

## A PROGRAM AND ANALYZE OF SYSTEM CIVIL PERPEFTIF IN TERMS OF COPYRIGHT AND PATENT DIGITAL

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### Keywords

Juridical Studies,  
Transfer of Book  
Copyrights, Civil  
Inheritance Law.

**Abstract.** This paper discussed about a legal aspects of transferring copyright for book works in Indonesia, particularly from the perspective of Civil Inheritance Law. It highlights that while the Copyright Law (Law Number 28 of 2014) doesn't provide detailed procedures for transferring copyrights through inheritance, it can be done after the author's or copyright holder's death, with the inheritance automatically passing to the heirs. It also mentions that book copyrights can be inherited in the form of licenses or royalties, which are regulated under the UUHC (presumably a relevant law).the article recommends that the government should provide public education and counseling on copyright, especially for book works. Authors are encouraged to transfer their creations through an application for registration with the Directorate General of Intellectual Property (Dirjen KI) in Jakarta or through the Regional Offices of the Ministry of Law and Human Rights in different regions.

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### 1. INTRODUCTION

An every individual possesses varying levels of intelligence, including creative and explorative intelligence, which can be cultivated through diligent effort, involving not only mental but also physical and emotional exertion (Donandi: 2019). Intellectual property rights refer to rights over intangible assets that originate from human intellectual capabilities, resulting from a combination of intellectual and emotional intelligence. (Djumhana and Djubaedillah: 2014). Since the adoption of the TRIPs Agreement in 1995, the study of Intellectual Property Rights has expanded to encompass various aspects, including Copyrights, Patents, Trademarks, Industrial Designs, Integrated Circuit Layouts, Geographical Indications, Trade Secrets, and Plant Varieties. Intellectual Property Rights are not isolated in the legal domain but are integrated into the realm of intangible assets. They can also be considered tangible when intellectual creations materialize into concrete forms, thus intersecting with other legal areas.

Despite being governed by specific norms and having their own legislations, Intellectual Property Rights are subject to limitations on property rights and the transfer of rights, with references to be found in the Civil Code, particularly in Book II on Objects and Book III on Binding (Directorate General of IPR and ECAP II: 2006). Regarding Copyright, even though it has been regulated by laws, including Law Number 6 of 1982 on Copyright, which aligns with the philosophical principles of Pancasila in the Republic of Indonesia, it has undergone several amendments due to evolving legal landscapes and societal demands (Hutagalung: 2012).

Book Copyright and Paten is an exclusive right automatically conferred to creators once their work takes tangible form, with certain restrictions in accordance with relevant laws and regulations. The genesis of Book Copyright starts with an idea born from the creativity and technological insights of individuals utilizing their intellectual and emotional intelligence (Saidin: 2019). Economic Rights, granted under Copyright, allow creators to exploit their work, including distribution and obtaining economic benefits during their lifetime. Adequate protection for their creations for a specific duration can be established through agreements, aiming to prevent disputes between creators and Copyright holders over profit-sharing or infringement by third parties (Margono: 2010).

As a property right, Book Copyright and Paten can be transferred, either wholly or partially, concerning both economic and moral rights. Typically, this transfer is formalized through an Application for Registration with the Directorate General of Intellectual Property (Directorate General of IP) and publicized in the Official Gazette at the Directorate General of IP. Failure to record the Transfer of Rights with the Directorate General of Intellectual Property renders it legally ineffective against third parties. Hence, the law prescribes a framework wherein creators or Copyright holders

can grant permissions or transfer their creations to others by documenting it in a License Deed (Syarifin and Jaubaedah: 2004).

A legal perspective is brought to think about something. In Griffin's view, perspective is defined as a stand point in looking at the world around him by seeing the various symptoms that arise in communication (Hasrullah: 2017). Inheritance Law is a law that regulates the transfer of property left by someone who has died to the heirs. In addition, Inheritance Law is the law or rules that regulate whether and how the rights and obligations of the heirs to the heir's estate (Istijab: 2020). Thus Civil Inheritance Law is a law that regulates the transfer of the heir's property and its consequences based on the Civil Code (Kitab Undang-Undang Hukum Perdata).

The Civil Code recognizes 2 (two) types of inheritance systems, namely:

- a. A Intestato Inheritance System (according to the law / due to death / without a will:
  - 1) The first group, which consists of the husband / wife and children of the testator and their descendants from children. Articles governing this first group are Article 852, Article 852 a paragraph (1) and Article 852 a paragraph (2) of the Civil Code. Article 852 of the Civil Code explains that the children's share is equal even though the children come from different marriages. The meaning of Article 852 of the Civil Code is that the inheritance rights of the children of the testator are the same, meaning that they get the same share even though they were born from different marriages.
  - 2) The second group, which consists of the father and mother or one of the father / mother and their siblings and descendants. Articles governing this second group are Article 854, Article 855, Article 856, Article 857 of the Civil Code. Article 854 of the Civil Code explains the share of inheritance, if there is still a father and mother and siblings. The father and mother's share is  $\frac{1}{3}$  each if there is one sibling and  $\frac{1}{4}$  each if there are two or more siblings. Article 855 of the Civil Code describes the share of inheritance if there is only a father/mother, then the share of the father/mother who lives the longest is  $\frac{1}{2}$  if inheriting with one brother,  $\frac{1}{3}$  if inheriting with two brothers,  $\frac{1}{4}$  if inheriting with 3 or more brothers. Article 856 of the Civil Code explains that in the absence of a father/mother, the siblings are entitled to inherit the entire estate. Article 857 of the Civil Code is about the division of siblings, while the division of siblings is divided into three types of siblings, namely siblings, half-brothers and half-mothers. The share of siblings from the same marriage, then the share is equal, whereas if the siblings come from different marriages, then the share must be divided in half (kloving), namely  $\frac{1}{2}$  share for siblings in the seapak line and  $\frac{1}{2}$  for siblings in the seibu line, siblings get two parts, namely the share of the seapak line and the share of the seibu line.
  - 3) The third group, which consists of grandparents, grandmothers and so on, along with family in a straight line up, both in the seapak line and in the seibu line. The articles governing this third group are Article 85, Article 853, Article 858 of the Civil Code. As with the division of relatives in Article 857 of the Civil Code, the division in the third group of heirs must also be cloving first, namely  $\frac{1}{2}$  part for the heirs in the seapak line and  $\frac{1}{2}$  part for the heirs of the seibu line.
  - 4) The fourth group, which consists of siblings of both parents and all their descendants up to the sixth degree. Heirs of the fourth group is included in the understanding of blood relatives in the line deviate further. The articles governing this fourth group are Article 850, Article 858, Article 861 of the Civil Code. The division of the fourth group of heirs is essentially the same as the division of the third group that in the distribution of inheritance must be cloving first, namely  $\frac{1}{2}$  part for the heirs in the seapak line and  $\frac{1}{2}$  part for the heirs in the seibu line. The important thing to know is that those entitled to inherit only up to the sixth degree, after the sixth degree will not appear as heirs.
- b. System of inheritance according to a will (testament). Article 875 of the Civil Code reads: "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, which can be revoked by him". From this provision, it can be concluded that the

elements or characteristics of a will are as follows: The will takes effect after the testament maker dies. Can be revoked again. It is personal in nature. Performed freely. Is a unilateral legal act. Made by Deed, either by Deed Under Hand or Authentic Deed (Francis: 2016).

## 2. METHOD

The type of research used by researchers is Normative Legal Research. According to Philipus M. Hadjon, normative legal research is "research aimed at finding and formulating legal arguments through analysis of the subject matter" (Hadjon and Djamiati: 2005). Normative legal research is also called library research or document study. It is called library research or document study because this research is mostly conducted on secondary data in libraries, such as books, and official documents from the government (Suratman and Dillah: 2013).

This research refers to the legal norms contained in the laws and regulations governing the Transfer of Book Copyright through inheritance in Indonesia as well as legal norms that exist in society which is also called normative juridical (Soekanto: 2014). The data collection method used is library research. According to M. Nazir in his book entitled "Research Methods" suggests that what is meant by "Literature Study is a data collection technique by conducting a study of books, literature, notes, and reports that have to do with the problem being solved". Literature Study, namely conducting research by studying and reading literature that has to do with the problems that are the object of research (Raharja: 2023).

The Library Research method is a library method used to find answers to problem formulations in reading sources (references), such as book literature, magazines, journals, the internet, legal dictionaries, laws and regulations and other sources (Zainuddin: 2010). This research uses the type of data obtained from Secondary Data sourced from official documents, books, reports, Scientific Journals, the internet and laws and regulations relating to the object of research. The research conducted was sourced from Secondary Data (Soekanto: 2014). Secondary data is divided into:

- a. Primary Legal Materials, which include laws and regulations related to "Juridical Studies on the Transfer of Book Copyright Through the Perspective of Civil Inheritance Law in Indonesia", such as the Civil Code and Law Number 28 of 2014 concerning Copyright.
- b. Secondary Legal Materials, consisting of book literature, Scientific Journals and the internet that have relevance to this research.
- c. Tertiary Legal Materials, in the form of materials that provide guidance or explanation of Primary Legal Materials and Secondary Legal Materials, including the Big Indonesian Dictionary and Legal Dictionary.

## 3. RESULT AND DISCUSSION

### Perpeftif Research.

Lexy J. Moeleong explained that data analysis is the process of arranging the order of data, organizing it in a pattern, category and basic description unit. Data analysis used in this research is qualitative data analysis because this research is descriptive. The data obtained and collected in this study are not in the form of numbers alone, but in the form of facts, cases and relationships between variables on Juridical Studies on the Transfer of Book Copyright Through the Perspective of Civil Inheritance Law in Indonesia. The data analysis process is carried out carefully to obtain valid and reliable research results (Moeleong: 1999). After the necessary data is collected, final conclusions can be drawn about the main research problems in detail and clearly, especially those related to "Juridical Studies on the Transfer of Book Copyright Through the Perspective of Civil Inheritance Law in Indonesia".

### Discussion Perpeftif

In Indonesia, the history of the birth of Copyright is motivated by the influence of foreign political pressure and the political interests of developed countries. Considering that Indonesia is a country that has a variety of cultural diversity, various works in science, art and literature, as well as Intellectual Property Rights derived from nature, many developing countries and even developed

countries are eyeing this great potential with the aim of exploiting it on a large scale, selling it as a trade product claimed from other countries and conducting international business transactions with Indonesia in the era of international trade liberalization, and providing a source of economic benefits for other countries.

This will also lead to a high level of awareness of the world community, especially developing countries and developed countries that have the potential to violate intellectual property rights and strengthen the competitiveness of the United States in the field of technology (Lubis: 2011). Thus, to require trade in various parts of the world to be carried out in a transparent and fair manner after World War II and to provide protection for the rights of the Indonesian people arising from Intellectual Property Rights, then Indonesia with all the necessity (political and economic pressure) joined the World Trade Organization (World Trade Organization) and the World Intellectual Property Rights Organization (World Intellectual Property Rights Organization) and ratified the General Agreement on Tariff and Trade (GATT 1994 / WTO) which contains the TRIPs Agreement and is used as a guideline to form other Copyright legislation in force in Indonesia (Arief and Sasono : 2013).

Copyright is an exclusive right for creators to publish or reproduce their creations in the fields of science, art and literature which, among others, can consist of books, computer programs, lectures, lectures, speeches and other similar creations as well as rights related to Copyright (Asian Law Group Pty. Ltd: 2011). In other words, the definition of Copyright is the right owned by a Creator, Copyright Holder or Owner of Related Rights to publish and reproduce their creations (Sitorus: 2015). Then the basic characteristics inherent in Copyright (the nature of Copyright), which include Property Rights, rights that are limited in time (limited duration), Exclusive Rights (Exclusive Right) and a collection of other rights in a work (a multiple right, a bundle of rights in one work). As for what is protected from Copyright is an idea that has materialized from the original (Hasibuan: 2014).

In Indonesia, Copyright protection is only given to a copyrighted work that has a distinctive form (material form), is personal, shows its originality born based on ability, creativity or expertise (mental effort) so that it manifests as a creation that can be seen, read or heard and one example is a book (Chosyali: 2018). Formally juridically, Indonesia was introduced to the issue of Copyright in 1912, namely with the promulgation of the Auteurswet 1912 Staatblaad 1912 Number 600 which this law was formed to protect the interests of creators in the field of publishing books and the field of cinematography operating in the Dutch Colonial area at that time (Usman: 2003).

Although the law was established in accordance with the transitional provisions contained in Article II of the Transitional Rules of the 1945 Constitution, Article 192 of the Provisional Constitution of the Republic of Indonesia and Article 142 of the 1950 Constitution. However, its enforcement was only temporary until the post-independence period of Indonesia and had to be replaced again (Margono: 2010). Indonesia as an independent and sovereign country, it is not appropriate if the legal products that are enforced "completely" come from the colonial government which for 350 years positioned itself as an imperialist country. Therefore, the Indonesian government decided to revoke the previous law and re-enacted Law Number 6 of 1982 concerning Copyright contained in the State Gazette of the Republic of Indonesia Year 1982 Number 15 (Usman: 2003).

In its implementation, the legal protection of Copyright in Law Number 6 of 1982 on Copyright does not fully meet the philosophical values of the Indonesian nation, namely Pancasila so that many violations are found, especially in the form of criminal acts of piracy against the type of creation on Copyright that has been going on for quite a long time and has reached a level that endangers and harms the creativity of the creator (Usman: 2003).

### **Model Of Analysed**

After a period of 10 years of the enactment of the law, it turns out that the violation or piracy of Copyright does not show an encouraging side. In its journey, what was originally the idea of changing the law can not all be realized. Thus, the Indonesian government amended Law Number 7 of 1987 on Copyright with Law Number 12 of 1997 on Copyright (Adams: 2004). Furthermore, Law Number 12 of 1997 is the first law in the field of Indonesian Copyright protection after Indonesia ratified the

GATT 1994 / WTO, which contains the format and substance adapted to the TRIPs Agreement and its protocols or attachments. In Law Number 12 of 1997, Copyright protection focuses on the status of its Copyright which if a work is unknown to the creator and not or has not been published / has not existed, then the Copyright on the work is held by the state to protect Copyright for the benefit of the creator. Meanwhile, if the work is a written work in the form of a book and has been published, then the Copyright on the creation concerned is held by the publisher (Gautama: 1997).

However, law enforcement of Law Number 12 Year 1997 in practice is not running as expected. This is because piracy activities and violations of copyrighted works are increasingly widespread and law enforcement mechanisms by aggravating criminal threats are still ineffective (Saidin: 2019). Furthermore, the Indonesian government re-enacted Law Number 19 of 2002 concerning Copyright in which the scope of creation that gets legal protection of Copyright is the intellectual creation of databases, books, music, computer programs and others except sound recording works that only get protection in rights related to Copyright. Copyright protection referred to in this right is the Economic Rights and Moral Rights of the creator. However, the changes in this law only emphasize the criminal aspect and law enforcement in practice is not running as expected (Damian: 2002).

After that, the Indonesian government re-established Law Number 28 of 2014 concerning Copyright as a result of the work of the National Legislation Body. Books are protected creations under Article 40 of Law Number 28 of 2014 concerning Copyright. The book is an intellectual work of the creator or copyright holder who has exclusive rights consisting of two rights, namely Economic Rights and Moral Rights. Exclusive Rights are described as rights that are only owned by the Creator, Copyright Holder or Copyright Bound Owner who is free to exercise the Copyright, while any person or other party who without the consent of the Creator, Copyright Holder or Copyright bound owner is prohibited from freely exercising the Copyright (Marbun and Anwar: 2013).

Law Number 28 of 2014 concerning Copyright explains the term of Copyright protection specifically to several subjects of Copyright law, namely First, the term of Copyright protection applies to the Creator during the life of the Creator and continues only until 70 years after he dies. Second, if the Copyright is owned by 2 or more people, then the term of protection of Copyright is enforced during the life of the longest living Creator and continues for 70 years after he dies. Third, if a creation does not include the name of the creator or the name of the creator is unknown, then the term of copyright protection is given to a legal entity for 50 years after the creation was announced for the first time (Supramono: 2010).

Given the protection of copyright can also be provided by way of legal protection of copyright to the creation, then the legal protection is the same as law enforcement against any violation or occurrence of piracy or duplication of books. Therefore, the protection of Copyright law is carried out by providing severe criminal sanctions to the perpetrators, demanding compensation and resolving Copyright disputes that can be done through Alternative Dispute Resolution, Arbitration or other in accordance with the provisions of Law Number 28 of 2014 on Copyright (Rahardjo: 2009). When viewed in terms of ownership rights, Article 16 Paragraph (2) of Law Number 28 of 2014 concerning Copyright states that Copyright can be transferred or transferred, either in whole or in part due to inheritance, grants, wills, waqf, agreements, or other causes as long as they are not contrary to the law (Tim Regulasi Publishing: 2017). In its implementation, Copyright that is transferred or transferred due to inheritance, grants, bequests, endowments, agreements, or other causes as long as it is not contrary to the law (Tim Regulasi Publishing: 2017).

Based on Article 16 paragraph (2) letter e of Law Number 28 of 2014 concerning Copyright which states that "Copyright may be transferred or transferred either in whole or in part by written agreement". Furthermore, the Explanation of Article 16 paragraph (2) means that "can be transferred or transferred", namely only Economic Rights, while Moral Rights remain attached to the Creator. The transfer of Copyright must be done clearly and in writing either with or without a Notarial Deed. The Civil Code defines an agreement as an agreement made by two or more parties, either written or oral, where each agrees to comply with the contents of the agreement that has been made together.

This is regulated in Article 1313 of the Civil Code and Article 1314 of the Civil Code. To make an agreement valid according to law, the agreement must fulfill the conditions stipulated in Article 1320 of the Civil Code, namely: a. Agreement b. Capacity c. Specific thing d. Halal cause (Supramono: 2010).

In order for the transfer of Copyright to be said to be valid, it still follows the requirements of the validity of an agreement as stipulated in Article 1320 of the Civil Code. However, the transfer of copyright is only economic rights, while moral rights remain attached to the creator. Because Moral Rights cannot be transferred as long as the creator is still alive according to the provisions stipulated in Article 5 paragraph (2) of the Copyright Act (UUHC). A person who creates a work of creation, in the form of a book in general, in addition to their own use, is also then reproduced to be utilized by others. Basically, the Creator has the right to prohibit and supervise the work of his creation circulating in the community. Creators in the fields of science, art, and literature or inventors in the field of technology must be given an award and recognition as well as legal protection for the works they create or discover. Therefore, thanks to the creator or inventor we recognize various achievements that are poured in various products of science, art and technology (Hutagalung: 2012).

If you want to transfer Copyright to heirs, of course it is possible to do so. Given that no human being lives forever, but his works can still be enjoyed by the community. Then it has been regulated about the transfer of Copyright to the heirs regulated in Article 16 paragraph (2) letter d of Law Number 28 of 2014 concerning Copyright which allows the transfer of Copyright due to inheritance. Article 832 of the Civil Code states that the Inheritance Property can be confiscated if the Heir has debts. So if the amount of the heir's debt is greater than the inherited / left property, there is a possibility that the heirs will not get anything from the inheritance because all the inherited property has been confiscated to pay off the debts of the heir (Fransiskus: 2016). In terms of inheriting according to the law, it can be divided into direct inheritance "uit eigen/hoofde" which is those or heirs who are called to inherit based on their own position in the family structure of the testator, each heir receives an equal share, gives the heir the right position to inherit and the testator and the heir are in the first degree of relationship. While inheriting by replacing or heirs replacing heirs who have died earlier than the testator "bijplaatvervulling" is those who inherit based on the replacement of a place to give the right to someone who replaces and to act as a substitute in the degree and all the rights of the person being replaced (Muhammad: 2011).

Given the economic benefits of Exclusive Rights in the field of Copyright, where the Creator or Copyright Holder can choose to license or give permission to other parties to duplicate or sell books, the Copyright Holder will receive royalties. The amount of royalty payments is generally based on the total sales of the licensee. For the parties, economic benefits will be the main goal and bring economic benefits to the state (Syafrinaldi: 2018). Royalties are intangible assets that contain claims on future bills of money and can be assumed to be financial assets. Assets are things of economic value owned by book authors in the form of money from a percentage of the selling price of the book multiplied by the number of books sold. Royalties that have economic value also include the characteristics of an object that can be used as an object of debt collateral and inheritance for heirs. This means that one day if the debtor or heir cannot pay off his debt, the object can be sold by the bank to pay off debts at the bank and the inheritance obtained is only a benefit for the heirs (Syafrinaldi: 2018).

#### 4. CONCLUSION

The conclusion that can be drawn from this research is the enactment of Law Number 28 of 2014 concerning Copyright which regulates the work of Book creation and the transfer of Copyright can be done by will, written agreement and based on the class of heirs regulated in the Civil Code and Book Copyright can be used as property in the form of licenses or royalties regulated under UUHC. It is hoped that the government will provide counseling to the public about Copyright, especially the work of the Book and the Book Creator can transfer his creation by making an Application for Recording at the Directorate General of Intellectual Property (Director General of KI) in Jakarta or through the Regional Office of the Ministry of Law and Human Rights in the region.

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