



Social Function of Copyright: Balancing the Interest of the Creator and Users in a Largest Islamic Country

Budi Santoso, Professor of the Faculty of Law, Diponegoro University, Semarang

Abstract- The purpose of this research was to analyze the copyright as a special right given to the creator or copyright holder. This special right is often defined as an exclusive right. However, there are also community rights as users of the work. The research approach was conducted to investigate the relation between the exclusive rights owned by the creator and the rights of the user community can conflict with each other, especially in Indonesia having largest population in the world of Muslim adherents. The task of the copyright law maker is to formulate a balance of rights between the two. The formula which approaches the importance of both is the concept of the social function of copyright. The results showed that the exclusive rights of creators and/or copyright holders to prohibit other parties from using works are often an obstacle for people who use works to reach a better level of civilization user of creation. The concept that approaches the balance between the interests of the creator and the users of the work is to use the concept of the social function of copyright.

Keywords: social function, copyright, creator, Indonesia, Common Law.

I. INTRODUCTION

Basically, in the world of copyright, there are two major blocks regarding the philosophy or culture of copyright that are contradicting each other, namely the philosophy adopted by France with the Civil Law tradition and the philosophy adopted by the United States with the Anglo-Saxon tradition. French copyright law which is heavily influenced by the views of medieval natural law and gives more attention and legal protection to authors as the implementation of natural rights, while the American tradition has another view of copyright which tends to be more influenced by the views of the view of the utilitarian school which is rooted in the hedonistic philosophy of "That pleasure was the highest or the only intrinsic good" from Greek philosophers who tend to put aside protecting the creator, but emphasize more on achieving greater benefits for the community at large. So that tends to provide more protection on creation and not on creator (Curzon, 1979).

Thus, a common problem in many countries to date is balancing the interests of creators with their monopoly rights and the interests of the public who use works as users of the work. Increasingly providing more protection to creators will result in limited community rights, while granting more freedom of rights to the community will result in the marginalization of the rights of the creators. One of the methods taken by many countries to reduce the conflict of interest is by regulating the economic rights of the creator on the one hand as well as regulating the limitations of these economic rights in the same regulation. Regulations relating to restrictions on the economic rights of authors are often known as fair use or fair dealing, or in the legal concept in Indonesia, the largest Muslim country in the world, they can be interpreted as the social function of copyright. Some authors have examined the copyright and intellectual property right in Islamic perspective (Carroll, 2000; Amanullah, 2006; Naser & Muhaisen, 2008; Jones, 2014; Moten, 2014; Elmahjub, 2015; Bayoumi & Rosman, 2018; Anjumm, 2019; Adam, 2020). The purpose of this research was to analyze the copyright as a special right given to the creator or copyright holder.

Social Function of Copyright

Based on the General Provisions, Article 1 number 1 Law No. 28 of 2014 concerning Copyright states that copyright is the exclusive right of an author that arises automatically based on the declarative principle after a work is manifested in a real form without reducing restrictions in accordance with the provisions of laws and regulations. Whereas in the provisions of Article 9 states that the creator or copyright holder has the economic right to do including publishing of work, reproduction of creation in all its forms, translation of creation, adapting, arranging, or transforming the work, distribution of works, creation show, announcement, communication of creation and rental of creation (Santoso, 2019).

Thus, basically, the main right that the creator has is the exclusive right of the creator or copyright holder to take economic benefits of a work through various means, on the other hand it contains the right to prohibit other parties from using the work (for commercial purpose) without the author's permission or copyright holder. These two rights are the most basic rights in copyright. However, in some conditions, the use of a work without the consent of the creator or copyright holder is often not a violation of the exclusive rights of the creator or copyright holder, in situations like this we often call it that copyright has

a social function. Talking about the social function of copyright, we are actually talking about restriction of copyright or in foreign terms it is often known as fair use or fair dealing.

Restrictions on the exclusive rights of creators are often considered as a social function of copyright, meaning that in certain conditions the public is allowed to use other people's works without prior permission from the creator or copyright holder for a specific purpose. Thus the factor for the purpose of using the work becomes an indicator to determine whether there is a copyright violation. The social function of copyright is a common thing in copyright law systems anywhere in the world, whether it follows the French Civil Law model or Common Law which is based on British tradition. The social function of copyright is created in order to create a balance of interests between the interests of the creator who creates a creation and the rights of the people who need the creation. However, it is admittedly not easy to draw a clear dividing line capable of providing a fair boundary between the interests of the creator on the one hand and the interests of the community on the other. In the copyright law system in Indonesia, where its legal system adopted from local customs, Islamic law and Western law, copyright restrictions are regulated in the fifth section regarding copyright restrictions, from Article 43 to Article 51 of Law No.28 of 2014 concerning Copyright.

Article 43 states that the material regulated in it is in the form of a substance that allows the public to use the work without being considered a copyright infringement as well as the permitted means. The provisions of Article 44 regulate the procedure for the action to be carried out and regulate the substance at once. The way that is deemed as an act not infringing copyright is by clearly stating the source, while the permitted substance is for the purposes of education, research, writing scientific papers, compiling reports, writing criticism, reviewing a problem, lecturing only for educational and/or scientific purposes. Ignitions, performances or performances free of charge, reproductions in braille, audiobooks (unless of a commercial nature). In the case of architectural works, changes can be made based on technical considerations. Article 45 Reproduction of one copy or adaptation of a computer program without the permission of the creator or copyright holder for the purposes of: research, development of computer programs, archives or backups.

In relation to restrictions on copyright for educational or research purposes, as mentioned in Article 44, there is a principal distinction between the use of works by individuals and the use of works by institutions, if it is related to the provisions of Article 47 of the 2014. Pursuant to Article 44, individuals can only use reasons for educational purposes if a work is used provided that the source is clearly stated, that is, usually by means of footnotes or backnotes in writing. This means, even though it is for educational purposes, individuals are not entitled to reproduce works for educational reasons, for example by making copies.

According to the provisions of Article 47, those who are given the authority to reproduce works by copying, including computer programs, only libraries (educational institutions), or archival institutions, this is also done only for the sake of their activities and is not commercial in nature and is a single copy of a work or part of it a creation. Article 48 states that reproduction, broadcasting, or communication of a work for the purpose of information by stating its source and full name of the author is not considered a copyright infringement. Article 49 explains that temporary reproduction of a work is not considered a copyright infringement if it fulfills the provisions: carried out by digital transmission in storage media carried out by everyone with the author's permission to transmit the work and using a device equipped with automatic copy deletion which does not allow the work to be displayed back. Broadcasting institutions can make temporary recordings without the permission of the creator or copyright holder for the purpose of their activities and are required to destroy them within a maximum period of 6 months from the time of creation.

Article 51 The government can organize the announcement, distribution, or communication of works through television, radio or other means for the national interest without the permission of the creator or copyright holder provided that they are obliged to provide compensation. Broadcasting institutions that make such announcements have the right to make documentation of the work provided that further broadcasting by the broadcasting institution must obtain permission from the copyright holder.

Fair Use and Fair Dealing in Some Advanced Countries

The regulations regarding copyright restrictions as stipulated in the provisions of Article 43 to Article 51 of Law No. 28 of 2014 regulated fair use in the copyright system in the US, which is considered an act of rights infringement. Copyright that is permitted by law (allowable infringement) and is not similar to fair dealing as is often found in Common Law countries under the Commonwealth. Some of the member also have large number of Muslim, and some adopted Islamic Law as its official religion.

The purpose and character of the use of the work must be carried out in relation to encouraging and enriching public creativity in general, thus not merely "replacing the object" of the original creation or the benefit of certain individuals. More than that, the intended use must be interpreted as transformative and not just a derivative. The characteristics or nature of a copyright-protected work must be considered

whether the work is fictional or non-fictional. In this regard, in order to prevent individual ownership of a work that becomes public property, facts and ideas are not copyrighted, but only the expression of ideas or facts that are copyrighted. On the other hand, information that is available to the public can receive copyright protection by carrying out certain activities.

In connection with the problem of the amount that is substantially used or imported in new works, the adage applies that the less part of the original work is used in new works, the more acceptable reason for fair use. However, it also remains to be considered whether this small part is a substantial part of the original creation or not. This is because taking even the smallest part from the original work but it is a substantial part, is copyright infringement and is not considered fair use.

Countries that adhere to the Common Law system, especially those that are members of the Commonwealth of Nations, do not use the term fair use but instead use the term fair dealing. In Australia, the reasons on which fair dealing are based are: research and study, review and criticism, reporting news, legal advice (although the Crown is deemed to own copyright in federal statutes and each State in state statutes). Furthermore, in Australia, fair dealing is a good copy of no more than one chapter or less than 10% of a book or journal. Even in Australia, fair dealing is given to individuals, as long as it is for the interests mentioned above.

In New Zealand, as stated in Sections 42 and 43 of the Copyright Act 1994, the criteria for fair dealing are almost the same as those used in the UK, although research for commercial purposes may still use fair dealing reasons in New Zealand. Incidental copies, as permitted, are not categorized as fair dealing. As in Canada, fair dealing is not an infringement of copyright. The factors that determine whether a copy for research or educational purposes is considered fair dealing is the purpose, influence on the potential market or value of copies, the nature of the work, the number of copies in relation to the entire original work, and whether the original work can be obtained at a reasonable time as well as a reasonable price.

In Singapore, as stated in the copyright Act, Chapter 63 of Singapore Statutes, a certain number of copies for legal reasons, such as; research, education, is permitted as fair dealing. Also for the purposes of writing criticism, newspaper news reports, judicial interests or professional advice. Copying of computer programs for back-up use is also permitted.

In the UK, fair dealing remains a contentious object, this is because the provisions of copyright law never clearly provide strict limits on the number of copies permitted and the amount of material from the original work that is permitted to be used by other parties without permission. In the Copyright, Design and Patents Act 1988 (CDPA) fair dealing is defined as private study, criticism, and news reporting. Although it is not clear that fair dealing is also applied to works in the field of sound recordings, films, broadcast works or cable programs. In 2003 there was a new provision that applied non-commercial research purposes. In CDPA, individuals are allowed to make a single copy that is "reasonable portion", in a reasonable amount of work in the fields of literature, drama, music and art, for the purposes of research and education, criticism, review and news reporting. The problem is around the limit of "reasonable portion" which is not explicitly stated in the CDPA.

II. CONCLUSION

Naturally, copyright was born from Western law, with the adoption all over the world, including Muslim world. Copyright is equipped with an exclusive right for the creator and/or copyright holder to implement or prohibit other parties from using their work. In the segment of scientific work, art, literature, most of them are considered as a very important segment for the advancement of civilization in society in general, as well as in Islamic society, such as in Indonesia. The exclusive rights of creators and/or copyright holders to prohibit other parties from using works are often an obstacle for people who use works to reach a better level of civilization user of creation. The concept that approaches the balance between the interests of the creator and the users of the work is to use the concept of the social function of copyright.

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