

# Legal Protection for Creators in Copyright Infringement through E-Commerce

Kornelis Agung Pringgohadi<sup>1</sup>, Cindy Ayu Alvianti<sup>2</sup>, Moch. Firman Adi Prasetyo<sup>3</sup>, Levi Fernanda Taalungan<sup>4</sup>

Fakultas Hukum, Universitas Wijaya Kusuma Surabaya  
Dukuh Kupang Street XXV No.54, Dukuh Kupang, Dukuhpakis Distric, Surabaya City, East Java 60225 |  
onekornel@gmail.com

DOI: <https://doi.org/10.35719/ijlil.v5i2.319>

**Abstract:** *The background of this research is that numerous incidents of copyright infringement, such as piracy, theft, and plagiarism, occur on e-commerce platforms; this is detrimental to the producer of intellectual work. This research aims to find a form of legal protection for creators for copyright infringement of their intellectual works on e-commerce platforms. The research method used is the normative legal research method with a statutory and conceptual approach, where this method is used to analyze and study several regulations governing copyright infringement and violations in the field of information technology, as well as several legal books and journals that discuss protection law for creators, and e-commerce platforms. The result of this research is the discovery of 2 (two) forms of legal protection for creators of copyright infringement through e-commerce, based on Philips M. Hadjon theory of legal protection, namely: First, preventive legal protection implemented in the form of Copyright Registration as a form of certainty law for creators to obtain concrete evidence regarding ownership of their copyrights; and Second, repressive legal protection implemented in the form of Law no. 28 of 2014 concerning Copyright and Law no. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, which regulates ways to deal with copyright infringements by imposing sanctions in the form of Administrative Sanctions, Civil Sanctions, and Criminal Sanctions.*

**Keywords:** Legal Protection, Copyright, E-Commerce

**Abstrak:** Latar belakang penelitian ini yakni adanya berbagai kasus mengenai pelanggaran hak cipta yang terjadi pada platform *e-commerce*, seperti pembajakan, pencurian, plagiarisme, dan lain-lain dimana hal ini tentu merugikan Pencipta dari suatu karya intelektual. Tujuan penelitian ini yaitu untuk menemukan bentuk perlindungan hukum bagi Pencipta atas pelanggaran hak cipta karya intelektualnya yang terjadi pada platform *e-commerce*. Metode penelitian yang digunakan yaitu metode penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, dimana metode ini digunakan untuk menganalisa dan mengkaji beberapa peraturan yang mengatur mengenai pelanggaran hak cipta dan pelanggaran di bidang teknologi informasi, serta beberapa buku dan jurnal hukum yang membahas mengenai perlindungan hukum bagi pencipta, dan platform *e-commerce*. Hasil dari penelitian ini adalah ditemukannya 2 (dua) bentuk perlindungan hukum bagi pencipta atas pelanggaran hak cipta melalui *e-commerce*, didasarkan pada teori perlindungan hukum Philipus M.Hadjon yakni: *Pertama*, perlindungan hukum preventif yang diimplementasikan dalam bentuk Pendaftaran Hak Cipta sebagai bentuk kepastian hukum bagi Pencipta untuk memperoleh bukti konkrit terkait kepemilikan hak ciptanya; dan *Kedua*, perlindungan hukum represif yang diimplementasikan dalam bentuk Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta dan Undang-Undang No. 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, yang didalamnya mengatur cara untuk mengatasi adanya pelanggaran hak cipta dengan diberikannya sanksi berupa Sanksi Administratif, Sanksi Perdata, maupun Sanksi Pidana.

**Kata Kunci:** Perlindungan Hukum, Hak Cipta, *E-Commerce*.

INDONESIAN JOURNAL OF LAW AND ISLAMIC LAW (IJLIL)

Volume 5 Nomor 2 Juli-Desember 2023;

ISSN 2721-5261 E-ISSN 2775-460X



Indonesian Journal of Law and Islamic Law (IJLIL) is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)

## Introduction

In the existing industrial era, 4.0, accompanied by technological advances, everyone's needs and activities are increasingly made more straightforward by utilizing technology, which is rapidly developing. The use of this technology is even recognized and felt by many countries worldwide, and technological progress plays a significant role and contributes to a country's economy, especially in the field of intellectual property rights (from now on, referred to as IPR). In connection with the above, it is necessary first to know and understand the definition of IPR itself. IPR is defined as a natural right or fundamental right that a person has concerning human intellect and reason, where this fundamental right deserves to be respected and appreciated by other humans. IPR is also defined as an economic right granted by law to a Creator or Inventor over a work resulting from his intellectual abilities. Intellectual property rights are a creation of thought that can take the form of inventions, literature, art, symbols, names, images, and designs used in trade.<sup>1</sup> From a broader perspective, W.R. Cornish interprets IPR as rights that protect ideas and embody ideas containing commercial values.<sup>2</sup> Furthermore, practically, IPR is an intangible object resulting from human intellectual activity that is realized in the form of specific creations or discoveries, in this case, intellectual activity (creative power) which covers the fields of science, art, and technology. There are various types of IPR, and one type of IPR that is widely used by the public and is the object of research in this scientific paper is Copyright.

Copyright is an exclusive right since the person has produced an intellectual work which is then distributed or, in other words, given approval to other people to distribute it without reducing limitations under existing regulations. The work created by someone indeed requires a lot of time, energy, and money, so of course, the creation is valuable and has value.<sup>3</sup> The value referred to is in the form of economic and moral rights that benefit the creator. Shows that copyright is important and undoubtedly beneficial for the creator, especially with economic rights that the creator can use to meet their daily needs.

In connection with the above, various forms of copyrighted intellectual works have been created, such as songs, books, paintings, carvings, batik, computer programs, photographic works, published written works, and many other forms of creation. These various creations are unique ideas that can now be easily channeled and promoted via social media by utilizing the internet. Moreover, if the work displayed interests the public and goes viral, it will undoubtedly provide more profits for the creator. Utilizing technology with a fast, practical, and efficient process, especially in carrying out business transaction processes by utilizing internet services, is also a powerful and effective way as a medium for communication, collaboration, and cooperation both with individuals and groups (companies, agencies, ..),<sup>4</sup> So, naturally, many intellectual or creative employment are bought and sold via the internet or what is known as electronic commerce (from now on referred to as e-commerce).<sup>5</sup>

Considering that the value of copyright is profitable, this is then exploited by irresponsible parties to carry out actions that violate the creator's copyright. Another case was experienced by Farah Quinn, who reported an e-commerce company to the authorities for alleged photo copyright violations. Farah Quinn's photo was used for promotional advertisements for these companies, where the photo used was a photo of Farah Quinn on

<sup>1</sup> Khoirul Hidayah, *Intellectual Property Rights IPR Law*, (Malang: Setara Press, 2017), 1

<sup>2</sup> Hayyan Ul Haq, "Creating Appropriate Legal Framework in the Utilization of Intellectual Property Products," *Journal of International Commercial Law and Technology* 9, no. 2, (2014): 10

<sup>3</sup> Budi Agus Riswandi and M, Syamsudin, *Intellectual Property Rights and Legal Culture*, (Jakarta: Raja Grafindo, 2005), 31

<sup>4</sup> Nidya Waras Sayekti, "Tantangan Perkembangan Ekonomi Digital Di Indonesia", *Info Singkat X*, no. 05/1/Puslit/Maret, (2018): 19.

<sup>5</sup> Shabur Miftah Maulana. *et.all*. "Implementasi E-Commerce Sebagai Media Penjualan Online (Studi Kasus Pada Toko Pastbrik Kota Malang)", *Jurnal Administrasi Bisnis (JAB)* 29, no. 1, (2015): 2.

the cover of her book entitled *Healthy Happy Family* by Farah Quinn and a photo for an advertisement for Tupperware products. However, another company used both photos for commercial purposes without permission from Farah Quinn.<sup>6</sup>

The following case is related to the piracy of intellectual works (creations) on one of the e-commerce platforms, namely Bukalapak, where Bukalapak is suspected of selling pirated books and goods, which is undoubtedly detrimental to the creator of the intellectual work, even because of this incident, Bukalapak was expelled from European Commission Counterfeit and Piracy Watch List.<sup>7</sup> Responding to this case, Syarifuddin, Director of Copyright and Industrial Design, confirmed that the Directorate General of Intellectual Property (DJKI) continues to minimize book piracy on digital platforms, especially in e-commerce. Since 2015, DJKI has recorded that it has closed/blocked 800 websites that violate copyright, some related to copyright violations in the book sector.<sup>8</sup>

Some of the cases above show that the rapid development of technology is also accompanied by the development of copyright crimes in the world of e-commerce, so, of course, it is a challenge for creators and the government to overcome copyright violations through e-commerce in various forms. New in the future. Considering copyright's important role and benefits, creators undoubtedly need legal protection so that the actions of irresponsible parties do not harm them. Based on this background, an exciting topic will become a legal issue to be discussed in this scientific paper: What is the form of legal protection for creators for copyright infringement through e-commerce platforms?

## Research Methodology

This research uses normative legal research, namely, studies from library materials, to provide a sequential understanding of the rules in specific legal fields, conduct studies on several regulations, and even predict the development of legal rules.<sup>9</sup> Based on this understanding, this method is implemented to analyze and study the rules or norms relating to legal protection for creators for copyright infringement through e-commerce platforms. In this regard, in writing this scientific work, the author used 2 (two) types of approaches: legal and conceptual. A legislative approach is used to examine several regulations related to the content of the law being resolved<sup>10</sup>, so if it is related to legal issues in this scientific work, then some of the regulations in question are the rules governing copyright infringement through e-commerce platforms. About the conceptual approach, namely, the approach used to find things that originate from the opinions of legal scholars and doctrines that develop in legal science,<sup>11</sup> the legal issues of this scientific work are implemented using books and legal journals that discuss legal protection, copyright, and the development of e-commerce in Indonesia.

## Results and Discussion

### Copyright is a natural right that needs to be protected

Before discussing copyright, it is necessary to understand the definition of rights. According to the Indonesian Language Thesaurus, rights means right, straight, valid, and

---

<sup>6</sup><https://celebrity.okezone.com/read/2016/03/18/33/1339999/farah-quinn-laporkan-e-commerce-terkait-pelanggaran-hak-cipta>, diakses pada tanggal 18 Juni 2023.

<sup>7</sup><https://m.jpnn.com/news/bukalapak-dihapus-dari-european-commission-counterfeit-and-piracy-analis-langkah-yang-tepat>, diakses pada tanggal 18 Juni 2023.

<sup>8</sup><https://www.dgip.go.id/artikel/detail-artikel/tanggulangi-pembajakan-buku-di-e-commerce-diki-tengah-susunan-permenkumham-terkait-hak-cipta?kategori=Berita%20Resmi%20Desain%20Industri>, diakses pada tanggal 18 Juni 2023.

<sup>9</sup> Dyah Ochterina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2018), 11.

<sup>10</sup> Dyah Ochterina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)*, 10

<sup>11</sup> Dyah Ochterina Susanti dan A'an Efendi, *Legal Research*, 15.

can also be interpreted as belonging and possession at the etymological level.<sup>12</sup> In essence, rights mean authority, ownership, possession, and freedom to do something because the rules have been determined in the law.<sup>13</sup> In essence, rights mean authority, ownership, possession, and freedom to do something because the rules have been determined in the law. At the term level, several experts put forward the meaning of rights, including according to Notonegoro in Satjipto Rahardjo, that rights are the power to receive or do something that should be accepted or done by a particular party and other parties cannot prevent it, even in principle, this right can be demanded by force.<sup>14</sup> Sudikno Mertokusumo believes that rights are interests protected by law, where interests themselves are individual or group demands that are expected to be fulfilled, where, in essence, interests contain power guaranteed and protected by law in carrying them out.<sup>15</sup>

The law protects a person's interests by allocating power to act in the context of his interests. This power allocation is carried out measurably because its breadth and depth are determined. Such power is called a right. In this regard, not all powers can be interpreted as rights because only certain powers can be called rights, namely rights granted by law.<sup>16</sup> This is in line with Salmond's view, which defines *rights* as legal rights, where these rights must be recognized and protected by regulations regarding rights so that anyone must comply with them as an obligation. If they ignore them, then it is a mistake.<sup>17</sup>

In connection with the above, apart from legal rights, there are also other types of rights, namely natural rights. Natural rights mean that everyone has ownership in themselves, and no one has the right to this ownership other than themselves because the results of the work of a person's body, hands, and mind are his<sup>18</sup> Based on the definition of legal rights and natural rights above, there is a difference between the two. If legal rights contain interests created and protected by legal rules, their violation is a legal violation, and respecting them is a legal obligation. In contrast to natural rights, where interests are created and protected by natural law, violating them is a moral wrong, and respecting them is a moral obligation.<sup>19</sup>

The definition above can be seen from the definition of copyright in Article 1 point 1 of Law No. 28 of 2014 concerning copyright (from now on referred to as the Copyright Law). The definition in this article shows that copyright is a natural right. Based on this provision, copyright is not a right granted by the state to legal subjects based on a specific legal procedure but rather a right that automatically exists when the creator creates a work in a natural form<sup>20</sup>. It also shows that the Copyright Law exists to regulate and protect creators for their creations, not to create a copyright. The statement that copyright is a natural right is even confirmed in Article 64 paragraph (2) of the Copyright Law, which confirms that recording creations and products related to copyright is not required for obtaining copyright and related rights.

In connection with the explanation above, it is necessary to understand. However, that copyright is attached automatically and already exists with the creator, concrete evidence explaining the ownership of the created product does not yet exist or is still

<sup>12</sup> Tim Redaksi Tesaurus Bahasa Indonesia, *Tesaurus Bahasa Indonesia Pusat Bahasa*, (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), 181.

<sup>13</sup> <https://kbbi.web.id/hak>, diakses pada tanggal 20 Juni 2023.

<sup>14</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2005), 131.

<sup>15</sup> Sudikno Mertokusumo, *Mengenal Hukum*, (Yogyakarta: Universitas Atmajaya, 2018), 161.

<sup>16</sup> Satjipto Rahardjo, *Ilmu Hukum*, 52.

<sup>17</sup> John W. Salmond, *Jurisprudence or Theory of the Law*, (London: Stevens & Haynes, 1902), 219.

<sup>18</sup> John Locke, *Two Treatises of Government and A Letter Concerning Toleration*. Ian Spahiro (Ed) (New Haven and London: Yale University Press, 2003), 111.

<sup>19</sup> John W. Salmond, *Jurisprudence or Theory of the Law*, 220.

<sup>20</sup> Menurut Pasal 1 angka 2 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta, Pencipta adalah seorang atau beberapa orang yang secara sendiri-sendiri atau bersama-sama menghasilkan suatu ciptaan yang bersifat khas dan pribadi.

abstract, so it is possible that one day the creation will be recognized (claimed). by other parties which is undoubtedly detrimental to the creator, so the creator and his creation need to be protected.

### **E-Commerce Platform as one of the Cybercrime Media in the Copyright Field**

*E-commerce involves buying, selling, distributing, and marketing (promoting) goods and services through electronic systems using electronic data transfer*<sup>21</sup> Another definition of e-commerce is buying, selling, or exchanging products, services, and information via computer networks. It also needs to be understood that e-commerce is part of e-business, which has an extensive scope, not only focusing on activities like trade, collaboration between business partners, job vacancies, and customer service.<sup>22</sup>

Conceptually, electronic commerce (from now on referred to as e-commerce) is similar to traditional commerce, which uses paper as a transaction medium. Sellers offer products or services to consumers, where consumers can choose the desired product/service without coercion. Consumers can even negotiate prices and make certain special agreements. Next, when the parties mutually agree, proceed to the transaction stage, which requires several complete documents. Ordered goods will be given directly to the buyer or sent via courier. What differentiates systematic transactions through e-commerce from traditional ones lies in the role of information technology, which is a medium for flexibly carrying out the buying and selling process, meaning it can be done in unlimited times and places.<sup>23</sup> These characteristics make e-commerce much loved by entrepreneurs to develop their businesses.

In practice, in simple terms, e-commerce consists of various parties involved, such as the e-commerce platform provider as the party who determines the content or type of content that will be provided on their site, and some parties play an essential role in the development of e-commerce, namely consumers (customers). In this regard, in transactions via e-commerce, there are 2 (two) things that consumers usually do, namely checking the products or services offered in the form of advertisements by the company via the company's website and looking for information related to the transaction process that the consumer will carry out. After doing the two things above, if the consumer is interested in the goods or services offered, the consumer will come directly to the place where the product/service is sold, or the consumer can also contact the seller via telephone or e-mail listed on the website. Alternatively, consumers can place orders online via computer or mobile phone using the applications provided (for example, Shopee marketplace, Tokopedia). Goods ordered by consumers will then be distributed via 2 (two) channels, namely for companies with physical products/goods, which will be sent using couriers provided by the seller/company. In contrast, digital products/goods or services like images, video, files, and audio will be sent via the Internet.

In connection with the explanation above, it can also be understood that e-commerce is a type of commerce in electronic business and will be operated if it is by the principles that exist in cyberspace (digital). In other words, the effectiveness of e-commerce, which provides easy access to products/services, may not contain more significant risks for future developments, where the risks referred to are related to cybercrime, namely an act of crime/violation that is related to computers or network devices, usually this crime is committed online. In the business world, there are many forms of cybercrime, including copyright infringement, such as theft of photos and drawings and piracy of books and films,

<sup>21</sup> Suyanto, M, *Strategi Periklanan Pada E-Commerce Perusahaan Top Dunia*, (Yogyakarta: Adi Offset, 2003), 10.

<sup>22</sup> Edwin Agung Wibowo, "Pemanfaatan Teknologi E-Commerce Dalam Proses Bisnis", *Jurnal Equilibria* 1 no.1, (2014): 96.

<sup>23</sup> Richardus Eko Indrajit. *Electronic Commerce: Strategi dan Konsep Bisnis di Dunia Maya*, 164. Diakses melalui <https://repository.unikom.ac.id/48010/1/Electronic%20Commerce-Strategi%20dan%20Konsep%20Bisnis%20di%20Dunia%20Maya.pdf>, pada tanggal 21 Juni 2023

which will undoubtedly harm the creator of the intellectual work. In this regard, legal protection is needed to guarantee legal certainty for creators of intellectual property rights and their creations.

### Legal Protection for Creators for Copyright Infringement through E-Commerce

The author must first explain the meaning of protection and law when discussing legal protection. From a linguistic perspective, protection is a place of refuge, things (actions) that protect<sup>24</sup>. In Black's Law Dictionary, protection using the term protection means the act of protecting, namely the act of protecting<sup>25</sup>

The following definition of the word is that law is defined as a set of societal regulations that society must obey. Hans Kelsen put forward another definition of law: law is a normative order accepted as a system of norms to regulate human behavior.<sup>26</sup> Likewise, Jimly Asshidiqie and Ali Safa'at define *law* as a system of rules of human behavior. Based on this, the law does not accumulate in one rule but rather a set of rules that have unity so that it can be understood as a system; the consequence is that it is only possible to understand the law if you pay attention to one rule.<sup>27</sup> This opinion is in line with Sudikno Mertokusumo, who defines *law* as a collection of rules or rules in a shared life, all regulations regarding behavior that apply in a shared life, whose implementation can be enforced with sanctions.<sup>28</sup>

Based on the explanation regarding the definition or meaning of the words protection and law above, it can be seen and understood that what is meant by legal protection is an action carried out to protect the rights of legal subjects using several legal instruments. *Legal protection* is also defined as an action or effort to protect citizens from arbitrary actions by those in power where these actions are outside the predetermined rules, to create order and tranquility to enable people to enjoy their lives.<sup>29</sup> Satjipto Rahardjo, in this case, stated that legal protection is carried out by looking at the rights that exist in every human being who feels disadvantaged so that protection is given to citizens in carrying out their lives.<sup>30</sup> C.S.T. Kansil thinks that legal protection is legal measures that law enforcement officials must provide to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.<sup>31</sup> According to Harjono, legal protection is protection using legal means or protection provided by law aimed at protecting specific interests, namely by making the interests that need to be protected into a legal right.<sup>32</sup> The explanation above shows that legal protection is critical and needed by every human being to protect the rights of legal subjects (every person or legal entity) and prevent losses that may occur at any time.

In connection with the explanation regarding legal protection above, it turns out that it is in line with the theory of Legal Protection developed by Philipus M. Hadjon, where Philipus M. Hadjon explains that legal protection is a situation where legal subjects must

<sup>24</sup> Tim Redaksi Kamus Bahasa Indonesia, *Tesaurus Bahasa Indonesia Pusat Bahasa*, 864.

<sup>25</sup> Bryan A. Garner (Ed.), *Black's Law Dictionary*. Ninth Edition, (USA: West Publishing.co, 2004), 1343.

<sup>26</sup> Hans Kelsen, *Pure Theory of Law*, (New Jersey: The Lawbook Exchange, Ltd., 2005), 30.

<sup>27</sup> Jimly Asshidiqie dan Ali Safa'at, *Teori Hans Kelsen tentang Hukum*, (Jakarta: Sekjen dan Kepaniteraan MK-RI, 2006), 13.

<sup>28</sup> Erwin Syahputra, *Tesis: Pengentasan Kemiskinan Melalui Hukum Sebagai Sarana Pemberdayaan CSR (Corporate Social Responsibility) Dalam Kegiatan Pertambangan Emas di Tapanuli Selatan*. (Semarang: Program Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro, 2017), 59.

<sup>29</sup> Setiono, Disertasi: *Rule of Law (Supremasi Hukum)*. (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004), 3.

<sup>30</sup> Satjipto Rahardjo, *Ilmu Hukum*, 54.

<sup>31</sup> C.S.T. Kansil, *Pengantar Ilmu Hukum*, Cetakan Kedelapan, (Jakarta: Balai Pustaka, 1989), 102.

<sup>32</sup> Harjono, *Konstitusi sebagai Rumah Bangsa*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), 357.

obtain the resources provided by the law to guarantee and protect the legal subjects.<sup>33</sup> Furthermore, Philips M. Hadjon divides legal protection into 2 (two) forms: first, preventive legal protection, namely protection that aims to prevent disputes, which gives people the opportunity to express opinions before government decisions, or in other words, this protection exists to encourage the government to be careful in making decisions, and secondly, repressive legal protection, namely protection that aims to resolve disputes resulting from violations, provide limitations in carrying out obligations, where this protection is given in the form of sanctions as a form of protection—end of violations committed by a person or legal subject.<sup>34</sup>

Referring to the two forms of legal protection above, if it is related to legal protection for creators for copyright infringement through e-commerce, the form of legal protection also consists of 2 (two), namely Preventive Legal Protection and Repressive Legal Protection. In this case, Preventive Legal Protection is implemented as Copyright Registration. The previous explanation in sub-B discussed that copyright is a natural right automatically attached to the creator of the intellectual work (creation). However, it must be understood that the creator also needs concrete proof of ownership of his work so that other parties do not easily claim the results of intellectual works that are not his creations.

If a product is copyrighted, ownership of the created product will be clear, and its truth can even be accounted for if a conflict arises regarding copyright ownership. Apart from that, the creator also obtains proof of ownership through a copyright certificate and his rights as the work owner. In this regard, there are 2 (two) types of rights inherent in the Creator or Copyright Holder, namely Moral Rights and Economic Rights. This moral right exists because everyone must respect and appreciate the creative works of others.<sup>35</sup> This is stated in Article 5, paragraph (1) of the Copyright Law, which contains the following:

“Moral rights are eternally inherent in the Creator to:

- a) Motionless including or not containing the name of the creator on the copy about the use of the work for the public;
- b) Using a pseudonym of the Creator;
- c) Changing his creations according to appropriateness in society;
- d) Change the title and subtitle of the work;
- e) Defending the rights in matters that destroy the work, mutilate the work, modify the work, or are detrimental to the personal honor or reputation of the creator. Motionless including or not containing the name of the creator on the copy about the use of the work for the public;

Another right is to obtain economic benefits from the results of the intellectual work created. It is said to be an economic right because copyright (IPR) is an object that can be valued in money.<sup>36</sup> Economic rationality also justifies copyright protection in the sense that protection must be provided to enable all the costs and efforts of the Creator to be repaid.<sup>37</sup> Another definition of economic rights is also defined as exclusive rights obtained by the Creator or Copyright Holder to obtain economic benefits from the work produced, as stated in Article 9 paragraph (1) of the Copyright Law.

Copyright registration (from now on, the author refers to copyright registration) has been regulated by Indonesian positive law, specifically in Chapter Copyright registration is carried out by the Minister who handles government affairs in the legal sector, in this case,

<sup>33</sup> Luthvi Febryka Nola, “Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)”, *Jurnal Negara Hukum* 7, no. 1, (2016): 40.

<sup>34</sup> Sayyid Muhammad Zein Alydrus, *et. all*, “Perlindungan Hukum Terhadap Konsumen PT. PLN (Persero) Balikpapan Terkait Adanya Pemadaman Listrik”, *Jurnal Lex Suprema* 2, no. I, (2020): 365.

<sup>35</sup> Gatot Supramono, *Hak Cipta dan Aspek-Aspek Hukumnya*, (Jakarta: Rineka Cipta, 2010), 45.

<sup>36</sup> Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*. (Jakarta: Rajawali Pers, 2011), 15.

<sup>37</sup> Henry Soelistyo, *Hak Cipta Tanpa Hak Moral*.

the Minister of Law and Human Rights. Copyright registration is carried out using an application by the Creator, Copyright Holder, owner of related rights, or their proxy to the Minister. Applications are made electronically and non-electronically by including examples of the Work, Related Rights products, or their substitutes; attach a statement of ownership of the Work and Related Rights; and pay the registration fee.

Applications for recording works and related rights products can also be made by applicants with qualifications and must meet the following requirements:

1. For Applications by several people who jointly have rights to a creation or product with related rights, the application must be accompanied by a written statement proving that right.
2. Application by a legal entity must be accompanied by an official copy of the legal entity's deed of establishment, which an authorized official has ratified.
3. For applications by several people, the names of all applicants must be written, specifying one address for the selected applicant.
4. For applications by applicants who come from outside the territory of the Indonesian Republic, the application must be made through an intellectual property consultant who is registered as an attorney.

Presuming that the Minister accepts the application for copyright registration, a letter of creation registration will be issued and recorded in the general register of works. Based on Article 69 paragraph (4) Law no. 28 of 2014 concerning copyright, a creation registration letter is initial proof of ownership of a work or related product unless proven otherwise. The general list of creations contains things that cover the following:

- a. Name of the Creator and Copyright Holder, or the name of the owner of the related rights product.
- b. The receipt date of the application letter.
- c. The complete date of the requirements as intended in Article 66 and Article 67 of Law no. 28 of 2014 concerning copyright; and
- d. Registration number of the work or related rights product.

The explanation above shows that copyright registration certainly gives rise to legal consequences, namely that the name of the person or legal entity written in the work registration letter is recognized by the state as the Creator of the work being registered and is given legal protection unless proven otherwise. means that if at a later date, it is proven that someone else is the actual Creator of a recorded creation, then the creation of that creation will be canceled. Apart from that, the recording of creations also results in the emergence of royalties. The definition of *Royalty* itself is compensation for the use of the Economic Rights of a Work or Related Rights Product received by the Creator or Owner of the related rights.<sup>38</sup> Concerning the mechanism for distributing and collecting royalties, the Copyright Law has mandated an institution with authority in this matter, namely the Collective Management Institute. The Collective Management Institution is a non-profit legal entity authorized by the Creator, Copyright Holder, and Related Rights Owner to manage their economic rights by collecting and distributing Royalties.<sup>39</sup> In Indonesia, one Collective Management Institution has been formally and officially recognized. It has the authority to carry out a Royalty collection mechanism, especially for created products in the form of music and songs through a licensing agreement, namely the Indonesian Creative Work Foundation (YKCI). This explanation strengthens the statement that copyright registration is essential because it provides many benefits for the Creator.

The second form is related to legal protection for creators for copyright infringement through e-commerce, namely repressive legal protection. This protection is

<sup>38</sup> Pasal 1 angka 21 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta

<sup>39</sup> Pasal 1 angka 22 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta



implemented in the form of statutory regulations relating to the use of information technology or what is known as cyber law. In terms of providing effective and efficient legal protection for creators to overcome copyright infringement through e-commerce, it is necessary to develop cyber law on the basic principles of the digital economy.

In this regard, several principles must be considered when drafting cyber law, including:<sup>40</sup> 1) that virtualization is the central concept underlying a company's form and structure in cyberspace. Consumers no longer physically encounter companies, people, and tangible products/goods in the transaction process but only need an electronic site (software); even a company can set up a company and offer products or services to various countries in the world without having to be burdened with much paperwork related to administration. In this regard, in preparing cyber law, a policy or regulation is needed that can undoubtedly facilitate the process of establishing a virtual company to improve the cyberspace industry; 2) The application of business models on e-commerce platforms almost completely excludes mediation in solving problems. Due to the ease of making transactions via electronic media (the internet), everyone can directly communicate with other people without having to be involved or ask for help from a third party as an intermediary. 3) Easy and fast communication also means that producers and consumers have clear boundaries in conventional transactions. However, in e-commerce transactions, it becomes unclear because consumers and producers can contact each other at any time. Hence, this also results in someone being able to double as a producer. Alternatively, consumers; 4) in digital transactions (e-commerce), product/service producers certainly cannot do all the work alone, but several parties are needed to support their business, namely by collaborating with companies in the internet network sector, which results in dependence on the company; 5) Adequate human resources are necessary, because the higher the performance and quality of human resources, the better the creation of a product/service will be. In cyberspace, the selection of human resources does not even recognize national boundaries because they can communicate and exchange ideas, information with any person around the world. In this case, effective policies and regulations are certainly needed to protect the Creator.

Based on the explanation above, it can be seen and understood that the formulation and development of cyber law must be carried out carefully and with several considerations, considering that business in cyberspace (e-commerce platforms) is a business area that applies the concept of free markets and globalization of information, so that by the ease with which other people (including people all over the world) can take, claim, pirate an intellectual work (creation) belonging to the Creator.

In connection with the explanation above, in order to overcome various problems related to copyright infringement through e-commerce, the government provides 2 (two) legal umbrellas, namely:

#### **1. The Law number 28 of 2014 concerning Copyright**

The Copyright Law provides regulations regarding sanctions as a solution to overcome copyright violations, where these sanctions include administrative sanctions, civil sanctions, and criminal sanctions. Through the Copyright Law, the state urges anyone aware of a copyright violation through an electronic system with the aim of commercial use to report it to the Minister of Law and Human Rights. If the report is proven, the Minister recommends to the Minister of Communication and Information to close some or all of the content that violates copyright in electronic systems or can also make electronic system services inaccessible.<sup>41</sup>

---

<sup>40</sup> Richardus Eko Indrajit, *Electronic Commerce: Strategi dan Konsep Bisnis di Dunia Maya*, 169-171.

<sup>41</sup> Lihat Pasal 55 and 56 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta.

The other sanctions are contained in Article 96 of the Copyright Law, which explains that creators or copyright holders or their heirs who experience loss of economic rights due to copyright infringement are entitled to compensation. The amount of compensation and the time of award are determined through a court decision. Furthermore, criminal sanctions are regulated in several articles, including Article 113 paragraph (3) of the Copyright Law, which explains that every person without rights and the permission of the Creator or Copyright Holder violates the Creator's economic rights, namely publishing a work, duplicating work in all its forms, distributing the work or copies thereof, and announcing the work for commercial use shall be punished by a maximum imprisonment of 4 (four) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). There are also sanctions for copyright infringement in portraits, namely photographic works with human objects.<sup>42</sup>

## 2. The Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions

Protection of intellectual work (in this case, copyright) is also regulated in the ITE Law, namely in Article 25 of the ITE Law. The provisions of this chapter mean that every Electronic Information and Electronic Document that is prepared and registered as intellectual work, such as copyright, patent, trademark, trade secret, industrial design, and the like, must be protected by the ITE Law by taking into account the provisions of the Legislative Regulations.

In this regard, the ITE Law also explains several prohibited acts, namely that every person intentionally and without right distributes (sends and distributes to many people or various parties) and transmits (sends to one other party) and make accessible (all actions other than distributing and transmitting so that it can be known to other parties or the public) Electronic Information and Electronic Documents that have content that violates decency, gambling, insults, and defamation, as well as extortion and threats.<sup>43</sup> If the prohibited act is carried out, it will be subject to criminal sanctions. For acts containing content that violates decency, gambling, extortion, and threats, a maximum prison sentence of 6 (six) years will be imposed and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). For acts containing content that violates insult and defamation, a maximum imprisonment of 4 years will be imposed, and a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).<sup>44</sup>

## Conclusion

Based on the explanation of the results and discussion above, the author concludes that the form of legal protection for creators for copyright infringement through e-commerce is divided into 2 (two) forms, namely, Preventive Legal Protection, namely protection provided by law with the aim of to prevent future disputes. This protection is implemented in Copyright Registration as a form of legal certainty for creators to obtain concrete evidence regarding their copyright ownership. With a copyright certificate, other people cannot claim copyrighted work from the creator or copyright holder. If they want to use the intellectual work, they must have permission from the creator or copyright holder. Second is repressive legal protection, namely protection provided by law to overcome the occurrence of a dispute/conflict/violation. This protection is implemented in the form of Law No. 28 of 2014 concerning Copyright and Law No. 19 of 2016 concerning Amendments

<sup>42</sup> Pasal 1 angka 10 Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta.

<sup>43</sup> Lihat Pasal 27 ayat (1), (2), (3), dan (4) Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi Dan Transaksi Elektronik.

<sup>44</sup> Lihat Pasal 45 ayat (1), (2), (3), dan (4) Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi Dan Transaksi Elektronik .

to Law Number 11 of 2008 concerning Information and Electronic Transactions, which regulates ways to overcome copyright violations by providing sanctions in the form of Administrative Sanctions, Civil Sanctions, and Criminal Sanctions.

## Bibliography

- Alydrus, Sayyid Muhammad Zein *et. all.* "Perlindungan Hukum Terhadap Konsumen PT. PLN (Persero) Balikpapan Terkait Adanya Pemadaman Listrik". *Jurnal Lex Suprema* 2, no. 1, (2020).
- Asshidiqie, Jimly dan Safa'at, Ali. *Teori Hans Kelsen tentang Hukum*. Jakarta: Sekjen dan Kepaniteraan MK-RI, 2006.
- Garner, Bryan A. (Ed.). *Black's Law Dictionary*. Ninth Edition. USA: West Publishing.co, 2000.
- Harjono. *Konstitusi sebagai Rumah Bangsa*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008.
- Hidayah, Khoirul. *Hukum HKI Hak Kekayaan Intelektual*. Malang: Setara Press, 2017.  
<https://celebrity.okezone.com/read/2016/03/18/33/1339999/farah-quinn-laporkan-e-commerce-terkait-pelanggaran-hak-cipta>, diakses pada tanggal 18 Juni 2023.  
<https://kbbi.web.id/hak>, diakses pada tanggal 20 Juni 2023.  
<https://m.jpnn.com/news/bukalapak-dihapus-dari-european-commission-counterfeit-and-piracy-analis-langkah-yang-tepat>, diakses pada tanggal 18 Juni 2023.  
<https://www.dgip.go.id/artikel/detail-artikel/tanggulangi-pembajakan-buku-di-e-commerce-djki-tengah-susun-permenkumham-terkait-hak-cipta?kategori=Berita%20Resmi%20Desain%20Industri>, diakses pada tanggal 18 Juni 2023.
- Kansil, C.S.T. *Pengantar Ilmu Hukum*, Cetakan Kedelapan, Jakarta: Balai Pustaka, 1989.
- Kelsen, Hans. *Pure Theory of Law*, New Jersey: The Lawbook Exchange, Ltd, 2005.
- Locke, John. *Two Treatises of Government and A Letter Concerning Toleration*. Ian Spahiro (Ed), New Haven and London: Yale University Press, 2003.
- Maulana, Shabur Miftah *et.all.* "Implementasi E-Commerce Sebagai Media Penjualan Online (Studi Kasus Pada Toko Pastbrik Kota Malang)", *Jurnal Administrasi Bisnis (JAB)* 29, no. 1, (2015).
- Mertokusumo, Sudikno. *Mengenal Hukum*. Yogyakarta: Universitas Atmajaya, 2018.
- Nola, Luthvi Febryka, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)", *Jurnal Negara Hukum* 7, no. 1, (2016).
- Rahardjo, Satjipto, *Ilmu Hukum*. Bandung: Citra Adhya Bakti, 2005.
- Richardus Eko Indrajit. *Electronic Commerce: Strategi dan Konsep Bisnis di Dunia Maya*, 164. Diakses melalui <https://repository.unikom.ac.id/48010/1/Electronic%20Commerce-Strategi%20dan%20Konsep%20Bisnis%20di%20Dunia%20Maya.pdf>, pada tanggal 21 Juni 2023.
- Riswandi, Budi Agus dan M. Syamsudin. *Hak Kekayaan Intelektual dan Budaya Hukum*. Jakarta: Raja Grafindo, 2005.
- Salmond, John W. *Jurisprudence or Theory of the Law*. London: Stevens & Haynes, 1902.
- Sayekti, Nidya Waras, "Tantangan Perkembangan Ekonomi Digital Di Indonesia", *Info Singkat*, Vol. X, No. 05/1/Puslit/Maret/2018.
- Setiono. Disertasi: *Rule of Law (Supremasi Hukum)*. Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004.
- Soelistyo, Henry *Hak Cipta Tanpa Hak Moral*. Jakarta: Rajawali Pers., 2011.
- Supramono, Gatot. *Hak Cipta dan Aspek-Aspek Hukumnya*. Jakarta: Rineka Cipta., 2010.

- Susanti, Dyah Octorina dan Efendi, A'an. *Penelitian Hukum (Legal Research)*. Jakarta: Sinar Grafika, 2018.
- Suyanto, M. *Strategi Periklanan Pada E-Commerce Perusahaan Top Dunia*. Yogyakarta: Adi Offset, 2003.
- Syahputra, Erwin. *Tesis: Pengentasan Kemiskinan Melalui Hukum Sebagai Sarana Pemberdayaan CSR (Corporate Social Responsibility) Dalam Kegiatan Pertambangan Emas di Tapanuli Selatan*. Semarang: Program Magister Ilmu Hukum Fakultas Hukum Universitas Diponegoro, 2017.
- Tim Redaksi Tesaurus Bahasa Indonesia. *Tesaurus Bahasa Indonesia Pusat Bahasa*. Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008.
- Ul Haq, Hayyan. "Creating Appropriate Legal Framework in the Utilization of Intellectual Property Products". *Journal of International Commercial Law and Technology* 9, no. 2, (2014).
- Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi Dan Transaksi Elektronik.
- Undang-Undang No. 28 Tahun 2014 tentang Hak Cipta.
- Wibowo, Edwin Agung. "Pemanfaatan Teknologi E-Commerce Dalam Proses Bisnis". *Jurnal Equilibiria* 1, no.1, (2014): 96.