



Analysis of the Copyright Dispute Decision Between Djanuar Ishak and PT. Elang Prima Retailindo: Study of Commercial Court Decision Number 35/PDT.SUS-COPYRIGHT/2021/PN JKT.PUS

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ARTICLE INFO

Keywords: Copyright, Copyright Dispute, Intellectual Property

Received : 01 January

Revised : 20 January

Accepted: 27 February

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ABSTRACT

This research aims to analyze the legal aspects involved in copyright protection in Indonesia and provide recommendations for the improvement of copyright protection, particularly regarding copyright enforcement in the use of works for advertising purposes without permission. Using a normative-doctrinal juridical approach, this research investigates the legal framework governing copyright in Indonesia through a systematic analysis of relevant legislation, principles and rules of law. The research focuses on the internal assessment of Indonesian positive law by exploring the prevailing legal conceptions and principles, examining Case Number 35/Pdt.Sus-Copyright/2021/PN Jkt.Pst as the main case study. The results show the importance of the state in protecting intellectual property rights to maintain dignity and respect for individual works. This research is expected to enrich the intellectual property law literature and increase public awareness and understanding of the importance of asking permission to creators when using their works, as well as encourage the government and relevant institutions to take concrete steps to strengthen copyright protection.

INTRODUCTION

The protection of intellectual property is essential to modern societies to foster innovation, creativity and economic growth (Gouvea et al., 2021; Neves et al., 2021). This protection system encourages inventors and creators to develop new ideas, discoveries, and creative works. It covers various forms of intangible assets, including patents, trademarks, copyrights, and trade secrets, which are essential in a knowledge-based economy. Intangible assets offer incentives for individuals and organizations to allocate their resources and efforts towards creative and innovative processes (Andrews & De Serres, 2012; Daum, 2003; Demmou & Franco, 2021). Legal protection of intellectual property guarantees economic benefits from investments made (Okediji, 2020). Without effective protection, the risk of misuse and counterfeiting by other parties increases, reducing the motivation to innovate. Intellectual property protection supports the sustainability of creative activities and is the foundation for sustainable economic growth. It encourages investment in research and development, which is vital for technological and industrial progress.

Intellectual property laws are crucial in granting creators and inventors exclusive rights to their work for a specific period of time (Silbey, 2014). These exclusive rights serve as a powerful incentive for individuals and companies to invest in research and development activities, which in turn fuels the generation of new ideas, products, and technologies (Dosi & Stiglitz, 2014; Lee, 2019). Through this mechanism, intellectual property laws stimulate the creative process and ensure that innovations can be commercialised, providing economic benefits to creators and society at large. At the international level, legal regulations regarding the protection of intellectual property play a crucial role in establishing uniform standards, which in turn promotes innovation and trade between nations. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets minimum global standards for the protection and enforcement of intellectual property rights (Dosi & Stiglitz, 2014; Lee, 2019).

The aim of TRIPS is to harmonise the protection of intellectual property rights worldwide, thereby encouraging innovation and creativity by providing a framework for creators and inventors to secure and utilise their rights effectively (Correa, 2020; Maskus, 2014). Furthermore, international cooperation in the fields of science, technology, and trade has strengthened awareness and efforts for the legal protection of intellectual property globally. This collaboration has led to the establishment of international treaties and conventions governing the protection of intellectual property rights, emphasizing the importance of safeguarding these rights in the context of the global economy. As a member of the World Trade Organisation (WTO), countries are bound by the TRIPS agreement to adhere to agreed standards and provide an efficient dispute settlement mechanism related to infringement of intellectual property rights. This global initiative significantly influences how countries regulate and protect intellectual property rights, ensuring that creators can enjoy their work and contribute to wider social and economic progress.

Indonesia has strengthened its intellectual property legal framework by becoming a member of the Agreement Establishing the World Trade Organization. This implicitly includes a commitment to TRIPS, through the enactment of Law Number 7 of 1994 (Sinaga, 2020; Wicaksono, 2020). Indonesia extended its commitment to protecting literary and artistic works internationally by ratifying the Berne Convention for the Protection of Artistic and Literary Works through Presidential Decree Number 18 of 1997. Additionally, the country ratified the World Intellectual Property Organization Copyright Treaty (WCT) through Presidential Decree Number 19 of 1997, which emphasizes copyright protection in the digital sphere. On the other hand, Indonesia's commitment to protecting the rights of artists and phonogram producers is demonstrated by its participation in the World Intellectual Property Organisation Performances and Phonograms Treaty (WPPT), ratified through Presidential Decree No. 74 of 2004. Additionally, Law Number 28 Year 2014 on Copyright (hereinafter referred to as the copyright law) specifically regulates the implementation and enforcement of intellectual property law in Indonesia, providing the legal framework for copyright protection in Indonesia.

Despite Indonesia having a clear legal framework regarding copyright through applicable laws, copyright infringement practices still occur frequently, which harms the creators who should be protected. For instance, Decision Number 35/Pdt.Sus-Copyright/2021/PN Jkt.Pst highlights the use of the song 'SKJ88' in an advertisement without obtaining permission from the copyright owner. This research aims to conduct an in-depth juridical analysis of a case that reveals a gap in the enforcement of copyright law in Indonesia, particularly in relation to the protection of copyrighted works in commercial use.

The analysis aims to clarify the legal aspects involved and provide recommendations for the improvement of copyright protection. In the theoretical context, this research is expected to enrich the intellectual property law literature, particularly related to copyright enforcement in the use of works for advertising purposes without permission. The analysis results are expected to serve as a guide for stakeholders to understand the limits of legal and ethical use of copyrighted works and strengthen the protection mechanism for creators. The research not only enhances the comprehension of legal aspects related to specific cases but also raises awareness of the significance of respecting copyright as a form of appreciation for intellectual work. Furthermore, the resulting recommendations are expected to motivate the government and relevant institutions to take concrete steps to strengthen copyright protection and prevent similar violations in the future.

LITERATURE REVIEW

Copyright Arrangement in the Cross-History

Copyright, as a form of intellectual property in the fields of science, art and literature, plays a strategic role in supporting national development and promoting public welfare, in accordance with the mandate contained in the 1945 Constitution of the Republic of Indonesia (Hutagalung, 2022; Sari, 2016). In the era of globalisation and rapid technological progress, the protection of copyright has become increasingly important to ensure legal certainty for

creators, copyright holders and holders of related rights. The rapid development of science, technology, art and literature requires the strengthening of copyright protection to ensure that creators can make the best use of their works. As part of the international community, Indonesia has acceded to various international treaties relating to copyright and related rights. Membership in these treaties requires effective implementation in the national legal system to enable national creators to compete internationally. This demonstrates Indonesia's commitment to recognising and protecting copyright as an important asset that can support economic growth and cultural development.

However, there are challenges in bringing Indonesia's copyright regime into line with recent developments and the requirements of international treaties. For example, Law No. 19 of 2002 on Copyright is no longer in line with legal developments and the changing needs of society. Social, economic and technological changes require the law to be revised and updated to reflect current conditions. Extending and strengthening copyright protection is essential to create an environment conducive to innovation and creativity. This enhanced protection not only protects the rights of creators and copyright holders, but also provides incentives to continue to innovate and create. Effective implementation of international treaties into national law will open up greater opportunities for Indonesian creators to showcase their work internationally. In this context, copyright reform in Indonesia is a crucial step to ensure that the country remains relevant and competitive in the global economy. In response, Indonesia has finally enacted Law No. 28 Year 2014 on Copyright. The reform is expected to respond to global dynamics, ensure justice and legal certainty for all parties, and strengthen Indonesia's position as a country that respects and protects intellectual property rights.

Copyright Arrangement in Indonesia

Arifardhani (2020) states that copyright is an exclusive right granted to creators or recipients of rights to intellectual works in the fields of science, art and literature that have been realised in a distinctive and fixed form. This copyright entitles the holder to publish, reproduce or authorise the reproduction of his creation, subject to the limitations set out in the applicable laws and regulations. This definition emphasises the importance of legal protection for copyrighted works that have intellectual value and creative expression. Article 1 point 1 of the Copyright Law states that "Copyright is the exclusive right of the creator which arises automatically based on the declarative principle after a work is realised in tangible form without prejudice to restrictions in accordance with the provisions of laws and regulations". This confirms that copyright protection does not require registration or other legal action to be recognised, indicating direct protection of intellectual works that have been created.

Article 1 point 2 Copyright Law further defines "creators as individuals or groups who produce works independently or jointly, which are distinctive and personal in character". This definition recognises individual or collaborative contributions in the creative process, ensuring that any creation

that is original and personal receives legal recognition and protection. In Article 1 point 3 Copyright Law, “a creation is defined as any work in the fields of science, art, and literature resulting from inspiration, ability, and skill expressed in tangible form”. This emphasises that a work must have a physical or concrete manifestation to be protected by copyright, providing room for a variety of intellectual expressions to gain protection. Finally, Article 1 point 4 Copyright Law explains that “the copyright holder can be the creator as the original owner of the right, an individual or entity that receives the right legitimately from the creator, or a party that receives the right legitimately from the original recipient”. This provision guarantees that rights to creations can be transferred or inherited, allowing for flexibility in the management of copyright.

Article 4 of the copyright law stipulates that copyright includes exclusive rights that are divided into two main types, namely moral rights and economic rights. Moral rights are rights that attach to the creator in perpetuity, asserting that the creator has the freedom to decide whether or not to put their name on publicly used copies of the work, use a pseudonym, change the work in accordance with social norms, and change the title and subtitle of the work. Furthermore, moral rights provide protection to the creator to defend the work from distortion, mutilation, or modification that may harm their honour or reputation. This right is non-transferable as long as the creator is alive, demonstrating the importance of recognising and respecting the integrity and originality of copyrighted works.

Economic rights, on the other hand, give the creator or copyright holder the exclusive authority to derive economic benefits from his or her work. These include the rights to publish, reproduce, distribute, perform, broadcast and rent the work (Arifardhani, 2020). The law also emphasises that any party wishing to exercise these economic rights must obtain prior permission from the creator or copyright holder. Violations of this provision, such as unauthorised reproduction or commercial exploitation, are strictly prohibited. Specifically for the economic right to portraits, the law prohibits the commercial use, reproduction, publication or distribution of portraits for advertising purposes without the written consent of the person photographed or his or her heirs. This demonstrates the protection that copyright law provides for the privacy and personal rights of individuals, while ensuring that the economic benefits from the use of the work can flow back to the creator or rights holder.

METHODOLOGY

This research adopts a normative-doctrinal juridical approach, which aims to provide a comprehensive understanding of the legal framework governing copyright in Indonesia. The doctrinal approach, as the primary method in legal research, allows for the systematic analysis of legislation, principles, and legal rules relevant to copyright issues. In this context, the research focuses on the internal assessment of Indonesian positive law, by exploring the prevailing legal conceptions and principles. As primary legal material, this research examines Decision Number 35/Pdt.Sus-Copyright/2021/PN Jkt.Pst, which is an important case in the context of copyright in Indonesia. In addition, Law Number 28 of 2014 on Copyright is

used as the main legal basis to analyse and understand the applicable regulations. This research aims to identify and analyse the legal aspects contained in both documents. To support the analysis, secondary legal materials such as books, journals, and other literature relevant to copyright are also utilised. These sources help in deepening the theoretical and contextual understanding of copyright issues, as well as providing additional insights related to the practice and interpretation of copyright law at the national and international levels.

RESEARCH RESULT

Case Position

Supreme Court Decision No 35/Pdt.Sus-Copyright/2021/PN Jkt.Pus is a decision on the copyright case between Mr Djanuar Ishak and PT Elang Prima Retailindo. The case concerns the copyrighted work of a song in the form of a musical notation without lyrics, known as the song *Senam Kesegaran Jasmani 1988* or SKJ88. The SKJ88 song was recorded at the Indonesian Copyright Works Foundation (KCI) and registered with the song sequence number 393 in 1991. Djanuar Ishak filed a copyright lawsuit through his attorney, Advocate at Josbi Indonesia Law Firm, against PT Elang Prima Retailindo to restore his civil rights as the copyright owner of the song, which was used without his permission. The lawsuit was filed because there was no agreement between the parties. PT Elang Prima Retailindo denied responsibility to Djanuar Ishak, the plaintiff and creator/copyright holder. The lawsuit was filed as a mechanism for copyright disputes, as stipulated in Law 28 of 2014 concerning Copyright, specifically in Articles 99-100 of the Copyright Law.

PT Elang Prima Retailindo nevertheless made an offer of damages for the sake of its business reputation and for the sake of the applicant's musical career. For these actions, the response to Djanuar Ishak's lawsuit was not followed. Additionally, PT Elang Prima Retailindo, through its attorney at LB Law Office, filed various exceptions, such as absolute competence, lack of legal standing of the plaintiff in filing a lawsuit, error in persona, lack of parties, and obscure libel. The purpose of the plaintiff in filing a lawsuit is stated to be solely for financial gain, which weakens the situation of the defendant. However, during the ongoing lawsuit, the Judge of the Commercial Court at the Central Jakarta District Court has ruled that Djanuar Ishak is the rightful Copyright Owner of the SKJ88 song. As a result, PT Elang Prima Retailindo has been ordered to pay compensation for both material and immaterial losses incurred in this case, including court costs.

Defendant's Exception

In the discussion of research related to copyright decision Number 35/Pdt.Sus-Copyright/2021/PN Jkt.Pst, there are several exceptions filed by the defendant. The first exception filed was regarding absolute competence, where the defendant argued that the Commercial Court at the Central Jakarta District Court did not have absolute authority to examine and decide the case. This argument raises questions about the jurisdiction and competence of courts in copyright cases, particularly when it comes to claims for damages for loss of

economic rights which usually relate to the criminal aspects of copyright infringement. Furthermore, the exception regarding the standing of the plaintiff reflects the importance of proof of copyright registration as a prerequisite for filing a claim. This challenge highlights the need for clear and registered documentation with the Ministry of Law and Human Rights as proof of ownership of a work, which is an important basis for filing a copyright claim.

The third exception was *error in persona*, which stated that the plaintiff had wrongly characterised the defendant as the owner of the product, opening a discussion on the importance of identifying the party legally responsible for copyright infringement. An error in targeting the responsible party can weaken the plaintiff's legal position and complicate the litigation process. The fourth exception is the insufficient parties claim, or *plurium litis consortium*, highlighting the complexity of copyright cases that often involve multiple parties. This case shows that unauthorised viewing and use of a work can involve a wider range of entities, including distribution platforms such as O Channel and YouTube LLC, which requires comprehensive legal consideration.

The next exception is vague and unclear claims, or *exceptio obscuri libelli*, underlining the importance of clarity in the drafting of legal claims. Clarity in outlining the legal basis, calculation of damages, and the object of the dispute is key to ensuring a common understanding between all parties involved and making it easier for the court to make a decision. Further exceptions are *vexatious litigation* and *exceptio doli mali*, which accuse the plaintiff of filing a lawsuit based on bad faith, opening a discussion on litigation ethics and the importance of avoiding the use of the legal system for improper purposes. These exceptions question the motivation behind filing a lawsuit, which should be based on a desire to achieve justice, not financial gain.

Expert Opinion related to the Subject of Dispute

In this case there were two experts presented by the Plaintiff, namely Candra Darusman and Agus Sardjono. The testimony given by expert Candra Darusman highlighted the important role of the Collective Management Board (LMK) in managing the right to publish works, which is limited to granting licences for the use of songs for public purposes. This underlines that the LMK has limited authority, which does not extend to licences for the use of songs in advertisements, as this involves duplication rights and moral rights that must be dealt with directly by the songwriter or publisher. Furthermore, the discussion emphasises that licences for the use of copyright works are exclusive and compulsory, highlighting that any unauthorised use of copyright works can have criminal and civil consequences. This understanding was reinforced by the explanation of mechanical rights, which pointed out the need for specific permission from the creator for the reproduction of works in the context of advertising. Expert testimony made it clear that copyright protection of a work applies automatically from the time the work is published, in contrast to the protection of brands and patents which require registration.

The second expert presented, Agus Sardjono, gave a complementary explanation of the relationship between creators and copyrighted works,

distinguishing between moral rights and economic rights. The expert explained the concept of synchronisation as part of the right of reproduction and highlighted that the announcement of the work through various media is part of the performing rights. This confirms that the creator has the exclusive right to use, authorise, or prohibit the use of his or her copyrighted work. The discussion on mechanical and performing rights revealed that the use of copyrighted works in advertising requires direct permission from the creator, not just the payment of royalties to the LMK. This underscores the importance of obtaining a proper licence for the use of the work in a commercial context, which includes permission for reproduction and publication. This discussion crystallised the understanding that copyright infringement should be reviewed on the basis of specific acts, and that copyright is protected by the Act from the moment of declaration of the work, without the necessity of registration. It reinforces the concept that copyright, unlike brands and patents, enjoys automatic legal protection that allows the creator to take legal action against unauthorised use.

DISCUSSION

In deciding Case Number 35/Pdt.Sus-Copyright/2021/PN Jkt.Pst, the judge considered various aspects related to the defendant's exception, evidence and witnesses submitted by the plaintiff, as well as the subject matter submitted by the plaintiff. First, the judge rejected the defendant's exception regarding absolute competence, stating that the Commercial Court at the Central Jakarta District Court had the authority to hear this case. Regarding the plaintiff's legal standing, the defendant challenged the plaintiff's capacity as a creator or copyright holder who has the capacity to file a lawsuit, but in the judge's consideration, this aspect was not specifically described.

The plaintiff submitted letter evidence and presented two experts to support the arguments of his lawsuit. The evidence included the plaintiff's identity, documents recording the identity of copyrighted works from KCI, photos of SKJ88 labels & cassettes, SKJ88 songs created by the plaintiff in various formats, SKJ88 song block notations, YouTube video recordings of "Bodimax Machine" advertisements, and others. The expert presented by the plaintiff, Candra Darusman, testified about the duties of the Collective Management Institution, the exclusive rights of the creator, the automatic protection of a work by law without the need for registration, and the difference between moral rights, broadcast/announcement rights, and licenses. The expert also emphasized that the use of songs for advertising requires special permission from the songwriter or publisher because it activates duplication rights and moral rights.

In the main case, the judge considered the arguments submitted by the plaintiff and the defendant's response, including the evidence and expert testimony presented. The plaintiff filed a lawsuit against the defendant for the use of the SKJ88 song for commercial purposes in the advertisement/promotion of bodimax running machine products without permission from the plaintiff as the copyright owner. The plaintiff claimed material and immaterial damages for

copyright infringement committed by the defendant. The judge considered that the use of SKJ88 songs in the context of advertising requires special permission from the creator or copyright holder because it involves duplication rights and moral rights which are the exclusive rights of the creator. The judge's considerations in deciding this case included an assessment of the defendant's exception, the plaintiff's legal standing, as well as an analysis of the evidence and expert testimony submitted by the plaintiff to support his claim. The judge also considered that copyright protection arises automatically based on the declarative principle after a work is realized in tangible form, and the use of copyrighted works, especially in advertising, requires the permission of the copyright holder.

The decision of the Commercial Court at the Central Jakarta District Court in favour of Djanuar Ishak in defending his copyright on the song *Senam Kesegaran Jasmani 1988* or SKJ88 provides an important picture of the recognition and protection of copyright in Indonesia. The court's decision to declare Djanuar Ishak as the creator and legal copyright holder of SKJ88, as well as the owner of the economic rights and recording rights of the song, confirms the importance of legal protection of copyrighted works. The use and duplication of the SKJ88 song by the defendant without the permission of the copyright owner, for commercial purposes in advertisements, is a clear violation of Article 9 paragraph (3) of the Copyright Law. The plaintiff's success in this case shows that the Indonesian judicial system provides sufficient space for creators to fight for their rights. This is in line with the provisions of Article 100 paragraph (1) of the Copyright Law, which explicitly states that a lawsuit for copyright infringement is filed with the Chairman of the Commercial Court. This makes it clear that the Commercial Court has absolute authority in handling copyright infringement cases, dismissing any exceptions related to absolute competence filed by the defendant.

Furthermore, this decision emphasises the importance of respecting and protecting copyright as the exclusive right of the creator, especially in the context of commercial use. It sends a strong message to society that any use of copyrighted works for commercial purposes requires the permission of the copyright holder. This decision emphasises the significance of registering copyright works. Although copyright arises automatically, registration can provide stronger evidence in cases of copyright disputes.

In analyzing the decision of the case between Djanuar Ishak and PT Elang Prima Retailindo there are fundamental legal concepts specifically related to Copyright. That basically even though Copyright is automatically only based on the declarative principle to be the exclusive right of the creator, this is based on Article 1 point (1) of the Copyright Law, even so related to Copyright needs to be recorded even though it is not a necessity. This is regulated and explained in Article 64 of the Copyright Law. It is clear that in this case PT Elang Prima Retailindo committed an unlawful act by violating the statutory provisions specifically on the Copyright Law, so that Djanuar Ishak is entitled to the Economic Rights attached to him as Article 96 of the Copyright Law. Through this Decision, it is important to understand that royalty payments are not a

form of requesting a license to use the song, especially for commercial purposes. However, royalty payments are a form of payment for performing rights.

The general provisions of the Copyright Law demonstrate that Article 1 number (20), namely "License is a written permission granted by the Copyright Holder or the Owner of Related Rights to other parties to exercise economic rights over his Creation or related rights products with certain conditions" and (21) Copyright Law, which states that "Royalties are compensation for the utilization of Economic Rights of a Creation or Related Rights Product received by the creator or owner of related rights.". Through these two things can be distinguished and concluded that royalty payments are not a form of permission for the use of copyright specifically in commercial use. Therefore, based on this decision, it can be a reference for us and views related to the importance of obtaining and carrying out intellectual property protection mechanisms, especially copyright on existing works.

CONCLUSIONS AND RECOMMENDATIONS

The main focus of this research is to investigate the accuracy of the judge's verdict and the extent to which the state protects intellectual property rights in Indonesia. Copyright is a crucial element in maintaining the dignity and respect for people's work in this context. The Commercial Court's dispute resolution process allows for a cassation filing if one party is dissatisfied with the existing decision. If the cassation decision fails to satisfy one of the parties, it can be reviewed in the Supreme Court. The decision demonstrates the government's commitment to providing legal protection through intellectual property legislation, specifically related to copyright. It is important to foster confidence and a sense of security for individuals to create freely.

This research provides an important understanding that must be understood by all people who work to create their creations, as well as ethics and procedures for parties not to respect other people's work by asking permission from the creator to use their work. This decision shows that not everyone understands and respects existing intellectual property. We can see in this decision, an Advocate who filed an exception to Absolute Authority which is clear in the Copyright Law has explained that Copyright disputes are resolved through the Commercial Court. A legal expert should understand more about fundamental things like this, what if a legal expert does not understand fundamental things can defend and fight for the rights of his client. So, from this it can be concluded that especially the general public, it is necessary to carry out more massive socialization to make them aware of the importance of protecting intellectual property accompanied by guidelines for intellectual property specifically Copyright.

ADVANCED RESEARCH

Future research could investigate the economic impact of copyright infringement on creative industries. This highlights the significance of intellectual property protection in supporting economic growth. Additionally, it

is crucial to explore the use of new technologies, such as blockchain, in copyright management and protection due to its potential to increase transparency and efficiency. Future research could investigate the role and responsibilities of digital platforms in copyright enforcement, considering the changes in content consumption behaviour that increasingly rely on digital media.

ACKNOWLEDGMENT

Thanks to the entire academic community of Universitas Pelita Harapan who supported the writing of this article, from writing guidance to access to the literature used.

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