order and the rule of law. This is done by controlling the functions, responsibilities and authorities of the institutions responsible for law enforcement in proportion to their respective scopes, and based on a good and effective system of cooperation that supports the desired results.¹¹ Factors influencing law enforcement are:¹² 1) The legal factor itself places more emphasis on the regulations, if there is a violation and the rules are not clear then law enforcement will be hampered; 2) Law enforcement factors, the scope of the term law enforcement is very wide, because it includes those who are directly and indirectly involved in law enforcement; 3) Factors of facilities and facilities, without the existence of certain facilities or facilities, it is impossible for law enforcement to take place smoothly. These facilities include those that support law enforcement, such as educated and skilled human resources, good organization, adequate equipment, adequate finances and so on; 4) The community factor, law enforcement comes from the community, and aims to achieve peace in society. Therefore, when viewed from a certain angle, society influences law enforcement; 5) The cultural factor, which is actually integrated with the community factor, is distinguished, because in the discussion it raises the issue of the value system which is the core of spiritual or non-material culture.

¹⁰ Labetubun, "Aspek Hukum Hak Cipta Terhadap Buku Elektronik (E-Book) Sebagai Karya Kekayaan Intelektual."

¹¹ Sanyoto, "Penegakan Hukum Di Indonesia," *Jurnal Dinamika Hukum* 8, no. 3 (2008): 199–204.

¹² Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2016), h. 8.

In terms of copyright, the creator enjoys the rights arising from his work and oversees the circulation of his work in society. If someone deliberately reproduces (commercially) someone's copyrighted work for the benefit of himself and others without the permission of the creator, then that person has violated the law. Because creators feel harmed by the actions of irresponsible people. The context is relevant to the economic field, because something that is copied without the author's permission and then sold to the public will benefit other people who copy or reproduce the work. At the same time, the creator will also feel disadvantaged by actions like this, because morally the name of the creator is betrayed materially.¹³ Due to recent technological developments, this has made it even easier for everyone in terms of accessing whatever is needed on the internet. For example, online comics have recently been very popular with comic readers because they are easy to access.

In Indonesia itself comic fans or readers also see the development of comics at this time as an advancement of the technology itself. The popularity of digital or online comics has continued to grow and increase since digital comics first appeared and became popular. Based on report data from Comic Book Resource (CBR), One Piece has been named a manga alias comic Japan's best-selling of all time globally, sales of the comic until 2021 have reached 480 million copies,¹⁴ And there are too data from similarweb.com, for the Webtoon platform which is a platform or site for reading comics online in the period April to June 2020, the site was visited by 27.08 million visits in Indonesia, and reached up to 53.81 million visits globally in June 2020. The existence of digital comics was initially seen as a substitute for printed versions of comics, but in Indonesia the existence of printed comics is still popular with comic fans.¹⁵

It is the flexibility in accessing the internet that makes the online comic website a site that is visited by many comic readers in Indonesia. Like a double-edged knife, this freedom becomes a problem when there are irresponsible parties who publish the comic without the permission of the creator and even get readers or results that are more than the creator himself. Such as publishing comics on illegal websites. In addition, compared to legal sites, it is these illegal sites that are visited by many internet users, even on a large scale, especially because they can be enjoyed for free. Due to the large number of illegal sites, many comic fans or readers read comics online on sites that are considered illegal.

Based on a report published by Yahoo News Japan, the level of piracy in 2021 has increased drastically by 26 times compared to previous years. According to the report, these illegal comic sites can bring in 326 million visitors every month. ABJ also said that his party managed to collect around 400 active illegal comic reading sites in 2017.¹⁶ The actions of

¹³ Rezky Lendi Maramis, "Perlindungan Hukum Hak Cipta Atas Karya Musik Dan Lagu Dalam Hubungannya Dengan Pembayaran Roalti," *Jurnal Lex Privatum* 2, no. 2 (2014): 116–25.

¹⁴ Cindy Mutia Annur, "Laku 480 Juta Eksemplar, One Piece Jadi Manga Terlaris Sepanjang Masa," [databoks.katadata.co.id](https://databoks.katadata.co.id/datapublish/2021/09/16/laku-480-juta-eksemplar-one-piece-jadi-manga-terlaris-sepanjang-masa), 2021, <https://databoks.katadata.co.id/datapublish/2021/09/16/laku-480-juta-eksemplar-one-piece-jadi-manga-terlaris-sepanjang-masa>.

¹⁵ Dimas Putro, "Perkembangan Tren Membaca Komik Pada Era Digital Di Indonesia," *Jurnal Ilmu Komunikasi* 7, no. 2 (2021): 115–26, <https://doi.org/10.35308/source.v7i2.3640>.

¹⁶ Andi Permana, "Pembajakan Manga Meningkatkan Drastis 26 Kali Pada Tahun 2021! Situs Baca Manga Ilegal Untung Besar!," diorama.suaramerdeka.com, 2022, <https://diorama.suaramerdeka.com/entertainment/pr-1832296297/pembajakan-manga-meningkat-drastis-26-kali-pada-tahun-2021-situs-baca-manga-ilegal-untung-besar>.

those who publish pirated comics on online sites that violate copyrights are of course very detrimental to the creators. As stipulated in Article 40 paragraph (1) letter a UUHC, comics are protected creations. Thus, comic copyright protection has permanent and strong legal protection. Nevertheless, in reality there are still similarities/similarities/copying/forgery of comic copyright without the permission of the creator.

In answering the legal liability of parties who publish comics on online sites without the creator's permission, the theory of legal liability is used. Hans Kelsen in his theory of legal liability states that a person legally bears responsibility or is responsible for a certain action, subject means that he is responsible for something. Sanctions in the case of contrary acts.¹⁷ Legal liability can occur if certain parties publish online comics on their own sites, commit violations, namely violate moral rights and economic rights. Moral rights are rights that are inherent in the creator that cannot be removed or deleted from individual or individual rights to the copyrighted work they produce so that no one changes them, even though the copyright of the work has actually been handed over to another party. This includes changes to the title of the copyrighted work, inclusion and changes to the name or pseudonym of the author.

UUHC Number 28 of 2014 states that moral rights are rights that are eternally attached to the creator. The attached right is regulated in Article 5 Paragraph (1) includes the right to: "a) keep including or not including his name on the copy in connection with the use of his work for the public; b) use aliases or pseudonyms; c) change their Works according to social decency; d) change the title and subtitle of the Work; and; e) defend their rights in the event of distortion of Works, mutilation of Works, modification of Works, or things that are detrimental to their self-respect or reputation."

Based on the description above, moral rights cannot be transferred during the life of the creator, but after the creator dies, the exercise of moral rights can be transferred by testament or other reasons in accordance with the provisions of the laws and regulations. Even if the copyright has been fully transferred to another party, this does not affect the ability of the Author or his heirs to sue or sue anyone who intentionally violates the Creator's moral rights without the permission of the Author and without their consent. Likewise in the case of the transfer of economic rights of Performers to other parties does not reduce the rights of the performers or their heirs to sue any person who deliberately and without rights and without the consent of the performers who violate the moral rights of the performers.

Then there are 8 (eight) kinds of rights which are seen as the basic rights of the creator's economic rights, namely:¹⁸ a) *Reproduction Rights* or reproductive rights are the creator's right to double the number of his creations, this is the elaboration of the creator's economic rights. These reproduction rights cover music, drama performances, as well as duplicating sound and films for example; b) *Adaptation right* or the right of adaptation is the right to make adaptations which can be in the form of translation from one language to another, musical arrangements, dramatization of non-drama, turning into fiction from non-fiction essays or vice versa for example; c) *Distribution rights* or the right of distribution is the right to distribute the results of his creation to the public. Dissemination can be in the form of sales,

¹⁷ Hans Kelsen, *Teori Murni: Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Empirik-Deskriptif*, trans. Somardi (Jakarta: Rimdi Press, 1995).

¹⁸Sophar Maru Hutagalung, *Hak Cipta Kedudukan & Peranannya dalam Pembangunan*, Sinar Grafika, Jakarta, 2012, hlm. 336.

rentals, or other forms intended to make their creations known by the public, for example; d) *Public Performance Rights* or performance right is the right of a member of permission to display a work to the public; e) *Broadcasting Rights* or broadcasting rights are giving permission to broadcast a work by wireless transmission, this broadcasting includes rebroadcasting and re-broadcasting; f) *Cablecasting Right* or Cable programming rights are almost the same as broadcasting rights except that they are transmitted via cable. The broadcasting agency has a certain studio, from there the program is broadcast via cable to the subscriber's aircraft. So the broadcast is definitely commercial; g) *Droit de Suite* is the right of the creator, which is regulated in Article 14 bis of the Brussek revision of the Berne Convention, 1948. This provision is an additional right, this right is material in nature; h) Community borrowing rights are rights owned by creators whose works are stored in the library, namely they are entitled to payment from certain parties because works are often borrowed by the public.

According to Article 8 UUHC economic rights are the exclusive right of the Author or Copyright Holder to obtain economic benefits from works. Then in the provisions of Article 9 UUHC, creators or copyright holders have economic rights to do: " 1) The creator or copyright holder as referred to in Article 8 has economic rights to: a) publication of Works; b) reproduction of Works in all its forms; c) translation of Works; d) adaptation, arrangement, or transformation of Works; e) distribution of Works or copies thereof; f) creation show; g) announcement of Works; h) Creation Communication; and i) Hire of Creation. 2) Everyone who exercises the economic rights referred to in paragraph (1) must obtain permission from the Author or Copyright Holder; 3) Everyone without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works."

Violations that occur such as parties or actors publishing comics on online sites without the permission of the Creator/Copyright Holder and because this creates economic benefits for these parties are included in copyright infringement, namely economic rights. The creators have the right to claim the economic rights of their creations. So the authors conclude that the creator or copyright owner has rights that get protection as follows:¹⁹ 1) The right to reproduce in the form of comic books or digital self-published by the publisher based on a license agreement; 2) The right to translate comic books into other languages; 3) The right to create performance works in any form; 4) The right to make broadcast works and so on.

If we examine based on the theory of book protection, the role of law in society is to provide legal protection to members of the public whose interests are disrupted, so that disputes that occur in society must be resolved according to applicable law. Settlement of disputes due to copyright infringement as stipulated in UUHC, can be done through court. The competent court is the Commercial Court. Other courts besides the Commercial Court are not authorized to handle copyright dispute resolution. Authors, copyright holders and/or related rights holders or their heirs who experience loss of economic rights are

¹⁹ Fatma Fitriani Fatima, "Pertanggungjawaban Hukum Perdata Terhadap Penjualan Buku Bajakan Melalui E-Commerce Berdasarkan UU Nomor 28 Tahun 2014 Tentang Hak Cipta" (Skripsi: Universitas Sebelas Maret, 2021), <https://digilib.uns.ac.id/dokumen/detail/84923/Pertanggungjawaban-Hukum-Perdata-Terhadap-Penjualan-Buku-Bajakan-Melalui-E-Commerce-Berdasarkan-UU-Nomor-28-Tahun-2014-Tentang-Hak-Cipta>.

entitled to compensation.²⁰ Comic publication activities are protected by copyright and are the economic rights of the creator or copyright holder. As in the provisions of Article 1 number 17 UUHC, distribution is the sale, distribution, distribution of creations or related rights products. The actions of certain parties who publish comics online on their own online sites without the permission of the creators where this violates copyright can be charged with threats maximum imprisonment of 4 years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah), this is regulated in Article 113 paragraph (3) UUHC. Piracy or publication of comics without permission is very detrimental to the creator or copyright holder, therefore sanctions against copyright violators should have a deterrent effect for violators. Which carries a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiah) as regulated in Article 113 paragraph (4) UUHC.

Liability for copyright infringement that occurs due to the actions of parties who publish comics online on their own online sites without the permission of the comic creators themselves, as described above also has the potential for liability that can ensnare these parties, namely: 1) Civil law: Civil law liability for parties or perpetrators of copyright infringement is based on the general principle of tort, namely Article 1365 of the Civil Code which reads: "Any act that violates the law and causes harm to another person, obliges the person who caused the loss because of his mistake to compensate for the loss." Therefore, in order for the violator to be held liable in civil law, there are 2 elements that must be met, namely: a) There is an act that is against the law: The actions of the violating parties or perpetrators who are qualified as unlawful acts based on the provisions of Article 9 paragraph 3 UUHC namely: "Every person without the permission of the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works". b) In a contrario, it can be interpreted that the action taken by the party or actor who publishes comics on his own online site without the permission of the comic creator which can be interpreted as an act of infringement of copyright and/or related rights is an act that is against the law; c) There is a loss from the unlawful act.

The element of loss is an integral part that cannot be separated, therefore the actions committed by the infringing party or perpetrator must cause harm to the creator or copyright holder so that only then can he be sued for compensation. In accordance with the provisions of Article 96 UUHC which explains that: " 1) Authors, Copyright holders and/or Related Rights holders or their heirs who experience loss of economic rights are entitled to Compensation; 2) Compensation as referred to in paragraph (1) shall be given and included in the court decision regarding the criminal case of Copyright and/or Related Rights; 3) Compensation payments to creators, copyright holders and/or related rights owners are paid no later than 6 (six) months after a court decision that has permanent legal force." 2) Criminal law: According to Roeslan Shaleh criminal liability is: ²¹ "Criminal responsibility is defined as continuing objective reproaches who were convicted for the act. The basis for the existence of a criminal act is the principle of legality, while the basis for the criminal act is the principle of error. This means that a criminal act will only be punished if he has a fault in committing the crime.

²⁰ Richard G E Rumbekwan, "Penyelesaian Sengketa Akibat Terjadinya Pelanggaran Hak Cipta Di Pengadilan Niaga," *Lex Crimen* 5, no. 3 (2016): 129-38.

²¹ Ludia Kartika Wisanti, "Pertanggung Jawaban Pidana Terhadap Anggota TNI Sebagai Pelaku Cyberporn" (Universitas Muhammadiyah Surabaya, 2019), p. 13.

So from there are several elements for a person to be held criminally responsible, namely: a) An error has been made: Actions committed by parties or actors, namely publishing comics online on their own online sites without the creator's permission, can be said to be acts that are considered something wrong or an error committed by said party or perpetrator; b) There is an intentional act: Based on what was done by the party or actor where he published the comic without the permission of the creator, especially on his own online site, then the actions committed by the party or actor were done intentionally.

So the responsibility of the party or actor if comics are published on their own online site without permission from the Creator or Copyright Holder can be seen or has been regulated in the provisions of Article 113 UUHC, namely: " 1) Everyone who unlawfully violates the economic rights as referred to in Article 9 paragraph (1) letter i for Commercial Use shall be subject to imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 100,000,000 (one hundred million rupiahs); 2) Everyone who without rights and/or without the permission of the Creator or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter c, letter d, letter f, and/or letter h for Commercial Use shall be punished with maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs); 3) Everyone who without rights and/or without the permission of the Author or Copyright holder violates the economic rights of the Author as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for Commercial Use shall be punished with maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah); 4) Everyone who fulfills the elements referred to in paragraph (3) which is carried out in the form of piracy, shall be subject to imprisonment for a maximum of 10 (ten) years and/or a maximum fine of Rp. 4,000,000,000.00 (four billion rupiahs)."

Based on the description above, legal responsibility for parties or actors who publish comics on their own online sites without permission from the creators/copyright holders of these comics is civil and criminal liability. In civil liability, compensation can be sued as regulated in UUHC Article 96 and in criminal liability, regulated in Article 113, namely imprisonment and fines.

3.2 Legal Protection Against Violations of Illustrated Literary Works (Comics)

Legal protection is protection given to legal subjects through legal instruments, both preventive and repressive in nature, both written and unwritten. In other words, legal protection refers to the idea that the rule of law can create justice, order, certainty, assurance and peace. According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a human right of power to him to act in the context of his interests.²² According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life between fellow human beings.²³ According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two characteristics, namely prevention (prohibited) and punishment (sanction).²⁴ From some of these opinions it can be concluded that legal protection is an activity to protect or maintain

²² Satjipto Rahardjo, *Sisi-Sisi Lain Dari Hukum Di Indonesia* (Jakarta: Kompas, 2003).

²³ Muchsin, "Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia" (Tesis: Universitas Sebelas Maret, 2003), p. 14.

²⁴ Rafael La Porta et al., "Investor Protection and Corporate Governance," *Journal of Financial Economics* 58, no. 1-2 (2000): 3-27, [https://doi.org/10.1016/S0304-405X\(00\)00065-9](https://doi.org/10.1016/S0304-405X(00)00065-9).

society in order to achieve justice.²⁵ Then legal protection is constructed as a form of service, and the subject is protected,²⁶ because intellectual property rights are the existence of rights born because of human intellectual creativity which is manifested in a real or original work, intellectual property rights require legal protection.²⁷ Legal protection for intellectual property rights, especially copyright for comic creators, has been regulated in Article 58 letter a UUHC.

By law, copyright exists automatically upon creation. In other words, after the creation has been completed, it is realized in a real form or material form in accordance with the wishes of the creator and in accordance with the characteristics of the creation.²⁸ Along with that, Article 9 (2) of the TRIPS Agreement confirms that Copyright adheres to the principle of only protecting expressions and not ideas or inspiration, procedures, operating methods or mathematical concepts.²⁹ Meanwhile, implicitly the Berne Convention also recognizes that Copyright does not protect ideas alone,³⁰ therefore it is theoretically possible and can happen if there are creations or creations with similar elements made by different creators. Copyrights can be recognized and protected as long as it can be proven that each creation is the result of one's own thoughts, ideas or inspirations and efforts, not an imitation of another person's creation.³¹

Copyright does not require the work to be registered. Copyright does not require registration or other formal requirements. This is implied in the provisions of the Berne Convention. The main purpose of implementing the copyright registration process in Indonesia is only to provide administrative services. Registration in no way certifies the substance, significance, or guarantee of the legitimacy of the ownership relationship between the work and its author. Registration of a work is only preliminary evidence of ownership of rights.³² If at a later date it can be proven that there are other people who are more entitled, the registration of the work is considered null and void by law.

According to Article 9 Paragraph (2) UUHC, every person who exercises economic rights must obtain permission from the Author or Copyright Holder. When used for commercial purposes other than requiring a permit, the user is required to provide royalties or compensation to the Author or Copyright Holder, in accordance with Article 80 paragraph (3) UUHC. The determination of the amount of the royalty as referred to in paragraph (3) and the procedure for awarding the royalty is carried out based on the license agreement between the copyright holder or owner of the related rights and the licensee.

Copyright under Article 16 paragraph (2) UUHC can be transferred or transferred, either in whole or in part due to inheritance, grants, endowments, wills, written agreements

²⁵ Hilda Hilmiah Dimiyati, "Perlindungan Hukum Bagi Investor Dalam Pasar Modal," *Jurnal Cita Hukum* 2, no. 2 (2014): 341-56, <https://doi.org/10.15408/jch.v1i2.1473>.

²⁶ H Salim HS and Erlias Septiana Nurbani, *Penerapan Teori Hukum Pada Tesis Dan Disertasi* (Jakarta: Raja Grafindo Persada, 2018), p. 26.

²⁷ Mahmuda Pancawisma Febriharini, "Eksistensi Hak Atas Kekayaan Intelektual Terhadap Hukum Siber," *Jurnal Ilmiah Serat Acitya* 5, no. 1 (2016): 15-22.

²⁸ Henry Soelistyo, *Hak Cipta Tanpa Hak Moral* (Jakarta: Raja Grafindo Persada, 2011), p. 12.

²⁹ *Ibid.*

³⁰ World Intellectual Property Organization, "Implications of the TRIPS Agreement on Treaties Administered by WIPO," WIPO Publication, 1996, <https://www.wipo.int/publications/en/details.jsp?id=381>.

³¹ Soelistyo, *Hak Cipta Tanpa Hak Moral*.

³² *Ibid.*, p. 13.

or other reasons justified in accordance with statutory provisions. Article 99 paragraph (2) UUHC which can be in the form of a request to submit all or part of the income obtained from holding lectures, scientific meetings, performances or exhibitions of works which are the result of copyright infringement or related rights products.

In addition to the lawsuit by the Author, Copyright Holder or Related Rights owner may apply for a provisional decision or interlocutory decision to the Commercial Court to request confiscation of Works made Publication or Reproduction, and/or Reproduction tools used to produce Works resulting from Copyright infringement and Related Rights products, and / or stop the activities of Announcement, Distribution, Communication, and / or Reproduction of Works which are the result of Copyright infringement and Related Rights products. In addition to civil lawsuits according to Article 105 UUHC, namely: "the right to file a civil lawsuit for violations of Copyright and/or Related Rights does not reduce the Rights of Authors and/or Related Rights owners to sue criminally".

Legal protection for comic copyright holders uses the theory of legal protection. Setiono defines legal protection as an effort to protect the community from arbitrary actions by the government that are not in accordance with the rule of law, to create order and tranquility so that people can enjoy the human dignity attached to them.³³ According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social life among human beings.³⁴ Legal protection is something that protects legal subjects through applicable laws and regulations and is enforced by a sanction. Legal protection can be divided into two, namely:³⁵ a) Preventive Legal Protection Protection provided by the government with the aim of preventing before a violation occurs. This is contained in laws and regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation; b) Repressive Legal Protection Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or an offense has been committed.

What is meant by legal protection is protection through legal means or legal provisions, which aims to protect certain interests, in particular by changing the interests that need to be protected into legal rights.³⁶ Protection of copyright serves to protect the rights owned by the creator of his creations, copyright also protects the potential of the creator because of the existence of the ability that an creator has to create a copyrighted work and his creations are maintained.³⁷ Problems with copyrights for copyrighted works often arise due to technological advances and the growing development of the world of copyrighted works using smartphones. Smartphones are cellular phones that are equipped with computer system technology that is more sophisticated than cellular phones in

³³ Setiono, "Rule of Law (Supremasi Hukum)" (Tesis: Universitas Sebelas Maret, 2004), p 3.

³⁴ Muchsin, "Perlindungan Dan Kepastian Hukum Bagi Investor Di Indonesia."

³⁵ *Ibid*, p. 20.

³⁶ Harjono Satjipto, *Perlindungan Hukum Bagi Konsumen Di Indonesia* (Jakarta: Ghalia Indonesia, 2006), p 17.

³⁷ Aji Ragil Putranto, "Penggunaan Audio Populer Dalam Pembuatan Video Menggunakan Aplikasi Dubsmash Ditinjau Dari Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta" (Universitas Diponegoro, 2017), p. 132.

general.³⁸ Works are protected as separate creations without prejudice to copyright on the original work. The concept of UUHC protection is to protect a work that already exists and has been announced to the public. However, the UUHC also provides protection for all creations that are not or have not been published as long as these creations already have a real unified form and can be reproduced. The provisions of Article 40 paragraph (2) UUHC clearly speak of works which are the result of the transformation of a work that already existed before into a new creation.³⁹ Protection of works that have not been announced or have not been made public but have been realized in a tangible form that allows the reproduction of said works.

Problems with copyright works basically often arise because of technological advances and the growing development of the world of digital copyrights using the internet. With the internet everything can be accessed quickly and easily, one example is online comics that can be read on legal online comic reading platforms or sites. Because of this, the comic is very easy to be reproduced and taken by everyone to be used for various purposes, without the knowledge of the creator.⁴⁰

In the case of copyrighted works where comics are published by certain parties or actors who do not have permission to publish them on their own online sites, after being published, many comic fans or readers visit these online sites to read their favorite comics. This has caused a loss in both the moral rights and the economic rights of the copyright holder. In such cases, 2 (two) sanctions may be imposed, namely civil and criminal sanctions.

From this, it is concluded that the party or actor must be responsible for comics published online on their online site without the creator's permission. Parties or actors who deliberately use commercially without permission also violate copyright as stipulated in Article 9 paragraph (3) UUHC that: "Every person without the permission of the Creator or Copyright Holder is prohibited from duplicating and or using the work commercially".

This is determined this way, because it is not certain that the person who created the copyrighted work agrees if the work he created is reproduced and published. That is why, copyright holders who want to reproduce and publish someone's copyrighted work are required to seek approval from the person copyrighted or their heirs.⁴¹

The validity period for the protection of moral rights and comic economic rights can be seen in the provisions of Article 57 and Article 58 UUHC. Then basically, a copyrighted work does not need to be registered, because it has received legal protection in the UUHC, but to prevent copyright infringement, the creator or copyright holder must register his creation with the DJIHKI. So, if a dispute occurs, the creator does not need to bother proving that the creation is his or his creation. Legal remedies that can be taken by the disputing

³⁸ Dwi Andi Susanto, "China Kalahkan Amerika Serikat Dalam Hal Kepemilikan Smartphone," merdeka.com, 2013, <https://m.merdeka.com/teknologi/china-kalahkan-amerika-serikat-dalam-hal-kepemilikan-smartphone.html>.

³⁹ Elyta Ras Ginting, *Hukum Hak Cipta Indonesia (Analisis Teori Dan Praktik)* (Bandung: Citra Aditya Bakti, 2012), p. 148.

⁴⁰ OK Saidin, *Aspek Hukum Hak Kekayaan Intelektual* (Jakarta: Rajagrafindo Persada, 2015), p. 89.

⁴¹ Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia* (Jakarta: Djaminan, 2003), p. 121.

parties can be classified into two parts, namely:⁴² 1) The path of litigation / court; 2) Alternative path of settlement out of court.

The litigation route is divided into two types, namely the civil route and the criminal route. The civil route is pursued through a process of claiming compensation at the Commercial Court. As for the criminal pathway, the procedure is from reporting the aggrieved party to the competent authority. Meanwhile, for other legal remedies taken through non-litigation channels are known as alternative dispute resolution. Alternative dispute resolution is often interpreted as an alternative to litigation, but is often also interpreted as an alternative to adjudication. The choice of one of the two meanings has different implications. If the first definition becomes an alternative reference to litigation, then it includes all alternative dispute resolution mechanisms outside the court.⁴³ In principle, online comic disputes will be protected as stated in one of the elements of legal protection for the people against the government which is directed at resolving disputes between the people and the government by means of deliberation or kinship. This path is taken by the creator on condition that the government can recover the creator's name, recover the actual loss (a fee that is usually paid for use), and stop all infringing activities.⁴⁴

A lawsuit for Copyright infringement is filed with the Chief Justice of the Commercial Court, then the Registrar registers the lawsuit on the date the lawsuit was filed and the plaintiff is given a written receipt signed by the authorized official on the same date as the date of registration. Submission of a lawsuit to the head of the Commercial Court no later than two days after the lawsuit is registered. The Commercial Court is given a maximum of three days to study the lawsuit and set a trial date. The examination hearing on the lawsuit begins within a maximum period of 60 (sixty) days after the lawsuit is registered.⁴⁵

The copyright holder has the right to file a claim for compensation to the Commercial Court for infringement of his copyright and request for confiscation of the published object or the reproduction of the work. The rights of the copyright holder do not apply to works that are on the part of parties who in good faith obtain the works solely for their own needs and are not used for a commercial activity and/or interests related to commercial activities. The creator or heir of a work can file a lawsuit for damages for violations. In addition to dispute resolution, the parties can resolve the dispute through arbitration or alternative dispute resolution. Regarding alternative dispute resolution resolved outside the court through arbitration, negotiation, mediation.⁴⁶

The procedure for filing a lawsuit for copyright infringement is regulated in Articles 100 and 101 of the UUHC. Article 100 of the UUHC explains that:" (1) A lawsuit for copyright infringement was filed with the Chairman of the Commercial Court; (2) The lawsuit as referred to in paragraph (1) is recorded by the clerk of the Commercial Court in the court case register on the date the lawsuit is registered; (3) The Registrar of the Commercial Court provides a signed receipt on the same date as the date of registration; (4) The Registrar of the Commercial Court submits a request for a lawsuit to the chairman of the Commercial Court within a maximum period of 2 (two) days from the date the lawsuit

⁴² Sudargo Gautama, *Perkembangan Arbitrase Dagang Indonesia* (Bandung: Citra Aditya Bakti, 1999), p. 52.

⁴³ *Ibid.* p. 23.

⁴⁴ *Ibid.*, p. 40.

⁴⁵ Rachmadi Usman, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan* (Bandung: Citra Aditya Bakti, 2013), h. 165.

⁴⁶ Ginting, *Hukum Hak Cipta Indonesia (Analisis Teori Dan Praktik)*, p. 294.

is registered; (5) Within a maximum period of 3 (three) days from the date the claim is registered, the Commercial Court shall determine the day of trial; (6) Notification and summons of the parties is carried out by the bailiff within a maximum period of 7 days from the date the claim is registered.

Then Article 101 UUHC also explained that: "(1) The decision on the lawsuit must be pronounced no later than 90 (ninety) days after the lawsuit is registered; (2) In the event that the period referred to in paragraph (1) cannot be fulfilled, with the approval of the chairman of the Supreme Court, this period can be extended for 30 (thirty) days; (3) The decision as referred to in paragraph (1) must be pronounced in a session open to the public; (4) The decision of the commercial court as referred to in paragraph (3) must be conveyed by the bailiff to the parties no later than 14 (fourteen) days from the date the decision is pronounced."

3.3 Obstacles in the Implementation of Copyright Law Protection

Law enforcement against copyright infringement is very important, given the development of copyright protection, where legal protection of copyrights for creators or copyright holders is still lacking, even though the law enforcement agencies involved have taken legal action, there are still many obstacles in implementation. Enforcement of this law. The participation of all parties is not only the government and creators or copyright holders but also society in general in enforcing this law. One thing that becomes a problem in legal protection in the field of copyright including the protection of illustrated literary works (comics) is how copyright protection is regulated in Indonesia and how legal protection is against copyright infringement itself.⁴⁷ These obstacles are: 1) Lack of Legal Awareness of Copyright Protection: Legal protection of comic copyrights as part of intellectual property rights cannot be separated from understanding and legal awareness of the various parties involved in it, the success of enacting a regulation lies not only with law enforcers but also with public awareness. In general, the public does not yet understand how important it is to protect a comic copyright work which is a copyrighted work in which there are economic rights and moral rights, therefore it is necessary to understand the community to protect and be more responsible for this. Such misunderstanding of the public is one of the reasons behind the occurrence of obstacles in the implementation of comic copyright protection itself.⁴⁸ 2) The Government Has Not Been Maximum In Providing Legal Protection of Comic Copyrights: The government's efforts in carrying out socialization programs by providing education about copyright, especially comics that have not been maximized, are one of the supporting factors for the occurrence of obstacles in the implementation of comic copyright law protection. Thus the lack of government efforts made by the DJHKI representative office in carrying out the socialization program by providing education about comic copyright as a part of IPR has caused many people to not know the legal rules contained in the 2014 UUHC.⁴⁹ 3) Technological Advancement Or Age Development: Technological advances or developments in the current era of globalization which are quite rapid are affecting comic fans or readers because they prefer to read comics online or read comics on online sites rather than buying comics directly. Because it is easier and faster to access wherever they

⁴⁷ Muh. Iman, "Perlindungan Hukum Hak Cipta Terhadap Karya Seni Fotografi Berdasarkan UU No. 28 Tahun 2014," *Jurnal Penelitian IPTEKS* 3, no. 1 (2018): 10–21, <https://doi.org/10.32528/ipteks.v3i1.1875>.

⁴⁸ Intan Shania and Sri Walny Rahayu, "Perlindungan Hukum Hak Cipta Tarian Tradisional Sebagai Ekspresi Budaya Tradisional Berdasarkan UUHC Tahun 2014 Di Provinsi Aceh," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 1, no. 2 (2017): 59–69.

⁴⁹ *Ibid*, p. 64

are.⁵⁰ 4) Economic Factors: Where the public or comic readers prefer to read comics on online sites which are considered illegal because they can be read for free rather than buying the comics directly or reading on online sites which are considered legal, one of which is Webtoon which can also be read for free but must wait once a week for read the following chapters. And if you want to read the next chapter right away, you have to pay using the existing system on Webtoon, namely the coin system. So each chapter has a price, which is 12 coins which if converted to around Rp. 4,000.00 (four thousand rupiah). Therefore, many choose illegal online sites compared to legal ones. So that this results in losses for the creator or copyright holder and this has an impact on the royalty income of the creator or copyright holder.

Based on the description above, the effectiveness of Copyright Law is to protect creators of copyrights which include moral rights and economic rights. However, its implementation is greatly influenced by several things, including: 1) Legislation in this case is Law Number 28 of 2014 concerning Copyright; 2) The structure of the implementation of the law Law enforcers are still not serious in tackling copyright infringement. For the Director General of Intellectual Property Rights, it has not been maximized by only carrying out socialization programs by providing education about copyright, especially comics and not taking clearer and firmer enforcement actions. This will have an impact on the community which causes them to be less aware of the rules contained in the UUHC; 3) Culture regarding people's attitudes and behavior today, people still prefer to read pirated comics on online sites more because they are free, although they can be purchased at shops that provide the desired comics and legal online comic reading sites. Thus the community or indirectly commits an offense in the form of piracy which can bring benefits to the community or that party and losses to the creator or copyright holder. The advantage for the community or offenders is that it is free and affordable and they get income because many people visit the online site. Losses for creators decrease in royalty income.

Economic factors in society The era of globalization forces people to struggle to survive so inevitably they prefer or look for free things. Comics are a work of art that also feel the effects, the more expensive the need to make the comic industries and the creators confused. Many comics are not sold and visitors to legal online sites are reduced, while pirated versions and visitors to illegal online comic reading sites can reach millions of buyers or visits. This is what makes the recording industry have to rack their brains so that songs are purchased at affordable prices.

4. CONCLUSION

The legal responsibility of parties or actors who publish copyrighted comics on online sites without the permission or approval of the Creator/Copyright Holder is civil and criminal liability. Legal protection for creators/copyright holders in the event that their comics are published on online sites without approval, the copyright holder has the right to take legal action in court (litigation) and settlement out of court (non-litigation). These legal remedies are criminal and civil legal remedies. Even though there is legal protection for creators/copyright holders, there are still many obstacles in the implementation of legal protection in the field of copyright.

⁵⁰ Wahyu Andika Putra, "Perlindungan Hak Cipta Karya 'Musik Independen' (Studi Tentang Perlindungan Hak Penggandaan Oleh PT Musikita Solo-Indonesia)" (Skripsi: Universitas Sebelas Maret, 2009), p. 72.

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