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# Written Quotations and Its Legal Protection: How Indonesian Law Reform on Copyrights Law?

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## ABSTRACT

Copyright is still on its way to legalizing a lot of homework to be done. One of these jobs is to protect the economic rights of cited sources for commercial use. So far, the copyright law has not specifically regulated this matter. The law does not even protect the economic rights of citation sources quoted for commercial purposes. This study formulates the problem (1) how is the current legal protection regarding copyright for

written works? and (2) how the legal protection should be regarding copyrights for excerpts of written works. The aims of this research are (1) to find out the current legal protection regarding copyright for citations of written works; and (2) formulating the legal protection that should be on copyright for excerpts of written works. The method used in this research is using normative juridical research. The conclusion in this study is to answer the formulation of the problem.

**Keywords:** *legal protection; Copyright; quote; papers; economic rights*

## INTRODUCTION

The development of copyright until now continues to develop. Especially with the development and advancement of technology so rapidly. The development of copyright also continues to experience varied developments. These variations are, for example, related to copyright in the realm of technology<sup>1</sup>. For example, if previously the copyright in the form of writing only existed in books and other written works in printed form. Along with the development of technology. Copyright penetrates, for example, e-books (electronic books), electronic journals, opinion writing in digital media, and others. But in addition to the development of copyright that goes hand in hand with technology. Copyright issues are also increasingly complex. For example, it is related to the economic rights to quotations from writings that are sold commercially. Currently,

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<sup>1</sup> Irawati, "Digital Right Managements (Teknologi Pengaman) Dalam Perlindungan Terhadap Hak Cipta Di Era Digital," *Diponegoro Private Law Review* 4, no. 1 (2019): 382–89; Ayon Diniyanto and Heris Suhendar, "How Law Responds to Technological Development?," *Unnes Law Journal: Jurnal Hukum Universitas Negeri Semarang* 6, no. 2 (2020): 405–26, <https://journal.unnes.ac.id/sju/index.php/ulj/article/view/41297>; Kholil Said and Ayon Diniyanto, "Determination of Advancement of Technology Against Law," *Journal of Law and Legal Reform* 2, no. 1 (2021): 125–34, <https://doi.org/https://doi.org/10.15294/jllr.v2i1.44525>; Khwarizmi Maulana Simatupang, "Tinjauan Yuridis Perlindungan Hak Cipta Dalam Ranah Digital," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 1 (2021): 67, <https://doi.org/10.30641/kebijakan.2021.v15.67-80>.

everyone has the right to quote sentences in written works without having to give economic rights to the creator or author of the paper. In fact, the quoter who creates the written work can trade the written work commercially. This means that the citation gets economic benefits from the results of the citations as outlined in the paper. Meanwhile, the authors of the cited works do not get economic rights from the cited works<sup>2</sup>.

Especially in the current era, the culture of writing is increasingly emphasized, especially in the academic environment. Many academics are currently being encouraged to write papers such as books, journal articles, opinions, and others<sup>3</sup>. Of course, the creation or creation of these works cannot be separated from the existence of quotations, especially quotations from previous writings or existing writings. Then the creation of these works also has the potential to gain commercial profits

This condition can certainly be said to be detrimental to the author of the written work whose writings are quoted. The author of the written work does not get protection of economic rights due to his work being quoted by other people. Even though the author of the written work gets moral rights from the quoted writing. This moral right occurs, for example, when a citation includes the source of the quote in a footnote, body note, bibliography, or reference. But, in the exclusive right to copyright does not only talk about moral rights. But there are also economic rights that can be

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<sup>2</sup> Antonio Rajoli Ginting, "Perlindungan Hak Moral Dan Hak Ekonomi Terhadap Konten Youtube Yang Dijadikan Sumber Berita," *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2020): 579–96, <https://doi.org/10.30641/kebijakan.2020.V14.579-596>; Arif Rahman, Efridani Lubis, and Agus Surachman, "Perlindungan Hak Ekonomi Pencipta E-Book Pada Situs Buku Gratis Merespon Perkembangan Hukum Informatika Dan Transaksi Elektronik," *Jurnal Ilmiah Living Law* 12, no. 2 (2020): 167–84; Rizky Pratama P. Karo, "Analisis Yuridis Perlindungan Hak Ekonomi Terhadap Buku Teks Pada Penerbit Gadjah Mada University Press Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Jurnal Penelitian Hukum* 2, no. 1 (2015): 37–44; Denny Kusmawan, "Perlindungan Hak Cipta Atas Buku," *Perspektif* XIX, no. 2 (2014): 137–43; Ade Uswatun Sitorus, "Hak Cipta Dan Perpustakaan," *Jurnal Iqra* 09, no. 02 (2015): 252–67; Achmad Chosyali, "Perlindungan Hukum Hak Cipta Buku Pengetahuan Tentang Hak Cipta," *Refleksi Hukum* 3, no. 28 (2018): 49–66, <https://doi.org/10.24246/jrh.2018.v3.i1.p49-66>.

<sup>3</sup> Agregasi KR Jogja, "Guru Besar Dan Dosen Wajib Publikasi Ilmiah," Okedukasi, 2018; Asep Rudi Nurjaman, "Menyoal Dosen Wajib Menulis," Kumparan.com, 2020; Iradhatie Wuriananda, "Dosen Punya Kewajiban Terbitkan Buku," Okedukasi, 2016.

attached to the creator. This is stated in Article 4 of Law Number 28 of 2014 concerning Copyright which states that Copyright as referred to in Article 3 letter a is an exclusive right consisting of moral rights and economic rights. Then Article 9 paragraph (3) states that any Person without permission from the Author or Copyright Holder is prohibited from Reproduction and/or Commercial Use of Works. Article 9 paragraph (3) implies that the author of a written work whose writing is quoted for commercialization is entitled to economic rights.

Seeing these problems, the researcher is interested in seeing how far the protection of economic rights for the works whose writings are quoted will be commercialized by the quoting. by someone else. The formulation of the problem in this study is (1) how is the current legal protection regarding copyright for written works? and (2) what should be the legal protection regarding copyrights for excerpts of written works? The aims of this research are (1) to find out the current legal protection regarding copyright for citations of written works; and (2) formulating the legal protection that should be on copyright for excerpts of written works.

## METHOD

This research was conducted using a qualitative research approach. Qualitative approach is the approach of researchers who look at social phenomena in society then photographed and then described in the form of a narrative. This means that this research will look at the symptoms that exist in the community related to legal protection for authors whose writings are quoted and commercialized by the citation. The researcher then described the symptoms in the form of a narrative. The type of research used in this research is using normative juridical research. This type of research emphasizes the study of the normative aspect of the legislation and is also studied from the aspect of the issues raised. The laws and regulations studied are Law Number 28 of 2014 concerning Copyright and other laws and regulations. The issue raised concerns copyright

protection for creators whose written works are quoted and commercialized by the author. Sources of data in this study include primary and secondary legal materials. The data collection technique was carried out by literature study. The validity of this research data using triangulation. Data analysis in this study was carried out using an interactive model<sup>4</sup>.

## RESULT & DISCUSSION

Legal protection regarding copyright has actually been regulated in laws and regulations. The legislation in question is Law Number 28 of 2014 concerning Copyright. Previously, legal protection regarding copyright was regulated in several laws and regulations such as (1) Law Number 12 of 1982 concerning Copyright; (2) Law Number 7 of 1987 concerning Amendments to Law Number 12 of 1982 concerning Copyright; and (3) Law Number 19 of 2002 concerning Copyrights. These three regulations are regulations that have been in force in Indonesia which regulate copyright, including legal protection in copyright.

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<sup>4</sup> Ayon Diniyanto, "Reformasi Hukum Tanah Desa: Redefinisi Dan Penguatan Kedudukan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, no. 3 (2019): 351–65, <https://doi.org/10.33331/rechtsvinding.v8i3.331>; Hardani et al., *Metode Penelitian Kualitatif & Kuantitatif* (Yogyakarta: Penerbit Pustaka Ilmu, 2020); Bachtiar S Bachri, "Meyakinkan Validitas Data Melalui Triangulasi Pada Penelitian Kualitatif," *Jurnal Teknologi Pendidikan* 10, no. 1 (2010): 46–62; Matthew B. Miles and A. Michael Huberman, *An Expanded Sourcebook Qualitative Data Analysis*, SAGE Publications, Inc., 2nd ed., vol. 1304 (California: SAGE Publications, Inc., 1994); Matthew B. Miles, A. Michael Huberman, and Johnny Saldaña, "Qualitative Data Analysis: A Methods Sourcebook," in *Nursing Standard (Royal College of Nursing (Great Britain) : 1987)*, 3rd ed., vol. 30, 2016, 33, <https://doi.org/10.7748/ns.30.25.33.s40>.

# I.

## THE CURRENT LEGAL PROTECTION REGARDING COPYRIGHTS FOR CITATIONS OF ESSAYS

Talking about legal protection, it cannot be separated from the theory of legal protection. The theory of legal protection basically has two aspects. First, preventive protection. Preventive legal protection is legal protection to prevent an action against the law. This prevention then gives rise to laws or statutory regulations as instruments to prevent acts or acts against the law. The legal instrument is carried out by the authorities who have the authority to form a statutory regulation regarding copyright. Second, repressive protection. Repressive legal protection is legal protection in the context of resolving legal problems. This means that repressive legal protection is a mechanism for resolving problems legally, including in handling the settlement before the court<sup>5</sup>.

In relation to copyright, the theory of legal protection is very closely related. Copyright is an exclusive right granted to creators and copyright holders to publish, distribute, and obtain related rights in it for the work

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<sup>5</sup> Zennia Almaida and Moch. Najib Imanullah, "Perlindungan Hukum Preventif Dan Represif Bagi Pengguna Uang Elektronik Dalam Melakukan Transaksi Tol Nontunai," *Privat Law* 9, no. 1 (2021): 222–24; Dyah Permata Budi Asri, "Perlindungan Hukum Preventif Terhadap Ekspresi Budaya Tradisional Di Daerah Istimewa Yogyakarta Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta," *Journal of Intellectual Property* 1, no. 1 (2018): 16; Agus Antara Putra, I Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Perlindungan Hukum Terhadap Pekerja Dengan Perjanjian Kerja Waktu Di Indonesia," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 15–16, <https://doi.org/10.22225/juinhum.1.2.2428.12-17>; Luthvi Febryka Nola, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)," *Negara Hukum* 7, no. 1 (2016): 40.

that has been created<sup>6</sup>. This is in accordance with Article 1 number (1) of Law Number 28 of 2014 concerning Copyright which states that Copyright is the exclusive right of the creator that arises automatically based on declarative principles after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of the regulations. This means that every work that has been published is protected by declarative principles. One of these protections is legal protection. This is where the importance of legal protection in copyright with the aim of protecting the work that has been created. Considering that the creator in this case has or has moral rights and economic rights to the work created. Moral rights according to Article 5 of Law Number 28 of 2014 concerning Copyright are rights that are inherent in the creator on an eternal basis and cannot be transferred and contested. Economic rights in accordance with Article 8 of Law Number 8 of 2014 are rights owned by creators or copyright holders to obtain economic benefits for the copyrighted works that have been created. Then copyright is protected, for example, copyrighted works about books, written works, and other works that have been published. Including other works regulated in Article 40 paragraph (1) of Law Number 28 of 2014 concerning Copyright.

The copyrights that are not protected are works that have not been realized, ideas or ideas, results of meetings, statutory regulations, holy books, and others as referred to in Articles 41 and 42 of Law Number 28 of 2014 concerning Copyright. Furthermore, there are also restrictions related to copyright, for example the use, retrieval, copying, partial conversion, etc. are not stated as legal protection of copyright. Then creations whose

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<sup>6</sup> Oksidelfa Yanto, "Konsep Perlindungan Hak Cipta Dalam Ranah Hukum Hak Kekayaan Intelektual (Studi Kritis Pembajakan Karya Cipta Musik Dalam Bentuk VCD Dan DVD)," *Yustisia* 4, no. 3 (2015): 746–60, <https://doi.org/10.20961/yustisia.v93i0.3702>; Ronna Novy Yosia Taliwongso, "Perlindungan Hukum Atas Hak Kekayaan Intelektual Khususnya Merek Di Indonesia," *Lex et Societatis* II, no. 8 (2014): 147–58; Hasbir Paserangi, "Perlindungan Hukum Hak Cipta Software Program Komputer Di Indonesia," *Jurnal Hukum* 18, no. 19 (2011): 21; Fajar Alamsyah Akbar, "Perlindungan Hukum Terhadap Hak Cipta Menurut Pasal 12 Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta Di Indonesia," *JOM Fakultas Hukum* III, no. 2 (2016): 8.

sources are listed in full and not for commercial use. This is in accordance with Article 42 to Article 51 of Law Number 28 of 2014 concerning Copyright. This means that every use of substance in a copyrighted work may be cited with certain limitations and as long as it is not for commercial purposes.

For example, in the use of written works that cite the substance of other people's works for educational purposes and to make it easier to convey information to people with disabilities and not for commercial purposes. It is allowed. But in fact, many of the citations of written works are done for commercial purposes. For example, someone who quotes something substantial from someone else's work, and then turns it into a new paper and the new paper is for commercial gain. For example, A makes a book. The book has a section citing books by B, C, D, and E. The books produced by A are then traded and profited economically. Meanwhile, B, C, D, and E whose books are quoted by A only get moral rights and do not get economic rights that arise from economic benefits in the books created by A. These examples are real facts that we see clearly and often occur until now. with today.

Up to now, the law has not provided specific arrangements in the legal protection of economic rights in the copyright of written works cited for economic purposes. There are still many things that have not been arranged. Article 40 paragraph (1) letter a of Law Number 28 of 2014 concerning Copyright states that written works are part of things protected by copyright. Meanwhile, based on Article 44 paragraph (1) letter a which explains that the use, retrieval, duplication and/or alteration of a work and/or related product/right in its entirety or substantial subsection is not considered a copyright infringement if the source is fully stated, mainly for commercial purposes. Then it is also clarified in Article 9 paragraph (3) that anyone without the permission of the creator or copyright holder is prohibited from duplicating and/or commercially using the work. This is also further strengthened in Article 1 paragraph (24) that what is meant by commercial use is the use of works and/or related rights products with the

aim of obtaining economic benefits from various sources or for a fee. create new writings for commercial purposes.

Judging from the material of the articles, there is no specific statement to discuss the use of citations which are regulated by Law Number 28 of 2014 concerning Copyright. This is different from Article 1 number 23 of Law Number 28 of 2014 concerning Copyright related to the piracy and illegal copying of works and/or related rights products and the distribution of goods resulting from the reproduction in question widely to obtain economic benefits. Article 1 number 23 is clearer about its content.

The quotation does not explain specifically, but the quotation from the written work is a substantial part or sub-section in accordance with Article 44 paragraph (1) which means that the quotation should also get copyright protection. Currently, there are many authors who in creating written works understand by including the author in the quote as a form of moral right and so that it is not indicated as an act of plagiarism in a written work. This quote has obtained moral rights which have been regulated in accordance with Law Number 28 of 2014 concerning Copyright, but there are no clear and specific regulations in Law Number 28 of 2014 concerning Copyright which explain the economic rights of the quote. a written work in which the citation is a substantial part or subsection of a written work.

Finally, today, the fact that we see there is no distribution of economic rights for the creators whose writings are quoted by others for commercial purposes. The law also does not provide specific protection for substantial excerpts from works whose citations have a commercially profitable impact. This certainly has an impact on the authors of the papers whose works are quoted. The impact in question is that the author does not get economic rights from the cited work for commercial gain. Authors should be protected not only get moral rights over written works cited for commercial purposes. The author has the right to get economic rights from the paper quoted by the citation if the citation gets economic benefits from the quote.

## II. LEGAL PROTECTION THAT SHOULD BE ABOUT COPYRIGHTS FOR WRITING QUOTES

The facts mentioned above indicate that there are problems, especially regarding the economic rights of authors whose works are cited for commercial gain. The laws and regulations, in this case Law Number 28 of 2014 concerning Copyright, do not appear to have regulated this matter. This condition can be interpreted that there is no preventive legal protection. Preventive legal protection in question is legal protection for authors whose works are quoted by others for commercial purposes. Actually, Law Number 28 of 2014 concerning Copyright has accommodated economic rights, as previously mentioned. However, the economic rights referred to in Law Number 28 of 2014 concerning Copyright do not or have not focused on the protection of citations. This means that Law Number 28 of 2014 concerning Copyright does not or has not specifically regulated economic rights in quotations.

The absence of specific legal protection for the author whose writings are quoted for commercial purposes certainly has an impact on the creator. Because it should be able to generate economic prosperity for the creators whose writings are quoted for commercial purposes. The absence or absence of such regulation makes it important to create a rule that regulates the provision in question. The rules or regulations that must be carried out must reflect at least two aspects. First, legal protection to obtain economic rights to written works cited for commercial purposes. Second, the economic impact on papers cited for commercial purposes.

The formulation of the right regulation is by making a rule that everyone who cites for commercial purposes is obliged to give some economic rights to the author or creator of the cited work (source of the quote). The distribution of economic rights must be regulated in detail up

to a percentage. The distribution of economic rights is carried out by an institution that deals with this matter, such as the National Collective Management Institute (LMKN). The formulation must be carried out or included in a regulation that regulates copyright. If necessary, the formulation can be done by establishing a new regulation that regulates the economic rights of written works. But in order to maintain the simplification and harmonization of regulations, it is better if the formulation is included in the existing laws and regulations, namely the law that regulates copyright. Why does it have to be statutory? Because the law is hierarchically statutory regulations have a strong position. This strong position has the consequence of strong legal protection.

If the formulation of the regulation is made in the form of a legal policy in the form of a law. Of course it will have an economic impact on the papers quoted for commercial purposes. The author has at least mapped out some of the impacts that will be obtained. The impact in question is a positive impact on the creator of the written work whose work is quoted (source of quotation/source cited) for commercial purposes. There are at least three impacts that will be obtained, namely (1) providing awards and copyright protection for authors whose writings are quoted; (2) obtain economic benefits; and (3) increase productivity and enthusiasm for writers in pouring new ideas into written works.

The first impact, is to provide appreciation and copyright protection for authors whose writings are quoted, which is not a new impact. Considering that this phenomenon has already taken place and we can see it in various written works. This is because so far, everyone who quotes must include the source of the quote. This means that there is an award made by the citation to the source cited.

The second impact is to gain economic benefits. This impact is a new impact because it has not happened before. Previously there was no obligation for the quoting agent to grant economic rights to the quoting source. The quoters who make writings to be commercialized and the writings are made by citing various sources, there is no obligation to provide profit sharing or some economic rights to the source of the

quotation. Economic rights can be said to be or owned by the creator or publisher. After the regulation that requires the citation to give economic rights to the source of the citation, it is certain that the source of the citation will also receive the economic rights of the cited paper. This economic advantage will certainly benefit the source of the quote or the author of the paper whose work is quoted for commercial purposes.

The third impact, of course, can increase or increase productivity and enthusiasm for the creator or writer of the paper whose works are quoted for commercial purposes. Productivity and enthusiasm are meant to be productive and enthusiastic in expressing new ideas. The existence of a policy of economic rights for the source of quotations or authors whose writings are quoted for commercial purposes can certainly provide encouragement for writers or authors to increase writing productivity. This impact is actually very important because it will have the potential to produce many new, unique, and interesting ideas or ideas that are set forth in the form of written works.

Indeed, some of these impacts have already occurred and some are still potential. But with this impact, it can at least provide a breath of fresh air for writers or writers. The existence of this impact also indicates that there is legal protection in copyright, including economic rights in written works that are quoted for commercial purposes.

## CONCLUSION

The existence of the cited written work (source of the quote) to be used as a work that has economic rights can be said to have not received protection. Law Number 28 of 2014 concerning Copyright can be said to have not provided protection, especially legal protection in economic rights for the creators of written works whose works are quoted by others for commercial gain. The author of the written work or the source of the quotation has not yet obtained economic rights from the quotation that has

been made into a written work for commercial gain. Therefore, it is necessary to formulate regulations that regulate the protection of citation sources whose quotations are used for commercial purposes. The formulation at least includes an obligation for every person who makes citations for commercial use must provide economic rights to the source of the citation. The distribution of economic rights is carried out or managed by a body that handles economic rights in copyright. The formulation can be contained in a new law or embedded in a revised copyright law. If the formulation of the regulation is implemented or implemented, there will be at least three impacts, namely (1) appreciation of the source of the quotation; (2) economic benefits for the source of the quotation; and (3) the productivity of ideas and writings.

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