

## REVIEW ARTICLE

# LEGAL PROTECTION OF COPYRIGHT IN THE GLOBALIZATION ERA: A COMPARISON OF INDONESIA AND CHINA

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## ABSTRACT

The aim of this study is to analyze and compare the copyrights protection between Indonesia and China in the globalization Era. The copyright in reference to the Republic Indonesia Law Number 19 of the Year 2002 on the copyright system is as an exclusive of right which is for a so called creator or a receiver of copyright itself to be able to display or to reproduced a creation or by giving the permission to it by not reducing its own restrictions under applicable copyright law. Hierarchically the copyright system itself belongs to the proprietary system of property that is immaterial because it also includes the ideas of thoughts, ideas, as well as from the imaginative form of a person who has poured it into a form of copyrighted work/copyright, as is the case with the copyright in the form of scientific books, literary works, or in the form of artwork. Many of the countries of the world both individuals and legal entities apply this copyright. the copyright system of each country must vary where this difference is the advantage of the country's copyright system itself compared to other countries copyright systems.

Keywords: *Copyrights, Creation, Immaterial Property; Protection*

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## INTRODUCTION

Copyright has a quite broad dimension, in the sense of the copyright system, actual knowledge of the scope of the copyright system is needed to avoid confusion in understanding the general understanding of copyright in society. Copyrights related to many products of national culture that are recognized by other countries, most of the requests from the central government to be able to promote "patenting" the copyright of products on cultural arts. Where in the case of copyright, the term "patented" is not justified, because "*patenting*" will only be appropriate for the right to industrial property, namely in the form of a right to a patent, not a copyright (Irawan, 2018).

Copyright in Indonesia refers to Law No. 19 of 2002 regarding Copyright is an exclusive right of a Creator or recipient of the copyright itself to be able to display or reproduce a work or to give permission to him without reducing the restriction itself based on the applicable copyright law (Usman, 2016).

Hierarchically the copyright system itself is included in the immaterial property rights system because it also includes ideas, ideas, including imaginative forms of someone who has put them into a work form for copyright, for example, with copyright in the form of scientific books, literary works, including works of art (Usman, 2016). Many of the countries in the world both individuals and legal entities apply this copyright. Of course, the system of copyright of each country must be different where this difference gives rise to the advantages of that country's own copyright system over other countries' copyright systems. This is the reason this paper

would analyze concerning Comparison of Case Study Copyright: Republic of Indonesia and People's Republic of China.

## METHOD

The study used a juridical normative approach. Where through such an approach, this article is focused on analyzing the comparison of copyright systems that take case studies between the Republic of Indonesia and the People's Republic of China through literature analysis such as book articles and journals, data cases through the media, and other related legislation. In addition, this paper also analyzes the relationship between the system of rights that are related to one another and theoretical concepts from the related literature. Therefore, the data used for writing articles is secondary data. Sources of this data are obtained through books, articles, and special journals from local and international media such as the United Nations and others as well as from legal experts as well as from applicable local and international regulations.

## DISCUSSION

Basically, the right to an author is "the right to copy a work". Copyright allows the owner of the right itself to be restricted from reproduction of works that are not authorized (Damian, 2004). Where in general, the copyright itself has a certain validity period. Where the copyright itself can be applied to several kinds of works of arts and crafts, the right to the creator is called "creation". It was explained that the right to creation is several forms of intellectual property rights, but also that the rights to creation itself are fundamentally differentiated from other intellectual property rights (such as rights to patents, which are those that can be granted rights) on monopolizing the use of the work itself), because the rights to creation itself are not in the form of monopoly rights to be able to do something, but these rights are to prevent other people from using it.

# COPYRIGHTS IN CONTEMPORARY DEVELOPMENT

## I. COPYRIGHT IN INDONESIA: CURRENT DEVELOPMENT

In the Republic of Indonesia itself, the issue of copyright itself is regulated by law regarding copyright, which, where applicable, the current law is the Copyrights Law (Law Number 24 of 2014). Where in the regulation itself, the meaning of copyright itself is an "exclusive right for the author or the opinion of a right to be able to notify or reproduce a work or hereby give permission for it without reducing the restrictions under applicable laws and regulations" ( Article 1 Paragraph 1).

Copyright in the Republic of Indonesia also recognizes the conceptualization of the terms "right to the economy" and "right to morals". The right to the economy is the right to obtain an advantage from economic creation, then the right to morality is a right which has been attached to the maker and / or actor (art, recording, broadcast) which cannot be eliminated for any reason, even if the copyright or related rights have been transferred. An example of the implementation of the right to morals is the inclusion of the name of the author on the creation, even though, for example, the copyright of this work has been sold to other parties for use (Ismail & Randi, 2018). The right to moral itself has been regulated by Articles 24-26 of this copyright law.

### *1. Duration of Copyright Protection*

In the Republic of Indonesia, the term for protection of copyright in general is that throughout the life of the creator, it is added for 70 years so that the work is known to the creator and the collaborative work or 50 years after it was first published or published or made for works made by legal entities, photography, and anonymous works (Law No. 28/2014 chapter IX and section 58), except 20 years after first broadcast for broadcast work (Law No. 28/2014 chapter IX and section 63), or without limitation the moral rights of the inclusion of names the creator at creation and for copyrights held by the state folklore and the cultural results of the people belong to the applicable invitation "(Law No. 28/2014 chapter IX and article 38; Ismail & Randi, 2018).

## *2. Law Enforcement of Copyright*

Criminal sanctions for copyright infringement in Indonesia are generally threatened by a prison term of at least ten years which may or may not be accompanied by a minimum fine of 4,000,000,000 Rupiah, while creation or goods that are the result of copyright crimes and tools used to commit a criminal act that is confiscated by the state to be eradicated (Law 28/2014 chapter XVII).

## *3. Copyright Exceptions and Limitations in the Republic of Indonesia*

Exclusion of copyright in this case means invalidity of the exclusive rights established in copyright law. Examples of exceptions to copyright are the fair use or fair use doctrine applied to some countries which allows the reproduction of a work without violating copyright. In the copyright law that applies in Indonesia, several things are regulated as not violating copyright (Chapters 14-18) (Maarif, 2019).

The use of a work is not considered a copyright infringement when the source is mentioned or stated clearly and is limited to non-commercial activities including social activities, for example, activities within the scope of education and science, research and development activities, provided that they do not harm the reasonable interests of its creator. The natural interest in this is "interest based on equilibrium in enjoying the economic benefits of creation." Included in this definition is the creation for performance or performance which is not subject to payment. Especially for quoting writings, mentioning or inclusion of sources cited creation must be completed in full.

That is, by including at least the name, title or name of the Creator's work, and the name of the publisher if any. In addition, an owner (not a copyright holder) of a computer program is allowed to make a copy of the computer program, it must be backed up solely for their own use. Copyright photos are generally held by the photographer, but portrait photos of a person (or persons) are prohibited from sharing when they conflict with the reasonable interests of the person being photographed. When people take copyright from someone, that person will get the right punishment for the crime that was committed (Rumbekwan, 2016). According to Law no. 28 of 2014 Article 42, there is no copyright on the results of open meetings of state institutions, laws and regulations, state speeches or speeches of government officials, court decisions or judges, or decisions of arbitration bodies or decisions of other similar bodies (such as decisions that decide the dispute). In the United States,

all government documents, no matter the date, are in the public domain, i.e. they are not copyrighted. Article 43 of copyright law provides that the use or duplication of the national emblem and national anthem by their original nature does not violate copyright. Likewise, the actual news is taken in whole or in part from news agencies, broadcasters, and newspapers or other similar sources, provided the source will be mentioned in full (Nugroho, 2019).

#### *4. Registration of Works in Indonesia*

In Indonesia, recording a work is not an obligation for the creator or copyright holder. Copyright protection appears since its creation and publication (Nugroho, 2019). However, the creation letter can be used as a means of initial evidence in a dispute. As stipulated in chapter X of the Copyright Law, copyright registration is held by the Directorate General of Intellectual Property (DJKI), which is now under the Ministry of Law and Human Rights. Creators or copyright holders can record their creations in person or by appointing a representative (intellectual property consultant). Applications for creation registration are subject to fees. Works that have been recorded through DGIP are included in the general list of creations. Public lists can be accessed in the intellectual property database maintained by DGIP (Sudargo & Winata, 1997).

## II. COPYRIGHT IN THE PEOPLE'S REPUBLIC OF CHINA

Formally, China's copyright law has been in line with the United States and other developed countries since China became a signatory to the Bern Convention in 1992 and the deal on trade hotspots related to intellectual property rights (TRIPS) in 2001. But it's hardly news that You can get pirated copies of almost any movie, CD, or book in China with very little effort. Few years ago, we could find pirated DVDs outside of nearly every supermarket and mall in the country. It is currently more difficult to find the Seller, but not because of China's efforts to limit counterfeit goods; it is because the market has moved to the internet.

But as Chinese Homegrown media companies such as Baidu, Alibaba, and Tencent continue to pay serious money for the right to stream TV shows, films, and other copyrighted material, more lawsuits filed in Chinese courts seek to enforce China's copyright laws, and efforts more formal work is being done to reduce the amount of pirated material available in China. A (few) more subtle forms of copyright infringement are still developing, however: creative work that cut the key elements of

copyrighted material, from storylines to characters to musical cues and beyond. Television shows in China will make some slight changes to a copyright-protected format and then insist it is an entirely new creation, like last year's Chinese voice. It's not always clearly copyright dodge, either; The popular Chinese singing competition *I am a Singer* was officially licensed out of the copyrighted Korean format - or that, until the title and format were changed recently amid China's unofficial restrictions on Korean content. Perhaps it is no longer considered Korean-content shows, which as a side benefit may mean the show cannot be held responsible for copyright infringement (Sudargo & Winata, 1997).

Chinese manufacturers have long excelled at taking key elements of existing products and incorporating them into "new" products. So, it is no surprise that the same is true in entertainment. This has been going on for decades with China's most famous story, the 16th century novel *Journey to The West* which has been adapted into a film or TV series dozens of times. We complain in America about the many sequels and superhero films, but at least most of them have different plots. It would be like having one of our greatest stories, like *Point Break* - remade several times in different formats every year for 40 years.

It is important to understand, however, that Chinese law prohibits unauthorized use of copyrighted works, or elements thereof, unless such use falls under one of the twelve specific exceptions listed in Article 22 of the Chinese copyright law:

1. personal use
2. quote "exactly" to introduce, comment on, or explain
3. use of the media to report current events
4. republishing or re-broadcasting of other media entity stories
5. publish or broadcast a public speech
6. translation or reproduction of scientific works solely for use in teaching or research
7. is used by a government agency "to a degree justifiable for the purpose of fulfilling its official duties"
8. reproduction of works in their collections by libraries, museums, etc. for exhibition or preservation purposes
9. life free performance
10. copy, draw, photograph, or record video with public works of art
11. Translating works of Chinese citizens from Mandarin into Chinese minority languages, for distribution in China
12. Transliterations of published works into Braille for publication.

The above exception is similar to the American concept of "*fair use*," a doctrine that allows for unauthorized use of copyrighted material under certain conditions. While not always interpreted consistently, China's fair use exceptions are quite limited. When you watch a Chinese reality show and hear a dozen uplifting musical cues from American pop songs, that's not fair use. When we watch a Chinese television show that looks exactly like *Mad about you*, it is not fair to use either. That leaves the (former) copyright infringement and the legal license of the copyrighted format (the latter). As the value of copyrighted material in China increases, it is increasingly important to take a broader view of IP protection. Licensing TV shows to China is big and growing business. Anti-piracy efforts are still important, but it is even more important to have a well-structured license agreement, and to take legal action when you find another media company using your copyrighted material.

## CONCLUSION

In the sense of the copyright system, actual knowledge of the scope of the copyright system is needed to avoid confusion over understanding of copyright that is common in society. Copyrights related to many products of national culture that are recognized by other countries, most of the requests from the central government to be able to promote "patenting" the copyright of products on cultural arts. Where in the case of copyright, the terminology of the word "patented" is not justified, because "patenting" will only be appropriate for the right to industrial property, namely in the form of a right to a patent, not for a copyright. Many of the countries in the world both individuals and legal entities apply this copyright. Of course, the system of copyright of each country must be different where this difference gives rise to the advantages of that country's own copyright system over other countries' copyright systems. Where in this case, even though each country has a different copyright system which, when compared, certainly has a comparison of advantages and disadvantages, it cannot be denied that it can also be used as a complementary system between countries to strengthen cooperation between countries.

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## QUOTE

“Copyright law has got to give up its obsession with 'the copy.' The law should not regulate 'copies' or 'modern reproductions' on their own. It should instead regulate uses--like public distributions of copies of copyrighted work--that connect directly to the economic incentive copyright law was intended to foster.”

**Lawrence Lessig**

*Remix: Making Art and Commerce Thrive in the Hybrid Economy*