

The Position of the Licensee Regarding Violations of Related Rights (Broadcasting Rights) in the Perspective of Unlawful Acts : Case Study of Case Number 12/PDT.SUS-HKI/CIPTA/2018/PN.NIAGA.Sby)

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ABSTRACT

This study examines dispute number 12/PDT.SUS-HKI/CIPTA/2018/PN.NIAGA.Sby involving violations of broadcasting rights. Moral and economic rights in the context of Copyright are in focus. The research uses normative juridical methods with a statutory approach. The results include a detailed analysis of violations by PT. Widhi Hartajaya (Suris Boutique Hotel) and the Supreme Court decision which sentenced him to pay material compensation.

In the discussion, the research links the findings to copyright theory and related literature. The conclusion confirms copyright infringement, reminding us of the urgency of exclusive protection and law enforcement. Recommendations include interdisciplinary dimensions, comparative studies, and technological exploration in managing Copyright. The research is expected to contribute to understanding law enforcement and copyright protection in Indonesia.

INTRODUCTION

Copyright is considered an exclusive right that gives creators the privilege to reproduce and publish their work, including aspects of economic and moral rights (Fagundes & Perzanowski, 2020). Copyright infringement, in its various forms, creates conflict between the rights owner and the party infringing (Dusollier, 2020).

Good copyright management involves agreements between creators and publishers to prevent unauthorized piracy practices (Senftleben, 2020). Copyright, which is considered a movable and intangible property right, has unique characteristics and is transferable, especially in the context of economic rights (Stim, 2022). Protection of intellectual property rights, including Copyright, is becoming increasingly important as the focus of capital shifts from the military-industrial sector to non-military industry.

Legal awareness among the public is a key element in law enforcement efforts, with a central role from law enforcement officials and active participation from creator and producer associations (Bamakan et al., 2022). Copyright disputes can involve a variety of issues, including torts, licensing agreements, and fee or royalty rates. Alternative dispute resolution, arbitration, and court are considered accessible options.

Copyright has the potential to become the focus of disputes, especially regarding the moral and economic rights owned by the rights holder (Bamakan et al., 2021). Copyright dispute resolution in the Commercial Court can be carried out through civil proceedings and criminal prosecution, with the main reference to the Copyright Law. The importance of a resolution that is fast, efficient, and in accordance with judicial principles is highlighted in the context of law enforcement.

In the context of Copyright law enforcement, sanctions in the form of compensation are regulated in law as a form of penalty for violations. Copyright restrictions are determined in accordance with applicable law, emphasizing that copyright ownership has certain conditions. Legal protection of Copyright involves a preventive and repressive approach, with sanctions such as fines and imprisonment as the final form of protection after a violation occurs (Simatupang, 2021).

This research focuses on case number 12/PDT.SUS-HKI/CIPTA/2018/PN.NIAGA.Sby, which is the basis of research. In this context, there are situations of violations of related rights, especially broadcasting rights, faced by copyright owners or licensees. This case is a central point for understanding the concrete problems faced by creative industry players related to their exclusive rights.

In detail, this study tries to gain an in-depth understanding of the dynamics of copyright disputes, the issues that arise, and the role of licensees in dealing with related rights violations. By referring to concrete cases, research can provide more contextual and relevant insight into the challenges faced by copyright owners and how resolution mechanisms can work within the applicable legal framework.

LITERATURE REVIEW

A. Concept of Intellectual Property Rights and their Grouping

In his book, Mahadi (1985), writing about immaterial property rights, he said that there was no clear information regarding the origin of the term "intellectual property rights." The root of the word "Intellectual" used in this sentence is unknown. IPR (Intellectual Property Rights) is a material right, the right to an object that originates from the work of the brain, the result of the work of reason. Furthermore, as explained by Prof. Mahadi, goods referred to in Article 499 KUHP are material objects, while rights are immaterial objects.

The grouping of IPRs can be further categorized into the following groups: (1) Industrial Property Rights; (2) Copyright. In fact, Copyright can be further classified into two parts, namely: (1) Copyright as a Creator (article 1 number (2) of Law Number 28 of 2014), and (2) Rights related to article 3 (Law Number 28 of 2014 concerning Copyright (Liuw et al., 2020).

Rights are always related to two aspects of ownership and something that is owned. Legal terminology combines and unites them into the term rights. L.J. van Aveldoorn states that rights are laws that are connected with a human being or a particular legal subject and are transformed into power, and a right arises when the law begins to move (Muslihun, 2018).

B. Basic Principles of Copyright

In essence, Law Number 28 of 2014 is a legal instrument in real form or form that protects the rights of creators in producing any original work. Therefore, the provisions governing Copyright, which are the legal basis that arises automatically based on the declarative principle after creation is realized in real form without reducing restrictions in accordance with statutory regulations, must be carried out by prioritizing national interests and paying attention to the balance between the interests of the Creator and the Rights Holder. Copyright, or Owners of Related Rights, with the community and paying attention to the provisions of international agreements in the field of Copyright and Related Rights (Munawar & Effendy, 2016).

Copyright holders remain bound to recognize and respect the moral rights of authors. The copyright holder is the party who has exclusive rights, either in full or in part, to Copyright. In copyright law, there are three parties (3) who are declared as copyright holders. Article 1 point (4) of the Copyright Law states that the Copyright Holder is: (1) The Creator as the owner of the Copyright. A creator is a person or several people who individually or together produce a creation that is unique and personal; (2) The party who legally receives the rights from the Author; (3) Another party who receives further rights from the party who received those rights legally (Suhayati, 2016).

Basically, the scope of Copyright is contained in article 40, paragraph (1) of Law Number 28 of 2014 concerning Copyright, which stipulates in detail the works that can be protected, namely: (1) Protected works; books, computer programs, pamphlets, layouts of published written works, and all

other written works. Lectures, lectures, speeches, and other similar creations, props made for educational and scientific purposes, songs or music with or without text, drama or musical drama, dance, choreography, wayang, and fine arts pantomime in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage and applied arts, architecture, maps, batik art, photography, cinematography, translations, interpretations, adaptations, anthologies, databases, and other works from the result of the transfer of form; (2) Works that are not granted Copyright as an exception to the above provisions, are not granted Copyright for the following matters: Results of open meetings of State institutions, statutory regulations, state speeches or speeches of government officials, court decisions or decision of a judge, decision of an arbitration body or decision of other similar bodies (Kilanta, 2017).

C. Moral Rights and Economic Rights in the Context of Copyright

D. In the copyright framework, two main aspects are the focus, namely, moral rights and economic rights. Moral rights are rights that remain inherent to the creator of a work in accordance with Article 9 of the Copyright Law. These rights include the right to be recognized as the Author, to have their name attached to the work, and the right to prohibit changes that could damage the reputation of the work. On the other hand, economic rights are rights that can be transferred and are owned by the copyright holder. In Law Number 28 of 2014, economic rights include the right to reproduce, publish, and rent out works (Kilanta, 2017).

The copyright owner, as the owner of economic rights, has exclusive power in full or in part over the copyrighted work. Article 1 number (4) of the Copyright Law explains that the copyright holder can be the creator, the party who legally receives the rights from the creator, or the party who further receives the rights from the recipient of the legal rights. Recognizing and respecting the moral rights of creators is a critical aspect of handling Copyright, ensuring that the process of economic exploitation does not harm the moral values inherent in a work. The scope of Copyright, as explained in Article 40 paragraph (1) of Law Number 28 of 2014, covers various types of works, such as books, computer programs, works of fine art, music, dance, photography, and so on. However, there are also exceptions, where several things, such as the results of open meetings of state institutions, statutory regulations, state speeches, or court decisions, are not granted Copyright (Handayani, 2019).

METHODOLOGY

This research uses a normative juridical method with a statutory approach. This approach involves an in-depth analysis of all laws and regulations related to the legal issue being researched. The aim is to understand the philosophical elements behind a particular legal regulation. Through this approach, research seeks to determine whether there is a philosophical clash between the law and the legal issue being faced.

This research uses secondary data involving primary legal materials (legislation, official records of legislation making, and judge's decisions, such as

the Civil Code, Law Number 28 of 2014 concerning Copyright, related laws, and court decisions) and secondary (publications about law such as books, legal dictionaries, journals, and comments on court decisions). Data collection techniques include inventory and clarification of legal materials, with data processing through editing, evaluation, and systematic. Data analysis was carried out qualitatively by interpreting data related to the legal issues studied, classifying them, and connecting them with theory to conclude. This method provides a theoretical basis in the form of expert opinions and statutory regulations related to the issue being studied.

RESULTS

A. Cases related to Copyright infringement from an Unlawful Act perspective

1. Statement of the case

PT. Inter Sports Marketing (ISM) was established as a Limited Liability Company legal entity on October 5, 2010, and received approval in accordance with the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number AHU-09377.AH.01.01 in 2011. ISM acts as a licensee from FIFA to broadcast the 2014 FIFA World Cup in Brazil throughout Indonesia, with a license agreement signed on May 5, 2011. ISM has granted sub-licenses to TV ONE, ANTV, K-VISION, VIVA+, and Domikado—however, PT. Widhi Harta Jaya (Suris Boutique Hotel) violated exclusivity by broadcasting FIFA World Cup Brazil 2014 content in commercial areas without permission from ISM, which has an official license from FIFA to broadcast the event throughout Indonesia.

In an effort to exercise its exclusive rights, ISM appointed PT. NONBAR is the sole coordinator for group viewing activities in Indonesia. However, the violation occurred when PT. Widhi Harta Jaya (Suris Boutique Hotel) carried out screenings without permission in commercial areas, such as hotels, malls, and other commercial places, which ISM's exclusivity should cover. These violations created inequities in the marketing and oversight of commercial use of Brazil's 2014 World Cup broadcasts.

This situation gave rise to a conflict between ISM as the official license holder and PT—Widhi Harta Jaya (Suris Boutique Hotel), which violates exclusivity. By referring to copyright regulations and agreed licensing agreements, this research will explore the legal aspects involved in this dispute, with a focus on unlawful acts and the resulting economic rights.

2. Judge's Considerations and Decisions

In its considerations, the Panel of Judges at the cassation level confirmed that PT. Inter Sports Marketing (ISM) is the license holder from the Federation Internationale of Football Association (FIFA) to broadcast the 2014 World Cup throughout Indonesia. These exclusive rights include public exhibitions and commercial area rights with PT. Nonbar as coordinator of watching together. PT. Widhi Hartajaya (Suris Boutique Hotel) was proven to have violated Copyright by broadcasting 2014 World Cup content in commercial areas without permission from PT.

STIs. The Panel of Judges at the cassation level referred to the Copyright Law Number 28 of 2014 and other related regulations, stating that the actions of PT. Widhi Hartajaya was an act against copyright law and was sentenced to pay a sum of money as compensation for material losses experienced by PT. STIs. This decision is based on legal principles and regulations governing Copyright in Indonesia.

B. Legal Opinions and Analysis

The Author highlights several relevant legal aspects based on the copyright infringement committed by PT. Widhi Hartajaya (Suris Boutique Hotel). First of all, the Author notes that the live broadcast of the 2014 Brazil World Cup football matches is considered a cinematographic work that enjoys legal protection from the Copyright Law. Suris Boutique Hotel's action of broadcasting without permission is an act outside its authority, involving malfeasance because it violates the exclusive authority of PT—nonbar as coordinator of watching together.

The importance of licensing permission from PT. Nonbar, in this context, is emphasized by the Author as a legal requirement that must be fulfilled by parties who wish to broadcast events commercially. This copyright violation results in not only material losses, which include financial values that can be requested as compensation, but also immaterial losses. These immaterial aspects involve an impact on the morale, reputation, and credibility of the PT. IMS and PT. Nonbar is the license holder. The Author details that immaterial losses are not only related to financial losses but also involve elements such as distrust, tarnished good names, and the potential for negative impacts on the credibility of the parties involved.

The Author's in-depth analysis of the legal and moral impacts of copyright infringement reflects a strong understanding of the relevant legal context, such as Law Number 28 of 2014 concerning Copyright and other relevant laws. The Author's conclusion proves that the actions of PT. Widhi Hartajaya has violated copyright law and has the potential to cause major losses, both in terms of finances and reputation for PT. IMS and PT. Nonbar.

C. Copyright Dispute Resolution

In the context of resolving copyright disputes between PT. Inter Sports Marketing (ISM) and PT. Widhi Hartajaya (Suris Boutique Hotel), the Author, highlights the importance of registering rights as a measure of legal protection. The Author emphasizes that although copyright registration is not an absolute requirement, legal protection begins from the moment the work exists, whether registered or not. In the analysis of legal subjects, the Author discusses that limited liability companies (PT) as legal entities can have rights and obligations, including rights to Intellectual Property Rights (IPR).

The Author believes that copyright law provides copyright holders access to civil legal instruments to prosecute violations of economic rights. In the context of Copyright, the Author dissects the moral and economic aspects, where moral rights are inherent to the creator and economic rights can be transferred. As a legal subject, PT can hold Copyright and enforce these

rights, illustrating the complexity and diversity of aspects involved in this dispute.

The Author continues by exploring the copyright violations that affected PT. ISM is the official license holder from FIFA with exclusive rights to broadcast broadcasts of the 2014 Brazil World Cup throughout Indonesia. Sublicenses are granted to certain parties, including PT. NONBAR as coordinator of watching together. However, PT. Widhi Hartajaya allegedly broadcast broadcasts of the 2014 FIFA World Cup Brazil in commercial areas without permission, triggering a complex legal dispute.

The Supreme Court's decision, which declared Suris Boutique Hotel guilty and sentenced to pay material compensation, was the culmination of the analysis. The Author also highlights the need to consider immaterial losses, which can have a serious impact on PT's reputation and credibility. ISM, especially in FIFA's view. The Author emphasizes that resolving copyright disputes through legal channels is a crucial step to maintain the rights and reputation of the license owner so that the trust of related parties such as FIFA can be maintained. This entire narrative illustrates the complexity and significance of resolving copyright disputes within the applicable legal framework.

DISCUSSION

In the realm of resolving copyright disputes between PT. Inter Sports Marketing (ISM) and PT. Widhi Hartajaya (Suris Boutique Hotel), the Author, carefully researched the exclusive rights owned by ISM as the official FIFA license holder to broadcast the 2014 Brazil World Cup throughout Indonesia. In this context, the Author connects research findings and copyright theory, which emphasizes the urgency of granting exclusive rights to official license holders to prevent potential unauthorized use and to maintain the economic value of these rights (Rayes, 2020) – violations committed by PT. Widhi Hartajaya was declared an unlawful act for illegally broadcasting World Cup content without permission, creating inequality in the commercial marketing arena.

The Author's analysis is not only limited to aspects of material losses but also extends to immaterial losses involving factors such as distrust, defamation, and potential negative impacts (Thalib, 2013) on the credibility of PT. IMS and PT. Nonbar is the license holder. The Author carefully understands the relevant legal context, including Law Number 28 of 2014 concerning Copyright, and concludes firmly that PT. Widhi Hartajaya violates copyright law.

In comparison with previous findings and theories regarding Copyright, the copyright literature highlights the need for exclusive protection to maintain the integrity of Copyright and prevent misuse (Triantoro & Hadi, 2019). The Author's in-depth approach to the legal and moral impact of copyright infringement reflects a strong understanding of the dynamics and complexity of copyright disputes within the applicable legal framework. The overall narrative shows good integration between research findings, theory, and legal context, demonstrating the relevance and significance of copyright dispute resolution in supporting sustainability and justice in the creative industries.

Other relevant research, particularly in the realm of Copyright, has highlighted the importance of exclusive protection and law enforcement against copyright infringement in the context of the creative industry (Gorda, 2020). Research by Amin (2018) emphasizes the need to increase legal awareness among creative industry stakeholders and implement strict sanctions against copyright violations. These findings support the urgency of this research as a contribution to the understanding and enforcement of copyright law in Indonesia (Budiman & Dialog, 2019).

CONCLUSIONS AND RECOMMENDATIONS

Overall, this research describes and analyzes the copyright dispute between PT. Inter Sports Marketing (ISM) and PT. Widhi Hartajaya (Suris Boutique Hotel) regarding the unauthorized broadcast of the 2014 Brazil World Cup broadcast. Focusing on the legal aspect, in-depth research outlined copyright violations by Suris Boutique Hotel, which was proven to violate ISM's exclusive rights as the official FIFA license holder. The impact is not only limited to measurable material losses but also includes immaterial impacts that could damage ISM's reputation and credibility in the eyes of related parties such as FIFA. The Supreme Court's decision to provide material compensation is an important point in enforcing copyright law. Thus, this research makes an important contribution to understanding the complexity of copyright dispute resolution in Indonesia, confirming the need for strong protection of Copyright as a foundation for the future development of creative industries and sports.

Recommendations for further research include an interdisciplinary dimension by involving economics, business, and communications experts to obtain a more comprehensive view. In addition, comparative studies of similar cases can provide additional insights regarding copyright infringement trends and the effectiveness of dispute resolution at the national level. In the face of ever-changing technological developments, future research can also explore new challenges and opportunities that may arise in the context of copyright infringement in the digital era. The integration of blockchain technology, big data, or artificial intelligence in copyright management and protection could be an interesting topic to research. By overcoming these limitations, it is hoped that future research will further contribute to the understanding and handling of copyright disputes, strengthen the legal framework, and increase protection for copyright holders in Indonesia.

ADVANCED RESEARCH

It should be acknowledged that this research has several limitations that need to be considered. First, the research focuses more on legal aspects and the material and immaterial impacts of copyright infringement. Still, it needs to include business and economic perspectives, which can provide a broader picture regarding the financial losses that may arise. Second, this research only considers the perspective of the official license holder, namely PT. Inter Sports Marketing (ISM), without delving into the views and justifications of the Suris Boutique Hotel. Therefore, future research can broaden the scope by including the perspectives of various parties involved in copyright disputes to gain a more holistic understanding. Furthermore, this research needs to discuss in detail the

implications of regulations and legislation that can provide a legal basis for copyright enforcement. Further research could explore the effectiveness of these regulations and whether revisions or capacity improvements need to be made to optimize copyright protection in Indonesia further.

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